

ORIGINAL

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

13-1984

In re:	:	
Complaint against	:	Case No. 11-046
Geoffrey Parker Damon Attorney Reg. No. 0029397	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Cincinnati Bar Association	:	
Relator	:	

FILED  
DEC 17 2013  
CLERK OF COURT  
SUPREME COURT OF OHIO

OVERVIEW

{¶1} This matter was heard on June 11, 2013, in Columbus before a panel consisting David E. Tschantz, Martha Butler Clark, and Charles E. Coulson, chair. None of the panel members resides in the district from which the complaint arose of 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 J. Hollingsworth and Hanlin Bavelly appeared on behalf of Relator. Respondent was pro se.

{¶3} From January 2, 2009 through July 30, 2010, Respondent was employed as a full-time associate by the law firm of Butkovich & Crosthwaite Co., LPA, in Cincinnati, Ohio. Prior to that time, Respondent was in the private practice of law as a sole practitioner. In return for Respondent's annual salary of \$120,000 as an associate with the law firm, Respondent agreed to remit to the firm all fees Respondent would earn while so employed, whether from work in progress before he joined the firm or from new client matters undertaken after January 1, 2009.

{¶4} During the entire course of Respondent's employment with the law firm of Butkovich & Crosthwaite, he stole money from the firm by collecting fees and retainers and not turning them over to the law firm as required by his employment agreement.

{¶5} On March 11, 2013, Respondent entered into a guilty plea in the Hamilton County Court of Common Pleas, Criminal Division for theft, a felony of the fourth degree, for the monies he stole from the law firm of Butkovich & Crosthwaite. It is not known the exact amount stolen from the Butkovich & Crosthwaite law firm. Respondent stipulates that he stole \$84,000. On April 11, 2013, Respondent was sentenced to three years of community control with other conditions. Respondent has made restitution in the amount of approximately \$56,000 to the Butkovich & Crosthwaite firm.

{¶6} As a result of the felony conviction, on May 21, 2013, the Supreme Court of Ohio placed Respondent on an interim suspension. Respondent is currently working as a paralegal for a law firm.

{¶7} On April 19, 2011, Relator filed the initial complaint against Respondent alleging multiple counts of violations of the Rules of Professional Conduct. Prosecution of this matter was stayed pending the outcome of Respondent's criminal case. On April 12, 2013, Relator filed a third amended complaint.

{¶8} Prior to the hearing on this matter, on April 9, 2012, the parties filed comprehensive Stipulations of Fact. Later, on May 29, 2012, the parties filed supplemental stipulations of fact. The panel unanimously accepted the stipulated facts. The panel, based upon the stipulated facts, the testimony of the witnesses, including the testimony of Respondent, and all of the exhibits admitted hereto finds by clear and convincing evidence as to each count of the complaint and recommends that Respondent be disbarred.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶9} Respondent was admitted to the practice of law in the state of Ohio on October 29, 1984. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

### **Count I--Butkovich & Crosthwaite Co., LPA**

{¶10} From January 1, 2009 through July 30, 2010, Respondent was employed as a full-time associate of the law firm of Butkovich & Crosthwaite Co., LPA, at annual salary of \$120,000. Respondent agreed to and had a duty to remit to the firm all fees and costs collected while so employed whether from work in progress before he joined the firm or from new client matters undertaken after January 1, 2009. During this period of time, Respondent stole at least \$84,000 from the firm. The figure of \$84,000 was apparently selected as Respondent declared the amount of \$84,066 as legal fees on his Schedule C, Profit or Loss From Business, on his 2009 U.S. Income Tax Return. The exact amount of money stolen from the Butkovich & Crosthwaite firm is unknown. Respondent has made restitution to the Butkovich & Crosthwaite firm in the approximate amount of \$56,000.

{¶11} The panel finds that the above acts of Respondent violated the following: Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

### **Count I (A)--Brautigam**

{¶12} Respondent was hired by Michael Brautigam to represent him in a malpractice suit against another attorney. Brautigam paid Respondent \$14,500 between December 14, 2009 and June 11, 2011, through Respondent's credit card terminal. Respondent deposited the sums in his personal trust account and not the Butkovich & Crosthwaite firm's trust account. Respondent has refunded \$10,000 of Brautigam's payments.

