

ORIGINAL

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL,

: Case No. 2011-1453

RELATOR,

vs.

WILLIAM MATTHEW CROSBY,

RESPONDENT.

**OBJECTIONS TO FINDINGS OF FACT AND RECOMMENDATION OF BOARD
WITH BRIEF IN SUPPORT**

Robert R. Berger, Esq. (#0064922)
Senior Assistant Disciplinary Counsel,
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215

Patrick J. Perotti, Esq. (#0005481)
DWORKEN & BERNSTEIN Co., L.P.A.
60 South Park Place
Painesville, Ohio 44077
(440) 352-3391 (440) 352-3469 Fax
Email: *pperotti@dworkenlaw.com*

Counsel for Relator

Counsel for Respondent

FILED
OCT 12 2011
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

Table of Authorities i

I. Standard Used by the Ohio Supreme Court.....1

II. Discussion of Cases Applicable to Each Count Against Respondent....2

 A. Count 1 – Income Tax Evasion.....2

 B. Count 2 and 3 – Violations in the Rivera Representation,
 including IOLTA4

 C. Count 4 – Excessive Fees/Expenses.....10

 D. Count 5 – False Statements in Malpractice Suit.....10

III. Discussion of Intent in Determining Sanction.....11

IV. Permanent Disbarment Generally.....15

V. Cases Cited by Relator16

VI. Conclusion.....16

Certificate of Service20

Appendix.....21

TABLE OF AUTHORITIES

Cases

Akron Bar Association v. Watkins, 120 Ohio St. 3d 307, 2008-Ohio-6144, 898 N.E.2d 946 10

Bar Association v. DeLoach, 2011-Ohio-4201 11

Butler County Bar Association v. Matejkovic, 121 Ohio St. 3d 266, 2009-Ohio-776, 903 N.E.2d 633..... 9

Cincinnati Bar Assn. v. Kellogg, 126 Ohio St. 3d 360; 2010 Ohio 3285; 933 N.E.2d 1085; 2010 Ohio LEXIS 1715 18

Cincinnati Bar Association v. Trainor, 129 Ohio St.3d 100 9

Cincinnati Bar Association v. Weaver, 102 Ohio St. 3d 264, 2004-Ohio-2683, 809 N.E.2d 1113 15

Cleveland Bar Association v. Herzog, 87 Ohio St. 3d 215, 1999-Ohio-30, 718 N.E.2d 1274..... 11

Columbus Bar Association v. Cooke, 111 Ohio St. 3d 290, 2006-Ohio-5709, 855 N.E.2d 1226 .. 8

Columbus Bar Association v. Wright (1991), 58 Ohio St. 3d 126, 568 N.E.2d1218 6

Columbus Bar v. Allerding, 123 Ohio St.3d 382, 2009-Ohio-5589, 916 N.E.2d 808 13

Cuyahoga County Bar Association v. Drain, 128 Ohio St. 3d 288, 2008-Ohio-6141, 898 N.E.2d 580..... 11

Dayton Bar Assn. v. Seall, 81 Ohio St. 3d 280, 690 N.E.2d 1271, 1998 Ohio 630..... 3

Dayton Bar Association v. Gerren, 103 Ohio St.3d 21, 2004-Ohio-4110, 812 N.E.2d 1280 14

Dayton Bar Association v. Lewis, 84 Ohio St.3d 517, 1999-Ohio-418, 705 N.E.2d 1217..... 3

Dayton Bar Association v. Schramm, 122 Ohio St. 3d 8, 2009-Ohio-1931, 907 N.E.2d 311 .. 3, 19

Disciplinary Counsel v. Bennett, 124 Ohio St. 3d 314, 2010-Ohio-313,318, 921 N.E.2d 1064 ... 2

Disciplinary Counsel v. Blair, 128 Ohio St. 3d 384, 2011-Ohio-767, 944 N.E.2d 1161 14

Disciplinary Counsel v. Blaszak, 104 Ohio St. 3d 330..... 14

Disciplinary Counsel v. Broeren, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935 1

Disciplinary Counsel v. Crosby, 124 Ohio St.3d 226, 2009-Ohio6763 9

Disciplinary Counsel v. Doellman, 127 Ohio St. 3d 411..... 9

Disciplinary Counsel v. Friedman, 114 Ohio St. 3d 1, 2007-Ohio-2477, 866 N.E. 2d 1076..... 11

Disciplinary Counsel v. Fumish, 116 Ohio St. 3d 257 12

Disciplinary Counsel v. Gittinger, 125 Ohio St. 3d 467; 2010 Ohio 1830; 929 N.E.2d 410; 2010 Ohio LEXIS 1035 19

Disciplinary Counsel v. Gorman (1989), 43 Ohio St.3d 166, 539 N.E.2d 1120 15

Disciplinary Counsel v. Hoppel, 129 Ohio St. 3d 53, 2011-Ohio-2672, 950 N.E.2d 171..... 1

Disciplinary Counsel v. Hunter, 106 Ohio St. 3d 418, 2005-Ohio-5411, 835 N.E.2d 707..... 15

Disciplinary Counsel v. Johnson, 113 Ohio St. 3d 344, 2007-Ohio-2074, 865 N.E.2d 873 10

Disciplinary Counsel v. Karris, Case No. 2010-Ohio-4243, 2011-Ohio-2168 11

Disciplinary Counsel v. Kimmins, 123 Ohio St. 3d 207 14

Disciplinary Counsel v. Longino, 128 Ohio St. 3d 426, 2011-Ohio-1524, 945 N.E.2d 1040 15

Disciplinary Counsel v. O'Brien, 120 Ohio St.3d 334 4

Disciplinary Counsel v. O'Neill, 103 Ohio St.3d 204, 2004 Ohio 4704, 815 N.E.2d 286 12

