

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, :

Relator, :

v. :

Vincent Ferdinand Gonzalez, Esq., :

Respondent. :

CASE NO. 2013-0222

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF
COMMISSIONERS' FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

Jonathan E. Coughlan (0026424)
 Disciplinary Counsel
 Philip A. King (0071895) (COUNSEL OF RECORD)
 Assistant Disciplinary Counsel
 Office of Disciplinary Counsel
 The Supreme Court of Ohio
 250 Civic Center Drive, Suite 325
 Columbus, Ohio 43215-7411
 (614) 461-0256
 Fax No. (614) 461-7205
P.King@sc.ohio.gov

FILED
 APR 12 2013
 CLERK OF COURT
 SUPREME COURT OF OHIO

COUNSEL FOR RELATOR, DISCIPLINARY COUNSEL

Vincent F. Gonzalez, Sr., Esq. (0008558)
 2535 Scranton Rd
 Cleveland, OH 44113
 (216) 344-0014
vfgonzalezlaw@sbcglobal.net

RESPONDENT *PRO SE*

TABLE OF CONTENTS

| <u>DESCRIPTION</u> | <u>PAGE NUMBER</u> |
|---|--------------------|
| Table of Authorities | ii |
| Introduction | 1 |
| Statement of Facts | 2 |
| Relator's Answer to Respondent's Objections | 10 |
| Answer No 1 There is clear and convincing evidence that respondent commingled funds in his IOLTA account in violation of Prof. Cond. Rule 1.15(a) as described in Count Two. | 10 |
| Answer No. 2 There is clear and convincing evidence that respondent committed the ethical misconduct in the Perez matter as described in Count Three. | 11 |
| A. Respondent misappropriated funds belonging to Perez in violation of Prof. Cond. Rule 8.4(c). | 11 |
| B. Respondent failed to maintain a client ledger regarding Perez's funds in respondent's IOLTA account in violation of Prof. Cond. Rule 1.15(a)(2). | 13 |
| Answer No. 3 There is clear and convincing evidence that respondent committed the ethical misconduct in the Samame matter as described in Count Six. | 14 |
| Answer No. 4 There are no mitigating factors in this case that warrant a less severe sanction than the indefinite suspension recommended by the board. | 16 |
| Conclusion | 17 |
| Certificate of Service | 17 |

TABLE OF AUTHORITIES

CASE LAW PAGE NUMBER(S)

| | |
|--|--------|
| <i>Cuyahoga Cty. Bar Assn. v. Gonzalez</i> , 89 Ohio St.3d 470, 2000-Ohio-221, 733 N.E.2d 587 | 2 |
| <i>Disciplinary Counsel V. Squire</i> , 130 Ohio St. 3d 368, 2011-Ohio-5578; 958 N.E.2d 914 | 12, 15 |
| <i>Disciplinary Counsel V. Weiss</i> , 133 Ohio St. 3d, 2012 Ohio 4564; 977 N.E.2d 636 | 12 |

OTHER AUTHORITIES PAGE NUMBER(S)

| | |
|---|---------------|
| BCGD Proc. Reg. 10(B)(1)(a),(d),(e) and (g) | 9 |
| Evid. R. 802 | 13 |
| Evid. R. 803 | 13 |
| Evid. R. 804 | 13 |
| Prof. Cond. Rule 1.2(a) | 7 |
| Prof. Cond. Rule 1.3 | 7 |
| Prof. Cond. Rule 1.4(c) | 2 |
| Prof. Cond. Rule 1.15(a) | 3, 10, 11 |
| Prof. Cond. Rule 1.15(a)(2) | 5, 6, 11, 13 |
| Prof. Cond. Rule 1.15(a)(5) | 5 |
| Prof. Cond. Rule 1.15(c) | 6 |
| Prof. Cond. Rule 1.16(c) | 8 |
| Prof. Cond. Rule 8.1(b) | 9 |
| Prof. Cond. Rule 8.4(c) | 5, 11, 12, 13 |
| Prof. Cond. Rule 8.4(d) | 7 |

