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After the Weaver grievance was filed with the Relator, another client, Craig Smith, submitted a grievance to Relator. Mr. Smith paid Mr. Britt to file a bankruptcy petition on his behalf. Mr. Britt failed to communicate with Mr. Smith and failed to file the bankruptcy petition because Mr. Britt no longer had the filing fee.

During the Smith investigation Mr. Britt disclosed that he received retainers and filing fees from multiple other clients. Moreover, he had not deposited those funds in an IOLTA account.

The facts as ultimately stipulated before the Board establish that Mr. Britt undertook the representation of over 40 clients, received fees from them, failed to perform any meaningful services, and then converted their fees for his own use. Moreover, nearly all of these clients sought Mr. Britt's assistance in filing for bankruptcy and were financially vulnerable. The evidence also disclosed that Mr. Britt failed to pay federal withholding taxes. As a result, the Internal Revenue Service filed a lien with the Bankruptcy Trustee against any fees that might be owed to Mr. Britt.

The hearing evidence shows that Mr. Britt was unable or unwilling to competently and ethically engage in the private practice of law. A law school graduate in private practice is expected to know the substantive areas of law, be able to manage a law office and abide by the rules governing the conduct of lawyers. Here, Mr. Britt testified that he had very little training or background in bankruptcy practice but still sought out bankruptcy clients. Hearing Tr., Pgs. 44-45. He was unable to operate his law office in a competent manner and turned the operation of the law office over to a non-lawyer who met with 95% of the clients. The evidence established that the non-lawyer advised clients, particularly Ms. Weaver. Hearing Tr., Pgs. 46-47, 51-53, 81-

82. Mr. Britt also testified that he has little understanding of the rules relating to IOLTA accounts. Hearing Tr., Pgs. 42-44, 78-81.

While Mr. Britt eventually informed his clients of his misconduct and arranged for another bankruptcy attorney, Nick Zingarelli, to handle approximately 12 of the cases, Mr. Britt's thirty-some remaining clients have received no assistance or reimbursement from him. Mr. Britt has recently begun paying Mr. Zingarelli \$1,000 a month to complete the work.

Mr. Britt's testimony at hearing demonstrated that he is now employed, earning a salary of over \$80,000 a year in addition to his \$4,000 per month military retirement. Hearing Tr., Pg. 73. And while he has begun making monthly payments to his parents of \$400 to repay \$100,000 they loaned to him, Mr. Britt has not reimbursed any of his remaining clients who are not being represented by Mr. Zingarelli.

Mr. Britt was evaluated by a psychiatrist, Dr. Douglas Mossman. Dr. Mossman found that Mr. Britt suffered from depression but concluded that his condition was not so severe as to impair his ability to practice law. Dr. Mossman also concluded that the depression did not grossly impair Mr. Britt's judgment. The Board, accepting the doctor's evaluation, found that Mr. Britt's mental health condition was insufficient to constitute mitigation.

Relator requested a sanction of permanent disbarment, but the Board recommended that Mr. Britt be indefinitely suspended and required to pay full restitution to all harmed clients.

Argument

Proposition of Law

WHEN STIPULATED FACTS DEMONSTRATE MULTIPLE VIOLATIONS OF THE RULES OF PROFESSIONAL CONDUCT, INCLUDING THE CONVERSION OF UNEARNED FEES FROM DOZENS OF CLIENTS FOR AN ATTORNEY'S PERSONAL USE, FAILURE TO REPAY THOSE FUNDS AFTER NEGLECTING ENTRUSTED MATTERS, AND ALLOWING STAFF TO ENGAGE IN THE UNAUTHORIZED PRACTICE OF LAW, THE ATTORNEY SHOULD BE DISBARRED AFTER FAILING TO PRESENT EVIDENCE OF MITIGATION SUFFICIENT TO REBUT THE PRESUMPTIVE SANCTION OF DISBARMENT.

