

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

In re: :  
Complaint against : Case No. 12-062  
Paul Lawrence Wallace : Findings of Fact,  
Attorney Reg. No. 0010369 : Conclusions of Law, and  
Respondent : Recommendation of the  
Disciplinary Counsel : Board of Commissioners on  
Relator : Grievances and Discipline of  
 : the Supreme Court of Ohio

13-0573

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APR 08 2013  
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OVERVIEW

{¶1} This matter was heard on January 11, 2013 in Columbus before a panel consisting of members Judge Robert P. Ringland , Judge Matthew McFarland, and Keith A. Sommer, chair. None of the panel members is from the appellate judicial district in which the complaint arose and none was a member of a probable cause panel that certified the matter to the Board.

{¶2} Joseph M. Caligiuri and Donald M. Scheetz appeared as counsel for Relator. Respondent appeared *pro se*.

{¶3} Respondent and Relator have entered into joint stipulations as to facts and rule violations, dismissals, exhibits, mitigation, and aggravation evidence. Respondent submitted additional exhibits on the date of the hearing which were admitted into evidence. Based upon the parties' joint stipulations as to facts and rule violations, evidence presented at the hearing, and Relator's and Respondent's exhibits, the panel finds that Relator has proven by clear and

convincing evidence that Respondent committed the acts set forth in the agreed stipulations and committed the stipulated violations.

{¶4} In Count One, Respondent agreed to represent a client but could not produce an agreement setting forth his fees. Respondent never sent invoices to his client. When Respondent received an insurance check payable to his client and another party, he endorsed his client's name and deposited the check into his IOLTA. Respondent misappropriated substantial funds and misstated the amount of the check to his client, who was in prison. When his client authorized Respondent to disburse funds, the IOLTA lacked the funds to make the distributions and made distributions from his operating account. Respondent could not produce records concerning distributions of the funds and how much he retained for legal fees.

{¶5} In Count Two, Respondent received cash on behalf of his client but had no record to substantiate the amount. Respondent failed to deposit the cash into his IOLTA and deposited some into his operating account. Respondent misappropriated funds, belonging to his client, from his operating account.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶6} Respondent, Paul Lawrence Wallace, was admitted to the practice of law in the state of Ohio on November 7, 1980. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶7} On May 31, 2000, the Supreme Court of Ohio suspended Respondent from the practice of law for six months. *Disciplinary Counsel v. Wallace*, 89 Ohio St. 3d 113, 2000-Ohio-120.

{¶8} Respondent was reinstated to the practice of law on March 6, 2002.

## Count One

{¶9} During December 2008, Respondent represented Nigel Jackson in various legal matters, including a claim with Liberty Mutual Insurance Company regarding the theft of Jackson's BMW; incorporation of Jackson's company "Who Done It Productions LLC;" a book publication; a civil judgment against Jackson and his girlfriend, Aisha Towles; the theft of Towles' vehicle; a real estate issue for Jackson's cousin; a potential real estate transaction for Jackson; and an unsuccessful claim for reimbursement of funeral expenses incurred by Jackson.

{¶10} Jackson paid Respondent a \$300 retainer. Respondent asserts that he agreed to charge Jackson \$200 per hour with respect to the stolen BMW. However, Respondent is not in possession of any records to corroborate the agreement. Jackson maintains there never was an agreement.

{¶11} Respondent never sent an invoice to Jackson and Towles.

{¶12} The BMW was recovered but was totaled.

{¶13} During March 2009, Jackson was arrested for drug trafficking resulting from federal drug investigation. Jackson remained in custody and was never represented by Respondent on the criminal charge. On July 17, 2009 and July 29, 2009, Respondent visited Jackson in the Delaware County Jail as he had done several times before.

{¶14} During the July 29, 2009 visit, Jackson granted a limited power of attorney allowing Respondent to transfer title to the BMW to Liberty Mutual.