Disciplinary Counsel v. Petroff, 85 Ohio St.3d 396, 709 N.E.2d 111, 1999 Ohio 400..... 2

Disciplinary Counsel v. Phillips, 108 Ohio St. 3d 331, 2006-Ohio-1064, 843 N.E.2d 775..... 15

Disciplinary Counsel v. Schiller, 123 Ohio St. 3d 200, 2009-Ohio-4909, 915 N.E.2d 324..... 7, 8

Disciplinary Counsel v. Simon, 128 Ohio St. 3d 359, 2011-Ohio-627, 944 N.E.2d 660 13

<i>Disciplinary Counsel v. Smith</i> , 128 Ohio St. 3d 390; 2011 Ohio 957; 944 N.E.2d 1166; 2011 Ohio LEXIS 614	17
<i>Disciplinary Counsel v. Vivyan</i> , 125 Ohio St.3d 12, 2010 Ohio 650, 925 N.E.2d 947	9
<i>In Re: Jose M. Rivera, Sr.</i> , Case 30-10798, Order Bankruptcy Chief Judge Baxter, 6/27/06.....	7
<i>Lorain County Bar Association v. Fernandez</i> , 99 Ohio St. 3d 426, 2003-Ohio-4078, 793 N.E.2d 434.....	16
<i>Medina County Bar Association v. Carlson</i> , 100 Ohio St. 3d 134, 2003-Ohio-5073, 797 N.E.2d 55.....	14
<i>Medina County Bar Association v. Kerek</i> , 102 Ohio St. 3d 228	13
<i>Office of Disciplinary Counsel v. Baumgartner</i> , 100 Ohio St. 3d 41, 2003-Ohio-4756, 796 N.E.2d 495	16
<i>Office of Disciplinary Counsel v. Roetzel</i> , 70 Ohio St. 3d 376, 1994-Ohio-254, 639 N.E.2d 50...	3
<i>Office of Disciplinary Counsel v. Shaffer</i> , 98 Ohio St. 3d 342.....	6
<i>Office of Disciplinary Counsel v. Shramek</i> , 98 Ohio St. 3d 441, 2003-Ohio-1636, 786 N.E.2d 869.....	13
<i>Rivera v. Crosby</i> , 2011 WL 1842299, 2011-Ohio-2265.....	5, 7
<i>Stark County Bar Association v. Hare</i> , 99 Ohio St. 3d 310.....	6
<i>Stark Cty. Bar Assn. v. Buttacavoli</i> , 96 Ohio St.3d 424, 2002 Ohio 4743, 775 N.E.2d 818	1
<i>Toledo Bar Association v. Stahlbush</i> , 126 Ohio St. 3d 366, 2010-Ohio-3823, 933 N.E.2d 1091	10
<i>Toledo Bar Association v. Weisberg</i> , 124 Ohio St. 3d 274, 2010-Ohio-142, 921 N.E.2d 641.....	1
 Rules	
Disciplinary Rule 7-102(A)(7).....	4, 5, 6
Disciplinary Rule 9-102(B)(3).....	9
Rule 10 of the Board of Commissioners on Grievances and Discipline.....	1, 11

This case presents the question of the proper sanction to impose for respondent's disciplinary violations. The permanent disbarment sanction recommended by the Board exceeds what this court has used in other pertinent cases. Rule 10 of the Board of Commissioners on Grievances and Discipline contains a non-exhaustive list of mitigating and aggravating factors in determining sanctions. The sanction imposed should be in line with that in similar cases and be designed primarily to protect the public, not punish the offender. It is requested that a two year suspension be imposed, with condition of alcohol abuse and mental health treatment.

I. Standard Used by the Ohio Supreme Court

In determining an appropriate sanction, the court reviews both the aggravating and mitigating factors outlined in Section 10(B) of the Board of Commissioners on Grievances and Discipline's Rules.¹ *Cincinnati Bar Association v. Kellogg*, 126 Ohio St. 3d 360, 2010-Ohio-3285, 933 N.E.2d 1085, at ¶13, citing *Disciplinary Counsel v. Broeren*, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935. "Because each disciplinary case involves unique facts and circumstances, we are not limited to the factors specified in the rule and may take into account "all relevant factors" in determining which sanction to impose. BCGD Proc.Reg. 10(B)." *Id.*

Sanctions imposed in similar disciplinary cases are relevant in determining the sanctions to be imposed for attorney misconduct. *Toledo Bar Association v. Weisberg*, 124 Ohio St. 3d 274, 2010-Ohio-142, 921 N.E.2d 641, citing *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002 Ohio 4743, 775 N.E.2d 818, The primary purpose of disciplinary sanctions is not to punish the offender but to protect the public. *Disciplinary Counsel v. Hoppel*, 129 Ohio St. 3d 53, 2011-Ohio-2672, 950 N.E.2d 171.

¹ Available for review at <http://www.sconet.state.oh.us/LegalResources/rules/govbar/govbar.pdf#App2>

II. Discussion of Cases Applicable to Each Count Against Respondent.

A. Count 1- Income Tax Evasion

In Count 1, Respondent did not file or pay income taxes for 2001 through 2006 resulting in a felony conviction. He served federal prison time for the conviction. Federal Judge Daniel Polster noted:

Your years of professional service, all the people you've helped, and most significantly the fact that you suffered from one or more diseases, you didn't choose them, you didn't plan for them, you don't deserve them any more than anyone else who gets sick does, they happen and they affect—anyone who gets sick is affected, and there is no doubt in my mind that those illnesses contributed to the flawed judgment and the continued flawed judgment that let you begin this, and more significantly keep this going.

Sentencing Proceedings, 1:10cr253, filed sealed with the Disciplinary Counsel Board.

