

ORIGINAL

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

12-0999

In Re:	:	
Complaint against	:	Case No. 10-060
Stanlee Earl Culbreath Attorney Reg. No. 0033211	:	Findings of Fact, Conclusions of Law and Recommendation of the
Respondent	:	Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Columbus Bar Association		
Relator		

FILED  
JUN 12 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO  
OVERVIEW

{¶1} This matter was heard on May 9, 2011 and January 30, 2012, in Columbus, before a panel consisting of members Walter Reynolds, Bernard Bauer, and Judge Beth Whitmore, chair. None of the panel members resides in the appellate district where this matter arose or was a member of the probable cause panel in this case. Relator was represented by Terry Sherman, James Tyack, Alysha Clous, and Bruce Campbell. Alvin Mathews, Jr. appeared on behalf of Respondent who was present at the hearing.

PROCEDURAL HISTORY

{¶2} On August 16, 2010, Relator filed a complaint for disciplinary action against Respondent. After uncovering additional allegations of misconduct after the filing of the original complaint, Relator was permitted to file an amended complaint. The amended complaint, filed October 1, 2010 contained three counts. The first count alleged that Respondent neglected to

properly document a settlement and distribute the funds from the settlement. The second count alleged that Respondent failed to properly maintain his IOLTA and manage his funds. The third count alleged that Respondent failed to fully cooperate in this grievance matter by not making himself available for a deposition and by not producing various requested documents in a timely manner. The amended complaint charged Respondent with violations of the following: Prof. Cond. R. 1.15; Prof. Cond. R. 4.1; Prof. Cond. R. 5.3; Prof. Cond. R. 8.1; and Prof. Cond. R. 8.4.

{¶3} On October 19, 2010, Respondent filed an answer to the amended complaint. The parties later filed stipulations on May 9, 2011 and January 24, 2012. Respondent stipulated that he failed to timely pay one of his client's medical bills after receiving a settlement, commingled personal funds with his IOLTA account funds, failed to maintain adequate financial records, including ledgers, and delayed scheduling his deposition and producing certain requested documents.

### **FINDINGS OF FACT**

{¶4} Respondent was admitted to the bar in 1975. After a brief period as a public defender, Respondent entered private practice and worked with several firms over the years. Respondent eventually began his own practice along with his friend, Paul Brown. Respondent focused his practice on criminal matters and personal injury work while relying heavily on Brown, his brother, and his office staff to help with the office accounting.

{¶5} Respondent did not have any disciplinary history until 1998, when the Columbus Bar Association pursued a grievance against him for his involvement in a 1989 felony criminal case. *See Columbus Bar Assn. v. Culbreath*, 88 Ohio St.3d 271, 2000-Ohio-336. While representing an individual named Danny Bryant, Respondent permitted another individual,

Michael Samuels, to give an opening statement to the jury and examine witnesses during the trial. *Id.* at 272. Respondent also referred to Samuels as “my partner” in his closing argument. *Id.* Samuels, however, was not permitted to practice law as he was neither a licensed attorney nor a certified legal intern. *Id.* The Unauthorized Practice of Law Committee (“UPL”) later investigated Samuels for other matters, and Respondent represented him in those proceedings. Respondent advised Samuels to enter into a consent agreement to resolve the UPL investigation. The agreement contained an averment that Samuels had fully disclosed any prior activities that might have constituted the unauthorized practice of law, but Samuels did not disclose his involvement in Bryant’s case. Further, Respondent, as Samuels’ counsel, did not disclose the incident. *Id.* The Supreme Court ultimately suspended Respondent for six months after finding that he had violated several disciplinary rules, but stayed the entire suspension due to the mitigation evidence presented. *Id.* at 272-273.

{¶6} Respondent’s grievances in this case arose after he failed to fully settle with the medical provider of one of his personal injury clients. Respondent inherited the client, Kossar Hassan, from his partner, Paul Brown, after Brown unexpectedly died in 2007. The investigation stemming from the grievance filed by the medical provider’s billing service uncovered numerous other problems. Specifically, Respondent could not properly account for the funds in his IOLTA account as he routinely commingled other funds with the funds in the IOLTA account, allowed his earned fees to remain in the account after a settlement, paid personal expenses from the account, failed to maintain ledgers, complete settlement statements, or distributions sheets for his clients, and neglected to maintain a monthly reconciliation for the funds in the IOLTA account. Respondent’s incomplete record-keeping also hampered Relator’s investigation, as he was either

unwilling or unable to produce all the items Relator requested. Respondent stipulated that he failed to promptly pay Hassan's medical bill, misused his IOLTA account, and did not immediately locate and turn over all the documents Relator requested. Stipulations ¶¶8, 9, 11.

¶7 At the hearing, Respondent testified that he experienced organizational problems after a series of misfortunes occurred, one of which was Brown's death. Specifically, his younger brother, his daughter's fiancée, and his brother-in-law also died, his son was incarcerated, and his wife developed a drinking problem. Respondent's misuse of his IOLTA account predated those misfortunes, however, and he admitted at the hearing that he "blatantly disregarded the Professional Rules of Conduct" by commingling other funds with the funds in his trust account. Hearing Transcript at 434. Respondent also admitted that he routinely wrote checks from his IOLTA account to pay operating expenses, personal expenses, and other items, including his mother's bills. Hearing Transcript at 143-144, 146. Respondent did not document the funds in his IOLTA account or regularly balance the account, but instead, relied upon "common sense" to operate the account by trying not issue checks for his expenses in excess of the contingency fee he knew he had earned on any given settlement. Respondent Deposition at 43; Hearing Transcript at 472.

