

IN THE SUPREME COURT OF OHIO

<b>Disciplinary Counsel,</b>	:	<b>CASE NO. 2013-0573</b>
	:	
Relator,	:	
	:	
vs.	:	
	:	
<b>Paul Lawrence Wallace.</b>	:	
	:	
Respondent.	:	

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**RELATOR'S ANSWER TO RESPONDENT'S OBJECTION TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS**

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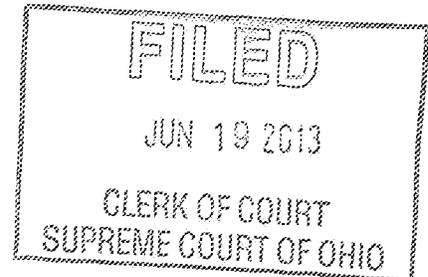
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<b>Paul Lawrence Wallace</b>	:	<b>RELATOR'S ANSWER TO</b>
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	:	<b>TO THE BOARD OF COMMISSIONERS'</b>
	:	<b>REPORT AND RECOMMENDATIONS</b>

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**RELATOR'S ANSWER TO RESPONDENT'S OBJECTION TO THE BOARD OF  
COMMISSIONERS' REPORT AND RECOMMENDATIONS**

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**INTRODUCTION**

On April 5, 2013, the Board of Commissioners on Grievances and Discipline (“board”) issued its report (attached as “Appendix A”) recommending that respondent be suspended from the practice of law for two years, with one year stayed, along with one year of monitored probation upon reinstatement. After this Court issued its Order to Show Cause, respondent timely filed objections. The following represents relator’s answer to respondent’s objections.

**STATEMENT OF FACTS**

Respondent, Paul Lawrence Wallace, was admitted to the practice of law in the state of Ohio on November 7, 1980. 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, 729 N.E.2d 343. Respondent was reinstated to the practice of law on March 6, 2002.<sup>1</sup>

### Count One

In or around December 2008, respondent represented Nigel Jackson in various legal matters including a claim Jackson filed with Liberty Mutual Insurance Company regarding the theft of Jackson's 2004 BMW 745; 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. *Report* at ¶ 9.

Jackson paid respondent \$300 to begin representation on the aforementioned matters. 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 alleged agreement. Jackson maintains that there was never an agreement between him and respondent regarding fees for legal services. *Id.* at ¶ 10. Throughout respondent's representation of Jackson and Towles, respondent never sent them an invoice. *Id.* at ¶ 11. The BMW was eventually recovered, but the car was totaled. *Id.* at ¶ 12.

In or around March 2009, while the insurance claim was pending, Jackson was arrested and charged with drug trafficking resulting from a federal drug investigation. *United States v. Jackson, et al.*, Case no. 2:08-CR-00186, US District Court, Northern District of Ohio.

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<sup>1</sup> Upon information and belief, respondent applied for reinstatement from his May 31, 2000 suspension on or about December 1, 2000; however, the application was denied based upon a disciplinary complaint that was filed on December 4, 2000. This Court dismissed that complaint on March 6, 2002. *Disciplinary Counsel v. Wallace*, 94 Ohio St.3d 414, 2002-Ohio-1240.

Respondent never represented Jackson in the criminal case and Jackson has remained in custody since his arrest. *Id.* at ¶ 13.

On or around July 17, 2009, and again on July 29, 2009, respondent visited Jackson in the Delaware County Jail, as he had done several times before. During the July 29, 2009 visit, Jackson granted respondent a limited power of attorney allowing respondent to transfer title to Jackson’s BMW to Liberty Mutual. *Id.* at ¶ 14. On or around August 4, 2009, Liberty Mutual issued check no. 23640577 for \$32,132.80 made payable to Nigel Jackson and Aisha Towles for the BMW. *Id.* at ¶ 15. The check was mailed to respondent’s law office, per Jackson’s instructions. *Id.* Although respondent informed Jackson that he would deposit the check into his IOLTA, he never received express permission from Jackson or Towles to endorse the check. *Id.* at ¶ 16. Respondent endorsed the check by signing Jackson and Towles’ signatures. *Id.* Respondent deposited the check into his IOLTA account at US Bank, account no. x-xxx-xxxx-7081. *Id.*

