

ORIGINAL

IN THE SUPREME COURT OF OHIO

JOY LENORE MARSHALL, ESQ. :
Law Office of Joy L. Marshall :
309 S. Fourth St. :
Columbus, OH 43215 :
Atty. Reg. No.: 0073585 :
Respondent :

CASE NO. 2013-0924

On Certified Report From the Board
Of Commissioners on Grievances
Discipline of the Supreme Court
Ohio Case No. 12-003

v.

DISCIPLINARY COUNSEL :
250 Civic Center Drive, Suite 325 :
Columbus, Ohio 43215-7411 :
Relator :

RESPONDENT'S OBJECTIONS

JOY L. MARSHALL (0073585)
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SUPREME COURT OF OHIO

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State v. Schiewe, , 110 Ohio App. 3d 170, 6th Appellate District 1996 at 175.

UNDERLYINGFACTS

Attorney Joy L. Marshall is the Respondent. She was licensed to practice law in the state of Wisconsin in 2001 and in Ohio in 2002. Attorney Marshall has varied experience. Before being licensed to practice law, she was a law clerk for the University of Wisconsin, the Honorable Judge Higgenbotham (now of the Wisconsin Court of Appeals, formerly of the Court of Common Pleas); and the law firm of Porter, Wright, Morris and Arthur. Attorney Marshall also served as a legal specialist for Nationwide Insurance Company. Attorney Marshall has been in private practice since 2003, where she is a general practitioner. She has no prior disciplinary action.

In 2006, Attorney Marshall was contacted by a friend, whose “family” wanted to find another attorney for their mother. Their mother was confined to a nursing home. She had been injured multiple times while there. The family was unhappy with the attorney chose to represent her. His sister, Kimberly Tyus (“Kim”), held power of attorney for his mother. His mother was Bessie Tyus (“Mrs. Tyus”). Attorney Marshall agreed to meet Kim at her office, which is in Columbus. Kim traveled there from Cleveland.

Kim explained to Attorney Marshall that her attorney did not listen to them and, therefore, had not included all of the claims available. In addition, she said he used the term “you people”, which made them feel uneasy. She also said that he told them that the claim was not worth any money. Attorney Marshall explained to her that it was easiest to maintain the same attorney since the case was in litigation. Kim decided to attempt to resolve her issues with her attorney.

Kim called a couple of days later and said that she would not keep her attorney. Kim said that she would find another attorney if Attorney Marshall would not take the case. Attorney

Marshall advised Kim to send a letter of termination to the attorney and get a statement from him stating the amount of money he believed was owed. Attorney Marshall advised Kim of the doctrine of *Quantum Meruit*. Kim produced both her letter and his statement. His statement said that she owed \$2,943.00. After Attorney Marshall contacted to local bar association to confirm that she had no obligation to former counsel, she agreed to take the case.

Attorney Marshall signed a one-third contingent fee agreement with Mrs. Tyus via Kim. Attorney Marshall hired Attorney Edward Parks (“Attorney Parks”) to co-counsel on the case with her, because he had vast experience with nursing home certifications and violations during his tenure with the Ohio Department of Health. Mrs. Tyus’ record of injury was fairly large and there was an upcoming settlement conference. Attorney Marshall did not know this when she took the case, because no one had told Kim. Attorney Marshall attempted to contact former counsel repeatedly, but to no avail. Attorney Marshall and Attorney Parks were prepared for the settlement conference.

Settlement negotiations began at the settlement conference. Attorney Marshall and Attorney Parks amended the complaint to add the additional claims and continued to gather information in furtherance of litigation. After the parties agreed upon an amount to settle the case, Attorney Marshall received her first contact from former counsel. He wanted Attorney Marshall to protect his fee. Attorney Marshall questioned him about the settlement statement he provided. He said that it was not his fee and that he could not determine his fee unless he knew what the settlement amount. Attorney Marshall informed that *Quantum Meruit* is determined upon the termination of services, not upon successor counsel’s work.

The Release and Settlement Agreement contained a promise to pay former counsel. Attorney Marshall informed opposing counsel that release terms were unacceptable. Attorney

Marshall reached an impasse with opposing counsel and called the court to request a settlement conference. When she called the court, Judge Russo's staff told her that the case had been dismissed via ex parte telephone call from the defendant. Attorney Marshall viewed the on-line docket and noticed the court had put on an order of dismissal, wherein the court retained jurisdiction over post-judgment motions. Attorney Marshall followed with a Motion, pursuant to Ohio Civil Rule 60(B), to set aside the dismissal. She also filed a Motion to Strike the Ex parte Notification of Dismissal.

The court denied the motion to set aside, ruling that the case was dismissed and that a proper motion would be a 60(B). Attorney Marshall made the changes to the Release and Settlement agreement and had her client sign the changes. The defendant accepted. When Attorney Marshall inquired about the status of the client's check, opposing counsel informed her that the check had been sent to the court. Attorney Marshall called the court, but no response. Finally Attorney Marshall sent Judge Russo a letter by fax, inquiring about the status of her client's settlement funds. Judge Russo left a message on Attorney Marshall's phone stating that the check was being held in abeyance. Attorney Marshall filed a Writ of Prohibition with the court of Appeals, because held her client's funds were being held without depositing it into an interest bearing account and without any orders informing the parties as to why and how she would hold the funds.

In the interim, former counsel, William Campbell, who had left his previous law firm of Schiff & Dickson, filed a motion to Enforce a Charging Lien. Attorney Marshall responded with a Motion to Dismiss, because the only parties were her client and the defendant. No one else had standing to file a motion. Furthermore, fee disputes were to be handled by the local bar association. Judge Russo set his motion for hearing. At the hearing, Judge Russo asked the

defendant why the check had been sent to her. She informed the parties that the check had been sitting in her fishbowl for the last month. She indicated that she was unsure what to do with the check. Attorney Marshall told the Judge that the proper thing to do is to give the check to her client. Judge Russo said that she did not want to do that with the motion pending. Attorney Marshall urged the Judge to allow her client to receive those proceeds that were not in dispute. Judge Russo ordered Attorney Marshall to disburse no more than \$85,000 of the \$150,000 settlement. Campbell's claim was for \$47,500 in fees and \$2,943 in expenses.

The hearing began on that same day. Attorney Marshall and Attorney Edward Parks came prepared to validate their earnings despite the completed contingent fee contract. Judge Russo ordered that Attorney Parks would cross-examine Campbell and that Blake Dickson would cross examine Attorney Marshall. Campbell began with a rendition of the work that he completed on behalf of the client and produced an hourly time sheet of 32.93 hours. He testified that his hourly rate is \$200 per hour. Judge Russo stopped Attorney Parks at the beginning of his cross-examination for recess. Attorney Marshall voluntarily dismissed the Writ of Prohibition and the Motion for 60(B) as moot.

The hearing on Campbell's motion was to continue about one month later and then was scheduled on June 21, 2006 at noon. Attorney Marshall called the court repeatedly to confirm the time with the court, but received no confirmation. Attorney Marshall then filed an Affidavit of Disqualification, because Judge Russo had entered orders for non parties and based upon ex parte communications, but her staff would never answer nor respond to Attorney Marshall's calls. Attorney Marshall believed she was biased and should have been disqualified. Her Affidavit was denied.

‘When Attorney Marshall appeared for the hearing, no one was present but Attorney Marshall, Attorney Parks, and Kim. Attorney Marshall traveled 2.5 hours to Cleveland in a storm and it appeared everyone knew not to appear, but Attorney Marshall, Attorney Parks, and the client. Judge Russo handed Attorney Marshall, what appeared to be an order of dismissal of Campbell’s motion with a promise to file it after he properly intervened. Attorney Marshall, seeing that Judge Russo’s order extinguished with the dismissal, disbursed the remaining funds to her client. Attorney Marshall was paid according to her contingent fee contract, plus expenses.

Several days later, Campbell filed a motion to intervene with another motion to enforce a charging lien. The motion to intervene was immediately granted. Attorney Marshall objected with a motion for reconsideration. The court had not given the requisite response period for the motion. The court reconsidered and then granted the intervention. It also set the new motion for hearing. Attorney Marshall filed motions on both her behalf and her client’s behalf, objecting to the motion. In addition, Attorney Marshall filed a Writ in Prohibition with the Supreme Court, arguing that the funds had been disbursed and that the case was dismissed with the funds disbursed therefore there was nothing over which the court could retain jurisdiction. The court dismissed the motion and ordered costs on behalf of Judge Russo.

Attorney Marshall advised Kim to get new/separate counsel. Kim hired **additional counsel**. Attorney Marshall filed a counterclaim on behalf of Mrs. Tyus simultaneous to her motion to withdraw as counsel. Judge Russo granted Attorney Marshall’s withdraw and ordered her to leave the open courtroom. Attorney Marshall did as ordered. Judge Russo entered a default judgment on behalf of Campbell when she left. Attorney Marshall re-entered the courtroom to find everyone gone and an order issued depriving her of her rightfully earned fee

and granting Campbell \$52,000 for 32 hours of work. Attorney Marshall was ordered to disburse the funds to her client within three, which the court had been informed was an impossibility, through the Supreme Court filings.

