ORIGINAL

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

11-0803

In Re:	:	
Complaint against	:	**Case No. 10-047**
Jeffrey A. Carr **Attorney Reg. No. 0081745**	:	**Amended Findings of Fact. Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Akron Bar Association	:	
Relator	:	

FILED
MAY 20 2011
CLERK OF COURT
SUPREME COURT OF OHIO

A formal hearing was held in this matter on December 15, 2010, in Columbus, Ohio, before a panel consisting of members, Lynn B. Jacobs, Patrick Sink, and Roger S. Gates, chair. None of the panel members resides in the appellate district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Respondent, Jeffrey A. Carr, was present at the hearing. Attorney Laura M. Faust represented Respondent. Attorneys Vincent J. Alfera and Milton C. Rankins represented Relator.

SUMMARY

The Complaint, containing two counts, arises from Respondent's representation of Silas Pearson in a suit claiming fraud by a realtor who induced Pearson to purchase a house in Summit County. Relator alleges that Respondent committed misconduct by failing to adequately communicate with Pearson [Prof. Cond. R. 1.4(a)(2) and (b)], charging an excessive hourly fee [Prof. Cond. R. 1.5(a)], failing to communicate the nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible [Prof. Cond. R. 1.5 (b)],

and misrepresenting his hours worked in his fee bills [Prof. Cond. R. 8.4(a), (c), (d) and (h)]. Although the Complaint also alleges misconduct for failing to notify Lawyer Referral Services of Cleveland ("LRS") of the status of the case, failing to pay the agreed percentage of fees to the LRS and failure to deposit the fees owed to LRS in an IOLTA account, Relator dismissed these allegations at the commencement of the hearing.

Based upon the findings of fact set forth herein, the panel concludes that Respondent violated Prof. Cond. R. 1.5(a) by charging a clearly excessive fee, but that Relator failed to meet its burden of proof as to the remaining charges of misconduct. The panel recommends that, upon his return to active status, Respondent be suspended from the practice of law for six months, but that the entire six months be stayed on conditions.

FINDINGS OF FACT

¶1. Following a career in construction for Honeywell Corporation and as a mediator and arbitrator of construction disputes, Jeffrey A. Carr, Ohio Supreme Court Registration Number 0081745, was admitted to practice law on May 14, 2007. Respondent was also admitted to practice in Pennsylvania in 2003. Because Respondent decided to cease his practice and to be employed as a college instructor, Respondent's registration status in Ohio was inactive as of the date of the hearing.

¶2. Respondent did not maintain an office in Ohio but did maintain an office in Pennsylvania. Respondent would generally meet with Ohio clients either in the client's home or business, at the Akron Bar Association, or another location convenient to the client. Respondent would also speak with clients by phone primarily using his cellular phone, but sometimes using a landline at his Pennsylvania office.

¶3. Approximately 90% of Respondent's practice involved real estate and construction litigation.

¶4. In late November or early December 2008, Respondent claims that he met with Silas Pearson, and his wife Gertha,[1] at the Akron Bar Association to discuss representing Mr. Pearson in a claim against Coldwell Banker Hunter Realty ("CBHR"). Respondent testified that, during this meeting, Pearson related the following facts supporting his claim:

a. Approximately two years earlier, Pearson had purchased his current home located at 208 Noble Avenue in Akron, Ohio. An agent with CBHR acted as Pearson's agent in connection with the transaction.

b. Prior to Pearson making an offer, the CBHR agent gave Pearson a listing document which showed the amount of real estate taxes attributable to the property.

c. At some time prior to the closing, Pearson, or his wife, specifically asked the CBHR agent whether the amount of taxes shown on the listing document was correct, and the agent represented the amount shown was correct.

d. After completing the purchase of the property, Pearson received a tax bill showing that the taxes were 50 – 100% higher than had been represented by his realtor.

e. Pearson later discovered that the seller in the transaction had qualified for a homestead exemption which reduced the amount of taxes which the seller had paid.

f. Since Pearson was too young to receive the homestead exemption, Pearson's tax bill reflected the actual amount of taxes assessed against the property.