The 'people helped' are hundreds of injury clients and dozens of victims in child and clergy sex abuse cases represented by Mr. Crosby. The one or more diseases are respondent's alcoholism, under control for 15 years (May, 1986 to 2001) and reoccurred in 2001, and respondent's diagnosed bi-polar disorder. John Goodman is Crosby's sponsor and testified in these disciplinary proceedings, and Paul Caimi is a director for OLAP and also testified.

The Ohio Supreme Court has routinely applied one year suspensions, with credit for the period of interim suspension, to attorneys who were convicted of tax evasion or fraud. See *Disciplinary Counsel v. Bennett*, 124 Ohio St. 3d 314, 2010-Ohio-313,318, 921 N.E.2d 1064 (discussing variety of cases including tax evasion which allowed credit for interim suspension); *Disciplinary Counsel v. Petroff*, 85 Ohio St.3d 396, 709 N.E.2d 111, 1999 Ohio 400 (attorney given one year suspension with credit for interim suspension arising from guilty plea in tax

evasion case): *Dayton Bar Assn. v. Seall*, 81 Ohio St. 3d 280, 690 N.E.2d 1271, 1998 Ohio 630 (attorney received one year suspension with credit for interim suspension after being sentenced to prison for tax fraud).

In support of a harsher penalty, Relator cites *Dayton Bar Association v. Lewis*, 84 Ohio St.3d 517, 1999-Ohio-418, 705 N.E.2d 1217. That case did not impose permanent disbarment, however, and rather indefinite suspension. Lewis failed to file tax returns using a lie—that he was given an extension. Crosby did not misrepresent his failure and rather plead guilty to charges involving this conduct and served his sentence.

Office of Disciplinary Counsel v. Roetzel, 70 Ohio St. 3d 376, 1994-Ohio-254, 639 N.E.2d 50, also cited by Realtor, involves an indefinite suspension not permanent disbarment. The conduct is also different. When the disciplinary complaint was brought against Roetzel arising from his guilty plea to tax evasion, he did not respond to the complaint, resulting in him being found in contempt and the panel issuing a decision based on the realtor's motion for default judgment. Crosby actively participated in the proceedings, cooperated fully with the IRS and "clearly and affirmatively accepted personal responsibility" for his conduct.²

The Relator's reliance on *Dayton Bar Association v. Schramm*, 122 Ohio St. 3d 8, 2009-Ohio-1931, 907 N.E.2d 311, is misplaced. That case illustrates the nature of Crosby's conduct compared to other cases. In *Schramm*, respondent was permanently disbarred for failing to pay any income taxes for twenty years and for not withholding for employees.³

² "34. Acceptance of Responsibility. The USAO has no reason to believe at this time that Defendant has not clearly and affirmatively accepted personal responsibility for Defendant's criminal conduct." Stip. Record, Tab 3.

³ The failure to withhold money for a worker is akin to theft since the money which the employer should withhold is, rather, kept by the employer.

Crosby's conduct involved a limited period of 2001-2006 when Crosby experienced the death of his law partner, the death of his father, and a relapse of alcoholism which he had controlled for over a decade. The court and USAO discussed clear and affirmative acceptance of personal responsibility, and the Board noted Page 20 the restitution agreement and order to the IRS and Crosby's offer of judgment in the bankruptcy court for the Rivera matter.⁴

B. Count 2 and 3- Violations in the Rivera Representation, including IOLTA.

Count 2 sets-forth DR 7-102(A)(7), in which provides that counsel shall not assist his client in conduct that the lawyer knows to be illegal or fraudulent. It arises from the conduct in handling Rivera's child sex abuse case, and Crosby's efforts to allow Rivera, and not the bankruptcy court, to retain the money.

In *Disciplinary Counsel v. O'Brien*, 120 Ohio St.3d 334, the respondent violated DR 7-102(A)(7) in failing to turn over his client's funds to a bankruptcy trustee. Respondent represented a client in the sale of his home. Afterwards respondent took possession of the proceeds and placed them in a trust for the client. When the client filed for chapter 7 bankruptcy, he was not represented by respondent. The client did not disclose the assets held by respondent in his bankruptcy petition. Further, the respondent and client discussed the matter and the lawyer still did not act. Instead, he continued to disburse the funds from the trust account to the client. Even when the bankruptcy trustee ultimately sent respondent a letter stating he was aware that respondent may be holding the client's funds in a trust and that such funds were required to be

⁴ The Board note of 'enhancement' based on lack of evidence of payment of the debt is inconsistent with the federal court program. Crosby recently completed his in term and in house prison sentence and is employed. The federal court agreement (Stip Rec. Tab 3, ¶30) has Crosby cooperating with the agency with pertinent information to work out a payment schedule, and he working with his accountant to do so.

turned over to the trustee, the respondent did not turn over the funds. The bankruptcy court then compelled him to do so.

In determining that the respondent had violated DR 7-102(A)(7), the court noted that the respondent was aware of the bankruptcy, would have known that the proceeds had not been disclosed, and made disbursements from the trust to the client. The court noted,

“respondent also stated that, from his initial knowledge of the existence of the bankruptcy case, he had fully "assumed" that the money in the trust account constituted an asset properly subject to ownership and control by the bankruptcy court and its trustee.”

The respondent was suspended for six months with all of it stayed.

Crosby consulted with bankruptcy lawyers and made repeated efforts for the client to keep the monies based on exemptions. As the Court of Appeals found at ¶32 of its opinion which reversed the malpractice award to Rivera:

“Specifically, Crosby advised Rivera that he believed Rivera may have been eligible for certain exemptions under bankruptcy law based on the nature of the personal injury suit.”

Rivera v. Crosby, 2011 WL 1842299, 2011-Ohio-2265.

His conduct was incorrect and wrongful—not for his own gain but stupidly trying to block the bankruptcy court from taking what Crosby felt was due to a victim of priest sex abuse as a small child.