Judge Russo faxed Attorney Marshall an order to appear for a show cause hearing, based upon the exparte communication of non-compliance, three days later. Although the order contained no motion nor was properly served, Attorney Marshall made every attempt to comply with the order to appear, several days later, at 8:30am. Attorney Marshall made an effort to have someone cover her cases in Franklin County, but to no avail, and did not have time to continue them or inform her clients that she would not be there. In addition, Attorney Marshall, being a single parent had to make provisions to have her child delivered to school. An 8:30 appearance required a departure from Columbus at 5:30 am. Attorney Marshall did not leave until 7:00am, after she made provisions for her child. She called the court immediately to inform them that she would be late for the hearing at 8:30 and would likely arrive at 9:30am. She also called the Administrative Judge for fear that Judge Russo would deny that she called.

Attorney Marshall arrived around 9:40 and was immediately handcuffed and jailed, in felony jail, for failure to appear. Attorney Parks attempted to have a bail set for Attorney Marshall, but Judge Russo's staff pretended she was on vacation. After Attorney Parks hired local counsel, Judge Russo issued a \$5000 cash and surety bond for Attorney Marshall. Attorney Marshall was released the following day.

Attorney Marshall was ordered to provide her IOLTA statement for the hearing and she complied. Attorney Marshall used the same attorneys that had handled her bond. Judge Russo acted as both prosecutor and judge for the show cause hearing. Attorney Marshall's counsel was told what questions to ask and only those questions. Attorney Marshall had no opportunity to

raise a defense. In an attempt to counter the record that Attorney Marshall had “taken” money from her client, Attorney Marshall responded that she had not taken anything, but was paid according to her contingent fee contract. Attorney Marshall was held in contempt and jailed indefinitely pending her compliance with the order. Attorney Marshall’s counsel obtained a bond from the court of appeals. She was released the following day.

Judge Russo moved to be added as a party to the appeal. Judge Russo was the only party to make an appearance or file a brief. Judge Russo, through her counsel, denied that Attorney Marshall called to inform the court that she would be late, just as Attorney Marshall suspected. The court of appeals affirmed in part and remanded in part, ordering further hearing on the fees.

On remand, Attorney Marshall was ordered to produce her IOLTA statements, again. She was also ordered to produce her settlement statements, her time sheets, and other documents. Attorney Marshall prepared all of the documents, but the IOLTA she provided to the court prior to remand. She did not retrieve it. She was confident that it was part of the court file and that the court could retrieve it from the file. However, Attorney Marshall was jailed for not bringing another copy, as being in violation of the order. She was jailed for three days. Attorney Marshall served all three days. That appeal was dismissed for failure to prosecute.

Simultaneously, Campbell filed a separate civil action and Attorney Marshall counterclaimed. Campbell was granted summary judgment and Attorney Marshall appealed it. During the appeal, Campbell moved to execute on his judgment and the sheriff delivered a tag to Attorney Marshall’s home. Attorney Marshall moved for bankruptcy protection, as she was unable to pay the judgment.

The bankruptcy court ruled that Campbell’s judgment was not dischargeable, after finding that Attorney Marshall acted with malice in disbursing the funds. On appeal of the

judgment, the court ruled that Campbell's judgment was not final, as matters were still pending before the court.

When Judge Russo set her contempt for hearing, the third time, Attorney Marshall filed another Affidavit of disqualification. Attorney Marshall, as a basis for Judge Russo's bias, that Judge Russo repeated ignored court rules, issued orders for the benefit of non-parties, and sent Attorney Marshall to jail at most every appearance. Judge Russo immediately recused herself then filed a grievance with the disciplinary counsel wherein, she complained in 2007, that Attorney Marshall violated her order in 2006. Judge Russo also complained that Attorney Marshall represented the client in a criminal case, and convinced her to fire her attorney so that she and the client could defraud Medicaid. Hence, we have the instant action.

III. ARGUMENT

A. Attorney Marshall did not violate Prof. Cond. R. 8.2, by alleging bias of a judicial officer, when the facts show clear bias.

“The responsibility of a judge is to decide matters that have been submitted to the court by the parties. The judge may not, having decided a case for or, as in this case, materially assist one party at the expense of the other. Such advocacy creates the appearance, and perhaps the reality, of partiality of the judge. This, in turn, erodes public confidence in the fairness of the judiciary and undermines the faith in the judicial process that is a necessary component of republican democracy’. *In re Complaint Against White* (2002), 264 Neb. 740, 752, 651 N.W.2d 551. ‘Judicial advocacy through ex parte communications therefore also warrants discipline. *Disciplinary Counsel v. Ferreri* (2000), 88 Ohio St. 3d 456, 727 N.E. 2d 908.” *Disciplinary Counsel v. O’Neil* 103 Ohio St.3d 204, 2004-Ohio-4704, ¶ 13

In *O'Neil*, a common pleas judge was found to have engaged in improper ex parte communications and violated her duties to remain impartial and avoid advocacy. Judge Nancy Margaret Russo ("Judge Russo") presided over the case of *Bessie Tyus v. Grande Pointe Health*, the case giving rise to the instant disciplinary complaint. Attorney Marshall filed several motions requesting that the court either strike the ex parte communications, dismiss orders made pursuant to ex parte communications, or reconsider orders entered ex parte. Such actions gave the appearance and the reality of partiality on the part of the judge.

The court, through Judge Russo, dismissed Bessie Tyus' case. Attorney Marshall requested a settlement conference, but was told that the case was dismissed pursuant to a phone call from the defendant. Judge Russo, without motion, notice, or an agreed entry from the plaintiff entered a final judgment dismissing the case. Attorney Marshall requested that the court strike the ex parte communication and she also moved to set aside the order made in furtherance of the ex parte communication.

Judge Russo granted a motion to intervene ex parte. William Campbell filed a motion to intervene. Judge Russo granted the motion on the day of its filing. Attorney Marshall moved the court to reconsider its entry, as the court had not provided time for service and response from the plaintiff, Mrs. Tyus.

Judge Russo issued a show cause order based upon ex parte communication. Judge Russo stated in her August show cause order that she had information that Attorney Marshall had not complied with the order. Such information was not made via motion, as none was filed. Judge Russo issued the order based upon ex parte communication.

Orders issued pursuant to ex parte communication, not only create the appearance of impropriety, they encourage impropriety. They erode at public confidence. They deny the

opportunity for hearing and the promotion of fairness. Orders repeatedly issued through *ex parte* communications is strong bias and judicial advocacy on the part of the one who benefits from the issuance of those orders. It brings harm to the system of our judiciary and those denied the application of the rule of law.

In *O'Neil*, the respondent repeatedly failed to comply with the law and act in a manner that promoted public confidence. In addition to issuing multiple orders, *ex parte*, Judge Russo failed to comply with the law in other ways. Counsel for the nursing home sent Mrs. Tyus' check, payable to Bessie Tyus and Attorney Marshall, to Judge Russo. Judge Russo placed the check in her fishbowl for approximately four weeks. DR 9-102 required that all funds of clients paid to a lawyer, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts. Judge Russo's actions forbade Attorney Marshall from fulfilling her legal obligations to her client. In addition, and most troubling, Attorney Marshall could not tell her client the location of her settlement proceeds, because Judge Russo did not provide any information about the receipt or whereabouts of the funds.

Judge Russo violated well established law and precedent by issuing an order for the benefit of a non-party. William Campbell, the former counsel for the plaintiff filed a motion to enforce an alleged charging lien. The case had been dismissed. William Campbell was not a party, yet Judge Russo set his motion for hearing and issued orders for his benefit.

Judge Russo denied Attorney Marshall due process to protect her liberty and property interests in her courtroom, in violation of the Fourteenth Amendment to the U.S. Constitution. Attorney Marshall had a property interest, via contingent fee contract, in Mrs. Tyus' settlement proceeds.

William Campbell alleged that he had superior rights to Attorney Marshall's fee. Judge Russo 1) would not let Attorney Marshall cross examine Campbell; 2) abrogated Attorney Marshall's contract with her client; 3) expelled Attorney Marshall from the courtroom during the hearing involving her property right; 4) denied Attorney Marshall a hearing regarding her property right; and 5) denied Attorney Marshall a, well settled. right to her property.

Judge Russo jailed Attorney Marshall repeatedly without setting a reasonable bail. First, Judge Russo ordered Attorney Marshall jailed after Attorney Marshall appeared at 9:40 for her show cause hearing. Attorney Marshall informed the court that she would be late. However, once Attorney Marshall appeared, she was jailed for her failure to appear. Judge Russo denied that Attorney Marshall called her. Judge Russo's staff told Attorney Parks that the Judge Russo was on vacation. No bond was issued. Attorney Marshall retained counsel, who persuaded Judge Russo to issue a bond, that evening. Attorney Marshall was forced to spend the night in jail.

Judge Russo found Attorney Marshall in violation of her order and jailed Attorney Marshall indefinitely with no bond. Attorney Marshall's counsel obtained a bond from the court of appeals.

In employment discrimination cases, a plaintiff can also establish a prima facie case by "offering evidence adequate to create an inference that an employment decision was based on a discriminatory criteria illegal under [Title VII]." *Mitchell v. Office of the Los Angeles County Superintendent of Schools*, 805 F.2d 844, 846 (9th Cir. 1986) (quoting *Teamsters v. United States*, 431 U.S. 324, 358 (1977)); see *Lowe v. City of Monrovia*, 775 F.2d 998, 1006 (9th Cir. 1985) (plaintiff can establish prima facie case of disparate treatment without satisfying McDonnell Douglas test if he or she provides evidence suggesting rejection was based on

discriminatory criteria), amended, 784 F.2d 1407 (1986). A plaintiff who provides such evidence for his or her prima facie case may be able to survive summary judgment on this evidence alone. Lowe, 775 F.2d at 1008.