The Presumptive Sanction

This Court has repeatedly held that the presumptive sanction for the conversion of unearned fees is disbarment. In *Cincinnati Bar Assn. v. Weaver*, 102 Ohio St. 3d 264, 2004-Ohio-2683, 809 N.E.2d 1113, ¶¶6-13, the respondent took money from his clients but did not perform any work on their cases. He did not provide the clients with any refunds and spent the client funds on his own personal expenses. *Id.* This Court stated that taking retainers and failing to carry out a contract of employment was tantamount to theft, and the presumptive discipline for such actions is disbarment. *Id.* at ¶ 16. This Court noted the large amount of money that was taken as a factor in imposing the disbarment sanction. *Id.* at ¶ 14, 17.

In *Butler Cty. Bar Assn. v. Cornett*, 109 Ohio St. 3d 347, 2006-Ohio-2575, 847 N.E.2d 1200, ¶¶6-29, the respondent took money from clients in three divorce cases, two child custody cases, and two bankruptcy cases, but did not complete the required work. In the bankruptcy cases, the respondent completed no work. *Id.* at ¶ 17, 20. The respondent also failed to respond to

investigation surrounding additional complaints. *Id.* at ¶7-10, ¶13-15, ¶ 19, ¶24. Again, this Court permanently disbarred the respondent, citing *Weaver*. *Id.* at ¶ 34.

In *Warren Cty. Bar Assn. v. Marshall*, 121 Ohio St. 3d. 197, 2009-Ohio-501, 903 N.E.2d 280, ¶ 3-8, the respondent took client funds and did not complete the work or provide clients with a refund. The respondent also failed to cooperate in the investigation. *Id.* at ¶ 9-11. In permanently disbarring the respondent, this Court stated that the primary purpose of the disciplinary system is to protect the public from lawyers who are unworthy of the trust and confidence necessary to the attorney-client relationship. *Id.* at ¶ 19.

There are cases where respondents have acted similarly to Mr. Britt and received an indefinite suspension rather than a permanent disbarment. *See Columbus Bar Assn. v. Harris*, 108 Ohio St.3d. 543, 2006-Ohio-1715, 844 N.E.2d 1202; *Dayton Bar Assn. v. Fox*, 108 Ohio St.3d. 444, 2006-Ohio-1328, 844 N.E.2d 346; *Columbus Bar Assn. v. Torian*, 106 Ohio St.3d. 14, 2005-Ohio-3216, 829 N.E.2d 1210. However, these cases involve significant distinguishable circumstances. Usually in these cases, the attorneys harmed only a handful of clients through their behavior. *Id.* Five clients were harmed in *Harris*, two clients were harmed in *Fox*, and five clients were harmed in *Torian*. In the instant case, Mr. Britt harmed 42 vulnerable clients. Indeed, as his practice diminished, essentially all of his remaining clients were victims whose filing fees he could not pay.

When there is serious misconduct, only significant mitigation should warrant a deviation from disbarment. For example, mental illness or drug addiction that is demonstrated to have caused the misconduct are mitigating circumstances that may reduce a sanction. Standards for Imposing Lawyer Sanctions, Rule 9.4, ABA (1992). In *Torian*, an indefinite suspension was imposed due to tragic events in the attorney's life causing her inattention to her law practice.

Torian at ¶ 15. Here, although encountering problems in his personal life, Mr. Britt failed to demonstrate similarly significant circumstances to support any mitigation.

Respondent's conduct is similar to the conduct in *Weaver*, *Cornett* and *Marshall*. In each of these cases, the attorneys took retainers and filing fees from clients and did not complete the work or refund the client's money. Respondent Britt has acted in the same manner. In *Weaver*, *Cornett* and *Marshall*, the Court was clear: taking fees from a client and failing to carry out the work is tantamount to theft and the presumptive sanction is disbarment.

More recently, the Court has imposed disbarment when an attorney has committed multiple violations of the rules of professional conduct and failed to promptly refund unearned fees. In *Disciplinary Counsel v. Henry*, 127 Ohio St.3d. 398, 2010-Ohio-6206, 939 N.E.2d 1255, the Court disbarred the respondent who committed multiple violations, including obtaining retainers from clients and failing to perform legal services for the clients. In *Disciplinary Counsel v. Bursey*, 124 Ohio St.3d. 85, 2009-Ohio-6180, 919 N.E.2d 198, the Court also imposed disbarment when the attorney neglected his clients' cases and misappropriated the clients' money and committed other professional misconduct. The Court in *Bursey* cited *Toledo Bar Assn. v. Mason*, 118 Ohio St.3d. 412, 2008-Ohio-2704, 889 N.E.2d, 539, in which the Court permanently disbarred an attorney for engaging in a continuous course of conduct involving multiple violations.

