
IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

-vs-

Steve J. Edwards, Esquire,

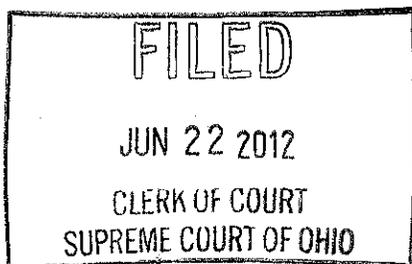
Respondent.

Case No. 2012-0681

RESPONDENT'S RESPONSE TO RELATOR'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATION

Jonathan E. Coughlan (0026424)

Disciplinary Counsel



William Mann, Esquire (0024253)

(Counsel of Record)

Mitchell, Pencheff, Fraley, Catalano & Boda

580 South High Street, Suite 200

Columbus, Ohio 43215

(614) 224-4114 — Telephone

(614) 224-3804 — Facsimile

Counsel for Respondent

Carol A. Costa (0046556)

Assistant Disciplinary Counsel

(Counsel of Record)

250 Civic Center Drive, Suite 325

Columbus, Ohio 43215-7411

(614) 461-0256 — Telephone

(614) 461-7205 — Facsimile

Steve J. Edwards, Esquire (0000398)

4030 Broadway

Grove City, Ohio 43123

(614) 875-6661 — Telephone

(614) 875-2074 — Facsimile

Respondent

TABLE OF CONTENTS

Table of Authorities ii

Statement of Facts 1

 Factual Summary 1

 Further Factual Development 2

Argument 8

 A LAWYER WHO REPORTS HIS MISAPPROPRIATION OF IOLTA FUNDS TO DISCIPLINARY COUNSEL, WHO FREELY ADMITS THE WRONGFUL NATURE OF HIS MISCONDUCT, WHO TAKES COMPLETE RESPONSIBILITY FOR HIS MISCONDUCT, WHO MAKES FULL RESTITUTION FOR HIS MISCONDUCT ENSURING THAT NOBODY HAS BEEN OR WILL BE HARMED BY THAT MISCONDUCT AND WHO PROVIDES DISCIPLINARY COUNSEL WITH FULL COOPERATION SHOULD NOT BE ACTUALLY SUSPENDED FROM THE PRACTICE OF LAW WHEN THE MITIGATING FACTORS RELATIVE TO HIS MISCONDUCT ARE SUBSTANTIAL. 8

 The “Theft” Argument 9

 The 8.4(c) Argument 9

 The “Case Law Mandates An Actual Suspension” Argument 10

 The Cases Cited by ODC 11

Closing Remarks 12

Conclusion 13

Certificate of Service 14

Appendix Appendix 1

 1. Board of Commissioners’ Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline to the Supreme Court of Ohio. Appendix 1

 2. Rule 8.4, Ohio R. Prof. Conduct Appendix 9

 3. Fifth Amendment, United States Constitution..... Appendix 10

TABLE OF AUTHORITIES

I. Cases:

<u>Akron Bar Assn. v. Gibson</u> (2011), 128 Ohio St. 3d 347	11
<u>Clark v. Arizona</u> (2006), 548 U.S. 735	9
<u>Dayton Bar Assn. v. Ellison</u> (2008), 118 Ohio St.3d 128	11
<u>Dayton Bar Assn. v. Gerren</u> (2004), 103 Ohio St. 3d 21	12
<u>Disciplinary Counsel v. Bubna</u> (2007), 116 Ohio St. 3d 294	12
<u>Disciplinary Counsel v. Fumich</u> (2007), 116 Ohio St. 3d 257	11
<u>Disciplinary Counsel v. King</u> (2004), 103 Ohio St. 3d 438	11, 12
<u>Disciplinary Counsel v. O’Neill</u> (2004), 103 Ohio St. 3d 204	13
<u>Toledo Bar Assn. v. Hales</u> (2008), 120 Ohio St. 3d 340	13

II. Constitutional Provisions

Fifth Amendment, United States Constitution	9
---	---

III. Other Authorities

Prof. Conduct R. 8.4(c)	9, 10, 11
-------------------------------	-----------

STATEMENT OF FACTS

Factual Summary

This case involves no disputed facts, although in a few instances there is a dispute as to the legal conclusions to be drawn from the facts. Respondent Steve J. Edwards self-reported that he wrongfully misappropriated money from his IOLTA, and has taken full taken responsibility for his misconduct. Mr. Edwards is embarrassed, ashamed and humiliated by his misappropriation of funds. The record of this case proves, and the Board of Commissioners on Grievances & Discipline found that:

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 [his] misconduct and does not place the blame on any[one] else; (3) he has fully cooperated with the investigation; (4) he has made full restitution to restore [the misappropriated money] to 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 has entered into individual counseling with a psychotherapist; (8) he retained an experience[d] attorney [Richard Swope] to provide guidance, counseling and mentoring [to him]; (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 [is] well respected in the legal community.

