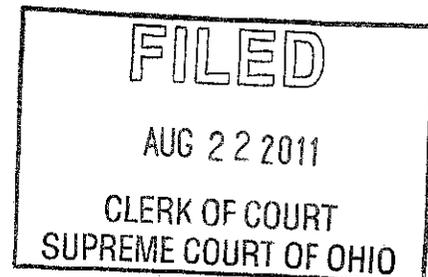


11-1453

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



In Re:	:	
Complaint against	:	Case No. 10-091
William Matthew Crosby Attorney Reg. No. 0002451	:	Findings of Fact, Conclusions of Law and
Respondent	:	Recommendation of the Board of Commissioners on
Disciplinary Counsel	:	Grievances and Discipline of the Supreme Court of Ohio
Relator	:	

This matter was heard on June 28 and June 29, 2011, in Columbus, Ohio, before a panel consisting of Stephen C. Rodeheffer, Lisa M. Lancione Fabbro and Bernard K. Bauer, 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 Robert R. Berger, Senior Assistant Disciplinary Counsel. Respondent was represented by Lester S. Potash and was present at the hearing.

Relator filed a five count amended complaint against Respondent.

In Count One, Relator alleged that Respondent was convicted of failing to file tax returns or make payments from 2002 through 2006 and that he used his IOLTA account to hide his income in violation of DR 1-102(A)(3), DR 1-102(A)(4), DR 1-102(A)(5) and DR 1-102 (A)(6).

In Count Two, Relator alleged that Respondent committed misconduct in his handling of a priest molestation case on behalf of a client and then assisted the client in committing a fraud on the bankruptcy court regarding the settlement proceeds in violation of DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102 (A)(6), DR 1-104, DR 7-102(A)(3), DR 7-102(A)(7), DR 9-102(B)(3) and DR 9-102(B)(4).

In Count Three, Relator alleged that Respondent misused his IOLTA account as it related to settlement proceeds of a client's case in violation of DR 1-102(A)(4), DR 1-102(A)(6), DR 9-102(B)(3) and DR 9-102(B)(4).

In Count Four, Relator alleged that Respondent failed to properly account for and disburse the expenses of litigation in connection with a priest molestation case involving five plaintiffs in violation DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 1-104, DR 7-102(A)(3), DR 9-102(B)(3) and DR 9-102(B)(4).

In Count Five, Relator alleged that Respondent lied under oath in a legal malpractice case against him which was filed by the victim/client whose settlement was mishandled, as alleged in Count Two, and that he misrepresented matters in response to an inquiry by Relator in violation of DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6) and Gov. Bar R. V, Section 4(G).

Respondent moved that Counts Two, Three, Four, and Five be dismissed as they should have been brought in connection with the disciplinary case for which Respondent is currently serving a 24-month suspension, as they were matters which Relator was aware of at the time it prosecuted the earlier grievance.

Essentially, Respondent argues that principal of collateral estoppel should apply in this disciplinary proceeding and that if applied it would bar prosecution of the counts in question.

Respondent argues that he meets the burden for claim preclusion because: (1) the subject claims involve the same two parties; (2) the subject claims arose out of the same transaction or occurrence that was the subject of the earlier action; (3) the subject claims could have been litigated in the previous action; and (4) there was a final decision in the prior action by a court of competent jurisdiction.

In *Ohio State Bar Association v. Weaver* (1975), 41 Ohio St.2d 97, 99, the Court held that “the doctrine of res judicata renders final judgments conclusive only when the subsequent actions involve the same parties, or those in privity with them as in the first action; when the issues to which the evidence is directed are identical in both actions; and when the quantum of proof necessary to render both the original and subsequent judgments are identical.”

After permitting Respondent and Relator to make their record on this defense, the panel unanimously overruled Respondent’s position and proceeded to try the case on the merits.

For the reasons which follow, the panel recommends that Respondent be disbarred.

Findings of Fact

Based upon the stipulations of the parties, the testimony and the exhibits, the panel makes the following findings based upon clear and convincing evidence:

1. Respondent was admitted to practice law in the State of Ohio on November 15, 1982, and is subject to the Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

2. On December 29, 2009, the Supreme Court of Ohio suspended Respondent from the practice of law for 24 months. *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763.

Count One

3. On June 30, 2010, Respondent appeared before Judge Polster in the U.S. District Court for the Northern District of Ohio. *United States v. Crosby*, Case No. 1:10cr00253 and entered a guilty plea to a one count information which alleged that he willfully attempted to evade and defeat the payment of personal income tax owed by him to the United States of America by concealing and attempting to conceal the nature and extent of his income and assets from October 2002 through May 2007, in violation of 26 U.S.C. 7201, which is a felony offense. (Stip. 4 and 5.)

4. On the same date, a plea agreement was filed in the U.S. District Court for the Northern District of Ohio in which Respondent admitted that he did not file personal income tax returns and did not make any income tax payments to the Internal Revenue Service (IRS) for the years 2001 through 2006.

5. Respondent further admitted in the plea agreement that he used his IOLTA account to conceal his assets from the IRS, prevent the IRS from seizing his assets, and disburse funds in a manner to conceal his income and disposition of his income from the IRS. (Stip. 8.)

6. On September 23, 2010, Respondent was sentenced to five months of incarceration and two years of supervised release. The Court further ordered Respondent to pay \$314,637 in restitution to the IRS.

7. On November 1, 2010, the Supreme Court of Ohio suspended Respondent for an interim period pursuant to Gov. Bar R. V, Section 5, due to his felony conviction. *In re Crosby*, 11/01/2010 Case Announcements, 2010-Ohio-5295

Count Two

8. In or about June 2002, Respondent undertook representation of Jose Rivera and Beningo Pacheco, who alleged that they had been sexually abused by a Catholic priest. At the time of the representation, Respondent was a solo practitioner and did not maintain malpractice insurance.

9. During the initial meeting with Rivera, Respondent advised Rivera that he would be charged a contingency fee. Respondent then presented Rivera with a fee agreement that had been altered with the one-third contingency fee portion of the fee agreement crossed out and "40%" written into the margin of the document. There was a dispute about whether the alteration occurred before Rivera executed the agreement or whether it was changed without his consent after he executed it. Based upon the state of the evidence, the panel cannot determine which was the case. (Relator's Ex. 1.)