As the Court pointed out in *Marshall*, the purpose of the disciplinary system is to ensure that lawyers can be trusted by their clients. Mr. Britt's repeated violation demonstrate that there can be no such guarantee here. He converted funds from financially vulnerable clients. This pattern of behavior would put future clients in danger of suffering the same fate. There is no way to ensure the public would be protected adequately other than by disbarment.

Insufficient Evidence of Mitigation Exists to Warrant the Board's Deviation from the Presumptive Sanction of Disbarment

In support of its recommended sanction, the Board cites *Disciplinary Counsel v. Garrity*, 98 Ohio St. 3d 317, 2003-Ohio-740, 956 N.E.2d 296, *Cleveland Metro Bar Assn. v. Brown*, 130 Ohio St. 3d 147, 2011-Ohio-5198, 784 N.E.2d 691 and *Disciplinary Counsel v. O'Neill*, 103 Ohio St. 3d 204, 2004-Ohio-4704, 815 N.E.2d 286. Each of these cases is distinguishable from the instant matter. The Board cited *Garrity* for the proposition that “even in cases of egregious misconduct and illegal drug use, the Court has decided against permanent disbarment based on the lawyer’s probable recovery from the drug addiction that caused the ethical breaches.” Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (hereafter Board Opinion), ¶ 61. In *Garrity*, the respondent was convicted of multiple counts of felony prescription drug theft. *Garrity*, at ¶ 4. The Board recommended a permanent disbarment, but this Court imposed an indefinite suspension due to the respondent’s mitigating drug addiction, his commitment to sobriety and because “he did not compromise any clients’ interest as a result of his addiction.” *Id.* at ¶ 12-13.

While the respondent in *Garrity* established mitigation based on his drug addiction and commitment to recovery, Britt has proven no such mitigation. On the contrary, the evidence presented by Respondent regarding his depression is legally insufficient to constitute mitigation, as the Board found. Therefore, the Board’s reliance on *Garrity* is misplaced.

The Board also cited *Brown* in support of its recommendation. Board Opinion, ¶ 62. In *Brown*, the respondent committed misconduct similar to Mr. Britt’s. *Brown*, at ¶ 4. However,

Brown took money from only three clients and failed to perform the work. *Id.* at ¶ 9-22.

Additionally, the Board in *Brown* took into account the fact that the respondent had only been in the practice of law for a few years. *Id.* at ¶ 25. Here, Mr. Britt took money and failed to perform work for more than 40 clients. He allowed a non-lawyer to run a significant portion of his practice and provide legal advice to clients. There is an obvious difference in the number of affected clients and violations in this case and those in *Brown*. Mr. Britt has been practicing law for more than ten years. Therefore, the Board's reliance on *Brown* is also misguided.

The Board also cites *O'Neill* for the proposition that the "primary purpose of disciplinary sanction is not to punish the offender, but to protect the public." Board Opinion, ¶ 61. Relator submits that the imposition of a permanent disbarment in this matter is necessary to protect the public. Here, the Board found that Mr. Britt violated at least 11 separate sections of the Rules. Those violations affected over 40 clients. Under such circumstances, only the imposition of a permanent disbarment would adequately protect the public.

In this Court's recent case of *Office of Disciplinary Counsel v. Squire*, 130 Ohio St. 3d 368, 2001-Ohio-5578, the respondent was charged with numerous rule violations for dishonesty, misappropriation, and the mishandling of client funds. Based on the character testimony concerning respondent (including from a federal judge) and his 25 years of practice without prior incident, the Board recommended a two-year suspension with one year stayed. *Id.* at ¶ 62-63. This Court found that while this evidence warranted a departure from the presumptive sanction of disbarment, it did not warrant the leniency the Board gave the respondent. *Id.* at ¶ 62-70. The respondent was indefinitely suspended. *Id.* at ¶ 70.

