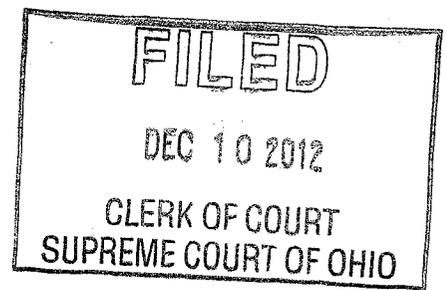


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

12-2072



In re:	:	
Complaint against	:	Case No. 11-060
Agatha Martin Williams	:	Findings of Fact,
Attorney Reg. No. 0052652	:	Conclusions of Law, and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Stark County Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

OVERVIEW

{¶1} A formal hearing was held in this matter on August 30, 2012, in Canton, before a panel consisting of members, Patrick Sink, Bernard Bauer, and Roger S. Gates, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Respondent, Agatha Martin Williams, was present at the hearing and was represented by Alvin Mathews. Richard S. Milligan and Dimitrios S. Pousoulides represented Relator.

{¶2} The third amended complaint contains five counts (Counts One through Five) alleging that Respondent repeatedly engaged in misconduct by stealing and/or mishandling client funds and a sixth count (Count Eight) regarding her criminal convictions in the theft of client funds. At the August 30, 2012 hearing, Relator requested dismissal of Counts Six and Seven of the third amended complaint, and the panel unanimously ordered the dismissal of those counts by entry dated August 31, 2012.

{¶3} Based upon the stipulations and the evidence presented at the hearing, the Panel concludes that Respondent committed multiple violations of Prof. Cond. R. 1.3 (diligence); Prof. Cond. R. 1.5 (fees and expenses); Prof. Cond. R. 1.8 (conflict of interest); Prof. Cond. R. 1.15 (safekeeping client funds); Prof. Cond. R. 8.4(b) (illegal act that reflects adversely on the lawyer's honesty or trustworthiness); 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). The panel also concludes that, by attempting to dissuade a client from cooperating with Relator's investigation, Respondent committed misconduct by violating Gov. Bar R. V, Section 4(G) (failure to cooperate in the investigation). The panel recommends dismissal of the alleged violation of Prof. Cond. R. 8.4(a) (violate or attempt to violate the Ohio Rules of Professional Conduct) as such charges are based upon the same facts which support the foregoing violations and are redundant and unnecessary.¹

{¶4} Since the completion of the hearing, Relator has submitted supplemental evidence documenting that Respondent had, prior to the hearing in this matter, violated the terms of the community control sanction imposed by the Stark County Court of Common Pleas in its original sentencing order and that the court has revoked the community control sanction and imposed the prison sentence on each of the counts. Therefore, Respondent has been committed to the Ohio Department of Rehabilitation and Corrections for incarceration for up to eight and one-half years.

¹ Relator filed a fourth amended complaint on July 11, 2012 that added two additional counts of misconduct. By agreement of counsel, the parties agreed to proceed at the August 30, 2012 hearing on the allegations contained in the third amended complaint and the stipulations filed by the parties on August 23, 2012. Hearing Tr. 14-15 and August 31, 2012 entry of the panel chair.

{¶5} Based upon the evidence presented in aggravation and mitigation, the panel recommends that Respondent be indefinitely suspended from the practice of law and that she be considered for reinstatement only after proof of compliance with several conditions set forth below.

FINDINGS OF FACT AND CONCLUSION OF LAW

{¶5} Respondent is a graduate of the University of Akron Law School and was admitted by examination on May 20, 1991. Respondent's registration status is active.

{¶6} The material facts relating to the charges of misconduct are not disputed and are set forth in the parties' stipulation. The panel adopts the stipulated facts as its findings of fact for purposes of this report. These facts can be summarized as follows.

