ORIGINAL

IN THE SUPREME COURT OF OHIO

TRUMBULL COUNTY BAR ASSOCIATION

Relator

CASE NO. 2012-0659

-vs-

JOSEPH DAVID OHLIN

Respondent

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE REPORT AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE AND BRIEF IN SUPPORT OF PERMANENT DISBARMENT AND IN OPPOSITION TO SUBMISSION OF ADDITIONAL EVIDENCE OR REMAND

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PROCEDURAL POSTURE AND STATEMENT OF THE CASE

On February 24, 2011, Relator served a six-count complaint upon Respondent by certified and ordinary U. S. mail. Relator filed its complaint with the Board of Commissioners February 25, 2011. On April 11, 2011, an entry was made by the Board of Commissioners stating that a probable cause panel had found probable cause existing for the filing of a formal complaint and ordered that the complaint be certified to the Board of Commissioners. On April 11, 2011 an Entry was made by the Board of Commissioners accepting Relator's Complaint for filing and directing that notice be served upon the Respondent. On April 11, 2011, notice of the filing of the Complaint was sent out by the Board of Commissioners and served on Respondent April 18, 2011, as indicated by a certified mail receipt signed by the Respondent. The Respondent's answer day expired on May 8, 2011.

On June 15, 2011, Relator's counsel sent Respondent a letter indicating Respondent's default status and suggesting that he enter an appearance pro se or via counsel. Respondent did not respond to that letter.

On February 22, 2012, Relator filed its motion for default judgment against Respondent and served a copy of same upon Respondent by ordinary and certified U. S. mail.

On February 23, 2012, the Board of Commissioners referred Relator's motion for default judgment to master commissioner, Judge W. Scott Gwin, for ruling upon Relator's motion. After reviewing all of the materials submitted in support of the motion for default judgment Judge Gwin found, based upon the extent of Respondent's misconduct and the presence of significant aggravating factors, that Respondent should be permanently disbarred from the practice of law.

The Board's report and recommendation of permanent disbarment was filed with this court April 18, 2012. On May 1, 2012, this court issued an order directing Respondent to show cause why the recommendation of the Board for Respondent's permanent disbarment should not be confirmed by the court and the disciplinary order so entered.

On or about May 18, 2012, Respondent, through counsel, entered an appearance, sought an extension of time to file objections to the Board's recommendation by June 11, 2012, and in fact filed those objections on June 11, 2012.

Respondent's objection to the recommendation of permanent disbarment is that he suffered with mental health issues which caused him to commit the violations charged and also prevented him from cooperating in any of the six grievances charged and investigated. Respondent asks this court to remand this case to the Board of Commissioners on Grievances and Discipline for further proceedings in which Respondent seeks to offer exculpatory and mitigating evidence for his conduct. In support of his motion, Respondent offers his own self-serving affidavit with no independent supporting evidence, such as a medical report from his physicians.

RESPONDENT'S BACKGROUND

Respondent, Joseph David Ohlin, Attorney Registration No. 0031532, was admitted to the practice of law in the state of Ohio on November 4, 1985 and is subject to the Ohio Rules of Professional Responsibility and the Rules for the Government of the Bar of Ohio.

In August 2009, Disciplinary Counsel filed a complaint charging Respondent with violations of the Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and Gov.Bar R. V(4)(G) and VI(1)(D). ***Disciplinary Counsel v. Ohlin, 126 Ohio St. 3d 384 2010-Ohio-3826.*** During the pendency of that action, this court suspended Respondent's license

to practice law in the State of Ohio for his failure to register for the 2009-2011 attorney-registration biennium. ***In Re Ohlin, 123 Ohio St. 3d 1475, 2009-Ohio-5786.*** This court also sanctioned and suspended Respondent from the practice of law for failing to comply with the continuing legal education requirements set forth in Gov.Bar R. X(3). ***In Re Ohlin, 124 Ohio St. 3d 1402, 2009-Ohio-6833.*** In ***Disciplinary Counsel v. Ohlin,*** Relator's complaint was served by certified mail August 19, 2009 at the address Respondent had registered with the office of attorney services, but Respondent failed to answer. Disciplinary Counsel filed a motion for default supported by documentary evidence. A master commissioner, Judge W. Scott Gwin, appointed by the Board considered the motion for default and prepared a report recommending that the Board indefinitely suspend Responded. The Board adopted the master commissioner's findings that the materials offered in support of the default motion were sufficient and that Respondent had committed multiple violations of the ethical duties incumbent upon Ohio lawyers.

In accordance with the master commissioner's report, the Board recommended that the court indefinitely suspend Respondent from the practice of law, condition his reinstatement upon submission of proof he has resolved the problems that he claims contributed to his misconduct and require Respondent to complete one year of monitored probation pursuant to Gov.Bar R. V(9) upon reinstatement.

In ***Disciplinary Counsel v. Ohlin*** Respondent was charged with five counts of misconduct as follows:

COUNT ONE

In 2002, a client retained Respondent's law firm to represent him in a personal injury case. Another attorney at the firm filed a lawsuit on the client's behalf and when that attorney

left the firm Respondent assumed representation. After Respondent failed to reply to the defendant's motion to dismiss or the Defendant's motion for summary judgment, the trial court granted judgment in favor of the Defendants.

At his deposition, Respondent acknowledged that he had received a copy of a letter of inquiry from Disciplinary Counsel forwarding the client's grievance, and that he failed to respond. Respondent further admitted that his malpractice insurance had lapsed and that he had failed to inform the client of that fact. Respondent agreed to provide additional information regarding his malpractice insurance and the client's complete case file to the Disciplinary Counsel following a deposition, but never did so.

The Board found the Respondent's conduct violated DR 1-104(A) and (B) requiring a lawyer to inform a client at the time of engagement or at any subsequent time to the engagement if the lawyer does not maintain professional liability insurance, and to keep a copy of the notice signed by the client for five years after the termination of representation; Prof.Cond.R. 1.1 requiring a lawyer provide competent representation to a client; Prof.Cond.R. 1.3 requiring a lawyer to act with reasonable diligence and promptness representing a client; Prof.Cond.R. 1.4(C) requiring a lawyer to inform the client, at the time of engagement or at any similar time to the engagement if the lawyer does not maintain professional liability insurance coverage; and Gov. Bar R. V(4)(G) requiring a lawyer to cooperate with the disciplinary investigation.

COUNT TWO

In April 2005, a client retained Respondent and paid him $200.00 to pursue expungement of a federal criminal conviction. A year and a half later Respondent had done nothing and sought the assistance of another attorney. The client met with that attorney and issued a check for $400.00 payable to Respondent. Respondent cashed the check and gave the money to the

other attorney for the work he had performed. At his deposition, Respondent agreed to provide the client's complete file to Disciplinary Counsel, but never did so.

