

ORIGINAL

BEFORE THE SUPREME COURT OF OHIO

DAYTON BAR ASSOCIATION :

Relator : Case No. 2011-0340
Board No. 09-064

v. :

GEORGIANNA I. PARISI :

Respondent. :

RESPONDENT'S OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED SANCTION OF THE
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
OF THE SUPREME COURT OF OHIO

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INTRODUCTION

Georgianna I. Parisi is a 29-year practitioner focusing her practice in estate planning, trusts and probate law. Since 2003 she has been certified as a specialist by the Ohio State Bar Association (“OSBA”). For 15 years, she was a member of the OSBA’s Certified Grievance Committee investigating grievances filed with it for possible violations of the Code of Professional Responsibility (“Code”) or the Ohio Rules of Professional Conduct (“Rules). For her entire practice, she has faithfully served the elderly community as attorney-in fact, guardian, trustee, and advocate, performing services that most members of the legal profession are unable or unwilling to do. Ms. Parisi’s services often require her to interact with irascible and unpredictable clients in depressing atmospheres characterized by abject despair and overpowering stench. She attempts to strike a balance between the personal best interests of her client and the client’s desires. Often she must deal with the client’s loved ones who may believe they have been wrongfully deprived of an inheritance.

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (“Board”) found that Ms. Parisi committed wrongdoing in her dealings with two clients. The first involves a 94-year old woman, Sylvia Demming, for whom Ms. Parisi filed a guardianship and rendered services as attorney-in-fact. The Board found that Ms. Parisi engaged in a conflict of interest when she simultaneously represented Ms. Demming and her niece, the applicant in guardianship proceeding.¹ That conclusion is not supported by the disciplinary rules, case authority or substantive law.

Ms. Demming did not oppose her guardianship until a nonrelative, Lisa Carroll, applied to be her guardian. Ms. Carroll is the long-time employee of the corporate entity whose stock

¹ Ms. Parisi first represented herself as the applicant. She later represented Ms. Demming’s niece, Sylvia Manchi, as the applicant.

comprises the corpus of a trust, a portion of which was to provide for Ms. Demming's living expenses for life. One of the trust's remaindermen is Ms. Carroll's boss. Ms. Carroll had antagonistic motives designed to deprive Ms. Demming of the trust funds, to the benefit of her boss. Ms. Parisi did her best to bring the matter to the Warren County Probate Court's ("Probate Court") attention. After Ms. Carroll made her intentions clear, Ms. Demming stated in four separate written instruments that she wanted Ms. Parisi to represent her to protect her interests in the trust. She also requested that either Ms. Parisi or Ms. Manchi, her niece, be appointed guardian. The Probate Court appointed Ms. Carroll as guardian of the estate.

In blatant disregard of both the Ohio guardianship statute and this Honorable Court's well-established line of disqualification decisions and in contravention of Rule 1.14, the Probate Court removed Ms. Parisi as Ms. Demming's counsel on the basis of a conflict of interest. This occurred at a pretrial at which Ms. Demming was not present, leaving Ms. Demming defenseless against her foes. Neither the Interim Guardian/Guardian *Ad Litem* nor Ms. Demming's court appointed attorney filed on Ms. Demming's behalf an objection to the guardianship, the only situation that could have created a conflict worthy of Ms. Parisi's removal. Nor did either take any action to protect Ms. Demming's rights relative to the trust. With control over the finances, Ms. Carroll has refused to press the trustee to pay for Ms. Demming's living expenses as the trust requires to Ms. Demming's ultimate detriment.

Ms. Demming also has incurred much greater legal expenses as a result of Ms. Parisi's removal. Her guardianship estate was charged for the attorney fees and costs for Ms. Carroll's counsel, Ms. Manchi's counsel, the Interim Guardian/Guardian *Ad Litem*, and Ms. Demming's court appointed counsel. Ms. Parisi, on the other hand, never received payment for her services.

Ms. Parisi did not violate R.C. 2111.04(D) when she paid her own invoice for services rendered along with the rest of Ms. Demming's living expenses. At the time she did so, Ms. Demming was not living in nor did she own property in Warren County. The Probate Court had no jurisdiction over her and, accordingly, it had no authority to rule upon a fee application from Ms. Parisi. Instead, Ms. Parisi submitted the bill to Ms. Manchi for review and approval prior to payment believing Ms. Manchi would be the next attorney-in-fact or guardian.

The second situation involves the Board's finding that Ms. Parisi charged a clearly excessive fee in rendering services to a 73-year old client, Royal John Greene. Mr. Greene hired Ms. Parisi to help him retain his independent lifestyle, a daunting task as Mr. Greene, a diabetic suffering from end stage renal failure, was undergoing dialysis three times per week. Paramount was keeping Mr. Greene out of a nursing home and avoiding guardianship. To accomplish this, Mr. Greene appointed Ms. Parisi as his attorney-in-fact and, later, as his health care attorney-in-fact. With Mr. Greene's knowledge and consent, Ms. Parisi and her staff provided him with services with which he was very satisfied. At the outset of the representation, Mr. Greene authorized Ms. Parisi to utilize the power of attorney to pay her and her staff for these services. He further instructed her not to send him billing statements. Ms. Parisi, however, prepared monthly reconciliation statements including in them the amounts of the checks that she wrote to pay for her services and showed them to him. The Board acknowledged that Mr. Greene could not have accomplished his goals without Ms. Parisi's help as his family refused to help him.

Mr. Greene personally signed his income tax returns prepared by an independent accountant, which showed the decline of the balances in his brokerage accounts. Mr. Greene also directed Ms. Parisi which assets to sell to fund his care. Unlike a guardianship or a trust

situation, Mr. Geene never ceded total control of his assets to Ms. Parisi. He always retained the authority direct the individuals that would provide his care and to terminate Ms. Parisi at will.

The Board's conclusion that Ms. Parisi charged Mr. Greene a clearly excessive fee for the services provided is quizzical. The services she rendered amounted to \$259,940.79 for which she collected \$231,570.24 and actually retained \$210,570.24. As its basis, the Board pointed to \$18,000 (about 8.5%) in services that it believed should not have been rendered, a sentiment that Mr. Greene did not share. The Board's conclusion is even more puzzling since it acknowledged that Ms. Parisi rendered \$23,000 of services for which she did not bill. The evidence, supported by two experts, overwhelmingly concurs with Ms. Parisi's position that her charges were fair and reasonable.

The following constitutes Ms. Parisi's considered objections to the Boards Findings of Fact, Conclusions of Law and Recommended Sanction ("FFCL").

I. FACTS

A. SYLVIA DEMMING

1. Individuals Involved

Sylvia Demming – 96 year old senior and Ward of the Demming Guardianship.

Sylvia Manchi – Sylvia Demming's niece and Guardian of the Person of Sylvia Demming.

Norman C. Cammerer – Sylvia Demming's companion of 40 years.

Midwest Tool & Engineering Co. ("Midwest") – Norman C. Cammerer's business enterprise for which he was a majority shareholder.

Richard Cammerer – Norman C. Cammerer's nephew and Successor Trustee and beneficiary under the Third Amended and Restated Revocable Living Trust Agreement of Norman C.

Cammerer dated 10/15/03 (“Cammerer Trust”) and Trustee and remainderman beneficiary of the Sylvia M. Demming Trust (“Demming Trust”).

Robert Cammerer – Norman C. Cammerer’s nephew, Successor Midwest President, beneficiary under the Cammerer Trust and remainderman beneficiary of the Demming Trust.

Lisa Carroll – Long time employee of Midwest and Robert Cammerer’s employee.

Carl Sherrets – Attorney for Lisa Carroll in her application for guardianship of Sylvia Demming.

Bev Gutmann – Marketing Director for Spring Hills, an assisted living facility.

2. Specifics

In October 2007, Ms. Parisi was introduced to Sylvia Demming, a 93-year old senior, being held against her will in a nursing home. (FFCL, ¶10). Norman C. Cammerer, Ms. Demming’s companion of 40 years, owned the Shroyer Road home in which she lived. (Tr., pp. 623; Exh. “A”, p. 1). Norman’s will set up the Cammerer Trust out of which is carved the Demming Trust. The corpus of the Cammerer trust is comprised of Midwest stock. The corpus of the Demming Trust is comprised of the Shroyer Road home (or the proceeds of its sale) and \$500,000, presumably from the sale of Midwest stock. The Demming Trust is to provide for Ms. Demming’s living expenses for life, with the remainder to go to the remainderman beneficiaries, including Richard and Robert Cammerer. (Tr. pp. 623-624; Exh. “A”, pp. 4-6).

Lisa Carroll is a long time employee of Midwest and Robert Cammerer is now her boss. (Tr. p. 621; Exh. “A”, p. 2). Ms. Carroll and Ms. Demming did not get along. (Tr. p. 663, 664). When Norman passed, despite Ms. Demming’s life interest, Ms. Carroll removed her from the Shroyer Road home. (Tr. p. 624; Exh. “A”). Ultimately, Ms. Demming was placed in a nursing home. (Tr. p. 624). At Ms. Demming’s request, Ms. Parisi secured her release to Spring Hills,

an assisted living facility, with the hope that Ms. Demming would eventually move to Florida to live with her sister. (Exh. "GGGG", pp. 24-25, 27; Tr. pp. 624-625, 627).

As part of Spring Hills' admissions requirements, Ms. Demming underwent a physical examination and the physician signed a Statement of Expert Evaluation recommending she be placed under guardianship. (Exh. "D", p. 3-5). There being no one else available, Ms. Parisi requested the Probate Court to appoint her as guardian. ("Exh. "D"). On November 29, 2008, Ms. Parisi located Sylvia Manchi, Ms. Demming's niece, living in Trumbull County who, later, was substituted as the applicant in the guardianship proceeding. ("E", p. 5).

Reviewing Norman Cammerer's Probate Estate records on file, Ms. Parisi discovered the trusts and, pursuant to their terms, forwarded Ms. Demming's living expense bills to the trustee for payment. (Tr. pp. 634-635; Exh. "E", p. 5-6). When the Trustee refused, Ms. Parisi made known that, as guardian, she may have no other alternative than to force the issue through a Declaratory Judgment Action. (Tr. pp. 637-638; Exh. "E", p. 8-10).

Within days of that conversation, Ms. Carroll began contacting Ms. Demming. (Exh. "E" pp. 8-9). On Christmas Eve, Ms. Carroll and an unknown male appeared at Spring Hills with a type written letter for Ms. Demming's signature stating that Ms. Demming did not know Ms. Parisi, did not want her to be her guardian, and requesting an attorney. (Exh. "A", p. 2; Exh. "H"). Ms. Demming signed the letter and Ms. Carroll faxed it to the Probate Court. (Exh. "H").

When Ms. Parisi discovered the letter, she contacted Ms. Demming, who confirmed that she wished Ms. Parisi to remain as her attorney. (Tr. p. 642). On January 2, 2008, Ms. Demming signed a series of documents, including an affidavit, a letter, and a Durable Power of Attorney. (Tr. p. 644; Exh. "A", pp. 7, 10, 14). Ms. Demming wrote a notation on the December 24, 2007 letter stating: **"I want Georgianna Parisi to be my attorney. I did not**

understand what they gave me to sign.” (Exh. “A”, p. 9). Ms. Demming prepared her own handwritten note refusing any contact with Lisa Carroll or Ms. Carroll’s attorney, Carl Sherrets, and confirming that **Ms. Parisi is her attorney**. (Tr. p. 649; Exh. “T”). Ms. Demming also signed a Durable Power of Attorney naming Ms. Parisi as her attorney-in-fact. Both Ms. Parisi and Bev Gutmann, the Marketing Director for Spring Hills, confirmed that Ms. Demming was lucid when she signed the documents. (Tr. pp. 645, 653, 803-804). Additionally, the notary clause on the Durable Power of Attorney certified that the document was read and explained to Ms. Demming and that she signed of her own free act. (Exh. “A”, pp. 14).

On January 7, 2008, Ms. Parisi filed a Notice with the Court explaining the situation and attaching the above documents. (Exh. “A”). **Ms. Demming’s affidavit states that Ms. Parisi is to be her attorney to fight for her rights under the Demming Trust.**” The 12/24/07 letter notation states that **Ms. Parisi is to be Ms. Demming’s attorney**. The letter Ms. Demming signed said **Ms. Parisi is to be appointed her Guardian** and indicates that **the Cammerer nephews told Ms. Demming they would do everything in their power to prevent her from using the money Norman Cammerer put aside for her**. (Exh. “A”, p. 7-10”).

On January 9, 2008, Lisa Carroll filed a competing Application to be Ms. Demming’s guardian. (Tr. p. 639; Exh. “J”). On several occasions, Ms. Demming expressed to Ms. Parisi, Ms. Gutmann and Ms. Manchi that she did not want Ms. Carroll to be her guardian, (Exh. “A”, pp. 7-10, Exh. “GGGG”, p. 32), although she consented to Ms. Parisi’s or Ms. Manchi’s appointment. (Exh. “GGGG”, pp. 33-34; Exh. “A”, pp. 7, 10, 14). On January 30, 2008, Ms. Parisi withdrew her application for guardianship and filed an application for Ms. Manchi to become Ms. Demming’s guardian. (Tr. p. 646; Exhs. “M”, “N”).

On March 1, 2008, Ms. Demming wrote the magistrate saying that she no longer lived in Warren County and was moving to Florida. (Tr. p. 658; Exh. "U"). On March 12, 2008, Ms. Parisi filed a Notice so indicating with the Court. (Tr. p. 6559; Exh. "V"). At the March 14, 2008 **pretrial**, the court confirmed that Ms. Demming had moved from Warren County to Mahoning County to be closer to family. (Exh. "1", pp. 4-5, 17).

Ms. Parisi originally planned to apply for attorney's fees through the guardianship. When Ms. Demming moved, by statute, the Probate Court no longer had jurisdiction, which meant Ms. Parisi could not apply to it for fees. (Tr. pp. 669-670; Exh. "1", p. 6). Ms. Parisi, Ms. Demming and Ms. Manchi discussed that Ms. Demming would take over as the attorney-in-fact and that Ms. Parisi's services were at an end. (Tr. pp. 669-670). As a result, Ms. Parisi sent her fee statement to Ms. Manchi for review and approval and, thereafter, paid herself \$18,000 (after reducing the bill from \$27,000) for her services rendered to Ms. Demming. (Tr. pp. 670-674; Exh. "1", pp. 23-24). In the end, the Probate Court retained jurisdiction.

Although Ms. Manchi initially intended to withdraw her Warren County application for guardianship (Tr. p. 25), she changed her mind. (Exh. "1"). Ms. Parisi explained this to the court and restored the funds to Ms. Demming's account the next business day. (Exh. "1", pp. 23; Exh. Exh. "X", p. 2). At a March 14, 2008 **pretrial unattended by Ms. Demming**, without either prior notice or a hearing, the magistrate revoked Ms. Parisi's power of attorney and disqualified her from further representing either Ms. Demming or Ms. Manchi in the guardianship on the basis that Ms. Demming objected to the guardianship. (Tr. pp. 662-663). The magistrate *sua sponte* appointed an Interim Guardian/Guardian *Ad Litem* and separate counsel for Ms. Demming. (Exh. "GGGG", pp. 31, 50, Exh. "1"). **Neither Ms. Demming's court appointed counsel nor the Interim Guardian/Guardian Ad Litem ever filed an**

objection to the guardianship on Ms. Demming's behalf. When Ms. Demming appeared before the Probate Court on June 30, 2008, she consented to the guardianship. (Exh. "GGGG", pp. 33-34). Ms. Manchi became the guardian of the person and Ms. Carroll became the guardian of the estate. (Exh. "1"). Ms. Demming's guardianship estate was charged for the attorney's fees for Ms. Carroll's attorney, the Interim Guardian/Guardian *Ad Litem*, Ms. Demming's court appointed attorney and Ms. Manchi's attorney. (Tr. pp. 1020-1021). The Demming Trust was later established. Although Ms. Demming has received some interest payments, the proceeds of the sale of the Shroyer Road home were never placed into the trust and the trust has never paid Ms. Demming's living expenses. (TR. pp. 623-24; Exhs. "J", "DD"). Ms. Parisi never received payment for her representation of Ms. Demming.

B. ROYAL JOHN GREENE

1. Individuals Involved

Royal John Green (John Greene) – 73-year old male suffering from diabetes and end stage renal failure for whom Ms. Parisi provided attorney-in-fact and attorney services.

