

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

In Re:	:	
Complaint against	:	Case No. 11-020
Christopher James Burchinal	:	Findings of Fact,
Attorney Reg. No. 0071503	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Disciplinary Counsel	:	the Supreme Court of Ohio
	:	
Relator	:	
	:	

{¶1} This case was heard on Friday, June 24, 2011 in Columbus, Ohio, before a panel consisting of Judge Robert P. Ringland, Patrick L. Sink, and Retired Judge Thomas F. Bryant, chair.

{¶2} None of the panel members is from the appellate district from which the complaint arose or served on the probable cause panel that certified the matter to the Board. Heather Hissom, Assistant Disciplinary Counsel, appeared as counsel for Relator. Respondent Christopher James Burchinal was present, with his counsel, Alvin E. Matthews, Jr.

{¶3} Relator's complaint alleges three counts of Respondent's violation of Prof. Cond. R. 1.15(c), 8.4(c), and 8.4(h) arising from Respondent's misappropriation of client's funds in three separate instances, and a fourth count arising from Respondent's failure to file a personal injury claim for his clients within the period of time allowed by the relevant statute of limitations

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and for more than two years thereafter falsely assuring his clients that he was continuing to negotiate for a settlement, thus violating Prof. Cond. R. 1.3, 1.4(a)(3), and 8.4(h).

FINDINGS OF FACT

{¶4} From the clear and convincing evidence presented, the panel makes the following findings of fact considering the parties' written stipulations of fact, the exhibits received in evidence, the testimony of Respondent and of witness Megan L. Snyder, MSW, LISW of the Ohio Lawyers Assistance Program, Inc. who testified at the panel hearing, and the deposition testimony of Judith E. Fisher, MSW, LISW filed pursuant to the Rules and admitted in evidence without objection.

{¶5} Respondent is a third generation Eagle Scout from a family of strong family values with a bread-winner father, stay-at-home mother, Respondent, and his younger brother and sister. He earned his bachelor degree in economics.

{¶6} Respondent at all times relevant to Relator's complaint was married with children.

{¶7} Respondent was admitted to the practice of law in Ohio in November 1999. The Supreme Court of Ohio public attorney information regarding attorney discipline and sanction discloses that pursuant to Gov. Bar R. VI, Christopher James Burchinal was the subject of "Attorney Registration Suspension on 12/02/2005" and "Attorney Registration Reinstatement on 12/05/2005."

{¶8} While he was a law student, Respondent worked for a year or two as a law clerk in a law firm specializing in personal injury cases. While still a law student, he next worked as a legal intern for both the Columbus City Attorney's office, in the municipal prosecutor's division, and for the City Law Director of the City of Reynoldsburg prosecuting cases in the mayor's court.

{¶9} After he was admitted to practice of law, he worked two years as an associate in a law firm defending insurance cases, and later as a sole practitioner for two more years. In late 2004, he joined the law partnership of Firestone, Brehm, Hanson, Wolf, and Burchinal, LLP, in Delaware, Ohio.

{¶10} Respondent first joined the law firm of Firestone, Brehm, Hanson, Wolf, and Burchinal, LLP as a partner in name only. Although he had some input into partnership affairs, he had no vote on finances and other partnership matters and no direct financial responsibilities for firm overhead expenses.

{¶11} About three months after he joined the firm, one of the partners withdrew and Respondent was made a full partner to succeed him. Along with his new partnership status, Respondent also gained a new financial responsibility to the firm for his share of the firm overhead. Respondent's monthly share of partnership expenses was \$3,800.

{¶12} Respondent had monthly personal obligations for his home mortgage payment and for child care expenses also, according to his household financial arrangements with his wife who is a CPA and apparently paid the rest of their household and personal expenses from her earnings as a project manager in the trust department of a bank.

{¶13} The \$8,000 monthly total of his partnership contribution and his monthly personal obligations sometimes exceeded Respondent's monthly fee income. In those months Respondent incurred a debt to the firm to be paid in the future. Respondent did not discuss or try to make adjustments for this shortfall with any of his partners or with his wife.

{¶14} After he joined the law firm, Respondent's income was principally earned as court-appointed defense counsel in criminal cases and from fees as privately retained counsel in

criminal and civil matters. Many cases were referred to him in-house by his partners as counsel or co-counsel.