#### **Count 1—Kossar Hassan**

¶8 Respondent assumed responsibility of Hassan's personal injury case after his partner, Brown, died in 2007. Stipulation ¶1; Hearing Transcript at 235. Respondent settled the case on or about March 10, 2008 for \$5,000. Stipulation ¶2; Hearing Transcript at 237, 412. Although Respondent indicated that Hassan received her portion of the settlement, Respondent failed to pay Hassan's medical service provider in a timely manner. Stipulation ¶8; Hearing

Transcript at 242.

{¶9} Gisela Salinas testified on behalf of Health 1 Medical, an independent firm that performed billing services for Hassan's medical service provider. Salinas testified that medical service providers generally receive payment within thirty days of a personal injury case settlement and that, as of June or July 2009, Hassan's provider had yet to receive payment. Hearing Transcript at 58. Salinas contacted Hassan directly and only then learned that Hassan's case had settled in March 2008. Hearing Transcript at 58. She also learned from Hassan that even though her case had settled for \$5,000, Hassan had received a check for \$700. Joint Exhibit A6. Salinas then attempted to contact Respondent multiple times, each time leaving a message with an unidentified individual at his office Hearing Transcript at 60. Respondent finally contacted Salinas after she left a message threatening to file a grievance against him if the company did not receive a payment. Hearing Transcript at 62.

{¶10} The hearing testimony of Salinas and Respondent differed greatly with regard to the details of their conversation. According to Salinas, Respondent refused to believe that Salinas had spoken with Hassan, as he insisted that Hassan was out of the country. Hearing Transcript at 62. Respondent also told her that Hassan's case only settled for \$1,800 and that he would send a payment for her medical bills from his trust account. Hearing Transcript at 62-63. Salinas testified that she specifically asked Respondent to provide a disbursement sheet along with the payment when he sent it, but that when Respondent sent the payment one to two weeks later, he failed to include the disbursement sheet. Hearing Transcript at 65. Salinas stated that, during the course of their conversation, Respondent was clear that they were talking about Hassan and mentioned her name several times. Hearing Transcript at 64. Salinas further

testified that she spoke with Respondent once more, after Salinas filed the grievance against him. Salinas explained to Respondent that she filed the grievance because he did not give her the proof of the disbursement that she requested. Hearing Transcript at 66-67. Salinas testified that Respondent said he could not give her a copy of the disbursement sheet because he could not locate the file. Hearing Transcript at 67.

{¶11} According to Respondent, his conversation with Salinas amounted to a misunderstanding based on his mistake that the two were discussing the case of Hassan's cousin, Roda Mohammed. Hearing Transcript at 145. Both Hassan and Mohammed had personal injury cases that settled within weeks of each other, and Mohammed's case was the one to settle for \$1,800. Hearing Transcript at 145, 236-237. Further, Respondent testified that Mohammed was the one who was out of the country and had received \$700 from her settlement, not Hassan. Hearing Transcript at 241. But, the alleged mix-up between Hassan and Mohammed was only one version of the events that Respondent supplied Relator. In his deposition, Respondent quibbled over whether or not he had even spoke with anyone about Hassan's medical bills. Respondent Deposition at 84-87. Respondent did not mention Mohammed at all during his deposition and denied that he ever told anyone Hassan's case had settled for \$1,800. Respondent Deposition, p. 87. Respondent insisted that information must have come from his office manager. Respondent Deposition, pp. 88-89. The foregoing illustrates Respondent's propensity to blame his office staff and others for his own errors and omissions.

{¶12} Moreover, by the time of the May disciplinary hearing, Respondent remembered having spoken with someone at Health 1 Medical. Hearing Transcript at 237-238. Instead of attributing any confusion to his office staff, he testified that his own clients were the source of

any confusion. Respondent testified that he thought a mix-up between Hassan and her cousin, Mohammed, occurred because Hassan did not speak English very well and she provided Health 1 Medical with information about her cousin's case instead of her own. Hearing Transcript at 238. The panel finds such testimony to be speculative and totally unsupported by the record. Respondent stated that he did not know why Hassan and Health 1 Medical thought Hassan received a check for \$700, but rationalized the figure by suggesting that both Hassan and Salinas were discussing Mohammed's case without realizing it. Hearing Transcript at 238, 241. Respondent testified that he never intended to mislead anyone and that Salinas and Hassan simply must have confused the two cases. Hearing Transcript at 240-241. The foregoing testimony highlights Respondent's chronic inability to remember and chronic resort to complete fabrications.