{¶15} On August 4, 2009, Liberty Mutual issued check number 23640577 for \$32,132.80 payable to Jackson and Towles for the BMW. The check was mailed to Respondent's law office per Jackson's instructions.

{¶16} Respondent informed Jackson that he would deposit the check into his IOLTA, but never received express permission from Jackson or Towles to endorse the check. Respondent endorsed the check by signing Jackson and Towles' signatures and deposited the check into his IOLTA at US Bank.

{¶17} During August, September, and October 2009, Respondent misappropriated all of Jackson's funds. Six checks were payable to Respondent during this period in the total amount of \$21,000. During September 2009, Respondent spoke with Jackson in the Delaware County Jail and informed him that he received the check and was prepared to make distributions according to Jackson's instructions. Respondent never advised Jackson that the check was for \$32,132.80. Respondent told Jackson that he would "net \$24,000." Believing the check was for \$24,000, Jackson authorized Respondent to disburse \$24,000 to others. Respondent lacked the funds in his IOLTA to make the distributions and deposited cash he received from Towles into his IOLTA and made a \$1,000 distribution which was authorized by Jackson.

{¶18} Due to his misappropriation of Jackson's funds from his IOLTA, Respondent made distributions from his operating account in the amount of \$20,995.

{¶19} On November 17, 2009, Towles contacted Liberty Mutual and discovered the check for the BMW was for \$32,132.80, not \$24,000. During a meeting November 23, 2009, Respondent explained to Towles that the difference between the \$24,000 and \$32,132.80 represented his legal fees.

{¶20} Respondent is not in possession of any records as to how much of the \$32,132.80 was paid on behalf of Jackson and how much he retained as legal fees. According to Respondent's bank records, he disbursed \$20,995 to third parties on behalf of Jackson and paid \$2,500 to Jackson's corporation. It appears Respondent retained \$8,637.80.

{¶21} Based upon the stipulations, the panel finds by clear and convincing evidence that Respondent violated the following violations: Prof. Cond. R. 1.15(a) [a lawyer shall hold property of clients that is in a lawyer's possession in connection with a representation that is separate from the lawyer's own property]; Prof. Cond. R. 1.15(a)(2) [a lawyer shall maintain a record for each client on whose behalf funds are held]; Prof. Cond. R. 8.4(c) [conduct involving fraud, dishonesty, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶22} Based upon the stipulated dismissal, the panel finds by clear and convincing evidence that Respondent did not violate: Prof. Cond. R. 1.15(d) [a lawyer shall promptly deliver to a client or third person all funds the client or third person is entitled to receive].

### **Count Two**

{¶23} After Jackson was incarcerated, he instructed Towles to deliver a bag containing an undisclosed sum of cash to Respondent. Towles delivered the bag to Respondent at his office.

{¶24} Respondent has no records to substantiate the amount of cash he received from Towles; however, he maintains that he received \$7,500 cash. Jackson had instructed Respondent to hold the cash to pay for future expenses associated with the publication of Jackson's book.

{¶25} Respondent failed to immediately deposit the cash into his IOLTA; rather, at various times, Respondent deposited portions of the cash into his operating account.

{¶26} On October 14, 2009, Respondent distributed \$2,500 of Jackson's cash into his IOLTA. Respondent used a portion of the \$2,500 cash to pay \$1,000 to Jackson's company via his IOLTA.

{¶27} As illustrated in the table in ¶15 of the Agreed Stipulations, Respondent misappropriated the remaining \$1,500 of the first \$2,500 deposit by issuing check no. 1593 to Owen Loan Servicing for \$500 and check no. 1597 to Respondent for \$1,000.

{¶28} On November 24, 2009, a day or so after meeting with Towles, Respondent deposited \$5,000 of Jackson's cash into his operating account. At the time of the deposit, Respondent's operating account also contained funds belonging to Respondent.