{¶15} Personal injury litigation was not a principal area of practice for the firm of Firestone, Brehm, Hanson, Wolf, and Burchinal, LLP. Because of his experience in earlier employment, the other partners in the firm referred such cases to Respondent who then handled those cases for the firm.

{¶16} Although counsel have stipulated that Respondent received large sums of cash from the firm to obtain certified checks for settlement of personal injury cases and that the firm did not write checks from its IOLTA account to make disbursements in personal injury cases, the evidence at the oral hearing of the matter discloses otherwise. (June 24, 2011 Hearing Tr. p.105, line 20 – p. 109, line 10.)

{¶17} When personal injury cases handled by Respondent were settled, settlement disbursements were handled through the firm's IOLTA account into which settlement funds were deposited and disbursements made according to settlement statements prepared by Respondent. A person other than Respondent prepared the necessary checks in accordance with the settlement statements. In making disbursements from settlement of some personal injury cases, Respondent took the checks for the amount of funds set aside to pay the client's bills associated with those settlements, cashed them at the bank ostensibly to buy certified checks payable to the creditors, but instead of getting the certified checks, he kept the money and used it to pay his personal bills.

{¶18} Respondent explained to the panel that certified checks were to be obtained to satisfy medical creditors who would not accept a law firm's check.

Count One

{¶19} In March 2007, the personal injury case of Molly Davis was settled. According to the settlement statement, the law firm was to pay from the funds received in settlement certain of the client's bills incurred incident to the case. One of the outstanding bills was a bill due Rawlings Co. on a subrogation claim in the amount of \$6,141.

{¶20} Respondent diverted the funds set aside from the settlement to get a certified check for the Rawlings Co. bill. Instead of obtaining a certified check to remit to Rawlings Co., Respondent used the money for his personal expenses.

Count Two

{¶21} In August 2008, Respondent settled the personal injury case of Getena Hartman. According to the settlement statement, the law firm was to pay from the funds received in settlement certain of the client's bills incurred incident to the case.

{¶22} One of the outstanding bills to be paid was to Riverside Methodist Hospital in the amount of \$303.25 for medical records.

{¶23} Respondent diverted the funds set aside from the settlement to get a certified check to pay the Riverside Methodist Hospital bill. Instead of obtaining a certified check to remit to Riverside Methodist Hospital, Respondent used the money for his personal expenses.

Count Three

{¶24} In August 2009, Respondent settled a personal injury case for Shannon Scott with Travelers Insurance. According to the settlement statement, the law firm was to pay from the funds received in settlement certain of the client's bills incurred incident to the case.

{¶25} One of the outstanding bills to be paid was that of Socrates, Inc./Lumenos, Inc. for a subrogation claim in the amount of \$7,435.02.

{¶26} Travelers Insurance issued a separate check payable to Ms. Scott or Socrates, Inc./Lumenos, Inc. to pay the Socrates, Inc./Lumenos, Inc. subrogation claim.

{¶27} In December 2009, Respondent had Ms. Scott endorse the back of the Travelers Insurance check sent by that insurer for payment of the subrogation amount. Instead of sending the endorsed check or the funds to Socrates, Inc./Lumenos, Inc. to pay the subrogation bill, Respondent cashed the check and used the funds to pay his personal expenses.

{¶28} In May 2010, Respondent was confronted by one of the partners of the law firm regarding the unpaid Riverside Methodist Hospital bill. Respondent admitted using the money intended to pay the Riverside Methodist Hospital to pay personal expenses.

{¶29} At that time, Respondent revealed to his partner that he had also misappropriated funds intended to pay the subrogation claims in the Molly Davis and the Shannon Scott settlements.

{¶30} In May 2010, Respondent gave to the firm money he had borrowed from his father to pay in full the Riverside Methodist Hospital bill, the Rawlings Co. and the Socrates, Inc./Lumenos, Inc. subrogation claims. He has since repaid his father.

Count Four

{¶31} Respondent represented James and Penny Robinson in a personal injury matter related to a motor vehicle accident that occurred on or about February 4, 2006.

{¶32} While negotiating with the insurance company, Respondent missed the statute of limitations that expired on February 4, 2008.

{¶33} Respondent was notified of the missed statute of limitations by the insurance company in the summer of 2008, when it ceased negotiating with Respondent for settlement of the Robinson claims.

