

IN THE SUPREME COURT OF OHIO

<b>Disciplinary Counsel,</b>	:	<b>CASE NO. 2013-1257</b>
	:	
Relator,	:	
	:	
	:	
	:	
	:	<b>RELATOR'S OBJECTION TO</b>
	:	<b>THE FINDINGS OF FACT,</b>
	:	<b>CONCLUSIONS OF LAW, AND</b>
<b>Stephen Leslie Becker (0002829)</b>	:	<b>RECOMMENDATION OF THE</b>
	:	<b>BOARD OF COMMISSIONERS</b>
Respondent.	:	<b>ON GRIEVANCES AND</b>
	:	<b>DISCIPLINE OF THE SUPREME</b>
	:	<b>COURT OF OHIO</b>

**RELATOR'S OJECTION TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON  
GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO**

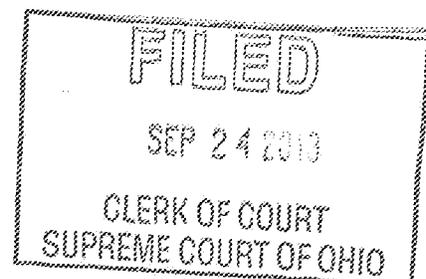
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**INTRODUCTION**

On December 3, 2012, and January 31, 2013, the panel in the above matter heard the testimony of respondent, Stephen Leslie Becker, and two other witnesses. Based upon the evidence presented at the hearing, the panel determined that respondent committed the misconduct as alleged in Counts One, Two, and Three of the formal complaint; however, the panel recommended dismissal of several violations in Count Four.

At its meeting on August 2, 2013, the Board of Commissioners on Grievances and Discipline (board) adopted the panel's recommendations. The board's report was certified to this Court on August 7, 2013, and an order to show cause was issued on August 16, 2013.<sup>1</sup> Now comes relator, Disciplinary Counsel, and submits one objection to the board's report as it relates to the recommended dismissal of certain violations in Count Four.

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<sup>1</sup> The board's report is attached as Appendix A. See S. Ct. Prac. R.16.02(B)(5)(b).

## BACKGROUND INFORMATION

As duly noted by the board, “this case is about an attorney who misappropriated funds entrusted to him for decades.” Report at 1. The “record is replete with evidence of hundreds of thousands of dollars [that respondent] spent as if they were his own.” *Id.* In order to feed his gambling addiction, respondent misappropriated funds belonging to his severely disabled nephew’s estate, his elderly aunt and her estate, and Huffman, Kelley, Becker and Brock, LLC – the law firm where respondent practiced until October of 2010. Report at 1-2. For his conduct, the board recommended that respondent be permanently disbarred. Report at 30.

With respect to Counts One, Two, and Three, which focused on respondent’s self-dealing and thefts from his disabled nephew, his elderly aunt, and his elderly aunt’s estate, the board concluded that respondent committed multiple violations of the Code of Professional Responsibility and Rules of Professional Conduct.<sup>2</sup> Report at 2-14. Relator has no objection to the board’s findings in Counts One, Two, or Three, nor to the board’s recommended sanction of permanent disbarment. Relator does object, however, to the board’s findings in Count Four, as expressed more fully below.

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<sup>2</sup> The board found two violations of DR 1-102(A)(3) (a lawyer shall not engage in conduct involving moral turpitude), two violations of DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), two violations of DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice) although respondent was only charged with a single violation of this rule in Counts One through Three, two violations of DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on the lawyer’s fitness to practice law), two violations of Prof. Cond. R. 8.4(b) (a lawyer shall not commit an illegal act that reflects adversely on the lawyer’s honesty or trustworthiness), two violations of Prof. Cond. R. 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), one violation of Prof. Cond. R. 8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), and two violations of Prof. Cond. R. 8.4(h) (a lawyer shall not engage in conduct that adversely reflects on the lawyer’s fitness to practice law).

## RELATOR'S OBJECTION

*In addition to the other violations found by the board, respondent's concealment of fees from his firm also violates DR 1-102(A)(4), DR 1-102(A)(6), DR 9-102(A), Prof. Cond. R. 1.15(a), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h).<sup>3</sup>*

Count Four is a multi-faceted count. It focuses on three separate and distinct, yet intertwined, acts of misconduct. The first is respondent's concealment of fees from his firm; the second is respondent's misappropriation of funds belonging to a client whose fees he concealed from his firm;<sup>4</sup> and the third is respondent's attempt to mislead his law firm partners as to his concealment activities.<sup>5</sup>

The board found relator's allegations regarding respondent's misappropriation of a client's funds, as well as relator's allegations regarding respondent's June 9, 2010 memorandum, to be well founded. Accordingly, the board found that respondent violated Prof. Cond. R.

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<sup>3</sup> The board found violations of Prof. Cond. R. 1.15(a), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h) in Count Four; however, the violations related solely to respondent's misappropriation of client funds and his misleading letter to his firm, and not to respondent's concealment of fees.

<sup>4</sup> In or about May of 2010, respondent received a check for \$24,920.48 for his client, John Festa. Report at 16. Rather than depositing this check into his firm's trust account, respondent deposited the check into a Tru-Title account over which he had control. *Id.* At the time of deposit, the Tru-Title account only contained \$65.35. Respondent then used the Tru-Title account (and Festa's funds) to write his brother, John Becker, a check for \$22,040.61 and himself a check for \$2,879.87.<sup>4</sup> Respondent later paid Festa \$16,815.36 with fees that he received pursuant to another representation. *Id.*

<sup>5</sup> In or about April of 2010, respondent received a check for \$2,216 from Hector and Mary Jo Buch. Respondent did not turn over this payment to his firm and instead deposited the check into his personal account. A short time later, respondent's firm sent an invoice to the Buches not knowing that the Buches had already paid their bill. Upon receipt of the invoice, Mary Jo Buch contacted respondent's firm and stated that she and her husband had already paid their invoice. Upon further investigation, respondent's firm determined that respondent had concealed the Buches' payment from the firm. On June 9, 2010, respondent disseminated a false and misleading memorandum to his law firm partners. Report at 16, 20. This memorandum expressed respondent's "embarrassment" over the situation and implied that respondent's concealment of funds belonging to the Buches was a one-time incident that would not happen again. Report at 17. As duly noted by the board, "the truth is...respondent had done the same thing before and, despite his promise to his colleagues, he would do it again." *Id.*

1.15(a) (requiring a lawyer to hold the property of clients in a separate interest-bearing trust account), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h). Report at 19-20. However, despite referring to respondent's conduct as "thefts," the board concluded that respondent's concealment of fees from his firm did not rise to the level of a disciplinary violation. Report at 20, 24. Accordingly, the board recommended dismissal of Prof. Cond. R. 8.4(d), DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), and DR 9-102(A) (all funds paid to a lawyer shall be deposited into an identifiable account and no funds of the lawyer shall be deposited therein). Report at 20-21. Since respondent's concealment of fees from his firm constitutes theft from his firm, relator objects to the board's recommended dismissal of DR 1-102(A)(4), DR 1-102(A)(6), and DR 9-102(A), as well as the board's conclusion that respondent's concealment of fees did not violate Prof. Cond. R. 1.15(a), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h).<sup>6</sup>

Relator's allegations in Count Four stem from respondent's employment agreements with his firm. In 2007, 2008, 2009, and 2010, respondent entered into one-year employment agreements with his firm. Report at 14. These employment agreements required respondent to pay a certain percentage of his fees to his firm to cover overhead expenses. *Id.* Per the employment agreements, all fees were to be turned over to the firm. Relator's Ex. 53, Dec. Transcript at 124:9. Upon receipt of the fees, firm staff would calculate the firm's share of the fees and place the remaining amount in an account that could be drawn on twice monthly by respondent. Relator's Ex. 53.