{¶13} Respondent was unable to produce a disbursement sheet evidencing Mohammed's settlement. Hearing Transcript at 428. Additionally, he was unable to produce a signed disbursement sheet for Hassan's settlement. Hearing Transcript at 56-60. Respondent testified that there were two distribution sheets related to Hassan's case and the one that she had signed was missing. Hearing Transcript at 155. The only disbursement sheet he produced was unsigned and reflected three different "funds to be paid out." Joint Exhibit 5Ad. The first was for a payment to Hassan in March 2009 of \$700, the exact amount that Salinas testified to having discussed with Hassan on the phone when she later spoke to her in June or July. The two other payments (one for \$700 and the other for \$967) were to Hassan's medical services provider in July 2009. Joint Exhibit A5d. Although he was unable to produce a second distribution sheet, Respondent also produced a check for \$1,700 written to Hassan on March 14, 2008. Joint

Exhibit A5e. At one point in the hearing, Respondent testified that he thought there were two distribution sheets for Hassan because his office created another distribution sheet after misplacing her file. Hearing Transcript at 420-421. In another illustration of his propensity to blame others, Respondent then claimed that there was confusion in his office as to what amount Hassan's case even settled for and that his secretary completed the distribution sheet admitted as Joint Exhibit A5d without his knowledge when he was out of town. Hearing Transcript at 421-422. Finally, Respondent admitted that he did not know why there were two distribution sheets for Hassan. Hearing Transcript at 424.

{¶14} There was also uncertainty as to whether Respondent even settled Hassan's case with her approval. The \$5,000 settlement check for Hassan's case, admitted as Joint Exhibit A5b, contained Respondent's signature beneath the writing "Kossar Hassan per request." Respondent testified that he was unsure why the endorsement said "per request," but agreed that someone in his office might have signed the check for Hassan. Hearing Transcript at 414-415. Respondent also agreed that the writing looked like his own and that the "signature" of Kossar Hassan on the check did not look the same as the other signature of Hassan that appeared on the endorsement for the \$1,700 check admitted as Joint Exhibit A5e. Hearing Transcript at 415-417. Respondent claimed that he personally accompanied Hassan to the bank to cash her \$1,700 check, so he knew that she received the money. Hearing Transcript at 418-419. Respondent also claimed that he actually overpaid on Hassan's case in the end because, due to the loss of her paperwork, he wrote her another \$700 check in March 2009, in addition to already having paid her \$1,700 and paying her medical service provider in July 2009. Hearing Transcript at 425-426. The only document upon which Respondent could rely to show that Hassan actually approved

her \$5,000 settlement, however, was the check signed “per request” and admitted as Joint Exhibit A5b. Hearing Transcript at 412-413. Incredibly, the only concession Respondent made with regard to Hassan’s case was that he failed to pay her medical bills promptly. Stipulation ¶8. According to Respondent, he forgot about having to negotiate with Hassan’s health care provider over the exact post-settlement payment amount until after he was notified that a grievance was being pursued. Stipulation ¶ 8; Hearing Transcript at 482. Based upon the ever shifting sands of Respondent’s testimony throughout the hearing, the panel gives little, if any, credibility to Respondent’s testimony regarding Count 1.

### **Count 2—Trust Account Irregularities and Office Practices**

{¶15} As to Count 2, Respondent and Relator stipulated to the following: Respondent admitted in his deposition that in the period from 2007 through 2009, he was unaware of the IOLTA requirements that became effective on February 1, 2007. Respondent acknowledges he maintained his own funds in the IOLTA, paid personal expenses from the IOLTA, and did not maintain ledgers related to the IOLTA. Stipulation ¶9. Respondent admitted in his deposition that he: (1) failed to keep ledgers for his clients in his IOLTA account [Respondent Deposition at 13]; (2) failed to maintain his knowledge of and abide by the Rules of Professional Conduct with regard to operating his IOLTA account [Respondent Deposition at 22-24]; (3) did not properly record settlements [Respondent Deposition at 30-31]; (4) neglected to remove his earned fees from his IOLTA account after a settlement [Respondent Deposition at 36-37]; and (5) failed to notate the specific withdrawals taken from his IOLTA account so as to trace them to a specific client [Respondent Deposition at 89-91]. Respondent also admitted that he routinely paid personal and office expenses from his IOLTA account. Respondent Deposition, p. 42.

{¶16} Respondent continually gave evasive testimony at the disciplinary hearing when questioned about his knowledge and application of the Rules of Professional Conduct. For instance, when Relator inquired whether Respondent complied with Prof. Cond. R. 1.15, requiring him to maintain a record for each client on whose behalf funds are being held in his IOLTA account, Respondent replied: “Somewhat I did and somewhat I didn’t.” Hearing Transcript at 132-133. Later, he testified that he did not even know what Prof. Cond. R. 1.15 was. Hearing Transcript at 139. In fact, he offered each of the following, contradictory explanations during the course of the hearing: (1) he failed to maintain accurate records because he lost several valuable individuals in his office [Hearing Transcript at 136-137]; (2) he did not comply with the applicable Rules of Professional Conduct because he did not know them [Hearing Transcript at 138-139]; (3) he did not know that it was against the rules to put his own money into his IOLTA [Hearing Transcript at 148]; and (4) he knew it was against the rules and had always been against the rules to commingle personal funds with IOLTA funds, but “blatantly disregarded” the rules [Hearing Transcript at 434].