Willa Greene – John Greene's deceased wife.

Charlene Vayos – Willa Greene's sister and John Greene's close friend who became attorney-in-fact after Willa's passing and who assured John Greene was properly cared for.

Nicholas Vayos – Charlene Vayos' husband. Both Charlene and Nick Vayos knew Mr. Greene for over 40 years.

John (Chris) Christiansen – John Greene's best friend of 50 years and neighbor who served in the Korean war with John and assisted in caring for him during the final years.

Janice Eder – John Greene's sister.

Janet Stookey – Janice Eder's friend who Ms. Vayos, as attorney-in-fact, employed to take care of Mr. Greene. Ms. Stookey's husband worked for many years with John Greene.

Patricia Langford – John Greene's sister who had no contact with him until the end of his life.

Robert Langford – Patricia Langford’s son who replaced Ms. Parisi as attorney-in-fact.

2. Specific details

Royal John Greene was a 73-year old man suffering from diabetes and end stage renal failure when Ms. Parisi represented him. (Stip. ¶ 9). He attended college on the GI bill, had been employed as superintendent of the press room at the Dayton Daily News, knew about the stock market, was able to take care of his own finances and was president of the NCR Credit Union. (Exh. “HHHH” p. 14-15, 18).

Until she died, Mr. Greene lived with this wife, Willa, in Dayton, Ohio. The Greens had no children but were close with Willa’s sister, Charlene and her husband Nick Vayos who lived in California. (Stip. ¶ 9; FFCL ¶ 30; Exh. “FFFF” p. 8, 22, 28; Exh. “HHHH” p. 28). While Mr. Greene had family in Dayton, Ohio, they were not close. (FFCL ¶ 30’ Exh. “FFFF” pp. 11, 15; Exh. “HHHH” p. 7). When Willa passed, Mrs. Vayos became Mr. Greene’s attorney-in-fact. (Exh. “FFFF” pp. 10-11, 14). She placed him at The Grand Court, an assisted living facility and hired Janet Stookey to manage his life. (Exh. “FFFF”, pp 12-14). Eventually, Mr. Greene made Ms. Stookey his attorney-in-fact. (Exh. “FFFF”, p. 16).

The Vayos learned that Ms. Stookey sold Mr. Greene’s house but there was no cash transfer. (Exh. “FFFF”, p. 17). When they could get no information from either the stock broker or Ms. Stookey, they contacted Ms. Parisi. (FFCL ¶ 31; Exh. “FFFF” p. 18). Mr. Greene retained Ms. Parisi as his attorney and on August 9, 2004, made her his attorney-in-fact. (Exh. “HHHH” pp. 22-24; Exh. “FFFF” p. 23; Exh. “PP”).

Ms. Parisi was to perform a number of tasks including straightening out the matter regarding the sale of Mr. Greene’s house, negotiating his contracts with the assisted living facility, overseeing the provision of supplemental care the assisted living facility provided,

ensuring that he received proper medical care, paying of his medical bills, applying for a kidney transplant, making sure he had transportation to and from doctor's appointments, taking care of his finances including tax preparation and filing, paying his bills and providing him with cash, and negotiating and overseeing the restoration of his Jaguar. (Exh. "HHHH" pp. 28-36).

At the time that she took over as attorney-in-fact, Mr. Greene's house had been sold by land contract without his knowledge, his tax returns had not been filed for three years, Fifth Third Bank had recently sold him two annuities with 8-year surrender periods, his insurance issues needed attending and individuals were trying to get him to enter into and fund a trust agreement. (Exh. WW). Ms. Parisi was on call 24 hours a day, 7 days a week and was to be compensated at her normal hourly rate for services she rendered, whether legal or not. (Exh. "FFFF", pp. 25-26). Especially important to Mr. Greene was to avoid being placed in a nursing home so he could maintain his freedom, something that could not happen without much assistance. (Stip. ¶ 10, FFCL ¶ 40; Exh. "HHHH" p. 47). John knew of the cost of this type of care. (Exh. "HHHH", pp. 42-43; Exh. "CCCC", ¶ 6).

Mr. Greene was well taken care of under Ms. Parisi's care. (FFCL ¶¶ 61; Exh. "FFFF", p. 51). He trusted her and was happy that someone was looking after his affairs. (Exh. "HHHH", pp. 34, 65). Mr. Greene never complained about Ms. Parisi's services or indicated that she in any way concealed anything, overcharged him or had been deceitful or dishonest. (Exh. "HHHH", p. 35). Mr. Greene's one passion was the restoration of his Jaguar, although financially the restoration was a disaster. (Exh. "FFFF", pp. 35-36; Exh. "HHHH" pp. 39-40).

Mr. Greene's closest friend of 50 years was Chris Christiansen, with whom he usually had weekly contact. (Exh. "HHHH", pp. 5-8, 62). Mr. Christiansen took Mr. Greene to doctor

appointments as much as possible as Mr. Greene's family living in the Dayton area was unwilling to do so. (Exh. "HHHH", 7-8, 28, 37-38, 40, 45-46 62; Exh. "FFFF" at 28).

Toward the end of his life, several things occurred. In January 2007, Mr. Greene fell and fractured his pelvis, requiring hospitalization and recovery in a nursing home. When he was discharged, The Grand Court would not take him back and Ms. Parisi was forced to move him to another facility, Sterling House, many miles away. Mr. Greene was unhappy about the move. (Tr. pp. 472-473; 867-868; Exh. WW, p. 94, 96).

At this point, Mr. Greene's relatives became involved. (Exh. "HHHH" pp. 43-44). Robert Langford took over as attorney-in-fact and Mr. Greene's care suffered. (Exh. "FFFF", pp. 36-37; Exh. "HHHH", pp. at 51-52). Mr. Greene had a sore on his foot, a dangerous condition for a diabetic, especially one undergoing dialysis, which needed much tending and monitoring. Ms. Parisi hired a nurse to monitor the sore and change the dressing daily. (Tr. p. 1022). Mr. Langford, however, failed to stay in contact with the nurse and Mr. Greene's foot deteriorated. (Tr. pp. 1022-1023; Exh. "FFFF", pp. 36-37). The dialysis center informed Mr. Langford of Mr. Greene's foot condition, his need to see a doctor, and even scheduled an appointment for Mr. Greene. (Tr. p. 1023). Ultimately, the dialysis center sent Mr. Greene to the emergency room where he was diagnosed with gangrene. (Tr. p. 1023; Exh. AAA, pp. 1, 5-6). Mr. Greene suffered immense pain and agony for two weeks as the gangrenous wound became infected with MRSA. (Tr. p. 1023; Exh. "HHHH", pp. 47, 52). Mr. Langford and a physician other than Mr. Greene's normal physician decided to amputate. (Exh. "HHHH" p. 51; Exh. "FFFF", pp. 36-37). One week later, Mr. Greene died, four months after Mr. Langford took over, from a medical condition nearly resolved prior to his appointment. (Tr. p. 1023-1024).

Mr. Greene's will named Ms. Vayos as executor and she retained Ms. Parisi to represent her as executor of the estate. (FFCL p 45; Tr. p. 874; Exh. "EEE", pp. 2-3; Exh. "EEEE-V", p. 70²). On or about February 18, 2008, Ms. Vayos reviewed Ms. Parisi's 404-page billing statement for services rendered to Mr. Greene from August 4, 2004 through July 12, 2007. She was satisfied with the bill and believed the charges to be appropriate, a sentiment that Mr. Greene's sisters, Janice Eder and Gail Greene, did not share. (Exh. "EEEE-V", pp. 71-73). When Ms. Vayos filed a concealment of assets claim against Mr. Langford for failing to turn Mr. Greene's property over to the estate, the sisters (with whom Ms. Vayos did not get along) filed a motion to have her removed as executor. (Exh. "CCCC", ¶¶ 11, 12; Exh. "9"). Prior to the hearing on the motion, Ms. Parisi withdrew as Ms. Vayos' counsel and Mike Conway substituted as counsel for the executor. (Tr. pp. 67, 214; Exh. "EEEE-V", p. 76). On July 16, 2008, Ms. Parisi filed her fee statement of \$25,370.55 for services rendered to the estate with the court and served a copy upon Ms. Vayos. (Exh. "10").

Mr. Conway recommended that Ms. Vayos not attend the hearing on her removal. (Exh. "EEEE-V", pp. 79-80). On September 18, 2008, Ms. Vayos was removed as executor and the court appointed a local attorney to serve as Administrator With Will Annexed. (FFCL 45; Exh. "CCCC", ¶ 12; Exh. "EEEE-V", p. 76; Exh. "11"). The Administrator rejected Ms. Parisi's claim for attorney's fees. (Tr. p. 171; Exh. "13"). Pursuant to R.C. §§ 2117.11 and 2117.12, Ms. Parisi had 60 days to file a suit in Common Pleas Court to protect her claim for attorney's fees, which she did. (Tr. pp. 236-238; Exh. "13"). Thereafter, the suit was settled. (Tr. p. 203).

² Unfortunately, an error in numbering resulted in two documents marked as Exhibit "EEEE". One is the deposition transcript of Charlene Vayos and the other is the deposition transcript of Stephanie Allen. For ease of reference, Ms. Vayos's deposition will be cited as Exh. "EEEE-V" and Ms. Allen's deposition transcript will be designated as Exh. "EEEE-A".

Eventually the Administrator was removed and Mr. Langford was appointed as the Administrator With Will Annexed. (Tr. p. 192). Ms. Vayos, as a beneficiary under Mr. Greene's Will has obtained no distribution of the remaining estate and does not believe any will be left as a result of Mr. Langford's administration. (Exh. "EEEE-V", p. 76-77).

II. LAW AND ARGUMENT

A. DEMMING MATTER

1. Constitutional Issues

This Honorable Court has long held that disciplinary proceedings are designed to protect the public and safeguard the courts, not to punish the attorney. (FFCL ¶ 72); *In re Judicial campaign Complaint Against Carr* (1996), 76 Ohio St.3d 320; *Ohio State Bar Ass'n v. Weaver* (1975), 41 Ohio St.2d 97. Ohio courts have held that attorney disciplinary proceedings are penal in nature. *State ex rel. v. Byrkett*, 4 Ohio Dec. 89, 1984 WL 1416 (Ohio Com.Pl. 1894). This Honorable Court, however, has held that disciplinary proceedings are neither criminal nor civil. *Disciplinary Counsel v. Heiland*, 2008-Ohio-91, ¶ 32. The U.S. Supreme Court has held that attorney disciplinary proceedings are quasi-criminal in nature and discipline is a punishment or penalty imposed upon the lawyer. *In re Ruffalo* (1968), 390 U.S. 544, 550.

- a) **The Board's Determination that Respondent Violated Rule 1.7(a)(2) When She represented Both Applicant and Ward in a Guardianship Proceeding is Void For Vagueness and Violates Respondent's Due Process Rights Under the Fifth and Fourteenth Amendments to the U.S. Constitution.**

Both this Honorable Court and the United States Supreme Court have held:

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence

a reasonable opportunity to know what is prohibited, so that he may act accordingly.” *Grayned v. Rockford* (1972), 408 U.S. 104, 108, 92 S.Ct. 2294, 2298-2299, 33 L.Ed.2d 222, 227.

[10] Vague laws may also trap the innocent by not providing fair warning. *Papachristou v. Jacksonville* (1972), 405 U.S. 156, 92 S.Ct. 839, 31 L.Ed.2d 110. Thus, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. *Coates v. Cincinnati* (1971), 402 U.S. 611, 91 S.Ct. 1686, 29 L.Ed.2d 214; *Gregory v. Chicago* (1969), 394 U.S. 111, 117-118, 89 S.Ct. 946, 950, 22 L.Ed.2d 134, 139-140 (Black and Douglas, J., concurring). A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application. See *Edwards v. South Carolina* (1963), 372 U.S. 229, 83 S.Ct. 680, 9 L.Ed.2d 697.

In re Complaint Against Harper, (1996), 77 Ohio St.3d 211, 221, 673 N.E.2d 1253, 1262

(emphasis added). This principal was again annunciated in *Ruffalo*, when Justice White with whom Justice Harlan concurred, stated:

“A relevant inquiry in appraising a decision to disbar is whether the attorney stricken from the rolls can be deemed to have been on notice that the courts would condemn the conduct for which he was removed.”

* * * * *

Even when a disbarment standard is as unspecific as the one before us, members of a bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, will be grounds for disbarment. This class of conduct certainly includes the criminal offenses traditionally known as *malum in se*. It also includes conduct which all responsible attorneys would recognize as improper for a member of the profession.

The conduct for which the Court of Appeals disbarred petitioner cannot, however, be so characterized.

Id. at 554-555 (emphasis added). See also *Zauderer v. Office of Disciplinary Counsel* (1985), 471 U.S. 626, 653.

“When the vice of a statute is its vagueness, the litigant asserting the vagueness defense must demonstrate that the statute in question is vague as applied to the litigant's conduct without regard to its potentially vague application to others. *Parker v. Levy* (1974), 417 U.S. 733, 94 S.Ct. 2547, 41 L.Ed.2d 439.”

In re Complaint Against Harper, 77 Ohio St.3d at 221. The Board has opined that anything not specifically prohibited by the Code (now Rules) is permitted.

There is no language in Rule 1.7(a)(2) that would suggest to Ms. Parisi that her simultaneous representation of both the applicant and the ward in an in rem guardianship proceeding would constitute a conflict of interest for which she could be sanctioned. The Board admits in FFCL ¶ 25 and ¶ 70 that there exists no case law prohibiting such representation and further finds in FFCL ¶ 70 that this is an issue of first impression.

This Honorable Court has held as a matter of law that such simultaneous representation does not present a conflict for disqualification purposes. It is well established Ohio law that **an applicant has no interest in the Probate Court's determination of the ward's competence.** *In re Guardianship of Love* (1969), 19 Ohio St.2d 111, 113 (guardian has no appealable interest in Probate Court's determination to end a guardianship). The proceedings "are not inter partes or adversary in character, but are in rem proceedings." *Id.* These nonadversary proceedings involve only the court and the ward. *Id.* A guardian has no interest in the subject matter of the appointment of a guardian for a ward. *Id.* at 114. The sole issue before the court is the mental condition of the ward. *Id.* See also, *In re Clendenning* (1945), 145 Ohio St. 82; *In re Guardianship of Breece* (1962), 173 Ohio St. 542; *In re Guardianship of Santrucek* (2008), 120 Ohio St.3d 67, 69.

Moreover, Rule 1.14(b) specifically permits Ms. Parisi to do exactly as she has done in this instance.

(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.** (Emphasis added).

The Comments to Rule 1.14 also support Ms. Parisi's conduct. Consistent with Rule 1.14, Comment [9], Ms. Parisi took action on Ms. Demming's behalf to protect her interests in good faith at a time when no other lawyer, agent or representative was available. (Exh. "E"). When Ms. Parisi discovered Ms. Manchi, Ms. Demming's niece, she withdrew her own application for guardian and filed an application for Ms. Manchi to become guardian. Consistent with Rule 1.14, Comment [8], Ms. Parisi was taking steps to ensure that Ms. Demming's property and interest in the Demming Trust was not diminished by the appointment of Ms. Carroll whose interests were antagonistic to Ms. Demming.

The Board now seeks to discipline Ms. Parisi for taking action that this Honorable Court and the Rules specifically permit. Nothing in the Rules, the case authority or the statutes could possibly have given Ms. Parisi advance warning that her conduct was impermissible so that she could steer clear of it. As the Board seems to understand (FFCL ¶¶ 69, 70) this is not conduct, as in *Ruffalo*, where any reasonable attorney would understand that it could lead to sanctions. To sanction Ms. Parisi under these circumstances would deny to her the very due process to which she is entitled. Rule 1.7(a)(2) as applied to Ms. Parisi in this situation is void for vagueness and constitutes a violation of Ms. Parisi's due process rights under the 5th and 14th Amendments to the U.S. Constitution.

b) Prospective Application.

The best manner in which to give attorneys advance notice of this new principle that a conflict within the meaning of Rule 1.7(a)(2) exists in the simultaneous representation of both the guardian and the ward in an uncontested in rem guardianship proceeding is to amend the rule or comments. However, if this Honorable Court wishes to announce the principle through case law in this case, it should be given prospectively effect only.

