

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION,	:	Case Number 2013-1984
	:	[Formerly Board # 11-046]
Relator,	:	
	:	
v.	:	
	:	<u>Cover Page</u>
GEOFFREY PARKER DAMON,	:	
	:	
Respondent.	:	

**RESPONDENT'S OBJECTIONS AND SUPPORTING BRIEF
IN RESPONSE TO THE ORDER TO SHOW CAUSE AND TO THE
BOARD OF COMMISSIONERS' FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

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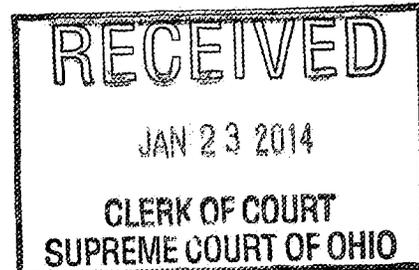
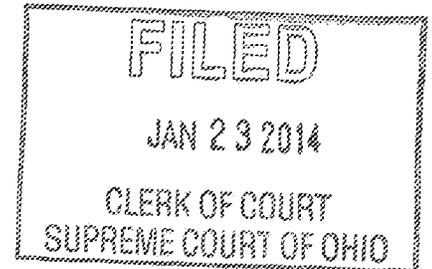
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A. INTRODUCTION

Now Comes Respondent Geoffrey P. Damon and respectfully submits the following Objections to the Findings of Fact, Conclusions of Law, and Recommendation (the "Report") of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the "Board"). The Hearing Panel recommended Respondent be permanently disbarred from the practice of law. (Report and Recommendation attached hereto hereinafter "Board Findings"). The Board's Report was certified to this Court, and an Order to Show Cause was filed on December 26, 2013.

Respondent now submits these Objections to the Board's Findings of Fact and Conclusions of Law. Respondent understands that his conduct warrants significant discipline. And in fact the Respondent has been suspended from the practice of law in the State of Ohio since May of 2013 pursuant to an interim felony suspension. However, it is apparent from the Board Findings that the Panel has failed to give Respondent any credit for remorse and for making substantial restitution, over fifty thousand (\$50, 000.00) dollars, prior to any prosecution either through the Grievance Procedure or by virtue of a felony prosecution, to his former employer, Butkovich & Crosthwaite Co., LPA. (Transcript of Disciplinary Proceedings, June 11, 2013, hereinafter, "Tr.;" Tr. pp. 57-58, Respondent's Exhibit A; Tr. pp. 87-88). Further, Respondent testified that he had experienced problems with alcohol abuse during the time of his employment with Butkovich & Crosthwaite Co., LPA which affected his judgment. (Tr. p. 134). Respondent has been punished with a felony conviction and with an ongoing suspension as a result of a felony conviction for theft.

This conviction was for the same conduct that the Hearing Panel considered involving Butkovich & Crosthwaite Co., LPA. The Panel disregarded the Respondent's testimony that he immediately turned over all bank records to his former employer. (Tr. 87-88) Respondent respectfully submits that the Panel has recommended an excessive sanction for the misconduct. Conduct, for which he has been serving a suspension and for which he has made and will continue to make restitution.

The Board erroneously found that the amount which was converted was unknown, even though Joseph Butkovich testified that they had arrived at a final restitution figure. (Tr. p. 59). Relator's counsel had entered into a stipulation regarding the amount of restitution and the testimony of an attorney/CPA, John J. Mueller, who reviewed the financial records, but whose testimony was not offered at the hearing because of the Stipulations of Fact entered into by the parties. There was a Stipulation regarding the amount of restitution owed to the firm based upon the checks written from the IOLTA Account to the Respondent. Respondent testified that he had turned over all of his financial information to the law firm.(Tr. 87-88). Mr. Butkovich made the unsubstantiated and false allegation that there were "multiple IOLTA" accounts, without any documentary proof that there was more than one.

Mr. Butkovich erroneously testified that there had been "an IRS Tax Refund" deposited into the IOLTA Account, when Respondent owed over fifty thousand dollars to the IRS. Because of the ongoing dispute regarding restitution and the application of the restitution payments. (Tr. p. 9; *Relator's Counsel acknowledging that restitution amount greater in Grievance Complaint than that in the felony prosecution*). Respondent requests that this matter

be remanded for further findings regarding the restitution payments which were made to Butkovich & Crosthwaite in 2010. The firm had an equal and independent duty to make the clients whole, which would include Grievant Timothy Robinson, Lisa Thompson, Mose Jemison, the Pattersons and Lori Gehring. All of these matters were files which under the auspices of the Butkovich firm. Respondent respectfully requests that the Board's Recommendation of permanent disbarment be modified to a lesser sanction.