{¶29} On November 24, 2009, Respondent issued check number 2110 drawn on his operating account and made payable to "Who Done It Productions, LLC" for \$10,000. The \$10,000 check represented the repaying of Jackson's \$7,500 cash and \$2,500 as final disbursement of the \$32,132.80.

{¶30} Respondent continued to perform legal work for Jackson through May 2010.

{¶31} Based upon the stipulations, the panel finds by clear and convincing evidence that Respondent violated the following violations: Prof. Cond. R. 1.15(a); Prof. Cond. R. 1.15(a)(2); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

#### **AGGRAVATION, MITIGATION, AND SANCTION**

{¶32} The parties stipulated as mitigating factors that Respondent fully and freely disclosed during the disciplinary process; Respondent has a positive reputation in the legal community; and Respondent's client was paid-in-full and suffered no financial harm.

{¶33} The parties stipulated as aggravating factors that Respondent acted with a selfish motive; Respondent was previously disciplined; and Respondent committed multiple offenses.

{¶34} In *Disciplinary Counsel v. Wallace*, 89 Ohio St.3d 113, 2000-Ohio-120, the Court adopted the findings and conclusions of the panel and suspended Respondent from the practice of law for six months.

{¶35} The Board of Commissioners on Grievances and Discipline considered a second complaint against Respondent, Case No. 00-96. In its findings of fact, the panel in Case No. 00-096 reported that Respondent was suspended for six months by order of the Supreme Court and referred to *Disciplinary Counsel v. Wallace* (2000), 89 Ohio St.3d 113, and stated Respondent received notice of his suspension on June 1, 2001. Respondent applied for reinstatement on December 1, 2001 when his six-month suspension had expired. Respondent's application for reinstatement was denied by the Supreme Court based upon a pending disciplinary complaint against Respondent. The panel found that Respondent began to comply with the requirements of notice to clients, courts, and opposing counsel in pending litigation cases in the hearing on the later complaint. The panel found that Respondent's only acts from the date of his suspension were the resubmission of documents in the same form and of the same content as had been previously sent to the Attorney General and another entity, that the documents were not accompanied by any discourse, and that these actions did not constitute the practice of law. The panel found that Respondent did not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation, but did, by oversight, fail to notify two parties and that he engaged in conduct adversely reflecting on his fitness to practice law in violation of DR 1-102(A)(6). The panel recommended Respondent receive a public reprimand. The Board adopted the findings of fact, conclusions of law and recommendations of the panel, and recommended a public reprimand.

{¶36} In *Disciplinary Counsel v. Wallace*, 94 Ohio St.3d 414, 2002-Ohio-1240, the Court referred to Respondent's previous discipline and the subsequent charges filed against him while he was under an order of suspension, charging Respondent with engaging in acts that constituted practice of law and failing to inform opposing counsel of his suspension. Respondent claimed his acts were ministerial and did not involve the practice of law and that the lawyers who were not

informed of his suspension were not opposing counsel. The Court referred to the panel report and the public reprimand sanction. The Court adopted the Board's findings and conclusions that Respondent was not practicing law when he provided documentation, but did not adopt the board's conclusions and recommendation that Respondent violated DR 1-102(A)(6) by failing to inform opposing counsel of his suspension. The Court concluded that by providing missing documentation, Respondent was not practicing law and that he was under no obligation to notify certain others, who were not opposing counsel, of his suspension pursuant to the Court order. The Court dismissed the charges against Respondent.

{¶37} Respondent stated at the hearing and in his post-hearing brief that his original six-month suspension evolved into an actual suspension of over 20 months, resulting in a loss of virtually all clients, attorneys, and staff. Because of the pendency of disciplinary changes that later were dismissed based on a finding that Respondent was not practicing law and was under no obligation to notify the individuals, Respondent served 14 months in addition to the Court ordered six-month suspension. The panel considered the above in recommending a sanction and in mitigation of that sanction.

{¶38} "The presumptive sanction for misappropriation of client funds is disbarment."