Judicial decision-making applies retrospectively unless a party has contract rights or vested rights under the prior decision. *DiCenzo v. A-Best Prods. Co., Inc.*, (2008), 120 Ohio St.3d 149, Syllabus No. 1. However a court has the discretion to apply its decision prospectively only after weighing the following factors: (1) whether the decision establishes a new principle of law that was not foreshadowed in prior decisions; (2) whether retroactive application of the decision promotes or retards the purpose behind the rule defined in the decision; and (3) whether retroactive application of the decision causes an inequitable result. *Id.*, Syllabus No. 2. All of these factors, applied to the Board's application of Rule 1.7(a)(2) to Ms. Parisi in this case matter militate for prospective only application of such a decision.

(1) New principle of law

The Board has already found that there is no case authority on this issue and it is one of first impression. (FFCL ¶¶ 25, 26, 69, 70).

(2) Whether Retroactive Application Of The Decision Promotes Or Retards The Purpose Behind The Rule Defined In The Decision.

The purpose behind Rule 1.7 is to discourage an attorney from disloyalty to his or her client by simultaneous representation of another client with an adverse interest. (Rule 1.7, Comment [3]). In the instant case, **no such adverse interest existed**. Indeed, the facts of the Demming guardianship make clear that Ms. Parisi was acting consistently with the interests of both her clients, Ms. Demming and Ms. Manchi. Ms. Demming was entitled to funds that her deceased companion placed in trust for her support, which the trustee denied to her. (FFCL ¶ 11). Ms. Parisi testified that she remained attorney for Ms. Manchi, the applicant, to ensure that Ms. Carroll was not appointed guardian as such an appointment would virtually ensure that Ms. Demming would not be given the full benefits of the trust established for her. (Tr. 370-731).

Ms. Demming's understanding of this is reflected in the documents she signed on January 2, 2008. (Exh. "A", pp. 7-14). Ms. Demming has not been given the full benefit of the trust.

The Board found that representing elderly individuals with diminished capacity poses difficult challenges. The client sometimes has the ability to make decisions about certain things but not others. It is difficult to assess the client's mental competence from day-to-day. (FFCL ¶ 69). It was unclear whether Ms. Demming opposed the guardianship. (FFCL ¶ 70).³ Clearly retroactive application of the decision to Ms. Parisi under these circumstances retards the purpose behind the Rule to encourage loyalty to one's client. Ms. Parisi could not have shown more loyalty, which included possible damage to her license.

(3) Retroactive Application Of The Decision Causes An Inequitable Result

There is no question that applying this new principle of conflict law to Ms. Parisi in this instance causes an inequitable result. She could not possibly have known that her conduct could result in sanctions.

2. Ms. Parisi Objects To The Following Findings Of Fact As Not Supported By Clear And Convincing Evidence.

a) Paragraphs 16

Respondent objects to the first sentence of FFCL ¶ 16 as contrary to both the facts and law. Neither a physician nor a court investigator can certify an individual to be incompetent. The Statements of Expert Evaluation filed in Ms. Demming's case (Exh. "D", pp. 3, 17)

³ Importantly, this factual conclusion **directly contradicts** the Board's conclusion in FFCL ¶ 26 that Ms. Demming opposed her guardianship, the very basis the Board uses for concluding that Ms. Parisi violated Rule 1.7(a)(2). Because it is unclear that Ms. Demming opposed her guardianship, relator did not prove by clear and convincing evidence that an adverse interest or a material limitation occurred in Ms. Parisi's simultaneous representation of both the applicant and the ward in Ms. Demming's guardianship. Without an adverse interest or material limitation, there can be no conflict of interest within the meaning of Rule 1.7. (Rule 1.7, Comment [2]).

specifically state this.⁴ The physicians only certified that they did an evaluation. Likewise, the Investigator's Report does not certify that Ms. Demming is incompetent. It only recommends whether a guardian is necessary and certifies that the court investigator served notice on the alleged incompetent and communicated to her the right to contest the appointment of a guardian and the right to counsel. (Exh. 29, p. 5, 7). Only a court can make a determination of incompetence after hearing. (R.C. 2111.02).

FFCL ¶ 16 suggests, without evidence, that Ms. Demming was confused at the time that she signed the Power of Attorney. The evidence overwhelmingly indicates that Ms. Demming knew and understood what she was doing when she signed the Power of Attorney and other documents on January 2, 2008. (Tr. pp. 653-654; Exh. "A", p. 14; Exh. "GGGG", pp. 13-16, 19; Tr. p. 653-654). Further, the Board's statement implies that Ms. Parisi acted improperly in obtaining the Power of Attorney pending a guardianship application, which contradicts Rule 1.14, Comment [5] in dealing with clients with diminished capacity.

b) Paragraph 19

FFCL ¶ 19 statement that "...sometimes [Ms. Demming] did not want a guardian at all. Other times she was okay with a guardianship, so long as the guardian was not an attorney[]" is misleading and not supported by the evidence. There is no evidence that Ms. Demming mentioned to anyone other than the court investigator on December 14, 2007 that she did not want an attorney to be her guardian. (Exh. 29). The evidence is clear, however, that all other statements wherein Ms. Demming indicates that she does not want a guardian come after visits from Lisa Carroll. Ms. Carroll visited Ms. Demming on December 20, 2007, resulting four days

⁴ "The Statement of Evaluation does not declare the individual competent or incompetent, but is evidence to be considered by the Court. . . ."

later in Ms. Demming's signature upon a document disavowing any knowledge of Ms. Parisi and requesting an attorney at the January 10, 2008 hearing. (Exh. E, p. 10; Exh. "H:"). This occurred a mere 9 days after the court investigator's interview wherein he certifies that he explained to Ms. Demming her rights to an attorney and to oppose the guardianship proceeding. Notably, the Investigator's Report does not indicate under Question I.C that Ms. Demming asked for such representation. (Exh. 29).

Thereafter, on January 2, 2008, in four separate documents, Ms. Demming states (1) Ms. Parisi is to be her attorney; (2) Ms. Parisi is to be her guardian; (3) if an attorney does not fight for her rights under the trust, the Cammerer nephews will deny her the funds; (4) Ms. Parisi is to take care of her bills; (5) she believes Ms. Parisi will protect her best interests relative to the Demming Trust because she does not trust the Cammerer nephews. (Exh. "A", pp. 7-10). Some of these documents are in Ms. Demming own handwriting. (Exh. "T"). Consistent with her pronouncement that Ms. Parisi is to take care of her bills, Ms. Demming also signs on that date a Durable Power of Attorney naming Ms. Parisi as her attorney-in-fact. (Exh. "A", pp. 11-14). Bev Gutmann and Ms. Parisi testified that Ms. Demming was lucid at that time she signed the documents. (Tr. pp. 802-804). The notary certificate on the Power of Attorney also so indicates. Ms. Demming made no further statements that she did not want a guardian until March 1, 2008, when she wrote a letter to the Judge after leaving the county. (Exh. "U").

Ms. Manchi testified that Ms. Demming disliked Ms. Carroll, did not trust her or the Cammerers and did not want Ms. Carroll to be her guardian. (Exh. "GGGG", pp. 32-33; Exh. "A", pp. 7-10). The evidence makes clear that Ms. Demming was not so much opposed to a guardian as opposed to Ms. Carroll being her guardian. (Tr., pp. 631, 642, Exh. "GGGG", p. 32-33). Unlike Ms. Parisi, Ms. Carroll's interests were antagonistic to Ms. Demming's and she was

ineligible to be appointed guardian. (Tr. pp. 620, 663-664). See also, *In re Briggs*, Cuyahoga App. No. 18117 (July 9, 1997), 1997 WL 416331 citing *In re Estate of Bost* (1983), 10 Ohio App.3d 147; Uniform Guardianship and Protective Proceedings Act, Section 2-204.

As a Midwest employee, Ms. Carroll's loyalty was to her employer, Robert Cammerer, a beneficiary under both the Cammerer and Demming Trusts, and not to Ms. Demming. (Tr. p. 620). Ms. Carroll's actions reflect this. She displaced Ms. Demming from the Shroyer Road home, a home in which Ms. Demming had a life interest. (Tr. 624). She had Ms. Demming sign the December 24, 2007 letter disavowing Ms. Parisi, Ms. Demming's attorney of choice. (Exh. "A", p. 9). Ms. Carroll failed to list the Demming Trust as an asset of the guardianship in the inventory. (Exhs. "J", "DD"). She failed to advance Ms. Demming's interest in having her living expenses paid from the Demming Trust. (Exhs. "J", "DD"). She has caused Ms. Demming's personal assets unnecessarily to be diminished. Ms. Carroll's goal, which she accomplished, was to prevent the appointment of a guardian who would pursue the Demming Trust for payment of Ms. Demming's living expenses. Ms. Demming's dislike and distrust of Ms. Carroll is understandable and reasonable under the circumstances. However, Ms. Demming trusted both her niece and Ms. Parisi. (Tr. pp. 669-670; 802; Exh. "A", p. 10).

c) Paragraph 24

Ms. Parisi objects to FFCL ¶ 24 that there was no waiver of the conflict because there was no informed consent, confirmed in writing, within the meaning of Rule 1.7(b). This is not supported by the evidence. As set forth in the preceding paragraph, Ms. Demming signed no fewer than four documents all very clearly indicating that she wanted Ms. Parisi to continue representing her and that she wanted Ms. Parisi to be her guardian. The evidence

overwhelmingly indicates that Ms. Demming repeatedly requested, in writing, that Ms. Parisi continue as her attorney. (Exh. "A", pp. 7, 8, 9, 10, 11-14, Exh. "I"; Tr. pp. 669-670, 802).

d) Paragraph 25

Ms. Parisi objects to the conclusion in FFCL ¶ 25 that under the circumstance of this case, the ward and proposed guardian should have had separate attorneys as contrary to law and not supported by the evidence. Ms. Parisi's disqualification on conflict grounds is in contradiction to this Honorable Court's pronouncement on the matter as stated above. See *Love, Breece, Clendenning, Santrucek, supra*. So disqualifying Ms. Parisi without meaningful notice and opportunity to be heard violates not only Ms. Parisi's due process and contract rights, but also Ms. Demming's statutory right to counsel of her choosing. R.C. 2111.02(C)(7)(2).

Civ.R. 17(C) permits a Probate Court to appoint a Guardian *Ad Litem* for the specific purpose of determining whether the prospective ward contests to his or her own guardianship.

Since *Sturges v. Longworth* (1953), 1 Ohio St. 544, we have approved of a court of common pleas' appointment of guardian *ad litem*, literally a guardian for the case, who has no duties prior to the institution of a suit or after its termination but whose sole duty is to defend in a particular cause. Civ. R. 17(B) authorizes a court, as incident to its power to try a case, to order the appointment of a guardian *ad litem*.

State ex rel Robinson v. Cuyahoga Cty. Court of Common Pleas (1996), 75 Ohio St.3d 431. The Probate Court appointed an Interim Guardian/Guardian *Ad Litem* who issued a report. Interestingly, nowhere does the report indicate that Ms. Demming opposed the guardianship or requested separate counsel. (Exh. "CC").

Prior to any such disqualification, the Warren County Probate Court should have had the appointed Interim Guardian/Guardian *Ad Litem* specifically question Ms. Demming about whether she contested her guardianship. If so, the Interim Guardian/Guardian *Ad Litem* should

then have determined whether Ms. Demming wished to proceed with Ms. Parisi as her counsel despite the conflict. At the very least, Ms. Parisi should have been provided a hearing and an opportunity to be heard on the disqualification issue prior to being removed. Ms. Parisi has a substantive right to such hearing according to *Kala v. Aluminum Smelting & Refining Co., Inc.* (1998), 81 Ohio St.3d 1, 12-13. As this Honorable Court has said:

“Finally, the court should hold an evidentiary hearing on a motion to disqualify and must issue findings of fact if requested based on the evidence presented. Because a request for disqualification implies a charge of unethical conduct, the challenged firm must be given an opportunity to defend not only its relationship with the client, but also its good name, reputation and ethical standards.”

Id. None of that occurred in this instance. (Tr. pp. 664-665).

e) Paragraph 26

For all of the reasons set forth in paragraph b) above, Ms. Parisi objects to the Board’s conclusions in FFCL ¶ 26 that Ms. Demming opposed her guardianship. Most importantly, that finding contradicts FFCL ¶ 70 that “it is unclear whether or not Demming opposed the guardianship . . .”, which alone, proves that the statement is not supported by clear and convincing evidence. Additionally, however, there is absolutely no evidence that any opposition to either prospective guardian’s Application for Guardianship of Ms. Demming was ever filed with the Probate Court. (Tr. p. 661).

The Investigator’s Report certified that Ms. Demming was advised of her rights in guardianship proceedings. (Exh. 29, p. 7). Nevertheless, page 2 of the Report under I.C “Specific requests of the individual concerning enumerated rights:” made no notation that Ms. Demming contested her guardianship. To the contrary, Section IV.F on page 5 of the Report indicates that there are no issues/conflicts/differences among the parties. In short, four different people, Ms. Parisi, the court investigator, the Interim Guardian/Guardian *Ad Litem* and Ms.

Demming's court appointed attorney, all reviewed the matter of the applications in Ms. Demming's guardianship. Not one of them concluded that Ms. Demming contested her guardianship. Certainly had there been such a conclusion, the Interim Guardian/Guardian *Ad Litem* and Ms. Demming's court appointed attorney would have been duty bound to file an opposition on Ms. Demming's behalf.

3. The Board's Conclusion That Ms. Parisi Violated Rule 1.7(A) In Her Representation Of Both The Ward And The Applicant In Ms. Demming's Uncontested Guardianship Is Contrary To The Evidence, Ohio Law And Rule 1.14.

a) No Material Limitation

Plaintiff objects to the Board's conclusion in FFCL ¶ 2 and ¶ 24 that she violated Rule 1.7(a)(2) in her representation of Ms. Demming. The Board found that Ms. Parisi had a material limitations conflict 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). The Board's conclusions are not supported by the evidence and are contrary to law.

Comment [15] to Rule 1.7 defines a "material limitation" conflict as:

A "material limitation" conflict exists when a lawyer represents co-plaintiffs or co-defendants in litigation and there is a substantial discrepancy in the clients' testimony, incompatible positions in relation to another party, potential cross-claims, or substantially different possibilities of settlement of the claims or liabilities in question.

As to transactional matters, Comment [16] states:

In transactional and counseling practice, the potential also exists for material limitation conflicts in representing multiple clients in regard to one matter. Depending upon the circumstances, a material limitation conflict of interest may be present. Relevant factors in determining whether there is a material limitation conflict include the nature of the clients' respective interests in the matter, the relative duration and intimacy of the lawyer's relationship with each client

involved, the functions being performed by the lawyer, the likelihood that disagreements will arise, and the likely prejudice to each client from the conflict.

The Board did not indicate whether Ms. Parisi's material limitations conflict was due to a litigation matter or a transactional matter. Indeed, the Board undertook no analysis of the factors for material limitations conflicts under either situation. Under either analysis, no material limitations conflict exists. Applying the Comment [15] factors, there was no discrepancy in the clients' testimony. The evidence demonstrates that Ms. Manchi and Ms. Demming agreed on Ms. Demming's guardianship. (Exh. "1"). Accordingly, they did not have incompatible positions in relation to one another. There was no potential cross-claim or substantially different possibility of settlement of claims or liabilities.

Under Comment [16], the first factor to analyze is the nature of the clients' respective interests in the matter. This Honorable Court has already made clear that Ms. Manchi has no interest in Ms. Demming's guardianship. The second factor is the duration and intimacy of the lawyer's relationship with each client involved. Ms. Parisi met Ms. Demming as a result of her representation of Ms. Demming and further met Ms. Manchi as a result of her representation of Ms. Demming (Exh. "E"). Ms. Parisi has no prior relationship either professionally or personally with either client.

Ms. Parisi's function in her representation of Ms. Demming in the guardianship proceeding was to make sure that a proper guardian was appointed. The evidence overwhelmingly demonstrates that Ms. Parisi was the only attorney protecting Ms. Demming's interests. Ms. Carroll was not a proper guardian as her interests were antagonistic to Ms. Demming's best interests. It was Ms. Parisi who discovered the Demming Trust. It was Ms. Parisi who wrote to the estate counsel demanding that Ms. Demming's living expenses be paid

from the Demming Trust even threatening legal action to accomplish this. It was Ms. Parisi who brought Ms. Carroll's antagonistic interests adverse to Ms. Demming to the court's attention.