Between 2007 and 2010, respondent concealed the following fees or funds from his firm:

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<sup>6</sup> Relator has no objection to the recommended dismissal of DR 1-102(A)(5) and Prof. Cond. R. 8.4(d).

\$2,216 from Hector and Mary Jo Buch, \$24,920.48 from John Festa of which \$6,230.12 was fees, \$1,200 from Matt Gossard, \$5,000 from Michael Steinke, \$2,000 from Joan Clellan, \$1,500 from Brad Longstreth, \$650 from Dennis Gardner, \$1,000 from Denise Ralston, at least \$100 from Jessica Wheeler, and \$2,400 from Tru-Title Agency. Report at 15-19. The specific facts of respondent's concealments, most of which respondent stipulated to during the hearing on December 3, 2012, are cogently laid out in the board's report on pages 15-19.

In total, respondent concealed over \$22,000 in fees (and nearly \$41,000 in funds) from his firm, thus depriving his firm of at least \$3,000 that should have been paid towards his firm's overhead expenses. Not only did respondent conceal these fees from his firm, he also failed to deposit these funds into a trust account. Report at 15-19. Instead, respondent used the fees to gamble with and/or replenish funds that he had already depleted due to gambling. *Id.*

Respondent has since paid his firm \$623 related to John Festa, \$120 related to Matt Gossard, \$1,047.50 related to Michael Steinke, \$1,000 related to Denise Ralston, and \$240 related to Tru-Title. He does not currently owe his firm any money. Dec. Transcript at 135:2 and 193:19.

In its report, the board determined that respondent's concealment of fees merely breached his employment agreements with his firm. Report at 20. The board further stated that it was "reluctant" to find that respondent's conduct constituted a disciplinary violation because respondent had settled all accounts with his firm and did not owe his firm any money. *Id.* There is no doubt that respondent's actions breached his employment agreements with his firm; however, this Court has previously held that similar actions by lawyers also violated the Code of Professional Responsibility and the Rules of Professional Conduct.

In *Toledo Bar Assn. v. Crossmock*, 111 Ohio St.3d 278, 2006-Ohio-5706, 855 N.E.2d 1215, this Court held that Attorney Steven Crossmock violated DR 1-102(A)(4) and DR 1-

102(A)(6) by breaching agreements that he had entered into with his law firm to split the settlement or judgment proceeds of personal injury cases. Similarly in *Disciplinary Counsel v. Kraemer*, 126 Ohio St.3d 163, 2010-Ohio-3300, 931 N.E.2d 571, this Court held that Bradley Kraemer's breach of an oral agreement with his firm to turn over 60% of fees in cases that he worked on constituted theft. This Court further held in *Kraemer* that it has "consistently held that the misappropriation of law-firm funds warrants an actual suspension from the practice of law." *Id.* at 165.

In *Akron Bar Assn. v. Smithern*, 125 Ohio St.3d 72, 2010-Ohio-652, 926 N.E.2d 274, this Court held that Attorney Michelle Smithern violated DR 1-102(A)(4), DR 1-102(A)(6), and DR 9-102(A) amongst other violations for concealing and misappropriating approximately \$108,000 from her law firm. Likewise, in *Disciplinary Counsel v. Yajko*, 77 Ohio St.3d 385, 1997-Ohio-263, 674 N.E.2d 684, *Columbus Bar Assn. v. Osipow*, 68 Ohio St.3d 338, 1994-Ohio-145, 626 N.E.2d 935, and *Disciplinary Counsel v. Crowley*, 69 Ohio St.3d 554, 1994-Ohio-214, 634 N.E.2d 1008, this Court held that indefinite suspensions were appropriate sanctions for attorneys who stole from their firms.

With the exception of the amount that was stolen, respondent's conduct is indistinguishable from the conduct in *Crossmock*, *Kraemer*, *Smithern*, and the other cases cited above. Respondent entered into an agreement with his firm to pay a portion of his gross fees to the firm to cover the overhead expenses of the firm. When he failed to disclose the receipt of fees as described above, he deprived his firm of at least \$3,000 that could have and should have been applied to his firm's overhead expenses. The effect of respondent's conduct is no different than if respondent had made an unauthorized withdrawal from his firm's overhead expense account for \$3,000. Clearly, that action would have constituted theft from his firm; therefore,

respondent's concealment of fees from his firm should also constitute theft. To hold otherwise would depart from this Court's precedent, and it would provide a layer of protection to attorneys who engage in misconduct with respect to their firms when there is an employment agreement in place. The fact that respondent has paid his firm in full should have no bearing on whether respondent committed the alleged violations. At best, it should serve as a mitigating factor; however, it does not alter or undo respondent's misconduct.

### CONCLUSION

Except for its determination regarding respondent's concealment of fees from his law firm, the board's report pinpoints respondent's conduct perfectly. The board correctly determined that respondent's self-dealing and gross misappropriation of funds over nearly two decades, combined with his lack of treatment and unwillingness to obtain treatment for his gambling addiction, warrants permanent disbarment.

The board erred, however, when it determined that respondent's concealment of fees from his firm merely constituted a breach of his employment agreements with his firm as opposed to a disciplinary violation. As noted above, this Court has previously held that conduct similar to respondent's violates the Code of Professional Responsibility and Rules of Professional Conduct. Accordingly, this Court should find that respondent's concealment of fees from his firm violated DR 1-102(A)(4), DR 1-102(A)(6), and DR 9-102(A), as well as Prof. Cond. R. 1.15(a), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h), which the board concluded that respondent violated for other reasons.

Respectfully submitted,

  
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Relator

  
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### CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Relator's Objections" was served via U.S. mail, postage prepaid, on this 24 day of September 2013, upon Richard A. Dove, Esq., Secretary of the Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215, and upon respondent's counsel, Robert K. Leonard, Esq., 119 N. West St., Suite 101, Lima, OH 45801.

  
Karen H. Osmond (0082202)  
Co-Counsel for Relator

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

<b>In re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 11-116</b>
<b>Stephen Leslie Becker</b> <b>Attorney Reg. No. 0002829</b>	:	<b>Findings of Fact,</b>
	:	<b>Conclusions of Law, and</b>
<b>Respondent</b>	:	<b>Recommendation of the</b>
	:	<b>Board of Commissioners on</b>
<b>Disciplinary Counsel</b>	:	<b>Grievances and Discipline of</b>
	:	<b>the Supreme Court of Ohio</b>
<b>Relator</b>	:	
	:	

OVERVIEW

{¶1} This matter was heard on December 3, 2012 and January 31, 2013 in Columbus before a panel consisting of Judge Otho Eyster, Judge Lee Hildebrandt, Jr., and Paul De Marco, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Robert Leonard appeared on behalf of Respondent. Robert Berger and Karen Osmond appeared on behalf of Relator.

{¶3} This case is about an attorney who misappropriated funds entrusted to him for decades, mostly to feed his gambling addiction. The record is replete with evidence of hundreds of thousands of dollars he spent as if they were his own and what he did with these funds, including dozens of checks written to casinos from accounts he held as the guardian of a severely disabled nephew's estate and as power-of-attorney and caretaker for an elderly aunt. Even when

he claims not to have been actively gambling, Respondent still displayed a compulsive gambler's tendency toward self-dealing, helping himself to tens of thousands in entrusted funds—in one instance lending his secretary \$63,000 from his nephew's guardianship to allow her to repay loans Respondent and his wife had made to her. Given the gravity and duration of Respondent's misconduct, the fiduciary duties he violated, the harm he caused vulnerable victims to suffer, the presence of multiple aggravating factors, the sanctions imposed in similar cases, and Respondent's dismissive attitude toward treatment and reporting requirements, the panel recommends that Respondent be disbarred as the only way to guarantee the protection of the public.

