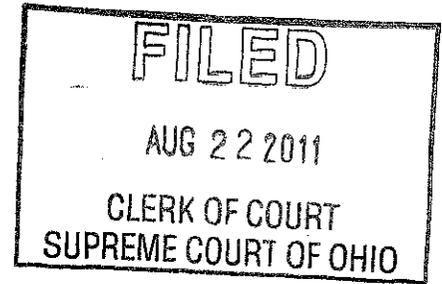


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

10-2199



In Re:	:	
Complaint against	:	Case No. 10-081
Frederick Bruce Johnson	:	Findings of Fact,
Attorney Reg. No. 0003093	:	Conclusions of Law and
Respondent	:	Recommendation of the
	:	Board of Commissioners on
Disciplinary Counsel	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
Relator	:	
	:	

INTRODUCTION

This matter was heard on July 25, 2011 at the Ohio Judicial Center, in Columbus, before a panel consisting of Janica P. Tucker, Judge Robert P. Ringland , and McKenzie Davis chair. None of the panel members is from the appellate district in which the complaint arose, or served on the probable cause panel that certified the grievance.

Respondent was represented by Alvin Matthews Jr. Relator was represented by Karen Osmond and Lori Brown.

BACKGROUND

This matter initially proceeded before the Board on Relator's motion for default judgment. Following a report and recommendation from master commissioner, the Board recommended Respondent be suspended from the practice of law for two years, with six months stayed. The Board's Findings of Fact, Conclusions of Law and Recommendation was filed with

the Clerk of the Supreme Court of Ohio on December 17, 2010. Supreme Court Case No. 2010-2199.

On January 24, 2011, Respondent, through counsel, filed objections to the Board's report and recommendation with the clerk of the Supreme Court of Ohio. Respondent also filed a motion to supplement the record and to remand the proceeding to Board.

On February 1, 2011, Relator filed an answer to Respondent's objections and a response to the motion to supplement the record and remand the proceeding to the Board.

On February 24, 2011, the Chief Justice granted Respondent's motions. The Board's review upon remand, however, was strictly limited to consideration of mitigation evidence. Thus, a hearing panel was assigned and the matter was heard on July 25, 2011.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Given that this matter was heard upon motion to remand and strictly limited to mitigation evidence, the panel will allow the master commissioner's report to serve as the Findings of Fact and Conclusions of Law (attached). Neither Respondent nor Relator dispute the Findings of Fact and Conclusions of Law and acknowledge the purpose of the hearing was "to explain and not contest." (July 25, 2011 Hearing Tr. p. 11, line 22).

In addition to the master commissioner's report and the procedural background, some further facts are necessary to understand how the matter resulted in a hearing.

Shortly after the master commissioner made his findings, Union County Probate and Juvenile Judge Charlotte Coleman Eufinger and Union County Common Pleas Judge Don Fraser learned of the matter. The judges, together, called Disciplinary Counsel and asked "if there was anything that could be done at that late date." (July 25, 2011 Hearing Tr., p. 21, line 16-24). Disciplinary Counsel suggested OLAP and a potential mitigation hearing. The judges, together,

called Alvin Mathews and sought his assistance. Finally, both judges met personally with Respondent to determine whether he would be open to meeting with OLAP. Shortly thereafter, Respondent, through counsel, filed the motions that led to the Court's remand.

AGGRAVATION AND MITIGATION

The guidelines governing mitigation and aggravation in attorney disciplinary cases are found in BCGD Proc. Reg. 10(B)(1) and (2), which list factors that may be considered in recommending either a more or less severe sanction than is recommended by either party.

AGGRAVATION

The master commissioner found the following aggravating factors in his original report to the board: dishonest or selfish motive; a pattern of misconduct; multiple offenses; and lack of cooperation in the disciplinary process. BCGD Proc. Reg. 10(B)(1)(b) to (e).

Upon further review, based on evidence presented at the hearing, the panel finds the following aggravating factor: lack of cooperation in the disciplinary process. Respondent's willingness to engage in the disciplinary process after the Board's report and only through a motion to remand cannot dissolve more than a year of inaction in the disciplinary process.

MITIGATION

The master commissioner found the following mitigating factors in his original report to the board: absence of a prior disciplinary record and timely good faith effort to make restitution. BCGD Proc. Reg. 10(B)(2)(a) and (c).