{¶17} Respondent claimed to keep track of the funds in his IOLTA account by virtue of disbursement sheets, monthly statements, and check stubs. Respondent Deposition at 40-41; Hearing Transcript at 250-251. Respondent was unable to produce all his clients’ disbursement sheets, however, including Hassan’s and her cousin, Mohammed’s. Hearing Transcript at 151-152, 419-420, 428. Respondent also testified that he did not keep a record of his deposit or withdrawal slips, did not record the current balances for each client, and did not perform monthly reconciliations for his IOLTA. Hearing Transcript at 134-136. Respondent’s wholly inadequate record-keeping made it impossible to trace any of the specific funds entering or exiting his

IOLTA.

{¶18} Respondent admitted that he wrote checks from his IOLTA to pay his wife, his daughters, his staff, bills, and bills for his mother. Stipulation¶9; Hearing Transcript at 141-142, 146-147. Respondent further admitted that he was investigated because his account dropped “below the amount,” presumably meaning a negative balance, after his wife gained access to his checkbook and wrote several checks. Respondent Deposition, p. 105; *accord* Hearing Transcript at 469-470. Additionally, he admitted that he placed money his mother received from her brother’s estate, for which he was the attorney, into his account so that he could use it to pay some of her bills. Hearing Transcript at 143-144. Respondent did not know which specific deposits he placed in his IOLTA were deposits from his mother’s checks. Hearing Transcript at 157-159.

{¶19} Respondent maintained throughout the proceedings that he never spent any of his client’s money. Respondent Deposition at 41-46; Hearing Transcript at 144, 443. Respondent gave the following explanation to questioning during his deposition:

Q. These monies, these IOLTA funds that you would pay personal expenses you said were your money, what records do you have to support that?

\* \* \*

A. I knew that I had a \$5,000 fee coming in, I had enough common sense to know that \$5,000 of it was mine and that I would try or would not write anything over \$5,000 that belonged to me.

Respondent Deposition at 43.

{¶20} At the hearing, Respondent responded similarly to a question posed by one of the panel members:

COMMISSIONER BAUER: Now, you understand the problem I'm having here, that's the fact that you got all these funds, your money \* \* \*[,] money of your mother's, the money of your clients, and it's all floating around in this trust account for which you're writing checks for personal expenses, your wife is writing checks out of it, you're writing checks to her out of it. How do you know whose funds were used on any given day out of that account?

[RESPONDENT]: Well, \* \* \* I was hoping it never got below the amount that wasn't mine because I would check on the amount that was in there \* \* \*.

Hearing Transcript at 471-472.

{¶21} Respondent admitted in his deposition that his IOLTA became overdrawn on three separate occasions. Respondent Deposition at 43-44. Because Respondent failed to keep adequate records and admitted to routinely commingling funds within his IOLTA, however, there was no proof that Respondent actually limited his spending to his own money. Respondent denied that he was hiding his personal funds in his IOLTA to shield them from creditors. Respondent Deposition at 98-99. Even so, he admitted that he had credit issues and a number of judgments against him, including a foreclosure. Respondent Deposition at 98-99.

### **Count 3—Duty to Cooperate**

{¶22} Due to Respondent's abhorrent record-keeping, he was unable to produce appropriate documents during the discovery process. Stipulation ¶11. Respondent appeared for his deposition without any documents, despite a prior request from Relator that he bring certain financial records with him. Respondent Deposition at. 11-12. Further, although he told Relator that he would produce all the bank statements from his IOLTA, he admitted at the disciplinary hearing that he only provided some of the bank statements. Hearing Transcript at 134-135. Respondent was unable to produce any deposit or withdrawal slips for 2008 and 2009 because he failed to keep a record of them. Hearing Transcript at 135. While Relator requested all of

Respondent's distribution sheets for the same time period, Respondent only provided "[t]he ones that [he] could find." Hearing Transcript at 151. Similarly, Respondent admitted that he provided Relator with very few check stubs, but insisted that "I've given you all that I had." Hearing Transcript at 432.

{¶23} As of the date of the first hearing, Respondent had not provided Relator with his tax returns from 2007, 2008, and 2009. Relator requested all three returns in discovery and specifically inquired about the returns for 2007, 2008, and 2009 during the hearing. Hearing Transcript at 148-149. Respondent answered that he provided Relator with his extension paperwork, but did not have any actual tax returns to provide for those years because he had yet to file them. Hearing Transcript at 149. Relator specifically asked: "My question is: Did you file a tax return for '07." Respondent answered "No." Hearing Transcript at 149.

{¶24} By the time of the second hearing date, Respondent had filed his returns, but only provided Relator with his returns for 2008 and 2009. The following exchange took place between Relator and Respondent during Respondent's testimony:

Q. We have since May, I believe, of last year, or before, have been trying to get your 2007, '8, and '9 tax returns, correct?

A. No. '8 and '9. I didn't know anything about '7. '7 was filed on time. If you need a copy of '7, I do have '7. \* \* \* '7, I don't remember you requesting that.

Hearing Transcript at 376-377.

{¶25} Respondent also added to the difficulty of tracing the funds in his IOLTA account to the extent that was possible. For example, Relator asked Respondent to identify the deposits and withdrawals entering and exiting his IOLTA account and attempted to compile that information in Joint Exhibits N and O, which were both color-coded according to the

information Relator received. The following exchange took place:

Q. Okay. And we asked you -- for example, we'll take Check 14341. Date on the check is 1/12, 2008. It's made out to you for \$500. We asked you where it came from and where it went, and you couldn't answer that, correct?