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

{¶4} Respondent was admitted to the practice of law in Ohio on November 7, 1975. During the time period relevant to this case (*i.e.*, 1983 to the present), Respondent was variously subject to the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio. During most of the relevant time period, Respondent was employed at the law firm of Huffman, Kelley, Becker and Brock, LLC ("the Huffman firm") in Lima, Ohio. Respondent's last day at that firm was October 15, 2010.

#### **COUNT I-Christopher I. Becker Guardianships**

{¶5} Respondent's nephew Christopher I. Becker, born in 1976, suffers from severe developmental disabilities. Respondent's brother John Becker is Christopher's father.

{¶6} On December 12, 1983, Respondent filed an application to be appointed guardian for the estate of Christopher, then still a minor. Relator's Ex. 2 (guardianship application in *In the Matter of Christopher I. Becker*, Allen County Probate Court Case No. 745-83).

{¶7} On the same day, Respondent filed a “Fiduciary’s Acceptance” form. Relator’s Ex. 3. By signing this document, Respondent acknowledged being “subject to possible penalties for improper conversion of the property which I hold as such fiduciary” and promised to “[i]nvest all funds in a lawful manner.” *Id.*

{¶8} On December 12, 1983, the Allen County Probate Court appointed Respondent guardian of Christopher’s estate. Relator’s Ex. 4.

{¶9} This guardianship came about because of a personal injury settlement that Respondent obtained for Christopher, which required probate court approval. December Hearing Tr. 42.

{¶10} In November 1990, Respondent lent \$5,000 to Jack and Cindy Stevenson. This loan was secured by a mortgage in Respondent’s favor. Relator’s Ex. 6.

{¶11} In July 1991, Respondent’s wife Robyn Becker lent an additional \$56,000 to Jack and Cindy Stevenson. December Hearing Tr. 44. The purpose of this loan was to permit the Stevensons to build a house. *Id.* This loan was secured by a mortgage in Robyn Becker’s favor. Relator’s Ex. 7.

{¶12} On or about March 7, 1992, Respondent arranged for Jack and Cindy Stevenson to “borrow” \$63,000. Relator’s Ex. 8. A “Note” pertaining to the \$63,000 loan identified the “Lender” as “Christopher I. Becker.” *Id.* at 1.

{¶13} The \$63,000 loan was made using assets from Christopher’s estate. December Hearing Tr., p. 46. It, too, was secured by a mortgage, this one in favor of Christopher. Relator’s Ex. 9.

{¶14} At the time of the \$63,000 loan, Cindy Stevenson was employed by Respondent's firm as his secretary. December Hearing Tr. 46. Respondent testified, "I was trying to be helpful to my secretary and that's what I did." *Id.* at 49.

{¶15} In using these funds to make the \$63,000 loan, Respondent did not discuss this "loan" with Christopher's parents in advance, nor did he disclose it to the probate court. December Hearing Tr. 50. The "Guardian's Account" that Respondent filed with the probate court following the \$63,000 loan did not mention the loan or itemize the interest income received in connection with it. Relator's Ex. 11.

{¶16} Shortly after the Stevensons received the \$63,000 and executed the note (Relator's Ex. 8), they used the \$63,000 to repay the loans previously made by Respondent and his wife (for \$5,000 and \$56,000). December Hearing Tr. 46-47. The mortgages securing those prior loans were then released. Relator's Ex. 10; December Hearing Tr. 47.

{¶17} About two years later, in June 1994, the Stevensons sent Respondent a check for \$58,049.99, made payable to Christopher I. Becker, to pay off the balance owed on the \$63,000 loan. *Id.* at 52; Relator's Ex. 12. The mortgage securing that loan was then released. Relator's Ex. 13.

{¶18} The "Guardian's Account" filed by Respondent on September 26, 1994 did not mention receipt of the \$58,049.99 check; nor did it itemize the interest income derived from that loan. Relator's Ex. 14.

{¶19} In September 1994, Respondent again applied to be, and was, appointed guardian of the estate of Christopher, who by then was no longer a minor but still was incompetent. Relator's Ex. 16 and 17 (guardianship application and entry in *In the Matter of Christopher I. Becker*, Allen County Probate Court Case No. 1994 GD 02349).

{¶20} Respondent acknowledged that, after his appointment, he failed to file the “Guardian’s Account” for this guardianship as frequently as the law required. December Hearing Tr. 58.

{¶21} Respondent further acknowledged that his desire to conceal his use of the guardianship funds during this period “may have been a factor” in his failure to comply with this legal requirement. *Id.* at 58-59.

{¶22} Respondent’s notes reveal that he also took \$32,152.50 from the guardianship during this time. *Id.* at 59-61; Relator’s Ex. 22. Respondent admits he used these funds “to pay gambling debt,” which is “not a ... proper use of the guardianship money.” December Hearing Tr. 61.

{¶23} Respondent’s notes also reveal that in 2002 he took \$30,800 from the guardianship and lent it to his daughter Briana Becker so that she could buy a home in Clermont County, near Cincinnati. December Hearing Tr. 62; Relator’s Ex. 22. The first mortgage on her property in favor of a Clermont County bank was filed with the Clermont County recorder on August 30, 2002. Relator’s Ex. 23.

{¶24} Respondent prepared a second mortgage on the property, in favor of “Stephen L. Becker,” and filed it with the Clermont County recorder on September 3, 2002. Relator’s Ex. 24; December Hearing Tr. 63.

{¶25} Respondent did not disclose this loan to Christopher’s parents or anyone else. *Id.* at 64.

{¶26} This mortgage was released on November 3, 2003. Relator’s Ex. 26.

{¶27} Respondent admits that using guardianship funds to make a loan secured by a second mortgage on real property is not a permissible investment of guardianship funds under the Ohio Revised Code. December Hearing Tr. 63-64.

{¶28} On June 3, 2004, a “Deed to Secure Debt” was filed with the Clerk of Courts in Bryan County, Georgia, where Briana Becker and her husband had just purchased a home. Relator’s Ex. 29.

{¶29} The deed in favor of “Stephen L. Becker, Guardian” secured the original \$30,800 loan that Respondent made to Briana using guardianship funds. *Id.*; December Hearing Tr. 65-66.

{¶30} Respondent admits that using guardianship funds to make a loan secured by a mortgage on real property outside Ohio is not a permissible investment of guardianship funds under the Ohio Revised Code. December Hearing Tr. 63-64.

{¶31} On January 11, 2005, at his brother John’s request, Respondent moved to terminate Christopher’s Allen County guardianship, so that one could be opened in Colorado, where the family then lived. Relator’s Ex. 30; December Hearing Tr. 66. The probate court terminated it on January 21, 2005 and ordered Respondent to “transmit the funds to the Colorado guardian.” Relator’s Ex. 31.

{¶32} In his final “Guardian’s Account,” filed April 4, 2006, Respondent reported that he had already distributed the remaining funds, totaling \$35,082.75, to his brother John. Relator’s Ex. 32. Respondent admitted “that I didn’t make the distribution to John of \$35,000 when I said I did in filing this account.” December Hearing Tr. 68. Bank records show a \$17,272.98 check from Respondent to his brother dated November 17, 2008, 29 months later.

Relator's Ex. 33. Respondent testified it was "a copy of a check I wrote to John for some of the money that was Christopher's \* \* \*." December Hearing Tr. 33.

{¶33} Respondent's final account in April 2006 also did not disclose the \$30,800 loan to his daughter, which still had not been repaid in full as of the final account. *Id.* at 69. It was not repaid until October 2006. *Id.* at 70.

{¶34} During the time he served as guardian of Christopher's estate, Respondent diverted more than \$125,000 belonging to Christopher's estate for his own personal use.

{¶35} The panel finds by clear and convincing evidence that Respondent's conduct regarding Christopher's guardianships violated the following: DR 1-102(A)(3) [conduct involving moral turpitude]; DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102(A)(5) [conduct that is prejudicial to the administration of justice]; and DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law].