The parties stipulated, and the Board found, that Mr. Edwards violated Prof. Conduct R. 1.15(a) (a lawyer shall hold a client's property separate from the lawyer's property) and Prof. Conduct R. 8.4 (h) (a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law).

Relator withdrew the alleged violation of Prof. Conduct R. 8.4 (d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

The Board found that the facts did not establish, by clear and convincing evidence, that Mr. Edwards violated Prof. Conduct R. 8.4 (c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation).

The Board recommended that Mr. Edwards be suspended from the practice of law for two years, with the entire suspension stayed provided Mr. Edwards: (1) not commit any further misconduct; (2) continue to comply with his OLAP contract; and (3) continues individual counseling with a mental health professional.

Further Factual Development

Steve Edwards went to law school because he wanted to help people. (Hearing Tr. 35). In November of 1979, he was admitted to practice law in Ohio. (Stipulation Made Between Relator & Respondent, filed on October 27, 2011, i.e. First Set of Stipulated Facts #1). (Three sets of stipulated facts were eventually filed).

Mr. Edwards worked hard, obeyed the rules, and developed a good reputation. (First Set of Stipulated Facts #17, Exhibits D-H; Second Set of Stipulated Facts #2-#4, Exhibits K, L & M). For instance, by way of brief example, Robert Norris, M.D. stated that he has known Mr. Edwards since the 7th grade and that one of his nicknames was "Honest Ed," as he was known for his honesty. (Second Set of Stipulated Facts #4, Exhibit M). Dr. Norris, who has utilized Mr. Edwards' legal services, said of Mr. Edwards, "He has always been a down to earth type of person with an integrity that I respect and value." Id.

Vincent Aiello, the President and CEO of Central Ohio Oxygen & Home Health Care, said he has known Mr. Edwards since the 1970's and would trust him with the

most important of his business and personal affairs. (Second Set of Stipulated Facts #3, Exhibit L).

Rev. Larry Wickliff of the Galloway Presbyterian Church said he has found Mr. Edwards to be trustworthy in every respect. (First Set of Stipulated Facts #17, Exhibit D). Rev. Wickliff further stated that Mr. Edwards has done pro bono work for the church and is, “* * * a willing, energetic and talented person who is dedicated to helping other people. He has always been a responsible, mature and dedicated person to those around him.” Id.

In 1994, Mr. Edwards met the woman he would marry. (Hearing Tr. 37). Mrs. Edwards had a daughter, Tiffany, from a prior marriage. Id. Mr. Edwards considered Tiffany to be his daughter as well. Id. In addition, Mr. & Mrs. Edwards had two sons, Lucas and Ethan. Id.

Things were fine until 2005 when Mrs. Edwards told Steve that she wanted him to move out of the family home, and end their marriage. (Hearing Tr. 38). Mr. Edwards, who loves his wife and three children, was shocked and devastated. Id. He moved out of the family home, but made it his number one goal in life to reunite his family and save his marriage. Id. This goal developed into an unhealthy obsession. (First Set of Stipulated Facts #18, Exhibit I).

Mr. Edwards' wife owned and operated a business. (Hearing Tr. 21). After the national economic crisis of September 2008, her business hit hard times. (Hearing Tr. 21; 39). For instance, part of Mrs. Edwards' business involved serving subpoenas for various governmental entities such as child support services in various counties. (Hearing Tr. 56). After the September 2008 economic crisis, several governmental

entities told Mrs. Edwards that they could not continue to pay her in a timely fashion, but that they would pay her in the future. (Hearing Tr. 56).