Based upon its findings of fact, the Board of Commissioners determined Respondent's conduct violated DR6-101(A)(3) prohibiting neglect of an entrusted legal matter; 7-101(A)(1) prohibiting a lawyer from intentionally failing to seek the lawful objectives of his client; and Gov.Bar R. V(4)(G) failing to cooperate in an investigation.

COUNT THREE

A client retained Respondent to represent her in a personal injury action. Respondent settled the matter for $10,000.00 in September 2005 and, after having his client sign the settlement check, he negotiated the check in November 2005. By February 2007, Respondent had still not distributed the client's money to her. Several weeks later, Respondent gave the client $800.00 cash. Respondent also promised to provide Disciplinary Counsel's office with the client's complete file, but has never done so.

Based upon those factors the Board of Commissioners determined that Respondent's conduct violated DR6-101(A)(3), 7-101(A)(1), 7-101(A)(2) and 9-102(B)(4) requiring a lawyer to promptly pay or deliver funds and property to which a client is entitled. The Board also found that Respondent's conduct violated Prof.Cond.R. 1.15(A) requiring a lawyer to hold property of a client separate from the lawyer's own property, and Prof.Cond.R. 1.15(D) requiring a lawyer to properly deliver funds or other property that the client is entitled to receive, and Gov. Bar R. V(4)(D) requiring a lawyer to cooperate in the investigation of a disciplinary matter.

COUNT FOUR

Despite having received a letter from Disciplinary Counsel seeking Respondent's reply to a fourth grievance, Respondent did not participate in the disciplinary investigation of that

grievance. Furthermore, in Respondent's deposition he agreed to provide Disciplinary Counsel with a copy of the client's complete file, but never did so. The Board of Commissioners and this court found that Respondent violated Gov.Bar R. V(4)(D).

COUNT FIVE

Respondent moved in the fall of 2008, and failed to provide his new residence and business addresses to the office of attorney services. At his deposition before Disciplinary Counsel, Respondent agreed to update his attorney registration records, but never did so. The Board and this court found that Respondent's conduct violated Gov.Bar R. VI(1)(D) requiring attorneys to keep the office of attorney services apprised of their residence and office addresses.

SANCTON

Respondent testified in his discovery deposition as to alcohol dependency problems and mental disability, but did not provide any competent evidence to support such a diagnosis or causal connection to his misconduct. As a result of the Board of Commissioners' findings of misconduct, and weighing the aggravating and mitigating factors in each, as the Board of Commissioners recommended, this court indefinitely suspended Respondent from the practice of law with any reinstatement being conditioned upon his submission of proof that any alcohol dependence and mental health problems have been resolved, that he has followed all treatment recommendations including compliance with his existing contract with the Ohio Lawyers Assistance Program, that he is able to return to the competent, ethical and professional practice of law, and that he has paid the client discussed in count three all of the monies to which she is entitled.

Further, this court's August 24, 2010 order of indefinite suspension required Respondent, (1) within 30 days from date of the order, to notify all clients being represented in pending

matters and any co-counsel of Respondent's suspension and consequent disqualification to act as an attorney, (2) deliver to all clients being represented in pending matters any papers or other property pertaining to clients regardless of any fees or expenses due Respondent; (3) refund any part of any fees or expenses paid in advance; (4) notify opposing counsel of pending litigation; (5) send all notices required by this order by certified mail with a return address where communication may be thereafter directed to Respondent; (6) file with the clerk of this court and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with the order; (7) retain and maintain a record of the various steps taken by Respondent pursuant to the order; and (8) until Respondent fully complies with this order, keep the clerk of the Ohio Supreme Court and the Office of Disciplinary Counsel informed of his current address. This Court's docket in case No. 2010-0287 establishes that Respondent did not comply with any of the ordered matters.

Incident to Respondent's objection to the Board of Commissioners' findings of fact, conclusions of law, and recommendation of Respondent's permanent disbarment, Respondent, at Appendix B, seeks permission to supplement the record and remand these proceedings to the Board of Commissioners to present exculpatory and mitigating evidence. In support of that motion, Respondent offers his own self-serving affidavit alleging that he now has exculpatory and mitigating evidence, but Respondent offers no independent evidence, such as a physician's report, to establish even a modicum of support for his own statements.

This court's August 24, 2010 indefinite suspension order in ***Disciplinary Counsel v Ohlin*** specifically held that before Respondent could apply for reinstatement he was to submit proof, *inter alia*, that "(1) any alcohol dependence and mental-health problems have been resolved and (2) he has followed all treatment recommendations, including compliance with his existing

contract with the Ohio Lawyers Assistance Program". In the nearly twenty-two months since this court's order, it appears that Respondent has done nothing to resolve his alleged substance and mental problems. In his affidavit at ¶12, Respondent acknowledges that he did not complete his contract with the Ohio Lawyers Assistance Program and expresses his willingness to re-enter the program, but offers nothing to show that he has actually taken steps to do so, or why he has waited over twenty-two months to decide that he would now like to re-enter OLAP.

FACTS AND ARGUMENT

COUNT ONE
THE TAMIKA L. BERRY MATTER

A. The Board of Commissioners' Findings of Fact regarding the Tamika L. Berry Matter, Count 1, are supported by clear and convincing evidence.

Respondent was retained on or about September 13, 2004, by Tamika L. Berry to represent her in a personal injury action stemming from an automobile accident on June 22, 2003. Respondent filed a complaint for personal injury in the Trumbull County Court of Common Pleas on June 22, 2006. Respondent never consulted with Berry about the accident or the possible outcome of her case. He did not notify her of any court dates or depositions. Subsequently, Respondent failed to comply with discovery requests from the opposing party, and the court granted a motion to compel. Eventually, the opposing party filed a motion to dismiss the complaint, and on October 10, 2006, Respondent voluntarily dismissed the case without prejudice. Respondent did not notify Berry that he had voluntarily dismissed her personal injury case and never refiled the complaint. Berry tried numerous times to contact Respondent without success, and when she finally went to his office, she found it closed. Berry said Respondent promised to take care of her medical bills, but did not do so.

B. The Board of Commissioners' Conclusions of Law that Respondent's misconduct in the Berry matter, Count 1, violated the Ohio Rules of Professional Conduct are supported by clear and convincing evidence.

(a) Rule 1.3 A lawyer shall act with reasonable diligence and promptness in representing a client. *(Respondent did not properly prosecute Berry's complaint or comply with discovery);*

(b) Rule 1.4(A)(1) Failing to promptly inform the client of any decision or circumstances with respect to which the client's informed consent is required. *(Respondent failed to obtain Berry's consent to the voluntary dismissal of her case and failed to explain to her what he had done);*

(c) Rule 1.4(A)(2) Failing to keep the client reasonably informed about the status of the matter. *(Respondent failed to keep Berry informed as to what was going on with her case and further failed to communicate with her at all);*

COUNT TWO
THE CARRIE B. STANLEY MATTER

C. The Board of Commissioners Findings of Fact regarding the Carrie B. Stanley matter, Count 2, are supported by clear and convincing evidence.

