

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

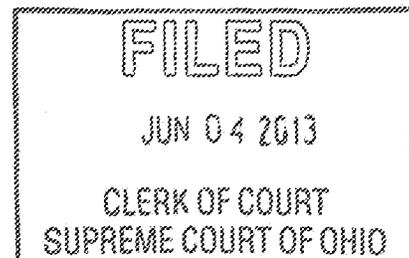
CASE NO. 2013-0573

Relator,

vs.

Paul Lawrence Wallace.

Respondent.



RESPONDENT'S OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND
DISCIPLINE

Now comes Respondent, Paul L. Wallace, , and hereby files Respondent's Objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances in Discipline in Case No. 2013-0573, *Disciplinary Counsel v Wallace*.

As noted by both the Panel and the Board, the facts in this matter were determined primarily by stipulations entered into between the parties, and those stipulations will not be disturbed. There was additional testimony provided that does not contradict those stipulations, but may clarify some issues.

Respondent initially represented Jackson and Towles relating to the theft of equipment from her vehicle. That vehicle was also insured by Liberty Mutual under the same joint policy and coverage was accepted by Liberty under a reservation of rights with the same investigator. The testimony at the hearing was that that claim was resolved after about six months, and Liberty issued the check payable jointly to Mr. Jackson and Ms. Towles. Because of a need for

funds for the book, that check went directly to Ms. Towles and no fees were collected or paid at that time.

Prior to the \$32,000.00 check being issued, fees had been negotiated with Mr. Jackson at the Delaware County jail, and it was agreed that those would be \$9,000.00 rather than the \$5,000.00 that Mr. Jackson originally offered. After the November meeting, the fees were broken down, Ms. Towles took the figures to Mr. Jackson for confirmation, and the balance of the funds, including the now deposited cash, were distributed, immediately. Work continued for both clients, including several more trips to the Delaware jail, for an additional seven months, with all work being completed to their satisfaction.

Essentially, all matters before the court involve the joint representation of these two clients over the course of eighteen months, and all legal work was done very successfully. The handling of the clients' funds by a sole practitioner was done very badly, and in derogation of the requirements relating to maintenance of records and segregation of client funds separate from operating accounts. As testified to at the hearing, systems were subsequently put in place in conformance with the rules.

The question of sanctions is a very difficult matter here. The board considered not only the usual factors, but also seemed to give consideration to the previous penalty imposed during the suspension in the year 2000. As noted by the Board, a six month suspension stretched into over twenty months based upon an allegation of practicing law during the prior suspension, and a failure to abide by this court's order to notify parties in pending litigation. The act complained of (mailing of a previously mailed set of non-legal documents within the first few days of the suspension) was determined to be a clerical act, and in the absence of any litigation, this court

found that its order was fully complied with. Although the matter was dismissed, the Court could not act on the application for reinstatement until the matter was completed.

There is no matrix or algorithm that is used to determine sanctions. The Court has made it clear that it is concerned primarily with the protection of the public. In the 2000 suspension and in the current action, no harm, either financial or legal, came to any client. Although the potential for harm may have been there, by good fortune or the grace of God, it did not occur.

Every case cited by the panel and board in support of the sanction involved factors of fabrication of closing statements, false reports to the Probate Court, and fabrication of fee disputes. In addition, there was a lack of cooperation or actual deceit in the disciplinary process. In the matter now before the court, there was full cooperation and disclosure, and no client was without their funds for an additional day. The range of sanctions for violations covers a broad scope, from an entirely stayed suspension. Disciplinary Counsel v. Edwards, 120512 OHSC, 2012-0681, to a two year actual suspension to disbarment. Respondent submits that a significantly lesser sanction than that proposed by the Board would appropriately serve the requirements of the Code of Professional Responsibility.

The Attorney in Disciplinary Counsel v. Manning 2008-Ohio-3319 received a six month suspension (with prior discipline) on misuse of \$12,500.00 of client funds, as well as fabricating a closing statement to conceal the actions. It should be considered that the clients in the present clearly intended for the funds to be deposited by respondent (per Respondent's Exhibits as to Mr. Jackson, and the lack of any statement in Ms. Towles affidavit.) and that they directed that the funds be paid out by respondent prior to any allegation that they had not signed the checks. In short, they were both aware that the check was received and that the funds had been deposited. In addition, the prior settlement check from Liberty had also been payable to both clients.

In Cleveland Bar Assn. v. Glassman, 104 Ohio St.3d 484, 2004-Ohio-6771, a one year suspension was imposed. In that case, there was an additional proven allegation of accepting a fee without performing any work, actual harm to a client and a conviction for two counts of felony theft.

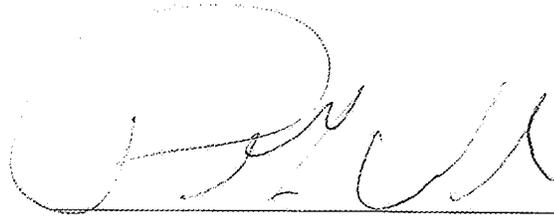
In a similar case involving far greater funds, Disciplinary Counsel v. Edwards, 120512 OHSC, 2012-0681, the Board and the Court considered all of the circumstances in imposing a stayed suspension. Although there was no prior misconduct and a mental health issue found, restitution was not made for a substantial period of time. Conditions were imposed to insure that the problem would not reoccur.

“Nonetheless, we have consistently recognized that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. *See, e.g., Disciplinary Counsel v. O'Neill*”, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286.

This Court more recently had the opportunity to measure the matter of protection with that of punishment. In Disciplinary Counsel v. Talikka, 135 Ohio State 3d, 2013Ohio 1012, the majority imposed a similar sanction to that proposed by the Board in the instant case. In Talikka, there were eight counts, multiple clients harmed, and significant funds that were not returned to clients for a substantial time. In addition, several of the clients were vulnerable victims. He also attempted to blame the problems on others, including his paralegal. The vigorous dissent points to the harm done, the lack of full acceptance of responsibility and that concern that the public would not be protected. In the current matter, the clients were not harmed, and adequate systems have subsequently been put in place to prevent future incidents.

A suspension, especially one wrongly extended, is difficult to recover from, at any time. The six month suspension imposed in 2000 for my actions in 1994 was served; the additional fourteen months saw the departure of all my employees, clients and staff. Although it is not a factor discussed in the cases, an actual suspension at this point of a career effectively ends it. The public can be protected, if the Court deems it necessary, by monitoring supervised by Relator. The actions as to the IOALTA account have not been repeated, systems are in place, and the once in a lifetime situation of having a client walk in with substantial amounts of cash is unlikely to reoccur. (The short answer is to either refuse or immediately deposit the funds into the Trust account). It is respectfully requested that the Court stay the entire suspension, with appropriate conditions of probation and monitoring.

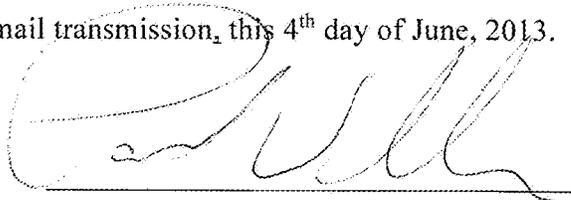
Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Respondent's Objections to the Board's Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline has been served upon, , Joseph M. Caligiuri, Esq. , 250 Civic Center Drive, Suite 325 Columbus, Ohio 43215-7411 via e-mail transmission, this 4th day of June, 2013.



Paul L. Wallace, Esq.