B. OBJECTIONS

1. Respondent presented sufficient evidence of mitigation to rebut the presumptive sanction of permanent disbarment.

Respondent Geoffrey P. Damon has been a duly licensed attorney in the state of Ohio since 1984. (Tr. p. 27). Respondent turned over all of his IOLTA account records to the Butkovich firm, upon being confronted about the continued usage of his IOLTA account subsequent to his hiring by the Butkovich firm. (Tr. 87-88). The Report and Recommendation of the Panel ignored the mitigating factors, which Respondent candidly testified to. Respondent has paid over fifty thousand dollars in restitution. (Tr. 87-88). The Panel however, ignored the stipulation regarding the amount of restitution owed and found erroneously that "The exact amount stolen from Butkovich & Crosthwaite firm is unknown and cannot be ascertained." This finding is not supported by the evidence. (Tr. 59). There were not an unlimited number of clients coming through the Butkovich firm. Respondent immediately began paying restitution to the firm in August of 2010. Restitution was being paid prior to any client having filed any alleged malpractice action.

2. This Matter should be remanded from reconsideration of the distribution of the restitution payments made to Butkovich & Crosthwaite Co., LPA.

The undisputed evidence presented was that over \$50,000.00 has been paid by Respondent to the Butkovich firm toward restitution. (Tr. 57-58, Respondent's Exhibit A, *Mr. Butkovich acknowledging receipt of \$56, 400.00 in restitution payments from Respondent*). The Respondent did not designate or earmark those funds toward any particular client. Further, the Butkovich firm has and had an equal and independent duty to assure that the Butkovich clients were made whole. This has not occurred.

At this point, the Butkovich clients, including Timothy Robinson, Lisa Thompson, Terry and Veronica Patterson, Mose Jemison and Lori Gehring have not been made whole by the firm even though the money was paid to the firm by the Respondent for purposes of restitution. The payments made by Respondent should be forwarded to those firm clients.

Given the findings of the Panel, some of the grievants are not entitled to any refund of fees paid, because there was no finding of any breach of duty by the Respondent. This includes, Grievants Michael Brautigam, Vickie McCoy, Bonnie Schantz, Tammy Tribbey and Darlene Merritt.

3. The Panel ignored the Mitigating Factors which were established by the evidence.

The Respondent was fully cooperative with the Butkovich firm, which included production of all bank statements all withdrawal and deposit slips and the items deposited. (Tr. 57-58; 87-88). There was only one IOLTA account used by the Respondent. There was a finite amount of legal fees flowing through the Butkovich firm. Respondent did not neglect the client matters. Legal services were provided to each of the clients referred to in this disciplinary process

The recommended sanction by the Board exceeds that which has been issued in other cases involving misappropriation of client funds and a number of ethical violations. See *Disciplinary Counsel v. Talikka*, 135 Ohio St. 3d 323, 2013-Ohio-1012, in which Attorney Talikka was found to have engaged in multiple violations involving multiple clients, failure to return unearned fees, failure to keep clients informed of the status of cases, failure to keep client funds in a separate account and conduct adversely reflecting on fitness to practice law and his sanction was a two year suspension with the second year stayed on conditions.

In this case, Respondent has already been serving a suspension since May of 2013. Respondent is simply requesting the opportunity to apply for reinstatement at some point in the future. Respondent is requesting an indefinite suspension. See *Cincinnati Bar Association v. Curtis D. Britt*, 2011-2043 (retainers taken from over 40 clients with no legal services performed, warranted indefinite suspension). Under comparable and/or analogous situations, this Honorable Court has permitted the attorney an opportunity to seek reinstatement to the practice of law in the State of Ohio.

Further, Respondent submitted numerous letters from Common Pleas Judges and from practicing attorneys vouching for Respondent's character and diligence in the practice of law which included conducting attorney malpractice matters against large law firms and other unpopular causes including civil rights matters for low income individuals. (Tr. 98-101, Respondent's Exhibits O, P, Q, R and S). Further, counsel had represented indigent criminal defendants for over fifteen years.