BY MR. ROSENBAUM [attorney for Rivera]:

Q.: Now I take it then that you felt there was legitimate reason to dispute turning all this money over. At least there's the possibility and that legitimate reason should have been explored

A.: I felt that the time that Pepe settled his claim that his claim itself, legitimately—and kind of in a lawyer—it was really—it was more than me, it was a couple of lawyers looking at this situation, that this might not have been a bankruptcy asset or a bankruptcy issue. It might have fallen outside of really the purview of bankruptcy court because is related to a child being raped or molested by a priest, not an adult who was in a car accident and that responsibility

represented something that was more temporal in time. This related to something that occurred 20 or 30 years prior when Pepe was a youth.

Stip. Record, Tab 19, Testimony in *Rivera v. Crosby* at page 25-26.

In *Columbus Bar Association v. Wright* (1991), 58 Ohio St. 3d 126, 568 N.E.2d1218, respondent was a creditor of his former client. His personal financial interest was the motivation of his unethical misconduct. Respondent advised his former client not to disclose certain assets obtained from a previous case in which respondent had represented them. Respondent knew the assets must be disclosed, actively counseled his former clients not to disclose them, attended creditors' meetings without disclosing the assets, and ratified the former clients' misrepresentations to the court.

The Respondent was seen conferring with his former clients before and after the creditors' meeting where his former clients made the misrepresentations to the bankruptcy court, presumably at Respondent's urging so that Respondent would be able to ultimately recoup the money owed to him. The court also found it suspicious that Respondent suddenly disclosed the assets to the bankruptcy court as soon as his former client terminated him from working on his mother's estate claim. In this case of misconduct entirely for the lawyer's personal financial gain, Respondent was suspended for two years with eighteen months stayed.

Other cases involve violations of DR 7-102(A)(7) where the attorney clearly knew such conduct was illegal. See *Stark County Bar Association v. Hare*, 99 Ohio St. 3d 310 (respondent acknowledged specifically reviewing the statute at issue prior to advising clients to illegally and fraudulently fail to disclose amount paid for private adoption); *Office of Disciplinary Counsel v. Shaffer*, 98 Ohio St. 3d 342 (respondent violated DR 7-102(A)(7) in advising client to commit forgery on a power of attorney and was suspended for only one year). The issues involved in Crosby's case were much more complex bankruptcy issues.

Crosby was found by the Board of taking steps to mislead about the money; tell the client not to disclose all of it; blocking the trustee from getting it. In contrast, the Bankruptcy Judge found: "It is not insignificant that Crosby also turned over all of the requested documents and appeared on two separate occasions to comply with the court's order." *In Re: Jose M. Rivera, Sr.*, Case 30-10798, Order Bankruptcy Chief Judge Baxter, 6/27/06, at page 11.

Crosby's conduct did contain a clear aspect of misleading; in circumstances where he believed it was improper to seize money compensating a physical wrong from 20 years ago to a child. His personal zeal took him into conduct he should never have committed.

BY MR. ROSENBAUM:

Q.: Who were the little Martins?

A. The Little Martins were a singing group of adolescent boys out of Puerto Rican descent out of Lorain, Ohio who were molested by a priest out of Lorain, Ohio.

Q.: Is Mr. Rivera one of the Little Martins?

A.: Yes.

Q.: Now what did you mean when you wrote you found it ghastly to think that a boy molested by a priest would have to pay over a nominal personal injury settlement to bankruptcy creditors?

A.: Well, as strange as it might seem \$175,000 in exchange for being raped and having your religion taken from you and all the rest was a pretty nominal sum of money when other people get millions of dollars, you know, in other situations.

It was my attempt to point out to the trustee that I didn't know whether this even—well, it was expressing my feelings about whether he would have to turn over this money or not and I found it terrible.

Rivera v. Crosby, Tab 19, at page 32-33.

Relator cites to *Disciplinary Counsel v. Schiller*, 123 Ohio St. 3d 200, 2009-Ohio-4909, 915 N.E.2d 324, for proposition that an indefinite suspension is warranted for multiple rule violations in the context of bankruptcy proceedings. However Relator is asking for permanent

disbarment. In *Schiller*, the respondent attorney refused to turn over client assets in his possession even after ordered to do so by the bankruptcy trustee. Here, as of June 2004 Crosby's client had received the full amount of the settlement from the trust. The bankruptcy trustee filed the complaint against Crosby after the settlement proceeds were turned over to the client. Schiller had the assets in his possession at the time the trustee ordered that they be turned over .

Significantly, and not present in Crosby's case, Schiller repeatedly stole money from clients, collecting retainers but performing no services. Crosby never did any of this and Rivera received the full amount of his settlement agreement. This is a significant difference in considering what sanction to impose because the overriding purposes of such sanctions are to protect the public. Crosby did not steal from his clients, as Schiller did. Schiller was indefinitely suspended, but the Relator seeks permanent disbarment for Mr. Crosby.

Columbus Bar Association v. Cooke, 111 Ohio St. 3d 290, 2006-Ohio-5709, 855 N.E.2d 1226, referenced by realtor, again involves attorney misconduct to cheat the client, not preserve money to him from the bankruptcy court. Cooke represented a client in both a bankruptcy and a personal injury matter. The respondent failed to inform the bankruptcy court that his client would be receiving a settlement in her personal injury case. The respondent also attempted to keep the client's portion of the personal injury settlement for himself, informing her that she could not have the money because of her bankruptcy. He then issued an additional bill to the client for bankruptcy fees, which were never authorized by the client, in order to conceal the fact that he had already spent a portion of her settlement. The court determined under such circumstances an indefinite suspension was necessary to protect the public.