Title VII prohibits employers from treating applicants or employees differently because of their membership in a protected class. A **disparate treatment** violation is made out when an individual of a protected group is shown to have been singled out and treated less favorably than others similarly situated on the basis of an impermissible criterion under Title VII. The issue is whether the employer's actions were motivated by discriminatory intent. Discriminatory intent can either be shown by direct evidence, or through indirect or circumstantial evidence.

Attorney Marshall is a black female lawyer. She had been employed by Mrs. Tyus on a contingent fee contract. William Campbell and his law firm of Schiff and Dickson, along with the law firm of Friedman, Domiano & Smith, were previously employed by Mrs. Tyus and had been terminated. They are white. Attorney Marshall was not just similarly situated with William Campbell and his law firms. She had a superior position because she fulfilled her contractual obligation and she was not terminated.

Judge Russo treated Attorney Marshall disparately, as compared. Not only was Attorney Marshall denied her rightfully earned fee, through Judge Russo's rulings. She was denied her expenses. She was denied a presence in the courtroom. She was denied justice in the face of her client. Judicial Conduct Rule 2.8 (B) and 2.2. Everyone with a legal interest has a right to be heard according to the law. 116 Ohio State 3d 64, 2007 Ohio 5635.

Attorney Marshall did not violate Prof. Cond. R. 8.2(a), by making false reckless statements concerning the qualifications or integrity of a judicial officer. Attorney Marshall suffered conduct prejudicial to the administration of justice in the most perverted way. Attorney

Marshall alleged bias in Affidavits of Disqualification and in her filings in the court of appeals. They are based upon fact.

The most telling instance of bias is Judge Russo's grievance to the Disciplinary Counsel wherein she fabricates a story about the origination of Attorney Marshall's relationship with her client. In it, she alleges that the client, a member of the public, was engaged in criminal activity in the past. She further alleges that Attorney Marshall and Mrs. Tyus entered into a lawyer-client relationship with the intent to commit criminal acts.

While it may be unfortunate that a member of the judiciary is biased; it happens nevertheless. Attorney Marshall did not violate any ethical rules by so stating.

B. Attorney Marshall did not violate DR 1-102(A)(2), as she was, at all times, honest with the court, while attempting to exercise her right to due process.

The panel found that Attorney Marshall made incomplete and misleading statements at the hearing. Attorney Marshall was required to appear for a hearing wherein she was charged with violating the court's orders by failing to disburse the settlement proceeds in accordance with the court's prior order. Judge Nancy Margaret Russo presided over the proceeds. At the same time, Judge Russo also prosecuted the contempt. Attorney Marshall was not afforded the opportunity to present a defense because Judge Russo told her attorney which questions he could ask and denied him any opportunity to ask any other questions. Therefore, Judge Russo effectively acted as prosecutor, defense, and trier of fact.

Attorney Marshall did not supply the court with incomplete and misleading answers. Attorney Marshall sought to supply the court with a complete answer, incorporating her defense of the contempt into the answer. It was her only chance of making ANY record. Judge Russo asked Attorney Marshall what did she take. Attorney Marshall stated that she did not TAKE

anything, that she had a valid and existing contingent fee contract. Attorney Marshall asserted her defense by stating that she did not take anything, she was paid what was rightfully hers. This statement would have been misleading or false if Attorney Marshall stated that she did not collect a fee.

Prior to the hearing on the refiled motion “Charging Lien, Attorney Marshall filed a Writ of Prohibition with the Supreme Court of Ohio. In that Writ of Prohibition, Attorney Marshall informed the court, Judge Nancy Russo was a party, that the funds had been disbursed. Therefore the court had full knowledge of the disbursement, prior to the hearing and chose not to inquire or charge Attorney Marshall with contempt.

The panel also relied on the Bankruptcy court’s finding that Attorney Marshall committed a willful and malicious act by disbursing the proceeds in violation of the court order. Attorney Marshall disagrees with the finding of the Bankruptcy Court and requests that this court reach its own conclusion regarding its application to fraud, deceit, or misrepresentation.

Attorney Marshall’s conduct is inconsistent with malice and ill-will. Attorney Marshall encouraged Kim to continue with Campbell instead of retaining new counsel. Attorney Marshall advised Kim on the doctrine of Quantum Meruit and required Kim to get a statement from Campbell upon termination of services. Attorney Marshall maintained the funds in her IOLTA account for three months, notwithstanding her belief that the court’s order, being for the benefit of a non-party, was invalid. Attorney Marshall, despite Kim’s belief that Campbell should not be paid anything, counseled her on the doctrine of Quantum Meruit and required that she pay the amount issued in his Settlement Memorandum.

C. Attorney Marshall did not violate DR 1-102(A)(5) or DR 1-102(A)(6), as she, actively sought the administration of justice by using the Ohio Rules of Court and established precedent, as her guide, from inception of the case to date.

Attorney Marshall did not violate DR 1-102(A) (5) or (6) when she actively sought the administration of justice zealously. The panel considered findings that Attorney Marshall violated Court Orders to also find that Attorney Marshall violated DR 1-102(A)(5) and (6). It does not follow, however that Attorney Marshall engaged in conduct that was prejudicial to administration of justice.

One must take the totality of circumstances into account. Attorney Marshall was present and prepared for every hearing. Attorney Marshall was the only attorney present and prepared for every hearing. Under established precedent the orders were invalid, expired, or unenforceable, yet Attorney Marshall made honest attempts at compliance.

Attorney Marshall was charged and found in contempt for distributing funds to her client in violation of the court's order. The court issued that order for the benefit of Campbell, who was a non-party and did not have standing. Those orders are invalid. Invalid orders are unenforceable. Unenforceable orders are not subject to contempt.

Campbell had withdrawn his motion. There was nothing pending before the court. The court cannot rule unless it has something pending before it. The order was then, prospective and anticipatory in nature, rather than pursuant to a filing in its court. Attorney Marshall drew a reasonable legal conclusion and was found in contempt for violation of that order. The court of appeals ruled that Attorney Marshall should not have disbursed the funds because she knew that he would refile. It gave no legal basis or precedent to support its finding.

In addition, it found Judge Russo jurisdiction to issue the order because she reserved jurisdiction over all post judgment motions, notwithstanding her previous denial over the plaintiff's motion to strike. There is no legal basis indicating that Attorney Marshall's understanding of the law was clearly erroneous or that her actions were egregious. Attorney

Marshall's clients had been held in the IOLTA account in violation of the rules which require that funds that are not in dispute be distributed.

Attorney Marshall was ordered to retain \$15,000 beyond what was in dispute. Attorney Marshall applied established precedent and the court rules from the inception of the case. Attorney Marshall contacted the local bar association for guidance on how she should respond to any claim of Quantum Meruit from former counsel. The court rules require, in a contingent fee case, the attorney to issue a settlement statement. Attorney Marshall considered the burden on all concerned and attempted to act accordingly. However, her obligation was to her client. In *State v. Schiewe*, the court of appeals held that a finding of contempt is contrary to law, where it refuses to recognize the contemptors responsibilities under the Code of Professional Responsibility. *See Schiewe*, 110 Ohio App. 3d 170, 6th Appellate District 1996 at 175.

EC 7-4 requires that an Attorney act as an advocate, within the bounds of the law. Although Attorney Marshall was prepared and willing to receive her fee, the important aspect of this case, is that the client believed that Attorney Marshall should be justly compensated and that William Campbell should not be compensated for his failure to advocate on her behalf. Attorney Marshall represented her client's interests.

D. The sanctions are too severe, given the aggravating and mitigating factors.

The purpose of lawyer discipline is to protect the public and the administration of justice from lawyers who have not discharged, will not discharge, or are unlikely properly to discharge their professional duties to clients, the public, the legal system, and the legal profession.

While Attorney Marshall did appear late for the show cause hearing and she failed to obtain additional copies of her IOLTA for the remanded hearing, her violations were not willful disobedience to the court's orders. They do not indicate an unwillingness to properly discharge her duty to the court, the public, or her clients.

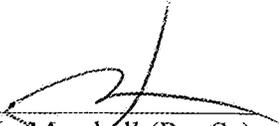
Attorney Marshall has been an attorney in good standing for twelve years. The facts giving rise to the instant complaint arose seven years ago. There have been no other allegations of misconduct. Attorney Marshall received numerous letters in support of her character and fitness to practice law.

The panel used *Disciplinary Counsel v. Simon-Seymour* as its guidance, 131 Ohio St.3d 161, 2012-Ohio-114. In that case an attorney took funds that did not belong to her and followed with a deceptive trail to hide her misdeeds and caused harm to her client. In that case the board recommended a two year suspension with six months stayed. Attorney Marshall has not harmed her client nor engaged in any deceptive practices.

The panel also relied on *Disciplinary Counsel v. Stafford*, 131 Ohio St. 3d 385, 2012-Ohio-909. In that case the attorney abused discovery, made misrepresentations to the court, and maligned the judge. The recommendation was one year. Here, Attorney Marshall was late to court, though she called. In addition, Attorney Marshall did not make additional copies of her IOLTA statements, after assuming that the court maintained the copies she provided earlier. The panel acknowledged that appearing late for court is not usually a violation. It should not be considered a violation here.

Attorney believes that, should this court find she violated her duties, that the mitigating circumstances dictate a public reprimand.