In 2004, Carrie B. Stanley retained Respondent to represent her in a personal injury action arising from an automobile accident that occurred in October 2003. On February 8, 2005, Respondent filed a personal injury action on behalf of Stanley and on February 6, 2008, the court entered a judgment finding the case was settled and dismissed without prejudice.

Respondent never advised Stanley her case had been settled and dismissed, and she never received any money. Stanley made numerous attempts to contact Respondent concerning the progress of her case, but was unsuccessful. When she went to Respondent's office, she found it was closed. Respondent failed to provide Relator's investigator with Stanley's file and failed to cooperate in the investigation.

D. The Board of Commissioners' Conclusions of Law that Respondent's misconduct in the Stanley matter, Count 2, violated the Ohio Rules of Professional Conduct are supported by clear and convincing evidence.

(a) Rule 1.4(A)(1) A lawyer shall promptly inform the client of any decisions or circumstance with respect to which the client's informed consent is required by

these rules. (*Respondent settled Stanley's case and never told her about it nor did he account to her for any money received);*

(b) Rule1.4(A)(2) A lawyer shall keep the client reasonably informed about the status of the matter. (*Respondent never advised Stanley what was going on with her case or that he had settled same);*

COUNT THREE

THE RANDALL L. MILLER MATTER

E. The Board of Commissioners' Findings of Fact regarding the Randall L Miller matter, Count Three, are supported by clear and convincing evidence.

Randall Miller retained Respondent to represent him in a personal injury matter after an automobile accident that occurred on September 10, 2004. Some time in September 2005, Respondent settled the personal injury claim with the tortfeasor's insurance company, Nationwide Insurance Company. Miller was insured under his own insurance policy with Allstate Insurance Company. Allstate denied Miller's under-insured motorist claim because Respondent settled Miller's claim against the tortfeasor without permission from Allstate. Miller terminated Respondent and retained a new attorney who advised him Respondent should not have settled the original claim with Nationwide without Allstate's consent and that Respondent should have given Miller a settlement disbursement sheet at the time the money was distributed from the settlement with Nationwide. Despite Miller's subsequent numerous requests, Respondent did not provide a settlement disbursement sheet or any other accounting to Miller. As part of Miller's grievance, he provided copies of disbursement checks from Nationwide to Randall Miller and Respondent in the amount of $12,500.00. Respondent wrote two checks against his Trust Account to Miller in the sums of $3,000.00 and $1,500.00. Miller states that he was never advised by Respondent as to how much Respondent's fee was and what if any bills Respondent paid out of the settlement funds. Respondent failed to co-operate with Relator in the investigation of the Miller case.

F. The Board of Commissioners' Conclusions of Law that Respondent's misconduct in the Miller Matter, Count 3, violated the Ohio Rules of Professional Conduct are supported by clear and convincing evidence.

(a) DR1-102(A)(5) Conduct prejudicial to the administration of justice.*(Failure to protect Miller's under-insured motorist claim);*

(b) DR1-102(A)(6) Conduct that adversely reflects on a lawyer's fitness to practice law. *(Failure to account to Miller for disbursement of settlement funds);*

(c) DR6-101(A)(3) Neglect. *(Failure to protect Miller's under-insured motorist claim);*

(d) DR7-101-(A)(2) Intentionally failing to carry out a contract of employment entered into with a client for professional services. *(Failure to protect Miller's under-insured motorist claim);*

(e) DR7-101-(A)(3) Concealing or knowingly failing to disclose that which he is required to reveal by law. *(Refusal to account to Miller for settlement proceeds);*

(f) DR9-102(B)(3) Failing to maintain complete records of all funds, securities and other property of a client coming into the possession of a lawyer and failing to render appropriate accounts to his clients regarding them. *(Failure to account to Miller for settlement proceeds);*

(g) Gov.Bar R. V(4)(G) No lawyer shall fail, neglect or refuse to assist in an investigation or hearing concerning disciplinary violations. *(Respondent did not cooperate with Relator in the investigation of the Miller grievance);*

COUNT FOUR
THE TYLER SLABAUGH MATTER

G. The Board of Commissioners' Findings of Fact regarding the Tyler Slabaugh matter, Count 4, are supported by clear and convincing evidence.

Respondent was retained by Tyler Slabaugh's mother in January 2003 to represent Slabaugh in a personal injury claim arising out of an automobile accident which occurred on November 13, 2002. Slabaugh was a minor at the time and eventually her claim was settled for $8,500.00 in 2008. Respondent told Slabaugh her insurance company, State Farm, had a claim for $5,000.00 it paid for medical payment benefits, that but he had negotiated with the insurance

company and it agreed to accept $2,500.00 in repayment. Slabaugh's bill from Cortland Chiropractic was $1,953.00. Out of the settlement proceeds, Respondent retained $4,453.00 to pay State Farm and Cortland Chiropractic. Slabaugh calculated that there should be more than $1,200.00 left for her after Respondent received his fee of one-third. Respondent told her that there were court fees to deduct and he gave her a check for $1,000.00.

In 2009, Slabaugh received a bill for $1,953.00 from Cortland Chiropractic. Slabaugh and her husband both attempted to contact Respondent, but their calls were never returned. Eventually when Slabaugh was able to contact Respondent, she asked him for copies of the case file, bills and checks, but Respondent never provided her with any of the information. Slabaugh subsequently contacted the tortfeasor's insurance company, Nationwide, and learned that Nationwide had paid her insurance company directly $5,000.00 in medical payment benefits. Nationwide told Slabaugh the $8,500.00 settlement was for her damages, Respondent's fee and the Cortland Chiropractic bill. Slabaugh believes Respondent kept $2,500.00 he claimed to have paid to State Farm and that the $1,953.00 should have been paid to Cortland Chiropractic for a total of $4,453.00 more than his fee.

H. The Board of Commissioners' Conclusions of law that Respondent's misconduct in the Slabaugh matter, Count Four, violated the Ohio Rules of Professional Code are supported by clear and convincing evidence.

(a) Rule 1.5(A) and DR2-106(A) A lawyer shall make an agreement for, charging or collecting an illegal or clearly excessive fee (*Respondent took $4,453.00 to which he was not entitled);*

(b) 1.15(A) A lawyer shall not fail to hold property of his clients or third persons that is in a lawyer's possession separate from the lawyer's own property and failing to maintain a record of the date, amount paid and purpose of each disbursement made on behalf of such client (*Respondent failed to keep a record of Slabaugh's funds)*;

(c) DR9-102(B)(4) Failing to properly pay or deliver to the client the funds in possession of the lawyer to which the client is entitled *(Respondent did not give Slabaugh the money to which she was entitled)*;

(d) DR9-102(B)(3) Failing to render appropriate accounts to a client regarding his client's funds (*Respondent never accounted to Slabaugh*);

(e) Rule 8.4(C) and DR1-102(A)(4) A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation *(Respondent misrepresented to Slabaugh what he was doing with her case and money)*;

COUNT FIVE
THE LARRY DONALDSON MATTER

I. The Board of Commissioners' findings of fact regarding the Larry Donaldson matter, Count Five, are supported by clear and convincing evidence.