There was very little likelihood of disagreement between Ms. Manchi and Ms. Demming. Ms. Demming consented to Ms. Manchi being her guardian and even told the court that she wanted Ms. Demming as her guardian. (Exh. "GGGG", p. 22-24). Likewise, there was very little likelihood of prejudice to either client. Had the court concluded that Ms. Demming was competent to handle her own affairs, it would have had no impact on Ms. Manchi. Likewise, the fact that the court concluded that Ms. Demming required a guardian and that Ms. Manchi is guardian of the person has had no adverse impact upon Ms. Demming. The only adverse impact upon Ms. Demming is that Ms. Carroll is the guardian of the estate and refuses to take steps to ensure that Ms. Demming is receiving the full benefit of the Demming Trust. Moreover, Ms. Demming must now pay Ms. Carroll, a person she dislikes, to perform her guardianship functions and further must pay an attorney to represent Ms. Carroll before the Probate Court. This could have been accomplished by Ms. Manchi and at least Ms. Demming's funds for payment of the guardian, if any, would have gone to an individual she likes and trusts

As the factors above indicate, Ms. Parisi had no material limitations conflict in representing both Ms. Manchi and Ms. Demming in the guardianship proceeding. The Board's conclusion that Ms. Parisi did is not supported by the evidence and is contrary to law.

b) Permitted by the Rules

As is set forth more fully above, Ms. Parisi's conduct is permitted both by Rule 1.7(b) and by Rule 1.14(b) and the comments thereto.

c) Client Consent

First, no conflict exists so waiver should not be an issue. However, if confirmation in writing to Ms. Parisi's representation of Ms. Demming is an issue, clearer evidence of such consent could not exist. Exhibit "A", pp. 7-14 and Exhibit "I" establish that, after being fully apprised by both Ms. Parisi and the court investigator as to her rights in guardianship proceedings, Ms. Demming consented, in writing, to Ms. Parisi's representation of her.

4. Ms. Parisi Objects To The Boards Finding Of A Rule 8.4(D) Violation.

Ms. Parisi objects to the Board's conclusion in FFCL ¶ 27 that using the Power of Attorney to pay herself legal fees during a pending guardianship application is a violation of Rule 8.4(d). This Honorable Court has defined DR 1-102(A)(5) (now Rule 8.4(d)) to mean that an attorney has a duty to deal fairly with the court and the client. *Cleveland Bar Assn. v. Cleary* (2001), 93 Ohio St.3d 191, 206. There is no suggestion that the fees were not owed. (FFCL ¶ 65.a). There is no allegation that they were excessive. Ms. Parisi did not secretly pay herself or hide her actions. At the time the fees were taken, by statute, the Probate Court had no jurisdiction over Ms. Demming because she no longer resided there. R.C. 2111.02(A). The Probate Court was duty bound to dismiss the matter.

Ms. Parisi testified that, in taking the funds, she made a horrible mistake that she would never do again. (Tr. pp. 670-671). The Board found that she was not likely to repeat this conduct. (FFCL ¶ 72). Given these facts, Ms. Parisi's conduct amounts to "an isolated incident and not a course of conduct in an otherwise unblemished legal career," as in *Toledo Bar Assn. v. Kramer* (2000), 89 Ohio St.3d 321,323. Accordingly, she should not be sanctioned.

B. ROYAL JOHN GREENE

1. Constitutional Issues

a) **The Board's Conclusion That Ms. Parisi Charged A Clearly Excessive Fee To John Greene Impairs Ms. Parisi's Right To Contract Under Article I, Section 10 Of The U.S. Constitution And Article I, Section 1 Of The Ohio Constitution.**

Article I, Section 10 of the U.S. Constitution precludes states from passing any law that impairs the obligation of contracts. The U.S. Supreme Court has consistently held that any state law retroactively modifying the obligations of debtors violates Article I, Section 10 of the U.S. Constitution. *See, e.g., Ogden v. Saunders* (1927), 25 U.S. (12 Wheat.) 212, 261-70; *Green v. Biddle* (1823), 21 U.S. (8 Wheat.) 1, (“[a]ny deviation from its terms ... however minute, or apparently immaterial ... impairs its obligation”); *Sturges v. Crowninshield* (1819), 17 U.S. (4 Wheat.) 122, 207. This Honorable Court has ruled that the right to contract is specifically guaranteed by Article I, Section 1 of the Ohio Constitution. *Cleveland v. Clements Bros. Construction Co.* (1902), 67 Ohio St. 197.

It is true that when Ms. Parisi sought admission to the bar of Ohio, she voluntarily subjected herself to the disciplinary jurisdiction of the Supreme Court of Ohio. As this Honorable Court has recognized, however, its authority in that realm is not absolute.

[T]he court's power to regulate the bar “is not absolute and [that] it must be contained by, and act congruently with, the very constitution that provides for its existence.” This court may no more disregard or infringe upon the constitutional rights of our citizens in the exercise of its regulatory functions than may any other branch of government. As we explained in **675 *Christensen v. Bd. of Commrs. on Grievances & Discipline* (1991), 61 Ohio St.3d 534, 537, 575 N.E.2d 790, “Rules adopted by this court in an administrative capacity must comply with the state and federal constitutions like any other rules and may be tested in any court of competent jurisdiction.”

Shimko v. Lobe (2004), 103 Ohio St.3d 59, 64. The 10th District Court of Appeals set forth the test as announced by both this Honorable Court and the U.S. Supreme Court as follows:

In determining whether a rule, regulation, or statute violates the Contract Clause, the first step is to determine whether the regulation constitutes a substantial impairment of a contractual relationship. *Smith v. Denihan* (1990), 63 Ohio App.3d 559, 570-571, 579 N.E.2d 527, 534-536. If so, the regulation must be justified by a significant and legitimate public purpose. *Id.* Finally, if a *346 legitimate public purpose exists, the last step is to determine whether adjustment of the rights and responsibilities of the parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the adoption of the regulation. *Id.*, citing *Energy Reserves Group, Inc. v. Kansas Power & Light Co.* (1983), 459 U.S. 400, 410, 103 S.Ct. 697, 703-704, 74 L.Ed.2d 569, 579-580.

Shimko v. Lobe, (10th Dist. 1997), 124 Ohio App.3d 336, 345-346.

When the Board, as here, declares that an attorney may not without sanction perform certain aspects of a contract between the attorney and the client merely because it believes that the tasks, however important to the client, are unnecessary, such application impinges upon the parties' contract rights. The Board's significant and legitimate public purpose is to ensure that attorneys do not overcharge clients. Adjustment of the rights and responsibilities is not based upon reasonable conditions justifying applying the regulation in this instance.

The Board's conclusion that certain tasks are unworthy of performance under a contract is nothing more than substitution of its own judgment for that of the client. The Board's recognition of the importance of the tasks to the client illustrates this. (FFCL ¶ 54). The Board has, in effect, superseded the instructions of a competent client on a contract matter to his attorney-in-fact merely because Ms. Parisi also happens to be an attorney licensed to practice law in the state of Ohio. This constitutes unconstitutional interference with and improper impingement upon both Mr. Greene's and Ms. Parisi's contract rights under Article I, Section 10 of the U.S. Constitution and Article I, Section 1 of the Ohio Constitution.

b) The Board's Determination that Respondent Violated Rule 1.5 and DR 2-106(A) by Charging Mr. Greene a Clearly Excessive Fee Is Void For Vagueness and Violates Respondent's Due Process Rights Under the Fifth and Fourteenth Amendments to the U.S. Constitution.

The 5th and 14th Amendments to the U.S. Constitution prohibit the government from depriving a person of "property without due process of law." The U.S. Supreme Court has determined that valid contracts are property whether the obligor is a private individual or otherwise. *Lynch v. U.S.* (1934), 292 U.S. 571, 579. "[*Brock v. Roadway Express* [(1987), 481 U.S. 252,] makes clear that a private contractual right can constitute a property interest entitled to due process protection from governmental interference under federal constitutional law. *Mertik v. Blalock* (6th Cir. (OH) 1993), 983 F.2d 1353, 1360. This Honorable Court has ruled that contract rights come within the protection of the Fourteenth Amendment. *Cleveland v. Clements Bros. Construction Co.*, supra. An individual has a property interest in said contract. *Akron v. Pub. Util. Comm.* (1933), 126 Ohio St. 333. At the very least, Ms. Parisi was entitled to proper procedural mechanisms regarding her property interest in the contract between her and Mr. Greene. A declaration after the fact that charging for certain services is sanctionable denies to Ms. Parisi notice and an opportunity to be heard at a meaningful place and time in violation of the due process clause of the 5th Amendment to the U.S Constitution as applied to the states through the 14th Amendment.

As is more fully set forth in the next section, the Board now recommends that Ms. Parisi be disciplined for taking action that this Honorable Court and the Rules specifically permit. Again, this is not conduct, as in *Hunter, supra*, or *Disciplinary Counsel v. Johnson* (2007), 113 Ohio St.3d 344, 2007-Ohio-2074 where any reasonable attorney would understand that it could lead to sanctions. Rule 1.5(a) and DR 2-106(A) as applied to Ms. Parisi in this situation is void

for vagueness and, as such, constitutes a violation of Ms. Parisi's due process rights under the 5th and 14th Amendments to the U.S. Constitution.

2. The Services Ms. Parisi Provided To Mr. Greene Were Permitted Under The Rules Of Professional Conduct.

a) Rules 1.2 and 1.4

Rule 1.2(a) provides that an attorney is to abide by the client's decisions concerning the objectives of representation and, as required by Rule 1.4 shall consult with the client as to the means by which the client's objectives are to be pursued. Rule 1.2, Comment [2] specifically states that lawyers usually defer to clients on such questions as the expense to be incurred by pursuing the client's desires. Professor Burman referenced both of these two rules in his article in the *Wyoming Lawyer*. It is the client that has the power to both establish the objectives of the representation and authorize a means by which it is to be accomplished.⁵ Moreover, according to Mr. Berman, "[a] good lawyer is not only interested in protecting the client's legal rights, but also in the well-being and mental and physical health of the client." *Id.* at 43 citing *Bowman v. Arnold*, 380 N.W.2d 531, 534 (Minn. App., 1986).

As the Board acknowledged, it was Mr. Greene that demanded that Ms. Parisi perform the tasks that it now believes were unimportant. (FFCL ¶¶ 51, 54, 71). Ms. Parisi's expert, Matthew Sorg, testified that, in the instance where a client requests that he perform a task that is not cost effective, he first counsels the client and then, if the client insists, he would perform the task. (Tr. p. 376-378). As the Board found, Ms. Parisi tried to reduce Mr. Greene's fees by finding others that could more economically perform these tasks, but Mr. Greene refused.

⁵ Burman, John M., "Advising Clients About Non-Legal Factors", *Wyoming Lawyer*, February 2004, p. 41.

(FFCL ¶¶ 36, 39). As Exhibit QQ demonstrates, Ms. Parisi was in constant conversation with Mr. Greene about these very issues.

The Board takes Ms. Parisi to task for using the Power of Attorney to pay herself without showing Mr. Greene the bills for services rendered. (FFCL ¶ 61). However, Comment [3] to Rule 1.2 states that at the outset of the representation, a client may authorize the attorney to take certain action on the client's behalf without further consultation. Subject to Rule 1.4, a lawyer is permitted to rely upon this advance authorization. Rule 1.4 states that the lawyer is to consult with the client about the means by which the client's objectives are to be accomplished, keep the client informed about the status of the matter and explain the matter to the client to the extent necessary to allow the client to make an informed decision regarding the representation.

The Board agrees that Ms. Parisi initially prepared an invoice and showed it to Mr. Greene. He indicated that he did not want to see any further invoices and authorized Ms. Parisi simply to take the funds to pay herself from his accounts using the power of attorney. (FFCL ¶ 37). The Board further acknowledges that this occurred at a time when Mr. Greene was competent to make his own decisions. (FFCL ¶ 71). The evidence demonstrates that Ms. Parisi or her staff had discussions with Mr. Greene about the costs of her services on at least 30 occasions during the course of her representation of him. (Tr. pp. 744-758; Exh. "QQ"). At his request, Ms. Parisi prepared and showed him a budget. (Tr. pp. 746-747; Exh. "QQ", p. 43-44). Ms. Parisi testified that either she or her staff regularly took financial statements and reconciliation statements to Mr. Greene for his review. (Tr. p. 751-752, 759-761; Exh. "BBBB"). Even though Ms. Parisi acted in conformity with both Rule 1.2 and Rule 1.4 with regard to her representation of Mr. Greene, still the Board found that she engaged in misconduct by charging a clearly excessive fee.

b) **Rule 5.7**

Ms. Parisi's conduct is also consistent with Rule 5.7, which permits an attorney to provide law-related services in circumstances that are not distinct from the lawyer's provision of legal services to clients. During the prosecution of this case, relator repeatedly beat the drum that her excessive fees are reflected in Ms. Parisi's inability to distinguish between the services that were legal and those that were not. Rule 5.7 was enacted specifically to address this situation. It permits Ms. Parisi to handle Mr. Greene's affairs exactly as she did **because the services are not readily distinguishable**. Indeed, Rule 5.7(b) and Comment [4] would have permitted Ms. Parisi to open a separate business, employ Social Workers, Nurses or other health care professionals, have them perform the tasks that her office performed for Mr. Greene, bill him for those services and not in any way violate the Rules. Although such a business model may have been more palatable and understandable to relator, it is not a violation of the Rules for Ms. Parisi to have provided these services in-house. Comment [9] to Rule 5.7 specifically includes medical consulting in its nonexclusive list of law-related tasks that attorneys may provide. Ms. Parisi provided the services rendered to Mr. Greene through her office because he refused to work with anyone not from her office. The overwhelming evidence in the record indicates that had a separate business been established, it would have cost Mr. Greene more than Ms. Parisi charged him. (Tr. pp. 396-503).

3. The Board's Conclusion That Ms. Parisi Charged Or Collected A Clearly Excessive Fee Is Not Supported By Clear And Convincing Evidence.

Rule 1.5 states that "[a] fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee." Of the four attorneys that testified regarding the reasonableness of Ms.

Parisi's fees, all agreed that her fees were reasonable. (Sorg, Tr. p. 357; Hoenigman, Tr. p. 554; Parisi Tr. p. 82; Proffered Testimony of Expert Thomas Rouse,⁶ Tr. p. 11). Stephanie Allen testified that Ms. Parisi is ethical and that all of the work billed was done. (Exh. "EEEE-A" p. 96). Additionally, two lay witnesses, the individuals closest to Mr. Greene, opined that Ms. Parisi's fees were reasonable in light of the work he requested and she performed. (Exh. "HHHH" p. 50; Exh. "EEEE-V", p. 22).

Ms. Parisi's expert, Matthew Sorg, testified that he acts as a receiver. (Tr. p. 348). In that capacity, he is compensated at his normal hourly rate, \$225 per hour. As receiver, he must sometimes do things that are not considered "traditional legal services". (Tr. p. 350, 352). These include property maintenance, including mowing the lawn, acting as landlord, arranging maintenance, collecting rents, doing accounting work, depositing funds and ensuring that paychecks are issued. (Tr. p. 351). For some of these tasks, it is economically more cost effective for him to perform them. Other times there is no other individual to whom the task can be delegated. At times, the tasks are in keeping with his obligations as a receiver. (Tr. p. 352-354). Mr. Sorg reviewed Ms. Parisi's 404-page bill and opined that had she submitted the bill to the Court for approval as a receiver, she would have been paid so long as there was a framework for the services provided within the charging document. He stated that the charges were all related to Mr. Greene. (Tr. p. 354, 357). The Vayoses testified as to the scope of Ms. Parisi's services to be rendered to Mr. Greene. (Exh. "FFFF", pp. 24-26, Exh. "EEEE-V", pp. 20-21; 45-46). They mirror those set forth in the Durable Power of Attorney. (Exh. "PP"). Ms. Parisi, Mr. Sorg and Ms. Hoenigman all testified that the Durable Power of Attorney provided the scope of Ms. Parisi representation for Mr. Greene. (Tr. pp. 89, 358, 389, 392, 443-444).

⁶ All citations to this proffered testimony appear as "Proffer".