3. The Panel found aggravating circumstances which are not supported by the evidence admitted at the hearing.

The Panel erroneously found that Respondent had demonstrated a “lack of cooperation in the disciplinary process.” That finding is not supported by the evidence. The Respondent immediately turned over all of his financial records to the Butkovich firm in 2010; the Respondent turned over files to the Relator's counsel and the Respondent has fully responded to all filings during the disciplinary proceedings. Further, Respondent immediately began paying the Butkovich firm back in 2010 in the amounts of two thousand dollars per week. (Tr. 57-58, 87-88, Respondent's Exhibit A).

The Panel erroneously found that the amount of restitution cannot be calculated. Certainly it can. There were a finite number of clients represented during the relevant time period. All of the Respondent's cases are a matter of record with the Clerk of Courts. The Panel took unsubstantiated and erroneous allegations by Mr. Butkovich at face value without any supporting documentation. For example, Mr. Butkovich falsely alleged that there were “multiple IOLTA accounts” used by Respondent. That is not the case. All of the statements, cancelled checks, deposit slips, deposited items pertaining to Respondent's bank transactions were provided to the Butkovich firm. The cases and files were all litigation matters, matters of public record. Any case which Respondent was engaged in is available under the Hamilton County website, and under PACER for federal court matters. Respondent did not perform any transactional work.

4. The Respondent's financial problems led to the filing of a Chapter 13 Bankruptcy; it was not filed to avoid paying restitution to the alleged victims of misconduct.

Respondent testified candidly that he had serious financial problems including

attachments of bank accounts. (Tr. 35). Further, the City of Cincinnati was threatening to criminally prosecute Respondent for non-payment of city taxes. This led to the filing of the Chapter 13 Bankruptcy. At the time, the taxing authorities had demonstrated no willingness to work with Respondent on payment plans.

Respondent listed all potential creditors on the Schedules, which is a requirement under federal law. A debtor is asked by the Trustee, under penalty of perjury, whether all of the debtor's creditors, liabilities and assets have been listed on the schedules. Relator's counsel, E. Hanlin Bavely, suggested to the Panel that the Chapter 13 was done to avoid paying the clients back. That is not the case. Further, the Chapter 13 case was dismissed and no discharge was granted.

C. STATEMENT OF FACTS AND ARGUMENT

Respondent was licensed to practice law in Ohio in 1984. (Tr. 27) He has been engaged in the practice of law from 1987 through 2013. From 1990 through 2009, Respondent operated a litigation practice which was engaged in civil and criminal practice in state and federal court. During over twenty years of practice, Respondent has not been previously sanctioned as part of any disciplinary proceeding. Respondent testified that he had financial problems which placed him under a great deal of pressure, including the attachment of bank accounts because of state tax debt. (Tr. 35)

Count One ; Butkovich & Crosthwaite Co., LPA

Butkovich & Crosthwaite was the primary prosecutor in the Grievance Procedure in 2010 and then two years later prevailed upon the Hamilton County Prosecutor to pursue a criminal charge against Respondent. For this conduct, Respondent has been paying restitution, is

currently under a felony suspension and is on felony probation. The Board found that Respondent had violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit or misrepresentation]. (Board Findings, p.3).

Count I(A) – Brautigam

The Panel found no ethical violation for the depositing of funds into his own personal IOLTA Account, which was the crux of the Relator's allegations against Respondent. The Panel found no ethical violation of Prof. Cond. R. 1.15(a). The Panel found no ethical violation of Prof. Cond. R. 1.15(c). The Panel found no ethical violation of Prof. Cond. R. 1.15(d). (Board Findings., pp. 3-4).

Count I(B) – McCoy

The Panel found no ethical violation of Prof. Cond. R. 1.15(a). The Panel found no ethical violation of Prof. Cond. R. 1.15(c). The Panel found no ethical violation of Prof. Cond. R. 1.15(d). (Board Findings, pp.4-5).

Count I(C) -- Patterson

The Panel found no ethical violation of Prof. Cond. R. 1.15(a). (Board Findings, pp. 5-6). The Panel found violations of Prof. Cond. R. 1.15(c) and Prof. Cond. R. 1.15(d).