A. Correct.

Q. Okay. And, in fact, every one of these on both Exhibits N \* \* \* and O, which are yellow, meaning you could not explain where that money came from or where it went?

A. The majority of them came from personal injury settlement cases and that one I had in here, okay?

Q. Well, we asked you for the name of the client.

A. Okay. Here has the name of the client. Okay, if this was the deposit, this here was the amount. I don't know why she didn't put it in here, but we basically knew where it came from. It came from income from the clients or personal injury.

Q. You were supposed to fill that out here and you never did?

A. That's right.

Q. We asked you to explain where the money came from --

A. Well, most of them are explained in there, I think.

Q. You think?

A. Aren't they?

Q. No.

A. Okay. But I did provide you with every check, every income that came in and every check that we wrote out.

Hearing Transcript at 387-388.

{¶26} Although Respondent maintained several times that he took "full responsibility" for his organizational and accounting problems, he also repeatedly expressed that the problems

were due to staffing difficulties and a loss of office personnel. Respondent Deposition at 64-68; Hearing Transcript at 137-138.

### **CONCLUSIONS OF LAW**

{¶27} Based upon the exhibits, stipulations, and the record of the hearing, the panel finds by clear and convincing evidence that Respondent has committed the following ethical violations: Prof. Cond. R. 1.15 [a lawyer shall keep the property and funds of clients separate from his own; maintain client funds in an interest-bearing account; keep records of the account, including a record for each client, bank statements, deposit slips, and cancelled checks; and perform a monthly reconciliation] [Stipulation ¶9; Respondent Deposition at 13, 22-24, 30-31, 36-37, 42, 56-60, and 89-91; Hearing Transcript at 134-137, 141-147, 151-152, 155, 157-159, 419-420, and 428]; Prof. Cond. R. 4.1 [knowingly make false statements of material fact or law in the course of representing a client] [Joint Ex. 6; Hearing Transcript at 62-63, 87]; Prof. Cond. R. 5.3 [a lawyer shall make reasonable efforts to ensure the conduct of his or her nonlawyer employees is compatible with his own professional obligations] [Respondent Deposition at 64-68, 88-89; Hearing Transcript at 60, 137-138, 414-415, and 420-422]; Prof. Cond. R. 8.1 [knowingly make a false statement of material fact or knowingly fail to respond in connection with a disciplinary matter] [Stipulation ¶11; Respondent Deposition at 11-12; Hearing Transcript at 134-135, 138-139, 149, 151, 376-377, 387-388, 432, and 434]; and Prof. Cond. R. 8.4 [conduct prejudicial to the administration of justice; conduct that adversely reflects on the lawyer's fitness to practice law] [Stipulation ¶¶8-9, 11; Respondent Deposition at 23, 32, 42, 48-49, 88-102; Hearing Transcript at 132-133, 136, 138-139, 151-159, 387-388, 414-420, 432-434].

## MITIGATION AND AGGRAVATION

{¶28} The panel approached the issues of mitigation and aggravation with the benefit of several days of hearing testimony in which it closely observed Respondent's demeanor and critically considered the substance of his testimony. Our observations lead us to the inescapable conclusion that Respondent is not presently able, and likely will never be able, to conform his conduct to necessary ethical and professional standards. We reach this conclusion because of the egregious nature and frequency of his violations, but also because of his inability to focus on questions and formulate logical, let alone truthful answers.

{¶29} We lack confidence in the assurances of Respondent's treating health care professional and expert witness, that Respondent will be successful in his efforts to practice in a responsible manner. While his therapist/expert did attribute Respondent's inability to focus on a diagnosis of adjustment disorder, with features of depression and anxiety, the expert did not demonstrate adequate knowledge of other potentially nonmitigating factors, such as Respondent's admitted long standing substance abuse—a topic that he failed to fully reveal during therapy and that the expert failed to fully investigate.

{¶30} Nor, in our opinion, did such expert establish that Respondent's personal losses (as described below) were the principal cause of his chronic personal, ethical, and business lapses. Rather, we find that Respondent's pattern of misconduct and deliberate lies was established before the personal tragedies summarized below intruded in his life. Moreover, it is particularly disturbing that Respondent's continued evasiveness and outright falsehoods remained prominent during the hearing, despite Respondent's purportedly successful treatment by health care providers.

{¶31} The parties did not stipulate to any mitigating factors in this case, but Respondent offered several items in mitigation. In particular, Respondent has been licensed to practice since 1975 and has only had one prior instance of discipline in his professional career. As for character witnesses, Respondent presented Attorneys Leo Ross and Frederick Benton, two longtime friends of Respondent's, and Jeffrey Kee, Respondent's pastor. Respondent also offered several character letters. Respondent's Ex. 9. All of the witnesses and letters generally described Respondent's good reputation in the community, his dedication, and his honest nature. Id.; Hearing Transcript at 346-347, 352.