{¶13} The panel declines to find a violation of Prof. Cond. R. 1.15(a) in this instance, as the only evidence that was submitted with regard to the alleged violation of that rule was that Respondent had deposited the money in his personal trust account, not the firm's trust account. In the opinion of the panel, depositing the client's funds in his personal trust account clearly met the requirement of the rule that he hold those funds separate from his personal property. Further, there was no evidence submitted that he failed to maintain records of the client's funds held in that trust account.

{¶14} The panel does not find a violation of Prof. Cond. R. 1.15(c) for failing to maintain legal fees and expenses that had been paid in advance in a client's trust account until the fees are earned or the expenses incurred as no evidence was submitted to support this violation.

{¶15} The panel does not find a violation of Prof. Cond. R. 1.15(d) for failing to render a full accounting of a client's funds as requested by the client as there is no evidence submitted to the panel that the client requested any accounting or funds.

#### **Count I (B)--McCoy**

{¶16} Respondent was hired by Vicki McCoy to represent her in a disability claim in April, 2009. McCoy paid Respondent a total of \$7,000 in two payments of \$3,500. Respondent diverted one of the \$3,500 payments to his personal trust account.

{¶17} The panel declines to find a violation of Prof. Cond. R. 1.15(a) in this instance, as the only evidence that was submitted with regard to the alleged violation of that rule was that Respondent had deposited the money in his personal trust account, not the firm's trust account. In the opinion of the panel, depositing the client's funds in his personal trust account clearly met the requirement of the rule that he hold those funds separate from his personal property. Further, there was no evidence submitted that he failed to maintain records of the client's funds held in that trust

account.

{¶18} The panel does not find a violation of Prof. Cond. R. 1.15(c) for failing to maintain legal fees and expenses that had been paid in advance in a client's trust account until the fees are earned or the expenses incurred as no evidence was submitted to support this violation.

{¶19} The panel does not find a violation of Prof. Cond. R. 1.15(d) for failing to render a full accounting of a client's funds as requested by the client as there is no evidence submitted to the panel that the client requested any accounting or funds.

#### **Count I (C)—Patterson**

{¶20} Respondent undertook representation of Terry and Veronica Patterson in a legal malpractice claim against another law firm in December 2008. Respondent did not utilize a written fee contract in this matter. The Patterson's paid Respondent an initial retainer of \$5,000 on December 2, 2008. However, on July 13, 2009, they paid him an additional \$3,700 that was to be payment for an expert witness. Respondent deposited both of these payments into his personal trust account. Respondent dismissed the law suit on December 10, 2009 without the clients' permission. Respondent failed to provide an accounting as requested by the clients and failed to return the \$3,700 that was not expended for an expert.

{¶21} The panel declines to find a violation of Prof. Cond. R. 1.15(a) in this instance, as the only evidence that was submitted with regard to the alleged violation of that rule was that Respondent had deposited the money in his personal trust account, not the firm's trust account. In the opinion of the panel, depositing the client's funds in his personal trust account clearly met the requirement of the rule that he hold those funds separate from his personal property. Further, there was no evidence submitted that he failed to maintain records of the client's funds held in that trust account.

{¶22} The panel finds that the above acts of Respondent violated the following: Prof. Cond. R. 1.15(c) [failing to maintain legal fees and expenses that had been paid in advance in a client's trust account until the fees are earned or the expenses incurred] and Prof. Cond. R. 1.15(d) [failing to render a full accounting of a client's funds as requested by the client].

**Count I (D)—Schantz**

{¶23} Respondent undertook representation of Bonnie Schantz in January 2010 regarding claims arising from her discharge from employment. Schantz paid Respondent two checks totaling \$1,500 for filing a discrimination charge with the Equal Employment Opportunity Commission. Respondent deposited both checks from Schantz in his personal trust account and not the trust account of Butkovich & Crosthwaite firm. Respondent made these deposits without the knowledge or permission of the Butkovich & Crosthwaite firm.