Respectfully Submitted,

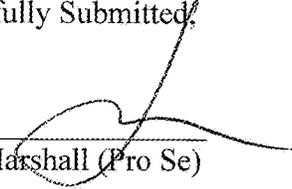


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CERTIFICATE OF SERVICE

This is to verify that a copy of the foregoing was sent via regular mail to Jonathan Coughlin, Disciplinary Counsel via regular mail 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411, postage paid on this 30th day of July, 2013.

Respectfully Submitted,



Joy L. Marshall (Pro Se)

ORIGINAL

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

In re:	:	13-0924
Complaint against	:	Case No. 12-003
Joy Lenore Marshall Attorney Reg. No. 0073585	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

FILED
 JUN 07 2013
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 SUPREME COURT OF OHIO

OVERVIEW

{¶1} This matter was heard in Columbus, Ohio on September 26, 27, and 28, 2012, before a panel consisting of Judge Beth Whitmore, Teresa Sherald, and David E. Tschantz, chair, all of whom are duly qualified members of the Board. None of the panel members resides in the appellate district from which the complaint originated or served as a member of the probable cause panel that reviewed this matter. Respondent, Joy L. Marshall, appeared at the hearing *pro se*. Relator, Disciplinary Counsel, also appeared by and through its counsel, Robert Berger.

{¶2} Respondent was charged in the complaint with the following violations: DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation]; DR 1-102(A)(5) and Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; DR 1-102(A)(6) and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law]; DR 2-106(A) [illegal or clearly excessive fee]; DR 5-101(A)(1) [a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or

reasonably may be affected by the lawyer's financial, business, property, or personal interests]; and Prof. Cond. R. 8.2(a) [false or with reckless statement concerning the qualifications or integrity of a judicial officer].

{¶3} The panel concludes that Relator proved the alleged violations of DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), Prof. Cond. R. 8.2(a), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h). The panel also finds that Respondent did not violate DR 2-106(A) and DR 5-101(A)(1) and recommends their dismissal.

{¶4} Based on its findings of fact, conclusions of law, the evidence adduced at the hearing concerning matters in mitigation and aggravation, case precedent established by the Supreme Court of Ohio, and the recommendations of the parties, the panel recommends the imposition of a two-year suspension, with one year stayed on conditions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent is an attorney who was first admitted to the practice of law in Wisconsin in 2001. Respondent was admitted to the practice of law in the State of Ohio on November 18, 2002. Respondent is subject to the Rules of Professional Conduct, the Code of Professional Responsibility, and the Rules for the Government of the Bar in Ohio. Since admission, Respondent has served as a law clerk for the University of Wisconsin, a law clerk for the Honorable Paul B. Higgenbotham (judge of the Wisconsin Court of Appeals, District IV), and practiced law with the firm of Porter, Wright, Morris & Arthur; served as a legal specialist for Nationwide Mutual Insurance Company and, for the past nine years, has engaged in the private practice of law in the Columbus area. Hearing Tr. 30.

{¶6} The complaint arose out of Respondent's representation, beginning on February 18, 2006, of a woman named Bessie Tyus. Ms. Tyus had been a resident of the Grande Point

Health Community in Richmond Heights, Ohio, a suburb of Cleveland, and had brought an action against the corporation owning and operating that facility for personal injury she alleged she had suffered while a resident there.

{¶7} The personal injury action was first filed in August 2005 in the Cuyahoga County Common Pleas Court, Case No. CV-05-571328, by the client's first attorney William P. Campbell, who is a partner in the Cleveland firm of Dickson & Campbell. The case was assigned to Judge Nancy M. Russo. The actual client, Bessie Tyus, did not directly participate in the conduct of the lawsuit. Instead, she delegated her authority in the matter to her daughter Kimberly Tyus through a power-of-attorney. Two other children, Bessie's son Andre Tyus and another daughter, Daphne Tyus, also were involved in the case and sometimes attended meetings and provided input. However, Kimberly Tyus exercised the authority of the client in all matters pertaining to the lawsuit out of which arose the circumstances that are the subject of the instant disciplinary matter.

{¶8} Attorney Campbell and Attorney M. David Smith of the firm of Friedman, Domiano & Smith, LPA, [hereinafter both attorneys and their firms will be referred to collectively as "Former Counsel"] had represented Ms. Tyus in her case against the nursing home since 2004 and had been retained under a contingent fee agreement that stated that Former Counsel was entitled to be paid 40 percent of any recovery if a complaint were filed. Relator's Ex. 2.

{¶9} Respondent's representation of the client began when she was contacted by Kimberly Tyus, who indicated that the family was not satisfied with the quality of the representation that Bessie Tyus was receiving from Former Counsel and, therefore, wished to retain her services.

{¶10} Respondent advised the Tyus family at that time that Ms. Tyus should remain with Former Counsel because the case was in litigation, but affirmed that she would represent Ms. Tyus if the client was determined to get another attorney. A few days later, a member of the family called and advised her that if she did not take the case then they would go elsewhere, as Ms. Tyus had made the decision to get another attorney. Based on that representation, Respondent agreed to accept the case. Also at that time the client sent a letter to Attorney Campbell informing him that Former Counsel had been terminated. Relator's Ex. 5, p. 7.

{¶11} Respondent then met with the client and advised her of the doctrine of quantum meruit, and explained that this meant that Former Counsel could claim payment for the reasonable value of the services they had provided from 2004 through their discharge in 2006. The client was also advised to contact Mr. Campbell and obtain a statement from him setting forth what he believed was owed to Former Counsel for costs advanced and for fees on a quantum meruit basis should there be a recovery.

{¶12} The client thereafter faxed a document to her office which was entitled settlement memorandum. Respondent's Ex. 1. The client advised that this document was what was provided by Mr. Campbell's office in response to the client's inquiry concerning what was owed for the previous services. The memorandum shows the amount of \$2,943.70 advanced as costs, but does not show any other amounts due from the client. The client and her family further advised Respondent that they believed that Former Counsel was not owed any additional fees. Respondent did not undertake to contact Former Counsel herself.

{¶13} Respondent then executed a contingent fee agreement of her own with the client on February 18, 2006, providing for payment to Respondent of one-third of any recovery, plus costs. *Id.*

{¶14} Attorney Campbell, upon receipt of his client's decision to terminate his services, sent a letter on February 20, 2006, to his now former client confirming the termination and advising that Former Counsel would assert an attorney's lien based on the contingent fee agreement or on quantum meruit. The letter did not specify any amount sought beyond the amount of \$2,943.70 advanced as costs. Relator's Ex. 4.

{¶15} Attorney Campbell also filed a motion to withdraw as plaintiff's counsel with the court on February 21, 2006. Relator's Ex. 5. In support of that motion, Attorney Campbell attached a memorandum in which he informed the court that Former Counsel were asserting an attorney's lien for "fees and costs advanced," but which likewise enumerated only the amount of \$2,943.70 advanced as costs.

{¶16} Respondent relied on the amount specified in the settlement memorandum and Attorney Campbell's letter to her client in concluding that her client was correct that Former Counsel were owed nothing beyond reimbursement for the \$2,943.70 advanced as costs. Respondent was never served with Attorney Campbell's motion to withdraw.

{¶17} Respondent then received a letter directly from Attorney Campbell on March 6, 2006, in which he advised that Former Counsel was asserting an attorney lien for reimbursement of the \$2,943.70 of advanced expenses and for fees based on quantum meruit, and asked her to contact him at the conclusion of the case to discuss what he should be paid. Relator's Ex. 6. Respondent found this suggestion to be "improper" because she saw Former Counsel's claim for fees as a demand being made upon her client, not upon her fee and she did not believe she had an obligation to negotiate with Former Counsel on behalf of her client. Hearing Tr. 259.

{¶18} Respondent was able to settle the case on March 19, 2006 and a release of the defendant in the suit was executed to that effect. Relator's Ex. 7. The amount of the settlement was \$150,000.

{¶19} The next day, one of defendant's attorneys informed the court that the case had been settled, and the court filed a journal entry to that effect the same day. Relator's Ex. 8. The entry also advised that the court "retains jurisdiction over all post-judgment motions." For some reason unknown to the panel, Judge Russo appears to have executed the entry on March 17, 2006, which would have been two days before the case was actually settled and three days before the court was informed that the case had been settled.

{¶20} Respondent did not call Attorney Campbell to discuss their respective fees, as he had requested, nor did she advise her client to seek the opinion of other counsel.

{¶21} On March 27, 2006, a week after the court put on its settlement entry, Former Counsel filed a notice of charging lien with the court in which they advised that they had performed 95 percent of the work on the case and asked the court to award them a fee of \$47,500 in addition to reimbursement of the \$2,953.70 in costs advanced by them on behalf of the client. Relator's Ex. 9. This was Respondent's first notice of the actual amount claimed by Former Counsel. The record of the trial court also indicates that Former Counsel filed a motion to declare and enforce charging lien on the same date, but this motion is not before the panel.

{¶22} On March 29, 2006, Respondent filed a memorandum contra Former Counsel's motion to declare and enforce charging lien. This memorandum was likewise not provided to the panel.

{¶23} The next day, because of the fee dispute, the defendants' insurance carrier sent the \$150,000 settlement proceeds to the court in the form of a check. Relator's Ex. 10. Judge Russo

did not cash the check, but deposited it in a presumably-empty fishbowl on her desk. Relator's Ex. 11, p. 5.

{¶24} On April 18, 2006, Judge Russo set the date of April 28, 2006 for a hearing on Former Counsel's motion.