In 2009, in order to keep her business operating, Mrs. Edwards asked Steve to loan her money to operate her business. (Hearing Tr. 39). In response, Mr. Edwards loaned his wife money in 2009 and 2010 so that she would see that Steve was a good provider and she would therefore want to continue their marriage. (Hearing Tr. 21; First Set of Stipulated Facts #18, Exhibit I). Mr. Edwards obtained the money he loaned to his wife by wrongfully misappropriating it from his IOLTA. Mr. Edwards has admitted that his misappropriation of money from his IOLTA was totally improper, and that he alone is 100% responsible for his improper conduct. The money Mr. Edwards loaned to his wife was never repaid. (Hearing Tr. 59-60).

Mr. Edwards improperly withdrew a total of \$69,500 from his IOLTA for his personal use. (First Set of Stipulated Facts #4). From May 28, 2009 to October 15, 2010, Mr. Edwards improperly withdrew 10 checks from his IOLTA. Id. The last check, dated October 15, 2010 in the amount of \$2,500, was returned for insufficient funds, resulting in an \$892.34 IOLTA overdraft. (First Set of Stipulated Facts #5).

This \$892.34 IOLTA overdraft prompted a routine letter of inquiry, from the Relator Office of Disciplinary Counsel (ODC), about that overdraft. (Hearing Tr. 9-10). Upon receipt of that letter, Mr. Edwards came to his senses and reported all (100%) of his improper conduct to the ODC. The First Set of Stipulated Facts state:

* * *

5. Respondent reported his misconduct to relator, in response to a letter of inquiry regarding an \$892.34 overdraft from his IOLTA. Since this reporting, respondent has, at all times, provided relator with cooperation.

* * *

7. * * * Since the time respondent reported his misconduct, he has freely and completely acknowledged the wrongful nature of his conduct.

8. The funds, that respondent improperly withdrew from his IOLTA, were funds of clients being held in the account to pay subrogated interests in personal injury cases. The funds were held while respondent attempted to negotiate reductions in the subrogation amounts that were being claimed by the subrogated interests.

9. Respondent fully repaid all funds which he improperly withdrew on the following dates:

a. December 2009 – repaid \$17,000

b. November 2010 – repaid \$15,000

c. December 2010 – repaid \$37,500

Total: \$69,500

10. Respondent repaid the funds from monies he legitimately obtained for work he did as a lawyer, and from a loan from his parents.

* * *

12. Respondent has made restitution in this matter as indicated above, and has done everything he has been asked to do to rectify the consequences of his actions. (Emphasis added).

It is agreed, by both the ODC and Mr. Edwards, that none of Mr. Edwards' clients were harmed as a result of his wrongful conduct, and no subrogated carriers were harmed as a result of his wrongful conduct. (Hearing Tr. 10). Mr. Edwards made full restitution, and everyone who was to receive money from Mr. Edwards has been paid. (Hearing Tr. 10). No person, firm, or entity has sustained any financial harm as a result of Mr. Edwards' improper conduct.

Mr. Edwards has taken substantial action to mitigate against his wrongful conduct. First, as indicated above, he self-reported his misconduct to Relator.

Second, as indicated, above, Mr. Edwards has made full disclosure to Relator, has provided Relator with cooperation, and has done everything he has been asked to do to rectify the consequences of his misconduct.

Third, as indicated above, Mr. Edwards has made full restitution regarding all misappropriated funds and nobody has been harmed as a result of his improper conduct.

Fourth, Mr. Edwards has entered into a two-year contract with the Ohio Lawyers Assistance Program, and has cooperated with OLAP. (Second Set of Stipulated Facts #1, Exhibit J). OLAP's primary diagnosis of Mr. Edwards is Adjustment Disorder with Mixed Anxiety and Depressed Mood. With OLAP's help, Mr. Edwards has identified some secondary financial stressors he was experiencing, beyond his primary financial and emotional stressor, which was his unhealthy obsession to maintain his marriage and keep his family together. He has taken action to reduce his professional overhead and reduce those secondary stressors as well. Id. (Hearing Tr. 48).

Fifth, at OLAP's suggestion, Mr. Edwards has been obtaining professional counseling from Judith E. Fisher, MSW, LISW. Her report is found in the First Set of Stipulated Facts, #18, Exhibit I). Ms. Fisher's report documents that Mr. Edwards' improper conduct was substantially caused by his unhealthy emotional condition and states:

* * *

In my professional judgment, there is a direct causal relationship between Steve's circumstances and his lapses in good legal practices. I do not see in Steve Edwards a man who had a plan to commit wrongdoing for personal gain. Instead, I have witnessed a man filled with shame and remorse over having made decisions in a turbulent period in his life that he terribly regrets.