{¶32} There was also testimony from Judith Fisher, a clinical social worker who began counseling Respondent sometime after the May 9, 2011 hearing date, after his previous physician and psychiatrist declined to testify. With regard to the office notes that she received from that physician, Fisher testified that she found them virtually useless. Fisher testified that she diagnosed Respondent with adjustment disorder, mixed with depression and anxiety. Hearing Transcript at 304. Fisher opined that numerous environmental factors impacted Respondent, including the deaths of several close people, his son's incarceration, and his wife's drinking problem. Hearing Transcript at 302-305. Fisher identified an inability to focus and concentrate as a symptom of depression and anxiety. Hearing Transcript at 336. She further expressed her opinion that Respondent's adjustment disorder and depression affected his ability to practice. Hearing Transcript at 309-310. According to Fisher, Respondent no doubt exercised poor judgment in handling things, but lacked any malicious intent. Hearing Transcript at 340-341. Fisher opined that Respondent could return to practice under certain conditions, but would benefit from continued therapy and the appointment of a monitor. Hearing Transcript at 312-

313.

{¶33} Stephanie Krznarich, the clinical director of the Ohio Lawyers Assistance Program (OLAP) also testified. According to Krznarich, Respondent sought help from OLAP in January 2010 and signed a monitoring contract. Hearing Transcript at 169, 177. Krznarich testified that Respondent has done “moderately well” in his compliance with his recovery contract—not exactly a ringing endorsement. Hearing Transcript at 185. She could not comment, however, on Respondent’s practice because OLAP only becomes involved with the client, not the client’s practice. Hearing Transcript at 186. She also could not opine whether Respondent might be capable of reentering practice at some point or whether any mental health or dependency problems Respondent might have had caused his inability to properly serve his clients. Hearing Transcript at 200-201.

{¶34} Krznarich testified that Respondent admitted to cannabis use when he met with her for his assessment. Hearing Transcript at 210. According to Krznarich, Respondent told her that he last used cannabis on January 16, 2009, but for a period of two years before that he had been using cannabis every weekend. Hearing Transcript at 211. Krznarich also testified that Respondent reported having used cannabis recreationally since the age of 23. Hearing Transcript at 210. Fisher, however, testified that the only mention of cannabis use that Respondent made to her was an acknowledgement that he had used it “about a decade ago” when he was visiting a friend out of state. Hearing Transcript at 320. Fisher did not follow up with more probing questions on that subject and it is evident to the panel that Respondent was not forthcoming with Fisher. Furthermore at the disciplinary hearing, Respondent adamantly denied having used cannabis on a regular basis and testified that the last time he used cannabis was on a trip to

California in 2007. Hearing Transcript at 404-410. We do not find his testimony credible on this point.

{¶35} The parties did not stipulate to any aggravating factors in this case, but the panel finds that certain aggravating factors exist. Respondent has a prior disciplinary record. Moreover, Respondent repeatedly refused to acknowledge the wrongfulness of his conduct, even with regard to the circumstances of his prior disciplinary case. As previously noted, in his prior disciplinary case the Supreme Court of Ohio adopted the Board's factual findings, including that Respondent allowed a nonlawyer (Samuels) to conduct an opening statement and examine witnesses, referred to Samuels as "my partner," and failed to disclose to the incident to UPL, even though he represented Samuels before the UPL committee and allowed him to enter into a consent agreement. *Culbreath*, supra at 271-273. At the disciplinary hearing, Respondent described his prior disciplinary case as the result of his "inadvertently" and "mistakenly" allowing Samuels to speak in a felony trial. Hearing Transcript at 233. Respondent insisted that he received permission from the judge in that case to allow Samuels to participate but "the record in some type of way got messed up" and he also did not realize that a legal intern certificate will only allow a legal intern to aid with misdemeanors. Hearing Transcript at 233. Yet, Samuels did not even have an intern certificate. *Culbreath*, supra at 272. Respondent also insisted that he never held Samuels out as an attorney to his client, the prosecutor, or the court and only recalled referring to him as an "associate" in his closing argument. Hearing Transcript at 363-366. Even after Relator had Respondent read the Supreme Court's opinion in his prior disciplinary case virtually line by line, Respondent maintained that he thought Samuels only "said about two or three words in the closing." Hearing Transcript at 376. It is beyond dispute that Respondent has

not, and cannot, acknowledge the wrongfulness of his misconduct. Even after therapy Respondent has shown his inability to accurately perceive significant events in his life and that such delusions are pervasive and chronic.

{¶36} Respondent also refused to acknowledge the wrongfulness of his conduct in other areas throughout the hearing, such as when testifying about commingling funds in his IOLTA. Apart from claiming at one point that he did not know it was a violation of the Rules of Professional Conduct to keep his own funds in his IOLTA account, Respondent repeatedly offered testimony that the commingling never caused a problem because all of his clients received their money. Hearing Transcript at 144-145, 443. Moreover, throughout his deposition and both days of the disciplinary hearing, Respondent gave testimony that was lengthy, evasive in nature, and filled with explanatory diatribe that virtually never answered the exact question posed and forced both Relator and the panel members to engage in excessive and exceedingly pointed questioning in order to elicit a satisfactory answer. Respondent was, generally speaking, less than cooperative during the disciplinary process.

{¶37} The panel also finds two other aggravating factors. First, the panel finds that Respondent displayed a pattern of misconduct, given his lack of cooperation, his repeated abuse of his IOLTA and poor recordkeeping, and his mishandling of client files. Second, the panel finds that Respondent's conduct also resulted in multiple offenses. Stipulation ¶¶8, 9, and 11.