Within months, respondent had misappropriated all of Jackson’s funds, as evidenced by the following reconstruction of respondent’s IOLTA account:

No.	Date Pd.	Payee	Payor/Memo	Amount	Balance
					1.81
Deposit	8-4-09	Nigel Jackson & Aisha Towles	Liberty Mutual Ins.	32,132.80	32,134.61
1578	8-7-09	Paul Wallace		-6000	26,134.61
1580	8-12-09	Paul Wallace		-4000	22,134.61
1581	8-18-09	Paul Wallace	Jackson	-2000	20,134.61
1573	8-19-09	Mike Hwatten, Executor	Delgado	-2000	18,134.61
1589	8-27-09	Paul Wallace		-6000	12,134.61

No.	Date Pd.	Payee	Payor/Memo	Amount	Balance
1598	9-9-09	Arbors & Delaunz	Ramona Lincoln	-2000	8,134.61
1591	9-16-09	James M. & Tina Elliott	Gilbert	-6500	1,634.61
1592	9-28-09	Watkins Firm APC		-1500	134.61
Deposit	10-14-09	CASH IN	Towles	+2500	2,634.61
1595	10-19-09	“Who Done It Productions, LLC”		-1000	1,634.61
1593	10-22-09	Owen Loan Servicing, LLC	Williams	-500	1,134.61
1597	10-28-09	Paul Wallace		-1000	134.61

[Stipulation No. 15].

In or around late September 2009, respondent spoke with Jackson in the Delaware County jail. Respondent informed Jackson that he had received the check and was prepared to make the distributions according to Jackson’s instructions. Respondent never advised Jackson that the check was for \$32,132.80; rather, respondent told Jackson that he would net \$24,000.

*Report* at ¶ 17. Believing the check was for \$24,000, Jackson originally authorized respondent to disburse \$1,000 to “Who Done It Productions, LLC;” \$3,200<sup>2</sup> to his book editor, Tracy Taylor; and \$19,800 to Towles’ mother, Terrie Sheppard. [*Report* at ¶ 17; *Stip.* No. 17].

As the table above illustrates, respondent lacked the funds in his IOLTA account to make the disbursements; therefore, on October 14, 2009, respondent deposited cash he had received from Towles (see Count Two) into his IOLTA account and made the \$1,000 disbursement to “Who Done It Productions, LLC,” via Check No. 1595. [*Id.*; *Stip.* No. 18].

Due to respondent's misappropriation of Jackson's funds from his IOLTA account, respondent made the following disbursements using his own funds from his operating account:

No.	Date Pd.	Payee	Payor/Memo	Amount
2069	9-21-09	Ohio Secretary of State		\$125
2081	10-2-09	Tracy Taylor	Book Contract NJ	\$700
2050	11-6-09	Tracy Taylor		\$200
2113	11-24-09	Terrie Sheppard		\$19,970

[Report at ¶ 18; Stip. No. 19].

On or around November 17, 2009, Towles contacted Liberty Mutual and discovered that the check for the BMW was for \$32,132.80, not \$24,000. Report at ¶ 19. On or around November 23, 2009, Towles met with respondent to discuss, among other things, the discrepancy. Respondent explained to Towles that the difference between the \$24,000 and the \$32,132.80 represented his legal fees.<sup>3</sup> *Id.* Respondent is not in possession of records showing how much of the \$32,132.80 was paid out on behalf of Jackson and/or how much respondent retained as legal fees. According to respondent's bank records, he disbursed \$20,995 of his own funds to various third parties on behalf of Jackson, but only after he had forged his clients' signatures and misappropriated his clients' funds. (See Table above). Respondent also paid \$2,500<sup>4</sup> to "Who Done It Productions, LLC," for a total disbursement of \$23,495 (\$20,995 +

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<sup>2</sup> The \$3,200 was to be paid in installments; however, after receiving \$900, Taylor quit working with Jackson; consequently, she was paid a total of \$900.