* * * I believe that at this time Steve is capable of returning to a competent, ethical and professional practice of law with the continued assistance of OLAP and counseling sessions with me. He is motivated to do both. He has made errors, but I am confident that these errors were not made with any malicious intent.

* * *

Sixth, Mr. Edwards has taken extra CLE approved classes in legal ethics, professionalism and substance abuse so that he has a renewed and heightened awareness of those important issues. (Hearing Tr. 47).

Seventh, Mr. Edwards has established a mentoring relationship with Reynoldsburg, Ohio Attorney Richard Swope. (Third Set of Stipulated Facts, Exhibit N). Mr. Swope was a member of the Columbus Bar Association's Professional Ethics Committee from 1971 – 1978 and from 1992 – 1995. Id. Mr. Swope and Mr. Edwards meet at least once each month, and this relationship gives Mr. Edwards the opportunity to discuss problems and concerns he is having with an experienced lawyer who is familiar with ethical requirements. This constructive relationship will help Mr. Edwards avoid future problems.

Eighth, as indicated above, and as found by the Board, Mr. Edwards is a person of good character and has a good reputation.

Ninth, Mr. Edwards has no prior disciplinary record. (First Set of Stipulated Facts #11).

ARGUMENT

A LAWYER WHO REPORTS HIS MISAPPROPRIATION OF IOLTA FUNDS TO DISCIPLINARY COUNSEL, WHO FREELY ADMITS THE WRONGFUL NATURE OF HIS MISCONDUCT, WHO TAKES COMPLETE RESPONSIBILITY FOR HIS MISCONDUCT, WHO MAKES FULL RESTITUTION FOR HIS MISCONDUCT ENSURING THAT NOBODY HAS BEEN OR WILL BE HARMED BY THAT MISCONDUCT AND WHO PROVIDES DISCIPLINARY COUNSEL WITH FULL COOPERATION SHOULD NOT BE ACTUALLY SUSPENDED FROM THE PRACTICE OF LAW WHEN THE MITIGATING FACTORS RELATIVE TO HIS MISCONDUCT ARE SUBSTANTIAL.

The Board recommended that Steve Edwards be suspended from the practice of law for two years, with the entire suspension stayed upon these conditions: (1) that he not commit further misconduct; (2) that he continues to comply with his OLAP contract; and (3) that he continue individual counseling with a mental health professional. Relator ODC argues that Mr. Edwards should be suspended from the practice of law for one year with six months suspended, thereby resulting in an actual six-month suspension from the practice.

The only issue before this Honorable Court is whether Mr. Edwards should serve an actual suspension from the practice in order to protect the public, including the court system. It is respectfully submitted that no such actual suspension is appropriate or necessary.

Relator, ODC, essentially bases its position on three arguments. One, that Mr. Edwards has committed "theft". (Relator's Objections, page two). Two, that Mr. Edwards violated Prof. Conduct R. 8.4 (c). Three, that case law mandates that Mr. Edwards receive an actual suspension from the practice.

The “Theft” Argument

To the best of our recollection and knowledge, the first time Relator advanced its “theft” argument is in its Objections filed with this Honorable Court. If it is shown that we are incorrect in this regard, we will stand corrected and apologize.

It is not fair to raise this allegation, for the first time, in this court. Had this issue been raised in the prior proceeding in this case, Mr. Edwards would have offered evidence and legal arguments to the contrary.

“Theft” is a crime and Mr. Edwards has not been charged with, or convicted of, any crime. Neither this Honorable Court, nor any court, should indulge the presumption that anybody has committed a crime. To do so — and this point is bigger and more significant than this important case — would violate the Due Process Clause of the Fifth Amendment to the United States Constitution. Clark v. Arizona (2006), 548 U.S. 735, 766. Therefore, it should not be presumed that Mr. Edwards has committed a crime.

The 8.4(c) Argument

The Panel held, “Although Respondent admitted to withdrawing funds from his IOLTA for personal use, the panel finds these actions did not, in and of themselves, establish by clear and convincing evidence a violation of Prof. Conduct R. 8.4 (c)”. (Report and Recommendations of the Board, p. 5). The Board adopted this finding. Id. at 8.

To be sure, Mr. Edwards misappropriated money from his IOLTA, and initially he did not tell anybody. But the Board seemed to find two facts to be significant in concluding that he did not violate Prof. Conduct R. 8.4 (c).