### **RECOMMENDED SANCTION**

{¶38} Respondent argues that a six-month stayed suspension is appropriate, given that he cooperated in the disciplinary process, did not intentionally misuse any client funds, and no aggravating factors are present. On the other hand, Relator argues that an indefinite suspension

is appropriate, given Respondent's prior disciplinary history, the seriousness of his conduct with regard to abusing his IOLTA, and the aggravating factors here.

{¶39} We begin our discussion of sanctions by noting that Respondent's inability to accept responsibility and his chronic fabrications that fly in the face of any rational thought are of grave concern. Despite receiving treatment from a psychiatrist, ongoing supervision by OLAP, and weekly therapy sessions with Dr. Fisher, Respondent is no closer to demonstrating that he will be able to conform his conduct to ethical standards. Respondent's request for a stayed suspension (conditioned on continued counseling and having a supervising monitor) is unrealistic and an invitation to disaster for the profession and for Respondent's future clients. Relator asks for an indefinite suspension. The panel recommends disbarment.

{¶40} Relator offers three cases in support of the recommendation for an indefinite suspension: *Disciplinary Counsel v. Scacchetti*, 131 Ohio St.3d 165, 2012-Ohio-223; *Disciplinary Counsel v. Ranke*, 130 Ohio St.3d 139, 2011-Ohio-4730; and *Dayton Bar Assn. v. Wilson*, 127 Ohio St.3d 10, 2010-Ohio-4937.

{¶41} "For attorneys who have commingled funds or failed to properly maintain their IOLTAs, the sanction has ranged from a stayed six-month suspension \* \* \* to an indefinite suspension." *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763, ¶19.

In *Wilson*, the Dayton Bar Association pursued a three-count complaint against the respondent based on the issuance of a bad trust-account check to a client, a complete failure to participate in the disciplinary proceedings, and a failure to provide competent representation in another matter. The Supreme Court upheld the Board's recommendation to indefinitely suspend Wilson after: (1) finding evidence that Wilson failed to maintain client records, had at least one

client check returned for insufficient funds, repeatedly failed to respond to Relator's attempts to conduct discovery; and (2) noting that the board found that at least five of the nine aggravating factors set forth in BCGD Proc. Reg. 10(B)(1) were present. *Id.* at ¶15-16. The Supreme Court held that:

[a]n indefinite suspension is an appropriate sanction for a lawyer who has violated the standards of professional competence, diligence, and integrity by failing to maintain accurate records of the funds held in her client trust account, failing to promptly deliver funds that a client was entitled to receive, failing to provide diligent and competent legal representation to her clients, and failing to cooperate in the resulting disciplinary investigation.

*Id.* at 18.

{¶42} The indefinite suspension in *Wilson* primarily stemmed from the direct harm Wilson caused to her clients and her complete refusal to cooperate with the disciplinary process.

{¶43} In *Ranke*, Disciplinary Counsel filed a three-count complaint against the respondent based on her failure to maintain her IOLTA account, to file an appellate brief on behalf of a criminal client, and to cooperate in the disciplinary investigation. *Ranke* at ¶2. Ranke's first count stemmed from the fact that she failed to return certain unearned funds to a client after she stopped representing him and later loaned IOLTA account funds to another client, though none of the advanced funds belonged to that client. *Id.* at ¶5-6. Ranke ultimately overdrew on her IOLTA account and then did not cooperate when Disciplinary Counsel later subpoenaed her client ledgers and IOLTA account statements. *Id.* at ¶7. Moreover, Ranke caused a criminal defendant's appeal to be dismissed after she failed to file the defendant's brief. *Id.* at ¶11. When the defendant later wrote Ranke several times to ask about the status of her appeal, Ranke never responded or otherwise notified her client that her appeal had been dismissed. *Id.* at ¶11. In recommending an indefinite suspension for Ranke, the Board also

noted that she had one prior disciplinary case that resulted in a public reprimand and that four other aggravating factors were present. The Supreme Court, citing several cases involving attorneys who neglected their clients, failed to maintain their trust accounts, and had prior disciplinary records, adopted the recommended sanction of an indefinite suspension. *Id.* at ¶18-21.

{¶44} In *Scacchetti*, Disciplinary Counsel filed a two-count complaint against the respondent based on his commingling personal and client funds, using his IOLTA account to pay operating expenses, neglecting client matters, and failing to cooperate in the disciplinary proceedings. *Scacchetti* at ¶2-3. Scacchetti had two prior disciplinary cases and pleaded guilty to misdemeanor possession charges during the course of the disciplinary hearing. *Id.* at ¶1, 10. Moreover, in addition to finding that Scacchetti neglected the legal matters of his clients, mishandled his IOLTA account, and failed to cooperate, the Board also found several aggravating factors to be present. *Id.* at ¶10-13. Noting Scacchetti's prior history and that his misconduct directly affected his clients, the Supreme Court held that an indefinite suspension was appropriate. *Id.* at ¶13-14.