{¶24} The panel declines to find a violation of Prof. Cond. R. 1.15(a) in this instance, as the only evidence that was submitted with regard to the alleged violation of that rule was that Respondent had deposited the money in his personal trust account, not the firm's trust account. In the opinion of the panel, depositing the client's funds in his personal trust account clearly met the requirement of the rule that he hold those funds separate from his personal property. Further, there was no evidence submitted that he failed to maintain records of the client's funds held in that trust account.

{¶25} The panel does not find a violation of Prof. Cond. R. 1.15(c) for failing to maintain legal fees and expenses that had been paid in advance in a client's trust account until the fees are earned or the expenses incurred as no evidence was submitted to support this violation.

{¶26} The panel does not find a violation of Prof. Cond. R. 1.15(d) for failing to render a full accounting of a client's funds as requested by the client as there is no evidence submitted to the

panel that the client requested any accounting or funds.

**Count I (E)—Tribbey**

{¶27} On December 3, 2009, Respondent undertook to represent Tammy Tribbey in a wrongful termination case against her former employer. Tribbey paid Respondent \$1,500 and Respondent diverted Tribbey's payments to his personal trust account.

{¶28} The panel declines to find a violation of Prof. Cond. R. 1.15(a) in this instance, as the only evidence that was submitted with regard to the alleged violation of that rule was that Respondent had deposited the money in his personal trust account, not the firm's trust account. In the opinion of the panel, depositing the client's funds in his personal trust account clearly met the requirement of the rule that he hold those funds separate from his personal property. Further, there was no evidence submitted that he failed to maintain records of the client's funds held in that trust account.

{¶29} The panel does not find a violation of Prof. Cond. R. 1.15(c) for failing to maintain legal fees and expenses that had been paid in advance in a client's trust account until the fees are earned or the expenses incurred as no evidence was submitted to support this violation.

{¶30} The panel does not find a violation of Prof. Cond. R. 1.15(d) for failing to render a full accounting of a client's funds as requested by the client as there is no evidence submitted to the panel that the client requested any accounting or funds.

**Count I (F)—Merritt**

{¶31} Relator did not present any evidence regarding Respondent's representation of Darlene Merritt.

{¶32} Accordingly, with respect to Count I (A) through (F) of the complaint, the panel finds violations of Prof. Cond. R. 1.15(c) and (d) only to Respondent's representation of the

Pattersons, dismisses all alleged violations of Prof. Cond. R. 1.15(a), and dismisses the alleged violations of Prof. Cond. R. 1.15(c) and (d) with respect to Respondent's conduct in the Brautigam, McCoy, Schantz, Tribbey, and Merritt matters.

### **Count II—Thompson**

{¶33} In April 2008, Lisa Thompson paid Respondent a \$5,000 retainer to represent her in a disability discrimination law suit against the University of Louisville College of Law and the Law School Admission Council (LSAC). More than a year later, in July 2009, Respondent filed the law suit in the United States District Court. This was also more than a year after the law school and the LSAC had granted Thompson the accommodation she had requested. The only viable cause of action remaining would be one for attorney fees that Thompson paid in obtaining the accommodation sought. The complaint filed by Respondent did not include a prayer for attorney's fees in obtaining the accommodation or even an allegation that the client was damaged by having to pay such fees. The panel finds that the law suit filed by Respondent was in fact meritless.

{¶34} When defendants threatened sanctions against Respondent for filing a frivolous law suit, he dismissed the law suit in December 2009 with prejudice. Respondent has not refunded any of the moneys to Thompson. Respondent kept neither an itemized record of Thompson's funds nor time records.

{¶35} The panel finds by clear and convincing evidence that Respondent violated the following: Prof. Cond. R. 1.5(a) [charging a clearly excessive fee]; Prof. Cond. R. 1.15(a)(2) [failure to maintain a record of client funds and for the failure to account for his time]; and Prof. Cond. R. 1.15(d).