Larry Donaldson retained Respondent on May 31, 2008, to represent him in a misdemeanor theft case. Donaldson gave Respondent a $2,000.00 retainer and asked Respondent to attend the arraignment with him. Respondent did not attend the arraignment and sent no one in his place. After numerous tries, Donaldson's wife contacted Respondent and informed him Donaldson no longer wanted Respondent to represent him. Although Respondent promised to return the retainer within two weeks, as of the date of the grievance, Donaldson had not received a refund of the retainer, nor had any other contact from Respondent.

J. The Board of Commissioners' conclusions of law that Respondent's misconduct in the Donaldson matter, Count Five, violated the Ohio Rules of Professional Conduct are supported by clear and convincing evidence.

(a) Rule 1.3 A lawyer shall act with reasonable diligence and promptness in representing a client *(Respondent failed to carry out his agreement to represent Donaldson);*

(b) Rule 1.5(B)(1) A lawyer shall not make an agreement for, charge or collect an illegal or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence will be left with a definite and affirmed conviction and the fee is in excess of a reasonable fee *(Respondent charged a fee and performed no legal services)*;

COUNT SIX
THE DENNIS BRAKE MATTER

K. The Board of Commissioners' findings of fact regarding the Dennis Brake matter, Count Six, are supported by clear and convincing evidence.

In 2002, Dennis Brake retained Respondent to represent him in a personal injury case arising out of a motor vehicle accident in Geauga County, Ohio on March 20, 2004. In March 2004, another attorney from Respondent's office filed a lawsuit in Brake's behalf. Later, that other attorney left that position, and Respondent became responsible for Brake's lawsuit.

The case went to arbitration and an award of $10,000.00 was made to Brake, but Defendant's insurance company filed an appeal of the arbitration award and the case was scheduled for further proceedings in court. There was a case management conference set for November 16, 2005 with a trial date of December 5, 2005. Respondent did not make Brake aware that he needed to attend the hearing or the trial, and, in fact, Brake was advised by Respondent that there was no need for him to appear for the November 16, 2005 status conference.

Subsequently, Respondent informed Brake that he had settled the case for $6,867.00. Brake asserts that he never agreed to settle for that amount of money, and never authorized Respondent to settle the case for anything less than Brake receiving $5,000.00, after all of his medical bills, attorney fees and expenses had been paid.

Thereafter, Brake and his wife met with Respondent to sign some paperwork, which they believed was needed to reinstate the case. In that meeting, Respondent presented Brake with settlement checks from the Defendant's insurance carrier, one in the amount of $6,86700 and the other in the amount of $1,000.00 for medical payments. Brake refused to sign the checks and did

not authorize Respondent to accept the checks. Brake never received any settlement money from Respondent as a result of this case.

Some time in 2007, Brake met with Respondent concerning his case, and according to Brake, Respondent informed him that the medical bill from Dr. Montgomery did not need to be paid, that Respondent had spoken with the doctor and the doctor had agreed to waive payment on the bill. In November 2007, Brake contacted Dr. Montgomery's office and was informed that the bill still remained unpaid and there was never any agreement that it need not be paid. After speaking with Dr. Montgomery's office, Brake went to Respondent's office and confronted Respondent. Respondent offered to make two payments of $2,500.00 each to Brake to cover the payment of the settlement. According to Brake, these payments were to be cash, however, he never received any money from Respondent.

Respondent failed to cooperate with Relator in the investigation of the Brake grievance.

L. The Board of Commissioners' conclusions of law to Respondent's misconduct in the Brake matter, Count Six, violated the Ohio Rules of Professional conduct and are supported by clear and convincing evidence.

(a) Rule 1.2(A) The lawyer shall not fail to abide with a client's decisions concerning the objectives of representation and the means by which they are to be pursued. *(Respondent settled Brake's case without permission);*

(b) Rule 1.4(A)(1) A lawyer shall not fail to inform a client as to events in his case. *(Respondent did not inform Brake what was done with his case);*

(c) Rule 1.15 A lawyer shall not fail to properly provide funds to a client or fail to provide an accounting. *(Respondent did not distribute the settlement funds to Brake*);

(d) Gov.Bar R. V(4)(G) A lawyer shall not fail, neglect or refuse to assist in an investigation or hearing concerning disciplinary violations. *(Respondent did not cooperate in Relator's investigation of the Brake grievance);*

SANCTION
AGGRAVATING AND MITIGATING FACTORS

While the purpose of discipline is not to punish the offender, but to protect the public, that purpose should not be a shield to avoid discipline.

> The privilege to practice law is not a vested property right; it is a conditional privilege, a license. The acquiring of that license in the first instance is dependent not alone upon the completion of a course of study and the passing of a bar examination, but equally upon the applicant's being a person of good moral character. Although there is no provision for periodic inquiry into an attorney's intellectual fitness to continue to practice, a disbarment proceeding provides the means for ascertaining his continued moral fitness to practice. The purpose of disbarment is not to punish the individual. It is intended to protect the public, the courts and the legal profession. Thus the moral character of an attorney is at all times to be scrutinized for the purpose of insuring that protection. And such moral character is necessarily at issue in a disbarment proceeding. If a prior attempt at discipline has been ineffective to provide the protection intended for the public, then such further safeguards should be imposed as will either tend to effect the reformation of the offender or remove him entirely from the practice. The discipline for a repeat offender may be much greater than would have been imposed were it a first offense, yet such greater discipline is not a meting out of further punishment for prior acts but is a determination of the attorney's fitness to practice. ***In re Disbarment of Lieberman, 163 Ohio St. 35 (1955).***

By definition, discipline is both punishment and training to ensure proper behavior. At hand, both should be considered.

AGGRAVATING FACTORS

Relator believes that the following aggravating factors exist in this case:

1. Respondent has previously been the subject of disciplinary proceedings and is currently indefinitely suspended from the practice of law in the State of Ohio for misconduct similar to that *sub judice*. (BCGD 10(B)(1)(a));

2. Respondent has demonstrated a dishonest or selfish motive in taking clients' money in the Stanley, Miller, Slabaugh, Donaldson and Brake matters and not accounting for it to the clients. (BCGD 10(B)(1)(a));

3. Respondent's conduct in the Berry, Stanley, Miller, Slabaugh, Donaldson and Brake matters demonstrates a pattern of misconduct. (BCGD 10(B)(1)(a));

4. Respondent committed multiple offenses. (BCGD 10(B)(1)(d));

5. Respondent did not fully or timely cooperate with Relator in its investigation of any of the grievances in this proceeding. (BCGD 10(B)(1)(e));

6. Respondent has refused to acknowledge the wrongful nature of his conduct, and in fact, in his affidavit in support of remand, Respondent suggests that his clients are responsible for the problems alleged in each of their grievances. (BCGD 10(B)(1)(g));

7. Respondent's misconduct in each of the grievances in this proceeding caused financial harm to vulnerable clients. (BCGD 10(B)(1)(h));

8. Respondent failed to make restitution in the Donaldson matter. (BCGD 10(B)(1)(i)); and

9. Respondent has never complied with this court's orders in Respondent's prior disciplinary case for which he presently indefinitely suspended from the practice of law.