#### **COUNT II-Eileen Binkley Power-of-Attorney and Joint Bank Account**

{¶36} Respondent helped to care for his elderly aunt Eileen Binkley from approximately 1994 until her death in 2008.

{¶37} In October 2004, when Binkley was 87 years old, she signed a will and durable power-of-attorney prepared by Respondent. Relator's Ex. 35 and 36.

{¶38} The power-of-attorney granted Respondent broad authority to manage Binkley's financial affairs. The will bequeathed one-third of her estate to Respondent and named him executor.

{¶39} On July 6, 2005, shortly before Binkley's eighty-eighth birthday, Respondent opened a joint bank account with rights of survivorship in her name and his at Huntington Bank (hereinafter "the joint account"). Relator's Ex. 38, p. 1.

{¶40} Respondent arranged for the monthly statements to be sent to his office, but not to Binkley. December Hearing Tr. 78.

{¶41} In the first 30 days the joint account was open, Respondent deposited two checks totaling \$35,000 using funds drawn from Binkley's Ameritrade investment account. Relator's Ex. 38, pp. 4, 7. He also deposited \$2,500 in cash from an undetermined source. *Id.* at 4.

{¶42} During the same 30-day period, Respondent wrote checks to four different casinos totaling \$37,000. *Id.* at 9.

{¶43} From July through December 2005, Respondent took a total of \$84,000 from the joint account, using it to pay \$59,000 in gambling debts and to repay \$25,000 he had improperly taken from Christopher's guardianship. Respondent himself wrote each of the eight checks removing these funds from the joint account.

{¶44} In October 2006, Respondent received a \$30,954 check from his daughter Briana in repayment of the \$30,800 loan he had made to her in 2002 using funds from Christopher's guardianship. Relator's Ex. 38, p. 47. Instead of returning this money (*i.e.*, \$30,954) to Christopher's parents (by then, he no longer was guardian of Christopher's estate) as required by the prior probate court order (Relator's Ex. 31), Respondent deposited Briana's check in the joint account on October 6, 2006. *Id.* Over the ensuing month, Respondent wrote five checks to four casinos totaling \$30,600. *Id.* at 50. According to Respondent, "I owed a bunch of money to the casinos and I took the money that I got from Briana and put it in this joint account and paid a bunch of casinos." December Hearing Tr. 88.

{¶45} On June 7, 2007, Respondent deposited in the joint account a \$15,000 cashier's check that had been made payable to Binkley. Relator's Ex. 38, p. 66. The funds for this cashier's check came out of Binkley's savings account, and Respondent signed the

withdrawal slip as "POA" for Binkley. Relator's Ex. 40, p. 1, 6. Prior to depositing this money in the joint account, it had a balance of only \$153.76. Relator's Ex. 38, p. 64. Once he made this deposit, Respondent wrote, signed and endorsed a \$15,000 check payable to himself. *Id.* at 67.

{¶46} On June 6, 2008, Respondent deposited \$65,222.37 in Binkley's investment proceeds in the Huntington joint account. December Hearing Tr., p. 92; Relator's Ex. 38, p. 94. Prior to this deposit, the joint account had a balance of \$148.39. *Id.* Over the ensuing ten days, Respondent wrote five checks to four casinos totaling \$62,500 to pay his personal gambling debts. *Id.* at 96, 99.

{¶47} On October 15, 2010, two attorneys from the Huffman firm met with Respondent to address their concerns that Respondent had engaged in financial improprieties. When asked about payments made for Respondent's personal expenses from the Huntington joint account, Respondent admitted he did not have the legal authority necessary to expend Binkley's funds in this manner, acknowledged that he had "stolen" funds from her, and referred to himself as a "thief." December Hearing Tr. 185-188.

{¶48} At the hearing in this matter, Respondent essentially claimed he possessed all of the authority he needed to take Binkley's money from the joint account and to use it as he pleased, including to cover his gambling debts. December Hearing Tr. 97, 256. There is no evidence he ever disclosed to his aunt that he was routinely withdrawing thousands of dollars from the joint account. Eileen Binkley was not a gambler. Respondent acknowledged that she "was very frugal and didn't like to spend" money and would be proud to be called a "penny-pincher." *Id.* at 256, 75. The panel finds it incredible that such a person would have sanctioned tens of thousands of her dollars going to casinos month

after month. See *id.* at 185 (one of Respondent's colleagues at the Huffman firm recounting Respondent's admission that he lacked the authority to use her funds as he pleased). Beyond explaining the checks he wrote to cover his gambling debts, Respondent frequently was at a loss to account for his other uses of his aunt's funds. Based on the panel's review of the joint account's bank statements in the record (Relator's Ex. 38), checks written to casinos account for approximately three-fourths of the total debited to the joint account from the time it was opened until Binkley's death on August 1, 2008, with equally suspect checks made payable to "cash" or to himself accounting for an additional one-eighth of the total debited within that period.

{¶49} In short, knowing full well that he was not her sole heir, Respondent depleted a significant portion of his aunt's savings in the years before her death (December Hearing Tr. 187-188), in service to his insatiable gambling habit.

{¶50} The panel also notes that, even if having his name on the joint account theoretically implied some discretion over the funds in it, it is quite clear Respondent did not merely take funds from that account. The joint account was merely a vessel into which Respondent diverted his aunt's money and from which he covered his gambling debts. Invoking Binkley's power-of-attorney, Respondent drained funds out of her separate investment and savings accounts, funneled them into the joint account, and once there spent them freely on himself.

{¶51} The panel finds by clear and convincing evidence that Respondent used the joint account as a means to convert tens of thousands of dollars belonging to his aunt.

{¶52} The panel finds by clear and convincing evidence that Respondent's conduct regarding the joint account and his aunt's funds prior to February 1, 2007 violated the following:

DR 1-102(A)(3); DR 1-102(A)(4); DR 1-102(A)(5) [by violating the probate court's order]; and DR 1-102(A)(6).

{¶53} The panel also finds by clear and convincing evidence that Respondent's conduct regarding the joint account and his aunt's funds from February 1, 2007 forward violated the following: Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

### **COUNT III-Eileen Binkley Estate**

{¶54} Eileen Binkley died on August 1, 2008 at the age of 91.

{¶55} On August 6, 2008, Respondent filed an application to probate Binkley's will and a request to be appointed executor. On the same date, Respondent was appointed executor for her estate. *Estate of Eileen R. Binkley*, Auglaize County Probate Court Case No. 2008 EST 184. Relator's Ex. 42 and 43.

{¶56} By signing the "Fiduciary's Acceptance" form for this estate, Respondent acknowledged being "subject to possible civil and criminal penalties for improper conversion of the property which I hold as such fiduciary" and promised to "[i]nvest all funds in a lawful manner." Relator's Ex. 44.

{¶57} Five days later, on August 11, 2008, only 10 days after his aunt's death, Respondent wrote, signed, and endorsed a check payable to himself for \$27,500, drawn on the Binkley estate's bank account at Chase Bank. Relator's Ex. 46, p. 9. On the memo line of this check, Respondent wrote "partial dist[ribution]." *Id.* Respondent took this distribution as a beneficiary. December Hearing Tr. 99. No other beneficiaries received distributions at this time.

Indeed, as discussed below, the other principal beneficiaries, Respondent's brother John Becker and his cousin Patrice Zahry, would not receive their final distributions of \$22,040 each until well into 2010.

{¶58} From August through December 2008, using the estate's bank account, Respondent wrote and signed an August 22, 2008 check payable to himself for \$7,500; a September 12, 2008 check payable to cash for \$9,000; a November 18, 2008 counter check payable to himself for \$17,147.98, and a December 8, 2008 counter check payable to himself for \$18,000. These four checks drawn on the Binkley estate's bank account totaled \$51,647.98. Relator's Ex. 46, pp. 11, 18, 28, and 34.