Count I(D) – Schantz

The Panel found no ethical violation of Prof. Cond. R. 1.15(a). The Panel found no ethical violation of Prof. Cond. R. 1.15(c). The Panel found no ethical violation of Prof. Cond. R. 1.15(d). (Board Findings, p. 6).

Count I(E) --- Tribbey

The Panel found no ethical violation of Prof. Cond. R. 1.15(a). The Panel found no ethical

violation of Prof. Cond. R. 1.15(c). The Panel found no ethical violation of Prof. Cond. R. 1.15(d). (Board Findings, p. 7).

Count I(F) – Merritt

The Panel found no ethical violation of Prof. Cond. R. 1.15(a). The Panel found no ethical violation of Prof. Cond. R. 1.15(c). The Panel found no ethical violation of Prof. Cond. R. 1.15(d). (Board Findings, p. 7).

Requested Sanction

Respondent respectfully submits that Count 1 was the primary motivation for the Grievance Hearing. For the conduct at issue, the Respondent has already been serving a felony suspension. Respondent cited numerous cases to the Panel, of attorneys who have received indefinite suspensions, resulting from a felony conviction and other misconduct. Respondent's efforts toward restitution, his fully cooperative attitude and production of all financial documents to the prosecuting witness and his lack of prior disciplinary record distinguish his situation from the cases cited by Relator's counsel. This Honorable Court has recognized that an attorney should be given an opportunity at redemption, just as other citizens are, without the permanent loss of their method to make a productive living. Respondent relies upon the following recent cases in support of an the propriety of an indefinite suspension: 1. ***Disciplinary Counsel v.***

Gittinger, 2010-Ohio-1830, 2009-2290 In *Gittinger*, the respondent was charged with federal bank fraud and money laundering causing a loss between \$400,000.00 and One Million dollars; respondent was charged with violations of the Disciplinary Rules including: DR 1-102(A)(3) (A lawyer shall not engage in illegal conduct involving moral turpitude).

DR 1-102(A)(4) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation, and 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law). Gittinger received an indefinite suspension from the practice of law, which was concurrent with the period of supervised release which he received from the federal district court. The Court even gave Gittinger credit for the time which he was on the interim suspension, citing with approval, *Disciplinary Counsel v. Lash* (1993), 68 Ohio St. 3d 12, 623 N.E. 2d 28 and *Cuyahoga Cty. Bar Assn v. Garfield*, 109 Ohio St. 3d 103, 2006-Ohio-1935, 846 N.E. 2d 45. Respondents Lash and Garfield were each convicted of federal bank fraud felonies and each received suspensions for a fixed period of time. 2. *Disciplinary Counsel v. Bennett*, 124 Ohio St. 3d 314, 2010-Ohio-313. In the *Bennett* case, the respondent was charged with structuring financial transactions to avoid federal tax reporting requirements. On September 26, 2007, Mr. Bennett pled guilty to a one count Bill of Information to a federal Class C Felony in violation of 31 USC § 5342(a)(3) and (d)(2) and 18 USC § 2 for unlawfully structuring financial transactions. Mr. Bennett received a 24 month prison term and a \$4000.00 fine. Structuring was done to avoid the filing requirement, when an individual receives payments, receives or transfers \$10,000.00 or more in US currency. Mr. Bennett structured \$124, 300.00 with various financial institutions to avoid the reporting requirements. Mr. Bennett received an indefinite suspension, with credit for the time on the interim suspension. In *Disciplinary Counsel v. Asante*, 133 Ohio St. 3d 102, 2012-Ohio-3906, Asante had entered the United States in 2002 to attend the Ohio State University Moritz College of Law. Asante was indicted in the