{¶45} The panel agrees that Respondent shares several commonalities with the respondents in *Wilson*, *Ranke*, and *Scacchetti*. Specifically, Respondent also commingled IOLTA funds, improperly used and maintained his account, failed to fully cooperate with Disciplinary Counsel, refused to acknowledge the wrongfulness of his conduct, and has prior disciplinary history. The key ingredient missing to some degree in Respondent's case as compared to each of the foregoing cases, however, is a direct link between his activities and direct harm suffered by one or more clients. Unlike Disciplinary Counsel in *Wilson*, *Ranke*, and

*Scacchetti*, Relator was unable to identify any single client of Respondent's whose case was affected as a result of his misconduct or who claimed they did not receive their fees. Although one might logically assume that Respondent's misconduct impacted one or more of Respondent's clients, given that he admitted to his IOLTA account being overdrawn on at least three occasions, Relator did not charge Respondent with neglecting any particular client.

{¶46} Respondent's case also shares several commonalities with the respondent in *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763. There, the respondent, Crosby, repeatedly commingled personal funds in his IOLTA account, paid personal and business expenses from his account, failed to remove earned fees from his account, and failed to reconcile his banking statements. *Crosby* at ¶5-14. Although Crosby did not harm any particular client, the Supreme Court held that "mishandling of clients' funds either by way of conversion, commingling, or just poor management, encompasses an area of the gravest concern of this court in reviewing claimed attorney misconduct," and "any violation of that rule warrants a substantial sanction whether or not the client has been harmed." (Internal quotations omitted.) *Id.* at ¶15. The Supreme Court noted that the Board found several aggravating factors to be present in that Crosby had displayed a dishonest and selfish motive, had a pattern of misconduct, and failed to fully cooperate in the disciplinary process. *Id.* at ¶17. Due to Crosby's lack of a prior disciplinary record and the fact that no client was harmed, however, the Supreme Court suspended Crosby from practice for 24 months instead of suspending him indefinitely. *Id.* at ¶21-22.

{¶47} Respondent's case is similar to Crosby's in that no specific client harm was proven, his misconduct by and large stemmed from the same IOLTA misuse, and he failed to

fully cooperate in this disciplinary proceeding. Unlike *Crosby*, however, Respondent does have prior disciplinary history and additional aggravating factors are present here, including Respondent's refusal to acknowledge the wrongfulness of his conduct. The presence of these additional factors make Respondent's case much closer to *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, where the Supreme Court found that an indefinite suspension was appropriate.

{¶48} In *Wise*, the respondent regularly misused his IOLTA account by commingling funds and paying personal and operating expenses from the account; not maintaining client ledgers, records, or receipts; and repeatedly overdrawing on his account. *Id.* at ¶3-6. Much like Respondent, *Wise* claimed that he never misused client funds because he knew that he was not holding client money in his account at any of the point in time that he overdrew on the account. *Id.* at ¶9-11. Yet, much like Respondent, *Wise* was not forthcoming with information about his IOLTA account and could not show the source of funds deposited in his account because he lacked the proper documentation. *Id.* In indefinitely suspending *Wise*, the Supreme Court held:

Respondent's extended misuse of his client trust account between 2002 and 2004, his failure to maintain or produce adequate records documenting account deposits and withdrawals, his multiple overdrafts from the trust account, and his lack of cooperation and candor during the disciplinary investigation point toward the need for a suspension to protect the public.

*Id.* at ¶ 16.

{¶49} The Supreme Court added that an indefinite suspension was appropriate, given that *Wise* had recently had another disciplinary case. *Id.*

{¶50} The panel acknowledges that Respondent practiced law since 1975 with only one prior disciplinary case. The panel further acknowledges that Respondent suffered multiple

personal losses in a relatively short time period and has begun to seek help for his problem coping with the losses he suffered. The panel in no way seeks to detract from the seriousness of the losses Respondent suffered or suggest that Respondent did not, in fact, struggle with them. Yet, the panel is not convinced that Respondent's depression or anxiety actually contributed to his misconduct. Respondent's misconduct began before the distressing personal circumstances and has persisted despite therapy. Respondent demonstrated a lack of candor during therapy with Dr. Fisher and his testimony at the hearing showed a complete regression to what the panel perceives as a chronic inability to think logically and a chronic tendency toward revisionist history and shifting blame to others.

{¶51} The panel cannot overlook the serious nature of the charges here and Respondent's response to them. Respondent repeatedly abused his trust account in multiple ways, essentially failed to account for any of the funds in his trust account, and lost files and important client documents. Most importantly, Respondent's attitude and the manner in which he answered the questions in this proceeding both convey to this panel the undeniable conclusion that Respondent still does not accept responsibility for his actions or understand the seriousness of his conduct. At the hearing before this panel, Respondent even refused to acknowledge the extent of his wrongdoings in his prior disciplinary case, despite the fact that the Supreme Court had determined that specific wrongdoings occurred. His claim that he accepts responsibility for his actions here rings hollow in light of his inability to answer even the most straightforward question. Respondent's prior disciplinary history, the gravity of his misconduct, and his uncooperative, evasive manner and continuing irrational thought processes all support the most severe of sanctions. Therefore, we recommend that Respondent be disbarred.

**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 June 7, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Stanlee Earl Culbreath, 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.**



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**RICHARD A. DOVE, Secretary  
Board of Commissioners on  
Grievances and Discipline of  
the Supreme Court of Ohio**