{¶34} From the time he learned the statute of limitation had been missed in the summer of 2008 until he informed them of that fact in May 2010, Respondent continued to misrepresent to the Robinsons that negotiations with the insurance company were continuing. He did not report to the firm's malpractice insurer that he had missed the statute of limitation on the Robinson claims.

{¶35} In May 2010, after he had revealed his misconduct to his law partner, Respondent notified the Robinsons of the missed statute of limitations.

{¶36} Respondent testified that he advised and urged Mr. and Mrs. Robinson to consult a lawyer not associated with him because of his conflicts of interest. It is not clear from the testimony what conflicts, if any, were specifically disclosed to the Robinsons, but upon their declining to seek other counsel, Respondent prepared and entered into a written agreement to pay the Robinsons the sum they determined to be the value of their case, \$17,000, and to pay an outstanding MRI bill in the approximate amount of \$1,200.

{¶37} On May 28, 2010, Respondent gave his promissory note to the Robinsons that set forth a payment plan and, by June 1, 2011, had made all the scheduled payments and had paid the MRI bill, thus paying all the restitution promised to them.

CONCLUSIONS

{¶38} Considering the testimony, the exhibits, and the parties' stipulated facts received at the oral hearing of this matter, the hearing panel finds the evidence to be clear and convincing that Respondent's conduct in Counts One, Count Two, and Count Three violates in each count: Prof. Cond. R. 1.15(d) [a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive]; Prof. Cond. R. 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; and

Prof. Cond. R. 8.4(h) [a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

{¶39} Further, the hearing panel finds from the clear and convincing evidence that Respondent's conduct in Count Four violates: Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]; and Prof. Cond. R. 8.4(h) [a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law].

AGGRAVATION AND MITIGATION

{¶40} Section 10 of the Rules Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court establishes guidelines for imposing appropriate sanctions for misconduct.

Mitigation

{¶41} Relator and Respondent stipulate to the following mitigating factors pursuant to BCGD Proc. Reg. 10(B)(2):

- (a) absence of a prior disciplinary record;
- (b) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (c) timely good faith effort to make restitution or rectify consequences of misconduct;
- and
- (d) a diagnosis of a chemical dependency or mental disability by a qualified health care professional.

{¶42} Regarding counsel's stipulations, the panel notes that Respondent has no prior disciplinary record for misconduct pursuant to Gov. Bar R. V, and that Respondent began to take steps to make restitution shortly after his misappropriation of funds was revealed. The panel considers these to be factors in mitigation of any sanction to be imposed upon Respondent for his misconduct.

{¶43} As to Respondent's settlement with and payment to Mr. and Mrs. Robinson for his malpractice by failing to commence a tort action within the period permitted by the statute of limitation against Lawrence Colvin for their damages suffered in an auto accident, the panel notes that the Robinsons were required to wait more than two years to receive full payment of the value of their tort claim when more prompt payment might have been achieved more than three years earlier had Respondent reported his malpractice to his malpractice insurer at the time it was discovered. The settlement agreement document and the promissory note drawn by Respondent to memorialize the settlement terms for Respondent's payment installments of the Robinsons' claims against him do not disclose that the Robinsons were advised that an alternative source for more timely payment for the claim could be available from Respondent's insurer. Further, because neither the settlement agreement (Stipulated Exhibit 7) nor the promissory note (Stipulated Exhibit 6) requires the payment of interest, the Robinsons may not have been fully compensated for the damages due them for the Colvin auto accident due to the delay resulting from Respondent's misconduct and his delay in making full payment to them. The panel considers this to offset the mitigating effect of payment to the Robinsons, but sufficiently unclear to be considered an aggravating factor. The panel is convinced, however, that the circumstances presented required Respondent to insist that the settlement terms and their import be reviewed by a lawyer representing the Robinsons' interests and advising them of their

rights, for without such counsel they were vulnerable victims relying on the fairness of their former legal advisor.

{¶44} OLAP representative Megan Snyder, MSW, LISW testified on Respondent's behalf, explaining her diagnosis that at the times of his misconduct. Respondent suffered from depression brought on by his family history combined with his then existing family and professional financial difficulties. His mental state did not, however, cause him to steal his clients' money. Ms. Snyder confirmed that Respondent still suffers from depression arising from a number of stressors, including the pendency of proceedings for divorce or dissolution of his marriage. She opined that Respondent's depression is now under control. Respondent has signed a four year contract with OLAP and continues to report to Ms. Snyder and attend several OLAP group sessions per week.