{¶59} On January 21, 2009, Respondent filed an estate inventory indicating that the Binkley estate had assets totaling \$203,762.52. Relator's Ex. 47.

{¶60} On the same date, Respondent filed a Memorandum in which he purported to disclose all real and personal property "which passed as a gift or was transferred by the decedent prior to death, for which no adequate consideration was paid, including all joint and survivorship bank or stock deposits \* \* \*." Relator's Ex. 48. In filing this Memorandum, Respondent failed to disclose his prior receipt of tens of thousands of dollars belonging to Binkley in the four years before her death. *Id.*

{¶61} Neither the memorandum nor the inventory disclosed the existence of the joint account. After Binkley's death, Respondent used the joint account to hold estate funds, pay estate bills, and improperly disburse estate funds without notifying the probate court. On April 9, 2009, Respondent deposited a \$96,979.50 check payable to the Binkley estate in the joint bank account. Relator's Ex. 38, p. 126. This check represented the proceeds from the sale of Binkley's house. *Id.* Prior to this deposit on April 9, 2009, the joint account had a balance of

only \$38.95. *Id.* at 124. During April, May, and July 2009, Respondent wrote four checks from the joint account totaling \$35,500: a \$5,000 check payable to Tru-Title Agency, which he owned; \$15,000 and \$2,000 checks payable to casinos; and \$12,000 and \$1,500 checks payable to cash. *Id.* at 127, 131, 135, and 140; December Hearing Tr. 112-113.

{¶62} On January 21, 2010, Respondent filed the “First and Final Fiduciary’s Account” for the Binkley estate, purportedly accounting for all receipts and disbursements. Relator’s Ex. 49. This document contained intentionally false and misleading information and omissions about Binkley’s assets and their distribution.

{¶63} In the January 21, 2010 final account, Respondent failed to disclose the checks he had written to Tru-Title, to the casinos, and to cash in April, May, and July 2009. *Id.*; December Hearing Tr. 110.

{¶64} In the same final account, Respondent falsely stated that final disbursements to his brother John Becker and his cousin Patrice Zahry of \$22,040.60 each had been made as of November 2009. Relator’s Ex. 49, p. 2 (Bates No. 002232). In fact, his brother did not receive his final distribution until May 2010, and his cousin did not receive hers until October 2010—in both instances well after the Binkley estate closed. December Hearing Tr. 112, 114-115.

{¶65} As of November 2009, Respondent did not have the funds necessary to make the distributions totaling \$44,081.20 to his brother and his cousin because he had taken those funds for himself. *Id.* at 110; see also *id.* at 292 (“Q. Why weren’t the funds available? A. Because I had gambled the money away.”).

{¶66} When Relator asked at the hearing if Respondent had forged his brother’s endorsement on his May 10, 2010 distribution check (Relator’s Ex. 62, p. 4) and his cousin Patrice’s signature on the purported receipt memorializing her distribution

(Relator's Ex. 51), Respondent invoked his Fifth Amendment right not to incriminate himself. December Hearing Tr. 117-119.

{¶67} To pay the distribution owed to his brother, Respondent used funds belonging to another client, John Festa. *Id.* at 113-114.

{¶68} While at times during the hearing, Respondent seemed to want the panel to believe that he merely paid himself what he was due as a one-third beneficiary and the executor of his aunt's estate, in actuality he took almost \$115,000 in estate funds in the year following her death, most of it without the probate court's knowledge. As even he eventually admitted, this far exceeded his entitlement: "I don't know how much more clearly I can state that I overpaid myself \$44,000 out of this estate and, you know, I shouldn't have done that, but I did it." December Hearing Tr. 112. Despite his claim that "I did make that right," *id.*, the panel finds his misappropriations diminished other beneficiaries' shares, *id.* at 185, and clearly affected at least one other client, Mr. Festa. See discussion of Count IV, *infra*.

{¶69} The panel finds by clear and convincing evidence that Respondent's conduct regarding Eileen Binkley's estate violated the following: Prof. Cond. R. 8.4(b); Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h).

#### **COUNT IV- Funds Pertaining to Other Clients**

{¶70} In 2007, 2008, 2009, and 2010, Respondent entered into one-year employment agreements with the Huffman firm under which he agreed to pay the firm as "overhead" a certain percentage of the gross amount of legal fees he earned during the year, subject to a cap. Relator's Ex. 53.

{¶71} In Count IV of the complaint, Relator alleged that Respondent concealed from the Huffman firm attorney fee payments he had received and that he failed to pay the firm its agreed-upon share of such fees, “in violation of his employment agreement.” Complaint, ¶ 57.

{¶72} In regard to these allegations, the parties stipulated to the following facts pertaining to two clients of the Huffman firm, Hector and Mary Jo Buch (December Hearing Tr. 134): In April 2010, Respondent received an attorney fee payment check for \$2,216 from clients Mary Jo and Hector Buch. Respondent deposited this check into his personal bank account and used these funds for his own personal purposes without reporting his receipt of this check to his law firm. A short time later, the Huffman firm sent the Buchs a bill for a past-due attorney fee balance of \$2,216. In response, the Buchs advised the Huffman firm that this bill had been previously paid to Respondent. When his colleagues at the Huffman firm asked Respondent about the \$2,216 payment by the Buchs, he admitted that he had improperly taken these attorney fees. However, Respondent falsely asserted that his actions were a one-time infraction due to his current financial problems. Respondent purposely did not disclose any other prior instances in which he had done the same thing.

{¶73} In a memo to the other attorneys in the Huffman firm dated June 9, 2010, Respondent stated that he had deposited the Buchs’ \$2,216 payment in his personal account without reporting it to the firm, attributing it to having “had a bad month” in April 2010. Relator’s Ex. 60. He added:

In my mind this was preferable to asking for a draw on future fees. Frankly my financial situation was somewhat of an embarrassment to me and I was looking for the easy way to address certain cash flow issues. The recent fees I have collected have helped with some past issues which are being addressed and resolved. You all probably know me to be a quiet, reserved person. This was to take care of my problem without involving anyone else. I obviously would not expect to be able to divert fees to my personal accounts on a permanent basis in an ongoing file where an account receivable existed. In other words if I was

going to steal money from the firm it would not be where the account was already there. As I said this incident is embarrassing to me and not pleasant to discuss. I again apologize to each of you and assure that it will not happen again \* \* \*.

*Id.*

{¶74} The truth is, however, Respondent had done the same thing before and, despite his promise to his colleagues, he would do it again.

{¶75} In this regard, the parties stipulated to the following facts regarding various other clients of the Huffman firm whose funds Respondent received before and after writing the June 9, 2010 memo. December Hearing Tr., p. 134.

*Regarding Client John Festa*

{¶76} Respondent was hired by John Festa to represent him in a collection matter. In settlement of the Festa matter, Respondent received a \$24,920.48 check for Festa dated May 19, 2010. Respondent did not deposit this check in the Huffman firm's IOLTA account or inform the firm that this check had been received. Instead, Respondent deposited this check in the trust account of Tru-Title, which he owned. At the time of this deposit, Tru-Title's trust account had a balance of \$65.35. Respondent next wrote a check for \$22,040.61 payable to his brother John Becker drawn on this Tru-Title account. Respondent transmitted these funds to John Becker as payment for his brother's remaining share of their aunt's estate. Respondent also wrote a check payable to himself for the remaining \$2,879.87 of Festa's funds. In doing so, Respondent misappropriated funds belonging to Festa. On or about July 1, 2010, Respondent sent Festa a check for \$16,815.36 drawn on Tru-Title's trust account. Because Respondent had previously expended the funds paid to him for Festa, Respondent paid Festa with a recent attorney fee paid to Respondent on another legal matter. In representing Festa,

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Respondent took \$6,230.12 in fees not reported to his law firm. Respondent has since paid \$623 in restitution to his former law firm.