TABLE OF AUTHORITIES (Cont'd)

| | |
|-----------------------------------|---------|
| Prof. Cond. Rule 8.4(h) | 5, 7, 9 |
| S.Ct. Prac. R. 16.02(B)(5)(a)-(g) | 12 |

INTRODUCTION

On June 11, 2012, relator filed a four-count formal complaint against respondent alleging that (1) he failed to inform his clients on a separate form signed by the clients that he did not maintain professional liability insurance, (2) he commingled funds in his IOLTA account, (3) he misappropriated funds belonging to his client Fernando Perez, and (4) he failed to maintain records regarding the client funds in his IOLTA account. On September 20, 2012, relator filed a seven-count amended complaint against respondent incorporating the four original counts and additionally alleging that respondent (5) failed to deposit into his IOLTA account funds entrusted to him by his client Ramon Colon, (6) improperly withdrew as counsel and failed to protect the interest of his client Maria Samame on the last day of her divorce trial, and (7) failed to cooperate in these disciplinary proceedings.

This matter was heard by a hearing panel on November 20, 2012. On February 4, 2013, the Board of Commissioners on Grievances and Discipline (“board”) filed its Findings of Facts and Conclusions of Law (“Report”) with this Court delineating its findings of fact, conclusions of law and recommending an indefinite suspension. This matter is now before this Court on respondent’s objections to the board’s Report.

In his objections, respondent does not present any legal argument against the board’s recommended sanction. Rather, he limits his objection to the board’s conclusions of law on three of the seven counts: Count Two – Commingling Funds, Count Three –Perez Matter, and Count Six – Samame Matter.

STATEMENT OF FACTS

As determined by the board, the following facts and violations were established by clear and convincing evidence regarding respondent's misconduct in the matter.

Respondent is an attorney who has been licensed to practice law in Ohio since 1974, and is registered with the Supreme Court of Ohio. (Report at ¶6; Stip. at ¶1.) On August 16, 2000, respondent was publicly reprimanded for undignified or discourteous conduct that was degrading to a tribunal. *Cuyahoga Cty. Bar Assn. v. Gonzalez*, 89 Ohio St.3d 470, 2000-Ohio-221, 733 N.E.2d 587. (Report at ¶6; Stip. at ¶2.)

COUNT 1 – PROFESSIONAL LIABILITY INSURANCE NOTICE

Respondent has been a sole practitioner since 2000, practicing in the areas of domestic relations, criminal defense, civil litigation, real estate law, and personal injury litigation. (Report at ¶9; Stip. at ¶¶3-4.) Respondent has not maintained professional-liability insurance since February 1, 2007, and he has not advised any of his clients that he did not carry malpractice insurance in writing on a separate form signed by his clients. (Report at ¶9; Stip. at ¶¶5-6.)

Based upon the stipulations and the evidence, the board found by clear and convincing evidence that respondent violated Prof. Cond. Rule 1.4(c) [failing to inform a client on a separate form signed by the client if the lawyer does not maintain professional liability insurance in the required amounts]. (Report at ¶10.)

COUNT 2 – COMMINGLING IOLTA FUNDS

Since July 19, 2002, respondent has maintained an IOLTA account at PNC Bank (formerly National City Bank). (Report at ¶12; Stip. at ¶8.) Respondent is the only person with signatory authority on the account. *Id.*

On March 27, 2006, Attorney Wes Dumas filed a personal injury suit on behalf of respondent and respondent's wife, Rita Chanda-Gonzalez. (Report at ¶13; Stip. at ¶10.) On March 11, 2009, a jury awarded respondent's wife \$120,000. (Report at ¶13; Stip. at ¶11.) Respondent received a favorable verdict from the jury but was awarded no damages. *Id.*

On July 17, 2009, the defendant's insurer issued a \$122,169.86 check to Attorney Dumas that represented the damage award and accrued interest. (Report at ¶14; Stip. at ¶12.) Attorney Dumas and respondent's wife endorsed the check to respondent, who deposited the check into his IOLTA account on July 21, 2009. (Report at ¶14; Stip. at ¶13.)