<sup>3</sup> The amount of respondent's legal fees is not the subject of this proceeding.

<sup>4</sup> The \$2,500 was part of a \$10,000 check made payable to "Who Done It Productions, LLC"

\$2,500). It appears respondent retained the balance of \$8,637.80 (\$32,132.80-\$23,495) as his legal fees. [Stip. No. 22].

### Count Two

Sometime after Jackson was incarcerated, he instructed Towles to deliver to respondent a bag containing an undisclosed sum of cash. *Report* at ¶23. As instructed, Towles delivered the bag containing the cash to respondent at his office. *Id.* Despite having no records to substantiate the amount of cash he received from Towles, respondent maintains that he received \$7,500 cash. *Id.* at ¶ 24. Jackson had instructed respondent to hold the cash to pay for future expenses associated with the publication of Jackson’s book. *Id.* Respondent failed to immediately deposit the cash into his IOLTA account; rather, he “stuck it in a drawer” and months later deposited portions of the cash into his IOLTA and operating accounts. [*Id.* at ¶ 25; Tr. p. 39].

On October 14, 2009, respondent deposited \$2,500 of the purported \$7,500 cash into his IOLTA account (see Stip. No. 15). The deposit slip contained the notation “Towles.” As the first table illustrates, on October 19, 2009, respondent used a portion of the \$2,500 cash deposit to pay \$1,000 to Jackson’s company, “Who Done It Productions, LLC,” via IOLTA Check No. 1595. [*Report* at ¶ 26, Stip. No. 15].

Respondent misappropriated the remaining \$1,500 of the first \$2,500 cash deposit by issuing Check No. 1593 to Owen Loan Servicing for \$500 and Check No. 1597 to himself for \$1,000. *Report* at ¶ 27.

On November 24, 2009—a day or so after meeting with Towles, respondent deposited the remaining \$5,000 of Jackson’s cash into his operating account. *Id.* at ¶ 28. At the time of the deposit, respondent’s operating account also contained funds belonging to respondent. *Id.* On November 24, 2009, respondent issued Check No. 2110 for \$10,000 drawn on his operating

account and made payable to “Who Done It Productions, LLC.” *Id.* at ¶ 29. The \$10,000 check represented the repayment of Jackson’s \$7,500 cash and \$2,500 as final disbursement of the \$32,132.80. *Id.* Respondent continued to perform legal work for Jackson through May 2010. *Id.*

### RELATOR’S ANSWER TO RESPONDENT’S OBJECTIONS

In his objections, respondent requests this Court reject the board’s recommendation of a two-year suspension with one-year stayed and instead, impose a one-year, fully stayed suspension. In defense of his request, respondent asserts, “The actions as to the IOALTA (sic) 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 occur.” But respondent’s statement glosses over the most troubling aspects of his misconduct. In addition to the commingling and IOLTA violations, respondent:

- forged his clients’ signatures on a settlement check;
- misappropriated over \$24,000 of his clients’ money;
- misled his client into believing the settlement funds were available for disbursement; and,
- falsely asserted to Towles that Jackson had given respondent permission to sign Towles’ name to the check.

While respondent correctly points out that, “The purpose of discipline is not to punish the offender, but to protect the public,” he fails to comprehend that there are times, such as this, where the Court must punish the offender in order to protect the public.

Respondent’s misconduct was riddled with deception. And his previous misconduct, for which he received an actual suspension, also involved lying to a client. *Wallace*, supra, 89 Ohio St.3d 113, 114, 2000-Ohio-120, 729 N.E.2d 343. “We have repeatedly held that the practice of

law is a learned profession grounded on integrity, respectability, and candor.” *Disciplinary Counsel v. Stafford*, 128 Ohio St.3d 446, 2011-1484, 976 N.E.2d 193, ¶ 56, citing *Disciplinary Counsel v. Clafin*, 107 Ohio St.3d 31, 2005-Ohio-5827, 836 N.E.2d 564, ¶ 14. Respondent’s penchant for dishonesty strikes at the core of the legal profession and warrants the actual suspension as recommended by the board.