[1] Gertha Pearson died sometime between Relator's filing of the Complaint and the formal hearing in this matter. She was not deposed prior to her death.

g. Pearson believed that the CBHR agent had lied to him as to the amount of the taxes, and that CBHR and its agent should be required to compensate him for the additional taxes he would have to pay until he could qualify for the homestead exemption. (Tr. 132-134)

¶5. As a result of this meeting, Respondent agreed to represent Pearson in a claim against the CBHR and the agent. Respondent testified that he verbally told Mr. and Mrs. Pearson that he would charge $240 per hour for his legal services. Although Pearson denied attending this meeting, he never disputed that Respondent was representing him at the rate of $240 per hour.

¶6. Although Respondent claimed that he sent a fee agreement to Pearson's wife, no fee agreement was ever signed. Respondent has no documentation concerning the alleged fee agreement. Pearson denied ever receiving a fee agreement. (Tr. 137) No portion of Respondent's fees would be contingent on the outcome of the action.

¶7. Respondent issued monthly invoices for the time he spent working on the case, however, Respondent initially agreed that Mrs. Pearson would simply pay $1,000 per month because Mr. Pearson had limited funds. Later Respondent agreed to Mrs. Pearson's request to reduce the monthly payment to $500 because Mr. Pearson was temporarily not working.

¶8. At all times relevant to this matter, Pearson was working in Wilmington, Ohio, and was in Akron only on weekends. Therefore with his consent, Respondent dealt primarily with Mrs. Pearson. Because his wife did not drive, Mr. Pearson claimed that she never left their house unless he was home and drove her where she wanted to go.

¶9. Following the initial meeting, Respondent prepared and filed in the Summit County Court of Common Pleas a complaint against CBHR alleging that its agent had made false statements to entice Pearson to purchase the real estate at 208 Noble Avenue in Akron, Ohio; the complaint was filed on December 19, 2008. Even though it contains generic allegations as to the

elements of a fraud claim, the complaint fails to allege specific false statements allegedly made by the CBHR agent. (Ex. 1-B)

¶10. Despite the complaint's allegations that the real estate agent made false statements, neither party presented any evidence to the panel to suggest that the agent's statements inaccurately represented the amount of the taxes being paid by the seller. (Tr. 217-218) Instead, the panel concludes that the CBHR agent failed to disclose to Pearson that the seller's taxes were reduced due to the Ohio homestead exemption for which the seller qualified, and that Pearson's taxes would be higher because he would not qualify for the homestead exemption.

¶11. When questioned during his testimony, Respondent was unable to provide any indication as to the actual variance between the taxes billed to Pearson and the amount of taxes which CBHR's agent had represented were being paid by the seller. Prior to filing the Complaint, Respondent did not independently verify the variance in the taxes, but instead relied solely on Mrs. Pearson's statements concerning the variance. Respondent knew of no way to verify the actual taxes except to check the website of the Summit County Recorder.[2]

¶12. Other than meeting with Mrs. Pearson and attending a mediation, Respondent focused on attempting to locate the real estate agent involved in the transaction by searching various websites, doing research concerning the vicarious liability of CBHR for fraud allegedly committed by its agent, meeting with a realtor he intended to use as an expert witness, drafting interrogatories to the defendant concerning the identity and location of the agent, responding to the defendant's discovery requests and preparing for depositions which did not ultimately occur.

¶13. CBHR's counsel filed an answer to the complaint on February 18, 2009, and served initial discovery requests on Respondent on February 21, 2009.

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[2] Summit County has adopted a county charter and the tax assessment process is actually handled by the Summit County Fiscal Officer.

¶14. After receiving the answer, Respondent spoke on several occasions with defendant's counsel. The focus of these discussions was on Respondent's requests that CBHR disclose the identity and location of the agent. From the beginning of these discussions, CBHR's counsel indicated to Respondent that CBHR wanted to settle the case.

¶15. On March 30, 2009, the court conducted a pretrial conference which was attended by Respondent, Mr. and Mrs. Pearson and CBHR's counsel. The court issued a scheduling order and referred the case for mediation.