10. Respondent's fee agreement advised Rivera that Minnesota attorney Jeffrey Anderson would be acting as co-counsel.

11. During this meeting or at any time thereafter, Respondent did not advise Rivera that he did not maintain malpractice insurance. He also failed to provide Rivera with a written notice containing this information and did not obtain Rivera's signature on any such written notice, as required by either the Ohio Code of Professional Responsibility or the Ohio Rules of Professional Conduct. (Hearing Tr. p. 17-18; Stip. Ex. 6.)

12. On June 24, 2002, Respondent and Anderson filed a lawsuit on behalf of Rivera and Pacheco in Lorain County Common Pleas Court entitled *Pacheco v. Catholic Diocese of Cleveland*, Lorain County Common Pleas Court, Case No. 02CV131933.

13. On September 28, 2002, Respondent and Anderson filed an amended complaint and added Marco Aponte, Hector Fonseca and Jose Garcia as plaintiffs, for a total of five plaintiffs.

14. In January of 2003, Rivera filed for bankruptcy and was represented in his bankruptcy by Attorney James Kerner. His bankruptcy petition listed the lawsuit against the Catholic Church as an asset.

15. On April 28, 2003, the bankruptcy court issued an order discharging Rivera's debts.

16. In June 2003, the Catholic Church and Respondent's five clients settled the lawsuit. Around this same time period, Attorney Anderson provided Respondent with an accounting of \$15,579.21 in costs and expenses associated with the representation he provided to the five clients.

17. On or about June 19, 2003, Respondent met with Rivera at a restaurant. During this meeting, Respondent presented Rivera with the settlement agreement. (Stip. 19.)

18. For whatever reason, Rivera signed the settlement agreement, but claimed he was unaware in doing so his legal matter had been settled for \$175,000.

19. Respondent did not inform the trustee for Rivera's bankruptcy, Attorney Marvin Sicherman, about the Rivera settlement or seek bankruptcy court approval for the settlement agreement or the attorney fees. (Stip. 18.)

20. As a part of the settlement, Respondent received a \$175,000 check in late June of 2003 payable to Rivera and his law firm.

21. On the back of the check, Respondent signed "Jose Rivera (per POA)." However, Rivera never signed a power of attorney granting Respondent permission to sign his name and he

signed the check on behalf of Rivera without the advance knowledge or permission of Rivera. (Hearing Tr. p. 351-352.)

22. Respondent did not prepare a settlement distribution sheet for Rivera or obtain Rivera's signature on any such document. However, a document created by Respondent labeled "Jose Rivera Spreadsheet" indicates that Rivera was charged a 40 percent contingency fee [divided among Respondent, Anderson and Attorney Carter Dodge] against his \$175,000 settlement. Rivera was also charged \$10,000 for "Expenses Reimbursement Jeff Anderson." (Stip. 22 and 23.)

23. Unlike the way Respondent handled the Rivera settlement, he prepared settlement distribution sheets for Pacheco, Aponte, Fonseca and Garcia that indicated each was charged a 40 percent contingency fee and \$5,000 apiece for their individual pro rata share of expenses.

24. Despite holding at least \$95,000 in settlement funds owed to Rivera, Respondent did not promptly disburse any of the funds to Rivera, but did promptly disburse the full settlement owed to his other four clients and paid the entire co-counsel fee for all clients to Anderson by the end of July 2003.

25. On July 3, 2003, Respondent dismissed the lawsuit filed on behalf of Rivera and the other four clients, with prejudice.

26. On July 11, 2003, Bankruptcy Trustee Sicherman faxed a letter to Respondent and co-counsel Anderson. The letter asked Respondent, in part, to "Please advise me of the status of the case, and if you wish to be engaged as special counsel to the trustee in bankruptcy to prosecute Mr. Rivera's claim. The claim cannot be settled without the consent and an order of the Bankruptcy Court."

27. Respondent did not reply to Sicherman's July 11, 2003 letter. (Stip. 29.)

28. On July 22, 2003, Rivera's bankruptcy attorney Kerner, sent a fax to Trustee Sicherman advising him that Rivera's "case against the diocese has apparently been settled for \$175,000."

29. On July 24, 2003, Anderson provided Sicherman with a copy of the check he received from Respondent for co-counsel attorney fees. On the same date, Anderson sent Respondent a letter advising him that he had been contacted by Sicherman and advising him what he had told Sicherman.

30. In or about August of 2003, Rivera contacted Respondent to get an update on the status of his lawsuit. During this conversation, Respondent advised Rivera that he was automatically entitled to \$5,000, and on August 21, 2003, Respondent disbursed \$5,000 to Rivera from the settlement funds that Respondent was holding in his IOLTA account. The memo on the check identifies this payment as a "net distribution exemption."

31. In or about October of 2003, Rivera contacted Respondent to get an update on the status of his lawsuit and advised him that he was also in need of funds. During this conversation, Respondent advised Rivera that he would send Rivera some additional funds. On October 11, 2003, Respondent disbursed \$10,000 to Rivera from the settlement funds that he was holding in his IOLTA account.

32. On February 14, 2004, Trustee Sicherman sent Respondent another letter seeking information about the Rivera settlement. In this letter, Sicherman stated "for many months my attempts to get an accounting of the funds distributed to [Rivera] have been thwarted." Sicherman further advised Respondent that "if I can't get your cooperation and a report as to the amount and when it was paid to Mr. Rivera, I will have no choice but to get an Order issued by the Bankruptcy Court for your appearance with the necessary documents." (Stip. Ex. 17.)

33. Respondent replied to Sicherman on February 23, 2004. In this letter, Respondent advised Sicherman that “nothing in the character of compensation paid to them was ‘income’ or ‘windfall’” and characterized Rivera’s settlement as “nominal compensation.”

34. Respondent further advised Sicherman that he would “seek permission from Jose Rivera to promptly disclose the amount paid to him” and that after Respondent “saw the discharge in bankruptcy to Mr. Rivera and I presumed apparently incorrectly that this was a resolved matter.”

35. On March 2, 2004, Respondent sent a letter to Sicherman advising him that stated “I spoke to Mr. Rivera who called me to ask if the fifteen thousand dollars that he received as his distribution ... was taxable. He agreed to permit me to disclose this information to you.” (Stip. Ex. 19.)

