

THE SUPREME COURT OF OHIO

Dayton Bar Association,

Relator,

v.

John Joseph Scaccia ,

Att. Reg. No. 0022217

Respondent.

: Case No. 2013-1982  
(Practice of Law Case)

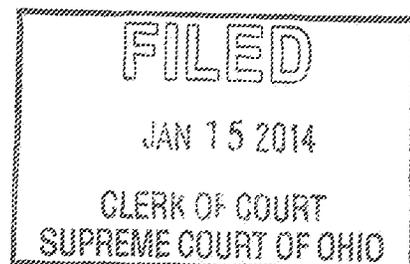
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: **OBJECTIONS OF RESPONDENT TO**  
**RECOMMENDATION OF BOARD**  
: **OF COMMISSIONERS ON**  
**GRIEVANCES AND DISCIPLINE**

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Respondent, by and through counsel, hereby objects to the Recommendation of the Board of Commissioners on Grievances and Discipline that Respondent be suspended from the practice of law for a period of one year, with six months of the suspension stayed. Instead, Respondent asks the Court to place him on probation with monitoring and the assignment of a mentor, or, in the alternative, to impose the one year suspension but stay the entire one year period and place Respondent on probation with monitoring and the assignment of a mentor. Respondent asks that this Court grant him the opportunity to work with the mentor to develop and implement an effective compliance policy and program in his practice to address and remedy the practice of law financial issues that have brought him before this Court.

This matter came before the Board upon the filing of two complaints by the Relator. The Board referred to the first Complaint, filed in 2012 (2012-013), as concerning “the Mound clients”. The Board referred to the second Complaint, filed in 2013 (2013-012), as concerning “the Grider matter” and “the Willis matter”. With regard to the Mound clients, the Board found that Respondent had failed to act competently and neglected a legal matter entrusted to him when he missed filing a pleading in Federal Court by two days and the case was subsequently dismissed. The Board also found that Respondent had failed to maintain complete records of all of the funds given him by the Mound clients, failed to render appropriate accounts, and failed to maintain client bank records for the period 2007-2010. With regard to the Grider matter, the panel found that Respondent had accepted a flat nonrefundable fee without advising the client of a possible refund, and failed to deposit the fee into his trust account as required. With regard to the Willis matter, the Board found that Respondent had failed to deposit a flat fee into his trust account. All other charges related to both Complaints were recommended to be dismissed.

Other than the missing of the filing deadline on behalf of the Mound clients, each of the other findings by the Board of violations by Respondent relate to fee arrangements between Respondent and his clients and Respondent’s handling of those funds. Significantly, the Board found as a mitigating factor the absence of a dishonest or selfish motive. At the hearing before the Board, Respondent did not refuse to acknowledge the wrongfulness of his conduct, but rather demonstrated a fundamental misunderstanding of the financial nuances faced by a sole practitioner when running a law practice. Ignorance of his professional obligations is no excuse for his conduct, but this Court may consider same in mitigation of the sanction to be levied against Respondent.

This Court did so in cases cited by the Board. The Court ordered a one-year stayed suspension with conditions in *Columbus Bar Assn. v. Watson*, 132 Ohio St.3d 496, 2012-Ohio-3830. Watson's conduct involved multiple offenses involving three clients including depositing client funds into an operating account instead of a trust account, comingling personal and client funds, and payment of personal expenses from the trust account. The facts are similar to Respondent's case.

In *Toledo Bar Assn. v. Royer*, 133 Ohio St.3d 545, 2012-Ohio-5147, this Court noted Royer's long legal career with an absence of a prior disciplinary record and that Royer's problems were due to bad time management and record keeping. Like Watson, Royer was given a one-year stayed suspension with conditions. Respondent's Board noted that the cases in which this Court imposed more severe sanctions were cases that "involved dishonesty, deceit, fraud, or misrepresentation, none of which were proven in this case." (Board Recommendation, pg. 21).

Accordingly, Respondent asks this Court to recognize the special challenges faced by solo practitioners in this state, who must practice law and serve their clients while at the same time run a business without the benefit of a back office to handle all of the lawyer's financial affairs. It merits repeating that there is no excuse for violating the Professional Rules of Conduct. The rules are the rules and every lawyer licensed to practice by this Court must follow them. However, when a sole practitioner's misconduct is attributable to bad office management and record keeping, and these bad practices can be remedied by having the lawyer work with a mentor to correct the practice of law deficiencies, the public and the profession are better served by having an otherwise capable and competent lawyer continue to serve his clients and practice law while given the chance to prove himself to this Court, his licensing authority.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I do hereby certify that a true and accurate copy of the foregoing was served by regular U.S. Mail this 15 day of January, 2014, upon the following:

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