Not surprisingly, respondent can offer no authority for a fully stayed suspension. In his brief, respondent discusses *Disciplinary Counsel v. Edwards*, 134 Ohio St.3d 271, 2012-Ohio-5643, 981 N.E.2d 857, in which this Court imposed a fully stayed suspension upon Attorney Edwards after finding that he misappropriated \$69,500 from his IOLTA. But *Edwards* is easily distinguishable. Unlike respondent, Edwards presented with several significant mitigating factors—two of which are glaringly absent from the case at bar. First, Edwards had practiced for over 30 years with no previous discipline. *Id.* at ¶10. Second, the Court found that Edwards suffered from a mental disability that was causally connected to the misappropriation. *Id.* at ¶ 15. In the case at bar, respondent has been previously disciplined for lying to a client and there was no evidence of a mental disability that may have explained his misconduct. In fact, unlike Edwards, respondent was found to have acted with a selfish motive and committed multiple offenses. *Report* at ¶ 39. *Edwards* has no application to the instant matter.

“The presumptive disciplinary measure for acts of misappropriation is disbarment, although this sanction may be tempered with sufficient evidence of mitigating or extenuating circumstances, including the isolated-incident exception cited by the board.” *Disciplinary Counsel v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110, 812 N.E.2d 1280, ¶ 14, citing *Disciplinary Counsel v. Smith*, 101 Ohio St.3d 27, 2003-Ohio-6623, 800 N.E.2d 1129. In the case at bar, respondent’s previous discipline precludes him from invoking the “isolated incident”

exception. Nor are there any extenuating circumstances. Moreover, there are strong similarities between respondent's previous disciplinary case and the current one—a strong indicator that respondent has not learned from his mistakes and will continue to pose a threat to the public. In his 2000 disciplinary case, respondent repeatedly lied to a client to conceal the fact that the client's case had long been dismissed. *Wallace*, supra, 89 Ohio St.3d 113, 2000-Ohio-120, 729 N.E.2d 343. In the current case, respondent not only forged his clients' signatures on a settlement check and immediately misappropriated the proceeds, but when Towles confronted respondent about her forged signature, respondent falsely asserted that Jackson had given respondent permission to sign Towles' name on the check. [Stip. Ex. 5, ¶ 15]. At the disciplinary hearing, respondent admitted that Jackson never gave him permission to sign Towles' name. [Tr. p. 83]. Respondent's misconduct was not an isolated incident.

Respondent's previous and current cases illustrate a disturbing proclivity to conceal—rather than disclose—his misdeeds. The board's recommended sanction of two years with one-year stayed, along with one year of monitored probation, appropriately protects the public from a lawyer who has twice during his career engaged in misconduct involving deception and misrepresentation.

Relator is unaware of any case in which a previously disciplined lawyer received a fully stayed suspension after misappropriating client funds in the subsequent case. On the contrary, this Court has routinely imposed actual suspensions upon lawyers who misappropriate funds after having been previously disciplined. (See *Columbus Bar Ass. v. Peden*, 134 Ohio St.3d 579, 2012-Ohio-5766, 984 N.E.2d 1, previously-disciplined lawyer indefinitely suspended for committing multiple offenses including neglect, commingling, misappropriation of client funds, failure to return unearned fees, failing to account, and failing to cooperate in the disciplinary process; *Trumbull County Bar Assn. v. Large*, 134 Ohio St.3d 172, 2012-Ohio-5482, 980 N.E.2d

1021, previously-disciplined lawyer received two-year suspension with six months stayed after he neglected two client matters, failed to deposit client funds in his trust account, failed to return unearned fees, and made false statements in his application for reinstatement; *Green County Bar Assn. v. Saunders*, 132 Ohio St.3d 29, 2012-Ohio-1651, 968 N.E.2d 470, previously-suspended lawyer disbarred for converting \$40,000 in client funds that were intended to pay estate taxes and failing to cooperate in the disciplinary process (default); and, *Northwest Ohio Bar Assn. v. Archer*, 129 Ohio St.3d 204, 2011-Ohio-3142, 951 N.E.2d 78, previously-disciplined lawyer suspended for one year after it was discovered that she had converted funds she had withheld from her employee's wages.).