36. Respondent’s March 2, 2004 letter to Sicherman intentionally failed to disclose the full \$175,000 settlement amount and misleadingly suggested that the lawsuit was settled with Rivera receiving a total of \$15,000.

37. On March 23, 2004, Respondent sent an e-mail to Rivera that, in part, advised Rivera to inform Trustee Sicherman that Rivera had only received \$15,000 from the lawsuit. (Stip. Ex. 20.)

38. On May 12, 2004, Respondent sent an e-mail to Rivera that, in part, asked Rivera “if we can reasonably be assured that the [bankruptcy trustee’s] inquiries are at an end and I can safely pay you over the balance which I’ve held in escrow, and not subsequently be stuck with a huge bill.”

39. On June 8, 2004, Respondent disbursed the remaining \$80,000 to Rivera. The memo on the check identifies this payment as the “final distribution.”

40. On August 12, 2004, Trustee Sicherman filed a motion for turnover premised on the trustee's belief that Rivera received a \$15,000 payment from the personal injury settlement.

41. On August 17, 2004, Rivera sent Respondent an e-mail advising Respondent that his bankruptcy attorney James Kerner "said [Respondent] was wrong. That the diocese claim was an asset and that I was not entitle [sic] to any of the money and that you should have turned it over to the trustee."

42. Respondent replied to Rivera's e-mail the next day and advised Rivera, in part, "Don't be afraid. Kerner is an idiot." (Stip. Ex. 30.)

43. On October 15, 2004, legal counsel for Trustee Sicherman sent a letter to Respondent requesting him to provide documentation regarding the Rivera settlement. Respondent did not reply to this letter.

44. On November 15, 2004, the bankruptcy court issued an order for Respondent to appear on December 3, 2004, produce certain documents and provide testimony. Respondent failed to appear as ordered by the bankruptcy court.

45. On December 15, 2004, legal counsel for Trustee Sicherman sent Respondent a letter advising him that unless he provided the documents pursuant to the bankruptcy court order, a contempt motion would be filed against him.

46. On December 30, 2004, Trustee Sicherman filed a contempt motion against Respondent for his failure to appear on December 3, 2004 and produce documents.

47. On January 27, 2005, Trustee Sicherman attempted to take Respondent's deposition regarding his representation of Rivera. Respondent appeared for the deposition and produced several documents, but declined to answer any specific questions about his representation of Rivera. (Stip. 47.)

48. On February 21, 2005, Trustee Sicherman attempted to take Respondent's deposition a second time regarding his representation of Rivera. Respondent appeared for the deposition, but declined to answer any specific questions about his representation of Rivera.

49. On March 14, 2005, Trustee Sicherman filed a complaint for monetary damages against Respondent and Rivera. The complaint sought the remaining \$80,000 in settlement funds paid to Rivera and the \$17,500 in settlement funds paid to Respondent as attorney fees.

50. On February 13, 2006, the bankruptcy court revoked Rivera's discharge of his debts due to his failure to provide Trustee Sicherman with his entire \$95,000 share of the \$175,000 settlement. (Stip. 50.)

51. On March 14, 2007, Trustee Sicherman again attempted to take Respondent's deposition regarding his representation of Rivera. Respondent appeared for the deposition, but invoked the Fifth Amendment privilege and spousal privilege and declined to answer any specific questions about his representation of Rivera.

52. On December 19, 2007, Rivera filed a malpractice lawsuit against Respondent alleging that his improper advice and/or actions related to the \$175,000 lawsuit settlement caused the bankruptcy court to revoke his discharge.

53. On March 10, 2009, the bankruptcy court granted Trustee Sicherman's summary judgment against Respondent and Rivera based upon the complaint for monetary damages. The court granted a joint and several judgment against Respondent and Rivera for \$35,257.16 and a judgment against Respondent for the \$17,500 in settlement funds paid to Respondent as attorney fees. (Stip. 52.)

54. On December 8, 2009, the trial court entered a judgment in favor of Rivera in his malpractice lawsuit against Respondent. On May 17, 2010, the court issued a judgment for damages of \$266,540.61 against Respondent.

55. On May 12, 2011, the court of appeals reversed the decision of the trial court, holding that:

The record clearly indicates that Rivera understood that he was required to turn over all proceeds from his settlement and failed to do so. Any assertion made by Crosby that the legal advice provided by Kerner was insufficient or incorrect played no direct or proximate role in Rivera's discharge. Rivera hired Kerner to represent him in his bankruptcy proceeding and was warned that his bankruptcy would be discharged if he failed to turn over all proceeds to the Trustee. Rivera simply ignored the advice of Kerner.

Rivera v. Crosby, 2011-Ohio-2265, at ¶48.

Count Three

56. On July 1, 2003, Respondent deposited a check for \$175,000, representing Rivera's settlement proceeds, into his Key Bank IOLTA account, account number xxxxxxxx4462. (Stip. Ex. 9.)

57. After a 40 percent contingent fee and \$10,000 expense reimbursement were subtracted from the settlement, Rivera was owed \$95,000.

58. On August 21, 2003, Respondent disbursed \$5,000 to Rivera from his settlement. Rivera cashed this check on August 26, 2003.

59. After August 26, 2003, Respondent's IOLTA account should have held a balance of not less than \$90,000, reflecting the funds still owed to Rivera and being held by Respondent during this period. (Stip. 56.)

60. On August 31, 2003, the balance in Respondent's IOLTA account was \$82,959.84. (Stip. 57.)

61. On October 11, 2003, Respondent disbursed an additional \$10,000 to Rivera from his settlement and Rivera cashed this check on October 17, 2003.

62. Therefore, after October 17, 2003, Respondent's IOLTA account should have held a balance of not less than \$80,000, reflecting the funds still owed to Rivera and being held by Respondent during this period.

63. On October 31, 2003, the balance in Respondent's IOLTA account was \$4,619.84.

64. On May 31, 2004, Respondent's IOLTA balance was \$43.52.

65. On June 4, 2004, Respondent deposited \$500,001 in unrelated settlement proceeds into his IOLTA account. Funds from this deposit were then used by Respondent on June 8, 2004 to disburse the remaining \$80,000 to Rivera. (Stip. 61.)