Count One—Jackson Matter

{¶7} Respondent was retained to represent Kevin Jackson on a contingent fee basis in regards to personal injuries he suffered in an automobile accident. Respondent settled the claim for \$100,000 and attempted to negotiate a settlement of a subrogation claim for medical bills paid by the claimant's insurance company. When the subrogee failed to sign the check from the tortfeasor's insurer, Respondent endorsed the check without the subrogee's authority and deposited the check in her IOLTA. After the subrogee filed suit against Jackson, Respondent negotiated a settlement and wrote checks to disburse the funds from her IOLTA account. However, between the time Respondent deposited the tortfeasor's insurer's check and the time she wrote the distribution checks, Respondent had withdrawn all of the money from her IOLTA account and converted it to her own use. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.31(A)(1) and/or (A)(3) [forgery], a felony of the fourth degree in connection with her endorsement of the settlement check.

{¶8} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.3; Prof. Cond. R. 1.5; Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(b); and Prof. Cond. R. 8.4(c).

Count Two—White Matter

{¶9} Respondent was retained to represent Kathryn White and her husband on a contingent fee basis in regards to personal injuries Ms. White suffered in an automobile accident. After representing to the insurance company that she would personally accept full responsibility for payment of her client's medical bills, Respondent settled the White's claims for the policy limits and received a check for \$100,000 made payable to Mrs. and Mr. White and Respondent. After her clients endorsed the check, Respondent deposited the check into her IOLTA account. Respondent negotiated with Mr. White's employer, Dinesol Plastics, to attempt to settle the claim for medical expenses paid by Dinesol. Without ever making any distribution to either her clients or Dinesol, Respondent withdrew and converted all of the settlement proceeds from her IOLTA account. After becoming aware that Relator was conducting an investigation concerning her IOLTA account, Respondent visited her clients and falsely assured them that she still had the money from the settlement in her IOLTA account and that she would be sending them a check. Respondent also attempted to dissuade her clients from cooperating with Relator's investigation. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds from Kathryn and Robert White.

{¶10} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.3; Prof. Cond. R. 1.5; Prof. Cond. R. 1.8; and Prof.

Cond. R. 1.15. The parties stipulated and the panel also concludes that Respondent violated Gov. Bar R. V, Section 4(G).

Count Three—Lemon Estate

{¶11} Respondent was retained by Sarrah Talbert to file and administer the estate of Talbert's deceased son Carlton Lemon. After she was appointed by the probate court as administrator of the estate, Respondent collected \$10,378.94 from the decedent's checking account and deposited those funds into a checking account she established as administrator of the estate. Without authority from the probate court, Respondent made multiple withdrawals from the estate checking account which she deposited into her personal checking account. Despite the court's issuance of a citation, Respondent failed to account to the probate court for the estate funds and was removed as administrator. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds from the Lemon Estate.

{¶12} The parties stipulated and the Panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.3; Prof. Cond. R. 1.5; Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(b); Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

Count Four—Talbert Claim Regarding Life Insurance Proceeds

{¶13} In addition to collecting money from Carlton Lemon's checking account, Respondent assisted Sarrah Talbert with processing a claim for the proceeds of a life insurance policy on Mr. Lemon's life. Respondent obtained a check made payable to Sarrah Talbert in the amount of \$81,599.13, which Respondent deposited into her IOLTA account after obtaining Talbert's endorsement of the check. Although Respondent issued an initial check from her IOLTA account to Talbert in the amount of \$4,730.68 and thereafter paid Talbert a total of

\$12,000 by issuing sixteen monthly checks of \$750 each, Respondent withdrew and dissipated the remainder of the life insurance proceeds. On February 10, 2012, Respondent pled guilty to a violation of R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3) [theft], a fourth degree felony in connection with the missing funds of Sarrah Talbert.

{¶14} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(b); Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

Count Five—Gates Matter

{¶15} Respondent was retained by Lucy Gates to pursue Ms. Gates' employer for unpaid pension payments. Although she received a \$600 retainer, Respondent did not have Gates sign a written fee agreement. The matter was resolved without litigation by a resumption of monthly payments to Gates and a lump sum payment of the outstanding unpaid balance in the amount of \$70,538.85. Respondent disbursed \$34,215.54 to Gates while retaining a 40 percent fee of \$24,215.54 and an additional \$10,000 as litigation expenses. Respondent did not commence any litigation in this matter, and thus incurred no litigation expenses. Her legal work in connection with the matter consisted of four letters to her client, seven letters to the employer, and no documents other than a one-page affidavit.