### **Count III—Robinson**

{¶36} Around December 2008, Timothy Robinson hired Respondent to file a legal

malpractice claim on his behalf. Robinson paid Respondent a \$10,000 retainer fee plus an additional \$15,000 for expenses. Respondent filed a law suit in the Butler County Common Pleas Court on March 18, 2009. Respondent dismissed the law suit without prejudice on July 13, 2010 when Respondent could not find an expert witness to support the malpractice claim. Respondent has not refunded any of Robinson's \$25,000. Further, Respondent kept neither itemized records of Robinson's funds nor time records for these matters.

{¶37} The panel finds by clear and convincing evidence that Respondent violated the following: Prof. Cond. R. 1.15(a)(2) and Prof. Cond. R. 1.15(d).

#### **Count IV—Jemison**

{¶38} In July 2010, Mose Jemison hired Respondent to represent him in a worker's compensation retaliation claim. Jemison paid Respondent a \$1,500 retainer. In November 2010, when Respondent had not filed any action on Jemison's part, Jemison discharged Respondent. In December 2010, Respondent refunded \$500 of the \$1,500 retainer paid by Jemison. Respondent failed to account for the funds or his time, but did state that he would determine the time spent on the case at a later date and determine how much of Jemison's retainer should be returned. To date, Respondent has done neither.

{¶39} The panel finds by clear and convincing evidence that Respondent violated the following: Prof. Cond. R. 1.15(a)(2) and Prof. Cond. R. 1.15(d).

#### **Count V—Johnson**

{¶40} In April 2009, Respondent undertook to represent Stephen Johnson in a discrimination against his former employer, Central State University (CSU). Johnson paid Respondent an initial retainer fee of \$1,500 by check and two additional \$500 payments for a total of \$2,500. Respondent only admits that he received the \$1,500 retainer by check. However, the

panel believed the testimony of Johnson that he made the additional \$1,000 in two cash payments. The panel also finds that Respondent was asking for an additional \$1,000 that Johnson did not pay. After the initial retainer, the balance of Respondent's fee in this matter was contingent on the award of attorney fees by the court. Respondent failed to enter into a written fee agreement with Johnson.

{¶41} On November 12, 2009, Respondent filed a complaint alleging age and race discrimination on behalf of Johnson in the Ohio Court of Claims. Johnson's deposition was taken by the attorneys for CSU and thereafter, CSU filed a motion for summary judgment. On the day that Johnson's memorandum in opposition to the motion for summary judgment was due Respondent instead filed a voluntary dismissal of the case without prejudice. Respondent has no time records for this matter and has not returned any of the money Johnson paid him.

{¶42} In this count of the complaint, Relator charges that Respondent violated Prof. Cond. R. 1.5(a) charging or collecting an illegal or clearly excessive fee and Prof. Cond. R. 1.5(d)(3) prohibition of fees earned upon receipt or nonrefundable without simultaneously advising the client that the client may be entitled to all or part of the fee, by charging a retainer which he treated as a flat fee, then withdrawing from the case before the work was performed. There was evidence presented that Respondent had done at least some work on his client's case and earned some amount of the retainer, and perhaps even all of it, and no evidence was presented to the panel at all supporting the allegation that the retainer was treated as nonrefundable or earned upon receipt. Thus, the panel does not find that these violations were proven by clear and convincing evidence. The panel dismisses these alleged violations.

{¶43} The panel finds by clear and convincing evidence that Respondent violated the following: Prof. Cond. R. 1.5(c) [entering into a contingent fee agreement without utilizing a

written fee contract signed by the client and the lawyer] and Prof. Cond. R. 1.15(d).

#### **Count VI—Long**

{¶44} Prior to Michael Long hiring Respondent, Long had filed a law suit against Long's former union, the UAW, and summary judgment had been entered in favor of the UAW against Long. The time for appeal on Long's claim had run months before Long hired Respondent. In September 2008, Respondent undertook to represent Long on two separate, but related law suits against Long's former union, the UAW, and his former employer, General Motors Corporation. Long paid Respondent a \$2,500 flat fee to represent him in his claim against the UAW.