66. Respondent's IOLTA balance was below the amount of settlement funds owed to Rivera and being purportedly held by him in his IOLTA from August 31, 2003 through June 4, 2004. As such, Respondent misappropriated funds belonging to Rivera.

Count Four

67. In June and July 2002, the Respondent undertook representation of Jose Rivera, Beningo Pacheco, Marco Aponte, Hector Fonseca and Jose Garcia, who alleged that they had been sexually abused by a Catholic priest.

68. Respondent entered into a contingency fee agreement with Garcia and Aponte and his fee agreement advised them that Minnesota attorney Jeffrey Anderson would be acting as co-counsel.

69. Respondent did not advise Garcia and Aponte that he did not maintain malpractice insurance and failed to provide Garcia and Aponte with a written notice containing

this information and did not obtain Garcia and Aponte's signature on any such written notice, as required by the Ohio Code of Professional Responsibility.

70. On September 18, 2002, Respondent and Attorney Anderson filed an amended complaint on behalf of all five clients in Lorain County Common Pleas Court.

71. In June 2003, the Catholic Church and Respondent's clients entered into a settlement of the lawsuit. During this same time period, Attorney Anderson provided respondent with an accounting of \$15,579.21 in costs and expenses associated with the representation he provided.

72. Because Respondent and Anderson were involved in representing several parties against the Catholic Church, Anderson advised Respondent that his costs and expenses should be pro-rated.

73. Respondent received \$800,000 in settlement checks for the five clients in late June 2003.

74. Respondent prepared a settlement distribution sheet for Garcia and Aponte which indicated each was charged a 40 percent contingency fee and \$5,000 apiece for their individual pro rata share of case-related expenses.

75. Respondent charged Rivera \$10,000 for "Expenses Reimbursement Jeff Anderson" and charged the remaining four clients \$5,000 apiece for their individual pro rata share of expenses.

76. Therefore, Respondent charged his five clients a total of \$30,000 for expenses, but he was unable to produce any documentation for expenses beyond the \$15,579.21 in expenses documented by Anderson or explain why Rivera was charged twice as much for expenses as the other four clients.

77. On June 8, 2005, Garcia and Aponte filed a malpractice lawsuit against Respondent.

78. In their lawsuit, Garcia and Aponte alleged that Respondent had retained more funds from the settlement than he was entitled to under the fee agreement. Specifically, it was alleged that Respondent charged Garcia and Aponte \$5,000 apiece for improperly divided, invalid and/or nonexistent expenses.

79. In May of 2006, Respondent, Garcia and Aponte entered into a settlement agreement under which the Respondent paid Garcia and Aponte \$5,000 apiece.

Count Five

80. On August 14, 2009, Respondent was cross examined in the malpractice lawsuit filed against him by Rivera and testified falsely when he:

- Stated Rivera “gave [Respondent] a power of attorney and [the \$175,000 settlement check] was deposited pursuant to the power of attorney he gave” Respondent.
- Stated that he kept \$80,000 of the settlement proceeds owed to Rivera in his IOLTA account for almost one year because “that’s where [Rivera] directed [Respondent] to maintain the funds.” (Stip. 73.)

81. In January of 2005, Rivera and his legal counsel filed a grievance with Relator alleging that Respondent had engaged in ethical misconduct in his handling of the lawsuit for Rivera, and the other four clients.

82. Respondent provided a response to the grievance that falsely alleged:

- Respondent “did not advise [Rivera] to make misrepresentations to the bankruptcy court;”
- “[All five clients] received every dollar due under their settlement agreements;”

- Respondent “had no involvement with nor further notice of any events involving the Rivera bankruptcy“ beyond the fact that he “understood that under bankruptcy law Rivera was entitled to the first \$5,000 of his proceeds, and probably additional proceeds once the question of his ‘exemption under Ohio law’ was settled.” (Stip. 75.)

Conclusions of Law

As to Count One, Relator alleges Respondent’s conduct violates the Code of Professional Responsibility: DR 1-102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude]; DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer’s fitness to practice law].

Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated DR 1-102(A)(3), DR 1-102(A)(4), DR 1-102(A)(5) and DR 1-102(A)(6).

As to Count Two, Relator alleges that Respondent’s conduct violates the Code of Professional Responsibility: DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer’s fitness to practice law]; DR 1-104 [a lawyer shall inform a client at the time of the client’s engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance]; DR 7-102(A)(3) [in his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal]; DR 7-102(A)(7) [in representation of a client, a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal

or fraudulent]; DR 9-102(B)(3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them]; and DR 9-102(B)(4) [a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties of a client in the possession of the lawyer which the client is entitled to receive].

Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 1-104, DR 7-102(A)(3), DR 7-102(A)(7) and DR 9-102(B)(3).

However, based upon the evidence submitted, the panel cannot conclude that Respondent violated DR 9-102(B)(4) because the client, Rivera, was not entitled to the funds in Respondent's possession and recommends that such allegation of misconduct be dismissed.

As to Count Three, Relator alleges that Respondent's conduct violates the Code of Professional Responsibility: DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]; DR 9-102(B)(3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them]; and DR 9-102(B)(4) [a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties of the client in the possession of the lawyer which the client is entitled to receive].

Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated DR 1-102(A)(4), DR 1-102(A)(6) and DR 9-102(B)(3).

However, based upon the evidence submitted, the panel cannot conclude that Respondent violated DR 9-102(B)(4) because the client, Rivera, was not entitled to the funds in Respondent's possession and recommends that such allegation of misconduct be dismissed.

As to Count Four, Relator alleges that Respondent's conduct violates the Code of Professional Responsibility: DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]; DR 1-104 [a lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance]; DR 7-102(A)(3) [in his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal]; DR 9-102(B)(3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them]; and DR 9-102(B)(4) [a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties of in possession of the lawyer which the client is entitled to receive].

Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), DR 1-104, DR 7-102(A)(3), DR 9-102(B)(3) and DR 9-102(B)(4).

As to Count Five, Relator alleges that Respondent's conduct violates the Code of Professional Responsibility: DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(5) [a lawyer shall not engage in

conduct that is prejudicial to the administration of justice]; DR 1-102(A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]; and Gov. Bar R. V, Section 4(G) [failure to cooperate with Relator's investigation].