Ms. Parisi proffered testimony of her second expert, Thomas Rouse.⁷ Mr. Rouse also opined that had Ms. Parisi performed these tasks as probate counsel, they would be deemed reasonable, legal, not clearly excessive and supported by detailed time keeping documentation. (Proffer, p. 9). Mr. Rouse would have testified that the proper method of determining the case for excessive fees is to examine the contract or agreement. In this case, the course and conduct of both Mr. Greene and Ms. Parisi sufficiently establishes their agreement to the tasks Mr. Greene requested, Ms. Parisi performed and the amount Ms. Parisi charged. (Proffer, p. 9). He opined that, every day, across the nation, attorneys perform nonlegal services for clients without being charged with collecting a clearly excessive fee despite the fact that another could more cost effectively have performed the task. He concluded that Ms. Parisi's fees to Mr. Greene were neither illegal nor clearly excessive. (Proffer, p. 10).

Mr. Rouse indicated that the proper question is not whether each individual task is clearly excessive, but whether Ms. Parisi's fees, as a whole, charged and collected for the services she provided to Mr. Greene are clearly excessive regardless of the time spent in performing certain discrete tasks. (Proffer, p. 10). Mr. Rouse's approach finds supported in Rule 1.5, Comment [1], which declares that the Rule 1.5(a) factors are not exclusive.

The above testimony was unopposed as relator offered absolutely no expert testimony as to the reasonableness of Ms. Parisi's fees. Relator believed that the panel was the ultimate determiner of fact as to what is excessive and what is not. While this is true, it does not obviate

⁷ Mr. Rouse is an attorney licensed to practice law in both Ohio and Kentucky. He serves on the Board of Governors of the Kentucky Bar Association. He served on the Board of Governors of Ethics, Professionalism and Ethics Hotline Committee from 1991 to 2006. He is a member of the Association of Professional Responsibility Lawyers. He is currently appointed to the Kentucky Supreme Court Rules Committee and the Kentucky Bar Association Board of Governors Rules Committee. (Proffer, pp. 2-3). Mr. Rouse's proffer states that he reviewed Ms. Parisi's billing records for Mr. Greene (Exh. "7). (Proffer, p.5).

the necessity for expert testimony. The Board must have some evidentiary support for its decision. Rule 1.5(a)'s factors include the fees charged in the locality for similar services and the experience, reputation and ability of the lawyer performing the services. The Board could not reach its own conclusions on these two factors without expert testimony. Gov. Bar R. V prohibits a Board member from Ms. Parisi's appellate jurisdiction from sitting on the hearing panel. Additionally, the panel members had no experience or understanding of the practice areas in which Ms. Parisi rendered services. One Panel member indicated that he had no experience with probate court (Tr. p. 237); another stated that she is a prosecutor and did not charge for her time at all (Tr. p. 393). In short, the panel members did not have the knowledge and experience necessary to pass upon certain Rule 1.5(a) factors absent expert testimony. Ms. Parisi, on the other hand, has been practicing in this area for 29 years and has been a certified specialist since 2003. (FFCL ¶ 6; Tr. p. 73).

In the end, both relator and the Board opined that Ms. Parisi charged a clearly excessive fee without ever indicating what would be a reasonable fee under the circumstances. The Board found that relator selected 80 time entries, totaling \$17,693.79 demonstrating the clearly excessive nature of Ms. Parisi's fees. (FFCL ¶ 50). Notably, the Board also found that Ms. Parisi did not charge \$18,000 of attorney time and \$5,000 in paralegal time, and that she waived \$25,370.55 in attorney's fees in the estate matter and paid the estate through her insurance carrier \$21,000 to settle the lawsuit reflecting capital gains taxes Mr. Greene paid. It is difficult to reconcile the Board's conclusion that Ms. Parisi charged a clearly excessive fee with the fact that she collected \$231,570.24 for \$259,940.79⁸ worth of services for which she actually retained

⁸ This figure was calculated as follows: \$231,570.24-\$18,000+\$25,370.55+\$21,000=\$259,940.79.

\$210,570.24. The charge to Mr. Greene averaged 6.5 hours of attorney time per week. The Board determined that she spent 40% of her time on Mr. Green's matters. (FFCL ¶ 52). Assuming she billed 30 attorney hours per week, 40% would have amounted to 12 hours. Although \$210,570.24 may seem like a substantial sum, Ms. Parisi's Schedule C's (Exh. "LLL") demonstrate that much of these funds were utilized to pay staff to perform tasks, including those rendered to Mr. Greene.

4. The Board's Finding That Ms. Parisi Charged Or Collected A Clearly Excessive Fee Is Not Supported By Ohio Law.

In reaching its conclusion that Ms. Parisi violated Rule 1.5 and DR 2-106(A), the Board looked to this Honorable Court's decisions in *Cincinnati Bar Assn. v. Alsfelder*, 103 Ohio St.3d 3775, 2004-Ohio-5216; *Cleveland Bar Assn. v. Kurtz* (1995), 72 Ohio St.3d 18 and *Disciplinary Counsel v. Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411. (FFCL ¶ 60). These cases, however, present fact patterns that are very different from the instant case. *Hunter* is a misappropriation case wherein the attorney took \$300,000 over three years from two probate estates. *Kurtz*, likewise, was a misappropriation case. In *Kurtz*, the attorney, without justification, charged two clients \$9,000 each for pursuing political asylum for them in immigration proceedings, \$4,000 more each than his usual fee. There is absolutely no evidence that Ms. Parisi misappropriated funds, charged an unreasonable hourly rate, or took too much time to perform the tasks rendered to Mr. Greene. Indeed, the evidence overwhelming indicates that she did a massive amount of work for Mr. Greene, much of it unbilled and \$49,370.55 waived.⁹

In *Alsfelder*, the attorney charged his client \$10,000 to attend trustee meetings for obtaining an increase amounting to double the income from her trust. His initial fee agreement

⁹ This figure was obtained as follows: \$4259,940.79-\$210,570.24=\$49,370.55.

reflected an hourly rate of \$225 and the number of hours actually performed was less than that justifying the \$10,000 charge. Thereafter, Mr. Alsfelder adjusted the terms under which he would render services for handling like matters to a fixed rate resulted in a charge greatly in excess of the initial hourly rate charge. There is absolutely no evidence and the Board did not find that anything of that nature occurred here.

5. Any Excessive Fee Determination Announced By This Case Should Be Given Prospective Effect Only.

As with Demming, above, applying Rule 1.5 and DR 2-106(A) to this situation is one that meets the three requirements for prospective application given the facts and the law during the time that Ms. Parisi engaged in the conduct.

a) New Application of the Law.

There is no question that applying Rule 1.5 and DR 2-106(A) to the facts in the Greene matter is a new application of the law. Nothing in the statutes, the case authority, the Rules or the Code could possibly have prepared Ms. Parisi for an outcome that collecting \$231,000 and retaining \$210,000 on a \$259,000 fee bill over three years constituted charging or collecting a clearly excessive fee. This is especially so where, as here, the Board bases its opinion upon charges for tasks it says should not have been performed that amount to 8.6% of the amount retained. Mr. Sorg testified that many attorneys perform tasks for clients that the client could more cost effectively perform themselves. (Tr. p. 376-378). Importantly, however, an attorney researching the matter would conclude that Ms. Parisi's conduct was ethically permissible in light of Rules 1.2, 1.4 and 5.7.

b) Whether Retroactive Application Of The Decision Promotes Or Retards The Purpose Behind The Rule Defined In The Decision.

The purpose behind Rule 1.5 and DR 2-106(a) is to ensure that the fees that lawyers charge are reasonable under the circumstances. (Rule 1.5, Comment [1]). To say that Ms. Parisi's fees charged to Mr. Greene are not reasonable retards the purpose of the Rule. Mr. Greene's goal was to avoid a nursing home, which he could not do without Ms. Parisi's help. (FFCL ¶ 40). If attorneys are not permitted to charge for tasks that, while perhaps not cost effective, are important to the overall representation and are necessary to accomplish the client's goals, it will have a profound effect not only on elder law attorneys, but other areas of practice as well. (Tr. p. 352-353).

c) Retroactive Application Of The Decision Causes An Inequitable Result

Applying this new principle of excessive fees to Ms. Parisi in this instance causes an inequitable result. In circumstances such as those presented in Ms. Parisi's representation of Mr. Greene, an attorney must be confident that he or she can make decisions without fear of disciplinary reprisal. This is especially true where, as here, reasonable minds could differ as to the importance of the task given the client's goals. The Board agreed that Mr. Greene was competent when he requested these services. It further found that Ms. Parisi was faced with difficult choices in her representation of Mr. Greene given his family situation. (FFCL ¶¶ 30, 71). Sanctioning Ms. Parisi for using her best judgment absolutely causes an inequitable result.

6. Ms. Parisi Objects To The Findings In ¶¶ 33, 41, 51, 61, 62, 63 And 71 As Not Supported By Clear And Convincing Evidence.

a) Paragraph 33

The nature and scope of the representation was absolutely communicated to Mr. Greene in writing at the outset of the representation. The Board found that Mr. Greene signed a Durable Power of Attorney on August 9, 2004 (FFCL ¶ 32, Exh. "PP"). As set forth above, Mr. Sorg, Ms. Hoenigman and Ms. Parisi all testified that it provided the scope of the representation. (Tr. pp. 79, 358, 389, 392, 442, Exh. "PP"). Ms. Parisi, Ms. Allen and Ms. Vayos testified that Mr. Greene was lucid when he signed the document. (Tr. pp. 894; Exh. "EEEE-V", pp. 19-20; Exh. "EEEE-A", pp. 11-12). Importantly, neither Rule 1.5 nor DR 2-106 require either a fee agreement or a retention letter. Rather, both require a communication with the client and Rule 1.5(b) states that a writing is preferable.

As the Board found, at the outset of the representation, Ms. Parisi presented Mr. Greene with a bill, setting forth her attorney rate and the rate of her staff. (FFCL ¶ 37, Exh. "QQ", pp. 21-34). The Board also found that Ms. Parisi discussed her hourly rate with Mr. Greene at least once and explained how she charged for paralegal time (FFCL ¶ 36). The evidence reveals that both Ms. Parisi and her paralegals had several discussions with Mr. Greene regarding the fees and rates charged. (Tr. pp. 684-701; Exh. "QQ").

b) Paragraph ¶ 41.

The Board's statement in ¶ 41 that "profound cerebral atrophy" constitutes the destruction of brain cells and is sometimes associated with alcoholism as incomplete. As Ward Tilton, a Licensed Independent Social Worker testified, cerebral atrophy is a loss of function of the brain. It may be caused by a number of things other than alcohol, such as brain injury, drugs,

an accident or diabetes. An individual can have cerebral atrophy without dementia. (Tr. p. 318, 327). Ms. Hoenigman is a former social worker with a master's degree in gerontology who worked as a licensed social worker in a nursing home for 26 years. She is now an attorney working at the Social Security Administration assisting administrative judges hearing cases in which disabled individuals have been denied benefits. (Tr. pp. 396-397). According to Ms. Hoenigman, cerebral atrophy is the dying of brain cells, which atrophy and become hard. It does not necessarily mean one has dementia since only about 1/3 of the brain is used. That parts die off is neither here nor there. (Tr. pp. 477-478).

c) Paragraph 51

Ms. Parisi's reasons for charging for many of the tasks listed in FFCL ¶ 51 is largely set forth in Tr. pp. 696-715 and is further documented in Exh. "AAAA". The \$50 phone charge to Time Warner was to straighten out its erroneous mailing address so that recurring late fees or disconnection would not result. (Tr. pp. 696, 930; Exh. "AAAA"). Ms. Parisi testified that Mr. Greene requested the Time Warner upgrade and could not have performed that task himself. (Tr. pp. 127-128). The \$50 phone call for the checks was to ensure that they had not become lost and to effectuate their delivery so that bills could be paid. (Tr. p. 693-694; Exh. "AAAA"). The \$100 involved for Mr. Greene to collect his TV involved Ms. Parisi's meeting with Mr. Greene and documenting his property that she held as the Rules require. Such documentation prevents any future allegation that she had somehow lost or misappropriated his property. (Exh. "AAAA", p.10). This is a matter that Ms. Parisi handled herself. (Tr. p. 118-119, 130). Even Mr. Sorg indicated that the Penthouse subscription is the kind of thing that he may have done himself as it may have been embarrassing for another to do. (Tr. p. 383). The Ladies Home Journal was one of several recurring subscriptions that Mr. Greene was paying for but which the

former attorney-in-fact, Janet Stookey, was receiving. This amounted to theft of Mr. Greene's funds. (Tr. p. 699-700; Exh. "AAAA"). Surely the Board does not really mean to suggest that the \$200 charge to ensure no theft occurred is somehow inappropriate. Checking improper charges is especially important since Ms. Parisi later discovered that an employee of the assisted living facility in which Mr. Greene resided stole his credit card and made thousands of dollars in unauthorized charges. The discovery resulted in investigation, criminal prosecution, and discharge of the employee (Tr. pp. 130-131). The \$50 to discover Mr. Greene's whereabouts was necessary because Ms. Parisi was also his health care power of attorney and was charged with Mr. Greene's ultimate care. (Tr. pp. 123-124). This was part of the contract. (Exh. "FFFF", p. 26; Exh. "PP"). Because Mr. Greene had end stage renal failure, it was important to know his whereabouts to ensure that he had not slipped into a diabetic coma, had not been hospitalized, was not stranded somewhere, or had not become otherwise ill or injured without Ms. Parisi's knowledge. There was more to the charge than simply delivering money to Mr. Greene. Again, both Mr. Sorg and Mr. Rouse testified that tasks such as these may have been reasonable. (Tr. p. 381-382; Proffer, pp.9-10). The Kitty Hawk Feline Club charges occurred because Ms. Parisi was seeking to reconnect Mr. Greene with some of his long lost friends and acquaintances with whom he and his wife had once socialized. (Tr. pp. 130-132, 710-711; Exh. "AAAA"). The charge for the watch battery occurred because Mr. Greene called the office upset about the matter. (Tr. p. 134, Exh. "AAAA"). The charge for the preoperative visit occurred because the physician required that Mr. Greene's health care power of attorney be present at the visit. (Tr. pp. 704-705; Exh. "AAAA").

d) Paragraph 61

Ms. Parisi began representing Mr. Greene in August 2004, when the Board agrees he was competent. (FFCL ¶ 71). At that beginning of the representation, while he was competent, Mr. Greene both gave the directive not to provide him with statements and to simply withdraw the funds for her representation using the POA. (FFCL ¶ 37). Moreover, although Mr. Greene requested not to see the bills, Ms. Parisi regularly showed him his financial statements, which listed the checks that were made payable to herself and reconciliation statements that she and her staff prepared. (Tr. p. 268-269; Exh. "EEEE", pp. 73-74; Exhs. "QQQ", "BBBB").

The Board's characterization of Ms. Parisi following her competent client's directive as "self-dealing" is contrary to Rule 1.2 Comment [3]. It was not until January 30, 2007 that Ms. Parisi noted that Mr. Greene had almost no short term memory (Exh. "QQ", p. 87), a situation that resolved itself the following month when he was first hospitalized due to a pelvic fracture and then admitted to a nursing home for rehabilitative care. (Tr. pp. 473-475). Ms. Allen testified that Mr. Greene was lucid the entire time she worked for Ms. Parisi until May 2005 (Exh. "EEEE-A", p. 711-712). Ms. Hoenigman testified that Mr. Greene knew what he wanted Ms. Parisi to do for him. (Tr. pp. 570).

e) Paragraph 62

As the Board acknowledged, Ms. Parisi routinely consulted with Charlene and Nick Vayos and Chris Christiansen about Mr. Greene's condition to independently evaluate the situation. (FFCL ¶ 62; Exh. "ZZZ"). Exhibit "RR" lists the 38 times that Ms. Parisi contacted Mr. Greene's family about his condition. (Tr. pp. 767-770). Toward the end of his life, with Mr. Greene's permission, Ms. Parisi informed his sisters of his condition. (Tr. pp. 266-267). Notwithstanding Rule 1.14, Ms. Parisi did not have the authority to disclose confidential

information to Mr. Greene's relatives. (See, generally, Tr. p. 677, 989, 1009). To so violate Mr. Greene's confidences by making his siblings aware of the amount he was spending for services would have subjected Ms. Parisi to Rule 1.6 violations. What is truly astounding is that the Board suggests that Ms. Parisi should have done so. As is stated above, neither Rule 1.5 nor DR 2-106 require an engagement letter. Ms. Parisi testified that the power of attorney sets forth the scope of her employment. (Tr. p. 679).

f) Paragraph 63

There is no evidence that Ms. Parisi solicited a substantial gift, drafted a will naming herself as a beneficiary, or entered into a business transaction with Mr. Greene. This is not a situation in which Rule 1.8(a) involving conflicts of interest applies. Relator did not so charge and the Board did not so find. As is set forth above, Ms. Parisi did not self deal. She performed services for Mr. Greene consistent with her charge of keeping him out of a nursing home and out of guardianship. As the Board found, without these services, Mr. Greene could not have accomplished these goals (FFCL ¶ 37). Rather than self-dealing, she dealt very fairly with Mr. Greene in terms of the amount she charged him and followed his instructions on paying herself with the power of attorney all the while regularly showing him his financial statements and discussing with him his financial condition. (Exh. "QQ").

g) Paragraph 71

Ms. Parisi did build safeguards into her relationship with Mr. Greene. They were the very safeguards that the Board suggests in FFCL ¶ 71. She discussed regularly Mr. Greene's state of affairs with the people closest to Mr. Greene, the Vayoses and Mr. Christiansen. (Exh. "ZZZ"). She attempted on 38 occasions to engage Mr. Greene's family to assist in his care. (Exh. "RR"). She had a very specific charging document, which set forth the scope of her representation.