{¶45} As a matter in mitigation in compliance with BCGD Proc. Reg. 10(B)(2)(d) Respondent has been counseling with Judith E. Fisher, MSW, LISW since June 10, 2010. Ms. Fisher, as Respondent's treating licensed professional counselor, in her opinion letter dated October 10, 2010, made a diagnosis of Respondent's "Adjustment Disorder with Mixed Emotional Features i.e. depression and anxiety" during the period of his misconduct. (Respondent's Exhibit C.) A major stressor causing Respondent's depression and anxiety seems to be his feeling of inadequacy for his inability to match his father's example as breadwinner and head of the household plus his fear his wife would leave him if she learned he was not producing his expected financial contribution to their family expenses. Ms. Fisher advises that Respondent was engaged in irrational thinking during that period. In her follow-up opinion letter dated May 24, 2011, Ms. Fisher states her belief that after twenty-five counseling sessions with her up to the date of the letter, Respondent no longer thinks or acts irrationally, that his prognosis is excellent,

and that he “can be a competent, respected, and ethical attorney-at-law” at the present time. Respondent continues to consult with Ms. Fisher regularly. Her deposition testimony explaining her diagnosis is a part of the record of the proceedings.

{¶46} Respondent has submitted several character letters attesting to his good reputation in general, a mitigating matter recognized by BCGD Proc. Reg. 10(B)(2)(e).

Aggravation

{¶47} Relator and Respondent stipulate to the following aggravating factors pursuant to BCGD Proc. Reg. 10(B)(1)(a): a dishonest or selfish motive.

{¶48} Clearly, Respondent acted at all times in his misconduct for a dishonest and selfish motive as he has stipulated, an aggravating factor under BCGD Proc. Reg. 10(B)(1)(a).

{¶49} While counsel have not so stipulated, the panel notes that Respondent has engaged in multiple offenses in a pattern of misconduct extending from March 2007 through May 2010, also aggravating factors pursuant to BCGD Proc. Reg. 10 (B)(1)(c) and (d).

Other Pertinent Matter

{¶50} The panel notes that Respondent has been not been otherwise penalized or sanctioned for his dishonest conduct.

{¶51} Respondent’s testimony is replete with the language of his diagnosis and illness and references to his “mistake” and “poor judgment.” His manner as a witness, while earnest, discloses that Respondent is conflicted still with much stress in his personal life, notwithstanding the improvement reported by his mental health counselor. He seems to be confused about whether the example set by his father is wrong, as he testified, or whether his father’s example did not wholly apply to Respondent’s family and financial circumstances. He is clearly dependent on his treating social worker and his OLAP group meetings nearly daily for

reassurance and support. He is in the midst of an unwanted divorce. He presently lives with his parents and works at his law practice from their home. His future is uncertain.

SANCTION

Respondent's Recommendation

{¶52} Respondent's counsel suggests that the appropriate sanction in the circumstances is an eighteen month stayed suspension with probation and strict conditions citing:

{¶53} *Disciplinary Counsel v. Poley*, 94 Ohio St.3d 425, 2002-Ohio-1237 in which Respondent maintained a personal bank account, a client trust account and a Master Card bank account. He routinely commingled funds in all three accounts and on numerous occasions was late paying over client settlement funds to clients' medical creditors. He did not misappropriate any client funds. He was found in several instances to have violated DR 1-102(A)(6) [a lawyer shall not engage in conduct adversely reflecting adversely on the lawyer's fitness to practice law]; DR 9-102(A) [a lawyer shall not commingle funds of a client with personal funds]; and DR 6-101(A)(3) [a lawyer shall not neglect an entrusted legal matter]. The Supreme Court imposed an eighteen-month stayed suspension on condition that Respondent renew and abide by his OLAP Contract until October 7, 2003 where the panel found that all the incidents occurred when Respondent was an actively drinking alcoholic who had since entered into an advocacy contract with OLAP, and currently was actively engaged in a recovery program, had paid all clients' creditors, resolved his bank account practices, acknowledged his wrongdoing, and expressed remorse. Two dissents would have stayed only twelve months of the suspension.

{¶54} *Disciplinary Counsel v. Riek*, 125 Ohio St.3d 46, 2010-Ohio-1556 in which a lawyer was sanctioned for his personal use of a settlement check deposited into his trust account by an eighteen-months suspension, with twelve months stayed.