{¶16} The parties stipulated and the panel concludes that Respondent committed misconduct by violating Prof. Cond. R. 1.5; Prof. Cond. R. 1.15; Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R.8.4(h).

Count Eight—Felony Convictions²

{¶17} In connection with the conduct described in Counts One through Four, Respondent pled guilty and was convicted on February 10, 2012 in the Stark County Common

² As noted in ¶2 of this report, the panel has dismissed Counts Six and Seven of the third amended complaint.

Pleas Court to one count of forgery R.C. 2913.31(A)(1) and/or (A)(3), four counts of grand theft R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3), and one count of theft R.C. 2913.02(A)(1) and/or (A)(2) and/or (A)(3).

{¶18} The panel concludes that the conduct involved in these criminal convictions is subsumed in the conclusions of law relative to Counts One through Four, and the panel makes no additional findings of misconduct in regard to Count Six.

AGGRAVATION, MITIGATION, AND SANCTION

{¶19} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties Respondent violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743. The panel must also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc. Reg. 10(B). *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251.

{¶20} The panel concludes that the following aggravating factors are present:

- Dishonest or selfish motive;
- Pattern of misconduct;
- Multiple offenses;
- Failure to cooperate in the disciplinary process—although Respondent appears to have been cooperative following the filing of the complaint in this matter, she initially attempted to discourage clients from cooperating with Relator’s investigation;
- Vulnerability of and resulting harm to victims of the misconduct; and
- Failure to make restitution.

{¶21} The panel concludes that the following mitigating factors are present:

- Absence of a prior disciplinary record;

- Character or reputation--Respondent presented eight character witnesses who attested to Respondent's moral character, her commitment to becoming an attorney, her work ethic, and her involvement in her church and community activities. The witnesses believed her gambling and the theft of client's money was totally out of character for the person they knew Respondent to be. At the time of the hearing, Respondent had gained employment, and her employer testified that he believed she had the qualities to learn his business as a major defense contractor, that she would be successful despite her legal problems, and that she would be able to earn sufficient money to pay back the money she had stolen. Her employer saw Respondent as a person in the community who provides encouragement and support to people who need a push; he saw her as the type of person that people in the African-American community could look up to. The fact that Respondent became an attorney and was viewed as being successful was an inspiration to young people in the community;
- Imposition of other penalties or sanctions—Respondent was convicted of multiple criminal offenses and is currently incarcerated following her violation of conditions of the community control sanction originally ordered by the Court. Respondent has been sentenced to incarceration for eight and one-half years and began her period of incarceration since the hearing in this matter; and
- Acknowledgement of the wrongness of her actions--Respondent fully acknowledged that she had "messed up" and that her conduct had injured and disappointed numerous people. She testified that the person who she was when she was gambling was not her true self. Although she admitted that she is "not at a place" where she can practice at this time, Respondent claimed that she was committed to correcting her behavior and making full restitution of those she had harmed.

{¶22} Much of the evidence at the hearing focused on Respondent's claim that the panel should consider her depression and her gambling addiction as a mitigating factor. Although testimony from multiple health care providers established that Respondent suffers from major depression and adjustment disorder, the more significant diagnosis was Respondent's impulse control disorder which caused a gambling addiction. Respondent testified that her gambling began to get out of control around 2007, when she was under a lot of stress from various family issues. Respondent also stated that she was required to travel a lot due to her sister's serious illness and that she would gamble whenever she was near a casino. Respondent also made frequent trips to Pittsburgh and Wheeling to gamble.

{¶23} Although the panel has no difficulty concluding that Respondent's gambling addition contributed to her misconduct in this matter, the panel cannot conclude that Respondent has successfully completed an approved course of treatment for her disability or that she is able to return to an ethical professional practice at the present time under any set of conditions. Although Stephanie Krznarich testified that Respondent's compliance with her OLAP contract had been very good, the evidence established that Respondent was regularly gambling while she was treating with a specialist in gambling addictions and being monitored and supported by OLAP. In fact, the evidence established that Respondent had gambled within the last couple of weeks before the hearing and that she had failed to attend numerous sessions with her gambling addiction therapist.