III. CONCLUSION

This case presents very important and increasingly significant legal and ethical issues. The overwhelming evidence demonstrates that Ms. Parisi acted within the Code and the Rules in both the Demming and the Greene matters. Both individuals were elderly and, eventually, suffered from diminished capacity. Both clients came to Ms. Parisi to resolve very important legal and nonlegal issues. Both came without support groups or family members that could offer assistance. Ms. Parisi stepped up to the plate and offered the very best services that she was capable of performing to assist both of these clients. She fought hard for their rights and was successful. Her removal in both instances had catastrophic consequences.

In Demming, an unopposed guardianship matter, Ms. Parisi's removal resulted in the appointment of a guardian of the estate who the ward dislikes and distrusts. Ms. Demming's guardianship and legal fees have increased as a result. More importantly, Ms. Demming has been denied the benefit of a half million dollar trust put into place to secure payment of her living expenses. Ms. Parisi's removal as Mr. Greene's attorney-in-fact resulted in the deterioration of a wound nearly healed resulting in unimaginable pain, suffering, amputation, MRSA infection and, ultimately, death. There is nothing more prejudicial to a client's interests than death.

The Board refuses to acknowledge that a Durable Power of Attorney forms a contract between the attorney-in-fact and the client every bit as binding and effective as a fee agreement or an engagement letter. It sets forth the scope of the authority, whether the attorney-in-fact is an attorney licensed to practice law in the state of Ohio or otherwise. To conclude that an attorney overcharges a client by performing the tasks set forth in the Durable Power of Attorney invades the province of the contractual relationship between the attorney and client. This is especially so

where absolutely no evidence of misappropriation, bill padding, overbilling or other such misconduct occurs. It is unclear how the Board can conclude that a clearly excessive fee occurred when it claims that \$17,000 of the bill should not have been charged but \$23,000 of legitimate services were not billed.

Likewise, to conclude that an attorney commits an ethical violation for agreeing to represent both the applicant of the ward's choosing and the ward in an uncontested guardianship proceeding invades the attorney-client relationship as well as the contractual relationship in a proceeding that this Honorable Court has deemed nonadversarial. It is scandalous that a prospective ward cannot choose an attorney whom he or she trusts to be guardian, but the Probate Court can appoint an attorney stranger to perform that function. And, of course, the ward must pay the court appointed attorney guardian. This Board now suggests that somehow this stranger attorney is to be trusted more than the ward's choice if that choice is an attorney licensed to practice law in the state of Ohio. Such a decision will have profound effects on such instruments as springing powers of attorney if an Ohio attorney is to act as attorney-in-fact, militating instead for the judgment of the Probate Court on such matters.

To hold that an attorney acting as power of attorney violates an ethics rule by paying her own fee statement along with those of other professionals turns the law in this area on its head. This is especially so where, as here, the probate court has lost jurisdiction and the attorney delivered the fee statement to the individual that would take over either as guardian or attorney-in-fact for approval. The recommendation for sanction is especially puzzling where, as here, the very conduct that Ms. Parisi engaged in by delivering her fee statement to Ms. Manchi for review in the Demming matter is what the Board suggests she should have done to avoid sanction for paying her bill in the Greene matter.

There once was a time when being an attorney was one of the most noble and esteemed professions in which one could engage. The presumption was that lawyers were honest, trustworthy individuals seeking to accomplish the client's goals through ethical and legal means. Certainly there are those among us who do disreputable things and for which sanctions should be imposed. Ms. Parisi is not one of those attorneys and this is not one of those cases.

The Board now seeks to make case authority that will have a chilling effect on any elder law attorney or other attorneys who perform nonlegal services for clients. No longer can attorneys render services that another may characterize as unimportant for fear of disciplinary reprisal. No longer can individuals seek the services of attorneys to act as attorneys-in-fact to maintain independence or to avoid the restrictive environment of a nursing home or the liberty impingement of a guardianship. For those individuals with no family or other person to perform those duties, this may be catastrophic. An attorney may well be the best choice since the attorney is already in a fiduciary relationship with the client. The Board's opinion stands these relationships between attorneys and clients on its head.

With the advancing in age of the baby boom generation, it is now more important than ever that this Honorable Court decide whether attorneys can be trusted to perform these very important and ever increasing responsibilities. Do disallow an attorney to act as attorney-in-fact for his or her client or to become the client's guardian will place ever increasing burden and strain upon the Ohio probate system. As Ohio law has long recognized, it is best not to decrease individual autonomy by insisting that the individual become the court's ward.

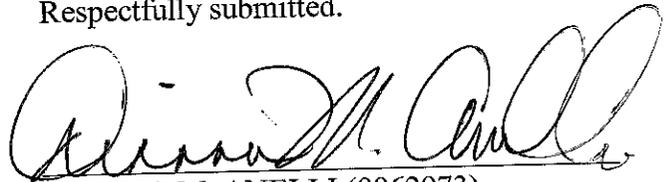
Ms. Parisi rendered Herculean services to Mr. Greene to accomplish his goals. She did so at his request and at a reasonable cost. Her services were permitted by Rules 1.2, 1.4 and 5.7.

She took good care of him and the Board so found. There is no reason to now deem that she has overcharged him merely because the Board disagreed with her rendering of 8.6% of her services.

Ms. Parisi fought long and hard for Ms. Demming's rights to a trust that her long-time companion provided for her care. Through cunning and false allegations, individuals with interests antagonistic to Ms. Demming were successful in removing Ms. Parisi as a force of protection for Ms. Demming. Their goals were to make sure that the trust assets were not used so that they could inherit it after Ms. Demming's passing. They succeeded. Let us not reward them further by sanctioning the only attorney that was protecting the ward's rights.

For the foregoing reasons, Ms. Parisi respectfully opposing the Board's Findings of Fact, Conclusions of Law and Recommended Sanction and requests this Honorable Court to dismiss this matter.

Respectfully submitted.



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CERTIFICATE OF SERVICE

A copy of the foregoing was served by email delivery, and U.S. Mail, postage prepaid,

this 15th day of April, 2011:

Mark A. Tuss
137 N. Main Street, Suite 712
Dayton, OH 45402-1773

A handwritten signature in cursive script, appearing to read "Dianna M. Anelli".

DIANNA M. ANELLI (0062973)

Attorney for Respondent

APPENDIX

The Supreme Court of Ohio

FILED

MAR 10 2011

Dayton Bar Association,
Relator,

v.
Georgianna Inez Parisi,
Respondent.

Case No. 2011-0340

CLERK OF COURT
SUPREME COURT OF OHIO

ORDER TO SHOW CAUSE

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio has filed a final report in the office of the clerk of this court. This final report recommended that pursuant to Rule V(6)(B)(3) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Georgianna Inez Parisi, Attorney Registration Number 0022538, be suspended from the practice of law for a period of six months with the entire six months stayed. The board further recommends that the costs of these proceedings be taxed to the respondent in any disciplinary order entered, so that execution may issue.

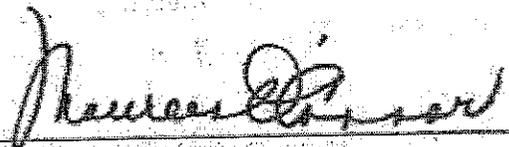
On consideration thereof, it is ordered by the court that the respondent show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered.

It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

After a hearing on the objections or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be more severe or less severe than said recommendation.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.



Maureen O'Connor
Chief Justice

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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March 2, 2011

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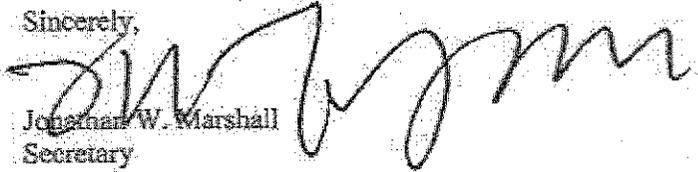
Re: Case No. 09-064
Dayton Bar Association, Relator v.
Georgianna L. Parisi, Respondent

Dear Mr. Tuss:

The Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline, in Case No. 09-064 was certified to the Supreme Court today, March 2, 2011. A copy of the Board's report is enclosed.

The Respondent will now be served with an order to show cause and may, if Respondent so desires, file objections with the Court. Any brief filed with the Court should include a copy to be served on me at this address in conformity with Gov. Bar Rule V(8)(B).

Sincerely,


Jonathan W. Marshall
Secretary

JWM/amb
Enclosure

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

In Re :
Complaint against : Case No. 09-064
Georgianna I. Parisi : Findings of Fact,
Attorney Reg. No. 0022538 : Conclusions of Law and
Respondent : Recommendation of the
Dayton Bar Association : Board of Commissioners on
Relator : Grievances and Discipline of
the 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 Denning 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 Kiity 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 services; 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 (e). 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 BOGD 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. Kartz* (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.

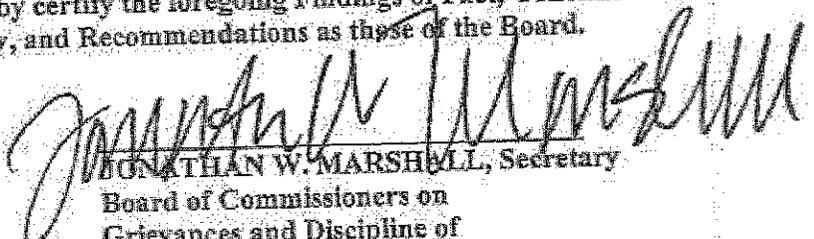
72. The primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. *Disciplinary Council v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. The Supreme Court has in other cases taken into account that the respondent is not likely to ever repeat her transgressions.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


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 I,
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 Vayce 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.

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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

C

United States Code Annotated Currentness
Constitution of the United States

▣ Annotated

▣ Article I. The Congress (Refs & Annos)

→ Section 10, Clause 1. Treaties, Letters of Marque and Reprisal; Coinage of Money; Bills of Credit; Gold and Silver as Legal Tender; Bills of Attainder; Ex Post Facto Laws; Impairment of Contracts; Title of Nobility

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility

<This clause is displayed in six separate documents according to subject matter,>

<see USCA Const Art. I § 10, cl. 1-Treaties, Etc.>

<see USCA Const Art. I § 10, cl. 1-Coinage of Money>

<see USCA Const Art. I § 10, cl. 1-Bills of Credit>

<see USCA Const Art. I § 10, cl. 1-Legal Tender>

<see USCA Const Art. I § 10, cl. 1-Bills of Attainder, Etc.>

<see USCA Const Art. I § 10, cl. 1-Impairment of Contracts>

LAW REVIEW COMMENTARIES

Back from the dead: The resurgence of due process challenges to retroactive tax legislation. Robert R. Gunning, 47 Duq. L. Rev. 291 (2009).

Drawing the line between taxes and takings: The continuous burdens principle, and its broader application. Eric Kades, 97 Nw. U. L.Rev. 189 (2002).

Felon disenfranchisement: The unconscionable social contract breached. Note, 89 Va. L.Rev. 109 (2003).

C

United States Code Annotated Currentness

Constitution of the United States

■ Annotated

■ Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property (Refs & Annots)

→ **Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<This amendment is further displayed in five separate documents according to subject matter.>

<see USCA Const Amend. V-Capital Crimes>

<see USCA Const Amend. V-Double Jeopardy>

<see USCA Const Amend. V-Self Incrimination>

<see USCA Const Amend. V-Due Process>

<see USCA Const Amend. V-Just Compensation>

CROSS REFERENCES

States prohibited from depriving persons of life, liberty, or property, without due process of law, see USCA Const. Amend. XIV, § 1.

LAW REVIEW COMMENTARIES

A jury of your peers?: How jury consulting may actually help trial lawyers resolve constitutional limitations imposed on the selection of juries. Comment, 41 Cal. W. L. Rev. 479 (2005).

C

United States Code Annotated Currentness

Constitution of the United States

▣ Annotated

▣ Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs & Annos)

→ AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

C
Baldwin's Ohio Revised Code Annotated Currentness
Constitution of the State of Ohio (Refs & Annos)
▣ Article I. Bill of Rights (Refs & Annos)
→ **O Const I Sec. 1 Inalienable rights**

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

CREDIT(S)

(1851 constitutional convention, adopted eff. 9-1-1851)

EDITOR'S COMMENT

1990:

This section and succeeding §2 are based on part of Article VIII, §1, 1802 Ohio Constitution, which itself paraphrased the Declaration of Independence. It restates principles accepted before the Revolution: that man has certain inalienable rights under natural law; that the purpose of government is to secure and protect those rights; and that all governmental powers depend on the people's consent. See, e.g., Resolutions of October 14, 1774, I *Journals of the Continental Congress* 63-73 (Worthington C. Ford ed, 1904); Blackstone's Commentaries 41-53 (J. W. Ehrlich ed, Nourse Publishing Co 1959); Thomas Rutherford, II *Institutes of Natural Law*, Ch III (Cambridge, England, 1754-56).

Most cases invoking §1, Article I involve challenges to the police power as infringing rights to liberty and property. The police power is the authority of government to adopt and enforce measures to protect the public health, safety, morals, and general welfare, and to the extent the exercise of the power is reasonable and has a real relationship to a legitimate governmental purpose, it has been held not to infringe constitutional rights despite some incidental interference with individual rights. See, e.g., *Ghaster Properties, Inc v Preston*, 176 OS 425, 200 NE(2d) 328 (1964); *Columbus v De Long*, 173 OS 81, 180 NE(2d) 158 (1962); *Kraus v Cleveland*, 66 Abs 417, 116 NE(2d) 779 (CP, Cuyahoga 1953); affirmed by 163 OS 559, 127 NE(2d) 609 (1955).

CROSS REFERENCES

Fish, property rights of net owner, see 1533.64

RESEARCH REFERENCES

organization's interest may or more of its constituents should advise any lawyer finds adverse to that or potential conflict of interest such constituent, an independent representative that the individual's adversity of interest, of provide legal representation, and that discussions and the individual

could be given by the constituent individual may

lawyer for an organization's constituents of an 1.7 are satisfied.

As the shareholders or suit to compel the actions in the supervision of incorporated associations such an action may be, but usually is, in fact, of the organization. Counsel for the organization proposition that the is not alone resolve the normal incident of an by the organization's, if the claim involves those in control of the seen the lawyer's duty relationship with the 1.7 governs who should zation.

Professional Responsibility

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of Professional Conduct the substance of Model revision by the ABA in identifies and requires that a lawyer communicate to the material risk to the organization aware. Rule 1.13 Rule 1.13 that imposes lawyers for organization

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of the apparent contradiction in Model Rule 1.13(b) between the direction to "proceed as reasonably necessary," which leaves the approach to the lawyer's discretion, and the mandatory direction to report to higher authority.

• The special "reporting out" requirement of Model Rule 1.13(c) has been stricken. Instead, a lawyer for an organization has the same "reporting out" discretion or duty as other lawyers have under Rule 1.6(b) and (c). Model Rule 1.13(d) and Comments [6] and [7] are unnecessary in light of its revision of Rule 1.13(b).