{¶45} On January 20, 2009, Respondent filed a Civil Rule 60(B) motion to vacate the judgment of dismissal in favor of the UAW. On February 10, 2009, the UAW filed a memorandum opposing the motion to vacate judgment and also sent a letter to Respondent stating that if Respondent did not withdraw the motion within twenty-one days the union would file a motion for sanctions. Respondent withdrew the motion to vacate on March 1, 2009. Respondent has not provided an accounting of the \$2,500 fee or any time records for his work on this matter.

{¶46} Long paid Respondent a \$5,000 retainer to represent him in a wrongful discharge claims against his former employer, General Motors. General Motors had filed for bankruptcy on June 2, 2009. This \$5,000 retainer was to be credited against Respondent's contingency fee in the case.

{¶47} Respondent framed the wrongful discharge claim as a "constructive discharge" cause of action alleging that GM constructively terminated Long's employment by allowing the UAW to subject Long to intolerable treatment.

{¶48} The suit against GM was filed in the Warren County Common Pleas Court on October 29, 2009. Respondent, knowing that GM had filed for bankruptcy, filed the law suit

against “Motors Liquidation Company FKA General Motors Corp.” Respondent was advised by GM’s counsel that any claim against GM would have to be pursued in the bankruptcy proceedings. Respondent took no further action on the complaint he filed in the Warren County Common Pleas Court and the action was dismissed without prejudice for lack of prosecution on July 9, 2009. Respondent has failed to produce any time records regarding the GM lawsuit and has failed to account for or refund any of the \$5,000 retainer.

{¶49} The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.5(a) and Prof. Cond. R. 1.15(d).

### **Count VII—Gehring**

{¶50} On April 6, 2011, Lori Gehring hired Respondent to represent her in a medical malpractice claim. At the same time, Gehring paid Respondent \$1,500 for consultation and review of her records by a medical professional. In June 2011, Respondent told Gehring that her medical records would be sent to a nurse practitioner for review in one or two weeks’ time. On July 5, 2011, Respondent left a voice mail for Gehring stating that it would be another one to two weeks before anything was done with her records. Gehring, in response to this voice mail left Respondent a message terminating his employment and requesting a refund of her retainer and a return of her medical records. On or about July 22, 2011, Respondent called Gehring and informed her that he had done nothing with her paperwork and Gehring again requested a return of her medical records and retainer. Respondent failed to refund Gehring’s retainer and Respondent only returned Gehring’s medical files after he received a letter from Relator’s investigator regarding this grievance.

{¶51} The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.5(a) and Prof. Cond. R. 1.15(d).

### **Count VIII--DuBose**

{¶52} In August 2009, Valerie DuBose hired Respondent to represent her in an employment matter. DuBose paid Respondent a total of \$4,800. Respondent filed a law suit on DuBose's behalf and the defendants filed a motion for summary judgment. Respondent had until March 25, 2011 to file a memorandum in opposition to the motion for summary judgment. Respondent failed to file this memorandum. On May 2, 2011, the court issued an order to show cause requiring Respondent file a response to the motion for summary judgment or to show cause why this matter should not be dismissed for a lack of prosecution. On May 4, 2011, Respondent filed a memorandum in opposition to the motion for summary judgment. At the oral argument on the motion for summary judgment held on June 27, 2011, Respondent voluntarily dismissed the case without prejudice. Respondent did not discuss the dismissal of the case with his client, DuBose, prior to dismissing the matter.

{¶53} On or about July 14, 2011, when DuBose learned that her case had been dismissed, she terminated her relationship with Respondent. Respondent has not provided DuBose with an accounting of her funds or the time Respondent spent in representing DuBose.