{¶25} On April 26, 2006, Respondent filed an application for writ of prohibition in the Cuyahoga County Court of Appeals, seeking an order to the trial court prohibiting Judge Russo from ruling on Former Counsel's motion. Relator's Ex. 14. The next day, Respondent filed a motion for an alternative writ with the court of appeals. Respondent also filed an application for a writ of prohibition with the trial court, which was stricken by the court on May 2, 2006 as being improperly filed.

{¶26} On April 28, 2006, the trial court held its hearing on Former Counsel's motion. Respondent was assisted at this hearing by Attorney Edward Parks of Columbus and she was late for this hearing. Judge Russo explained to Respondent, once she arrived, that she had filed improper applications for a writ with the court of appeals and her court, so the trial court retained jurisdiction on the fee issue. At the hearing, Attorney Campbell advised the court that, to make things easier, Former Counsel would accept the application of a one-third percentage to the recovery rather than the 40 percent their agreement with the client entitled them to recover. This modified their agreement to be in line with Respondent's percentage, and allowed the court to focus on the division of one-third of the recovery between the attorneys, rather than attempting to apply two different percentages. Attorney Campbell put on evidence at this hearing that Former Counsel was entitled to 95 percent of one-third of the recovery, and should also be reimbursed for the \$2,953.70 in costs advanced, and was therefore entitled to a total of \$50,453.70 out of the

recovery. Attorney Campbell was then cross-examined about his services and fees by Attorney Parks. Relator's Ex. 11.

{¶27} However, before Attorney Parks' cross-examination of Attorney Campbell was concluded, and without giving Respondent an opportunity to present any evidence of her own, Judge Russo advised the parties off the record that the hearing would be continued due to other pressing matters of court, gave the \$150,000 settlement check to Respondent and instructed her not to disburse more than \$85,000 of the proceeds to her client pending resolution of the attorney fee issue. No record was made of that part of the hearing. Respondent deposited the check in an IOLTA on May 1, 2006. Relator's Ex. 12.

{¶28} On May 5, 2006, the trial court set the date of June 22, 2006 as the date on which the attorney fee hearing would reconvene. On the same date, Respondent wrote herself a check for \$1,127.66 in reimbursement of her costs advanced, which are detailed in a statement admitted into evidence, and also distributed \$63,352.34 to her client. Relator's Ex. 13. The account earned \$241.15 in interest, which Respondent transferred to another account, and there was a bank fee of \$20, so after all these transactions a balance of \$85,500 remained in the IOLTA account. Relator's Ex. 12. At some point on or around that same date, the client sent a cashier's check to Respondent in the amount of \$25,000 as a "gift" out of the client's share of the distributed proceeds. There is conflicting evidence before the panel on whether Respondent applied this money toward her fees or returned the \$25,000 to the client, but the panel believes that Respondent received this money, applied it toward her fee, and did not return it.

{¶29} On May 9, 2006, the court of appeals denied Respondent's application for a writ of prohibition on the grounds that it was improperly filed and that it failed on the merits. Relator's Ex. 14.

{¶35} On June 23, 2006, Respondent sent her client a second check out of the funds in the IOLTA account in the amount of \$60,006.50 and paid herself the amount of \$25,493.50 in fees and costs. On the same date, the client executed a settlement agreement, in which the client agreed in writing that she had received \$98,561.92, that Respondent had received a fee of \$50,000, and that the client had reimbursed Respondent for \$1,438.08 in costs advanced.

Relator's Ex. 20. The settlement agreement also provided, significantly, that the client agreed to be responsible for all outstanding liens against the settlement proceeds, including the claims "found to be valid and owing any previous attorney." Further, the settlement agreement recited the following: "As of this date there are no known valid and existing liens."

{¶36} Respondent did not counsel her client to seek the advice of another attorney before this document was executed.

{¶37} After interest was credited to Respondent's IOLTA in the amount of \$167.48 on June 26, 2006, she transferred the interest to another account and closed the account on June 30, 2006. Relator's Ex. 12. The transfer of this interest brought the total paid to Respondent, or transferred by Respondent to a party other than the client, out of the settlement funds to \$52,029.74. At this point, the client had received \$98,358.84 but had agreed to be responsible for the payment of Former Counsel's fees and costs, and any other liens that might arise. Former Counsel's demand was for a total of \$50,453.70; thus at this point over half of what the client had received was still subject to, at the very least, the claims of Former Counsel.

{¶38} Respondent advised the client and her family what their potential liability to Former Counsel could be and testified that they "were okay with assuming the liability for that quantum meruit claim and Mr. Campbell's expenses." Hearing Tr. 382.

{¶39} On June 26, 2006, Former Counsel filed their motion to intervene. The motion was unopposed and granted on July 6, 2006, and the court appears to have set the matter for hearing on the fee issue on July 19, 2006.

{¶40} On July 7, 2006, Respondent filed a motion for reconsideration, a memorandum contra the motion to intervene, and a motion for continuance, and on July 10, 2006 the motion for reconsideration was granted and the motion for continuance was denied.

{¶41} On July 14, 2006, the court re-granted Former Counsel's motion to intervene and reminded counsel for all parties that the hearing would go forward on July 26, 2006.

{¶42} On July 12, 2006, Respondent filed an affidavit of disqualification regarding Judge Russo with the Supreme Court of Ohio. Respondent's Ex. E. Chief Justice Moyer denied Respondent's affidavit on July 19, 2006. Relator's Ex. 21. Respondent filed a motion for reconsideration with the Supreme Court of Ohio in July 2006 and it was likewise denied by Chief Justice Moyer on July 28, 2006. Respondent filed a second motion for reconsideration on September 18, 2006 and it was likewise denied by the Chief Justice on September 20, 2006. Respondent's Ex. F. In all his rulings, the Chief Justice found no evidence of bias or prejudice on the part of Judge Russo.

{¶43} The record does not state specifically, but it appears that the July 26, 2006 hearing was cancelled because of the filing of these affidavits.

{¶44} On August 1, 2006, Respondent filed a second complaint in prohibition with the Supreme Court of Ohio seeking yet another order prohibiting Judge Russo from ruling on Former Counsel's motion to declare and enforce charging lien. Relator's Ex. 22. Again, the actual complaint filed with the Court was not provided to the panel. Judge Russo moved for dismissal of the case on August 10, 2006 and on August 17, 2006 Judge Russo moved for

{¶30} On May 11, 2006, Respondent filed a second application for writ of prohibition in the court of appeals, again seeking an order to the trial court prohibiting Judge Russo from ruling on Former Counsel's motion. Relator's Ex. 15.

{¶31} On May 22, 2006, Respondent filed a motion with the trial court to dismiss Former Counsel's motion. Relator's Ex. 16. This motion to dismiss was denied by Judge Russo on June 13, 2006. Respondent also voluntarily dismissed, on this same date, the second application for writ of prohibition she had filed with the court of appeals.

{¶32} On May 31, 2006, Respondent filed a complaint in prohibition with the Supreme Court of Ohio also seeking an order to the trial court prohibiting Judge Russo from ruling on Former Counsel's motion. Relator's Ex. 17. The actual complaint filed with the Supreme Court was not provided to the panel; rather, Relator provided a certified copy of the docket entries in the case. Relator's Ex. 17. Respondent applied for dismissal of the case on June 26, 2006 and the court granted the application and dismissed the case on June 29, 2006.

{¶33} On June 12, 2006, the trial court journalized its verbal order of April 28, 2006 confirming that Respondent was prohibited from distributing more than \$85,000 from the settlement proceeds. Relator's Ex. 18. At the time the entry was filed by the court, the balance in Respondent's IOLTA account was \$85,500.

{¶34} On June 22, 2006, Former Counsel withdrew their motion to declare and enforce charging lien and the trial court filed a journal entry noting that the motion was withdrawn, but also noting that Former Counsel had advised the court that they would file an appropriate post-judgment motion to intervene for the purposes of enforcing the charging lien. This entry was signed by Judge Russo on June 21, 2006. Relator's Ex. 19.

sanctions based on an allegation of frivolous actions. On August 21, 2006, Respondent filed two additional motions with the Court, one for issuance of an alternative writ and one for injunctive relief. On September 19, 2006, Respondent filed a motion for leave to file an amended complaint and on September 20, 2006 Respondent filed a motion for issuance of an emergency peremptory writ. All of these motions were opposed by Judge Russo.

{¶45} On October 4, 2006, the Court denied all of Respondent's motions and granted Judge Russo's motions for dismissal and for sanctions. Eventually, the Court awarded expenses to Judge Russo in the amount of \$327.42.

{¶46} Meanwhile, back in Cuyahoga County, on August 1, 2006 Attorney Cassandra Collier-Williams filed her appearance as additional counsel for Respondent's client and on August 15, 2006 Respondent filed a motion to withdraw from representation citing a conflict of interest between herself and her client. Relator's Ex. 23. The same day, Respondent also filed a counterclaim against Former Counsel on behalf of her client alleging legal malpractice.

{¶47} Also on the same day, the trial court finally reconvened its hearing on the fee dispute. The judge was advised that Respondent had withdrawn from the case and when Respondent stood up to place her withdrawal upon the record, took the unusual step of ordering Respondent from the courtroom while the hearing proceeded. Respondent complied with this order. Respondent's Ex. A, at p. 3. The judge then advised Attorney Collier-Williams that she should finish Attorney Parks' cross-examination of Attorney Campbell so that the court could make a determination of how to award fees, but Attorney Collier-Williams, who now represented the client, indicated that she had no intention of doing so. Attorney Collier-Williams further indicated that she was there to protect her client from paying any further fees out of their share of

the recovery, not argue with Former Counsel over how much of the fees they were entitled to receive. *Id.* at pp. 4-6.