Between July 2009 and August 2009, respondent disbursed \$38,065 of the \$122,169.86 from his IOLTA account to pay Attorney Dumas's fee and litigation expenses. (Report at ¶15; Stip. at ¶14.) During the same time, Respondent disbursed an additional \$50,500 to himself, to his wife, and to Julio Castro to repay a personal loan. (Report at ¶16; Stip. at ¶15.) Respondent left the remaining sum of \$33,604.86 of his wife's personal funds in his IOLTA account and made 25 disbursements between July 2009 and January 2010 to pay marital expenses. (Report at ¶17; Stip. at ¶16.) During the time that respondent had his wife's funds in his IOLTA account, he also had funds in the account belonging to his client Red Masters. (Report at ¶18; Stip. at ¶17.)

Based on the stipulations and the evidence, the board found by clear and convincing evidence that respondent violated Prof. Cond. Rule 1.15(a) [failing to keep client funds in the lawyer's possession separate from the lawyer's funds]. (Report at ¶19.)

COUNT 3 – PEREZ

In 2010, respondent represented Fernando Perez in a case against Cory W. Finding in the Cuyahoga Court of Common Pleas. (Report at ¶22; Stip. at ¶19.) On October 21, 2010,

respondent deposited a settlement check for \$20,000 into his IOLTA account on behalf of Perez. (Report at ¶¶20 and 22; Stip. at ¶¶19-20.)

In October and November 2010, respondent disbursed \$18,697.73 of the \$20,000. (Report at ¶23; Stip. at ¶21.) The disbursements were in the form of three checks written on the IOLTA account: \$6,000 to respondent for attorney fees; \$5,000 to an expert in Perez's case; and \$7,697.73 to Perez. (Report at ¶23; Stip. at ¶21.) At the hearing, the evidence established that respondent failed to maintain any records showing the disbursement of the remaining \$1,302.27 from Perez's settlement. (Report at ¶23.)

On January 5, 2011, respondent disbursed \$125 from the IOLTA account made payable to "Clerk, Court of Appeals," reducing the balance of the account to \$1,661.39. (Report at ¶24; Stip. at ¶24.) Respondent has no record of who owned the funds disbursed with that check. *Id.*

On March 22, 2011, respondent wrote three checks on the IOLTA account as follows: a check for \$1,000 to himself; a \$500 check on behalf of client Ramon Colon; and a check written for "cash" on behalf of Colon. (Report at ¶25; Stip. at ¶25.) When respondent wrote the checks on behalf of Colon, he had no funds in the IOLTA account belonging to Colon. (Report at ¶25; Stip. at ¶26.) After respondent had written these three checks, his IOLTA account reflected a negative balance of \$21.89. (Report at ¶25.)

At the hearing, respondent admitted that he had not maintained client ledgers for Perez's funds in the IOLTA account and that he had not provided any records to relator to indicate that Perez had received all the money to which he was entitled. (Report at ¶26.) Respondent did not produce any documentation of the disbursements and could not account for the missing \$1,302.27. (Report at ¶27.) As a result, the hearing panel concluded that respondent misappropriated \$1,302.27 of Perez's funds. (Report at ¶27.)

Based on the stipulations and the evidence, the board found by clear and convincing evidence that respondent violated Prof. Cond. Rule 1.15(a)(2) [failing to maintain a record for each client on whose behalf funds are held]; Prof Cond. Rule 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. Rule 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law]. (Report at ¶27.)

COUNT 4 – IOLTA RECORDKEEPING

Since February 1, 2007, respondent (1) has not maintained ledgers for any of the client funds deposited in his IOLTA account, (2) has not reconciled his IOLTA account, and (3) has not maintained the requisite records to be able to reconcile his IOLTA account. (Report at ¶29; Stip. at ¶¶30-31.)

Based upon these stipulations and the evidence, the board found by clear and convincing evidence that respondent violated Prof Cond. Rule 1.15(a)(2); and Prof. Cond. Rule 1.15(a)(5) [failing to perform and retain a monthly reconciliation of his trust account]. (Report at ¶30.)