*Regarding Client Matt Gossard*

{¶77} Matt Gossard hired Respondent to represent him in a personal injury matter.

Respondent obtained a \$1,200 settlement for Gossard. Gossard then directed Respondent to keep these funds to pay anticipated attorney fees in another legal matter being handled by Respondent.

Respondent failed to hold these unearned fees in an IOLTA account. In representing Gossard,

Respondent took \$1,200 in fees not reported to his law firm. Respondent has since paid \$120 in restitution to his former law firm.

*Regarding Client Michael Steinke*

{¶78} In January 2007, Michael Steinke hired Respondent and paid him \$5,000 in attorney fees. In representing Steinke, Respondent took \$5,000 in fees not reported to his law firm. Respondent has since paid \$1,047.50 in restitution to his former law firm.

*Regarding Client Joan Clellan*

{¶79} On or about July 25, 2009, Joan Clellan hired Respondent and paid a \$2,000 attorney fee. Respondent did not deposit this check into the Huffman firm's IOLTA account. Instead, Respondent cashed this check and used the funds for his own personal use. In December 2009, Clellan sent Respondent a letter terminating his services and requesting a full refund.

*Regarding Client Brad Longstreth*

{¶80} Brad Longstreth hired Respondent to represent him in a complicated ongoing custody proceeding. During the representation, Respondent received a \$1,500 attorney fee

payment from Longstreth. In representing Longstreth, Respondent took \$1,500 in fees not reported to his law firm.

{¶81} The panel also makes the following findings of fact regarding various other clients of the Huffman firm whose funds Respondent took without reporting them to the firm.

*Regarding Client Dennis Gardner*

{¶82} Dennis Gardner paid Respondent \$650 to create a limited liability corporation. In representing Gardner, Respondent took \$650 in fees not reported to his law firm. December Hearing Tr. 126-127.

*Regarding Client Denise Ralston*

{¶83} In August 2009, Denise Ralston hired Respondent and paid him a \$1,000 retainer in August 2009. Respondent did not deposit this check into the Huffman firm's IOLTA account. Instead, Respondent cashed this check and used the funds for his own personal use. Approximately one year later, Respondent deposited \$1,000 in the Huffman firm's bank account. *Id.* at 136-137.

*Regarding Client Jessica Wheeler*

{¶84} Client Jessica Wheeler periodically made attorney fee payments to Respondent beginning in November 2009. Respondent did not deposit these funds in the Huffman firm's IOLTA account. Instead, Respondent used them for his own purposes. *Id.* at 137-138.

*Regarding Tru-Title Agency*

{¶85} Although it is not completely clear from Respondent's employment agreements (Relator's Ex. 53) that he owed the Huffman firm a percentage of every payment he received from Tru-Title, Respondent admitted at the hearing that he was required to pay his firm a portion of any fees he received through Tru-Title. December Hearing Tr. 140 ("I was required to pay the

firm a share of the fees that I earned. Tru-Title earned fees that, you know, inured to me; so, therefore, I would have been required to pay the law firm a share of those fees, yes.”).

Respondent had not disclosed to the firm certain Tru-Title fee payments. *Id.* at 139-141.

Respondent ultimately paid the firm its share of the Tru-Title fee payments after the firm discovered his improprieties. *Id.* at 140-141.

{¶86} The panel finds by clear and convincing evidence that Respondent’s misappropriation of Festa’s funds involved dishonesty and deceit, in violation of Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(h), and that by failing to deposit the settlement check in the firm’s IOLTA account and depositing it instead in Tru-Title’s account, Respondent also violated Prof. Cond. R. 1.15(a) [a lawyer shall hold the property of clients in the lawyer’s possession in an IOLTA account, separate from the lawyer’s own property].

{¶87} The allegations in Count IV pertaining to the Buchs, Gossard, Gardner, Clellan, Longstreth, Ralston, Steinke, Wheeler, and Tru-Title differ from those involving Festa in that Respondent stole funds rightfully belonging to Festa to pay his brother. He is not accused of stealing any funds belonging to the Buchs, Gossard, Gardner, Clellan, Longstreth, Ralston, Steinke, and Wheeler. Rather, Relator’s allegation is that Respondent dishonestly concealed from the Huffman firm the fees that these clients and Tru-Title paid him and, thus, failed to pay the agreed-upon percentage to the Huffman firm, “in violation of his employment agreement.” Complaint, ¶57.

{¶88} The panel does not find by clear and convincing evidence that Relator has established any disciplinary violations based on Respondent’s failure to pay the Huffman firm a percentage of the fees he received from the Buchs, Gossard, Gardner, Clellan, Longstreth, Ralston, and Wheeler. As the complaint suggests, Respondent’s failure to pay

what he owed his law firm may well constitute a “violation of his employment agreement.”

*Id.* The panel is reluctant to elevate this apparent contractual breach, however, to the level of a disciplinary violation, especially since it appears all financial matters between Respondent and his former firm have been resolved and Respondent owes the firm nothing. December Hearing Tr. 194, 219. The panel thus recommends dismissal of the alleged violation of Prof. Cond. R. 8.4(d).

{¶89} On the other hand, the panel finds that statements Respondent made in his June 9, 2010 memo to the other attorneys at the Huffman firm reflected dishonesty on his part. By passing off his diversion of the entire Buch fee as merely the product of “a bad month” and by making the statement “if I was going to steal money from the firm it would not be where the account was already there,” Relator’s Ex. 60, Respondent dishonestly sought to throw his colleagues off the scent and thereby conceal from them the existence of numerous clients’ fees that he previously had received and kept for himself — including, for example, those from Gossard, Clellan, Ralston, and Wheeler. The panel finds by clear and convincing evidence that such dishonesty toward his employer violated Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(h).

{¶90} The alleged violation regarding Respondent’s nondisclosure of Steinke’s fee payment, on the other hand, presents a unique and odd situation. In its post-hearing brief, Relator represents that the alleged violations of DR 1-102(A)(4) , DR 1-102(A)(5), DR 1-102(A)(6), and DR 9-102(A) [all funds of clients paid to a lawyer shall be deposited in one or more identifiable bank accounts and no funds belonging to the lawyer shall be deposited therein] relate solely to Steinke, from whom Respondent received \$5,000 in January 2007, the last month these disciplinary rules were operative. Relator’s Post-Hearing Brief, p. 17. Relator did not allege in its complaint, nor assert at the hearing or in its post-hearing brief,

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that Respondent's nondisclosure of Steinke's \$5,000 fee payment violated any of the Rules of Professional Conduct, which came into existence on February 1, 2007.

{¶91} As noted above, Respondent's memo dated June 9, 2010 is the key to our conclusion that he committed disciplinary violations by concealing from his law firm funds he received from several clients. In the panel's mind, Respondent's statements in that 2010 memo show a deliberate intent on his part to hide the fact he had not divulged to his firm all of the fees he had received and kept up until then. It is, in short, clear evidence of Respondent's dishonest intent to conceal. The problem is that, because his nondisclosure of the Steinke fee is alleged to have violated only disciplinary rules, which ceased to be operative at the end of January 2007, his dishonest concealment of the Steinke fee must have occurred before February 1, 2007. The panel can find no evidence on which to base a conclusion that Respondent was actively and intentionally hiding the Steinke fee during January 2007, the month he received it. The evidence sheds no light on what he did with the check during that particular month. The only real evidence that Respondent actively concealed fees such as Steinke's payment is the misleading June 9, 2010 memo, which Respondent wrote more than three years after the code ceased to be operative. Thus, the panel recommends dismissal of the alleged violations of DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), and DR 9-102(A) that, according to Relator, pertain only to his nondisclosure of the Steinke fee payment.

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

{¶92} Relator recommends that Respondent be permanently disbarred from the practice of law. Respondent recommends a two-year suspension, with the final 18 months stayed on conditions. For the reasons set forth below, the panel agrees with Relator.