{¶48} Judge Russo then stated, on the record, that Respondent's absence was indicative to the court that Former Counsel's motion to declare and enforce the charging lien was unopposed. The court then discussed the best method of administering the distribution of the remaining funds with Attorneys Campbell and Collier-Williams and thereafter ordered that Respondent retain \$4,557 and transfer the remaining funds on or before August 18, 2006 to Attorney Collier-Williams, who was ordered to then distribute \$10,000 to the client and \$50,443 to Former Counsel. Relator's Ex. 24. The judge, after reaching this decision, sent Attorney Campbell out into the hallway to find Respondent, but he was unable to do so. Respondent later reentered the courtroom, but by the time she returned the hearing had concluded.

{¶49} Respondent subsequently received a copy of the court's order.

{¶50} On August 16, 2006, Respondent's motion to withdraw was granted by the court, and on August 20, 2006 the counterclaim was stricken as having been filed by Respondent without the consent of the client or her new counsel and for being filed improperly in a post-dispositive enforcement of lien action.

{¶51} On or about August 21, 2006, the court was advised by Attorney Collier-Williams that no funds had been received from Respondent for distribution pursuant to the court's order of August 15, 2006. The court ordered the same day that Respondent show cause why she should not be held in contempt for failure to comply with the court's order, and further that she produce for the court's inspection copies of her IOLTA records. The hearing was set for 8:30 a.m. on August 23, 2006 and the order clearly indicated that if Respondent did not appear on that date and at that time a bench warrant would be issued for her arrest. Relator's Ex. 25.

{¶52} Respondent received a copy of this order.

{¶53} On August 23, 2006, Respondent was seventy minutes late for the hearing. Respondent testified at the hearing in this matter that her reason for being late was that she simply did not leave Columbus early enough. Hearing Tr. 133. The court issued a bench warrant at 8:30 a.m. when Respondent failed to appear, so when she did finally arrive at the courthouse she was arrested. The court set her bond at \$5,000 and scheduled another show cause hearing for August 28, 2006 at 8:30 a.m. at which time she was expected to explain why she had not complied with court's order to transmit the remaining funds to Attorney Collier-Williams and why she had shown up late, and that she was expected to produce her IOLTA records. The order also clearly specified that a bench warrant would be issued if she did not appear at the court on that date at that time. Relator's Ex. 26. Subsequently, the court continued this second show cause hearing to September 21, 2006.

{¶54} On September 18, 2006, Respondent appealed Judge Russo's order for respondent to transmit the funds held in her IOLTA. This appeal was subsequently dismissed for failure to timely file the appeal. Relator's Ex. 31. In addition, the matter was appealed to the Supreme Court of Ohio, but the Court declined to hear the case. Relator's Ex. 32.

{¶55} At the second show cause hearing on September 21, 2006, Respondent was represented by counsel. At this hearing, Respondent's counsel attempted to argue that she had not been given an opportunity at the August 15, 2006 hearing to defend her interest in the fees due under her contingent fee agreement, but the court rejected Respondent's argument and characterized her actions at that hearing as a voluntary withdrawal as counsel for the plaintiff (which the record shows is what happened) followed by a voluntary departure from the courtroom (which the record shows was definitely not voluntary). Respondent's counsel, near

the beginning of the hearing, advised the court that all the settlement funds had been distributed. Respondent's counsel then attempted to elicit testimony from her regarding her fees, but this was cut short by Judge Russo, who ordered counsel to focus only on the contempt charge and matters relevant to it. The judge then questioned Respondent directly on what had happened to the money, but Respondent would not answer the judge's questions, so the court held her in contempt and ordered her jailed a second time until the money was disbursed pursuant to the court's previous order. Relator's Ex. 27 and 28.

{¶56} Although the trial court initially denied bond, Respondent was later released on bond and the next day filed a notice of appeal of the court's holding of contempt. In December 2007, the appeals court upheld Judge Russo's finding of contempt and remanded the case to the trial court for a determination of the status of the funds. Relator's Ex. 34. In its holding, and significant to this case, the appeals court held that Respondent's disbursement of the funds she had been ordered to hold in trust by the trial court, even though done in the period between Former Counsel's filing of their motion to enforce charging lien and the withdrawal of that motion, was a violation of the trial court's order. The court of appeals, in light of this finding, held that a finding of contempt was "clearly within the court's discretion." *Id.* at p. 8.

{¶57} Upon receipt of the remand, Judge Russo immediately ordered that the show cause hearing be resumed and set its resumption for January 9, 2008. Relator's Ex. 35. In her order, the judge specifically instructed Respondent to bring all relevant financial records to the hearing and produce them to Former Counsel, and also to produce all relevant records of time and activity on the Tyus case. Respondent received this order.

{¶58} In the meantime, on June 19, 2006 Former Counsel filed a civil suit against Respondent alleging fraud, conversion/theft, embezzlement, and tortious interference with

business and seeking compensatory and punitive damages, in the Cuyahoga Common Pleas Court and the case was assigned to Judge Timothy J. McGinty. Respondent counterclaimed for fraud, interference with contractual relations, libel per se, abuse of process, and intentional and negligent infliction of emotional distress. The court granted plaintiff Former Counsel's motion for summary judgment and denied Respondent's motion for summary judgment on December 31, 2007 and awarded a judgment to Former Counsel, and against Respondent, in the amount of \$50,443 plus statutory interest. Relator's Ex. 36. However, Respondent appealed and the Cuyahoga County Court of Appeals dismissed the appeal after determining that the trial court has not ruled on all the claims before it and, therefore, has never made a final determination in the case. The case remains pending with the trial court.

{¶59} When the show cause hearing resumed on January 9, 2008, Respondent informed the court that she had been unable to locate her IOLTA records. Respondent also testified at the hearing in this case, that she did not attempt to reconstruct those records because she believed that she had already provided them to the court. As a substitute for the production of those records in compliance with the order of the court, she represented to the court that the contents of those records had been read into the record at the September 21(sic), 2006 hearing. The court promptly found her in violation of yet another order of the court. Later in the hearing, after giving her another opportunity to advise the court regarding what had happened to the money and not receiving a straight-forward answer to the question, Judge Russo again found her in contempt, remanded her to the county jail and scheduled a resumption of the hearing for January 15, 2008. Relator's Ex. 38 and 39.

{¶60} On January 14, 2008, Judge Russo decided to recuse herself from the case, citing a referral to outside investigative authority regarding the location of the missing funds and the

possibility that she might be called as a witness, and also cancelled the scheduled resumption of the show cause hearing. Relator's Ex. 41. At the time of the hearing in this matter, the court has yet to set a date for resumption of this show cause hearing.

{¶61} On January 17, 2008, Respondent filed a second affidavit with the Supreme Court of Ohio seeking the disqualification of Judge Russo, but as the judge had already recused herself from the case, Chief Justice Moyer dismissed the request as moot. Relator's Ex. 42.

{¶62} On February 11, 2008, Respondent appealed the second contempt finding. Relator's Ex. 40. The court of appeals, on May 5, 2008 dismissed the appeal for failure to timely file a brief. Relator's Ex. 46.

{¶63} Although Respondent did not timely file a brief, she did file one on May 1, 2008. In it, Respondent alleged that Judge Russo allowed Respondent's race and gender to affect her partiality. Relator's Ex. 45, p. 14. Respondent admitted in later testimony at the hearing that she conducted no research to determine the racial makeup of Attorney Campbell's law firm although Respondent alleged preferential treatment of them by Judge Russo because of their gender and race. Likewise, Respondent was unable to cite any specific actions by the trial judge such as improper racial or gender-based remarks that indicated an overt bias. Respondent admitted that the sole basis for her allegation was that the judge had ruled against her on the fee division issue and had had her jailed for contempt. Hearing Tr. 167-171, 329, 330, 338.

{¶64} On April 22, 2008, Respondent filed a petition for relief under Chapter 13 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of Ohio, which was converted eleven months later into a Chapter 7 proceeding. Respondent gave somewhat conflicting testimony concerning this bankruptcy filing at the hearing in this matter. Respondent testified that, although she filed her petition under Chapter 13 initially, her goal was to discharge,

among other debts, the judgment awarded against her in Judge McGinty's court. Hearing Tr. 101, 165. Respondent also testified that her initial intent was to pay at least a portion of Former Counsel's judgment. Hearing Tr. 345. But Respondent also testified that she did not file the bankruptcy petition with the objective of discharging Former Counsel's judgment, but only as a means to stay execution of that judgment while the case was on appeal. Hearing Tr. 292. On October 15, 2008, Former Counsel filed an adversary action in the bankruptcy court contesting the discharge of the judgment. Relator's Ex. 47.

{¶65} On March 31, 2010, the bankruptcy court denied Respondent's request to discharge Former Counsel's judgment, citing evidence that Respondent had "committed a wrongful act by disbursing the escrowed funds in contravention of the State Court order" and further stating that "The Defendant's theory that the Plaintiff no longer had an interest in the Escrowed Funds is simply disingenuous." Relator's Ex. 48, pp. 9-11.

{¶66} On June 11, 2010, Respondent appealed the bankruptcy court's decision to the U.S. District Court and on January 26, 2011 Judge Algenon L. Marbley affirmed the bankruptcy court's decision. Relator's Ex. 50.