COUNT 5 - COLON

In March 2011, respondent represented Ramon Colon. (Report at ¶32; Stip. at ¶33.) On March 8, 2011, Colon gave respondent \$400 in cash to retain an expert. (Report at ¶32; Stip. at ¶34.) Respondent did not place the money in his IOLTA account; instead, he placed the cash in Colon's client file. (Report at ¶32; Stip. at ¶35.) Respondent disbursed another client's funds from his IOLTA account on behalf of Colon without depositing Colon's funds in that account. (Report at ¶32; Stip. at ¶36.) Moreover, respondent did not maintain a client ledger for Colon's funds as required by Prof. Cond. R. 1.15(a)(2). (Report at ¶32; Stip. at ¶37.)

Based upon these stipulations and the evidence, the board found by clear and convincing evidence that respondent violated Prof. Cond. Rule 1.15(a)(2); and Prof. Cond. Rule 1.15(c) [failing to deposit into a client trust account legal fees and expenses that have been paid in advance]. (Report at ¶33.)

COUNT 6 – SAMAME

Maria Samame is a Venezuelan native. (Report at ¶34; Stip. at ¶41.) On October 6, 2009, Samame’s husband, through Attorney Marshall Wolf, filed a complaint for divorce against Samame in the Cuyahoga County Domestic Relations Court. (Report at ¶35; Stip. at ¶¶39-40.) Samame hired respondent to represent her for an hourly fee. (Report at ¶35; Stip. at ¶43.) Samame paid respondent an initial retainer and was to pay the balance of the fee at the conclusion of the case. (Report at ¶35; Stip. at ¶44.)

The case proceeded to trial beginning on January 25, 2011, before Magistrate Lawrence Loeb. (Report at ¶36; Stip. at ¶46.) On January 31, 2011, the fourth day of the trial, respondent appeared with Samame. (Report at ¶36; Stip. at ¶48.) That day, respondent was to resume his cross-examination of Samame’s husband. (Report at ¶37.) At the beginning of the proceedings on January 31, 2011, respondent stated in open court that Samame had discharged him, that he was withdrawing because he believed the court would not award him attorney fees and because he, in his words, “won’t work for free.” *Id.* Magistrate Loeb refused to allow respondent to withdraw from the case and ordered respondent to proceed with the trial. *Id.* Despite Magistrate Loeb’s order, respondent refused to continue his cross-examination of Samame’s husband. *Id.* at ¶38. Respondent also withdrew two previously marked trial exhibits, ignoring Loeb’s admonition that his actions were resulting in prejudice to Samame. *Id.*

After Samame's husband had left the witness stand, Attorney Wolf testified in support for his motion for attorney fees. (Report at ¶39; Stip. at ¶53.) Respondent did not cross-examine Attorney Wolf. (Report at ¶39; Stip. at ¶54.)

After Attorney Wolf rested his case-in-chief, respondent did not call any witnesses on Samame's behalf and instead informed the court that Samame wished to address the court in narrative fashion. (Report at ¶40; Stip. at ¶¶55-56.) Samame took the stand, and respondent asked her if she had anything to say. (Report at ¶40; Stip. at ¶57.) Samame made a brief statement and left the stand without respondent asking any further questions. (Report at ¶40; Stip. at ¶¶58-59.) Respondent did not call any other witnesses in Samame's case-in-chief. (Report at ¶40; Stip. at ¶60.)

That day at the end of the trial, Magistrate Loeb instructed respondent to make a closing argument. (Report at ¶41; Stip. at ¶61.) Respondent made a 30-second closing argument, and the trial concluded. (Report at ¶41; Stip. at ¶¶63-64.)

On April 27, 2011, Magistrate Loeb issued a decision granting the divorce and recommending that Samame's husband be ordered to pay respondent \$1,754.05 in attorney fees. (Report at ¶42; Stip. at ¶65.) On May 19, 2011, Judge Cheryl Karner adopted Loeb's recommendations and entered judgment accordingly. (Report at ¶42; Stip. at ¶66.)