The evidence Mr. Britt presented did not establish sufficient mitigation to warrant a deviation from the presumptive sanction of disbarment established in the cases cited above. The

Board found mitigation in the fact that Mr. Britt plans to pay \$1,000 a month in restitution to the clients that have not retained Mr. Zingarelli. Board Opinion, ¶ 57. However, Mr. Britt's intent to make restitution should not be afforded the same mitigating weight as if he had made restitution prior to the commencement of these grievance proceedings. Standards for Imposing Lawyer Sanctions, Rule 9.4, ABA (1992) (Forced or compelled restitution is a neutral factor). The Board also cites Mr. Britt's fee agreement with his counsel in this matter, stating that counsel's fee will not be paid until restitution has been made. Board Opinion, ¶ 57. While this speaks well of Mr. Britt's counsel, it should not be considered a mitigating factor.

Even if these factors are given weight as mitigating factors, they do not rise to the level of mitigation that would warrant an indefinite suspension. This Court has deviated from the presumptive sanction only in cases of significant mitigation, such as mental illness or an addiction or in cases where the respondent has had many years of practice without committing such a violation. See *Disciplinary Counsel v. Squire*, 130 Ohio St. 3d 368, 2001-Ohio-5578. In view of the multiple disciplinary violations in addition to the conversion of unearned fees, the mitigation in this case does not rise to such a level, and Mr. Britt should be permanently disbarred.

Ultimately, in deciding an appropriate sanction in this case, the Court must determine if there is sufficient evidence that Mr. Britt, if ever readmitted to the practice, will be able to competently and ethically practice law. In deciding the sanction level, the Court is often persuaded by evidence of an attorney's character and reputation, or, in the case of substance abuse or mental illness, that the attorney has sought treatment. Minimal reputation or character evidence has been presented here. None of the letters Mr. Britt submitted provide any indication that the authors were even aware of his conduct that led to these proceedings. There is no

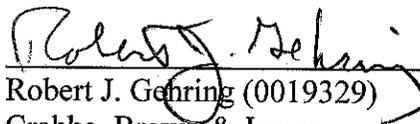
testimony concerning Mr. Britt's community or bar association activities. The evidence shows that Mr. Britt did little to educate himself as to his professional obligations. Thus, there is very little reason to believe that after serving a suspension that Mr. Britt can become a successful practitioner who will not put his clients at risk.

Conclusion

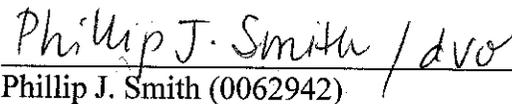
Insofar as Respondent has failed to present mitigation sufficient to rebut the presumptive sanction of disbarment for his multiple ethical violations, this Court should reject the Board's recommendation of an indefinite suspension and instead permanently disbar Respondent.

Respondent should be permanently disbarred.

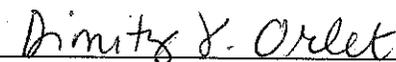
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Relator's Objections Brief was served via regular mail, this 20th day of January, 2012, upon George D. Jonson, Montgomery, Rennie and Jonson LPA, 36 East 7th St., Ste. 2100, Cincinnati, OH 45202, counsel for Respondent.

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APPENDIX A

STANDARDS FOR IMPOSING LAWYER SANCTIONS

AS APPROVED, FEBRUARY 1986

AND AS AMENDED, FEBRUARY 1992

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9.4 Factors which are neither aggravating nor mitigating.

The following factors should not be considered as either aggravating or mitigating:

- (a) forced or compelled restitution;**
- (b) agreeing to the client's demand for certain improper behavior or result;**
- (c) withdrawal of complaint against the lawyer;**
- (d) resignation prior to completion of disciplinary proceedings;**
- (e) complainant's recommendation as to sanction;**
- (f) failure of injured client to complain.**

APPENDIX B

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

In Re:	:	
Complaint against	:	Case No. 10-048
Curtis D. Britt	:	Findings of Fact,
Attorney Reg. No. 0070966	:	Conclusions of Law and
Respondent	:	Recommendation of the
Cincinnati Bar Association	:	Board of Commissioners on
Relator	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
	:	
	:	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶1} This matter was considered by a panel consisting of Patrick Sink, David Tschantz and Walter Reynolds, chair. None of the panel members is from the appellate district where the complaint originated or served on the probable cause panel that certified this matter to the Board.