{¶24} In short, the panel cannot conclude that Respondent has established the criteria required by BCGD Proc. Reg. 10 for the panel to consider Respondent's mental disability as a mitigating factor.

{¶25} Based upon the serious harm caused by Respondent's misconduct and the fact that she has continued to gamble while this matter was pending while leading her treating professionals to believe that she was attempting to stop gambling, Relator strongly recommends that Respondent be permanently disbarred. Respondent acknowledges that she is unable to ethically practice at this time and recommends an indefinite suspension.

{¶26} The presumptive disciplinary sanction for a pattern of misconduct involving dishonesty, misappropriation, and lack of cooperation in disciplinary proceedings is disbarment. *Disciplinary Counsel v. Wickerham*, 132 Ohio St.3d 205, 2012-Ohio-2580. Although disbarment is the presumptive sanction for misappropriation of client funds, mitigating circumstances can support the penalty of indefinite suspension. *Disciplinary Counsel v. Zapor*, 127 Ohio St.3d 372,

2010-Ohio-5769. Because each disciplinary case is unique, the court is not limited to the factors specified in the rule but may take into account all relevant factors in determining what sanction to impose. *Ohio State Bar Assn. v. Resnick*, 128 Ohio St.3d 56, 2010-Ohio-6147.

{¶27} While the purpose of the disciplinary process is the protection of the public, a countervailing goal is to “take care not to deprive the public of attorneys who, through rehabilitation, may be able to ethically and competently serve in a professional capacity.” *Columbus Bar Assn. v. Larkin*, 128 Ohio St.3d 368, 2011-Ohio-762. In its *Larkin* decision, the Supreme Court adopted the recommendation of the Board for an indefinite suspension where there was evidence of the respondent’s mental illness or substance abuse but a failure to meet all of the criteria for establishing it as a mitigating factor. *Id.* at ¶10. *Accord*, *Columbus Bar Assn. v. Van Sickle*, 128 Ohio St.3d 376, 2011-Ohio-774, and *Columbus Bar Assn. v. Thomas*, 124 Ohio St.3d 498, 2010-Ohio-604. In its *Thomas* decision, the Court approved an indefinite suspension rather than disbarment where the respondent had stolen client funds, hidden the theft from his client, and failed to make restitution. The Court recognized that the respondent would have “a difficult journey back to reinstatement” but that he should not be disbarred because he was financially unable to make restitution.

{¶28} In the instant case, the Panel has concluded that Respondent is truly sorry for the harm she has caused and that her gambling addiction contributed to her misconduct even though she is unable to establish the criteria required for that addiction to be considered as a mitigating factor. Given the amount of restitution which will be required and the fact that she may well spend the next eight and one-half years in prison, Respondent will surely have “a difficult journey back to reinstatement.” Were it not for the witnesses who testified that they believe that Respondent is fundamentally a person of good character and that they are willing to continue to

support Respondent in her struggle to overcome her gambling addiction, the Panel would have no hesitation recommending disbarment. However, if Respondent is ultimately able to be rehabilitated and to gain control over her addiction, Respondent's friends have convinced the Panel that she is worthy of another chance.

{¶29} For the foregoing reasons, the panel recommends that Respondent be indefinitely suspended from the practice of law and that in addition to the requirements set forth in Gov. Bar R. V for reinstatement, Respondent should not be reinstated unless she has satisfied all of the following conditions:

- Completed her prison term and satisfied all other sanctions associated with her criminal convictions;
- Made full and complete restitution;
- Demonstrated that she is in compliance with any post-release control conditions; and
- Following her release from prison, Respondent is able to demonstrate that she has successfully completed a professional course of treatment for her gambling addiction, is no longer gambling, and is engaged in an on-going support program, as prescribed by OLAP, of not less than five years in duration, to prevent a recurrence of her gambling so that she can return to the ethical practice of law.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 7, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Agatha Martin Williams, be indefinitely suspended from the practice of law, with reinstatement subject to the conditions set forth in ¶29 of this report. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

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**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