Count 2 also discusses Crosby's failure to properly advise his clients that he does not carry malpractice insurance. Crosby reasonably believed that the firm where he shared space and

for whom he did work had the insurance. He was wrong. The failure of an attorney to advise a client that he does not carry malpractice insurance is not an offense warranting disbarment. A public reprimand is an appropriate sanction for an attorney who fails to advise his client that he does not carry malpractice insurance. *Butler County Bar Association v. Matejkovic*, 121 Ohio St. 3d 266, 2009-Ohio-776, 903 N.E.2d 633. See also *Cincinnati Bar Association v. Trainor*, 129 Ohio St.3d 100 (respondent received only two year suspension for failure to advise clients he did not carry malpractice insurance, even where he had been party in two previous similar disciplinary actions).

Count 2 and 3 deal with the IOLTA issue and count 2 found a violation of DR 9-102(B)(3), which provides that a lawyer shall maintain complete records of all client funds coming into the possession of the lawyer and render appropriate accounting. Crosby used his trust fund for operating expenses, which violates the Rules and he was suspended for this in the earlier case for conduct in 2005-2006 (the instant matter being the year before). *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio6763 at ¶4 (All of the violations alleged by relator arise from the use and maintenance of respondent's IOLTA account.)

In *Disciplinary Counsel v. Doellman*, 127 Ohio St. 3d 411, the respondent was found to have committed misconduct in failing to properly separate and account for client's funds. The account balance regularly fell below that which was owned to the client. The respondent often commingled funds and deposited client funds in non-IOLTA accounts. The court noted that "in cases where attorneys have misused client trust accounts, as respondent did in this case, but without an improper motive or deceit, this court has regularly imposed six-month suspensions, conditionally stayed." *Disciplinary Counsel v. Vivyan*, 125 Ohio St.3d 12, 2010 Ohio 650, 925 N.E.2d 947, P 7-12. The motive in this case was admittedly not innocent. Respondent kept

money aside as he became drowned in personal grief, alcoholism and mental issues. He has been jailed for this, served his time, and the federal court found that, "I am absolutely confident that you won't do anything like that again..." Polster at 14.

The cases discussed by Relator apply indefinite suspension.

C. Count 4- Excessive Fees/Expenses

Count 4 stems from allegations that Crosby charged clients excessive fees in the form of undocumented expenses. This is true since Crosby did not keep the records needed to verify the charges. His co-counsel accrued \$15,000 in expenses. Crosby estimated he spent \$5,000 for four of the clients and \$10,000 for Rivera. He later returned \$10,000 of the money to two clients who filed suit. Rivera also sued (for over \$200,000) and the Court of Appeal found he was not entitled to any judgment against Crosby. Billing clients for undocumented fees results in sanction less than permanent disbarment.

See *Toledo Bar Association v. Stahlbush*, 126 Ohio St. 3d 366, 2010-Ohio-3823, 933 N.E.2d 1091 (Attorney received two years suspension, with one year stayed, for billing clients excess hours which she did not actually work); *Akron Bar Association v. Watkins*, 120 Ohio St. 3d 307, 2008-Ohio-6144, 898 N.E.2d 946 (suspended six month suspension imposed where attorney commingled funds and charged clients excessive fees and attorney cooperated in disciplinary process); *Disciplinary Counsel v. Johnson*, 113 Ohio St. 3d 344, 2007-Ohio-2074, 865 N.E.2d 873 (one year suspension appropriate where attorney charged and collected clearly excessive fees).

D. Count 5- False Statements in Malpractice Suit

Count 5 stems from Crosby's statements at his malpractice trial. Those are that Rivera gave him a power of attorney to deposit the settlement in trust and not pay it over; that he did not

tell Rivera to misrepresent to the bankruptcy court; and that he was not involved with the bankruptcy but understood that Rivera was entitled to \$5,000 of proceeds. This conduct was untruthful and more of the ill-conceived plan to help Rivera keep his money from sexual abuse.

Cases involving lying under oath have not imposed permanent disbarment. See *Disciplinary Counsel v. Karris*, Case No. 2010-Ohio-4243, 2011-Ohio-2168 (attorney suspended for six months for improperly notarizing signatures and lying about it at deposition); *Cleveland Bar Association v. Herzog*, 87 Ohio St. 3d 215, 1999-Ohio-30, 718 N.E.2d 1274 (six month suspension imposed on attorney for misrepresenting information to bankruptcy court); *Disciplinary Counsel v. Friedman*, 114 Ohio St. 3d 1, 2007-Ohio-2477, 866 N.E. 2d 1076 (attorney suspended for two years for falsely testifying that he returned a client's retainer).

III. Discussion of intent in determining sanction.

In considering what sanction should be imposed, the court must look to the mitigating factors outlined in the Board of Commissioners on Grievances and Discipline Procedural Regulations. The "absence of a dishonest or selfish motive" is a mitigating factor. BCGD Proc. Reg. 10(B)(2)(b). A significant mitigating factor is present where the respondent had no intent to obtain financial gain. *Akron Bar Association v. DeLoach*, 2011-Ohio-4201, at ¶13.

In *DeLoach*, the respondent received only a six month suspended sentence where the court determined that the respondent acted with no financial motive and no one was harmed by his conduct. (respondent had failed to file affidavit of indigency resulting in appeal being dismissed, then submitted false, redrafted letters to grievance investigation as if they were originals).

In *Cuyahoga County Bar Association v. Drain*, 128 Ohio St. 3d 288, 2008-Ohio-6141, 898 N.E.2d 580, the respondent attorney agreed to file a client's dental malpractice claim. The

attorney missed the deadline for filing an expert report and failed to timely respond to the defendant's motion for summary judgment. Despite respondent's knowledge that he had mishandled his client's case, he allowed his malpractice insurance to lapse, leaving her with no recourse. The respondent then filed for bankruptcy and did not list the client as a creditor. The court determined that the attorney did not commit the misconduct for purposes of financial gain and that he showed good character aside from this limited misconduct, therefore, the attorney received only a six month stayed suspension.