{¶2} On September 14, 2011, a formal hearing was held in this matter. Relator was represented by Robert J. Gehring and Phillip J. Smith. Respondent was represented by George D. Jonson.

{¶3} On August 29, 2011, the parties filed an agreed stipulation of facts and violations. At the hearing the agreed stipulations were duly identified and admitted into evidence as Joint Exhibit 1. Based on the agreed stipulations and testimony, the facts and violations are not in dispute.

{¶4} Respondent was admitted to the practice of law in Ohio in November 1999.

{¶5} In March 2007, Respondent was also admitted in Kentucky. His Kentucky license was suspended from December 2008 to November 2009 for non-payment of bar dues, but he is now in good standing in Kentucky.

{¶6} At the time Relator filed its initial complaint in this matter in June 2010, Respondent maintained his sole office in Florence, Kentucky. He had previously maintained three additional offices: in the Cincinnati suburb of Blue Ash from July 2008 through July 2009; in the Cincinnati suburb of Kenwood from October 2008 to November 2009; and in Cincinnati from February 2009 through January 2010. The Florence, Kentucky office was open from October 2008 through September 2010. Respondent has now closed all of his offices.

{¶7} From the time Respondent opened his own law office on or about July 2008, on Reed Hartman Highway in Blue Ash, ninety-five percent of his practice related to Ohio bankruptcy matters.

COUNT ONE - SONYA WEAVER

{¶8} Respondent had an agreement with "Total Bankruptcy," a website that provides a referral platform for bankruptcy attorneys, whereby he paid Total Bankruptcy \$65 per client referral.

{¶9} Client leads from Total Bankruptcy made up approximately ninety percent of Respondent's client referral base.

{¶10} The Total Bankruptcy website stated that clients would receive a free evaluation by the local bankruptcy lawyer they were referred to.

{¶11} Sonya Weaver was referred to Respondent after completing an application on the Total Bankruptcy website. She sought legal counsel regarding the feasibility of filing Chapter 7 bankruptcy.

{¶12} At her first appointment, at Respondent's office on February 6, 2009, Weaver met with Kenneth Cooper, a nonlawyer employed by Respondent.

{¶13} At this meeting, Cooper advised Weaver that she would qualify for Chapter 7 despite her interest in three time-share properties. Cooper also advised Weaver to discontinue payment of her credit card bills, to quit her part-time job, and to convert a CD to an IRA.

{¶14} Weaver relied on Cooper's advice, discontinuing payment of her credit card bills and quitting her part-time job.

{¶15} That day, Cooper completed an intake form noting Weaver's interest in the three time shares. (Joint Ex. 1, Ex. A)

{¶16} Weaver signed an agreement calling for payment of a flat fee of \$1,000 to Respondent for handling of the Chapter 7 bankruptcy. The agreement also called for the payment of miscellaneous filing fees. (Joint Ex. 1, Ex. B) Respondent did not review or sign the agreement until sometime in early March 2009.

{¶17} In payment of these fees, Weaver wrote Respondent two checks totaling \$1,424 - a check for \$100 on February 26, 2009 and a check for \$1,324 on February 27, 2009 - both of which she dropped off at Respondent's office.

{¶18} Respondent did not meet with Weaver on either occasion when she dropped off the checks. His office assistant merely provided her with paperwork to complete to further the filing of her bankruptcy.

{¶19} In early March 2009, Weaver returned the completed paperwork, as well as bank records that Cooper had requested, to Respondent's office.

{¶20} Thereafter, at the direction of Respondent's office assistant, Weaver completed an online credit counseling course to satisfy a court mandate for bankruptcy petitioners.

{¶21} In April 2009, Respondent met with Weaver for the first time. At this brief meeting, he informed her that a Chapter 7 bankruptcy might not be a viable option given her ownership interest in the property, including the time-shares. Respondent requested additional information from Weaver so that he could make a final determination.

{¶22} Several days later, Respondent and Weaver met again and she provided him with the documentation he had requested. At this brief meeting, Respondent confirmed that Chapter 7 was not a viable option for her given her interest in property.

{¶23} Weaver expressed dissatisfaction that, due to her reliance on Cooper's flawed advice, she was now two months behind on her credit card payments. Respondent suggested that she contact her creditors to set up payment plans.