There are some cases in which previously-disciplined lawyers received fully stayed suspensions in their subsequent disciplinary cases, but none of those cases involved misappropriation of client funds. (See e.g. *Cleveland Metropolitan Bar Assn. v. Berk*, 132 Ohio St.3d 82, 2012-Ohio-2167, 969 N.E.2d 256, previously disciplined lawyer received an 18-month fully stayed suspension for neglecting two clients' cases; *Disciplinary Counsel v. Siewert*, 130 Ohio St.3d 402, 2011-Ohio-5935, 958 N.E.2d 946, previously suspended lawyer received a six-month, fully stayed suspension for engaging in a consensual sexual relationship with a client; *Cleveland Metropolitan Bar Assn. v. Freeman*, 128 Ohio St.3d 416, 2011-Ohio-1447, 945 N.E.2d 515, previously disciplined lawyer received a one-year, stayed suspension for neglecting two foreclosure cases, failing to return a file, and an advertising violation; *Mahoning County Bar Assn. v. Jones*, 127 Ohio St.3d 424, 2010-Ohio-6024, 940 N.E.2d 940, previously suspended lawyer received a six-month stayed suspension for failing to cooperate in a disciplinary investigation).

Unable to provide this Court with authority for a fully stayed suspension, respondent cites to *Disciplinary Counsel v. Manning*, 119 Ohio St.3d 52, 2008-Ohio-3319, 891 N.E.2d 743, in which the Court imposed a six-month actual suspension to run consecutive to a two-year suspension that Attorney Thomas Manning was serving for lying to a client. *Id.* at ¶1, 12. Manning represented a woman in a personal injury case arising from an automobile accident. Manning settled the matter with the tortfeasor's insurance company for \$12,500 and deposited the check into his IOLTA account. *Id.* at ¶4, 5. After paying himself, Manning immediately began using the client's funds to pay his own personal and business expenses. *Id.* at ¶7, 8. Months later, Manning obtained a \$60,000 settlement from the other driver's insurance company and used a portion of his fee to reimburse the \$5,000 that he had previously misappropriated; however, respondent fabricated the closing statement to conceal his previous theft. *Id.* at ¶9, 10. The Court found that Manning violated several disciplinary rules including, DR 1-102(A)(4) (engaging in conduct involving fraud, dishonesty, deceit or misrepresentation); DR 9-102(A) (requiring a lawyer to deposit and maintain client funds in separate and identifiable bank account); and, DR 9-102(B)(3) (requiring a lawyer to maintain complete records of and account for client property in the lawyer's possession). *Id.* at ¶10.

In his objections, respondent attempts—unsuccessfully—to distinguish his misconduct from Manning's by stating:

It should be considered that the clients in the present [case] 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 the funds be paid out by respondent prior to any allegation that they had not signed the checks. (Sic)

But respondent's assertion overlooks two critical facts. First, neither Jackson nor Towles knew the check had been made out to them; consequently, they had no reason to suspect respondent had forged their signatures. In fact, Jackson authorized his insurance company to

send the check directly to respondent's office. [Stip. No. 12]. Second, the only reason Jackson directed the funds to be paid was because respondent had misled Jackson into believing the check was for \$24,000, not \$32,132.80. *Report* at ¶ 17. In fact, it was not until November 2009—almost four months after respondent deposited the check—that Towles contacted the insurance company and learned the true value of the check. *Id.*

Although similar in nature, respondent's misconduct was more egregious than Manning's. Whereas Manning misappropriated \$5,000, respondent misappropriated almost \$25,000. Manning fudged the numbers on the closing statement to conceal his misappropriation, whereas respondent engaged in a much more deceptive scheme to defraud his clients. In order to obtain the funds, respondent forged Jackson and Towles' signatures on the settlement check, then continuously misled Jackson regarding the amount of the check, only telling Jackson he would net \$24,000. *Report* at ¶ 17. While Jackson was in prison, respondent misappropriated the funds. In late September 2009, respondent spoke with Jackson in the Delaware County Jail and falsely asserted to Jackson that he "was prepared to make the disbursements according to Jackson's instructions." *Report* at ¶ 17. At the time respondent made that assertion, he had already misappropriated the majority of Jackson's funds. In fact, by September 28, 2009, respondent had only \$134.61 in his IOTLA. [Stip. No. 15]. And, as mentioned previously, when Towles confronted respondent about her forged signature, respondent lied, stating that Jackson had given him permission to sign her name. [Stip. Ex. 5, ¶ 15].