{¶54} The panel finds by clear and convincing evidence that Respondent violated the following: Prof. Cond. R. 1.2(a) [failing to consult with the client before voluntarily dismissing the case]; Prof. Cond. R. 1.4(a) [failing to keep the client informed about the status of her case]; Prof. Cond. R. 1.3 [failing to act with reasonable diligence and promptness in representing the client]; Prof. Cond. R. 1.4(b) [failing to communicate and explain the nature and scope of the representation to permit the client to make informed decisions regarding that representation]; and Prof. Cond. R. 1.15(d).

## Count IX—Criminal Conviction

{¶55} Count IX alleges that Respondent entered a plea of guilty on March 11, 2013 in the Hamilton County Court of Common Pleas to grand theft, a felony of the fourth degree and thus violated Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness]. The illegal conduct committed by Respondent in the felony conviction is the identical illegal conduct contained in Count I. The court, on April 4, 2013, sentenced the Respondent to three years probation, with a prison term of twelve months to be imposed if he violated the terms and conditions of probation. Respondent was further ordered to pay restitution to the Butkovich & Crosthwaite firm in the approximate amount of \$59,553.98.

{¶56} The panel finds that the above acts of Respondent violated Prof. Cond. R. 8.4(b).

### MITIGATION, AGGRAVATION, AND SANCTION

{¶57} The panel finds pursuant to BCGD Proc. Reg. 10(B)(2) the following factors in mitigation are present.

- Absence of prior disciplinary record;
- Character reputation—Respondent submitted character reference letters from a municipal judge, two common pleas judges and three lawyers attesting to his professionalism and courteousness; and
- Imposition of other penalties or sanctions—Respondent was found guilty of theft, a felony of the fourth degree, sentenced to probation, and ordered to make restitution. In addition, Respondent has been under an interim suspension from the practice of law by the Supreme Court since May 21, 2013.

{¶58} Respondent also argues that he has made significant restitution payments. The panel does not find this to be the case. The panel finds that Respondent did not make timely, good faith effort to make restitution or to rectify the consequences of his misconduct. Although Respondent has made partial restitution to some of the clients and to the Butkovich & Crosthwaite firm, the amount of restitution paid pales to the amount of loss incurred. The exact amount stolen from Butkovich & Crosthwaite firm is unknown and cannot be ascertained. The stipulated amount

of \$84,000 does not cover cash payments, if any, or any moneys received in the calendar year 2010. There is no certainty that it even includes all of the money taken in 2009. In addition, the Butkovich & Crosthwaite firm has had to defend four malpractice law suits filed by clients because of the Respondent's actions. The panel finds that Respondent felt that he had no duty to pay back any of the fees he had not earned, unless sued by a client to recover those fees or requested to return those fees.

{¶59} In addition, Respondent filed a Chapter 13 bankruptcy wherein he listed virtually all, if not all, of the clients who filed grievances against him, including the Butkovich & Crosthwaite law firm.

{¶60} The panel found pursuant to BCGD Proc. Reg. 10(B)(1) the following factors in aggravation are present:

- Dishonest or selfish motive;
- Pattern of misconduct;
- Multiple offenses;
- Lack of cooperation in the disciplinary process—The panel felt that while on the witness stand Respondent, on occasion, gave evasive answers and sometimes refused to answer the specific questions he was asked;
- Refusal to acknowledge wrongful nature of conduct—Respondent showed no remorse and felt that he had no duty to pay back fees that he had not earned unless pursued to do so;
- Vulnerability of and resulting harm to victims of the misconduct; and
- Failure to make voluntary restitution that would rectify the consequences of his misconduct—In some cases, no restitution was made and in other instances only partial restitution was made.

{¶61} Relator recommends that Respondent be permanently disbarred from the practice of law in Ohio. Respondent is recommending that he receive an indefinite suspension from the practice of law.

{¶62} The panel is troubled by the significant aggravating factors that outweigh the mitigation factors. Respondent has a total lack of remorse and apparent lack of interest in the harm

he has thrust upon his clients and his employer.

{¶63} The panel recommends that Respondent be disbarred from the practice of law in the State of Ohio.

**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 December 13, 2013. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Geoffrey Parker Damon, be permanently disbarred. 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