• Model Rule 1.13(e) is deleted. That provision requires that a lawyer who has quit or been discharged because of "reporting up" or "reporting out" make sure that the governing board knows of the lawyer's withdrawal or termination. Such a provision seems out of place in a code of ethics.

• The comments to Rule 1.13 are revised to reflect changes to the rule.

Rule 1.14 Client with diminished capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as *reasonably* possible, maintain a normal client-lawyer relationship with the client.

(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.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to division (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent *reasonably* necessary to protect the client's interests.

(Adopted eff. 2-1-07)

Official Comment

[1] 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 is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters

while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under division (b), must look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in division (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then division (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members; using a reconsideration period to permit clarification or improvement of circumstances; using voluntary surrogate decision-making tools such as durable powers of attorney; or consulting with support groups professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian *ad litem*, conservator, or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's

benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however, appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to division (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, division (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety, or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Comparison to former Ohio Code of Professional Responsibility

There are no Disciplinary Rules that cover directly the representation of a client with diminished capacity. The only comparable provisions are EC 7-11 and 7-12, which discuss the representation of a client with a mental or physical disability that renders the client incapable of making independent decisions.

Rule 1.14 is both broader and narrower than EC 7-12. It is broader to the extent that it explicitly permits a lawyer to ask for the appointment of a guardian *ad hunc* in the appropriate circumstance, it explicitly permits the lawyer to take reasonably necessary protective action, and it explicitly permits the disclosure of confidential information to the extent necessary to protect the client's interest.

Rule 1.14 is narrower to the extent that it does not explicitly permit the lawyer representing a client with diminished capacity to make decisions that the ordinary client would normally make. The rule does not address the matter of decision-making, as is the case in EC 7-12, but merely states that the lawyer should maintain a normal client-lawyer relationship as far as reasonably possible.

Comparison to ABA Model Rules of Professional Conduct
Rule 1.14 is identical to the ABA Model Rule.

Rule 1.15 Safekeeping funds and property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated. The account shall be designated as a "client trust account," "TOLTA account," or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:

(1) maintain a copy of any fee agreement with each client;

(2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:

(i) the name of the client;

(ii) the date, amount, and source of all funds received on behalf of such client;

(iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;

(iv) the current balance for such client.

(3) maintain a record for each bank account that sets forth all of the following:

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of Professional Conduct

Rules 1.4(a)(1) through (a)(5) are the same as the Model Rule provisions except for division (a)(4), which is altered to require compliance with client requests "as soon as practicable" rather than "promptly."

Rule 1.4(b) is the same as the Model Rule provision.

Rule 1.4(c) does not have a counterpart in the Model Rules. The provision mirrors DR 1-104, adopted effective July 1, 2001. DR 1-104 provides the public with additional information and protection from attorneys who do not carry malpractice insurance. Ohio is one of only a few states that have adopted a similar provision, and this requirement is retained in the rules.

Rule 1.5 Fees and expenses

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be

determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement shall clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case;

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in *writing* that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.

(e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:

(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;

(4) the total fee is reasonable.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

(Adopted eff. 2-1-07)

Official Comment

Reasonableness of Fee

[1] Division (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in divisions (a)(1) through (8) are not exclusive. Nor will each factor be relevant in each instance.

Nature and Scope of Representation; Basis or Rate of Fee and Expenses

[2] The detail and specificity of the communication required by division (b) will depend on the nature of the client-lawyer relationship, the work to be performed, and the basis of the rate or fee. A writing that confirms the nature and scope of the client-lawyer relationship and the fees to be charged is the preferred means of communicating this information to the client and can clarify the relationship and reduce the possibility of a misunderstanding. When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be established promptly. Unless the situation involves a regularly represented client, the lawyer should furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs, expenses, or disbursements in the course of the representation. So long as the client agrees in advance, a lawyer may seek reimbursement for the reasonable cost of services performed in-house, such as copying.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of division (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(e). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because

such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[5A] If all funds held by the lawyer are not disbursed at the time the closing statement required by division (c)(2) is prepared, the lawyer's obligation with regard to those funds is governed by Rule 1.15.

Prohibited Contingent Fees

[6] Division (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of spousal or child support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support or other financial orders because such contracts do not implicate the same policy concerns.

Retainer

[6A] Advance fee payments are of at least four types. The "true" or "classic" retainer is a fee paid in advance solely to ensure the lawyer's availability to represent the client and precludes the lawyer from taking adverse representation. What is often called a retainer is in fact an advance payment to ensure that fees are paid when they are subsequently earned, on either a flat fee or hourly fee basis. 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. An earned upon receipt fee is a flat fee paid in advance that is deemed earned upon payment regardless of the amount of future work performed. When a fee is earned affects whether it must be placed in the attorney's trust account, see Rule 1.15, and may have significance under other laws such as tax and bankruptcy. The reasonableness requirement and the application of the factors in division (a) may mean that a client is entitled to a refund of an advance fee payment even though it has been denominated "nonrefundable," "earned upon receipt," or in similar terms that imply the client would never receive a refund. So that a client is not misled by the use of such terms, division (d)(3) requires certain minimum disclosures that must be included in the written fee agreement. This does not mean the client will always be entitled to a refund upon early termination of the representation [e.g., factor (a)(2) might justify the entire fee], nor does it determine how any refund should be calculated (e.g., hours worked times a reasonable hourly rate, quantum meruit, percentage of the work completed, etc.), but merely requires that the client be advised of the possibility of a refund based upon application of the factors set forth in division (a). In order to be able to demonstrate the reasonableness of the fee in the event of early termination of the representation, it is advisable that lawyers maintain contemporaneous time records for any representation undertaken on a flat fee basis.

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Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial lawyer. Division (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. Within a reasonable time after disclosure of the identity of each lawyer, the client must give written approval that the fee will be divided and that the division of fees is in proportion to the services performed by each lawyer or that each lawyer assumes joint responsibility for the representation. Except where court approval of the fee division is obtained, closing statements must be in a writing signed by the client and each lawyer and must otherwise comply with division (c) of this rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rules 1.1 and 1.17.

[8] Division (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes between a client and a lawyer, such as an arbitration or mediation procedure established by a local bar association, the Ohio State Bar Association, or the Supreme Court of Ohio, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[10] A procedure has been established for resolution of fee disputes between lawyers who are sharing a fee pursuant to division (e) of this rule. This involves use of an arbitration or mediation procedure established by a local bar association or the Ohio State Bar Association. The lawyer must comply with the procedure. A dispute between lawyers who are splitting a fee shall not delay disbursement to the client. See Rule 1.15.

Comparison to former Ohio Code of Professional Responsibility

Rule 1.5 replaces DR 2-106 and DR 2-107; makes provisions of EC 2-18 and EC 2-19 mandatory, as opposed to aspirational, with substantive modifications; and makes the provisions of R.C. 4705.15 mandatory, with technical modifications.

Rule 1.5(a) adopts the language contained in DR 2-106(A) and (B), which prohibits illegal or clearly excessive fees and establishes standards for determining the reasonableness of fees. Eliminated from Rule 1.5(a) is language regarding expenses.

Rule 1.5(b) expands on EC 2-18 by mandating that the nature and scope of the representation and the arrangements

for fees and expenses shall promptly be communicated to the client, preferably in writing, to avoid potential disputes, unless the situation involves a regularly represented client who will be represented on the same basis as in the other matters for which the lawyer is regularly engaged.

Rule 1.5(c)(1) also expands on EC 2-18 and R.C. 4705.15(B) by requiring that all contingent fee agreements shall be reduced to a writing signed by the client and the lawyer. Rule 1.5(c)(2) directs that a closing statement shall be prepared and signed by both the lawyer and the client in matters involving contingent fees. It closely parallels the current R.C. 4705.15(C).

Rule 1.5(d) prohibits the use of a contingent fee arrangement when the contingency is securing a divorce, spousal support, or property settlement in lieu of support. It finds its basis in EC 2-19, which provides that "Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations cases are rarely justified." Rule 1.5(d)(2) prohibits the use of contingent fee arrangements in criminal cases and parallels DR 2-106(C).

Rule 1.5(d)(3) prohibits fee arrangements denominated as "earned upon receipt," "nonrefundable," or other similar terms that imply the client may never be entitled to a refund, unless the client is advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund so the client is not misled by such terms. The rationale for this rule is contained in Comment [6A].

Rule 1.5(e) deals with the division of fees among lawyers who are not in the same firm. Rule 1.5(e)(1) restates the provisions of DR 2-107(A)(1), with the additional requirement that in the event the division of fees is on the basis of joint responsibility, each lawyer must be available for consultation with the client. Rule 1.5(e)(2) clarifies DR 2-107(A)(2) and Advisory Opinion 2003-3 of the Board of Commissioners on Grievances and Discipline regarding the matters that must be disclosed in writing to the client.

Rule 1.5(e)(3) is a new provision directing that the closing statement contemplated by Rule 1.5(c)(2) must be signed by the client and all lawyers who are not in the same firm who will share in the fees, except where the fee division is court-approved. Rule 1.5(e)(4) is a restatement of DR 2-107(A)(3) regarding the requirement that the total fee must be reasonable.

Rule 1.5(f) is a restatement of DR 2-107(B) requiring mandatory mediation or arbitration regarding disputes between lawyers sharing a fee under this rule.

Comparison to ABA Model Rules of Professional Conduct
Model Rule 1.5 is amended to conform to Disciplinary Rules and ensure a better understanding of the relationship between the client and the lawyers representing the client, thereby reducing the likelihood of future disputes. Also, the comments are modified to bring them into conformity with the proposed changes to Model Rule 1.5 and clarify certain aspects of fees for the benefit of the bench, bar, and the public.

Although ABA Model Rule 1.5(a) directs that a lawyer shall not charge "unreasonable" fees or expenses, the terminology in DR 2-106 (A) prohibiting "illegal or clearly excessive" fees is more encompassing and better suited to use in Ohio. Charging an "illegal fee" differs from charging an "unreasonable fee" and, accordingly, the existing Ohio language is retained.

Model Rule 1.5(c), while dealing with contingent fees, is expanded and clarified. The closing statement provisions of the Model Rule are expanded to bring them in line with existing R.C. 4705.15(C). Additionally, the Model Rule is divided into two parts, the first dealing with the lawyer's obligations at the commencement of the relationship and the second dealing with the lawyer's obligations at the time a fee is earned.

The provisions of Model Rule 1.5(d) are modified to add division (d)(3) and Comment [6A] in light of the number of disciplinary cases involving "retainers."

Model Rule 1.5(e) and Comment [7] dealing with division of fees are modified to bring both the requirements of the rule and the commentary into line with existing practice in Ohio.

Rule 1.6 Confidentiality of information

(a) A lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by division (b) or required by division (c) of this rule.

(b) A lawyer may reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary for any of the following purposes:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the commission of a crime by the client or other person;

(3) to mitigate substantial injury to the financial interests or property of another that has resulted from the client's commission of an illegal or fraudulent act, in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding, including any disciplinary matter, concerning the lawyer's representation of the client;

(6) to comply with other law or a court order.

(c) A lawyer shall reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, to the extent the lawyer reasonably believes necessary to comply with Rule 3.3 or 4.1.

(Adopted eff. 2-1-07)

Official Comment

[1] This rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.13 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client, and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(f) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work-product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Ohio Rules of Professional Conduct or other law. See also Scope.

[4] Division (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

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DR 2-106. FEES FOR LEGAL SERVICES.

(A) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge, or collect a contingent fee for representing a defendant in a criminal case.

[Effective: October 5, 1970.]

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assist lawyers with substance abuse or mental health problems; provided the information was obtained while the member, employee, or agent was performing duties as a member, employee, or agent of the committee, subcommittee, or nonprofit corporation, shall be privileged for all purposes under this rule.

(Adopted eff. 2-1-07)

Official Comment

[1] Self-regulation of the legal profession requires that a member of the profession initiate disciplinary investigation when the lawyer knows of a violation of the Ohio Rules of Professional Conduct involving that lawyer or another lawyer. A lawyer has a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve the disclosure of privileged information. However, a lawyer should encourage a client to consent to disclosure where it would not substantially prejudice the client's interests.

[3] [RESERVED]

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the rules applicable to the client-lawyer relationship. See Rule 1.6.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers- or judges- assistance program. In that circumstance, providing for an exception to the reporting requirements of divisions (a) and (b) of this rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public.

Comparison to former Ohio Code of Professional Responsibility

Rule 8.3 is comparable to DR 1-103 but differs in two respects. First, Rule 8.3 does not contain the strict reporting requirement of DR 1-103. DR 1-103 requires a lawyer to report all misconduct of which the lawyer has unprivileged knowledge. Rule 8.3 requires a lawyer to report misconduct only when the lawyer possesses unprivileged knowledge that raises a question as to any lawyer's honesty, trustworthiness, or fitness in other respects. Second, Rule 8.3 requires a lawyer to self-report.

Comparison to ABA Model Rules of Professional Conduct

Rule 8.3 is revised to comport more closely to DR 1-103. Division (a) is rewritten to require the self-reporting of disciplinary violations. In addition, the provisions of divisions (a) and (b) are broadened to require reporting of (1) any violation by a lawyer that raises a question regarding the lawyer's honesty, trustworthiness, or fitness, and (2) any ethical violation by a judge. In both provisions, language is included to limit the reporting requirement to circumstances where a lawyer's knowledge of a reportable violation is unprivileged.

Division (c), which deals with confidentiality of information regarding lawyers and judges participating in lawyers' assistance programs, has been strengthened to reflect Ohio's position that such information is not only confidential, but "shall be privileged for all purposes" under DR 1-103(C). The substance of DR 1-103(C) has been inserted in place of Model Rule 8.3(c).

In light of the substantive changes made in divisions (a) and (b), Comment [3] is no longer applicable and is stricken. Further, due to the substantive changes made to confidentiality of information regarding lawyers and judges participating in lawyers' assistance programs, the last sentence in Comment [5] has been stricken.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to do any of the following:

- (a) violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit an *illegal* act that reflects adversely on the lawyer's honesty or trustworthiness;
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law;
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of the Ohio Rules of Professional Conduct, the applicable rules of judicial conduct, or other law;
- (g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;
- (h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

(Adopted eff. 2-1-07)

Official Comment

[1] Lawyers are subject to discipline when they violate or attempt to violate the Ohio Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Division (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that

have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[2A] Division (c) does not prohibit a lawyer from supervising or advising about lawful covert activity in the investigation of criminal activity or violations of constitutional or civil rights when authorized by law.

[3] Division (g) does not apply to a lawyer's confidential communication to a client or preclude legitimate advocacy where race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability is relevant to the proceeding where the advocacy is made.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning, or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent, and officer, director, or manager of a corporation or other organization.

Comparison to former Ohio Code of Professional Responsibility

Rule 8.4 is substantively comparable to DR 1-102 and 9-101(C).

Rule 8.4 removes the "moral turpitude" standard of DR 1-102(A)(3) and replaces it with Rule 8.4(b), which states that a lawyer engages in professional misconduct if the lawyer "commit[s] an illegal act that reflects adversely on the lawyer's honesty or trustworthiness."

Comparison to ABA Model Rules of Professional Conduct

Rule 8.4 is substantially similar to Model Rule 8.4 except for the additions of the anti-discrimination provisions of DR 1-102(B) and the fitness to practice provision of DR 1-102(A)(6). Comment [2A] is added to indicate that a lawyer's involvement in lawful covert activities is not a violation of Rule 8.4(c). The last sentence of DR 1-102(B) is inserted in place of Model Rule Comment [3].

Rule 8.5 Disciplinary authority; choice of law

(a) **Disciplinary Authority.** A lawyer admitted to practice in Ohio is subject to the disciplinary authority of Ohio, regardless of where the lawyer's conduct occurs. A lawyer not admitted in Ohio is also subject to the disciplinary authority of Ohio if the lawyer provides or offers to provide any legal services in Ohio. A lawyer may be subject to the disciplinary authority of both Ohio and another jurisdiction for the same conduct.

(b) **Choice of Law.** In any exercise of the disciplinary authority of Ohio, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a *tribunal*, the rules of the jurisdiction in which the *tribunal* sits, unless the rules of the *tribunal* provide otherwise;

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer *reasonably believes* the predominant effect of the lawyer's conduct will occur.