Based upon clear and convincing evidence, the panel concludes that Respondent by his actions violated DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102 (A)(6) and Gov. Bar R. V, Section 4(G).

Aggravation and Mitigation

BCGD Proc. Reg. 10(B)(1) lists aggravating factors that may be considered in favor of a more severe sanction. The following aggravating factors are present in this case:

- Respondent has a prior disciplinary violation.
- A dishonest motive was involved in the handling of the funds from the Rivera settlement and the conduct which resulted in Respondent's conviction.
- A pattern of misconduct has been demonstrated.
- False statements were made during the disciplinary process.
- The five clients Respondent represented were not only apparently abused by a priest, but by the lawyer they trusted to right the wrongs that had been done to them as children making them vulnerable. As to Rivera, Respondent's conduct caused him to lose the bankruptcy protection he should have had.
- There is no evidence of restitution to the IRS or satisfaction of the bankruptcy judgment.

BCGD Proc. Reg. 10(B)(2) lists factors that may be considered in mitigation and in favor of a less severe sanction. The following mitigating factors are present in this case:

- Respondent has served a five-month prison sentence, is serving five months of house arrest for his tax conviction, and has been ordered to make restitution to the IRS. He also has suffered a judgment in the bankruptcy court for his conduct in the Rivera matter.
- Evidence of alcohol dependency was presented, with Respondent in the OLAP program for ten months at the time of the hearing. He has contracted with OLAP for three years. However, there was no competent evidence offered to demonstrate that the chemical dependency contributed to cause the misconduct charged in this case.

Recommended Sanction

Relator has recommended that Respondent be disbarred.

Respondent has recommended that he be suspended for two years, with the suspension to run concurrent with his current suspension.

In *Dayton Bar Assn. v. Lewis* (1998), 84 Ohio St.3d 517, Lewis was given an indefinite suspension for failing to file tax returns in disregard of a bankruptcy judge's order to file them.

In *Disciplinary Counsel v. Roetzel* (1994), 70 Ohio St.3d 376, Roetzel received an indefinite suspension for conduct resulting in a conviction for attempted income tax evasion.

In *Disciplinary Counsel v. Schiller*, 123 Ohio St.3d 200, 2009-Ohio-4909, Schiller's punishment was indefinite suspension with full restitution before reinstatement and two-year probation after reinstatement for multiple rule violations in his representation of bankruptcy clients.

In *Columbus Bar Assn. v. Cooke*, 111 Ohio St.3d 290, 2006-Ohio-5709, an indefinite suspension was appropriate for fraudulent and deceitful conduct involving a client's personal bankruptcy case.

In *Dayton Bar Assn. v. Schram*, 122 Ohio St.3d 8, 2009-Ohio-1931, Schram was disbarred for failing to file tax returns and remit taxes owed for more than 20 years.

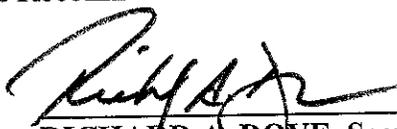
As in *Schram*, the aggravating factors in this case greatly outweigh any mitigating factors. The overall pattern of dishonesty in dealing with the IRS, the bankruptcy trustee, his clients, the court system and the disciplinary process warrants the harshest penalty.

The panel recommends that Respondent be disbarred.

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, William Matthew Crosby, be permanently disbarred from the practice of law in the State of Ohio. 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.



**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

RECEIVED

JUN 1 - 2011

WILLIAM MATTHEW CROSBY
14805 Lake Ave
Lakewood, OH 44107

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Attorney Registration No. (0002451)

AGREED
STIPULATIONS

BOARD NO. 10-091

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

JUN - 1 2011

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, William Matthew Crosby, do hereby stipulate to the admission of the following facts, violations, aggravation and exhibits.

STIPULATED FACTS

1. Respondent, William Matthew Crosby, was admitted to the practice of law in the State of Ohio on November 15, 1982. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. On December 29, 2009, by Order of the Supreme Court of Ohio, respondent was suspended from the practice of law for 24 months. *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763, 921 N.E.2d 225.

COUNT I

3. On June 30, 2010, respondent appeared before Judge Dan Aaron Polster in the United States District Court for the Northern District of Ohio. *United States v. Crosby*, Case No. 1:10cr00253.
4. On that day, respondent pled guilty to a one count information. The information alleged that respondent willfully attempted to evade and defeat the payment of personal income tax owed by him to the United States of America by concealing and attempting to conceal the nature and extent of his income and assets.
5. The information further alleged that respondent engaged in this conduct from October 2002 through May 2007 in violation of 26 U.S.C. 7201, which is a felony offense.
6. On the same date, a plea agreement was filed in the U.S. District Court for the Northern District of Ohio.
7. Under the terms of this agreement, respondent admitted that he did not file a personal income tax return and did not make any income tax payments to the Internal Revenue Service [IRS] for each of the years 2001 through 2006.
8. Respondent further admitted in the plea agreement that he used his IOLTA account to:
 - Conceal his assets from the IRS,
 - Prevent the IRS from seizing his assets, and

- Disburse funds in a manner to conceal his income and disposition of his income from the IRS.
9. On September 23 2010, respondent was sentenced to five months incarceration and two years supervised release. The Court further ordered respondent to pay \$314,637 in restitution to the IRS.
 10. On November 1, 2010, the Supreme Court suspended respondent for an interim period pursuant to Gov. Bar R. V(5) due to his felony conviction.

COUNT II

11. In or about June 2002, respondent undertook representation of Jose Rivera and Beningo Pacheco, who alleged that they had been sexually abused by a Catholic priest. At the start of the representation, respondent was a solo practitioner. Respondent was also of counsel for Crosby, O'Brien & Associates Co., LPA, the law firm where his wife was employed.
12. During the initial meeting with Rivera, respondent presented Rivera with a pre-printed form entitled "Attorney Fee Agreement and Assignment." This form stated, in part, "In consideration for these services, the undersigned agree(s) and assign(s) from any settlement, for any judgment, or from any compensation obtained, awarded or received, a sum of money equal to thirty-three and one-third percent (33 1/3%) which may be had in the case or claim."