¶16. Respondent testified that he met several times with Gertha Pearson at either the Akron Bar Association or a local McDonald's restaurant to discuss the discovery propounded by CBHR's attorney and to generally discuss strategy.

¶17. Without obtaining his client's signature, Respondent responded to the defendant's discovery requests. These responses disclosed very little, if any, information and generally referred the defendant either to allegations in the complaint or to documents which the defendant had provided in response to plaintiff's discovery requests.

¶18. Although Respondent and CBHR's counsel mutually scheduled some depositions, those depositions were subsequently canceled. Although Respondent claimed the cancellation was due to Mrs. Pearson's refusal to be deposed, Mr. Pearson testified that he was never asked to come home for a deposition, but that he could have arranged time off to do so.

¶19. After finally obtaining information from defendant's counsel concerning the whereabouts of the agent who represented Pearson, Respondent filed an Amended Complaint adding the agent as a party defendant.

¶20. Once Mrs. Pearson told him that she and Mr. Pearson would not testify at a deposition, Respondent advised his clients that they would have to settle the case. Despite

Respondent's advice that the case was worth between $20,000 and $30,000 at most, Gertha Pearson insisted that she wanted more than $1,000,000 to settle. (Tr. 105)

¶21. At the mediation held on July 20, 2009, Mrs. Pearson steadfastly demanded $1,000,000 while the defendant was offering $5,000. The mediator adjourned the mediation and directed Respondent to talk to his client because this was not a million-dollar case.

¶22. After further discussion between Respondent and Mrs. Pearson, the mediation resumed on September 18, 2009, with Mr. Pearson also in attendance. Although everyone agrees that Mr. Pearson made an agreement with CBHR's insurance company to accept $7,500 in full settlement of his claim, the testimony is totally divergent as to how the settlement was to be distributed.

a. Respondent testified that he told Pearson that Respondent was owed more than $7,500 for fees for his work on the case, but that he would accept the $7,500 as full satisfaction of Pearson's fee obligation. Respondent testified that the mediator discussed the fee issue in great detail with Pearson who agreed to accept the settlement on the terms outlined to him. Respondent testified that, since he was to receive the entire $7,500 in satisfaction of his fees, CBHR's insurance company agreed that the check would be made directly to Respondent because everyone believed that Pearson would not endorse the check if his name was included on the check. (Tr. 98-99, 101)

b. Pearson admitted that, although he had never seen any bill from Respondent, he was aware that his wife had been paying money to Respondent. However, Pearson testified that Respondent never told him at, or prior to, the mediation that Respondent was still owed money for fees. Pearson further denied that the mediator explained to him that the $7,500 would be paid to Respondent in satisfaction of the fees owed to Respondent. Instead, Pearson

testified that, when he left the mediation, he expected to receive the entire $7,500 once the check was received from CBHR's insurance company. (Tr. 149-150; 164-165)

¶23. At the conclusion of the mediation, Pearson, a representative of CBHR, and both attorneys signed a handwritten statement describing the settlement. The document recited the amount of the settlement, and further stated that plaintiff would dismiss the case with prejudice at plaintiff's costs, that the settlement would remain confidential and that plaintiff would not disparage CBHR. The document fails to state that the settlement check would be made payable only to Respondent or that Pearson would not receive any portion of the settlement. Although Respondent testified that Pearson signed a release of his claims at the mediation, Respondent did not produce a copy of the release.

¶24. Within a week, Respondent received the insurance company's check in the amount of $7,500. Respondent deposited the entire check into his business account.

¶25. Respondent sent his invoice for September, 2009, to Pearson's home address showing that the balance billable for his fees was $8,250, but that Respondent had applied a fee reduction of $1,000, so that the remaining balance due was $7,250. After applying $7,500 to this balance, the invoice showed an "Account Settlement Check" of $250. Respondent sent a check made payable to Pearson in the amount of $250 with this invoice.