Based upon these stipulations and the evidence, the board found by clear and convincing evidence that respondent violated Prof. Cond. Rule 1.2(a) [intentionally failing to seek the lawful objectives of his client]; Prof. Cond. Rule 1.3 [diligence]; Prof. Cond. Rule 1.16(c) [withdrawing from representation without a tribunal's permission when permission is required by the tribunal]; Prof. Cond. Rule 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. Rule 8.4(h). (Report at ¶45.)

COUNT 7 – FAILURE TO COOPERATE

On October 24, 2011, relator received a grievance against respondent concerning his alleged misconduct in the Samame matter. (Report at ¶47; Stip. at ¶68.) On November 22, 2011, relator sent respondent a certified letter of inquiry regarding the grievance to respondent's business address. (Report at ¶47; Stip. at ¶69.) Respondent confirmed receipt of the letter on November 28, 2011, but he never responded to it. (Report at ¶47; Stip. at ¶¶70-71.)

On December 13, 2011, relator sent respondent a second letter of inquiry by certified mail. (Report at ¶48; Stip. at ¶72.) Respondent did not receive or claim the second letter, and it was returned to relator. (Report at ¶48; Stip. at ¶74.)

On January 13, 2012, relator delivered a subpoena to respondent requiring him to attend a deposition on January 24, 2012. (Report at ¶49; Stip. at ¶75.) During the deposition, respondent acknowledged receipt of the letters as well as his failure to respond. (Report at ¶49; Stip. at ¶78.) When questioned about his lack of response, respondent stated that the Samame complaint and letters of inquiry from relator were "of no consequence." (Report at ¶49; Stip. at ¶78.)

On May 17, 2012, relator sent respondent a letter requesting a copy of Samame's client file. (Report at ¶50; Stip. at ¶79.) As of September 10, 2012, respondent had neither responded nor objected to relator's May 17, 2012 request. (Report at ¶50; Stip. at ¶80.)

On May 29, 2012, relator sent respondent a letter requesting a copy of the client files of Perez, Colon, and Masters. (Report at ¶51; Stip. at ¶81.) As of September 10, 2012, respondent had neither responded nor objected to relator's May 29, 2012 request. (Report at ¶51; Stip. at ¶82.)

Respondent stipulated that his conduct in this count violates Prof. Cond. Rule 8.1(b) [failing to disclose a material fact or knowingly fail to respond to a demand for information from a disciplinary authority]; and Prof. Cond. Rule 8.4(h). (Stip. at ¶83.)

Based upon these stipulations and the evidence, the board found by clear and convincing evidence that respondent violated Prof. Cond. Rule 8.1(b) and Prof. Cond. Rule 8.4(h). (Report at ¶52.)

AGGRAVATION, MITIGATION, AND SANCTION

In addition to the above rule violations, the board found the presence of the following aggravating factors under BCGD Proc. Reg. 10(B)(1)(a), (d), (e) and (g): prior disciplinary offense, multiple offenses, failure to cooperate in the disciplinary proceedings, and refusal to acknowledge the wrongfulness of his conduct. (Report at ¶¶53-54.) The board found no mitigating factors. *Id.* at 55. Based on the rule violations and the aggravating factors, the board recommends that this Court indefinitely suspend respondent from the practice of law with reinstatement conditioned upon a \$1,302.27 restitution payment to Perez. (Report at ¶65 and pp. 13-14.)

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

Respondent does not object to the board's conclusions of law regarding Counts One, Four, Five and Seven. Relator urges the Court to accept the board's conclusions of law regarding these counts.

In his brief, respondent does not make any legal argument against the imposition of an indefinite suspension. Rather, he limits his objection to the board's conclusions of law on three of the seven counts: Count Two – Commingling Funds, Count Three –Perez Matter, and Count Six – Samame Matter. In addition, respondent seems to suggest that this Court ought to consider the fair result in the Samame matter, despite respondent's neglect, as a possible mitigating factor. However, as explained below, the Court should overrule respondent's objections and adopt the board's findings and recommended sanction.

Answer No. 1

There is clear and convincing evidence that respondent commingled funds in his IOLTA account in violation of Prof. Cond. Rule 1.15(a) as described in Count Two.