13. Respondent's fee agreement advised Rivera that Minnesota attorney Jeffrey Anderson would be acting as co-counsel.
14. On June 24, 2002, respondent and Anderson filed a lawsuit on behalf of Rivera and Pacheco in Lorain County Common Pleas Court. *Pacheco et al. v. Catholic Diocese of Cleveland*, et al., Lorain County Common Pleas Court, Case No. 02CV131933.
15. On September 28, 2002, respondent and Anderson filed an amended lawsuit and added Marco Aponte, Hector Fonseca and Jose Garcia as plaintiffs, for a total of five plaintiffs. *Pacheco et al. v. Catholic Diocese of Cleveland*, et al., Lorain County Common Pleas Court, Case No. 02CV131933.
16. In January 2003, Rivera filed for bankruptcy and was represented in his bankruptcy by Attorney James Kerner. Rivera's bankruptcy petition identified the lawsuit against the Catholic Church as an asset. On April 28, 2003, the bankruptcy court issued an order discharging Rivera's debts.
17. In June 2003, the Catholic Church and respondent's five clients settled the lawsuit. Around this same time period, Attorney Anderson provided respondent with an accounting of \$15,579.21 in costs and expenses.
18. Respondent did not seek bankruptcy court approval for the settlement agreement and/or the attorney fees prior to entering the settlement. Respondent did not immediately inform the trustee for Rivera's bankruptcy, Attorney Marvin Sicherman, after the Rivera settlement had been finalized.

19. On or about June 19, 2003, respondent met with Rivera at a restaurant. During this meeting, Rivera signed the lawsuit settlement agreement.
20. As a part of the settlement, respondent received a \$175,000 check in late June 2003 payable to "Jose Rivera and The Crosby Law Offices, L.L.C."
21. Prior to depositing this check into his IOLTA account, respondent wrote "Jose Rivera (per POA)" and "the Crosby Law Offices L.L.C." as an endorsement on the back of the check.
22. Respondent created a document labeled "Jose Rivera Spreadsheet." This document indicates that Rivera paid a 40 percent contingency fee of \$70,000, which was divided between respondent, Anderson and Attorney Carter Dodge.
23. Rivera also paid \$10,000 for "Expenses Reimbursement Jeff Anderson (Mediation fees, travel, hotels, Anderson and entourage to Cleveland and St. Paul, SNAP consultation and media support."
24. This document further indicated "(per instruction of client distributed in installments \$5,000, \$10,000.00 and \$80,000)."
25. Respondent prepared four documents entitled "Distribution of Settlement Proceeds" for Pacheco, Aponte, Fonseca and Garcia. These four documents indicated that Pacheco, Aponte, Fonseca and Garcia each paid a 40 percent contingency fee and \$5,000 apiece for their individual pro rata share of expenses. Pacheco, Aponte, Fonseca and Garcia signed their individual settlement distribution documents.

26. Respondent promptly disbursed the full settlement amounts owed to Pacheco, Aponte, Fonseca and Garcia and paid the co-counsel fees to Anderson by the end of July 2003.
27. On July 3, 2003, respondent dismissed the lawsuit filed on behalf of Rivera and the other four clients with prejudice.
28. On July 11, 2003, Bankruptcy Trustee Sicherman faxed a letter to respondent and co-counsel Anderson. The letter asked respondent, in part, to "Please advise me of the status of the case, and if you wish to be engaged as special counsel to the trustee in bankruptcy to prosecute Mr. Rivera's claim. The claim cannot be settled without the consent and an order of the Bankruptcy Court."
29. Respondent did not immediately reply to Sicherman's July 11, 2003 letter.
30. On July 22, 2003, Rivera's bankruptcy attorney Kerner, sent a fax to Trustee Sicherman advising him that Rivera's "case against the diocese has apparently been settled for \$175,000."
31. On July 24, 2003, Anderson provided Sicherman with a copy of the check he received from respondent for co-counsel attorney fees.
32. On August 21, 2003, respondent disbursed \$5,000 to Rivera from his settlement funds that respondent was holding in his IOLTA. The memo line on the check identifies this payment as a "net distribution exemption."
33. In or about October 2003, Rivera contacted respondent to get an update on the status of Rivera's lawsuit. Rivera was also in need of funds. During this conversation, respondent

advised Rivera that he would send Rivera some additional funds. On October 11, 2003, respondent disbursed \$10,000 to Rivera from his settlement funds that respondent was holding in his IOLTA.

34. On February 14, 2004, Trustee Sicherman sent respondent another letter seeking information about the Rivera settlement.
35. Respondent replied to Sicherman on February 23, 2004.
36. On March 2, 2004, respondent sent another letter to Sicherman.
37. On March 23, 2004 respondent sent an e-mail to Rivera.
38. On May 12, 2004 respondent sent another e-mail to Rivera.
39. On June 8, 2004, respondent disbursed the remaining \$80,000 to Rivera. The memo line on the check identifies this payment as the "final distribution."
40. On August 12, 2004, Trustee Sicherman filed a "Motion of Trustee for Order Directing the Debtor to Turn Over Funds."
41. On August 17, 2004, Rivera sent respondent an e-mail.
42. Respondent replied to Rivera's e-mail on August 18, 2004.
43. On October 15, 2004, legal counsel for Trustee Sicherman sent a letter to respondent requesting respondent provide documentation regarding the Rivera settlement.

44. On November 15, 2004, the bankruptcy court issued an "Order Authorizing Examination of William M. Crosby Under Rule 2004 of the Federal Rules of Bankruptcy Procedure." This order required respondent to appear on December 3, 2004, produce certain documents and provide testimony. Respondent failed to appear as ordered by the bankruptcy court.
45. On December 15, 2004, legal counsel for Trustee Sicherman sent respondent a letter.
46. On December 30, 2004, Trustee Sicherman filed a pleading entitled "Motion of Trustee for an Order on William M. Crosby to Appear and Show Cause Why He Should Not Be Held in Contempt for Failure to Comply with a Court Order."
47. On January 27, 2005, respondent appeared at Trustee Sicherman's office for his deposition. Respondent produced several documents, but declined to proceed with the deposition until he retained legal counsel.
48. On February 21, 2005, respondent appeared at Trustee Sicherman's office for his deposition with his legal counsel, Lester Potash. Respondent declined to answer some of Sicherman's questions based upon respondent's assertion of his Fifth Amendment privilege.
49. On March 14, 2005, Trustee Sicherman filed a complaint for monetary damages against respondent and Rivera. The complaint sought the remaining \$80,000 in settlement funds paid to Rivera and the \$17,500 in settlement funds paid to respondent as attorney fees.
50. On February 13, 2006, the bankruptcy court revoked Rivera's discharge of his debts.