In *Disciplinary Counsel v. Fumish*, 116 Ohio St. 3d 257, the respondent was found to have committed conduct by failing to inform a client for over two years that her case has been dismissed by the court. Instead, respondent represented to the client that the matter could be settled for \$16,000. Respondent then withdrew \$16,000 from his retirement account, placed it in his IOLTA account, and obtained a release from the client prior to providing her with the funds.

The court found the fact that the respondent did not act with a financial motive to be a significant mitigating factor, along with the fact that respondent had no prior disciplinary record and complied with the disciplinary process. The Board recommended that respondent be suspended from practice for twelve months with six months stayed. The Ohio Supreme Court agreed with the twelve month suspension, but stayed the entire period on the condition respondent commit no further misconduct on the basis of these mitigating factors. The court relied on the principle that the primary purpose of the disciplinary process was to protect the public. *Id.* at 260, citing *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004 Ohio 4704, 815 N.E.2d 286 (primary purpose of discipline is to protect the public, not to punish the offender). Similarly, Crosby did not act with financial motive. He did not keep the \$95,000 but paid it to Rivera.

In *Medina County Bar Association v. Kerek*, 102 Ohio St. 3d 228, the respondent attorney agreed to take on a client's personal injury case but failed to file a complaint, return the client's phone calls, or immediately respond to the disciplinary process after the client has initiated a complaint. In determining that only a public reprimand was warranted the court noted significant mitigating factors, including that respondent "had no prior disciplinary record, had not sought or received financial gain through his misconduct, and had rectified the consequences of his misconduct by timely filing a complaint and negotiating a settlement." *Kerek* at ¶6. Similarly, in *Office of Disciplinary Counsel v. Shramek*, 98 Ohio St. 3d 441, 2003-Ohio-1636, 786 N.E.2d 869, where the respondent was found to have committed misconduct by egregiously mishandling a client's case, the court determined an appropriate sanction to be a one year suspension with six months stayed based on the fact that he did not act with a selfish motive and cooperated in the disciplinary process.

Numerous other cases have found the absence of dishonest or selfish motive to be a significant mitigating factor in determining sanctions. For example, in *Disciplinary Counsel v. Simon*, 128 Ohio St. 3d 359, 2011-Ohio-627, 944 N.E.2d 660, the respondent was found to have committed misconduct in failing to maintain separate accounts for client funds. He commingled his personal money with that of his clients, writing checks to his creditors from the same account client funds were deposited into. In imposing only a one year stayed suspension, the court noted that there was no evidence of a selfish motive or that any of the respondent's clients had actually been harmed by his conduct. See also *Columbus Bar v. Allerding*, 123 Ohio St.3d 382, 2009-Ohio-5589, 916 N.E.2d 808 (no suspension necessary where attorney mishandled case and was unable to account for client's fund where conduct was not motivated by a selfish motive, but by alcohol).

The case of *Disciplinary Counsel v. Kimmins*, 123 Ohio St. 3d 207, is very pertinent. This involved an attorney who committed multiple ethical violations but for a purpose he thought was proper. He received a one year stayed suspension. The court reasoned,

“[w]hile respondent's unilateral decision to clean up and dispose of Steiner's property against his client's known wishes, his misrepresentations to Steiner's children, which were designed to gain their agreement to his plan of action, his retention of his client's property, his failure to keep an accurate and complete inventory and to account for Steiner's personal property during the cleanup, and his failure to acknowledge the wrongfulness of his actions demonstrate that a suspension of his license to practice law for one year is warranted, there is no question that respondent acted in what he perceived to be Steiner's best interest.”

The Crosby case absolutely divides into two parts. In the tax matter, his conduct was wrong and financial gain can be concluded. For that conduct, however, he has been jailed, served his time, and the federal court concluded he would not repeat and concluded that his tax conduct was plainly part of a breakdown in his life. The Rivera conduct was not for any personal gain.

Even in cases where the attorney's motive was financial gain less serious sanctions are imposed. See *Dayton Bar Association v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110, 812 N.E.2d 1280 (respondent suspended for six months for using nearly \$12,000 in client's trust fund account for his personal expenses); *Disciplinary Counsel v. Blaszak*, 104 Ohio St. 3d 330 (respondent received two year suspension with credit for interim suspension for his misconduct in offering to sell his testimony in an antitrust suit for \$500,000); *Medina County Bar Association v. Carlson*, 100 Ohio St. 3d 134, 2003-Ohio-5073, 797 N.E.2d 55 (attorney received a two year suspension for misconduct motivated by financial gain in deceitfully trying to purchase a mentally disabled individual's property for a fraction of its worth); *Disciplinary Counsel v. Blair*, 128 Ohio St. 3d 384, 2011-Ohio-767, 944 N.E.2d 1161 (attorney was

suspended for two years with eighteen months stayed for writing checks to herself from incompetent ward's trust account, depleting the account and filing false affidavit with the court).

Permanent disbarment has rarely been found appropriate even with financial gain, and then in cases involving ongoing schemes to bilk multiple victims which is not the case here. *Disciplinary Counsel v. Gorman* (1989), 43 Ohio St.3d 166, 539 N.E.2d 1120 (prosecutor permanently disbarred where he used his position for financial gain by creating a check kiting scheme and failed to participate in the disciplinary process); *Disciplinary Counsel v. Phillips*, 108 Ohio St. 3d 331, 2006-Ohio-1064, 843 N.E.2d 775 (prosecutor permanently disbarred where he used his position for financial gain by accepting bribes from criminal defendants to change the outcome of proceedings); *Disciplinary Counsel v. Hunter*, 106 Ohio St. 3d 418, 2005-Ohio-5411, 835 N.E.2d 707 (permanent disbarment appropriate where attorney embezzled nearly \$300,000 from estates in her care finding her actions were motivated by financial gain); *Cincinnati Bar Association v. Weaver*, 102 Ohio St. 3d 264, 2004-Ohio-2683, 809 N.E.2d 1113 (permanent disbarment warranted where attorney took money from multiple clients to file cases, which he did not file, and could not account for the client's funds).