Respondent objects to the board's conclusion of law that he commingled funds in his IOLTA account in violation of Prof. Cond. Rule 1.15(a) as described in "Count 2" of the Complaint. Specifically, respondent argues that no such violation occurred because "he did not hold money for clients." (Resp. Objections at 3.) However, as the board noted, respondent stipulated that during the period he kept personal funds in his IOLTA account, he also had funds in his IOLTA account belonging to his client Red Masters. (Report at ¶¶ 17-18.) Respondent's own admission proves this violation. For this reason, there is clear and convincing evidence that respondent commingled funds in his IOLTA account in violation of Prof. Cond. Rule 1.15(a).

Accordingly, this Court should overrule respondent's objection to the board's conclusion that he violated Prof. Cond. Rule 1.15(a).

Answer No. 2

There is clear and convincing evidence that respondent committed the ethical misconduct in the Perez matter as described in Count Three.

Respondent makes two objections to the board's conclusions of law regarding his representation of Fernando Perez. Respondent objects to the board's conclusions of law that (1) he misappropriated funds belonging to Perez in violation of Prof. Cond. Rule 8.4(c), and that (2) he failed to maintain a client ledger regarding Perez's funds in respondent's IOLTA account in violation of Prof. Cond. Rule 1.15(a)(2). As set forth herein, the clear and convincing evidence presented at the hearing established that respondent committed these rule violations.

A. Respondent misappropriated funds belonging to Perez in violation of Prof. Cond. Rule 8.4(c).

The board found that respondent misappropriated funds belonging to Perez in violation of Prof. Cond. Rule 8.4(c) and as described in "Count 3" of the Complaint. Specifically, respondent failed to account for \$1,302.27 of the \$20,000 settlement he received for Perez in 2010. (Report at ¶23.) Respondent objects arguing, "he did not owe any funds to Mr. Perez; that all of Mr. Perez's funds were distributed to him...." (Respondent's Objection at 3.) The evidence presented at the hearing disproves respondent's argument.

At the hearing, respondent stipulated that he received a \$20,000 settlement check on behalf of his client Perez that respondent deposited in his IOLTA account. (Report at ¶23; Stip. at ¶20.) However, respondent could not establish that he had disbursed the entire \$20,000 on Perez's behalf. As the board noted, "[a]t the hearing, respondent admitted that he had not maintained client ledgers for Perez's funds in the IOLTA account and that he had not provided

any records to Relator to indicate that Perez had received his entire share of the settlement.” *Id.* at ¶26. Respondent maintains that the hearing panel should have viewed the discrepancy in his IOLTA account in respondent’s favor unless Perez testified against him at the hearing. *See* (Respondent’s Objection at 3.) Respondent also made this argument at the hearing. (Report at ¶26; Hearing Tr. 177:9-14.) However, the board, citing *Disciplinary Counsel v. Weiss*, 133 Ohio St.3d, 2012-Ohio-4564, 977 N.E.2d 636, rejected respondent’s argument stating, “it is Respondent’s duty to produce records establishing the proper disbursement of funds where there is a discrepancy in an IOLTA account.” (Report at ¶27.) Because respondent adamantly refused to produce, before or at the hearing, any evidence that he disbursed the remaining \$1,302.27, and he could not account for those funds, the board rightly concluded that respondent misappropriated Perez’s funds in violation of Prof. Cond. Rule 8.4(c). *Id.*

Having failed to present evidence at the hearing, respondent attempts to do so now by attaching to his objections a settlement statement and an affidavit purportedly signed by Perez. (Respondent’s Objection at Exs. 1 and 2.) This is the first time respondent has offered these documents; however, this Court should not consider this new evidence for two reasons.

