

Before the Supreme Court of Ohio

MICHAEL BRIAN DOCKRY, Esq.
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Youngstown, OH 44515
Atty. Reg. No.: 0002845

Respondent

v.

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

Relator

Case N° 2012-0287

DISCIPLINARY CASE

RESPONDENT MICHAEL B. DOCKRY'S OBJECTIONS TO THE
REPORT AND RECOMMENDATION OF THE BOARD OF COMMIS-
SIONERS ON GRIEVANCES AND DISCIPLINE AND BRIEF IN
SUPPORT

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STATEMENT OF THE CASE

As set forth in the stipulations, record, and report of the Board. Respondent, Michael B. Dockry improperly used his IOLTA account. Though he did not know, or did not realize that he was acting improperly, there is no dispute that he was. He was entirely forthright and cooperative with the disciplinary investigation. He has no prior discipline in nearly thirty years of practicing law. Respondent objects to the report of the Board of Commissioners on Grievances and Discipline solely with respect to the recommended sanction of a one year suspension, with six months of the suspension stayed.

ARGUMENT

Objection No. 1:

The Recommended Discipline of a One Year Suspension with Six Months Stayed, is More than is Necessary to Adequately Protect the Public from Respondent's Misconduct.

In *Disciplinary Counsel v. Vivyan*, 125 Ohio St.3d 12, 2010 Ohio 650, 925 N.E.2d 947, this Court found that a lawyer violated Prof Cond. R. 1.15(a), (b), and (c) by withdrawing unearned funds from his trust account. In that case, this Court imposed a six month suspension, all stayed, on the condition of no future ethical violations. In considering that matter, the Court cited other cases, including *Disciplinary Counsel v. Fletcher*, 122 Ohio St.3d 390, 2009 Ohio 3480, 911 N.E.2d 897, a case in

which the respondent did not have an operating account for a five year period, and where he paid his personal and business expenses from his IOLTA account. He wrote at least 150 checks during a two year period. He received a six month stayed suspension.

The Court in *Vivyan* also referred to the Board's citation to *Disciplinary Counsel v. Johnston*, 121 Ohio St.3d 403, 2009 Ohio 1432, 904 N.E.2d 892. In that case, the lawyer received a one year suspension, with all of it stayed. He had used his IOLTA account for operating and personal expenses for two years, commingling his own funds with those of his clients. The Court also noted that the Board had cited three other cases, *Cuyahoga County Bar Association v. Nance*, 119 Ohio St.3d 55, 2008 Ohio 3333, 891 N.E.2d 746 (a six month suspension with conditions upon findings of conduct adversely reflecting on fitness to practice law and requiring client funds to be maintained in a separate account); *Columbus Bar Association v. Peden*, 118 Ohio St.3d 244, 2008 Ohio 2237, 887 N.E.2d 1183 (six month suspension, all stayed, where respondent maintained no IOLTA account and also failed to cooperate); and, *Disciplinary Counsel v. Newcomer*, 119 Ohio St.3d 351, 2008 Ohio 4492, 894 N.E.2d 50 (six month stayed suspension when lawyer used his IOLTA account for personal expenses after his personal account was closed by his bank).

In the *Vivyan* case, the lawyer had practiced law for nearly 40 years without incident, was of good character and reputation apart from the underlying conduct, and was cooperative and honest during the disciplinary process. The Board in *Vivyan* also found that the respondent had made timely and good faith restitution and had replenished his IOLTA account upon notice that it was overdrawn. The Board found that the lawyer may not have specifically intended to misuse his client trust account, but the Court concluded that the lawyer knew that he had withdrawn client funds to which he was not entitled, and thus misused the account. This is very much like what occurred here, where Dockry misused the account more out of ignorance of its operation than out of deceit or dishonesty. This Court proceeded to issue what it called its “standard disposition” by suspending the respondent from the practice of law for six months stayed on the condition of no further misconduct. One justice, Justice O’Donnell, dissented, and would have publicly reprimanded the lawyer.

There are many similarities here. Respondent has practiced law for considerable period of time without prior discipline. The evidence demonstrates that he is of good character save and except for the conduct here. He is genuinely remorseful. No client has lost any funds. Respondent is now operating his IOLTA account properly. He is open to, and indeed would

welcome, the recommended monitoring to make certain that he does not operate his account improperly in the future. He most assuredly does not want to undergo this process again.

This Court has said over and over again that “the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. *See, Disciplinary Counsel v. Fumich*, 116 Ohio St.3d 257, 2007 Ohio 6040, 878 N.E.2d 6, ¶17, citing and quoting *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204, 2004 Ohio 4704, 815 N.E.2d 286, ¶53. Here, fortunately, the public was not harmed, and it will not be harmed in the future if Respondent is permitted to continue to practice upon a suspension that is entirely stayed with conditions; *i.e.*, without an actual suspension. Indeed, Respondent’s learning experience and the condition of a monitor will assure protection of the public. An actual suspension is *not* required to protect the public.

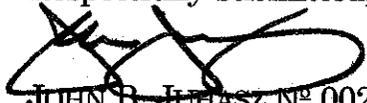
With due respect, it is easy to add to a complaint, and perhaps even easy to find at a hearing, that a violation of more specific disciplinary rules also reflects adversely upon a lawyers’s fitness to practice law or amounts to dishonest conduct by the lawyer for not following the established rules. Of course, it is virtually a given that *any* violation of *specific* provisions of the disciplinary code can also be bootstrapped into a finding of a violation of more general provisions such as those relating to dishonesty or fitness

to practice law. Respondent's conduct, fueled by ignorance, was not "a course of conduct that was replete with dishonest, deceptive, and disrespectful acts." *Compare, Disciplinary Counsel v. Stafford*, __ Ohio St.3d __, 2012 Ohio 909, 2012 Ohio LEXIS 660, at ¶68. Respondent's conduct, like any other conduct which violates a *specific* disciplinary rule, does not amount to and does not justify a finding by clear and convincing evidence that there was conduct involving dishonesty, fraud, deceit, or misrepresentation; or conduct that adversely reflects on the lawyer's fitness to practice law. Arguably, *any* violation of the disciplinary rules violates these provisions. We have a rule that specific statutes prevail over general ones for a reason. The cases cited above demonstrate that when the findings of violations are tailored to case-specific rules that apply, then the imposition of a six month suspension, all stayed upon conditions, is certainly sufficient to protect the public and to insure that the Respondent commits no future disciplinary violations.

CONCLUSION

For the reasons stated, the Respondent prays for an order modifying the recommendation of the Board of Commissioners on Grievances and Discipline to a six month suspension, all stayed on conditions as specified by the Board.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was [] sent by regular United States Mail, postage prepaid; [] hand delivered to counsel or counsel's office; [] sent by telecopier this 27th day of March, 2012 to Mr. Philip King, Esq., 250 Civil Center Drive, Suite 325, Columbus, Ohio 43215; Mr. Richard A. Dove, Esq., Secretary, Board of Commissioners on Grievances and Discipline, Supreme Court of Ohio 65 South Front Street, Fifth Floor, Columbus, Ohio 43215-3431.



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