

ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	CASE NO. 2012-0681
	:	
Relator,	:	
	:	
vs.	:	
	:	
Steve J. Edwards, Esq.	:	
	:	
Respondent.	:	

RELATOR’S OBJECTIONS TO THE BOARD OF COMMISSIONERS’ REPORT AND RECOMMENDATION

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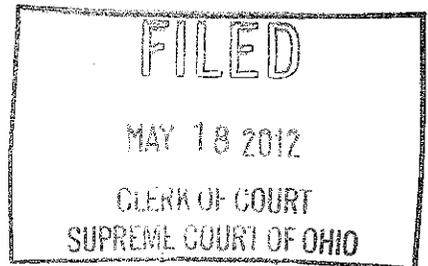


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FACTS

For nearly one and a half years, from May 28, 2009 until October 15, 2010 respondent misappropriated client funds from his IOLTA for his personal use. These funds were withdrawn from the IOLTA as follows:

- a. May 28, 2009- \$10,000
- b. November 13, 2009- \$12,000
- c. December 5, 2009- \$5,000
- d. May 12, 2010- \$15,000
- e. August 10, 2010- \$10,000
- f. August 13, 2010- \$7,500
- g. September 16, 2010- \$5,000
- h. September 24, 2010- \$2,500
- i. October 12, 2010- \$2,500
- j. October 15, 2010- \$2,500 (Report at 3)

The matter came to relator's attention because of an overdraft in the IOLTA. The check respondent wrote on October 15, 2010 in the amount of \$2,500 was returned for insufficient funds causing respondent's IOLTA to be overdrawn in the amount of \$892.34. The overdraft occurred because respondent wrote the check without reviewing the balance in the IOLTA. In his response to relator's November 3, 2010 letter of inquiry regarding the overdraft, respondent admitted that he had been writing IOLTA checks to himself, depositing the funds into his operating account, and then using the funds to pay personal and business expenses. The funds that were misappropriated constituted funds of clients held in the IOLTA to pay subrogation claims from clients' personal injury cases. (Trans. pp. 19-20)

During the disciplinary hearing, respondent testified that the majority of the disbursed funds, \$53,900, were “loans” he gave to his wife to financially support her private investigation business and other expenses. Respondent and his wife were separated at that time and had been so since 2005. Respondent testified that he “felt that if [he] loaned her money, it would show her that [he] was able to provide for his family and it would be a reason for the marriage to continue.” (Tr. p. 21). Respondent’s wife never repaid the “loans”, and at the time of the hearing, respondent was negotiating a dissolution of his marriage. (Trans. pp. 20-21)

During the time respondent misappropriated the funds, he timely paid the clients’ subrogation claims, and thus there were no allegations that he delayed making payments or that he failed to negotiate with the clients’ medical providers in good faith. (Trans. pp. 24-25)

Respondent fully repaid the funds he misappropriated through monies he earned through his legal practice and from a loan from his parents. The funds were paid back in three installments:

- a. December 2009- \$17,000
- b. November 2010- \$15,000
- c. December 2010- \$37,500 (Report at 4)

OBJECTIONS

THE MISAPPROPRIATION OF FUNDS FROM AN IOLTA IS DISHONEST CONDUCT WHICH REQUIRES AN ACTUAL SUSPENSION FROM THE PRACTICE OF LAW

Respondent misappropriated \$69,500 from his IOLTA over a period of nearly one and a half years. Respondent admitted under oath that he knew at the time that his actions were wrong and that he misappropriated others' funds. (Trans. pp. 21-22)

This Court has long held that the starting point for determining an appropriate sanction for misappropriation is disbarment. *Cuyahoga County Bar Assn. vs. Churilla*, 78 Ohio St.3d. 348, 1997-Ohio-580. The Court also noted:

Respect for our profession is diminished with every deceitful act of a lawyer. We cannot expect citizens to trust that lawyers are honest if we have not yet sanctioned those who are not. *Disciplinary Counsel vs. Fowerbaugh*, 74 Ohio St.3d. 187, 1995-Ohio-261.