MITIGATING FACTORS

Because Respondent failed to in any way cooperate with Relator or to participate in the proceeding there is no evidence as to the existence of any mitigating factors, and Relator is not otherwise aware of any mitigating factors. Respondent has, however, now filed objections to the Board of Commissioners Findings of Fact, Conclusions of Law and Recommendation that Respondent be permanently disbarred, in which he alleges a mitigating factor of mental illness. Respondent has not, however, offered any credible or competent evidence to support his allegations.

ARGUMENT CONTRA SUPPLEMENTATION OF THE RECORD OR REMAND

Respondent's June 11, 2012 Objections to the Report and Recommendation of the Board of Commissioners includes, at Appendix B, a motion to supplement the record and remand proceedings to the board. For the reasons hereafter stated the motion should be denied and this case should proceed on the report of the Board of Commissioners, Respondent's objections and Relator's brief.

Respondent failed to file an answer to the complaint and never appeared in this matter until the notice to show cause was issued by this court. Respondent now moves this court to permit him to supplement the record with mitigation and/or exculpatory evidence for the court to consider in its determination of what sanction to impose.

Respondent also submits an affidavit indicating that he is willing to re-enter the Ohio Lawyers Assistance Program to begin the necessary treatment for the "mental condition" from which Respondent allegedly suffers. No documentation was submitted as to the nature of Respondent's condition, nor has Respondent submitted any diagnoses or treatment plan, or proved that the "mental condition" caused Respondent's misconduct.

Contrary to Respondent's arguments, there is no authority permitting a Respondent in a disciplinary action to supplement the record and submit evidence for the first time to this court.

Respondent argues that Gov.Bar R. V(11)(D) is applicable. This provision states in pertinent part:

> The process and procedure under this rule and regulations approved by the Supreme Court shall be as summary as reasonably may be. Amendments to any Complaint, notice, answer, objections, report, or order to show cause may be made at any time prior to the final order of the Supreme Court. The party affected by the amendment shall be given reasonable opportunity to meet any new matter presented.

Respondent's argument is flawed however, because no answer was ever filed. There is thus nothing to amend and the foregoing provision is inapplicable.

Respondent does not deny the allegations in the complaint, but he disagrees with the recommended sanction of disbarment. Therefore, pursuant to Civ.R. 8(D) all of the allegations are admitted:

> Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damages, are admitted when not denied in the responsive pleading. Civ.R. 8(D)

This Court has explicitly held that a Respondent may not submit evidence to the court for the first time in a disciplinary matter. A case directly on point is ***Columbus Bar Assn. v. Sterner, 77 Ohio St.3d. 164, 1996-Ohio-324.*** In that case, this court upheld the Board's recommendation of disbarment upon a motion for default. In response to Sterner's attempt to introduce mitigation evidence for the first time in his objections to the Board's recommendation, the *Sterner* Court held:

> Respondent has attempted in his brief and in oral argument to introduce in mitigation evidence of his alleged attention deficit disorder, a psychological condition which Respondent did not connect to his five year pattern of neglect of duty. *We decline to accept such evidence at this late date.*
>
> Disciplinary matters are original actions. Rule V of the Rules for the Government of the Bar of Ohio, setting forth detailed procedures for such matters, is promulgated pursuant to our constitutional power to oversee all phases of the conduct of the bar. (Citation omitted.) Under Rule V, the time for the production of evidence is at the formal hearing before a panel appointed by the Secretary of the Board of Commissioners on Grievances and Discipline. After the Board issues its findings and recommendations based on the certified report of the panel, this Court issues an order to show cause to the Respondent who then has an opportunity to object and to support that objection with a brief. *Rule V has no provision for the introduction of evidence in the brief filed in this court, or in the oral argument to this court.* Only in the most exceptional circumstances would we accept additional evidence at that late stage of the proceedings.
>
> If Respondent has any objection here, it must be to the findings and recommendations of the Board. The entire record sent to us from the Board consists of the pleadings, the default motion, the affidavits, and other material filed in support of the motion, and the

> findings of fact and recommendations of the Board after Respondent failed to answer, otherwise plead, or appear before the panel. Matters in excuse or mitigation do not appear in that record, nor do exceptional circumstances exist that would allow such evidence to be introduced for the first time by way of brief or oral argument in response to the order to show cause.

Id. at 167-168 (Emphasis added).

Likewise, in ***Columbus Bar Assn. v. Finneran,* 80 Ohio St.3d 428, 1997-Ohio-286**, this Court held:

> Moreover, Respondent failed to respond to the complaint before this court. Neither in his brief nor in his oral presentation, did Respondent address either his failure to answer Relator's complaint or his failure to respond to Relator's motion for default. Instead, in replying to our order to show cause why the recommendation of the Board should not be confirmed by the court, Respondent filed a response and objections, a brief in support, and a motion requesting remand. To that document, Respondent attached five exhibits. In oral argument before this court, Respondent also sought to explain his actions in the various cases with new material. As we said in *Columbus Bar Assn. v. Sterner,*(citation omitted), Rule V of the Rules for the Government of the Bar of Ohio, setting forth detailed procedures for [disciplinary] matters . . . has no provision for the introduction of evidence in the brief filed in this court or in oral argument to this court.

Id. at 432

At this late date, Respondent seeks to have the court consider evidence that an undisclosed "mental condition" contributed to his misconduct. As this court is aware, in order for a mental disability to qualify as a mitigating factor, all of the following must be present:

i. A diagnoses of a chemical dependent or mental disability by a qualified health care professional or alcohol/substance abuse counselor.

ii. A determination that the chemical dependency or mental disability contributed to the cause of the misconduct.

iii. . . . in the event of a mental disability, a sustained period of successful treatment.

iv. A prognosis from a qualified healthcare professional or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical, professional practice under specified conditions.

(BCGD Proc. Reg. 10(B)(2)(g)(i-iv)). None of the foregoing factors have been established by proper or timely presented evidence.