{¶93} Arriving at the appropriate sanction requires consideration of the duties violated, the injuries caused, the attorney's mental state, and the sanctions imposed in similar cases. *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673. Before recommending a sanction, the panel also weigh the aggravating and mitigating factors in the case, including not only those set forth in BCGD Proc. Reg. 10, but all factors relevant to the case. *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541.

{¶94} Much of Respondent's misconduct occurred in the course of, and in violation of, his duties as a fiduciary—initially for his disabled nephew, later for his elderly aunt, and ultimately for the beneficiaries under her will. A fiduciary's duty is generally defined as “[a] duty of utmost good faith, trust, confidence, and candor owed by a fiduciary \* \* \* to the beneficiary; a duty to act with the highest degree of honesty and loyalty toward another person and in the best interests of that other person.” *Black's Law Dictionary* (8th Ed. Rev. 2004), p. 545. Fueled by his need for money to feed his gambling habit or to cover his casino markers, Respondent shamelessly used funds entrusted to him as if they were his own, often not bothering even to keep track of how much he stole or what he spent it on.

{¶95} There is no question these actions inflicted harm on his nephew, his aunt, her heirs, Festa, and the attorneys at his former firm. But the injuries he caused were not confined to them. Respondent also caused needless embarrassment to the Buchs. The Huffman firm falsely accused them of not paying their fees, not knowing that Respondent had concealed and kept the Buchs' fee payment. Relator's Ex. 59; see *Disciplinary Counsel v. Yajko*, 77 Ohio St.3d 385, 1997-Ohio-263.

{¶96} Respondent offered no reliable evidence that he suffered from any mental disability or chemical dependency at the time of the alleged violations. Thus, there is a

presumption that he was healthy and unhindered at that time. *Disciplinary Counsel v. McCord*, 121 Ohio St.3d 497, 2009-Ohio-1517. Although Respondent's former psychologist testified that Respondent was in a "depressed mood" at the time of their first meeting on October 22, 2010, the psychologist attributed it to the fact Respondent was "in deep financial straits" due to his gambling and to the fact that his association with the Huffman firm was ending in the wake of his colleagues' discovery of his improprieties. January Hearing Tr. 23. In essence, the psychologist did not attribute Respondent's misconduct to his depression; rather, he attributed Respondent's depression to his misconduct. Because Respondent's depression was not the cause of his misconduct, but instead was caused by it, it has no bearing on the appropriate sanction for his misconduct.

{¶97} As aggravating factors, the panel finds that Respondent acted with a dishonest and selfish motive, committed multiple offenses, engaged in a pattern of misconduct, caused harm to vulnerable victims, and failed to make restitution to all of his victims.

{¶98} The panel finds as the sole mitigating factor that Respondent had no prior disciplinary record.

{¶99} Respondent's gambling addiction, though clearly at the root of most of his misconduct,<sup>1</sup> does not qualify as a mitigating factor under BCGD Proc. Reg. 10(B)(2)(g) under the facts and circumstances presented in this case. Even if compulsive gambling might qualify as a "mental disability" under BCGD Proc. Reg. 10(B)(2)(g)(i), in the panel's view Respondent failed to establish clearly and convincingly two other requirements of BCGD Proc. Reg. 10(B)(2)(g)—that Respondent has undergone a sustained period of successful treatment for his

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<sup>1</sup> It should be noted that when Respondent, in a flagrant act of self-dealing, took \$63,000 from Christopher's guardianship and gave it to the Stevensons so that they could repay earlier loans from Respondent and his wife, Respondent was, according to his testimony, on a hiatus from gambling. December Hearing Tr. 249.

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addiction and there is a reliable prognosis from a qualified health care professional that Respondent will be capable of returning to the competent, ethical practice of law under specified conditions.

{¶100} The parties dispute one another's characterizations of Respondent's attitude toward these proceedings. Respondent claims he displayed a cooperative attitude by responding to discovery and appearing for a deposition; Relator contends he was uncooperative in that he was slow in responding to discovery, failed to enter into stipulations, and refused to respond to certain questions posed by Relator. Based on Respondent's conduct during discovery and at the hearing, the panel finds that Respondent was neither notably cooperative nor conspicuously uncooperative toward these proceedings. Thus, we decline Respondent's invitation to apply BCGD Proc. Reg. 10(B)(2)(d) as a mitigating factor and Relator's invitation to apply BCGD Proc. Reg. 10(B)(1)(e) as an aggravating factor.

{¶101} The panel also rejects Respondent's contention that he has accepted full responsibility for his actions. Despite the overwhelming evidence of his misconduct, Respondent frequently downplayed his misappropriations as "loans" and his fiduciary derelictions as merely being "out of trust." December Hearing Tr. 109-110; see also *id.* at 68-69, 120-121 (suggesting that calling his actions thefts and his accounts inaccurate were matters of "semantics"). Respondent also sought to minimize his false probate court accounts, variously characterizing them as "accurate, except in one respect," "perfectly fine," or "approved" by the probate court. December Hearing Tr. 52. These are not the words of an individual genuinely intent on owning up to misconduct. And, finally, with respect to the fact that Respondent self-reported, the panel notes that he did so only after his colleagues at the Huffman firm discovered his thefts and advised him it was necessary to do so, the clear

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implication being that they would if he did not. Under such circumstances, a self-report is justifiably accorded less weight. *Yajko*, 77 Ohio St.3d at 388.

{¶102} The Supreme Court consistently has reminded us “that the primary purpose of the disciplinary process is not to punish the offender but to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship.” *Cleveland Metro. Bar Assn. v. Lockshin*, 125 Ohio St.3d 529, 2010-Ohio-2207.

{¶103} There is no question that Respondent misappropriated enormous amounts of funds entrusted to him. The Supreme Court has held that public confidence in the judicial system and the bar requires that the strictest discipline be imposed in misappropriation cases. *Cleveland Bar Ass’n v. Belock*, 82 Ohio St.3d 98, 1998-Ohio-261. The presumptive sanction in such cases is permanent disbarment. *Id.* At times, the Court has tempered its presumptive sanction due to the presence of mitigating factors; however, there are no mitigating factors in this case other than Respondent’s lack of prior discipline.

{¶104} There is no question that Respondent is a compulsive gambler and that if left to practice law as he has, he would pose a serious danger to an unsuspecting public. The question, in our minds, is this: given Respondent’s history, personality, and circumstances, is it likely that he could gain sufficient control over his addiction to allow him to practice competently and ethically in the future, without posing any danger to the public? If the answer is yes, then case law suggests the appropriate sanction would be an indefinite suspension with reinstatement conditioned on successful completion of a stringent treatment regime, strict compliance with monitoring, reporting, and other requirements, and full restitution. If the answer is no, then case law suggests disbarment is in order. There are precedents for both outcomes, in Ohio and elsewhere. See, e.g., *Disciplinary Counsel v. Leksan*, 136 Ohio St. 3d 85, 2013-Ohio-2415

(indefinite suspension with reinstatement conditioned); *Akron Bar Assn. v. Smithern*, 125 Ohio St.3d 72, 2010-Ohio-652 (indefinite suspension with reinstatement conditioned); *Disciplinary Counsel v. Liviola*, 94 Ohio St.3d 408, 2002-Ohio-1049 (disbarment); *Matter of Adelman*, 293 A.D.2d 62, 741 N.Y.S.2d 526 (2002) (disbarment); *Matter of Miller*, 86 A.D.2d 344, 450 N.Y.S.2d 8 (1982) (disbarment); *Matter of Salinger*, 88 A.D.2d 133, 452 N.Y.S.2d 623 (1982); *Matter of Paglia*, 268 A.D.2d 72, 705 N.Y.S.2d 314 (2000) (three-year suspension); *In re Rumore*, 197 N.J. 27, 961 A.2d 699 (2008), and *Matter of Rumore*, 63 A.D.3d 1, 880 N.Y.S.2d 1 (2009) (disbarment); *In re Discipline of Crawford*, Nev.Sup.Ct. Docket No. 51724 (Feb. 18, 2009) (five-year suspension).