First, Mr. Edwards never made an affirmative misrepresentation, to anybody. Mr. Edwards never made a false or misleading statement about his misconduct to any client, subrogated entity, tribunal or anybody else.

Second, when Mr. Edwards received a letter of inquiry from the ODC, about an \$892.34 IOLTA overdraft, Mr. Edwards responded by disclosing all (100%) of his misconduct, and by providing Relator with openness, honesty and candor. These facts establish that the ODC did not prove a violation of Prof. Conduct R. 8.4 (c) by clear and convincing evidence.

It is respectfully submitted that this Honorable Court should be careful not to rule that whenever a lawyer knows he or she has engaged in ethical misconduct, that he or she must immediately self-report their misconduct to a disciplinary authority empowered to investigate or act upon such a violation, or be in violation of Prof. Conduct R. 8.4 (c). Such a precedent will cause allegations of 8.4(c) violations to be added to several cases where 8.4(c) allegations don't belong.

Further, it is respectfully submitted that if lawyers are not given appropriate credit for reporting their own misconduct, and then being open, honest and candid with the ODC, that lawyers will have insufficient motivation to engage in this highly desirable conduct. This Honorable Court should decide this case in a way that will create a precedent that will encourage lawyers to self-report their misconduct, and then be open and honest about it.

The "Case Law Mandates An Actual Suspension" Argument

The ODC seems to argue, at page four of its Objections, that a violation of Prof. Conduct R. 8.4 (c) should automatically result in an actual suspension from the practice

of law. Therefore, the ODC seems to argue, it is important for this Honorable Court to overrule the Board and find that an 8.4 (c) violation was, in fact, established by clear and convincing evidence. (If this is not the ODC's argument, then the issue of whether Mr. Edwards violated Prof. Conduct R. 8.4 [c] would seem moot).

In any event, this Honorable Court has held that a violation of the "dishonesty" prohibition of the ethics rules does **not** need to result in an actual suspension from the practice of law. Akron Bar Assn. v. Gibson (2011), 128 Ohio St. 3d 347; Dayton Bar Assn. v. Ellison (2008), 118 Ohio St. 3d 128; Disciplinary Counsel v. Fumich (2007), 116 Ohio St. 3d 257. In Fumich, for example, this Court held:

A violation of DR 1-102 (A)(4) [now Prof. Conduct R. 8.4(c)] **usually** requires an actual suspension from the practice of law for an appropriate period of time. Disciplinary Counsel v. Fowerbaugh (1995) 74 Ohio St. 3d 187, 190. **We have held, however that an abundance of mitigating evidence can justify a lesser sanction.** [Citations omitted] (Emphasis added).

Thus, even if this Honorable Court were to find that Mr. Edwards violated Prof. Conduct R. 8.4 (c), the sanction recommended by the Board would still be consistent with the prior decisions of this court.

The Cases Cited By The ODC

The ODC has cited three additional cases in support of it's contention that Mr. Edwards should receive an actual suspension from the practice of law. The first case relied on by the ODC is Disciplinary Counsel v. King (2004), 103 Ohio St. 3d 438. In that case, Mr. King was suspended from the practice of law in Ohio for one year after being convicted of filing false income tax returns in 1984 and 1985. He was reinstated to the practice in 1991. In 1996, he was suspended from the practice of law for six

months for neglecting an entrusted legal matter and for engaging in dishonest conduct, by repeatedly lying to his client. In 2006, Mr. King was reinstated to the practice of law. Mr. King was subsequently charged with multiple violations of the Disciplinary Rules and was eventually suspended, again, from the practice of law. The numerous aggravating facts of King make it easily distinguishable from this case.

The second case relied upon by the ODC is Disciplinary Counsel v. Bubna, (2007), 116 Ohio St. 3d 294. In that case Mr. Bubna co-mingled his money with that of his clients, failed to keep records of client funds he was holding, and sometimes overdrew the account preventing him from paying sums to which a client was entitled. Further, Mr. Bubna did not set up appropriate bank accounts, to keep his money separate from that of his clients, for at least about a year after the grievance against him was filed. Mr. Bubna also showed little appreciation for why the rule against co-mingling exists, showed little regard for one of the problems he caused a particular client, and was found to be less than credible as to why he had poor bookkeeping practices. Mr. Bubna was suspended from the practice of law for one year, with six months stayed based on certain conditions. Given Bubna's aggravating facts, the case tends to support the Boards position more than it supports the ODC's position.