Respondent's deception is even more troubling when one considers the context in which it occurred. At the disciplinary hearing, respondent testified that Jackson had instructed respondent to tell Towles—whom respondent was also representing—that the feds had seized the insurance proceeds and that there was no money. *Tr.* p. 46-47. Respondent refused to go along

with Jackson's ruse, yet he still forged Towles' (and Jackson's) signature. Respondent's actions under the circumstances cast serious doubt upon his judgment, credibility, and integrity. At the hearing, respondent admitted the gravity of his transgression.

Relator: And with respect to your testimony regarding the tension between Nigel Jackson and Aisha [Towles] with regard to the money, it would have been all the more important to ensure that Aisha knew, (A) that that check was made out to her and Nigel, and (B) that you were signing her name, correct?

Respondent: It—in hind—If I was going with 20/20 hindsight, it would have been critical to do it, yes.

Tr. p. 78.

Even without previous discipline, this Court has consistently imposed actual suspensions upon lawyers who have misappropriated client funds. In *Disciplinary Counsel v. Riek*, 125 Ohio St.3d 46, 2010-Ohio-1556, 925 N.E.2d 980, Attorney Ben Riek deposited a \$10,000 settlement check into his IOLTA and, over the next two weeks, wrote over \$8,000 in checks to himself to pay various personal expenses. *Id.* at ¶ 6. Consequently, when the client attempted to cash the \$2,875.60 check, which represented the client's share of the settlement proceeds, it bounced. *Id.* at ¶ 7. When confronted by the client, Riek lied by stating that the original \$10,000 check from the client's employer had been dishonored. *Id.* Within days, the client resubmitted the check and it cleared. *Id.* In suspending Riek for 18 months with 12 months stayed, the Court stated:

We have consistently recognized the 'mishandling of clients' funds, either by way of conversion, commingling, or just poor management, encompasses an area of the gravest concern of this court in reviewing claimed attorney misconduct,'<sup>5</sup> and that 'it is of the utmost importance that attorneys maintain their personal and office accounts separate from their clients' accounts' and that any violation of that rule 'warrants a substantial sanction whether or not the client has been harmed.'

*Id.* at ¶ 10, citing *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, 843 N.E.2d 1198, ¶ 15, quoting *Erie-Huron Counties Joint Certified Grievance Comm. v. Miles* (1996), 76 Ohio St.3d 574, 577, 669 N.E.2d 831.

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<sup>5</sup> *Columbus Bar Assn. v. Thompsen* (1982), 69 Ohio St.2d 667, 669, 23 O.O.3d 541, 433 N.E.2d 602

Although similar in many respects, respondent's misconduct was much more egregious than Riek's. Respondent not only misappropriated a far greater sum of money, he obtained access to the funds by forging his clients' signatures on the settlement check, then committed additional misconduct by misappropriating \$1,500 of the \$7,500<sup>6</sup> Towles had provided respondent to hold in trust for Jackson. *Report* at ¶ 27. Whereas Riek presented with no aggravating factors, respondent stands before this Court with three aggravating factors—multiple offenses, a selfish motive, and a history of discipline. *Report* at ¶33.

In *Disciplinary Counsel v. Simon-Seymour*, 131 Ohio St.3d 161, 2012-Ohio-114, 962 N.E.2d 309, this Court suspended an attorney for two years with six months stayed after finding that she misappropriated \$17,000 from an estate and falsely represented to the probate court that she had made disbursements to pay estate obligations when, in fact, she had not paid those debts. *Id.* at ¶3, 4. The attorney in *Simon-Seymour* had no previous discipline, made complete restitution, and cooperated in the disciplinary process. *Id.* at ¶9. In the case at bar, respondent did not deceive the court, but he deceived his clients by forging their signatures, misrepresenting the amount of the settlement check, lying about his purported authority to sign the check, and misappropriating their funds.