Respondent relies on ***Butler County Bar Association v. Portman, 121 Ohio St.3d 518, 2009-Ohio-1705*** as authority for his request to supplement the record and for remand. While this court granted the Respondent's request in ***Butler,*** in other cases this court has refused such relief in circumstances similar to those at bar; ***Dayton Bar Association v. Stephan, 108 Ohio St.3d 327, 206-Ohio-1063*** in which this court denied Respondent's request to supplement the record and for remand after the Respondent only first reacted to the disciplinary proceedings against him when he received a show cause order from this court. This court said *"We have previously held that attorneys have an obligation to assist in disciplinary matters, and that the record should be developed in the answers and hearings prior to reaching this court (citing* ***Cleveland Bar Assn. v. Witt, 85 Ohio St.3d 9*** *where Respondent's affidavit filed with the court was not considered because only after the court issued an order to show cause did the respondent awake to the consequences of his inaction and make a belated attempt to excuse and justify his failure to cooperate). We will consider supplements to the record only under the most exceptional circumstances";* ***Disciplinary Counsel v. McShane, 121 Ohio St.3d 169, 2009-Ohio-746*** this court denied a motion to supplement the record, but did grant remand because respondent proffered compelling evidence of mental disability in explanation of his failure to answer the complaint as well as substantial evidence in mitigation of his misconduct; ***Disciplinary Counsel v. Lentes, 120 Ohio St.3d 431, 2008-Ohio-6355*** in which this court denied respondent's efforts to supplement the record after having ignored all prior proceeding before the board of commissioners and disbarred respondent; ***Disciplinary Counsel v. Shaw, 126 Ohio St.3d 494, 2010-Ohio-4412*** noting that "in a few cases, we have permitted respondents

to supplement records before this court or have remanded cases to the board for the presentation of mitigating evidence" but in this case this court did not.

Further, if this court permits Respondent to supplement the record, Relator will have no opportunity to cross-examine Respondent, any witnesses, or offer any evidence to refute Respondent's "evidence" due to Respondent's complete lack of cooperation and participation in this case. Respondent's motion to supplement the record should be denied.

CONCLUSION

Respondent's misconduct equals, if it does not exceed, that described in prior disciplinary matters in which this court imposed disbarment. This court has imposed disbarment as a sanction for aggravating conduct similar to Respondent's *sub judice*: ***Disciplinary Counsel v. Bursey, 124 Ohio St.3d 85, 2009-Ohio-618,*** where the Respondent failed to pay over settlement proceeds to his client, failed to account to the client, would not communicate with the client, failing to keep clients apprised as to the status of their cases, not returning telephone calls, failing to return client files, failed to respond to letters of inquiry from Relator, failing to produce client records to Relator after promising in a deposition to do so, failing to pay a client's Chiropractor bill from settlement proceeds as promised; ***Disciplinary Counsel v. Character, 129 Ohio St.3d 60, 2022-Ohio-2902,*** where Respondent failed to adequately prepare to handle legal matters, failed to cooperate in the disciplinary process, had previous discipline, failure to deposit client retainer fee to IOLTA Account, failure to account for fees and expenses against a retainer, failed to produce client records and files, failed to oppose a motion for summary judgment in a foreclosure case, pattern of misconduct involving multiple violations, prior discipline, refusal to acknowledge wrongful nature of her conduct, failure to make restitution, caused harm to vulnerable clients; ***Columbus Bar Assn. v. Gueli, 119 Ohio St.3d 434, 2008-Ohio-4786,*** where

Respondent failed to complete work for which he had been paid, abandoned clients without notice, ignored client attempts to contact him, failed to provide promised records to Relator involving client matters; ***Disciplinary Counsel v. Henry, 127 Ohio St.3d 398, 2010-Ohio-6206,*** where Respondent neglected client matters, failed to keep clients informed about the status of their matters, failed to return unused fees and client documents, failed to respond to the disciplinary process, engaged in a pattern of multiple instance of misconduct, failed to acknowledge the wrongful nature of his misconduct, and caused harm to vulnerable clients; ***Toledo Bar Assn. v. Hickman, 119 Ohio St.3d 102, 2008-Ohio-3837,*** where Respondent committed the same type of misconduct for which he had previously been suspended, acted with dishonest or selfish motive, engaged in a pattern of misconduct, failed to acknowledge the wrongful nature of his misconduct, and failed to make restitution to his clients, many of whom were vulnerable; ***Cleveland Metro. Bar Assn. v. Hildebrand, 127 Ohio St.3d 304, 2010-Ohio-5712,*** where Respondent took a retainer, did not do the work and did not return the retainer and the court said that such was tantamount to theft and that permanent disbarment is the presumptive sanction; See also ***Columbus Bar Assn. v. Kiesling, 125 Ohio St.3d 36, 2010-Ohio-1555***; likewise ***Toledo Bar Assn. v. Mason, 118 Ohio St.3d 412, 2008-Ohio-2704***; ***Cleveland Bar Assn. v. Mishler, 127 Ohio St.3d 336, 2010-Ohio-5987,*** a pattern of neglect, along with misappropriation of client funds, failure to account for client funds, and failure to return client funds properly creates a presumption of disbarment as the proper sanction; also ***Disciplinary Counsel v. Sabroff, 123 Ohio St.3d 182, 2009-Ohio-4205***.

Respondent learned nothing from his first disciplinary experience as is evident by the fact that he is now before this Court again, for more of the same serious disciplinary violations.

Respondent's history demonstrates that compliance with court orders and professional standards are not priorities in his practice of law.

Considering the facts of each of the matters involved in this case, as well as the aggravating and mitigating factors discussed, Relator requests that the Court find that Respondent has violated the Ohio Code of Professional Responsibility and the Ohio Rules of Professional Conduct as charged, and impose the sanction of permanent disbarment.

TRUMBULL COUNTY BAR ASSOCIATION, REALTOR

By_____

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CERTIFICATE OF SERVICE

A copy of Relator's Answer to Respondent's Objections was served by ordinary U.S. Mail the 25th day of June, 2012 upon the following:

Joseph Terrance Dull, Esq.
Attorney for Respondent
724 Youngstown Warren Road
Suite #11
Niles, Ohio 44446

_____
Randil J. Rudloff
Trumbull County Bar Counsel

APPENDIX

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

In Re:	:	
Complaint against	:	**Case No. 11-026**
Joseph David Ohlin **Attorney Reg. No. 0031532**	:	**Findings of Fact,** **Conclusions of Law and**
Respondent	:	**Recommendation of the** **Board of Commissioners on**
Trumbull County Bar Association	:	**Grievances and Discipline of** **the Supreme Court of Ohio**
Relator	:	
	:	

MOTION FOR DEFAULT JUDGMENT

{¶1} This matter was referred to Master Commissioner, Judge W. Scott Gwin, on February 23, 2012, by the secretary of the Board pursuant to Gov.Bar R. V, Section 6(F)(2) for ruling on the Relator's motion for default judgment. Master Commissioner Gwin then proceeded to prepare a report pursuant to Gov.Bar R. V, Section 6(J). Based on the extent of Respondent's misconduct, as established by the evidence presented in support of the motion for default judgment, and the presence of significant aggravating factors, the Master Commissioner recommends Respondent be permanently disbarred from the practice of law in Ohio.