¶26. Pearson testified that, when his wife received the September invoice along with the Account Settlement Check, this was the first time he was aware that Respondent was claiming to be entitled to retain any portion of the check. Pearson never signed a distribution statement or any other document stating that Respondent would retain $7,250 from the settlement check.

¶27. Other than handwritten notes from the first mediation (Ex. 8-F), Respondent produced no documentation of research he performed, phone calls in which he participated or

meetings which he attended in connection with his representation of Pearson. At Relator's request, Respondent produced cellular phone account records for a portion of the period during which he represented Pearson.

¶28. Respondent's only time records were notes which he wrote on a large desk calendar concerning work he performed on client matters on a given day. Although he would rely on these notes in preparing monthly invoices for his clients, he would discard the desk calendar page for the relevant month within two or three weeks after the invoices were mailed.

¶29. Respondent did not intend that his invoices would present an itemization of the date and time expended for each service he performed during his representation of Pearson. Instead, Respondent used what he described as a "project billing" method which he claimed was the customary billing practice in the construction industry. Using this method, he would describe a particular task he completed, the date on which that task was completed and the total time he had expended over some period of time to complete that task. Respondent testified that he was never told in law school or in any CLE program that this was an unacceptable billing method for his law practice.

¶30. Over the course of his representation of Pearson, Respondent mailed nine monthly invoices to Pearson's address at 208 Noble Ave., Akron, Ohio. These invoices contained the following entries:

Period	Dates	Description of Result	Hours
December 2008	December 22	Draft/file complaint[3]	4.9
	December 26	Draft Interrogatories	4.2
	December 27	Case strategy/research	3.7
		Total Hours for Month	12.8
January 2009		Total Hours for Month	0
February 2009	February 26	Case Research	3.8

[3] This entry also stated a cost of $250 for the Court's filing fee for the Complaint.

		Total Hours for Month	3.8
March 2009	March 5	Case Strategy	4.6
	March 30	Pre-trial hearing	2.1
		Total Hours for Month	6.7
April 2009	April 14	Discovery requests	4.5
	April 22	Prepare for depositions	4.3
		Total Hours for Month	8.8
May 2009	May 1	Answer Interrogatories	3.7
	May 8	Deposition Preparation	4.2
	May 19	Deposition Preparation	4.6
		Total Hours for Month	12.5
June, 2009	June 4	Second Interrogatories	2.8
	June 8	Amended Complaint	4.6
		Total Hours for Month	7.4
July 2009	July 15	Mediation Report	1.1
	July 15	Settlement Negotiations	1.4
	July 20	Mediation	4.0
		Total Hours for Month	6.1
September 2009	Sept. 18	Mediation	4.0
	Sept. 30	Dismissal	0.4
		Total Hours for Month	4.4

¶31. Through the invoice for July 2009, Respondent billed Pearson a total of $13,944 based upon 58.1 hours, and Mrs. Pearson paid a total of $5,500 in a series of monthly payments of either $1,000 or $500. Respondent's invoice for September 2009 charged an additional $1,056 based upon 4.4 hours.

¶32. As of the date of the second mediation, Pearson had not complained to Respondent about either the format of the invoices or the amount billed.

¶33. Relator's expert witness, R. Scott Haley,[4] provided his opinion that, based upon the factors delineated in Prof. Cond. R. 1.5(a), the total fee charged by Respondent to Pearson was "substantially excessive." (Haley depo. 60) Haley's opinion was based upon his review of the documents contained in the court file and the documents assembled by Relator in its investigation

[4] Haley is an attorney in the Akron area and has been practicing primarily real estate law, including real estate litigation, since 1977. Respondent stipulated to Haley's qualifications as an expert and agreed that his deposition could be submitted to the Panel in lieu of live testimony. Respondent's counsel declined the opportunity to provide any argument for any of the objections reflected in the deposition transcript.

(including Respondent's entire file). Haley also had one or more conversations with the attorney who represented CBHR in the Pearson litigation. Haley's opinion was that Respondent's hourly rate was excessive based upon his relative lack of experience, that the fee charges were in excess of fees normally charged in the Akron area for the type of work involved in the case, and that the number of hours charged was unreasonable based upon the issues involved in the case.