In *Disciplinary Counsel v. Gildee*, 134 Ohio St.3d 374, 2012-Ohio-5641, 982 N.E.2d 704, Attorney Eva Gildee represented a client in a commercial lease dispute. Gildee settled the matter in favor of her client and, pursuant to the settlement agreement, began receiving lease payments from the landlord. *Id.* at ¶7. Gildee failed to deposit the lease payments into her IOLTA and misappropriated over \$8,000 of her client's funds. *Id.* When confronted by relator, Gildee made several false assertions in an attempt to avoid discipline. *Id.* at ¶8, 13. In imposing a two-year suspension with one-year stayed on condition that Gildee make complete restitution

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<sup>6</sup> Respondent has no records to substantiate the amount of cash he received from Towles. *Report* at ¶ 24.

to her former client, 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.” *Id.* at ¶17, 18.

In *Disciplinary Counsel v. Burchinal*, 133 Ohio St.3d 38, 2012-Ohio-3882, 975 N.E.2d 960, this Court imposed a two-year suspension with 18 months stayed after determining that Attorney Christopher Burchinal misappropriated a total of \$13,879.27 from three separate clients and led another client to believe he was negotiating with the insurance company despite having missed the statute of limitations. When a law firm partner confronted Burchinal about a \$303.25 unpaid hospital bill, Burchinal admitted to misappropriating the \$303.25 and immediately disclosed the other transgressions that formed the basis of the disciplinary complaint. *Id.* at ¶ 12. Despite the absence of a disciplinary record, full cooperation, good character, and a documented mental impairment, the Court imposed an actual suspension stating, “Multiple acts of dishonesty require an actual suspension from the practice of law.” *Id.* at ¶ 19, citing *Toledo Bar Assn. v. Miller*, 132 Ohio St.3d 63, 2012-Ohio-1880, 969 N.E.2d 239, ¶ 13.

In a similar but earlier case, Attorney Drew Diehl misappropriated \$5,084.55 from an estate, self-reported his theft to the executor’s secretary, and made complete restitution. *Cincinnati Bar Assn. v. Diehl*, 105 Ohio St. 3d 469, 2005-Ohio-2817, 828 N.E.2d 1004, ¶ 4, 5. Despite an unblemished record and a mental disability that contributed to the misconduct, the Court imposed a two-year suspension with 18 months stayed. *Id.* at ¶ 11.

Respondent misappropriated a greater sum of money than Burchinal and Diehl, used deceptive tactics in an attempt to conceal his misconduct, and failed to report his misdeeds. Taking into consideration respondent’s previous history, along with the absence of any mental

disability, it is apparent that a two-year suspension with one year stayed is an appropriate sanction.

Attorney Mark Glassman pled guilty to two counts of felony theft after it was discovered that he misappropriated over \$9,000 in client funds by forging his clients' signatures on an insurance settlement check. *Cleveland Bar Assn. v. Glassman*, 104 Ohio St.3d 484, 2004-Ohio-6771, 820 N.E.2d 350, ¶11, 15. In addition, Glassman took \$925 to file a bankruptcy petition on behalf of a client; however, Glassman never filed the petition, ignored the client, and failed to refund the unearned fee. *Id.* at ¶9. In suspending Glassman for one year, without credit for time served under the interim suspension, the Court noted that Glassman made restitution, was cooperative during the disciplinary process, and enjoyed a positive reputation in the legal community. *Id.* at ¶25.