IV. Permanent Disbarment Generally

Cases which have resulted in permanent disbarment involved a higher number of violations and significantly more egregious conduct. In *Disciplinary Counsel v. Longino*, 128 Ohio St. 3d 426, 2011-Ohio-1524, 945 N.E.2d 1040, supra, the respondent was permanently disbarred for having a total of 48 disciplinary violations for a continuous pattern of fraudulent activity which permeated her practice. Longino routinely submitted false affidavits to the court, failed to obtain her client's consent to settle their actions, and even signed over and fully depleted a client's settlement check.

In *Lorain County Bar Association v. Fernandez*, 99 Ohio St. 3d 426, 2003-Ohio-4078, 793 N.E.2d 434, the attorney was permanently disbarred after continuously engaging in fraudulent activity during the period of time in which she was already indefinitely suspended from the practice of law. While she was indefinitely suspended, Fernandez retained client funds, ultimately leading to criminal charges for theft by deception. Additionally, Fernandez neglected multiple clients and failed to cooperate in the disciplinary investigation.

In *Office of Disciplinary Counsel v. Baumgartner*, 100 Ohio St. 3d 41, 2003-Ohio-4756, 796 N.E.2d 495, the respondent was disbarred for misconduct based on an eleven counts complaint demonstrating that she attempted to extort money from a client for her own financial gain, made numerous unfounded accusations against public officials, lied to a judge hearing her client's case, continued to represent clients during an interim suspension, failed to acknowledge that her conduct was wrongful, and failed to make any restitution to her victims.

V. **Cases Cited by Relator**

It should be noted that of the cases cited by Relator in support of its contention that Crosby be permanently disbarred, only one case, *Schramm* (involving 20 year tax evasion), imposed permanent disbarment. The remainder of the cases imposed an indefinite suspension, which pursuant to Ohio Gov. Bar Rule V, Section B, allows an attorney to file a petition for reinstatement after two years.

VI. **Conclusion**

The Relator will now file its brief. Such briefs disaggregate each count, item by item, tending to magnify the violations. On such date Mr. Crosby did this, then this, and this, as well as this.....

The parts are not greater than the whole.

This case is about two matters. One is tax evasion. The other is Rivera's case and bankruptcy. This conduct relates to an attorney in a fixed period involving two matters over a 27 years career in which other than the connected IOLTA matter, Mr. Crosby was never sued for malpractice or subject to any certified disciplinary charge.

Recently, in *Disciplinary Counsel v. Smith*, 128 Ohio St. 3d 390; 2011 Ohio 957; 944 N.E.2d 1166; 2011 Ohio LEXIS 614, this court addressed the former Treasurer of the Diocese of Cleveland who orchestrated a scheme taking a quarter million dollars per year from the diocese for undisclosed "wages":

The parties have stipulated that from 1983 through February 17, 2003, respondent was employed by the Catholic Diocese of Cleveland. He began as the diocese treasurer. By 2000, he had been promoted to chief financial officer, and was finally named financial and legal secretary. In August 2006, a federal grand jury issued a 27-count indictment against respondent and a codefendant. Respondent was charged with one count of conspiracy to commit mail fraud, eight counts of mail fraud, eight counts of money laundering, one count of conspiring to defraud the IRS, four counts of making false tax returns, and one count of corruptly endeavoring to obstruct and impede an IRS investigation.

...
[I]n the late 1990s [respondent] received a series of offers to go into private or public practice. According to respondent, the priest who oversaw respondent's employment did not want respondent to leave the diocese and agreed to pay him approximately \$250,000 annually, but stated that this compensation could not go through the diocese payroll. To conceal respondent's compensation, respondent and his codefendant, who provided comptroller services for the diocese through his company, moved money from the diocese, through the codefendant's company, and into two businesses owned by respondent. Respondent failed to pay taxes on this compensation, and while representing respondent in a 1999 audit, the codefendant presented fraudulent documentation of expenses purportedly incurred by respondent and falsely stated that respondent had no sources of income other than those reported on his tax return.

As a result of the conduct, "respondent has been convicted of conspiracy to defraud the IRS, making false tax returns, and corruptly endeavoring to obstruct and impede an IRS investigation."

The sanction imposed was indefinite suspension.

In *Cincinnati Bar Assn. v. Kellogg*, 126 Ohio St. 3d 360; 2010 Ohio 3285; 933 N.E.2d 1085; 2010 Ohio LEXIS 1715 the attorney engaged in money laundering and obstructing a federal investigation. It is noted that Kellogg was convicted of transferring \$14 million dollars to protect his corporate client from a federal criminal investigation—compared to \$125,000 for the victim of a child sex abuse.

Relator objects to the board's recommended sanction, arguing that pursuant to our precedent, respondent's felony convictions for money laundering warrant permanent disbarment.

As a result of the FTC and FDA investigations, a federal grand jury indicted respondent on nine felony counts. In February 2008, a jury found him guilty of two counts of conspiracy to commit money laundering, two counts of money laundering, and one count of conspiracy to obstruct proceedings before the FTC for his role in a scheme to protect Warshak's assets from the FTC and future legal claims by transferring \$ 14 million into two separate trusts.

The jury also found respondent guilty of a single count of conspiracy to obstruct proceedings before the FDA, for instigating the removal of a misbranded supplement from the company's warehouse after learning that an FDA inspection of the facility was imminent.

Here, respondent both conspired to commit and committed money laundering by assisting in the creation of two trusts designed to protect \$ 14 million of Warshak's assets--the ill-begotten gains of the company's "continuity program"--from the FTC and future lawsuits by its customers. By instructing an employee to "get rid of" a misbranded product housed in the company's warehouse, he also set in motion a scheme to conceal evidence of the company's misdeeds from federal

investigators. This conduct involving dishonesty and moral turpitude violated the very laws that respondent took an oath to uphold.