(Adopted eff. 2-1-07)

Official Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in Ohio is subject to the disciplinary authority of Ohio. Extension of the disciplinary authority of Ohio to other lawyers who provide or offer to provide legal services in Ohio is for the protection of the citizens of Ohio. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this rule. See Rule V, Section 11 of the Supreme Court Rules for the Government of the Bar of Ohio. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of Ohio may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

[1A] A lawyer admitted in another state, but not Ohio, may seek permission from a tribunal to appear *pro hac vice*. The decision of whether to permit representation by an out-of-state lawyer before an Ohio tribunal is a matter within the discretion of the trial court. Once *pro hac vice* status is extended, the tribunal retains the authority to revoke the status as part of its inherent power to regulate the practice before the tribunal and protect the integrity of its proceedings. Revocation of *pro hac vice* status and disciplinary proceedings are separate methods of addressing lawyer misconduct, and a lawyer may be subject to disciplinary proceedings for the same conduct that led to revocation of *pro hac vice* status.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct that impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Division (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the

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Any expense that is eligible for quarterly reimbursement, but that is not submitted on a quarterly reimbursement application, shall be submitted no later than the appropriate annual reimbursement application pursuant to division (D)(2)(b) of this section and shall be denied by the Board if not timely submitted. The application for quarterly reimbursement shall include an affidavit with documentation demonstrating that the Certified Grievance Committee incurred the expenses set forth in divisions (D)(2)(b)(i) and (ii) of this section.

(3) **Audit.** Expenses incurred by Certified Grievance Committees and reimbursed under division (D)(2) of this section may be audited at the discretion of the Board or the Supreme Court and paid out of the Attorney Services Fund.

(4) **Availability of Funds.** Reimbursement under division (D)(2) of this section is subject to the availability of moneys in the Attorney Services Fund.

(E) **Public Records.** Except as provided in Section 11(E) of this rule and by state and federal law, documents and records of the Board, the Secretary, and the Disciplinary Counsel, including budgets, reports, and records of income and expenditures, shall be made available for inspection to any member of the general public at reasonable times during regular business hours. Upon request, a person responsible for the records shall make copies available at cost, within a reasonable period of time. The records shall be maintained in a manner that they can be made available for inspection.

Section 4. Investigation and filing of complaints

(A) **Referral by Board.** The Board may refer to a Certified Grievance Committee or the Disciplinary Counsel any matter filed with it for investigation as provided in this section.

(B) **Referral by Certified Grievance Committee.** If a Certified Grievance Committee determines in the course of a disciplinary investigation that the matters of alleged misconduct under investigation are sufficiently serious and complex as to require the assistance of the Disciplinary Counsel, the chair of the Certified Grievance Committee may direct a written request for assistance to the Disciplinary Counsel. The Disciplinary Counsel shall investigate all matters contained in the request and report the results of the investigation to the committee that requested it.

(C) **Power and Duty to Investigate.** The investigation of grievances involving alleged misconduct by justices, judges, and attorneys and grievances with regard to mental illness shall be conducted by the Disciplinary Counsel or a Certified Grievance Committee. The Disciplinary Counsel and a Certified Grievance Committee shall investigate any matter filed with it or that comes to its attention and may file a complaint pursuant to this rule in cases where it

finds probable cause to believe that misconduct has occurred or that a condition of mental illness exists.

(D) **Time for Investigation.** The investigation of grievances by Disciplinary Counsel or a Certified Grievance Committee shall be concluded within sixty days from the date of the receipt of the grievance. A decision as to the disposition of the grievance shall be made within thirty days after conclusion of the investigation.

(1) **Extensions of Time.** Extensions of time for completion of the investigation may be granted by the Secretary of the Board upon written request and for good cause shown. Investigations for which an extension is granted shall be completed within one hundred fifty days from the date of receipt of the grievance. Time may be extended when all parties voluntarily enter into an alternative dispute resolution method for resolving fee disputes sponsored by the Ohio State Bar Association or a local bar association.

(2) **Extension Limits.** The chair or Secretary of the Board may extend time limits beyond one hundred fifty days from the date of filing in the event of pending litigation, appeals, unusually complex investigations, including the investigation of multiple grievances, time delays in obtaining evidence or testimony of witnesses, or for other good cause shown. If an investigation is not completed within one hundred fifty days from the date of filing the grievance or a good cause extension of that time, the Secretary may refer the matter either to a geographically appropriate Certified Grievance Committee or the Disciplinary Counsel. The investigation shall be completed within sixty days after referral. No investigation shall be extended beyond one year from the date of the filing of the grievance.

(3) **Time Limits not Jurisdictional.** Time limits set forth in this rule are not jurisdictional. No grievance filed shall be dismissed unless it appears that there has been an unreasonable delay and that the rights of the respondent to have a fair hearing have been violated. Investigations that extend beyond one year from the date of filing are prima facie evidence of unreasonable delay.

(E) **Retaining Outside Experts.** A particular investigation may benefit from the services of an independent investigator, auditor, examiner, assessor, or other expert. A Certified Grievance Committee may retain the services of an expert in accordance with the Board regulations.

(F) **Cooperation with Clients' Security Fund.** Upon the receipt of any grievance presenting facts that may be the basis for an award from the Clients' Security Fund under Gov. Bar R. VIII, the Disciplinary Counsel or a Certified Grievance Committee shall notify the grievant of the potential right to an award from the Fund and provide the grievant with the forms necessary to initiate a claim with the Clients' Security Fund. The Disciplinary Counsel, a Certified Griev-

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APPENDIX II THE RULES AND REGULATIONS GOVERNING PROCEDURE ON COMPLAINTS AND HEARINGS BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DIS- CIPLINE OF THE SUPREME COURT

Ed. Note: Pursuant to Gov Bar R. V, former section 41, these Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline were adopted by the Supreme Court, effective October 8, 1990.

APPENDIX II THE RULES AND REGU- LATIONS GOVERNING PROCEDURE ON COMPLAINTS AND HEARINGS BE- FORE THE BOARD OF COMMISSION- ERS ON GRIEVANCES AND DISCI- PLINE OF THE SUPREME COURT

Rule

1. Complaint Requirements
2. Pleadings and Motions
3. Rules of Procedure
4. Manner of service
5. Quorum of panel or board
6. Manner of service on clerk; record of such service a public record
7. Power to issue subpoenas; foreign subpoenas
8. Master commissioner
9. Time Guidelines for Pending Cases
10. Guidelines for Imposing Lawyer Sanctions
11. Consent to discipline
- 12 to BCGD Proc Rég 19 [Reserved]
20. Regulation for the issuance of advisory opinions

BCGD Proc Reg 1 Complaint Requirements

(A) The complaint shall allege the specific misconduct detailed in Gov. R. IV or Section 6(a) of Gov. R. V and cite the disciplinary rule allegedly violated by the Respondent. The Panel and Board shall not be limited to the citation to the disciplinary rule(s) in finding violations based on all the evidence.

(B) The Relator in the complaint shall set forth the Respondent's attorney registration number and his last known address where the Board shall serve the complaint.

(Adopted eff. 10-8-90)

BCGD Proc Reg 2 Pleadings and Motions

(A) Within the period of time permitted for an answer to the complaint, Respondent may file any motion appropriate under Rule 12 of the Ohio Rules of Civil Procedure, supported by a brief and affidavits if necessary. A brief and affidavits, if appropriate, in opposition to such motion may be filed within twenty days after service of such motion. No oral hearing will be granted, and rulings of the Board will be made

by the Chairman of the Board or any member designated by the Secretary of the Board. All motions shall be made in accordance with this rule.

(B) The chairman or a member of the panel shall rule on all motions subsequent to the appointment of a panel.

(C) For good cause, the Chairman of the Board, or, after appointment of a panel, the chairman or member of the panel may grant extensions of time for the filing of any pleading, motion, brief or affidavit, either before or after the time permitted for filing.

(D) Every pleading after the complaint shall show proof of service.

(Adopted eff. 10-8-90)

BCGD Proc Reg 3 Rules of Procedure

(A) The Board and hearing panels shall follow the Ohio Rules of Civil Procedure wherever practicable unless a specific provision of Gov. Bar R. V provides otherwise.

(B) Depositions taken in Gov. Bar R. V proceedings shall be filed with the Secretary of the Board as Rule 32 of the Ohio Rules of Civil Procedure prescribes.

(C) If Relator and Respondent stipulate to facts, the chairman or member of the panel may either cancel a hearing and deem the matter submitted in writing or order that a hearing be held with all counsel and the Respondent present.

(D) Notwithstanding the agreement of Relator and Respondent on a recommended sanction for Respondent, the hearing panel and the Board are not bound by the joint recommendation and retain sole power and discretion to make a final recommendation to the Ohio Supreme Court on the appropriate sanction.
(Adopted eff. 10-8-90; amended eff. 6-1-00)

BCGD Proc Reg 4 Manner of service

Whenever provision is made for the service of any notice, order, report, or other paper or copy upon any complainant, relator, respondent, petitioner, or other party, in connection with any proceeding under these rules, service may be made upon counsel of record for

(C) The application shall state what arrangements, if any, have been made with respect to counsel fees. Counsel fees shall be subject to approval by the court. (Adopted eff. 7-1-97; amended eff. 10-1-97)

Sup R 71 Counsel fees

(A) Attorney fees in all matters shall be governed by Rule 1.5 of the Ohio Rules of Professional Conduct.

(B) Attorney fees for the administration of estates shall not be paid until the final account is prepared for filing unless otherwise approved by the court upon application and for good cause shown.

(C) Attorney fees may be allowed if there is a written application that sets forth the amount requested and will be awarded only after proper hearing, unless otherwise modified by local rule.

(D) The court may set a hearing on any application for allowance of attorney fees regardless of the fact that the required consents of the beneficiaries have been given.

(E) Except for good cause shown, attorney fees shall not be allowed to attorneys representing fiduciaries who are delinquent in filing the accounts required by section 2109.30 of the Revised Code.

(F) If a hearing is scheduled on an application for the allowance of attorney fees, notice shall be given to all parties affected by the payment of fees, unless otherwise ordered by the court.

(G) An application shall be filed for the allowance of counsel fees for services rendered to a guardian, trustee, or other fiduciary. The application may be filed by the fiduciary or attorney. The application shall set forth a statement of the services rendered and the amount claimed in conformity with division (A) of this rule.

(H) There shall be no minimum or maximum fees that automatically will be approved by the court.

(I) Prior to a fiduciary entering into a contingent fee contract with an attorney for services, an application for authority to enter into the fee contract shall be filed with the court, unless otherwise ordered by local court rule. The contingent fee on the amount obtained shall be subject to approval by the court. (Adopted eff. 7-1-97; amended eff. 10-1-97; 2-1-07)

Sup R 72 Executor's and administrator's commissions

(A) Additional compensation for extraordinary services may be allowed upon an application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require the application to be set for hearing with notice given to interested persons in accordance with Civil Rule 73(E).

(B) The court may deny or reduce commissions if there is a delinquency in the filing of an inventory or an account, or if, after hearing, the court finds that the executor or administrator has not faithfully discharged the duties of the office.

(C) The commissions of co-executors or co-administrators in the aggregate shall not exceed the commissions that would have been allowed to one executor or administrator acting alone, except where the instrument under which the co-executors serve provides otherwise.

(D) Where counsel fees have been awarded for services to the estate that normally would have been performed by the executor or administrator, the executor or administrator commission, except for good cause shown, shall be reduced by the amount awarded to counsel for those services.

(Adopted eff. 7-1-97; amended eff. 10-1-97)

Sup R 73 Guardian's compensation

(A) Guardian's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services, reimbursement for expenses incurred and compensation of a guardian of a person only may be allowed upon an application setting forth an itemized statement of the services rendered and expenses incurred and the amount for which compensation is applied. The court may require the application to be set for hearing with notice given to interested persons in accordance with Civil Rule 73(E).

(C) The compensation of co-guardians in the aggregate shall not exceed the compensation that would have been allowed to one guardian acting alone.

(D) The court may deny or reduce compensation if there is a delinquency in the filing of an inventory or account, or after hearing, the court finds the guardian has not faithfully discharged the duties of the office.

(Adopted eff. 7-1-97; amended eff. 10-1-97)

Sup R 74 Trustee's compensation

(A) Trustee's compensation shall be set by local rule.

(B) Additional compensation for extraordinary services may be allowed upon application setting forth an itemized statement of the services rendered and the amount of compensation requested. The court may require that the application be set for hearing with notice given to interested parties in accordance with Civil Rule 73(E).

(C) The compensation of co-trustees in the aggregate shall not exceed the compensation that would have been allowed to one trustee acting alone, except where the instrument under which the co-trustees are acting provides otherwise.

missioner shall issue a scheduling order setting a pretrial, a final conference, and a trial date.

3.07 Civilian Clothing

If defendant is incarcerated, he may appear in civilian clothing at trial only if civilian clothing is provided to the jail the night before the trial. Defendant may then dress at the jail, after the clothing has been cleared by security. Defendant will not be permitted to change into civilian clothing at the courthouse on the day of trial.

Rule 4.00 Broadcasting, photographing or recording within the courthouse

The following rules pertaining to recording or broadcasting within the Courthouse are to be read in conjunction with Canon 3(A)(7) of the Code of Judicial Conduct and Rule 12 of the Rules of Superintendence:

A. All persons who wish to engage in the broadcasting, recording, or photographing of Court proceedings must apply in writing to the assigned trial judge for approval. Approval will be given only to those who are affiliated with the news media.

Those not affiliated with the news media are prohibited from using any video, photographic or audio recording device, including cell phones when used for this purpose, inside the courthouse. The taking of pictures, use of cellular telephones, pagers, beepers or other media type recording devices is strictly prohibited inside the courthouse. The penalty for use of any of the above-mentioned items is forfeiture of the item and a \$100.00 fine.

B. The written application must be made prior to each hearing for which permission is sought, and shall indicate the applicant's news media affiliation, the recording equipment proposed to be used (video camera, still camera, audio recording device), and any special requirements, such as microphone hook-ups or electrical conduits.

C. The trial judge will assign positions in the courtroom to approved media representatives and technicians. They will not be permitted to move about the courtroom, nor to enter or leave the courtroom during active Court proceedings.

D. No one shall record or broadcast activities in the courtroom that take place during the recesses of a hearing, or during the half-hour before or after the hearing.

E. The use of artificial lighting and flash photography is prohibited. Equipment used in the broadcasting or televising of proceedings, such as microphones and television cameras, must be positioned prior to the commencement of the hearing, and must remain in position until the entire proceeding is concluded.

F. If the Court orders that a particular witness or other person in the courtroom is not to be photographed or recorded, it will be the responsibility of

each news media representative to inform his assistants of the trial judge's instructions.

G. The Court may further regulate the conduct of any broadcasting or recording activity so as to avoid distracting the participants and to guarantee a fair trial.

Rule 5.00 Rules of court in receivership

5.01 Appointment

When an application is made for the appointment of a receiver, a hearing on the application will be set by court order, and notice will be sent to all parties. Unless otherwise ordered, a schedule of all creditors, secured and unsecured, shall be filed within seven days of the filing of the application. The Court shall consider any recommendations made by unsecured creditors, or by creditors whose security is threatened, as to the appointment of a particular receiver or his counsel.

When a receiver is appointed, he shall post bond in an amount set by the Court, and shall file an inventory within thirty days of his appointment.

5.02 Application for Fees

In any matter in which a receiver or other fiduciary is appointed by the Court, and seeks compensation through the Court for his fees, he shall:

A. File a written application for compensation, which shall include notice of the time and date of a hearing upon the application. Hearing will be set no less than seven days from the date the application is filed.

B. This rule shall not apply in cases in which the fees sought are less than \$100,000, nor in cases in which the fees have been fixed in a journal entry approved by all counsel in the case.

Rule 6.00 Jury management plan

In accord with Rule 5(B)(2) of the Rules of Superintendence, the Court adopts these rules to ensure the effective use and management of jury resources.

Jury service is an obligation of all citizens, and the opportunity to serve on a jury shall not be denied on the basis of race, gender, religion, income, or occupation.

6.01 Jury Administration

A. The Warren County Common Pleas Court administers the jury system for the County through the office of a Jury Commissioner, and shall from time to time evaluate the system for the effectiveness of summoning and qualification procedures; the inclusiveness of the jury source list; the cost effectiveness of the jury management system; and the responsiveness of individuals to jury duty summonses.

The Jury Commissioner is responsible for summoning persons for jury service and collecting information so that each person's eligibility for service can be