

**IN THE
SUPREME COURT OF OHIO**

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CASE NO. 2011-1426

Respondent

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Relator

**RELATOR'S ANSWER TO
RESPONDENT'S OBJECTIONS TO
THE BOARD OF COMMISSIONERS'
REPORT AND RECOMMENDATIONS**

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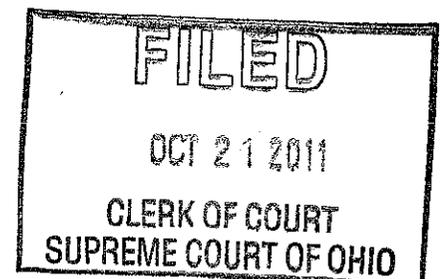


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Christopher James Burchinal
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Now comes relator, disciplinary Counsel, and hereby submits this answer to respondent's objections.

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By clear and convincing evidence the board found violations of Prof. Cond. Rule 1.15(c), Prof. Cond. Rule 8.4(c), and Prof. Cond. Rule 8.4(h) in Counts I, II and III and violations of Prof. Cond. Rule 1.3, Prof. Cond. Rule 1.4(a)(3) and Prof. Cond. Rule 8.4(h) in Count IV.

The board found mitigation pursuant to BCGD Proc. Rule 10(B)(2) of no prior discipline, full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings, timely good faith effort to make restitution or rectify consequences of misconduct, a diagnosis of mental disability by a qualified health care professional, and evidence of character or reputation.

The board found aggravation of a dishonest or selfish motive and a pattern of misconduct. BCGD Proc. Rule 10(B)(1).

The board recommended a two year suspension with one year stayed on conditions that respondent served one year of monitored probation pursuant to Gov. Bar R. V(9) and complete his current contract with OLAP.

The board's report was certified to this Court on August 19, 2011. This Court issued a Show Cause Order on August 30, 2011. Respondent's objections were filed on September 19, 2011. A Stipulated Extension of Time to File Reply Brief was filed on September 20, 2011 extending relator's time for filing a reply brief to October 24, 2011. It is to those objections that relator now responds.

STATEMENT OF FACTS

Respondent was a partner in the Delaware, Ohio law firm of Firestone, Brehm, Hanson, Wolf & Burchinal, LLP, having joined the firm in 2004. (Jt. Stip. 2; Report at ¶9). Three months after joining the firm, respondent became a full partner with responsibility for the firm's overhead. (Report at ¶11). Respondent's monthly share of expenses was \$3,800. (Report at ¶11).

Respondent began having difficulty paying his personal bills and his monthly share of firm expenses. He began incurring a debt to the firm to be paid in the future. (Report at ¶13). Respondent was unable to meet his financial obligations but did not talk to either his wife or his partners about the problem. (Report at ¶13).

Respondent practiced mainly in the area of criminal law but also accepted some personal injury cases. (Jt. Stip. 3; Report at ¶15).

In March 2007, the personal injury matter of Molly Davis was settled. The firm was to pay outstanding client expenses from the settlement funds. One of the outstanding bills was a subrogation claim to the Rawlings Co. for \$6,141. (Jt. Stip. 6; Report at ¶19).

Respondent was to obtain a certified check [for the subrogation claim to Rawlings Co.] but instead he diverted the funds to pay personal expenses. (Jt. Stip. 7-8; Report at ¶20).

In August 2008, respondent settled the personal injury case of Getena Hartman. Again, the firm was to pay outstanding client expenses from the settlement funds. One of the outstanding bills was to Riverside Methodist Hospital for medical records in the amount of \$303.25. (Jt. Stip. 11; Report at ¶21-22).

Instead of obtaining a certified check with which to pay the bill, respondent diverted the settlement funds to pay personal bills. (Jt. Stip. 14; Report at ¶23).

In August 2009, respondent settled the personal injury case of Shannon Scott. Outstanding client expenses were to be paid from the settlement funds. One of the outstanding bills was the subrogation claim of Socratese, Inc./Lumenos, Inc. in the amount of \$7,435.02. (Jt. Stip. 17; Report at ¶ 24-25).

Traveler's Insurance, as part of the settlement, issued a separate check for the Socratese, Inc./Lumenos, Inc. subrogation claim made payable to Shannon Scott or Socratese, Inc./Lumenos, Inc. (Jt. Stip. 18; Report at ¶26).

In December 2009, respondent had Ms. Scott endorse the back of the check that was for the subrogation claim. (Jt. Stip. 18; Report at ¶27). Instead of paying the subrogation claim to Socratese, Inc./Lumenos, Inc., respondent cashed the check and diverted the funds to pay personal expenses. (Jt. Stip. 19; Report at ¶27).

In May 2010, respondent was confronted by another partner at the law firm regarding the Riverside Methodist Hospital bill for Getena Hartman. The partner only knew that the bill had not been paid. Respondent admitted diverting the funds from Getena Hartman's settlement for

personal expenses and that he failed to pay the Riverside Methodist Hospital bill. (Jt. Stip. 15; Report at ¶28).