The third case the ODC relies on is Dayton Bar Assn. v. Gerren (2004), 103 Ohio St. 3d 21. In that case, Mr. Gerren failed to keep complete records of client funds in his possession, took money from his trust fund to pay his personal expenses, and damaged one of his clients in the process. The Gerren court said that while the presumptive disciplinary measure for acts of misappropriation is disbarment, **this sanction may be tempered with sufficient evidence of mitigating or extenuating circumstances.**

The court then found that insufficient mitigating or extenuating circumstances existed because Mr. Gerren engaged in misconduct over a period of years, the number of which was not specified, and his misappropriation of funds resulted in a judgment against his client that had apparently not been satisfied. He was suspended from the practice of law for six months. Again, given its aggravating facts, and lack of mitigating facts, the Gerren case tends to support the Board's position more than it supports the ODC's position.

Closing Remarks

The purpose of disciplinary sanctions is not to punish the offender, but to protect the public, including the legal system. See Disciplinary Counsel v. O'Neill (2004), 103 Ohio St. 3d 204. When imposing a sanction this Court weighs the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline. Toledo Bar Assn. v. Hales (2008), 120 Ohio St. 3d 340. Because each disciplinary case is unique, this Court is not limited to the factors specified in the rule, but may take into account all relevant factors. Id.

As the Board said in its Report and Recommendations, at pages 5-6, this case involves these unique factors:

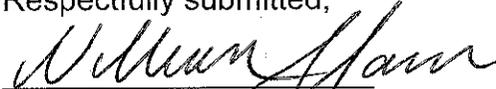
Although the behavior that forms the basis of the violations is disturbing, there are many mitigating factors to consider: (1) Respondent acknowledged his misconduct and during the hearing was credible in his contrition for his wrongdoing; (2) he takes full responsibility for [his] misconduct and does not place the blame on any else; (3) he has fully cooperated with the investigation; (4) he has made full restitution to restore [the misappropriated money to] 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[d] attorney [Richard Swope] to provide guidance, counseling, and mentoring [to him]; (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.

CONCLUSION

For all of the foregoing reasons, the ODC's objection should be overruled and the Report and Recommendations of the Board of Commissioners on Grievances and Discipline should be adopted.

Respectfully submitted,



William Mann (0024256)

Mitchell + Pencheff, Fraley,

Catalano & Boda Co LPA

580 S. High Street, Suite 200

Columbus, OH 43215

Tel: 614-224-4114

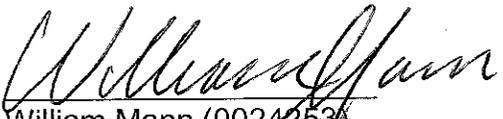
Fax: 614-224-3804

Email: mannlaw99@aol.com

Certificate of Service

I certify that a copy of this BRIEF OF RESPONDENT OF STEVE EDWARDS IN
RESPONSE TO RELATOR'S OBJECTIONS was served upon the following by regular
U.S. Mail this 22 day of June 2012:

Carol A. Costa (0046556)
Assistant Disciplinary Counsel
250 Civic Center Drive #325
Columbus, OH 43215
Lead Counsel for Relator


William Mann (0024253)
Attorney for Respondent
Steve Edwards

**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
Respondent	:	Recommendation of the
	:	Board of Commissioners on
Disciplinary Counsel	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
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**

RULE 8.4 MISCONDUCT

It is professional misconduct for a lawyer to do any of the following:

(a) violate or attempt to violate the Ohio Rules of Professional Conduct, *knowingly* assist or induce another to do so, or do so through the acts of another;

(b) commit an *illegal* act that reflects adversely on the lawyer's honesty or trustworthiness;

(c) engage in conduct involving dishonesty, *fraud*, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law;

(f) *knowingly* assist a judge or judicial officer in conduct that is a violation of the Ohio Rules of Professional Conduct, the applicable rules of judicial conduct, or other law;

(g) engage, in a professional capacity, in conduct involving discrimination prohibited by law because of race, color, religion, age, gender, sexual orientation, national origin, marital status, or disability;

(h) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

CONSTITUTION OF UNITED STATES
AMENDMENTS

Current through 2012

Amendment V. Rights of Persons

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.