51. On March 14, 2007, respondent appeared for a third deposition. Respondent declined to answer some of the questions posed to him by counsel for Rivera, Jonathan Rosenbaum. Instead, respondent asserted his Fifth Amendment and spousal privileges.
52. On March 10, 2009, the bankruptcy court granted Trustee Sicherman's summary judgment against respondent and Rivera based upon the complaint for monetary damages. The court granted a joint and several judgment against respondent and Rivera for \$35,257.16 and a judgment against respondent for the \$17,500 in settlement funds paid to respondent as attorney fees.

COUNT III

53. On July 1, 2003, respondent deposited a check for \$175,000, representing Rivera's settlement proceeds, into respondent's Key Bank IOLTA account, account number xxxxxxxx4462.
54. After a 40 percent contingent fee and \$10,000 expense reimbursement were subtracted from the settlement, Rivera was owed \$95,000.
55. On August 21, 2003, respondent disbursed \$5,000 to Rivera from his settlement. Rivera cashed this check on August 26, 2003.
56. As such, after August 26, 2003, respondent's IOLTA account should have held a balance of not less than \$90,000, reflecting the funds still owed to Rivera and being held by respondent during this period.
57. As of August 31, 2003, the balance in respondent's IOLTA account was \$82,959.84.

58. On October 11, 2003, respondent disbursed an additional \$10,000 to Rivera from his settlement. Rivera cashed this check on October 17, 2003.
59. As such, after October 17, 2003, respondent's IOLTA account should have held a balance of not less than \$80,000, reflecting the funds still owed to Rivera and being held by respondent during this period.
60. As of October 31, 2003, the balance in respondent's IOLTA account was \$4,619.84.
61. On May 31, 2004, respondent's IOLTA balance was \$43.52. On June 4, 2004, respondent deposited \$500,001 in unrelated settlement proceeds into his IOLTA account. Funds from this deposit were then used by respondent on June 8, 2004 to disburse the remaining \$80,000 to Rivera.
62. Respondent's IOLTA balance was below the amount of settlement funds owed to Rivera and being purportedly held by respondent in his IOLTA from August 31, 2003 through June 4, 2004. As such, respondent misappropriated funds belonging to Rivera.

COUNT IV

63. In June and July 2002, respondent undertook representation of Jose Rivera, Beningo Pacheco, Marco Aponte, Hector Fonseca and Jose Garcia, who alleged that they had been sexually abused by a Catholic priest.
64. Respondent entered into a contingency fee agreement with Garcia and Aponte and his fee agreement advised them that Minnesota attorney Jeffrey Anderson would be acting as co-counsel.

65. On September 18, 2002, respondent and Attorney Anderson filed an amended complaint on behalf of all five clients in Lorain County Common Pleas Court. *Pacheco et al. v. Catholic Diocese of Cleveland*, et al., Lorain County Common Pleas Court, Case No. 02CV131933.
66. In June 2003, the Catholic Church and respondent's clients entered into a settlement of the lawsuit. During this same time period, Attorney Anderson provided respondent with an accounting of \$15,579.21 in costs and expenses.
67. Because respondent and Anderson were involved in representing several parties against the Catholic Church, Anderson advised respondent that his costs and expenses should be pro-rated.
68. Respondent received \$800,000 in settlement checks for the five clients in late June 2003.
69. Respondent prepared a settlement distribution sheet for Garcia and Aponte which indicated each paid a 40 percent contingency fee and \$5,000 apiece for their individual pro rata share of case-related expenses.
70. Garcia and Aponte signed the settlement statements beneath a paragraph that stated "The undersigned acknowledges and agrees to the distribution as follows. Withholding of a pro rata share of expenses are specifically authorized relating to the mediation expenses and support of the Survivors' Network of those Abused by Priests as well as Jeff Anderson Advocate travel to and from Cleveland."

71. Based upon the "Jose Rivera Spreadsheet" prepared by respondent, Rivera paid \$10,000 for "Expenses Reimbursement Jeff Anderson (Mediation fees, travel, hotels, Anderson and entourage to Cleveland and St. Paul, SNAP consultation and media support." Based upon a "Distribution of Settlement Proceeds" sheets prepared by respondent, Pacheco and Fonseca paid \$5,000 apiece for their individual pro rata share of expenses.
72. As such, respondent's five clients paid a total of \$30,000 for expenses.

COUNT V

73. On August 14, 2009, respondent was cross examined in the malpractice lawsuit filed against him by Rivera. Respondent testified:
- Rivera "gave [respondent] a power of attorney and [the \$175,000 settlement check] was deposited pursuant to the power of attorney he gave" respondent.
 - He kept \$80,000 of the settlement proceeds owed to Rivera in his IOLTA account for almost one year because "that's where [Rivera] directed [respondent] to maintain the funds."
74. In January 2005, Rivera and his legal counsel filed a grievance with relator alleging that respondent had engaged in ethical misconduct in his handling of the lawsuit for Rivera, and the other four clients.
75. In respondent's response to the grievance, he stated:
- He "did not advise [Rivera] to make misrepresentations to the bankruptcy court,"
 - "[All five clients] received every dollar due under their settlement agreements,"

- He “had no involvement with nor further notice of any events involving the Rivera bankruptcy” beyond the fact that he “understood that under bankruptcy law Rivera was entitled to the first \$5,000 of his proceeds, and probably additional proceeds once the question of his ‘exemption under Ohio law’ was settled” and that respondent “consulted with a Cleveland bankruptcy attorney about this matter, and mentioned to Rivera that he may want to speak with this lawyer.”

STIPULATED VIOLATIONS

76. Respondent’s conduct in Count I violates the Code of Professional Responsibility: DR 1-102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude]; DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102 (A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and DR 1-102 (A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer’s fitness to practice law].
77. Respondent’s conduct in Count III violates the Code of Professional Responsibility: DR 1-102 (A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer’s fitness to practice law].