Respondent knew the funds he took from the IOLTA did not belong to him. He took these funds because in his mind he needed the money. The taking of funds which belong to another cannot logically be considered anything but theft and dishonesty. Respondent's actions thus clearly violate Prof. Cond. R. 8.4(c). To suggest otherwise, as the board did, would be to minimize a misappropriation simply because a respondent admits his misconduct and cooperates in a disciplinary investigation.

Relator acknowledges that mitigating factors exist in this case. Respondent reported his misappropriation in response to a relator's November 3, 2010 letter of inquiry regarding an overdraft in the IOLTA. Respondent took responsibility for his misconduct and made full

restitution (although \$52,500 was repaid after relator sent its letter of inquiry, Trans. pp. 22-23). While respondent negotiated his clients' subrogation claims and paid them in a timely fashion, the fact remains that these funds were not respondent's to use, regardless of his reasons. It makes no difference whether respondent felt he needed to loan money to his wife to save their marriage, or whether he needed additional monies to pay his bills- respondent had a fiduciary obligation to his clients and an ethical obligation to his profession, both of which he breached.

Respondent argued that because he "self-reported" his misconduct to relator, this and other mitigation justify a fully-stayed suspension. This argument ignores the fact that relator considered these mitigating factors when it made its recommendation of one year suspension with six months stayed.

Contrary to the panel's opinion, respondent's actions were not an isolated incident. Respondent wrote ten checks to himself over a period of nearly one and a half years. The matter was not brought to relator's attention until the last check bounced because respondent failed to check the balance in his IOLTA. The panel found that respondent's behavior was "disturbing." It was more than that- it was a theft that cannot and should not be sanctioned by this court with a fully stayed suspension even with the mitigating factors present.

The panel seemed to imply that respondent's motive in this case, an attempt to placate his wife, should not weigh against him. However, this Court has concluded that although a respondent's motives may even be characterized as altruistic, if he places his own interests above his client's, he is not insulated from any consequences of misconduct. *Disciplinary Counsel vs. King*, 103 Ohio St.3d. 438, 2004-Ohio-5470 ¶28.

This Court has often held that a six-month actual suspension is appropriate in misappropriation cases. In *Disciplinary Counsel vs. Riek*, 125 Ohio St.3d. 46, 2010-Ohio-1556,

the Court ordered that the respondent receive an 18-month suspension with 12 months stayed after the respondent paid personal expenses directly from his IOLTA for nearly a year.

Relator cited to the cases of *Disciplinary Counsel vs. Bubna*, 116 Ohio St.3d. 294, 2007-Ohio-6436, and *Dayton Bar Assn. vs. Gerren*, 103 Ohio St.3d. 21, 2004-Ohio-4110 in support of its recommendation. The panel determined that these cases were distinguishable because the conduct was more egregious than is found here. Relator disagrees.

In *Bubna*, the relator received a one-year suspension with six months stayed for comingling client and personal funds, overdrawing his IOLTA, and failing to pay medical expenses from a settlement for a client. In distinguishing *Bubna* from this case, the panel found the respondent here not only expressed remorse, but ultimately did not harm his clients. As this Court has previously held, "It is of the utmost importance that attorneys maintain their personal and office accounts separate from their client accounts and that any violation of that rule warrants a substantial sanction whether or not the client has been harmed." *Disciplinary Counsel vs. Riek*, supra, at ¶10.

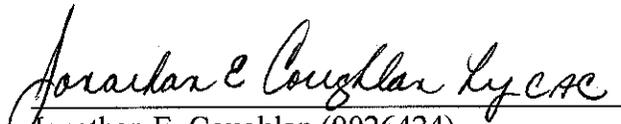
In *Dayton Bar Assn. vs. Gerren*, the respondent maintained slightly over \$12,000 in his IOLTA in order to attempt to negotiate a settlement with a personal injury client's medical provider. Respondent then made a series of disbursements from his trust account and used the funds to pay his personal expenses, all the while realizing the impropriety of his actions. Ultimately, the respondent ended up paying the majority of the medical providers fees himself, and the client did not complain of any financial harm resulting from respondent's misconduct. The Court noted "misappropriation of a client's money cannot be tolerated, and it is immaterial whether the amount at stake is large or small, to be paid to the client, or applied to pay a client's debt." *Id.* at ¶14.