CONCLUSIONS OF LAW

¶34. Based upon Relator's motion at the commencement of the hearing, the panel dismissed the allegations that Respondent committed misconduct by failing to notify LRS of the status of the case, to pay the agreed percentage of fees to the LRS and to deposit the fees owed to LRS in an IOLTA account.

¶35. Respondent testified about the numerous telephone conferences and meetings which he had with Mrs. Pearson, and maintained that, with Mr. Pearson's consent, he fully informed Mrs. Pearson about the status of the case and fully discussed his strategies and recommendations concerning the case. Respondent also testified that Mrs. Pearson regularly provided Respondent with feedback from her husband. Although Mr. Pearson disputed much of this testimony, Relator was unfortunately unable to provide testimony from Mrs. Pearson. Although Respondent's documentation of his communications with his client falls short of what a prudent attorney should maintain, the panel is unable to conclude that Relator met its burden of proving by clear and convincing evidence the alleged violations of Prof. Cond. R. 1.4(a)(2) and (b), and those charges of misconduct should be dismissed.

¶36. Although the Complaint lacks clarity, Relator's charges of Prof. Cond. R. 8.4(a), (c), (d) and (h) appear to be based on Relator's allegations that Respondent's invoices misrepresented the hours he worked on Pearson's case. However, based upon Respondent's testimony concerning

his billing practices, the panel is unable to conclude that Relator met its burden of proving these alleged violations by clear and convincing evidence. Therefore, those charges of misconduct should be dismissed.

¶37. Although Respondent failed to produce a written fee agreement, Respondent testified that he informed Mr. and Mrs. Pearson what his hourly rate would be and that he sent them monthly invoices showing the total amount of time he was spending on the case. Respondent also testified that he informed Mr. and Mrs. Pearson that he would be filing a lawsuit on their behalf against CBHR.

Although he denied meeting with Respondent at the commencement of the case, Pearson admitted that his wife told him that Respondent's hourly fee was $240 per hour.[5] Pearson also admitted that he was aware of, and had no objection to, the checks his wife was writing to Respondent. Pearson further admitted that his only objection about the way the case was handled came at the end when he did not receive the settlement check.

Based on this evidence, Relator failed to prove by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.5(b) by failing to communicate the nature and scope of the representation and the rate of the fee and expenses for which the client was to be responsible before or within a reasonable time after commencing the representation. Therefore, this charge should be dismissed.

¶38. Prof. Cond. R. 1.5(a) provides that a lawyer shall not charge or collect a clearly excessive fee, and provides 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.

[5] The Board does not find that this hourly rate charged is, standing alone, an excessive fee.

The rule lists eight factors which should be considered when determining the reasonableness of a fee. Additionally, the Supreme Court has stated that a lawyer violates the prohibition against charging a clearly excessive fee whenever the lawyer obtains payment from a client but provides no service or other benefit in return. *Columbus Bar Assn. v. Farmer*, 111 Ohio St.3d 137, 2006-Ohio-5342, ¶29. "[T]o ensure that lawyers do not overcharge," a lawyer has a duty to maintain complete records of client funds coming into his possession and to render appropriate accounts to his client. Id.[6]

In the instant case, the panel concludes by clear and convincing evidence that the fee charged by Respondent was in excess of a reasonable fee, for the following reasons:

a. The number of hours billed by Respondent for work on the Pearson case was unreasonable given the lack of novelty or difficulty presented by claim. The issue involved was whether CBHR and its agent fraudulently induced Pearson to enter into a real estate purchase contract by failing to disclose the material fact that the real estate taxes being paid by the seller were reduced due to the application of the Ohio homestead exemption. The transaction was not complex, and the facts were never seriously contested. The legal issues involved in proving fraud are neither novel nor complex. As was noted by Relator's expert witness, Respondent failed to explore alternative legal theories which might have strengthened the Pearsons' claim.