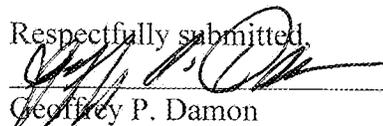
United States District Court, Southern District of Ohio, for entering into a fraudulent marriage for purposes of evading United States Immigration law, in violation of 8 USC §1325(c) and 18 U.S.C. §2. Asante was sentenced to two years of probation and she stipulated to an order of removal. Asante departed the United States on January 28, 2010. Asante received an indefinite suspension from the practice of law and the case cited a number of matters, in which attorneys had been convicted of felonies and received an indefinite suspension, including *Columbus Bar Assn v. Hunter*, 130 Ohio St. 3d 355, 2011-Ohio-5788, 958 N.E. 2d 567 (indefinitely suspending an attorney following his felony conviction for failing to report a cash payment in excess of \$10,000.00 in his law practice to the Financial Crimes Enforcement Network as required by federal law and additional misconduct of neglecting client matters and mishandling client funds); *Disciplinary Counsel v. Smith*, 128 Ohio St. 3d 390, 2011-Ohio-957, 944 N.E. 2d 1166 (indefinitely suspending an attorney convicted of conspiracy to defraud the IRS, making false tax returns, and corruptly endeavoring to obstruct and impede an IRS investigation); *Cincinnati Bar Assn. v. Kellogg*, 126 Ohio St. 3d 360, 2010-Ohio-3285, 933 N.E. 2d 1085 (indefinitely suspending an attorney convicted of money laundering, conspiracy to commit money laundering, and conspiracy to obstruct proceedings before both the United States Federal Trade Commission and the Food and Drug Administration; and *Dayton Bar Assn v. Brunner*, 91 Ohio St.3d 398, 746 N.E. 2d 596 (2001) (indefinitely suspending an attorney convicted of bank fraud and conspiracy to commit tax fraud, arising from a real estate transaction). In all of the above-cited matters, the respondent was given an opportunity to seek reinstatement to the practice of law by this Honorable Court. The undersigned Respondent is respectfully requesting to be afforded that same opportunity.

Further, Respondent relies upon the caselaw presented at the hearing which included *Cincinnati Bar Assn v. Britt*, 2012-Ohio-4541; *Mahoning Cty Bar Assn v. Pritchard*, 2012-Ohio-44; *Disciplinary Counsel v. Hall*, 2012-Ohio-783; *Mahoning Cty Bar Assn v. Kish*, 2012-Ohio-40. (Tr. 99-101). These cases demonstrate that after careful scrutiny of the facts that the Supreme Court of Ohio has, at times, allowed an attorney, an opportunity to redeem himself or herself and eventually obtain reinstatement to the practice of law in the State of Ohio. Respondent respectfully requests that opportunity.

CONCLUSION

When imposing sanctions for attorney misconduct, this Honorable Court weighs the evidence of the aggravating and mitigating factors listed in BCGD Proc. Reg. 10(B). *Disciplinary Counsel v. Broeren*, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E. 2d 935, ¶ 21. Further, when imposing sanctions for attorney misconduct, this Honorable Court considers the ethical duties which the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn v. Buttacavoli*, 96 Ohio St. 3d 424, 2002-Ohio-4743, 775 N.E. 2d 818, ¶ 16. Respondent requests that the sanction of an indefinite suspension be imposed upon him. In the alternative, Respondent requests that this matter be remanded for further proceedings regarding the distribution of the restitution payments made by Respondent.

Respectfully submitted


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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and accurate copy of the foregoing Objections and Brief of Respondent by First-Class U.S. Mail, postage prepaid, upon the following on this 22 day of January, 2014:

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APPENDIX A

1. **Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, Board Case No. 11-046**
2. **Order to Show Cause, Supreme Court of Ohio Case No. 2013-1984**

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

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	:	

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 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 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.



RICHARD A. DOVE, Secretary

DEC 26 2013

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Cincinnati Bar Association,
Relator,
v.Geoffrey Parker Damon,
Respondent.

Case No. 2013-1984

ORDER TO SHOW CAUSE

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio filed a final report in the office of the clerk of this court. In this final report the board recommends that, pursuant to Rule V(6)(B)(1) of the Supreme Court Rules for the Government of the Bar of Ohio, respondent, Geoffrey Parker Damon, Attorney Registration Number 0029397, be permanently disbarred from the practice of law. The board further recommends that the costs of these proceedings be taxed to respondent in any disciplinary order entered, so that execution may issue.

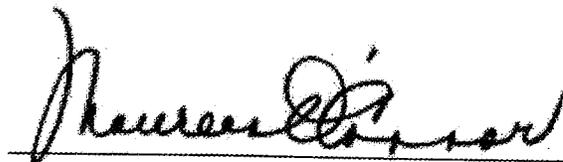
On consideration thereof, it is ordered by the court that the parties show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered.

It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

After a hearing on the objections, or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be less severe than said recommendation.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.



Maureen O'Connor
Chief Justice