{¶24} On April 30, 2009, Weaver sent Respondent a certified letter dismissing him from the case, and requesting return of her file, an itemized statement of the legal services rendered, and the return of any unearned fees. (Joint Ex. 1, Ex. C)

{¶25} In late May 2009, Respondent sent Weaver a check for \$499, which represented \$299 for the filing fee and \$200 in unused legal fees. He failed to include an itemization of the legal services rendered and failed to return her file.

{¶26} Respondent kept no contemporaneous time records in Weaver's case. In responding to inquiries from Relator, Respondent maintained that he was due the \$925 that he retained based on the following: two hours of direct consultation with Weaver (billed at \$225 per hour); one hour of file review and research (billed at \$225 per hour); administrative work performed by his office assistant (billed at a total of \$150); and reimbursement for the \$50 fee for the credit counseling course.

{¶27} Weaver disputes that Respondent spent two hours with her.

{¶28} Weaver has since retained another attorney to assist her in filing bankruptcy.

COUNT TWO - CRAIG SMITH

{¶29} In May 2010, Respondent undertook representation of Craig Smith in a Chapter 7 bankruptcy matter, receiving a \$299 filing fee and \$800 retainer from Smith.

{¶30} Respondent deposited the retainer and filing fees from Smith directed into his office operating account.

{¶31} Thereafter, Respondent failed to communicate with Smith, failed to respond to his inquiries, and failed to file his petition.

{¶32} Respondent's delay in filing the petition was due in part to the fact that he had already spent Smith's filing fee on other matters not related to Smith's case and no longer had sufficient funds to file the petition.

{¶33} Respondent was only able to file Smith's petition when he eventually received a retainer and/or filing fee from a different matter and misapplied those monies to pay Smith's filing fee.

COUNT THREE - NEIL FRAZIER

{¶34} In October 2009, Neil Frazier retained Respondent to represent him in dissolution, paying him an \$800 retainer.

{¶35} Frazier later paid Respondent a \$250 filing fee.

{¶36} Respondent deposited Frazier's retainer and filing fee directly into his operating account.

{¶37} In October 2010, after Respondent's repeated failure to communicate with him and his failure to file the dissolution, Frazier dismissed Respondent.

{¶38} Respondent failed to refund Frazier's retainer or filing fee, as he had expended the funds on other matters.

**COUNT FOUR - RECEIPT AND EXPENDITURE OF CLIENT FEES
AND FAILURE TO MAINTAIN A TRUST ACCOUNT**

{¶39} During Relator's investigation of the Smith grievance, Respondent admitted that, while he had a trust account, he did not use it. Rather, it was his regular practice to deposit all client monies, whether earned or unearned, into his office operating account.

{¶40} At the time of Relator's second deposition of Respondent on September 28, 2010, Respondent also admitted that he had accepted employment from between 24 and 30 additional bankruptcy clients, taking retainers and filing fees from them, but that he had failed to file their petitions and had spent the clients' fees on matters other than their cases.

{¶41} On September 30, 2010, after Respondent's deposition in this matter, Relator requested that he provide names and contact information of the additional clients he identified by October 8, 2010. Respondent did not respond until after he retained counsel and on or about November 4, 2010.

{¶42} After Respondent provided the documents to his counsel and thereby to Relator, Relator learned that Respondent actually accepted over \$40,000 in retainers and filing fees from 42 clients. Those retainers and filing fees were deposited in Respondent's operating account. None of the funds were deposited in a trust account. The spreadsheet attached as Exhibit D to the agreed stipulations summarizes the information from Respondent's client files concerning the clients from whom Respondent received fees that he deposited into his operating account without filing any action on their behalf. The data contained in the columns of the spreadsheet assign an identifying number to the client and accurately summarizes from left to right: (1) the names of the clients; (2) the dates on which each client made payments to Respondent that were deposited

into Respondent's operating account; (3) the amount of such payments; (4) whether Respondent's client file contained written evidence of a fee agreement with the client and, if so, the date of the agreement; and the amount agreed under the fee agreement.

{¶43} Respondent used funds deposited into his operating account from the clients identified on Exhibit D, in part, for his own purposes without regard to whether any such funds had been earned.

{¶44} It was not until after Relator initiated the instant matter that Respondent took steps to alert the clients identified in Exhibit D that he had not filed their petitions because of his conversion of their fees.