b. The panel finds credible Haley's opinion as to the unreasonableness of the total fees charged by Respondent in the Pearson case. Although Respondent possesses quite a bit of experience in resolving construction disputes, the amount of work he claims to have done in this matter demonstrates that he was not a highly qualified practitioner in regards to proving fraud in real

[6] Although this decision is based upon DR 2-106(A) and DR 9-102(B)(3), those rules are comparable to Prof. Cond. R. 1.5(a) and Prof. Cond. R. 1.15, respectively.

estate cases. Respondent did not even appear to know where to go to verify the amount of taxes paid by the seller and the amount charged to Pearson.

c. Although the panel is well-aware that cases that look promising at the beginning do not always produce the expected result, the panel concludes that the facts presented to Respondent never supported a result greater than $10,000 - 20,000. In short, the ultimate settlement of $7,500 is not surprising and Respondent's fee of almost twice that amount is clearly excessive. In *Disciplinary Counsel v. Johnson*, 113 Ohio St.3d 344, 2007-Ohio-2074, the Court concluded that the respondent had charged clearly excessive fees by continuing to bill for hours spent pursuing claim for which there was little likelihood of recovery. In finding the opinions of relator's expert witness to be persuasive, the Court stated:

> His remarks underscore a fundamental tenet: attorney fees are not justified merely because the lawyer has charged his professional time and expenses at reasonable rates; a legitimate purpose must also explain why the lawyer spent that time and incurred those costs. Here, however, respondent admitted that he did not even consider a cost-benefit analysis. We therefore have no doubt that respondent continued to aggressively pursue any legal claim on [his clients'] behalf to the point where his fees consumed most of the recovered assets and, if his final bills had been paid, would have consumed a substantial portion of the awards from the Client Security Fund.

Id. at ¶71. Similarly, the panel concludes in this matter that Respondent performed work which was not justified by the issues involved, that the relatively generic quality of his work product does not support the volume of time which he claims to have spent and that the fees charged are unreasonable in relation to the value which a reasonable practitioner would have expected based upon the facts of the case.

d. Respondent collected $13,000 from, and on behalf of Pearson, and returned only $250 to his client. Based upon the evidence presented to the panel, Respondent failed to maintain complete records of his time spent on this matter and to provide an appropriate accounting to his client. Respondent owed a duty to Pearson to provide him with a full written accounting of the deductions from the settlement check. Furthermore, Respondent should have obtained

Pearson's documented consent to those deductions either by his endorsement of the settlement check or by his signing of a settlement statement.

Therefore, the Panel concludes that Respondent violated Prof. Cond. R. 1.5(a) by charging a clearly excessive fee.

AGGRAVATING AND MITIGATING FACTORS

¶39. Although the parties presented little evidence of aggravating and mitigating factors, the panel finds the following:

a. As aggravating factors, the panel concludes that due to Mr. Pearson's absence from Akron during the bulk of the proceeding and Mrs. Pearson's apparent lack of sophistication concerning the legal issues, Mr. Pearson was a vulnerable client who suffered harm as a result of Respondent's misconduct. Respondent's billing practices and handling of the settlement reveal selfish actions taken for his own benefit. Additionally, Respondent has failed to acknowledge the wrongful nature of his conduct and has failed to make restitution.

b. As mitigating factors, the panel concludes that Respondent has no prior disciplinary record, that Respondent did not act with a dishonest motive and that there is no evidence that Respondent failed to fully and freely cooperate in the prosecution of this matter.

RECOMMENDED SANCTION

¶40. Relator suggests a two-year suspension with one-year stayed on condition of monitoring and restitution. However, Relator cites no authority to support this recommendation and fails to specify the amount of restitution it believes is warranted. Respondent argues that Relator has failed to meet its burden of proof and that the Complaint should be dismissed.