*Disciplinary Counsel v. Gildee*, 134 Ohio St.3d 374, 2012-Ohio-5641, citing *Disciplinary Counsel v. Burchinal*, 133 Ohio St.3d 38, 2012-Ohio-3882. The Supreme Court of Ohio has imposed lesser sanctions based upon the presence of mitigating factors as stated in *Gildee* and *Burchinal*, supra.

{¶39} In the instant case, Relator recognized several mitigating factors, including full and free disclosure during the disciplinary process, a positive reputation in the legal community, and the fact that his client suffered no financial harm. Relator recognizes that Respondent has been

previously disciplined, acted with a selfish motive, and committed multiple offenses, and states that the case law supports a two-year suspension from the practice of law, along with one year of monitored probation.

{¶40} Relator cites *Columbus Bar Assn. v. Peden*, 134 Ohio St.3d 579, 2012-Ohio-5766, wherein respondent was indefinitely suspended for committing multiple offenses, including neglect, misappropriation of clients' funds, commingling, failure to return unearned funds, and a failure to account. Respondent had been previously disciplined, failed to cooperate in the disciplinary process, failed to make restitution, and caused harm to vulnerable clients.

{¶41} Relator cites *Disciplinary Counsel v. Manning*, 119 Ohio St.3d 52, 2008-Ohio-3319, wherein respondent used client's funds from settlements to pay personal and business expenses, and fabricated a closing statement to conceal his theft. Respondent was found to have violated several disciplinary rules, including engaging in conduct involving fraud and dishonesty; failing to deposit and maintain client funds in a separate and identifiable bank account; and failing to maintain complete records of an account for clients' property in the lawyer's possession. The Court imposed a six-month suspension to run consecutive to the two-year suspension Respondent was already serving for lying to a client.

{¶42} Relator next cited *Columbus Bar Assn. v. King*, 132 Ohio St.3d 501, 2012-Ohio-873. The Supreme Court suspended respondent for two years, plus one year of probation. Respondent misappropriated at least \$15,000 from two clients and fabricated a fee dispute during the disciplinary process. Respondent had no previous discipline. Relator stated that respondent cooperated during the disciplinary process and fully and freely disclosed his violations.

{¶43} Relator also cites *Disciplinary Counsel v. Simon-Seymour*, 131 Ohio St.3d 161, 2012-Ohio-114, wherein respondent was suspended for two years with six months stayed. Respondent misappropriated \$17,000 from an estate and falsely represented to the probate court that she had made distributions to pay estate obligations when she had not paid those debts. Respondent had no previous discipline, made complete restitution, and cooperated in the disciplinary process.

{¶44} In *Gildee*, supra, Respondent settled a lease dispute and failed to deposit lease payments into her IOLTA and misappropriated over \$8,000 of her client's funds. When confronted, Gildee made false assertions to avoid discipline. The Court imposed a two-year suspension, with one year stayed on condition that Gildee make complete restitution. The Court stated "Gildee's multiple acts of dishonesty require an actual suspension from the practice of law, but the mitigating evidence—including the absence of a disciplinary record, full and free disclosure to the board, positive character evidence, and genuine remorse—warrant a lesser sanction than disbarment."

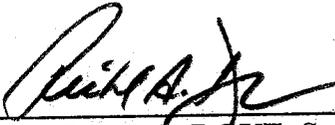
{¶45} The panel recommends a two-year suspension from the practice of law, six months stayed, plus one year of monitored probation upon reinstatement. The six-month stay is based on Respondent being suspended for an additional 14 months on top of the six-month suspension imposed in the 2000 disciplinary case.

#### **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 April 5, 2013. The Board adopted the Findings of Fact and Conclusions of Law of the panel. However, the Board modified the sanction recommended by the panel and recommends that Respondent be suspended from the

practice of law in Ohio for a period of two years, with one year stayed, and that he serve a period of one-year monitored probation following his reinstatement to the practice of law. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**

  
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**RICHARD A. DOVE, Secretary**