{¶55} *Disciplinary Counsel v. Pfundstein*, 128 Ohio St.3d 61, 2010-Ohio-6150, seems to arise from a lawyer's failure to act diligently and promptly in his clients behalf and his misrepresenting to the client the status of the client's litigation. The Court adopted the Board's recommendation suspending Respondent's license for twelve months stayed on conditions that Respondent: (1) comply with his Ohio Lawyers Assistance Program (OLAP) contract; (2) accept the treatment recommended by OLAP and his psychologist during the period of suspension; (3) remain on probation monitored by Relator during the term of his three-year OLAP contract; and (4) pay the costs of the disciplinary proceedings. The mitigating matter is not disclosed.

{¶56} In *Dayton Bar Association v. Ellison*, 118 Ohio St.3d 128, 2008-Ohio-1808, for misleading a client about the disposition in her case, among other things; a lawyer's license was suspended for one year, stayed on the condition that Respondent serve one-year probation pursuant to Gov. Bar R. V, Section 9, cooperate with an attorney assigned by Relator to monitor and make recommendations for the responsible management of her office and practice, and attend a continuing legal education course on law office management.

{¶57} In *Disciplinary Counsel v. Grigsby*, 128 Ohio St. 3d 413, 2011-Ohio-1446, a lawyer's license was suspended for eighteen months, all stayed with supervised probation, for misuse of employer's credit card that she self-reported and for which she made prompt restitution.

Relator's Recommendation

{¶58} Relator recommends that the appropriate sanction in this case is that Respondent be suspended from the practice of law for a period of eighteen months with the final twelve months of suspension stayed. Relator cites two cases as support for the sanction recommended.

{¶59} In *Disciplinary Counsel v. Claflin*, 107 Ohio St.3d 31, 2005-Ohio-5827, the Court suspended Claflin for two years, with one year conditionally stayed, for misappropriating client funds from a settlement. Claflin failed to distribute settlement funds to his client for 32 months. Claflin did not maintain the funds in his IOLTA but in a separate account, which had a balance of just \$2.99 for six months. The Court considered the finding of a violation of DR 1-102(A)(4) [now Prof. Cond. R. 8.4(c)] in their discussion of the sanction and required an actual suspension.

{¶60} In *Disciplinary Counsel v. Kraemer*, 126 Ohio St.3d 163, 2010-Ohio-3300, Kraemer failed to remit more than \$7,000 in fees to his law firm and in a criminal proceeding was convicted and sentenced for the theft. Evidence that Kraemer has been diagnosed with an adjustment disorder was offered in mitigation of sanction at the disciplinary hearing. The Supreme Court in the disciplinary matter ordered a two-year suspension with one year stayed, specifically noting that Kraemer had misappropriated funds and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation and that both violations require actual suspension from the practice of law. mitigated because Respondent accepted responsibility, expressed sincere remorse for his conduct, and that his offenses occurred over a short period.

Panel Recommendation

{¶61} The presumptive disciplinary measure for acts of misappropriation is disbarment. *Dayton Bar Assn. v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110. And see *Disciplinary Counsel v. Connaughton* (1996), 75 Ohio St.3d 644, 645 and cases cited therein.

{¶62} However, because mitigating circumstances have been found, the Court has given weight to a Board recommendation of a lesser sanction. *Disciplinary Counsel v. Kurtz* (1998), 82 Ohio St.3d 55 and *Disciplinary Counsel v. Folwell*, Slip Opinion 2011-Ohio-3181.

{¶63} Respondent in this matter has stipulated to and the panel has found three separate violations of Prof. Cond. R. 1.15(c), 8.4(c), and 8.4(h) arising from Respondent's misappropriation of client's funds in three separate instances, and a fourth count arising from Respondent's failure to file a personal injury claim for his clients within the period of time allowed by the relevant statute of limitations and for more than two years thereafter falsely assuring his clients that he was continuing to negotiate a settlement, thus violating Prof. Cond. R. 1.3, 1.4(a)(3), and 8.4(h).