¶41. Although most decisions finding misconduct for charging a clearly excessive fee also involve other findings of misconduct, the panel finds the following decisions to be instructive. In *Cuyahoga Cty. Bar Assn. v. Cook*, 121 Ohio St.3d 9, 2009-Ohio-259, the Court imposed a stayed six-month suspension where the respondent violated DR 2-106(A) by charging a flat earned-upon-receipt retainer plus a 20% contingent fee, failed to deposit unearned funds in a client trust account and violated DR 9-102(B)(3) by failing to maintain records and account for client funds in his possession. The respondent also admitted that he failed to keep "careful track of his time." In *Cuyahoga Cty. Bar Assn. v. Jackson*, 120 Ohio St.3d 173, 2008-Ohio-5378, the Court approved a consent-to-discipline agreement imposing a public reprimand against a respondent who admitted that he had failed to account to a client for his time, fees, and expenses as required by DR 9-102(B)(3), and failed to apprise a client that he does not maintain professional-malpractice insurance and obtain the client's written acknowledgement as required by DR 1-104(A) and (B).

In the companion cases of *Toledo Bar Assn. v. Johnson*, 121 Ohio St.3d 226, 2009-Ohio-777, and *Toledo Bar Assn. v. Sawers*, 121 Ohio St.3d 229, 2009-Ohio-778, Johnson and Sawers agreed to share a fee, without agreement of the clients, for the preparation of trust documents. In separate consent-to-discipline agreements, each attorney agreed that Sawers had "prepared generic trust documents for the couple, making no effort to adapt the documents to their individualized legal needs," and that they had not considered other alternatives which would have prevented adverse tax consequences and reduced legal fees. The Court approved the agreed sanctions of a six-month stayed suspension for Johnson, and a public reprimand for Sawers; each had refunded the portion of the fee he or she received.

In *Cleveland Bar Assn. v. Ramos*, 119 Ohio St.3d 36, 2008-Ohio-3235, the Court approved a stayed six month sanction in a consent-to-discipline agreement where the respondent admitted that

he had neglected a legal matter and that he had failed to provide his client with monthly invoices detailing fees and expenses which he had agreed to provide. In mitigation, the Court noted that the respondent "had rectified his failure to account to [the client] for his services and fees, ultimately repaying his entire fee, and also tried to help [the client] with different options to resolve the real estate dispute." Id. at ¶8.

¶42. Based upon the Findings of Fact, Conclusions of Law and the Aggravating and Mitigating Factors, the panel recommends that Respondent be suspended from the practice of law for six months, with the entire six months stayed on the conditions that Respondent shall:

a. Commit no further misconduct;
b. Complete at least six hours of continuing legal education focused on law practice management;
c. Submit to monitoring of his practice by an attorney designated by Relator during the entire term of the six month stayed suspension;
d. Make restitution to Silas Pearson in the amount of $7,250; and
e. Pay the costs associated with this matter.

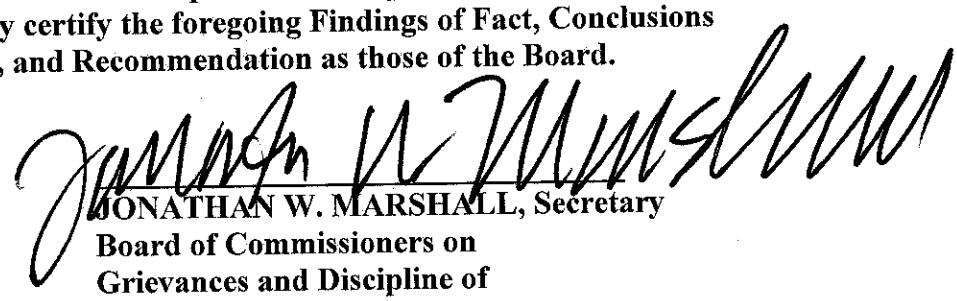
¶43. Because Respondent's registration is currently inactive, the panel recommends that the sanction be imposed upon his being restored to active status, provided that the restitution is made and costs paid prior to Respondent being restored to active status. *Mahoning Cty. Bar Assn. v. Jones*, 123 Ohio St.3d 285, 2009-Ohio-5029 at ¶13.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 8, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and

recommends that Respondent, Jeffrey A. Carr, be suspended from the practice of law for a period of six months with the entire six months stayed upon the five conditions contained in the panel report. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

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



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