PROCEDURAL HISTORY

{¶2} On August 24, 2010, the Supreme Court of Ohio indefinitely suspended Respondent's license to practice law in *Disciplinary Counsel v. Ohlin,* 126 Ohio St.3d 384, 2010-Ohio-3826, 934 N.E.2d 323. The prior case involved three counts of misconduct occurring between 2002 and 2007, plus counts for failing to cooperate and for failure to provide his new

residence and business addresses to the Office of Attorney Services. The misconduct in the instant case occurred during roughly the same time period as the prior case.

{¶3} On December 11, 2008, Tamika L. Berry filed a grievance against Respondent. On February 5, 2009, Carrie B. Stanley filed a grievance against Respondent. On March 30, 2009, Randall L. Miller filed a grievance against Respondent. On July 21, 2009, Tyler Slabaugh filed a grievance against Respondent. On April 27, 2009, Larry Donaldson filed a grievance against Respondent, and on November 5, 2007, Dennis E. Brake filed a grievance against Respondent.

{¶4} Upon receipt of each grievance, Relator sent a notice of the filing of the grievance to Respondent, along with a copy of the grievance.

{¶5} On February 25, 2011, Relator filed its complaint with the Board and on April 8, 2011, a probable cause panel found probable cause for the filing of a formal complaint and ordered the complaint be certified to the Board. On April 11, 2011, the complaint was accepted for filing and the Board sent notice by certified mail to Respondent of the filing of the complaint, along with a copy of the complaint. The notice of the filing of the complaint advised Respondent his written answer was due within twenty days after April 14, 2011. The certified mail receipt indicates Respondent received the complaint on April 18, 2011. On February 22, 2012, Relator filed its motion for default judgment. Respondent has never filed an answer or responded in any other way in this action.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Count One—Berry Matter

{¶6} Tamika L. Berry retained Respondent on or about September 13, 2004, to represent her in a personal injury action stemming from an automobile accident on June 22,

2003. Respondent filed a complaint for personal injury in the Trumbull County Court of Common Pleas on June 22, 2005. Respondent never consulted with Berry about the accident or the possible outcome of her case. He did not notify her of any court dates or depositions.

{¶7} Subsequently, Respondent failed to comply with discovery requests from the opposing party, and the court granted a motion to compel. Eventually, the opposing party filed a motion to dismiss the complaint, and on October 10, 2006, Respondent voluntarily dismissed the case without prejudice.

{¶8} Respondent did not notify Berry that he had voluntarily dismissed her personal injury case, and never re-filed the complaint. Berry tried numerous times to contact Respondent without success, and when she finally went to his office she found it closed. She states Respondent promised to take care of her medical bills but did not do so.

{¶9} In *Disciplinary Counsel v. Plough*, 126 Ohio St.3d 167, 2010-Ohio-3298, the parties stipulated, and the Board found, Plough had violated Prof. Cond. R 8.4(d). The Supreme Court found the misconduct occurred before the effective date of the Rules. The court concluded Plough had violated DR1-102(A)(5), which prohibited the same behavior as the Rule. *Id.* ¶14. In this matter, Respondent's misconduct in the Berry matter occurred both during the time governed by the Code of Professional Responsibility and the Rules of Professional Conduct. Although the Relator charged only rule violations, the misconduct is also governed by parallel provisions of the Code of Professional Responsibility.

{¶10} Respondent's conduct with regard to the Berry matter violates the following provisions of the Rules of Professional Conduct and the Code of Professional Responsibility:

- Prof. Cond. R. 1.3 [diligence]; DR 6-101(A)(3) [neglect] and DR 7-101(A)(1) [failing to seek the lawful objectives of the client];
- Prof. Cond. R. 1.4(a)(1) [failing to promptly inform the client of any decision or

circumstances with respect to which the client's informed consent is required]; there is no specific parallel Code section, but the behavior also falls under DR 7-101(A)(1) [failing to seek the lawful objectives of the client]; and

- Prof. Cond. R. 1.4(a)(2)[failing to keep the client reasonably informed about the status of the matter]; there is no specific parallel Code section, but the behavior also falls under DR 7-101(A)(1) [failing to seek the lawful objectives of the client].

Count Two—Stanley Matter

{¶11} In 2004, Carrie B. Stanley retained Respondent to represent her in a personal injury action arising out of an automobile accident that occurred in October, 2003. On February 8, 2005, Respondent filed a personal injury action on behalf of Stanley. On February 6, 2008, the court entered judgment finding the case was settled and dismissed it without prejudice.

{¶12} Respondent never advised Stanley her case had been settled and dismissed, and she never received any money. Stanley made numerous attempts to contact Respondent concerning the progress of her case, but was unsuccessful. When she went to Respondent's office, she found it was closed. Stanley believes Respondent settled her case and kept her money. The record contains no evidence regarding the amount of the settlement or whether Stanley had medical bills or other unreimbursed damages.

{¶13} Respondent's conduct with regard to the Stanley violates Prof. Cond. R. 1.4(a)(1) and Prof. Cond. R. 1.4(a)(2).

Count Three—Miller Matter

{¶14} Randall L. Miller retained Respondent to represent him in a personal injury matter after an automobile accident that occurred on September 10, 2004. Miller's grievance does not indicate the date he retained Respondent.

{¶15} Sometime in September 2005, Respondent settled the personal injury claim with the tortfeasor's insurer, Nationwide Insurance Company. Miller owned an insurance policy with

Allstate Insurance Company. Allstate denied Miller's underinsured motorist claim because Respondent settled the claim without permission. Miller terminated his involvement with Respondent and retained a new attorney, who advised him Respondent should have given Miller a settlement disbursement sheet at the time the money was distributed from the settlement with Nationwide. Despite requests, Respondent did not provide a settlement disbursement sheet.

{¶16} Attached to the grievance were copies of disbursement checks from Nationwide to Randall Miller and Respondent in the amount of $12,500 and two checks written against Respondent's Trust Account to Randall Miller in the amount of $3,000 and $1,500. Miller states he has never been advised of how much Respondent kept as his fee and what, if any, bills he paid out of the settlement funds. Miller does not allege he has unpaid medical bills or other unreimbursed damages.

{¶17} Respondent's conduct with regard to the Miller matter violates the following:

- DR 1-102(A)(5) [conduct prejudicial to the administration of justice];
- DR1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice];
- DR6-101(A)(3) [neglect];
- DR7-101(A)(2) [intentionally failing to carry out a contract of employment entered into with a client for professional services];
- DR7-101(A)(3) [concealing or knowingly failing to disclose that which he is required to reveal by law]; and
- DR9-102(B)(3) [failing to maintain complete records, all funds, securities, and other properties of a client coming into the possession of a lawyer and failing to render appropriate accounts to his clients regarding them].

{¶18} Relator also alleges a violation of DR 9-102(E)(1) [failing to maintain the funds of clients or third persons in an interest-bearing trust account that is established at an eligible depository institution]. However, the evidence shows both checks were drawn on accounts titled

Joseph D. Ohlin Trust and there is no evidence in the record these accounts do not qualify as IOLTA accounts. Relator did not prove this violation by clear and convincing evidence, and it is dismissed.