Here we have a situation in which the respondent helped himself to client funds for nearly one and a half years, and did not repay the majority of the monies until relator was made aware of the situation. To paraphrase the Court's discussion in *King*, supra, "dishonesty is dishonesty."

CONCLUSION

Theft of funds from an IOLTA is a violation of Prof. Cond. R. 8.4(c) and mandates an actual suspension from the practice of law- in this case a one year suspension with six months stayed. Relator thus requests this Court to so hold.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Objections to the Board of Commissioners' Report and Recommendation was served upon: William Mann, counsel for respondent, Mitchell, Pencheff, Fraley, Catalano & Boda, 580 South High Street, Suite 200, Columbus, Ohio, 43215, and upon Richard Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5th Floor, Columbus, Ohio, 43215, this 18th day of May, 2012.



Carol A. Costa (0046556)
Counsel for Relator

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

In Re:	:	
Complaint against	:	Case No. 11-053
Steve J. Edwards Attorney Reg. No. 0000398	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

OVERVIEW

{¶1} This matter was heard on November 4, 2011, in Columbus, Ohio before a panel consisting Judge Lee H. Hildebrandt, Jr., Patrick L. Sink, and Sanford E. Watson, chair. None of the panel members reside in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1). Respondent, Steve J. Edwards, was present at the hearing and was represented by William Mann. Carol Costa represented Relator.

{¶2} The primary misconduct in this proceeding consisted of Respondent's overdraft and misappropriation of funds from his IOLTA. Over a two and a half year period, Respondent wrote ten checks for personal use from his IOLTA for a total of \$69,500 and the last of those checks caused on overdraft of the account. When he was contacted regarding the overdraft, he admitted to the misappropriation as well and fully cooperated in the disciplinary proceedings.

{¶3} Following a hearing, and based on multiple mitigating factors, the panel recommends a sanction consisting of a one-year suspension all stayed and conditions, as set forth at the end of this report.

PROCEDURAL STATUS

{¶4} The formal complaint was filed June 13, 2011 by the office of Disciplinary Counsel. The one count complaint alleges violations of Prof. Cond. R. 1.15(a) [a lawyer shall hold property of clients separate from the lawyer's own property]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶5} On October 27, 2011, the parties entered into stipulations of fact and stipulated violations of Prof. Cond. R. 1.15(a) and Prof. Cond. R. 8.4(h). Relator withdrew the alleged violation of Prof. Cond. R. 8.4(d), but maintains that Respondent also violated Prof. Cond. R. 8.4(c). The panel accepted the stipulations of fact and stipulated violations, including the dismissal of the alleged violation of Prof. Cond. R. 8.4(d), and conducted a hearing to consider the additional violation, aggravating and mitigating factors, and the appropriate sanction. The parties' factual stipulations are set forth below, interspersed with the testimony and evidence from the hearing that provide further context for the panel's recommendation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent, Steve J. Edwards, graduated from the Ohio State University Law School in June 1979 and was admitted to the practice of law later that year. Respondent is a sole practitioner and his practice consists primarily of environmental groundwater litigation and personal injury work.

{¶7} Respondent maintained an IOLTA and held in it funds from the proceeds of personal injury settlements. Respondent's clients had received disbursements from the settlements and the remaining client funds were held to cover subrogated interest in the personal injury cases. The funds were held while Respondent attempted to negotiate reductions in the subrogation amounts that were claimed by subrogated interests.