At the same time, respondent also admitted to diverting the settlement funds intended to pay the subrogation claims in the Molly Davis and Shannon Scott matters for personal expenses. (Jt. Stip. 15; Report at ¶29). Respondent paid full restitution for the settlement funds that he diverted for personal expenses in May 2010. (Jt. Stip. 10, 16, 21; Report at ¶30).

Respondent represented James and Penny Robinson in a personal injury matter related to a motor vehicle accident that occurred on or about February 4, 2006. (Jt. Stip. 22; Report at ¶31).

Respondent missed the statute of limitations filing deadline. (Jt. Stip. 23; Report at ¶32). He was notified of the missed deadline by the insurance company when it ceased negotiating with him. (Jt. Stip. 24; Report at ¶33). Respondent did not notify his clients of the missed deadline. Instead, he continued to lead the Robinsons to believe that he was negotiating a settlement. (Jt. Stip. 25; Report at ¶34).

Respondent notified the Robinsons of the missed statute of limitations deadline in May 2010. Respondent then entered into a promissory note with the Robinsons where he agreed to pay them \$17,000, the value of their case, and to pay an outstanding MRI bill. (Jt. Stip. 28; Report at ¶36). Respondent notified the Robinsons that they should obtain independent counsel, but they declined. (Report at ¶36).

By June 1, 2011, respondent had paid full restitution to the Robinsons including paying the MRI bill. (Jt. Stip. 30; Report at ¶37).

ANSWER TO RESPONDENT'S OBJECTIONS

I. Respondent argues that the Sanction Recommended by the Board is too Severe and Should Be Modified

Although respondent's brief contains two separate objections, they are interrelated and relator will address them together.

The board recommended a sanction of a two year suspension with one year stayed on the conditions that respondent fulfill his OLAP contract and have a monitor appointed.

At the hearing, respondent recommended an eighteen month suspension with all of the time stayed. In his brief, respondent recommends a two year suspension with all of the time stayed on condition that he fulfill his OLAP contract and have a monitor appointed.

At the hearing, relator recommended an eighteen month suspension with twelve months stayed. Relator is not making an alternate recommendation and believes that its original sanction recommendation was appropriate.

Relator based its recommended sanction on the facts and mitigation in this matter. Although respondent misappropriated client funds and missed a statute of limitations deadline and failed to notify his clients, respondent presented mitigation evidence from both his therapist, Judith Fisher, MSW, LISW and OLAP through Megan Snyder, MSW, LISW. Respondent also self-reported his misconduct and paid full restitution.

At the hearing, relator referenced two cases in support of the recommended sanction.

In *Disciplinary Counsel v. Clafin*, 107 Ohio St.3d 31, 2005-Ohio-5827, 836 N.E.2d 564, this Court issued a two year suspension with one year stayed to an attorney who misappropriated funds from a client settlement. This Court found that disbarment would have been too severe

when Claflin made full restitution and committed no other misconduct. However, Claflin did not present mitigation of mental illness.

In *Disciplinary Counsel v. Kraemer*, 126 Ohio St.3d 163, 2010-Ohio-3300, 931 N.E.2d 571, this Court issued a two year suspension with one year stayed for an attorney who stole \$7,000 from his law firm. Kraemer was convicted of a felony for the theft but prior to the hearing made full restitution. Kraemer was found to be cooperative and remorseful for his actions. Kraemer was diagnosed with an adjustment disorder.

The respondent in this matter was diagnosed with adjustment disorder with mixed emotional features (depression and anxiety). (Jt. Ex. 11). He paid full restitution by the time of the hearing, was cooperative with the disciplinary investigation and during the hearing, and self-reported his misconduct. Respondent has no other discipline.

Relator believes that a period of suspension is required in this case because it involves the misappropriation of client funds and because respondent exhibited a selfish motive.

Relator considered these mitigating and aggravating factors when determining a recommended sanction of eighteen months suspension with twelve months stayed.

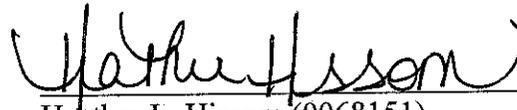
CONCLUSION

Relator requests that the Court determine the appropriate sanction in this case based on the facts, aggravation and mitigation presented.

Respectfully submitted,



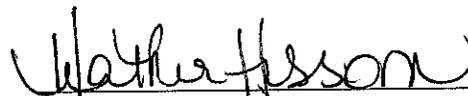
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CERTIFICATE OF SERVICE

I hereby certify that Relator's Answer To Respondent's Objections To The Board of Commissioners' Report And Recommendations was served by U.S. Mail, postage prepaid, upon Richard A. Dove, Secretary, Board of Commissioners' on Grievances and Discipline, and respondent's counsel Alvin Earl Mathews, Jr. Esq., Bricker and Eckler, 100 S. Third Street, Columbus, OH 43215 this 21st of October, 2011.



Heather L. Hissom
Counsel for Relator