{¶45} Although Respondent has made no direct restitution to any of the clients identified in Exhibit D, he has paid \$1,000 per month (\$9,350 as of the September 14, 2011 hearing) to local bankruptcy attorney Nick Zingarelli as part of an arrangement to have Zingarelli complete the work for which some of the clients paid Respondent.

COUNT FOUR - IRS ISSUES

{¶46} Two Internal Revenue Service levies were filed against Respondent in the Bankruptcy Court (Joint Ex. 1, Exhibits E and F) as he had failed to withhold federal taxes or pay unemployment taxes. The levies totaled \$16,672.92. Thus, fees earned by Respondent that were to be paid by the Bankruptcy Trustee were paid to the IRS.

HARM TO CLIENTS

{¶47} Because they were seeking assistance with bankruptcy issues, Respondent's clients had limited resources. By making payments to Respondent that he spent, those funds were not available to make payments to alternative counsel. Because their bankruptcies were not

filed, their effort to seek relief from their indebtedness and creditors was delayed, in some cases indefinitely.

**RESPONDENT'S EFFORTS TO ASSIST CLIENTS
TO FIND OTHER COUNSEL**

{¶48} On December 14, 2010, Respondent and bankruptcy attorney Nick Zingarelli executed a contract in order to assist those clients who had paid Respondent for work that was not completed. For those who wanted to have Zingarelli take over representation, Zingarelli agreed to complete the work for the amount agreed upon between the client and Respondent. Respondent agreed to pay Zingarelli \$1,000 per month for completing the work, and he instructed his bank to deposit the \$1,000 into Zingarelli's account on the first of each month. (Joint Ex. 1, Ex. G). As of September 14, 2011, Respondent had paid Zingarelli \$9,350.

{¶49} After executing the contract with Zingarelli, Respondent sent each of the clients identified in ¶39 of the agreed stipulations a letter. For the Chapter 7 clients, Respondent explained that he had spent the money they paid him before it was earned, and outlined the arrangement with Zingarelli. An example of this letter as appears in Joint Ex. 1, Exhibit I.

{¶50} For the Chapter 13 clients, Respondent explained he was closing his practice and that Zingarelli was willing to substitute as counsel. An example of this letter appears in Joint Ex. 1, Ex. J.

RECENT CLIENT COMPLAINTS TO RELATOR

{¶51} Since the second amended complaint was filed in this matter, Relator has received additional complaints from three of Respondent's clients (Philip Jones, Linda Powell, and Richard Scott Brandenburg) that are consistent with the facts and pattern of conduct to which the parties have stipulated above. (Joint Ex. 1, Ex. K -M)

{¶52} Respondent admits that the facts set forth in Joint Ex. 1, Exhibits K-M are true.

{¶53} Based upon the agreed stipulations and the evidence at the hearing, the panel finds by clear and convincing evidence that Respondent violated the following Rules of Professional Conduct:

- Prof. Cond. R. 1.1, by failing to provide Ms. Weaver with competent representation as a result of his flawed office intake and review process;
- Prof. Cond. R. 1.1, 1.3, and 1.4, by failing to provide diligent, prompt and competent representation to his clients;
- Prof. Cond. R. 1.4, by failing to inform his clients of the status of their cases;
- Prof. Cond. R. 1.5, in that he charged Ms. Weaver an excessive fee;
- Prof. Cond. R. 1.15(a) and (c), through his failure to properly segregate client funds from his own funds in a trust account;
- Prof. Cond. R. 5.3(b) and 5.5(a), by aiding in the unauthorized practice of law through his failure to properly supervise Mr. Cooper;
- Prof. Cond. R. 7.1, by failing to provide Ms. Weaver with the free initial consultation that the Total Bankruptcy website had promised.
- Prof. Cond. R. 8.4(c) and (d), through his conversion of client funds;
- Prof. Cond. R. 8.4(h), by engaging in conduct that adversely reflects on his fitness to practice law.