DISPUTED VIOLATIONS

78. With regard to Count II: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102 (A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102 (A)(6) [a lawyer

shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]; DR 1-104 [a lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance]; DR 7-102(A)(3) [in his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal]; DR 7-102(A)(7) [in representation of a client, a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent]; DR 9-102(B)(3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them], and DR 9-102(B)(4) [a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties of in possession of the lawyer which the client is entitled to receive].

79. With regard to Count III: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 9-102(B)(3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them], and DR 9-102(B)(4) [a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties of in possession of the lawyer which the client is entitled to receive].

80. With regard to Count IV: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102 (A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102 (A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law];

DR 1-104 [a lawyer shall inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement if the lawyer does not maintain professional liability insurance]; DR 9-102(B)(3) [a lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them], and DR 9-102(B)(4) [a lawyer shall promptly pay or deliver to the client as requested by the client the funds, securities or other properties of in possession of the lawyer which the client is entitled to receive].

81. With regard to Count V: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102 (A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102 (A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]; and Gov. Bar R. V(4)(G) [failure to cooperate with relator's investigation].

STIPULATED AGGRAVATION

82. Respondent owes \$314,637 in restitution to the IRS.

STIPULATED EXHIBITS

- Exhibit 1 *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763, 921 N.E.2d 225.
- Exhibit 2 Information for *U.S. v. Crosby*, Case No. 1:10CR253
- Exhibit 3 Plea agreement for *U.S. v. Crosby*, Case No. 1:10CR253
- Exhibit 4 Judgment entry for *U.S. v. Crosby*, Case No. 1:10CR253
- Exhibit 5 In re: William Mathew Crosby, *11/01/2010 Case Announcements*, 2010-Ohio-5295
- Exhibit 6 Crosby O'Brien & Associates Co. malpractice insurance declarations for 2002 and 2003
- Exhibit 7 Attorney Anderson accounting of costs

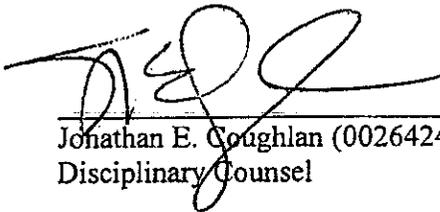
- Exhibit 8 Rivera settlement agreement
- Exhibit 9 Rivera \$175,000 settlement check
- Exhibit 10 Jose Rivera Spreadsheet
- Exhibit 11 Pacheco, Aponte, Fonseca and Garcia settlement distribution sheets
- Exhibit 12 July 11, 2003 letter to respondent from Bankruptcy Trustee Sicherman
- Exhibit 13 July 22, 2003 facsimile from Attorney Kerner to Bankruptcy Trustee Sicherman
- Exhibit 14 July 24, 2003 letter from Attorney Anderson to Bankruptcy Trustee Sicherman
- Exhibit 15 August 21, 2003 check for \$5,000
- Exhibit 16 October 11, 2003 check for \$10,000
- Exhibit 17 February 14, 2004 letter from Bankruptcy Trustee Sicherman to respondent
- Exhibit 18 February 23, 2004 letter from respondent to Bankruptcy Trustee Sicherman
- Exhibit 19 March 2, 2004 letter from respondent to Bankruptcy Trustee Sicherman
- Exhibit 20 March 23, 2004 e-mail from respondent to Rivera
- Exhibit 21 May 4, 2004 e-mail from respondent to Rivera
- Exhibit 22 May 5, 2004 e-mail from respondent to Rivera
- Exhibit 23 Two May 12, 2004 e-mails from respondent to Rivera
- Exhibit 24 May 25, 2004 e-mail from respondent to Rivera
- Exhibit 25 June 8, 2004 e-mail from respondent to Rivera
- Exhibit 26 June 8, 2004 check for \$80,000
- Exhibit 27 June 10, 2004 e-mail from respondent to Rivera
- Exhibit 28 August 16, 2004 e-mail from Rivera to respondent
- Exhibit 29 August 17, 2004 e-mail from Rivera to respondent
- Exhibit 30 August 18, 2004 e-mail from respondent to Rivera
- Exhibit 31 September 2, 2004 e-mail from Rivera to respondent
- Exhibit 32 September 3, 2004 e-mail from respondent to Rivera and reply
- Exhibit 33 September 8, 2004 e-mail from Rivera to respondent
- Exhibit 34 September 14, 2004 e-mail from respondent to Rivera
- Exhibit 35 September 15, 2004 e-mail from Rivera to respondent
- Exhibit 36 October 15, 2004 letter to respondent
- Exhibit 37 November 15, 2004 order granting motion for examination of respondent, *In re Rivera*, Case No. 03-10798

- Exhibit 38 December 15, 2004 letter to respondent
Exhibit 39 February 13, 2006 order revoking Rivera's bankruptcy discharge, *In re Rivera*, Case No. 03-10798
Exhibit 40 March 10, 2009 order granting summary judgment, *In re Sicherman v. Crosby, et al.*, Case No. 03-10798
Exhibit 41 Respondent's July 2003 Key Bank IOLTA account bank statement
Exhibit 42 Respondent's August 2003 Key Bank IOLTA account bank statement
Exhibit 43 Respondent's October 2003 Key Bank IOLTA account bank statement
Exhibit 44 Respondent's May 2004 Key Bank IOLTA account bank statement
Exhibit 45 Respondent's June 2004 Key Bank IOLTA account bank statement
Exhibit 46 Respondent's February 14, 2005 letter to relator in response to Rivera grievance

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this

31 day of ^{MAY} ~~June~~, 2011.


Jonathan E. Coughlan (0026424)
Disciplinary Counsel

Lester Potash (0011009)
Counsel for Respondent


Robert R. Berger (0064922)
Assistant Disciplinary Counsel

William M. Crosby (0002451)
Respondent

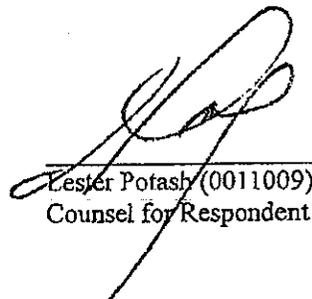
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CONCLUSION

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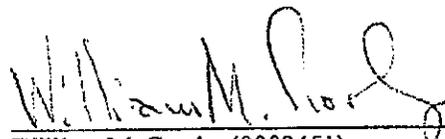
_____ day of June, 2011.

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