{¶64} Notwithstanding the recommendations of counsel, considering the authorities cited, matters in aggravation and mitigation, the nature of Respondent's misconduct, his present circumstances, and all the purposes for sanctions, especially protection of the public, the panel recommends that Respondent's license to practice law in Ohio be suspended for two years with the final twelve-months stayed on conditions that Respondent serve twelve-months monitored probation pursuant to Gov. Bar R. V, Section 9 during the period suspension is stayed, cooperate with an attorney assigned by Relator as a mentor for his reentry to practice, and complete his present four-year contract with OLAP.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on August 12, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Christopher James Burchinal, be suspended from the practice of law for a period of two years with the final twelve months stayed on the conditions recommended by the panel. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

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

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**

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

CHRISTOPHER JAMES BURCHINAL, ESQ.

P.O. Box 412
Delaware, OH 43015

Atty. Reg. No.: 0071503

Respondent

FILED

JUN 10 2011

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

**AGREED
STIPULATIONS
BOARD NO. 11-020**

DISCIPLINARY COUNSEL

250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Christopher James Burchinal, do hereby stipulate to the admission of the following facts and exhibits.

STIPULATED FACTS

1. Respondent, Christopher James Burchinal, was admitted to the practice of law in the state of Ohio on November 8, 1999. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

Count One

2. Respondent worked at the law firm of Firestone, Brehm, Hanson, Wolf & Burchinal, LLP in Delaware, Ohio from December 2004 until July 2010.
3. Respondent practiced in the area of personal injury law, among other areas.
4. In the cases of Davis, Hartman and Scott, respondent obtained cash from the firm to pay bills associated with personal injury cases after settlement. Respondent would obtain certified checks with the cash to pay the bills.
5. The firm did not write checks for bills associated with personal injury cases from its trust account at Delaware County Bank & Trust.
6. In March 2007, the personal injury case of Molly Davis was settled. One of the outstanding bills was to Rawlings Co. on a subrogation claim in the amount of \$6,141.
7. Respondent obtained cash from the firm and was to get a certified check for the Rawlings Co. bill.
8. Instead of obtaining a certified check, respondent used the money for personal expenses.
9. In May 2010, respondent was confronted by a partner of the law firm regarding expenses that were not paid from an unrelated case (see Count Two). Respondent admitted using the money intended to pay the Rawlings Co. subrogation bill to pay personal expenses.
10. In May 2010, respondent gave money to the firm to pay the Rawlings Co. subrogation bill in full.

Count Two

11. In August 2008, respondent settled the personal injury case of Getena Hartman. One of the outstanding bills was to Riverside Methodist Hospital in the amount of \$303.25 for medical records.

12. Respondent obtained cash from the firm and was to get a certified check for the Riverside Methodist Hospital bill.
13. The firm did not write bills associated with personal injury cases from its trust account at Delaware County Bank & Trust.
14. Instead of obtaining a certified check, respondent used the money for personal expenses.
15. In May 2010, respondent was confronted by a partner of the law firm regarding the unpaid Riverside Methodist Hospital bill. Respondent admitted using the money intended to pay the Riverside Methodist Hospital bill to pay personal expenses.
16. In May 2010, respondent gave money to the firm to pay the Riverside Methodist Hospital bill in full.

Count Three

17. In August 2009, respondent settled a personal injury case for Shannon Scott with Travellers Insurance. One of the outstanding bills was to Socrates, Inc./ Lumenos, Inc. for a subrogation claim in the amount of \$7,435.02.
18. Travellers Insurance issued a separate check to pay the Socrates, Inc./ Lumenos, Inc. subrogation claim. Respondent had Ms. Scott endorse the back of the check that was for the subrogation amount in December 2009.
19. Instead of using sending the funds to Socrates, Inc./ Lumenos, Inc. to pay the subrogation bill, respondent used the funds to pay personal expenses.
20. In May 2010, respondent was confronted by a partner of the law firm regarding an unpaid bill unrelated to this matter (see Count Two). Respondent admitted using the money intended to pay the Socrates, Inc. / Lumenos, Inc. subrogation bill to pay personal expenses.