Alleged Violations of DR 1-102(A)(4)

{¶67} Relator argues that Respondent violated DR 1-102(A)(4) in several ways. First, it asserts that Respondent purposefully and knowingly took and kept a \$50,000 fee and disbursed \$700 in expenses to herself in direct violation of several of the court's orders. Second, Relator points to the finding of the bankruptcy court, affirmed by the U.S. District Court, that Respondent committed a wrongful act and inflicted willful and malicious injury upon Former Counsel. Third, Relator cites Respondent's incomplete and misleading statements made to the court on September 21, 2006 with regard to the status of the settlement funds as evidence of

misrepresentation. Finally, Relator argues that the fact that Respondent, despite having a judgment taken against her and being ordered to make payment to Former Counsel by Judge Russo, has yet to pay Former Counsel anything is evidence of dishonesty and fraud.

{¶68} The panel, after carefully examining all the evidence before it, finds by clear and convincing evidence that Respondent did violate DR 1-102(A)(4). The panel concurs with Relator that Respondent made incomplete and misleading statements to the court at the hearing on September 21, 2006. An examination of the transcript of that hearing discloses several instances of Respondent's failure to answer, or providing incomplete answers to, direct questions put to her by Judge Russo on the status of the funds entrusted to her by the court. Relator's Ex. 27, pp. 24-26. In the opinion of the panel, incomplete answers and refusals to answer are misrepresentations. The panel also finds that Respondent misrepresented to the court that she had not taken a fee from the Tyus settlement proceeds when in fact she had done exactly that on June 23, 2006.

{¶69} The panel also finds that a violation of DR 1-102(A)(4) occurred when Respondent distributed the Tyus settlement funds. The panel concurs with the U.S. Bankruptcy Court that Respondent committed a wrongful act and inflicted willful injury to Former Counsel when she did so, in the panel's opinion Respondent did what she did with malice toward Former Counsel and as a deliberate action to misappropriate said funds. Respondent should have known that the distribution was a violation of the orders of the court, so the panel finds that this violation of the court's orders was done out of dishonesty or in perpetration of a fraud such that it rises to the level of a violation of DR 1-102(A)(4).

{¶70} The panel is of the opinion that Respondent is correct that Judge Russo's order of August 15, 2006 is superseded by the order of the Cuyahoga County Court of Appeals of

December 24, 2007 remanding the contempt case to the trial court and ordering it to hold a hearing to determine which parties are owed money and what amounts, if any, the respondent is retaining that do not belong to her. Relator's Ex. 34, p. 9. While the case was before the court of appeals on appeal of the contempt charge, the panel notes that the court had the entire record before it and chose not to order Respondent to comply with Judge Russo's order of August 15, 2006. Instead, it ordered another determination hearing. This hearing, although commenced, has never been completed by the trial court and the determination ordered by the court of appeals has never been made. In light of these circumstances, the panel declines to find that Respondent's continued failure to pay Former Counsel is a violation of DR 1-102(A)(4).

{¶71} Likewise, the panel finds that Respondent's failure to pay the judgment awarded against her by the Cuyahoga County Common Pleas Court in the civil action filed by Former Counsel does not rise to a violation of DR 1-102(A)(4) because said judgment has also not been finalized due to the finding of the Cuyahoga County Court of Appeals that the trial court has not finalized its determination of the case.

Alleged Violations of DR-102(A)(5), DR 1-102(A)(6), Corresponding Rules of Professional Conduct, and Prof. Cond. R. 8.2(a)

{¶72} Relator next alleges that Respondent is in violation of DR 1-102(A)(5) and its counterpart, Prof. Cond. R. 8.4(d), DR 1-102(A)(6) and its counterpart Prof. Cond. R. 8.4(h), and Prof. Cond. R. 8.2(a), due to Respondent's violation of court orders, Respondent's behavior that resulted in two findings of contempt, and Respondent's public, written, accusation of racial and gender bias on the part of the trial judge.

{¶73} First, the panel is convinced that Respondent believed she was entitled to take her fee out of the Tyus settlement funds, but Respondent also admitted at the hearing that she was aware that she was under a court order not to do so until such time as the court ruled in the

disposition of the remaining funds. However, Respondent read the court's entry of June 22, 2006 as creating a "legal window" that permitted her to disburse the funds without the court's resolution of the fee dispute. The panel disagrees with her interpretation of the wording of the court's entry. It is the opinion of the panel that the entry makes clear that, although Former Counsel had withdrawn their motion to enforce charging lien, they intended to file another post-judgment motion. Since the court made no mention of any release of the funds being held by Respondent, her determination that this entry permitted her to disburse the funds, and pay herself a fee in the process, was irresponsible, reckless, and a violation of the court's order of June 12, 2006. As it was a violation of the court's order, the panel finds, by clear and convincing evidence, that it is a violation of DR 1-102(A)(5) and DR 1-102(A)(6).

{¶74} Second, Respondent violated the court's order to appear for the August 23, 2006 show cause hearing when she arrived seventy minutes late for that hearing. The panel is mindful that the late arrival of an attorney for a hearing is not normally a violation of any Rule of Professional Conduct. However, in this case Respondent had been ordered to appear by the judge in the courtroom at a definite time on a definite date under a clearly communicated threat of a contempt charge, and Respondent failed to do so, not by a few minutes, but by well over an hour and then failed to give a reasonable excuse for her late arrival. Respondent's only excuse was that she was unable to leave Columbus any earlier than she did. The panel finds, by clear and convincing evidence, that this is also a violation of DR 1-102(A)(5) and DR 1-102(A)(6).

{¶75} Third, Respondent violated the court's order to produce her IOLTA records at the January 9, 2008 continuation of the show cause hearing. Here again, Respondent had received a specific order from Judge Russo to produce her IOLTA and financial records in the courtroom at a definite time on a definite date, and Respondent failed to do so. Again, Respondent had no

reasonable explanation for why she had failed to comply with the court's order. When the judge asked Respondent where her records were, her only response was that the contents of those records had been read into the record of the September 23, 2006 hearing. Respondent attempted at the hearing in this matter to justify her behavior by explaining that she thought the judge would allow her to pull the records from the file. However, this explanation rings hollow, because Respondent admitted under questioning that she did nothing to prepare for the hearing and wasn't even sure that she had produced the proper records in the previous hearing. Hearing Tr. 405-411. Respondent did not obtain a transcript, she did not obtain copies of any of the exhibits from the previous hearing, and she did not call her bank and try to obtain copies of bank statements. The panel finds, by clear and convincing evidence, that this lack of any attempt to comply with the specific order of the court is also a violation of Prof. Cond. R. 8.4(d) and Prof. Cond. R. 8.4(h).

{¶76} Fourth and most troubling is Respondent's accusation, found in the merit brief she filed with the Cuyahoga County Court of Appeals concerning her second contempt charge, that Judge Russo denied her a hearing and reduced her attorney fees because of racial and gender bias. The panel understands Respondent's frustration with Judge Russo. It is difficult for the panel to understand why the judge prevented Respondent's attorney, Edward Parks, from completing his examination of Respondent for the purpose of putting evidence on the record detailing her services to the Tyus family at the April 28, 2006 hearing or why the judge ordered Respondent from the courtroom during the August 15, 2006 hearing without giving her an opportunity to present the same evidence.

{¶77} But the panel notes that Respondent filed two affidavits of disqualification with the Supreme Court of Ohio alleging bias on the part of Judge Russo and both were found to be

without merit by Chief Justice Moyer. Respondent's Ex. F and G. The panel is also mindful that the Supreme Court of Ohio has set forth an objective standard with regard to attorney misconduct in this area in *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 2003-Ohio-4048. The Court stated in that case that, to be able to survive scrutiny in a disciplinary case, statements an attorney makes about the integrity of a judicial officer must be supported by a reasonable factual basis. In the opinion of the panel, Respondent was within her rights and obligations as an attorney when she made her charges of bias in seeking the judge's disqualification, even though both requests were later found to be meritless.

{¶78} However, Respondent's later charge of racial and gender bias against the judge does not, in the opinion of the panel, survive the reasonable factual basis test set forth in *Gardner*. Respondent, who is a black female, alleged that she had been treated disparately from what she believed were the white, male members of Former Counsel's law firms as the basis for her allegation of racial and gender bias. Chief Justice Moyer wrote about the effect of unfounded racial bias claims made against judges in *In Re Disqualification of Cunningham*, 100 Ohio St.3d 1216, 2002-Ohio-7470:

Allegations of racial bias are among the most serious and damaging claims that can be directed at a judge, since such allegations, if true, would not only constitute a violation of the judge's oath of office and the Code of Judicial Conduct, but also would strike at the very heart of the integrity of the judiciary. In order to warrant a judge's disqualification, these claims must be demonstrated by clear evidence that establishes the existence of bias. *Id.* at ¶2.

{¶79} Respondent admitted during the hearing in this matter that she conducted no research with regard to the racial makeup of Former Counsel's firms, Respondent could point to no specific actions or racial- or gender-based remarks made by Judge Russo that indicated bias, and Respondent could cite no instances of anyone else who advised her that they had had a similar experience with Judge Russo. Also, Respondent's charge of gender bias has a difficult

time surviving the reasonableness test in light of the fact that both the judge and Respondent are females. Given this complete lack of substantiation of both allegations, the panel finds, by clear and convincing evidence, that they were unreasonable and therefore finds violations of Prof. Cond. R. 8.4(d), Prof. Cond. R. 8.4(h), and Prof. Cond. R. 8.2(a).