{¶8} Between May 28, 2009 and October 15, 2010, Respondent wrote ten checks to himself from his IOLTA for a total of \$69,500 as follows:

- a. 5/28/09 - \$10,000 – check number 1135;
- b. 11/13/09 - \$12,000 – check number 1161;
- c. 12/5/09 - \$5,000 – check number 1163;
- d. 5/12/10 - \$15,000 – check number 1191;
- e. 8/10/10 - \$10,000 – check number 1205;
- f. 8/13/10 - \$7,500 – check number 1206;
- g. 9/16/10 - \$5,000 – check number 1217;
- h. 9/24/10 - \$2,500 – check number 1218;
- i. 10/12/10 - \$2,500 – check number 1222;
- j. 10/15/10 - \$2,500 – check number 1223.

{¶9} The last of those checks caused his IOLTA to be overdrawn by \$832.34. In response to a letter of inquiry from Relator regarding the overdraft, Respondent not only admitted to the overdraft but reported his misappropriation of funds. Since reporting his misconduct, Respondent has fully cooperated with the investigation. Respondent acknowledged the wrongful nature of his conduct and accepts full responsibility for his misconduct.

{¶10} During the hearing, Respondent testified that most of the funds, \$53,900, were loaned to his wife to financially support her private investigation business. Respondent and his wife were separated in 2005. Four years later, Respondent began loaning her money. The checks Respondent wrote from his IOLTA were deposited into his operating account and from there he wrote checks to his wife. Respondent “felt that if [he] loaned her money, it would show her that [he] was able to provide for [his] family, and [he] would – it would be a reason for the marriage to continue.” Hearing Tr. 21. His wife never repaid the loan and at the time of hearing, he was negotiating dissolution of the marriage. Nonetheless, Respondent does not blame his wife and fully acknowledges the wrongfulness of his actions.

{¶11} Respondent further testified that during the year and half period that he was removing funds from his IOLTA, he also paid subrogated interests as they became due. There were no allegations that he delayed paying any subrogated interests or failed to negotiate in good faith.

{¶12} Respondent fully repaid the funds from monies he legitimately earned from his legal practice and from a loan from his parents. Respondent fully repaid the \$69,500 in three installments as follows:

- a. December 2009 -- \$17,000
 - b. November 2010 -- \$15,000
 - c. December 2010 -- \$37,500
- Total: \$69,500

{¶13} Respondent has sought the assistance of the Ohio Lawyers Assistance Program (OLAP) and entered into a two year mental health contract on November 22, 2010. Respondent has engaged in individual counseling with Judith E. Fisher, MSW, LISW, since December 1,

2010. Respondent also retained attorney Richard F. Swope of Swope and Swope to provide guidance, counseling, and lawyer-to-lawyer mentoring. Finally, he offered character letters from his former pastor, a colleague, two of his employees, four clients, and his psychotherapist. Respondent has no prior disciplinary record.

{¶14} Based upon the stipulations and evidence adduced during the hearing, the panel finds clear and convincing evidence that Respondent violated Prof. Cond. R. 1.15(a) and Prof. Cond. R. 8.4(h) and dismisses the alleged violation of Prof. Cond. R. 8.4(d). The one violation in dispute is whether Respondent's conduct rose to the level of conduct involving dishonesty, fraud, deceit, or misrepresentation under Prof. Cond. R. 8.4(c). Although Respondent admitted to withdrawing funds from his IOLTA for personal use, the panel finds that these actions did not, in and of themselves, establish by clear and convincing evidence a violation of Prof. Cond. R. 8.4(c).

AGGRAVATING AND MITIGATING FACTORS

{¶15} Respondent's writing of multiple checks over a two and a half year period is a clear aggravating factor. He wrote ten checks misappropriating funds and did not stop writing checks until there was an overdraft. While this behavior could be viewed as multiple offenses, the record suggests it was all part of one singularly motivated pattern of behavior—to curry favor and support his wife's business. What is disturbing about this behavior is that he was not checking the bank balance and did not realize the problem until he had misappropriated a substantial amount of money—more than his ability to pay back.