{¶105} For good reason, compulsive gambling often has been labeled the hidden addiction. Unlike other addictions, it defies detection because no test is available to alert others before harm occurs that a compulsive gambler is in the midst of a destructive binge. And because the natural balm for a compulsive gambler's inevitable losses is more gambling, requiring more money, secured more frequently and in increasingly large amounts, most compulsive gamblers eventually resort to stealing, either to feed their habit or take care of its consequences. One study of 400 Gamblers Anonymous members revealed that 57 percent admitted to stealing to support their habit, that their average theft was \$135,000, and that in the aggregate they stole more than \$30 million.<sup>2</sup> As the instant case demonstrates, when compulsive gamblers resort to theft, persons whose trust and money they can most readily access—*e.g.*, relatives, dependents, or those who already have placed trust in them—tend to be their preferred and most vulnerable targets. Respondent's victims fell into all three of these categories.

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<sup>2</sup> See Earl L. Grinols and David B. Mustard, "Measuring Industry Externalities: The Curious Case of Casinos and Crime" (March 2001), p. 11, citing a 1998 study by Henry Lesieur from the Institute of Problem Gambling; retrievable at <http://stoppredatorygambling.org/wp-content/uploads/2012/12/Measuring-Industry-Externalities-The-Curious-Case-of-Casinos-and-Crime.pdf>.

{¶106} “A lawyer who is a compulsive gambler can be very dangerous. By the nature of their practice, lawyers are often exposed to fiduciary relationships involving large sums of money, which serve as the commodity or ‘drug of choice’ for the gambler.” See “Gambling,” by Paul R. Ashe, New Jersey Lawyers Assistance Program website.<sup>3</sup> Moreover, given that casinos and other avenues for legal gambling are more accessible than ever in our state, we cannot gainsay the temptations that Ohio lawyers who are compulsive gamblers, such as Respondent, will face in the future.

{¶107} While we recognize our Supreme Court has not uniformly disbarred lawyers whose history of misconduct made them recidivism risks, see, e.g., *Lockshin*, 2010-Ohio-2207, at ¶51, we believe Respondent’s history, personality, and circumstances put him at too great a risk of reoffending for us to leave open the possibility he might practice law again. Like compulsive gamblers generally, Respondent was systematic, almost meticulous, in stealing what he needed to support his habit and in covering his tracks, while remaining remarkably unconcerned about the results of his actions or those who would be harmed. See *Matter of Adelman*, 293 A.D.2d at 66. As demonstrated by his ability to hoodwink his relatives and all of the lawyers at his former firm over many years, Respondent is practiced at the sort of deception that compulsive gamblers routinely use to escape detection. Respondent also has a history, once caught stealing, of rationalizing his thefts as entitlements, “loans,” or simply being “out of trust.” That Respondent mainly has targeted relatives up to now—a disabled nephew, a trusting aunt, a supportive brother, and an unsuspecting cousin—gives us no confidence that he will restrain himself when he runs out of relatives from whom to steal.

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<sup>3</sup> Retrieval at <http://www.njlap.org/AboutGambling/UnderstandingCompulsiveGambling/tabid/75/Default.aspx>.

{¶108} The panel finds itself even less confident in Respondent's ability to overcome his addiction and practice ethically in the future when the panel considered his attitude and approach thus far toward treatment. Despite being obviously in the grip of a gambling addiction for decades, Respondent did not seek help until his first meeting with Dr. Thomas Hustak, his former psychologist, in October 2010. All told, he has seen Dr. Hustak only eight times, and five of those visits took place between October and December 2010. January Hearing Tr. 67-68. The other three visits occurred in 2012, two of them close in time to the hearing in this matter. *Id.* Dr. Hustak did not see him at all in 2011 or thus far in 2013. *Id.* Respondent is currently living in Florida, and to the best of Dr. Hustak's knowledge, he has not sought treatment there. *Id.* at 71-72.

{¶109} Even after beginning to see Dr. Hustak, Respondent took an ill-advised trip to a Las Vegas casino. *Id.* at 88. It is difficult to say what left the panel more incredulous—Respondent's decision to make that trip less than a month after "coming clean" with the Huffman firm about his thefts and gambling problem and beginning treatment for it, or his assurance that he did not gamble while staying at a Las Vegas casino.

{¶110} Even while theoretically under Dr. Hustak's treatment, Respondent failed to follow through with steps necessary for his recovery. *Id.* at 71-73. For example, in 2010, Dr. Hustak recommended that Respondent take Paxil. *Id.* at 70. Despite this recommendation and the fact that Respondent himself found it helpful, Respondent discontinued taking Paxil. December Hearing Tr. 153-154, 272-273; January Hearing Tr. 70. In addition, both Dr. Hustak and Michael Burke, an author and former lawyer who counsels attorneys with gambling problems and has "extensively consulted" with Respondent, advised Respondent to attend Gamblers Anonymous meetings regularly. December Hearing Tr. 151, 161. Respondent began

attending in 2010, but stopped after only three months. *Id.* at 162. Also in 2010, Respondent entered into a four-year mental health recovery contract with the Ohio Lawyers Assistance Program, but stopped complying with it because he found it was not effective for him. Relator's Ex. 64; December Hearing Tr. 150-152.

{¶111} Even at the hearing in this matter, Respondent would not commit to traditional recovery steps, such as attending Gamblers Anonymous meetings or undergoing counseling. *Id.* at 273-274; compare *Smithern*, 2010-Ohio-652, at ¶10 (“The board also found that respondent has acknowledged her addictions, is receiving treatment for these addictions, and can overcome these addictions with continued treatment.”); *Leksan*, 2013-Ohio-2415, at ¶¶27 and 32 (“The board also found that Leksan was recovering from a gambling addiction, was struggling with an alcohol addiction, and had been engaged in treatment for these and other problems for more than ten years \* \* \*. Two of Leksan's character-reference letters are from members of Gamblers Anonymous who praise him for the inspiration and assistance he has given them [and others like them] in addressing not only their compulsive gambling but also the legal repercussions of their addictions.”).

{¶112} By all appearances, Respondent's approach to controlling his gambling problem adds up to this: if he avoids contact with money, the thinking goes, he avoids the temptation to steal. The panel does not view this as a realistic approach. Indeed, Mr. Burke, Respondent's consultant, has been quoted as saying, “If there's a possibility of a compulsive gambler getting his or her hands on money, they will do it without fail.” See “Former Michigan attorney is expert on gambling addiction among lawyers,” *LegalNews.com*, October 25, 2010, p. 2. Even if Respondent somehow were to develop greater powers of self-control than he has displayed to date, the practice of law—especially as Respondent has engaged in it—entails frequent,

unavoidable contact with and access to money, whether it be in the lawyer's operating account or in his trust account. It strikes the panel as utterly inconceivable that Respondent would be able to "white knuckle" his way past such money without yielding to temptation for the rest of his career.

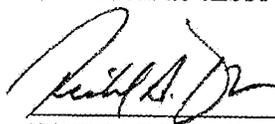
{¶113} After considering all of the factors and case law mentioned above, the panel reluctantly concludes that Respondent no longer is fit to practice a profession grounded on trust, integrity, and candor. To assure the protection of the public, the only appropriate sanction is permanent disbarment.

{¶114} In light of Respondent's misconduct, the duties violated and the harm caused, the presence of multiple aggravating factors, the sole mitigating factor of no prior discipline, and the sanctions imposed in similar cases, the panel recommends that Respondent be disbarred.

#### **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 August 2, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Stephen Leslie Becker, be permanently disbarred from the practice of law in the State of Ohio. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

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



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RICHARD A. DOVE, Secretary