Upon further review, based on evidence presented at the hearing, the panel finds the following mitigating factors (BCGD Proc. Reg. 10(B)(2)(a) to (c), (e), and (f):

Absence of a prior disciplinary record. Respondent has a practiced law for nearly 30 years, including significant time representing legal aid clients, without any disciplinary record.

Absence of a dishonest or selfish motive. While Relator suggested Respondent acted in a selfish manner, the panel disagreed. The failure to maintain client's property in the IOLTA account, the panel felt, was based on poor accounting by Respondent and not a selfish motive.

Timely good faith effort to make restitution. Respondent returned the \$6,000 of client funds to his IOLTA as soon as he became aware it was not in the account and thus not available to his client.

Character and reputation. Two judges from the Union County Court provided character evidence on behalf of Respondent. Union County Probate and Juvenile Judge Charlotte Coleman Eufinger sent a letter outlining Respondent "high ethical standards." Additionally, Union County Common Pleas Court General Judge Don Fraser testified at the hearing. Judge Fraser testified that Respondent "enjoys an excellent reputation" and is "a truthful and honest person." (July 25, 2011 Hearing Tr. p. 17-18). The panel was particularly impressed with Judge Fraser's testimony.

Chemical dependency or mental disability. Respondent suffers from significant physical and mental conditions. Respondent admitted he is grossly overweight. His weight has caused a host of other significant health related issues. Respondent has high blood pressure, high cholesterol, severe problems related to prostate cancer and complications from the treatment of the cancer. Respondent also suffers from kidney stones that have developed from the side effects of the cancer treatment. Respondent has been diagnosed with major depressive episode, generalized anxiety disorder and bereavement and occupational problems. Respondent was able to demonstrate a diagnosis of a chemical or mental disability by Stephanie Wilson, who is a qualified health care professional. Ms. Wilson testified at a

deposition that Respondent's mental disability contributed to cause the misconduct. (Wilson Depo. p. 22, lines 7-10). Ms. Wilson testified that Respondent has sustained period of successful treatment. Respondent is meeting regularly with Ms. Wilson and she continues to see much improvement. (Wilson Depo. p. 24, lines 11-25). Finally, Ms. Wilson testified that Respondent will be able to return to the competent, ethical professional practice. (Wilson Depo. p. 25, lines 12-17). The panel finds Respondent met the necessary criteria for mental health mitigation.

RECOMMENDED SANCTION

As stated earlier, the Board, based on the motion for default and prior to the remand order, recommended the Respondent be suspended from the practice of law for two years with six months stayed.

After the motion to remand and panel hearing, Disciplinary Counsel recommended a two-year suspension with six months stayed. Among the cases cited, Disciplinary Counsel focused on *Disciplinary Counsel v. Riek*, 125 Ohio St.3d 46, 2010-Ohio-1556. In *Riek*, the Court stated, "The mishandling of client funds, either by way of conversion, commingling, or just poor management, encompasses an area of gravest concern to this Court in reviewing claimed attorney misconduct. It is of the utmost importance that attorneys maintain their personal and office accounts separated from their client accounts, and that any violation of the rule warrants a substantial sanction whether or not the client has been harmed."

Respondent, on the other hand, recommends a sanction of two-year suspension with the entire suspension stayed with very strict conditions. The conditions Respondent suggested are: monitor by a Marysville area attorney; continued counseling with Stephanie Wilson during the probationary period; and completion of the OLAP contract. Respondent cites *Allen Cty. Bar*

Assn. v. Schramski, 124 Ohio St.3d 465, 2010-Ohio-630 to suggest a stayed suspension. The *Schramski* matter had similar alleged rule violations and the Court held a stayed suspension with six strict conditions.

The panel agrees with the Court in *Riek* that any mishandling of clients funds justifies a substantial sanction. However, *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743 and *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251 require the panel to consider all relevant factors in determining what sanction to impose.

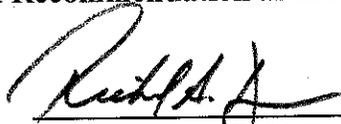
The panel disagrees with Relator's recommended sanction because it fails to account for Respondent's mental health condition and the character letter and character testimony presented at the hearing. The panel also disagrees with Respondent's recommended sanction because it fails to account for Respondent's complete disregard for the disciplinary system. Respondent had a default motion that would have prevented him from practicing law for one and one-half years. Respondent was only saved from such a sanction by the kindness of two area judges.

Therefore, the panel concludes the sanction of two-year suspension from the practice of law with eighteen months stayed is appropriate.

BOARD RECOMMENDATION

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

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



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