21. In May 2010, respondent gave money to the firm to pay the Socrates, Inc./ Lumenos, Inc. subrogation bill in full.

Count Four

22. Respondent represented James and Penny Robinson in a personal injury matter related to a motor vehicle accident that occurred on or about February 4, 2006.
23. While negotiating with the insurance company, respondent missed the statute of limitations that expired on February 4, 2008.
24. Respondent was notified of the missed statute of limitations by the insurance company in the summer of 2008. The insurance company ceased negotiating with respondent after it discovered the missed statute of limitations.
25. Respondent continued to lead the Robinsons to believe that negotiations with the insurance company were continuing.
26. Respondent spoke with the Robinsons every two or three months between the summer of 2008, when he discovered the missed statute of limitations, and May 2010, when he informed the Robinsons of the missed statute of limitations. During these conversations, respondent continued to represent that he was engaged in negotiations with the insurance company.
27. In May 2010, respondent notified the Robinsons of the missed statute of limitations.
28. Respondent entered into an agreement to pay the Robinsons the value of their case, \$17,000, and to pay an outstanding MRI bill in the approximate amount of \$1,200.
29. To facilitate the repayment agreement, respondent entered into a promissory note with the Robinsons that set forth a payment plan.
30. To date, respondent has paid the Robinsons full restitution of \$17,000 and paid the MRI bill.

STIPULATED VIOLATIONS

Respondent's conduct in Counts I, II and III violates in each count: Prof. Cond. R. 1.15(c) [A lawyer shall deliver to the client or third person any funds that the client or third person are entitled to receive]; Prof. Cond. R. 8.4(c) [A lawyer shall not in conduct involving dishonesty, fraud, deceit or misrepresentation]; and Prof. Cond. R. 8.4(h) [A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law].

Respondent's conduct in Count V violates: Prof. Cond. R. 1.3 [A lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.4(A)(3) [A lawyer shall keep the client reasonable informed about the status of their matter]; and Prof. Cond. R. 8.4(h) [A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law].

STIPULATED AGGRAVATION AND MITIGATION

Relator and Respondent stipulate to the following mitigating factors pursuant to BCGD Proc. Reg. § 10 (B)(2):

- (a) absence of a prior disciplinary record;
- (b) full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (c) timely good faith effort to make restitution or rectify consequences of misconduct;
- (d) a diagnosis of a chemical dependency or mental disability by a qualified health care professional.

Relator and respondent stipulate to the following aggravating factors pursuant to BCGD Proc. Reg. §10(B)(1):

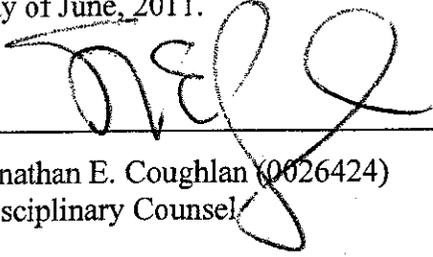
- (a) a dishonest or selfish motive.

STIPULATED EXHIBITS

1. Molly Davis proposed settlement statement March 6, 2007
2. Molly Davis settlement summary (underinsured Tortfeasor only) June 14, 2005
3. Hartman Settlement Account (unsigned)
4. Scott Settlement Account (unsigned)
5. Respondent's May 19, 2010 letter to James and Penny Robinson
6. James and Penny Robinson Promissory Note, May 28, 2010
7. James and Penny Robinson Settlement Agreement and Release
8. Proof of payments to James and Penny Robinson
9. Transcript of deposition of respondent taken November 23, 2010
10. Ohio Lawyer's Assistance Program Contract, signed May 18, 2010
11. Letter from Judith Fisher, MISW, LISW, October 11, 2010
12. Letter from Megan Snyder, MSW, LISW, November 19, 2010
13. Letter from Judith Fisher, MISW, LISW, May 24, 2011

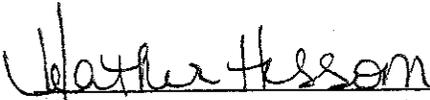
CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 10th day of June, 2011.



Jonathan E. Coughlan (0026424)
Disciplinary Counsel

Alvin Earl Mathews, Jr. Esq.
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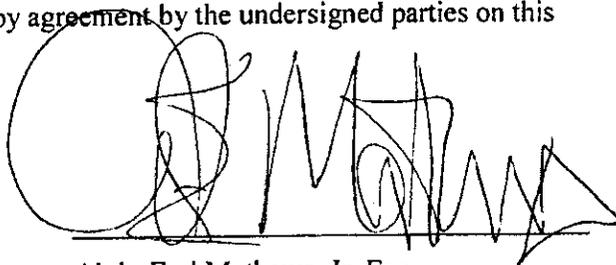
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CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this 10th day of June, 2011.

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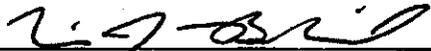
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