AGGRAVATION AND MITIGATION

{¶54} In aggravation, the panel finds that the evidence in this case shows a pattern of misconduct, multiple offenses, and harm to vulnerable clients. Respondent took more than \$40,000 from 42 clients and did little or no work for many of these clients who came to Respondent for bankruptcy assistance

{¶55} There is evidence that once Relator commenced its investigation, Respondent did not avail himself of the opportunity to disclose other wrongdoings. Further, although Respondent has retained Zingarelli to take over the representation of some former clients, there

are other clients harmed by Respondent's misconduct to whom Respondent has made no direct restitution. Rather, Respondent has directed payments to his parents in order to repay approximately \$116,000 he borrowed to help keep his office operating.

{¶56} In mitigation, the parties entered into an agreement for Respondent to be evaluated by Dr. Douglas Mossman, M.D. Mr. Mossman concluded that although Respondent suffers from depression, such was not the cause of his misconduct. Moreover, Dr. Mossman opined that Respondent's depression "was not severe enough to substantially impair his ability to practice law." (Respondent's Ex. 2) Thus, the panel will not consider Dr. Mossman's evaluation as evidence of mitigation.

{¶57} Although Relator contends that Respondent showed a lack of remorse from his actions, the panel finds the evidence is otherwise. Respondent testified that he has been employed at Wright Patterson Air Force Base for approximately three months. His net compensation is approximately \$4,000 per month. He testified that he intends to make restitution by paying \$1,000 each month into an account so that payments can be made to the approximately 30 clients who are not represented by Zingarelli. Further, as part of Respondent's engagement of Jonson to represent him in this matter, an agreement was reached that Jonson's fee would not be paid until restitution has been made to all clients.

{¶58} Although Respondent denies that there was a selfish or dishonest motive for his wrongful acts, he did acknowledge that his acts were wrongful.

{¶59} Relator is requesting that Respondent be disbarred. Relator cites *Cincinnati Bar Assn. v. Weaver*, 102 Ohio St.3d 264, 2004-Ohio-2683 for the proposition that the presumptive discipline for the wrongful taking of clients' money without performing work is disbarment.

Relator also directs the panel's attention to *Butler Cty. Bar Assn. v. Cornett*, 109 Ohio St.3d 347, 2006-Ohio-2575 and *Warren Cty. Bar Assn. v. Marshall*, 121 Ohio St.3d 197, 2009-Ohio-501.

{¶60} Respondent is requesting a two-year suspension, with reinstatement conditioned on total restitution. Respondent cited several cases supporting his request for a sanction of a two-year suspension. However, the panel concludes that those cases are not controlling considering the extent and nature of Respondent's misconduct. The panel instead recommends Respondent be suspended indefinitely from the practice of law in Ohio.

{¶61} In recommending that Respondent be indefinitely suspended, we note that the Supreme Court has stated on numerous occasions that "[t]he primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. Thus, even in cases of egregious misconduct and illegal drug use, the Court has decided against permanent disbarment based on the lawyer's probable recovery from the drug addiction that caused the ethical breaches. See, e.g., *Disciplinary Counsel v. Garrity*, 98 Ohio St.3d 317, 2003-Ohio-740.

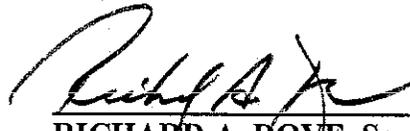
{¶62} In support of the recommendation, the panel considered *Cleveland Metro. Bar Assn. v. Brown*, 130 Ohio St.3d 147, 2011-Ohio-5198 (attorney neglected a client's matter, failed to communicate or respond to clients' requests, failed to properly maintain and deliver client's funds, failed to provide competent representation, and engaged in conduct involving dishonesty, fraud, deceit and misrepresentation). In *Brown*, Relator recommended permanent disbarment. The master commissioner also recommended disbarment. However, the Board disagreed and recommended an indefinite suspension based on the entire record, including the fact that Brown had been in the practice of law for only a few years. The Board further recommended that Brown be required to pay full restitution. The Supreme Court agreed.

{¶63} Accordingly, the panel recommends that Respondent be indefinitely suspended for the practice of law and that he be ordered to pay full restitution to all clients harmed by his misconduct as evidenced by Joint Ex. 1, Ex. D and K-M.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 2, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the panel and recommends that Respondent, Curtis D. Britt, be suspended indefinitely from the practice of law in Ohio and ordered to pay full restitution to his former clients as set forth in ¶63 of this report. 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**