Alleged Violations of DR 2-106(A)

{¶80} Relator also alleges that Respondent is in violation of DR 2-106(A). Relator's argument is that Respondent billed her client in the Tyus case over \$700 for expenses that were incurred after the lawsuit was settled and were specifically incurred as the result of the respondent attempting to defend her fee in Judge Russo's courtroom and on appeal, and therefore should not have been billed to the client at all. Respondent's counter-argument is that she incurred these expenses in defense of her client's interests and therefore no violation occurred.

{¶81} The panel notes that DR 2-106(A) reads as follows: "a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee." A review of the items listed in Relator's Ex. 13 discloses that Respondent did not charge her clients an illegal or clearly excessive fee in that document. Rather, Respondent charged them for expenses, and the rule cited by Relator does not appear, on its face, to apply to expenses. In order to find a violation of DR 2-106(A), the panel would have to assume that the Court, in adopting this rule, intended to insert a word into the rule that was not there when the rule was adopted. Since the Court did not insert the words "costs" or "expenses" into the rule, the panel declines to do so as well. The panel also notes that the current equivalent to DR 2-106(A), Prof. Cond. R. 1.5, likewise does not contain either of the words "costs" or "expenses."¹ Therefore, since the rule on its face does not prohibit an attorney from charging his or her clients excessive costs, the panel recommends that this charge be dismissed.

¹ Cf. Model Rule of Professional Conduct 1.5(a).

Alleged Violations of DR 5-101(A)(1)

{¶82} Relator next alleges that Respondent is in violation of DR 5-101(A)(1). Relator's argument concerning this issue is that Respondent violated this disciplinary rule when she sought and obtained her client's signature on the settlement agreement in which her client agreed to be responsible for Former Counsel's fees and expenses advanced, and then continued to represent her for a period of seven weeks thereafter. Respondent believes that her client's interests and those of her own were in alignment, and that no conflict was present, because her client was responsible for Former Counsel's fees and their expenses advanced and this had nothing to do with her fees and the expenses she had advanced.

{¶83} As held by the Supreme Court in *Fox & Assoc. Co., L.P.A. v. Purdon* (1989), 44 Ohio St.3d 69, a client remains responsible to pay the fees due to and costs incurred by a prior attorney. In the opinion of the panel, the settlement agreement executed by Respondent and her client does nothing more than remind the parties of that fact in writing. Therefore, the panel finds that the allegation of a violation of DR 5-101(A)(1) was not proven by clear and convincing evidence and recommends that said allegation be dismissed.

{¶84} In summary of all of the foregoing conclusions of law, the panel finds, by clear and convincing evidence, that Respondent has violated DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), Prof. Cond. R. 8.2(a), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h). The panel finds that Respondent did not violate DR 2-106(A) and DR 5-101(A)(1) and recommends that those allegations be dismissed.

MITIGATION, AGGRAVATION AND SANCTION

{¶85} With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in BCGD Proc. Reg. 10(B)(1), Relator

argued that Respondent (a) engaged in a pattern of misconduct, (b) committed multiple offenses, (c) has refused to acknowledge the wrongful nature of her conduct, (d) acted with a dishonest and selfish motive, (e) failed to make restitution, and (f) caused harm to Judge Russo through her unreasonable accusation of racial and gender bias, the courts by filing a plethora of litigation, Former Counsel by not paying their claim for fees, and her client by creating an impermissible conflict of interest and charging improperly for expenses.

{¶86} The panel finds, by clear and convincing evidence, that Respondent did engage in a pattern of misconduct and committed multiple offenses. Respondent violated a number of court orders and was held in contempt twice as a result.

{¶87} The panel disagrees that Respondent has refused to acknowledge the wrongful nature of her conduct. While some of Respondent's conduct was based on her interpretation of the law, some of her conduct was clearly wrong, and she acknowledged that it was wrong at the hearing in this matter.

{¶88} In regard to the allegation that Respondent acted with a dishonest and selfish motive, the panel agrees that Respondent did so when she distributed the remaining settlement funds in violation of the court's order.

{¶89} In regard to the allegation that Respondent has failed to make restitution, the panel does not find this to be an aggravating factor, given the status of the contempt and civil cases before the trial courts and the panel's finding in ¶70 above that the order of the trial court that Respondent pay Former Counsel is not currently in effect and the panel's note in ¶71 above of the finding of the Eighth District Court of Appeals that the trial court has not finalized its determination of the civil action filed against Respondent by Former Counsel.

{¶90} Relator alleged in its closing argument that Respondent caused harm to Judge Russo through her unreasonable accusation of racial and gender bias, the courts by filing a plethora of litigation, Former Counsel by not paying their claim for fees, and her client by creating an impermissible conflict of interest and charging improperly for expenses. The panel agrees that Respondent caused harm to Judge Russo and the courts and finds this is an aggravating factor, but in light of its finding in ¶¶81 and 83 above, the panel finds that no harm was caused to Respondent's client.

{¶91} With regard to the factors in mitigation that may be considered in favor of less severe sanctions for professional misconduct listed in BCGD Proc. Reg. 10(B)(2), the panel unanimously finds, by clear and convincing evidence, that Respondent (a) has no prior disciplinary violations, (b) made full and free disclosure to Relator, (c) has good character and reputation, and (d) has had other sanctions imposed upon her for her misconduct in the form of actual jail time as the result of the court's findings of contempt.

{¶92} In its prehearing brief, Relator recommended that Respondent receive between a two-year suspension and an indefinite suspension, but at the hearing advocated only an indefinite suspension. Respondent, in her prehearing brief, argued in one part that she should receive no more than a public reprimand, and in another part that the matter should be dismissed. Relator presented authority to the panel in support of its recommendation. Respondent presented no authority in support of her recommendation.

{¶93} The panel reviewed both parties' recommendations in light of the findings of fact, conclusions of law, factors in mitigation and aggravation, and precedent established by the Supreme Court of Ohio.

{¶94} The panel believes that guidance on the appropriate sanction is found in the case of *Disciplinary Counsel v. Simon-Seymour*, 131 Ohio St.3d 161, 2012-Ohio-114. In that case, the respondent was found to have violated several professional conduct rules, among them DR 1-102(A)(4) and Prof. Cond. R. 8.4(c). The respondent in that case was hired to probate an estate but took funds from the estate without court approval, eventually causing an overdraft on her trust account. To cover this, the respondent falsely reported to the probate court that she had made disbursements to pay estate obligations. The respondent later repaid the estate more than she owed it, but never provided a full accounting to the estate's administrator. The Court adopted the parties' consent-to-discipline agreement, as recommended by the Board, of a two-year suspension, with six months stayed, with the condition that the respondent complete five hours of CLE in trust account management as a condition of the stay.

{¶95} Also instructive is the case of *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909. In that case, the respondent, in divorce proceedings, abused the discovery process and made several inaccurate statements or omissions to the tribunal and opposing counsel. The respondent also misled the court in a motion in order to insert a new charge into a pleading. The respondent engaged in dishonesty, fraud, deceit, or misrepresentation, and failed to inform a tribunal of all relevant facts. In another matter, the respondent in that case instructed a subordinate attorney to prepare a motion that maligned a judge and made statements and misrepresentations in a motion that further maligned the judge, which adversely reflected on the respondent's fitness to practice law. The Court ordered in that case that the respondent be suspended for one year.

{¶96} The panel also finds instructive the case of *Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 2009-Ohio-2870. In that case, the respondent repeatedly leveled unfounded

accusations of racial bias and other impropriety against a federal judge. The Court imposed an indefinite suspension in that case, although the sanction was due in significant part to other rule violations.

{¶97} Based on the foregoing, the panel recommends that Respondent receive a two-year suspension from the practice of law, with one year stayed on the conditions that Respondent commit no further misconduct and as set forth below.

{¶98} Both parties argued the issue of restitution at the hearing in this matter and in post-hearing briefs filed at the request of the panel. The panel notes Relator's argument that Respondent, in her post-hearing brief, stated that she advised her client that she placed the value of Former Counsel's services in the Tyus case at \$8,232, and also notes that she has never contested Former Counsel's claims for reimbursement of expenses in the amount of \$2,943.70. The panel also considered the recommendation of Relator that payment of the total of \$50,443 in fees and costs by Respondent to Former Counsel, as ordered by the trial court in the Tyus case, be made a condition of a stay of any sanction. The panel is unwilling to comply with Relator's request as it is of the opinion, after having sifted through all the hearings and motions filed in the various cases involving this matter, that Respondent has never been afforded the opportunity to present evidence of the work she performed for her client in that case to the court or to finish her cross-examination of Former Counsel on their claims for fees and reimbursement for costs advanced. In the opinion of the panel, the trial court should complete its work in the contempt case against Respondent as ordered by the court of appeals and then enter the order it deems appropriate before restitution should attach.

{¶99} Therefore, the panel recommends that the stay set forth in ¶97 above and Respondent's return to the practice of law also be conditioned upon the payment, or an

arrangement satisfactory to Relator to make payment, of any additional amounts that may be ordered paid by Respondent to Former Counsel by the Cuyahoga County Common Pleas Court, after it holds the hearing ordered by the Cuyahoga County Court of Appeals in Appeal No. 88780.

{¶100} As a final matter, the panel recommends that restitution not be ordered with regard to the civil case filed against Respondent, as also recommended by Relator.

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 4 and June 6, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Joy Lenore Marshall, be suspended from the practice of law in Ohio for two years, with one year stayed subject to the condition contained in ¶99 of this report and that she engage in no further misconduct. 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.



RICHARD A. DOVE, Secretary