{¶16} Although the behavior that forms the basis of the violations is disturbing, there are many mitigating factors to consider: (1) Respondent acknowledged his misconduct and during the hearing was credible in his contrition for his wrongdoing; (2) he takes full responsibility for misconduct and does not place the blame on any else; (3) he has fully cooperated with the

investigation; (4) he has made full restitution to restore the IOLTA; (5) there was no harm to his clients or to the public; (6) he entered into a two-year mental health contract with OLAP; (7) he entered into individual counseling with a psychotherapist; (8) he retained an experience attorney to provide guidance, counseling, and mentoring; (9) he has no prior disciplinary history; and (10) he provided the panel with multiple letters of reference that would suggest, but for this one series of events, he is a person of good character and well respected in the legal community.

RECOMMENDED SANCTION

{¶17} In considering the appropriate sanction, the panel weighed Relator's recommendation of a one-year suspension, with six months stayed against Respondents argument that, given the mitigating factors, an actual suspension was not warranted.

{¶18} Relator offered two cases in support of an actual suspension, *Disciplinary Counsel v. Bubna*, 116 Ohio St.3d 294, 2007-Ohio-6436, and *Dayton Bar Assn. v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110.

{¶19} In *Bubna*, an attorney received a one-year suspension, with six months stayed for commingling client and personal funds, repeatedly overdrew his trust account, and failed to pay medical expenses from a client's settlement, resulting in collection efforts against the client. The facts in *Bubna* are clearly distinguishable. Not only did the respondent's behavior cause actual harm to his client in that his failure to pay medical expenses adversely affected his client's credit, but the Court found that the respondent showed "little regard for the problems he caused." *Bubna*, ¶21. In this matter, Respondent not only expressed remorse for his actions but ultimately did not harm his clients.

{¶20} *Gerren*, for similar reasons, is also factually distinguishable. In *Gerren*, an attorney received a six-month suspension for misappropriating client funds from his trust account to pay personal expenses. As a direct result of the misappropriation and the respondent's failure

to settle subrogation interests with his client's medical providers, a judgment was entered against his client and not been satisfied at the time of hearing. *Gerren*, ¶15. In this matter, Respondent did not fail to settle subrogation claims nor was a judgment entered against any of his clients as a result of his violations.

{¶21} Although the misappropriation of funds often warrants an actual suspension from the practice of law, those cases generally involve other aggravating factors, such as the lack of remorse or actual harm to the client as we find in *Bubna* and *Gerren*.

{¶22} Here, Respondent's misappropriation is more in line with those cases where there is an absence of improper motive or deceit. See, e.g., *Disciplinary Counsel v. Doellman*, 127 Ohio St.3d 411, 2010-Ohio-5990, ¶54 (one-year suspension, all stayed on conditions). In *Doellman*, ¶55-57, the Court recognized that the respondent committed multiple violations, engaged in a pattern of misconduct, and acted with a selfish motive, but held that these aggravating factors were outweighed by the mitigating factors. The same is true for Steve J. Edwards who took every step he could to mitigate his wrongdoing.

RECOMMENDATION

{¶23} For the foregoing reasons, the panel recommends that Respondent be suspended for one year, with the suspension stayed in its entirety. The panel also recommends that the stayed suspension be conditioned upon Respondent's compliance with the following terms during the period of the stayed suspension: (1) he must not commit any further misconduct; (2) he must continue and comply with his OLAP contract; and (3) he must continue individual counseling with a mental-health professional.

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 April 13, 2012. The Board amended the panel's Findings of Fact and Conclusions of Law to find, by clear and convincing evidence, a violation of Prof. Cond. R. 8.4(c) based on ¶8 of the parties' stipulations filed on October 27, 2011 and Respondent's admissions at the November 4, 2011 hearing. Hearing Tr. 20-22, 34-35. The Board further amended the sanction recommended by the panel and recommends that Respondent, Steve J. Edwards, be suspended from the practice of law for two years, with the entire suspension stayed upon the conditions contained in ¶23 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**