First, the Rules of Practice of the Supreme Court prohibit respondent from attaching to his brief at this “late stage of the proceedings” Perez’s settlement statement (Exhibit 1) and Perez’s affidavit (Exhibit 2) absent exceptional circumstances. *See* S.Ct. Prac. R. 16.02(B)(5)(a) – (g); *see also*, *Disciplinary Counsel v. Squire*, 130 Ohio St.3d 368, 2011-Ohio-5578, 958 N.E.2d 914. Respondent cannot demonstrate exceptional circumstances because none exist. In fact, the evidence respondent seeks to admit late was available to him before the hearing. Certainly, respondent had a copy of the settlement statement signed on October 12, 2010 – two years before the hearing in this matter. And despite his apparent ability to do so, respondent

chose not to call Perez as a witness. (Respondent's Objection at 1 and Ex. 1.) Bottom line, respondent could have offered the settlement statement or Perez's testimony at the hearing but chose not to. Therefore, in line with the *Squire* case, the Court should not consider Exhibits 1 and 2 attached to respondent's brief.

Second, the settlement statement and Perez's affidavit are hearsay that respondent has failed to establish is admissible as a hearsay exception. *See* Evid. R. 802, 803 and 804. The Court should reject these self-serving documents offered for the sole purpose of avoiding discipline.

Relator strongly urges this Court not to consider the settlement statement and affidavit attached to respondent's brief. But even if this Court accepted these documents, they do not negate the board's finding of misappropriation. Neither document proves that respondent actually disbursed Perez's remaining \$1,302.27 on Perez's behalf. Therefore, there is no evidence to negate the board's conclusion of law that respondent violated Prof. Cond. Rule 8.4(c) in the Perez matter by clear and convincing evidence.

B. Respondent failed to maintain a client ledger regarding Perez's funds in respondent's IOLTA account in violation of Prof. Cond. Rule 1.15(a)(2).

The board found that respondent violated Prof. Cond. Rule 1.15(a)(2) for failing to keep a client ledger regarding Perez's funds as described in "Count 3" of the Complaint. Respondent objects stating, "since he did not 'hold' [Perez's] funds in the account he did not keep a ledger." (Respondent's Objection at 3.) Yet, respondent's statement is belied by the fact that he stipulated that on October 21, 2010, he deposited a settlement check for \$20,000 into his IOLTA account on behalf of Perez. (Report at ¶22; Stip. at ¶20.) Therefore, the board properly found that respondent violated Prof. Cond. Rule 1.15(a)(2) in the Perez matter by clear and convincing evidence.

Accordingly, this Court should overrule respondent's objections to the board's conclusions of law regarding his representation of Fernando Perez.

Answer No. 3

There is clear and convincing evidence that respondent committed the ethical misconduct in the Samame matter as described in Count Six.

Respondent objects to the board's findings of ethical misconduct in the Samame matter claiming that he did nothing wrong, that he was simply honoring his client's request to stop representing her.¹ (Respondent's Objection at 2.) Respondent made the same argument at the hearing before the panel. (Report at ¶44.) However, the hearing panel understood respondent's true motive for withdrawing from Samame's case – money. At the beginning of the last day of trial while still representing Samame, respondent stated on the record, “[a]nd at this point, in as much as, again, it's been very clear to me that this court is not going to award any attorney fees to Miss Samame, then I wish to withdraw.... I'm not going to work for free.” (Ex. 23 at 10:6-10.) Magistrate Loeb had not made a determination about attorney fees at this point. (Ex. 23 at 6:13-7:7.) He denied respondent permission to withdraw and ordered respondent to proceed with the trial. (Report at ¶37.) At that moment, respondent concluded that while the court could compel his physical presence, it could not compel his active participation. Thereafter, respondent refused to cross-examine Samame's husband, withdrew exhibits, and gave an ineffective 30-second closing argument. (Report at ¶¶38 and 41.) Respondent's statement about not working for free proves that he was motivated by his needs and not the needs of his client.

¹ Respondent claims that Samame refused to continue the trial after (1) respondent told her that she had no credibility with Magistrate Loeb, and (2) she witnessed an ex parte communication between Magistrate Loeb and Attorney Wolf. (Respondent's Objection at 2.) There is no evidence in the record to establish that Magistrate Loeb stated that Samame had “no credibility” or that Samame witnessed an ex parte communication.