Count Four—Slabaugh Matter

{¶19} Tyler Slabaugh's mother retained Respondent in January 2003, to represent Slabaugh in a personal injury claim resulting out of an automobile accident which occurred on November 13, 2002. In 2008, her claim was settled for $8,500. Respondent told Slabaugh her insurance company, State Farm, had a claim for $5,000 it paid for MedPay, but he had negotiated with the insurance company and it had agreed to accept $2,500 in repayment. Slabaugh's bill from Cortland Clinic was $1,953. Out of the settlement, Respondent retained $4,453 to pay State Farm and Cortland Clinic. Slabaugh calculated there should be more than $1,200 left for her after Respondent received his fee of one-third. Respondent told her there were court fees to deduct, and he gave her a check for $1,000.

{¶20} In 2009, Slabaugh received a bill for $1,953 from Cortland Clinic. Slabaugh alleges both she and her husband attempted to call Respondent, but their calls went to voicemail and the voicemail box was so full they could not leave messages. When they were able to contact him, Slabaugh asked for copies of the case file, bills, and checks, but Respondent never provided her with her file. Respondent did not set up a meeting to discuss the matter as he had promised.

{¶21} Slabaugh contacted the tortfeasor's insurance company, Nationwide, and learned that Nationwide had paid her insurance company directly for the $5,000 MedPay. Nationwide told Slabaugh the $8,500 settlement was for her damages, Respondent's fee, and the Cortland Clinic bill. Slabaugh believes Respondent kept the $2,500 he claimed to have paid to State Farm

and the $1,953 that should have been paid to Cortland Clinic, for a total of $4,453 more than his fee.

{¶22} Respondent's actions occurred both before and after the effective date of the Rules of Professional Responsibility but Relator charged only under the Rules. Pursuant to *Plough, supra*, the following Code sections parallel the Rule violations. Respondent's conduct with regard to the Slabaugh matter violates the following provisions of the Rules of Professional Conduct and the Code of Professional Responsibility:

- Prof. Cond. R. 1.5(a) and DR 2-106(A) [making an agreement for, charging, or collecting an illegal or clearly excessive fee];

- Prof. Cond. R. 1.15(a) [failing to hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property, and failing to maintain a record of the date, amount, payee, and purpose of each disbursement made on behalf of such client], DR 9-102(B)(4) [failing to promptly pay or deliver to the client the funds in possession of the lawyer which the client is entitled to receive], and DR 9-102(B)(3) [failing to render appropriate accounts to his client regarding the client's funds]; and

- Prof. Cond. R. 8.4(c) and DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

Count Five—Donaldson Matter

{¶23} Larry Donaldson retained Respondent on May 31, 2008, to represent him in a misdemeanor theft case. Donaldson gave Respondent a $2,000 retainer, and asked Respondent to attend the arraignment with him. Respondent did not attend the arraignment and sent no one in his place. After numerous tries, Donaldson's wife contacted Respondent, and informed him Donaldson no longer wanted Respondent to represent him. Although Respondent promised to return the retainer within two weeks, as of the date of the grievance, Donaldson had not received a refund of his retainer nor any other contact from Respondent.

{¶24} Respondent's conduct with respect to the Donaldson matter violates Prof. Cond.

R. 1.3 and Prof. Cond. R. 1.5(b)(1).

{¶25} Relator also alleges violations of Prof. Cond. R. 1.5(b)(2) and Prof. Cond. R. 1.15. However, Relator has not presented clear and convincing evidence to prove these alleged violations.

Count Six—Brake Matter

{¶26} Sometime in 2002, Dennis Brake retained Respondent to represent him in a personal injury case arising out of an automobile accident on March 20, 2002. In March 2004, another attorney from Respondent's office filed a lawsuit on Brake's behalf. Later, the other attorney left his position, and Respondent became responsible for Brake's lawsuit.

{¶27} Brake alleges Respondent received $1,000 from Brake's insurance company for med pay and has improperly held the funds for five years. Respondent told Brake not to worry about the doctor bill because Brake's sister-in-law worked for the doctor, so he would write off the bill. The doctor bill is $3,391.

{¶28} The case went to arbitration several months before Brake filed the grievance on November 5, 2007. Brake understood he was to receive a certain (unspecified) amount. Thereafter, Respondent informed Brake he would receive about half what Brake thought he should receive, based on what he understood from the arbitration discussion.

{¶29} Brake asked Respondent for proof there is a settlement offer, and for proof of the amount, but Respondent has not provided it. Brake refused to settle unless he saw a breakdown of the disbursements, but Respondent did not provide this.

{¶30} Brake alleges Respondent told him Respondent had spoken with Dr. Montgomery about his bill and the doctor waived payment. In November 2007, Brake contacted Dr. Montgomery's office and was informed there was never any agreement that the bill did not need

to be paid. Brake alleges on November 5, 2007, Respondent told the doctor's office the matter had not been settled, but Respondent promised to pay the bill within two weeks, and was not going to charge Brake a fee for legal services.

{¶31} Respondent's conduct with regard to the Brake matter has violated Prof. Cond. R. 1.2(a) [failing to abide with a client's decisions concerning the objectives of representation and the means by which they are to be pursued]; Prof. Cond. R. 1.4(a)(1); and Prof. Cond. R. 1.15.

Respondent's Failure to Cooperate

{¶32} Respondent's conduct with regard to all these grievances has also violated Gov. Bar R. V, Section 4(G) [failing, neglecting, or refusing to assist in an investigation or hearing concerning disciplinary violations].

MITIGATING FACTORS

{¶33} The record does not contain any evidence of mitigating factors.

AGGRAVATING FACTORS

{¶34} At least eight of the nine aggravating factors set forth in BCGD Proc.Reg. 10(B)(1) are present here: prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; lack of cooperation in the disciplinary process; refusal to acknowledge the wrongful nature of his conduct; vulnerability of and resulting harm to the victims of the misconduct; and failure to make restitution.

RECOMMENDED SANCTION OF RELATOR

{¶35} Relator recommends an indefinite term of suspension.

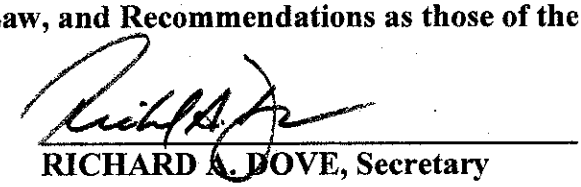
RECOMMENDATION OF MASTER COMMISSIONER

{¶36} Based on the record, the Master Commissioner finds an indefinite suspension is not a severe enough sanction and recommends permanent disbarment.

RECOMMENDATION

Pursuant to Gov. Bar Rule 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 adopted the Findings of Fact, Conclusions of Law, and Recommendation of the Master Commissioner and recommends that Respondent, Joseph David Ohlin, be permanently disbared from the practice of law in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to the 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 Recommendations as those of the Board.



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