Id at 361-363

As noted by the dissenting Justices, “respondent did not plead guilty but rather contested the charges and was found guilty by a jury.”

This court rejected the sanction of permanent disbarment sought by Relator, and imposed indefinite suspension.

In *Disciplinary Counsel v. Gittinger*, 125 Ohio St. 3d 467; 2010 Ohio 1830; 929 N.E.2d 410; 2010 Ohio LEXIS 1035, the attorney participated in a widespread real estate fraud which involved between \$400,000 and \$1 million dollars in losses. This court noted lack of acceptance of responsibility (“[respondent’s denial] suggests that he does not accept responsibility for or acknowledge the wrongful nature of his conduct”). This court also noted

Respondent's criminal conduct also evidences a motive to defraud others in an apparent effort to retain a lucrative business client, thus manifesting [HN7] dishonesty and selfishness, which are aggravating factors under BCGD Proc.Reg. 10(B)(1)(b).

The case involved a period of federal release during which Respondent would not be able to practice law and would have to successfully complete at least one year probation after his 5 year release. Respondent was given an indefinite suspension. His ability to repetition this court was therefore kept intact. He was spared what is sometimes called the “death sentence” in a disciplinary case—permanent disbarment.

As discussed above, of the cases cited by Relator in support of its contention that Crosby be permanently disbarred, only one case, *Schramm* (involving 20 year tax evasion), imposed permanent disbarment. The remainder of the cases imposed an indefinite suspension, which

pursuant to Ohio Gov. Bar Rule V, Section B, allows an attorney to file a petition for reinstatement.

Respectfully submitted,



Patrick J. Perotti, Esq. (#0005481)
DWORKEN & BERNSTEIN CO., L.P.A.
60 South Park Place
Painesville, Ohio 44077
(440) 352-3391 (440) 352-3469 Fax
Email: *pperotti@dworkenlaw.com*

Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that a copy of the Objections to Findings of Fact and Recommendation of Board with Brief in Support was sent via regular U.S. Mail Service on October 12, 2011, addressed as follows:

Robert R. Berger, Esq.
Senior Assistant Disciplinary Counsel
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215

Counsel for Relator

Richard A. Dove, Secretary
Board of Commissioners on Grievances & Discipline
65 South Front Street, 5th Floor
Columbus, OH 43215



Patrick J. Perotti, Esq. (#0005481)
DWORKEN & BERNSTEIN CO., L.P.A.
60 South Park Place
Painesville, Ohio 44077
(440) 352-3391 (440) 352-3469 Fax
Email: *pperotti@dworkenlaw.com*

Counsel for Respondent

APPENDIX

Appx. Page

Exhibit A Findings of Fact, Conclusions of Law and Recommendation of the
Board of Commissioners on Grievances and Discipline of the
Supreme Court of Ohio (August 22, 2011).....1

Exhibit B Order to Show Cause (September 2, 2011).....40

11-1453

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

FILED
AUG 22 2011
CLERK OF COURT
SUPREME COURT OF OHIO

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

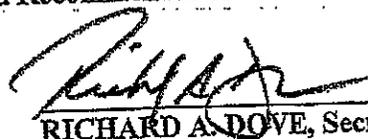
As in *Schram*, the aggravating factors in this case greatly outweigh any mitigating factors. The overall pattern of dishonestly in dealing with the IRS, the bankruptcy trustee, his clients, the court system and the disciplinary process warrants the harshest penalty.

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-FILED

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. I: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 Sichernman
- Exhibit 13 July 22, 2003 facsimile from Attorney Kerner to Bankruptcy Trustee Sichernman
- Exhibit 14 July 24, 2003 letter from Attorney Anderson to Bankruptcy Trustee Sichernman
- 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 Sichernman to respondent
- Exhibit 18 February 23, 2004 letter from respondent to Bankruptcy Trustee Sichernman
- Exhibit 19 March 2, 2004 letter from respondent to Bankruptcy Trustee Sichernman
- 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. Goughlan (0026424)
 Disciplinary Counsel

 Lester Potash (0011009)
 Counsel for Respondent



 Robert R. Berger (0064922)
 Assistant Disciplinary Counsel

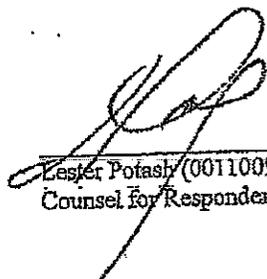
 William M. Crosby (0002451)
 Respondent

- 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 Stoherman 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

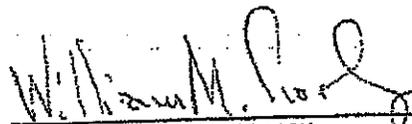
CONCLUSION

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

FILED

SEP 02 2011

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Disciplinary Counsel,
Relator,
v.
William Matthew Crosby,
Respondent.

Case No. 2011-1453

ORDER TO SHOW CAUSE

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio has filed a final report in the office of the clerk of this court. This final report recommended that pursuant to Rule V(6)(B)(1) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, William Matthew Crosby, Attorney Registration Number 0002451, be permanently disbarred from the practice of law. The board further recommends that the costs of these proceedings be taxed to the respondent in any disciplinary order entered, so that execution may issue.

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

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

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

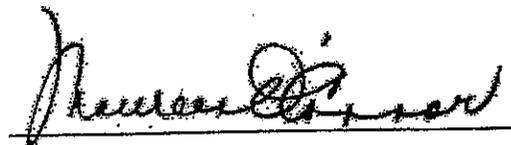
It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable,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

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

RECEIVED

SEP - 2 2011

Initials: _____



Maureen O'Connor
Chief Justice