In his objections, respondent attempts to distinguish *Glassman* by stating that it involved 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." Like the lawyer in *Glassman*, respondent's misconduct was not limited to the forgery and misappropriation. In fact, respondent stipulated that he committed multiple offenses, including a separate count of misappropriation, commingling, and failure to keep adequate records. *Report* at ¶ 33. And while there was no *financial* harm to respondent's clients, there is no doubt his deception prejudiced his clients, both of whom were left to figure out the mystery surrounding the settlement check. Furthermore, the fact that the lawyer in *Glassman* sustained a felony conviction is a mitigating factor, not an aggravating factor. (See BCGD Proc. Reg. 10(B)(2)(f)). Finally, respondent overlooks the fact that Glassman had no previous discipline. *Glassman*, *supra*, 104 Ohio St.3d 484, 2004-Ohio-6771, 820 N.E.2d 350, ¶12. The board's recommendation of a two-year

suspension with one year stayed, along with one year of monitored probation is completely consistent with *Glassman*.

In *Columbus Bar Assn. v. King*, 132 Ohio St.3d 501, 2012-Ohio-873, 974 N.E.2d 1180, Attorney Ray King, over the course of several months, misappropriated over \$100,000 belonging to two separate clients—an estate and a corporation. Although King eventually repaid the funds, he initially attempted to minimize his culpability by classifying the matter involving the corporation as a fee dispute. *Id.* at ¶ 4. Despite the fact that King had never been disciplined, the Court imposed a two-year suspension from the practice of law. *Id.* at ¶ 16.

In his objections, respondent points to *Disciplinary Counsel v. Talikka*, 135 Ohio St.3d323, 2013-Ohio-1012, 986 N.E.2d 954, in which the Court imposed a two-year suspension with one-year stayed, in apparent attempt to cast the board’s recommendation in the current case an unfair or inconsistent. While it’s true that Talikka committed numerous acts of misconduct that resulted in financial harm to several clients, respondent overlooks the fact that Talikka practiced law for over 40 years without incident and suffered from a series of serious health problems during the time he committed the misconduct. *Id.* at ¶ 20, 21. Comparing respondent’s misconduct to that of a first-time offender is like comparing apples to oranges. Respondent’s previous discipline sets him apart.

Taking into account respondent’s disciplinary history, it is clear that the board’s recommended sanction comports with this Court’s precedent and will ensure the public’s protection.

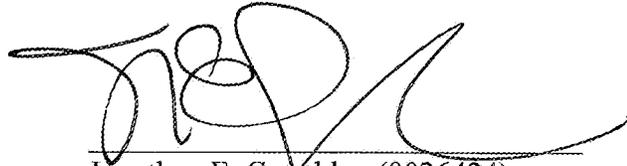
### **CONCLUSION**

For the second time in his career, respondent stands before this Court charged with engaging in conduct involving fraud and dishonesty. This time, acting with a selfish motive,

respondent forged his clients' signatures, misappropriated their funds, and misrepresented the value of the settlement and the availability of the funds. In addition, respondent commingled personal and client funds and failed to keep appropriate records.

Over the course of his career, respondent has shown a penchant for dishonesty and a willingness to place his interests above his clients' interests. In speaking of his current and previous disciplinary cases, respondent asserts in his objections, "Although the potential for harm may have been there, by good fortune or the grace of God, it did not occur." In order to protect against future harm to unsuspecting clients, relator urges this Court to overrule respondent's objections and adopt the board's recommendation of a two-year suspension, with one-year stayed, along with one year of monitored probation.

Respectfully submitted,



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Jonathan E. Coughlan (0026424)  
Relator

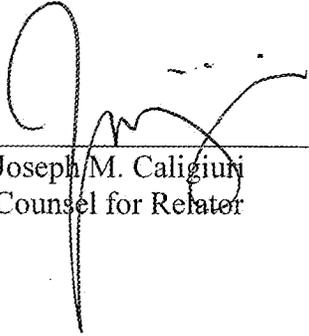


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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Relator's Answer to Respondent's Objection to the Board of Commissioners Report and Recommendation was served via U.S. Mail, postage prepaid, upon respondent, Paul Lawrence Wallace, Esq., Director, Paul L. Wallace Co. L.P.A. 171 East Livingston Ave., Columbus, OH 43215, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 S. Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215 this 19<sup>th</sup> day of June, 2013.

  
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Joseph M. Caligiuri  
Counsel for Relator