In addition, respondent claims that it is impossible to prove that he committed any misconduct in Samame's case because Samame did not complain or testify at the hearing.² However, it is not necessary that a client file a grievance or testify at the hearing for this Court to discipline an attorney. This Court's decision in *Squire*, 130 Ohio St. 3d 368, 2011-Ohio-5578, 958 N.E.2d 914, makes this clear. In *Squire*, the fact that the allegations concerned non-complaining clients and the fact that Squire's failure to maintain adequate records may have concealed any actual harm to his clients, did not stop this Court from finding that Squire violated the disciplinary rules. 130 Ohio St. 3d 368; 2011 Ohio 5578; 958 N.E.2d 914, ¶61. Moreover, the hearing panel had ample evidence to find that respondent violated the disciplinary rules alleged regarding Samame's case. For instance, the hearing panel heard the testimony of Magistrate Loeb, Attorney Wolf and respondent. Each was present throughout the last day of the Samame trial and testified to the events that occurred. The record before the hearing panel also included a copy of the transcript for the last day of trial in the Samame case containing Samame's statements. (Stipulated Ex. 23.) After considering the witnesses' testimonies and the trial transcript, the hearing panel properly found clear and convincing evidence that respondent committed the ethical misconduct in the Samame matter.

Accordingly, this Court should overrule respondent's objection to the board's conclusion of law regarding the Samame matter.

² The grievance in the Samame matter was initiated by Attorney Wolf and, as respondent acknowledges, relator contacted Samame who refused to testify in this matter.

Answer No. 4

There are no mitigating factors in this case that warrant a less severe sanction than the indefinite suspension recommended by the board.

In this matter, the board found the presence of four aggravating factors and no mitigating factors. (Report at ¶¶53-55.) Respondent does not object to the aggravating factors, but he offers, as a possible mitigating factor, that his actions did not harm Samame's case. Respondent states, without citing the hearing transcript, that Attorney Wolf and Magistrate Loeb "testified that Samame received a fair settlement and that she was not prejudiced by waiving the calling [of] witnesses and foregoing her closing argument." (Respondent's Objection at 2.)

Respondent's argument, however, is nonsensical because the extent to which he harmed Samame's case is indeterminable. On the last day of the Samame trial, respondent effectively abandoned his client despite being ordered to proceed with the trial when his request to withdraw was denied. Wrongfully concluding that he would not receive additional attorney fees, respondent refused to cross-examine Samame's husband, withdrew exhibits, failed to present evidence on Samame's behalf, and gave a perfunctory 30-second closing argument. (Report at ¶¶38 and 41.) These are the immutable facts that occurred in Samame's case.

That being said, neither respondent, this Court, nor Samame knows whether there would have been a different result – a better result – had respondent not abandoned his client. Therefore, this Court cannot determine the extent to which respondent's misconduct caused Samame a less favorable result than she would have received otherwise. For this reason, it is impossible to conclude that respondent's misconduct was harmless. Moreover, it is automatic that that anytime a lawyer abandons his client during trial, the client suffers harm.

Accordingly, this Court should adopt the board's conclusion of law that there are no mitigating factors in this case to warrant a less severe sanction than an indefinite suspension.

CONCLUSION

For the foregoing reasons, this honorable Court should overrule respondent's objections to the board's Report. The Court should adopt the findings of fact and conclusions of law in the board's Report and order that respondent be indefinitely suspended from the practice of law with reinstatement subject to the condition of restitution set forth in paragraph 65 of the board's Report.

Respectfully submitted,



Jonathan E. Coughlan (0026424) (0074726)
Relator



Philip A. King (0071895)
Assistant Disciplinary Counsel
Counsel of Record for Relator
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
(614) 461-0256
P.King@sc.ohio.gov

CERTIFICATE OF SERVICE

I certify that an accurate copy of *Relator's Answer Brief* was served via U.S. Mail, postage prepaid, upon respondent Vincent F. Gonzalez, Sr., Esq. at 2535 Scranton Road, Cleveland, OH 44113; and Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, at 65 S. Front Street, 5th Floor, Columbus, OH 43215 on April 12, 2013.



Philip A. King
Counsel of Record for Relator