

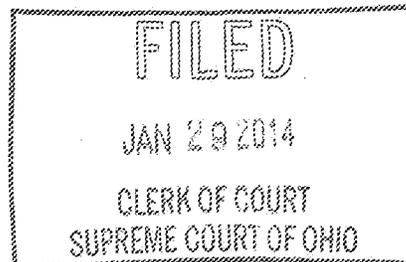
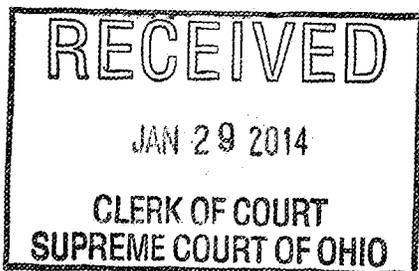
ORIGINAL

THE SUPREME COURT OF OHIO

Dayton Bar Association, : Case No.: 2013-1982
Relator, : (Practice of Law Case)
v. : BRIEF OF RELATOR IN SUPPORT
 : OF RECOMMENDATION OF
John Joseph Scaccia, : BOARD OF COMMISSIONERS ON
Attorney Reg. No. 0022217 : GRIEVANCES AND DISCIPLINE
Respondent. :

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Relator, the Dayton Bar Association, concurs with the Board of Commissioners on Grievances & Discipline recommendation that Respondent, John J. Scaccia should be suspended from the practice of law for one year, with six months stayed. Relator requests this Court make the recommendation a judgment, suspending Mr. Scaccia for one year, with six months stayed.

This case, as outlined in the Board's report of December 12, 2013, was a consolidation of two cases. The initial case involved Mr. Scaccia's representation of (28) twenty-eight former employees of the Mound Facility in Miamisburg, Ohio, and (19) nineteen of those former employee's spouses. This was referred to throughout the grievance proceedings as the Mound Case. Mr. Scaccia filed suit on behalf of these (47) forty-seven people in Federal court, in the Southern District of Ohio. The case was dismissed by the District due to actions, and inactions, of Mr. Scaccia.

The Board of Commissioners December 12, 2013 report to this Court outlines the conduct of Mr. Scaccia, as contained in the opinions of the District Court judge, the Honorable Thomas Rose. All of Judge Rose's opinions and rulings in the Mound Case are part of the record that the Hearing Panel had before it. The Board Recommendation quotes from those opinions and rulings. Those quotes show that Mr. Scaccia exhibited total disregard for the District Court Rules, as well as instructions from the District Court as to the filing of pleadings. These actions by Mr. Scaccia were not merely the missing of a filing deadline. The last missed deadline was just the final act of a pattern of conduct by Mr. Scaccia throughout the Mound Case. As a result of Mr. Scaccia's conduct, the Panel found, and the Board of Commissioners agreed that "it cannot be denied that the Mound clients were damaged or prejudiced by Respondent's actions." Board Recommendation of December 12, 2013, pg. 10.

The Mound clients entrusted \$21,875.00 with Mr. Scaccia for expenses of suit. Mr. Scaccia spent all the money. He can however, only document how \$4,716.66 of the expense funds were spent. The money had been in a trust account of Mr. Scaccia's. Where the remaining \$17,158.34 went is not documented, or in fact known. Mr. Scaccia testified he used the funds for various expenses and reimbursed himself. Yet no receipts, no cancelled checks exist evidencing such expenses. Where did the client money go?

Mr. Scaccia also abused his responsibility in other ways during this period regarding his trust account. In 2006, he wrote two checks from that account for his children's summer camp, another check to his wife and perhaps ironically, two checks to the Dayton Bar Association, one for dues and one for a CLE seminar. In 2008, he comingled his personal funds in his trust account when he deposited \$3,300.00 and then wrote \$300.00 checks from that account to eleven of the Mound clients. Then in 2010, Mr. Scaccia deposited \$1,500.00 of personal funds into his

trust account, then sending a trust account check in that amount to a Mound client. And throughout this period of 2007 through 2010, Mr. Scaccia kept money in his trust account which was his, had not been withdrawn from that account when earned and which he labeled as "surplus". Another term for Mr. Scaccia's "surplus" is comingled funds.

As the Board of Commissioners report states, after the Panel hearing in October 2012 on the Mound Case, Relator filed another case against Mr. Scaccia in early 2013. The 2013 filing was consolidated with the 2012 case, by agreement of all involved. This 2013 matter were grievances expressed by two former clients of Mr. Scaccia, Kimberly Grider and Jason Willis. The hearing on the matters was held July 30, 2013.

Kimberly Grider and Mr. Scaccia entered into a written attorney-client contract on July 27, 2010. Ms. Grider paid \$2,000.00 to Mr. Scaccia, which the contract, prepared by Mr. Scaccia, designated as a "flat, non-refundable fee". On March 20, 2012, Ms. Grider terminated Mr. Scaccia as her lawyer, and asked for an accounting of the funds she had paid him. No accounting was ever provided. The \$2,000.00 fee Ms. Grider paid to Mr. Scaccia was placed by him in his law office operating account and not his trust account. Nothing in the contract referenced Mr. Scaccia advising his client, Ms. Grider, that she might be entitled to a refund. The Panel, as stated in the Board of Commissioners Recommendation, did "not accept Respondent's position that the word 'non-refundable' was inserted as an error in the fee agreement." Board of Commissioners Recommendation, pg. 14.

Jason Willis and John Scaccia entered into an oral attorney-client contract on April 15, 2011. Mr. Willis was then incarcerated in an Ohio Prison. Mr. Willis paid Mr. Scaccia \$2,500.00, which Mr. Scaccia deposited in his law office operating account and not his trust

account. The Panel did “not accept Respondent’s explanation that at the time Willis paid \$2,500.00 the fee had already been earned”. Board of Commissioners Report, pg. 18.

The Hearing Panel in these matters found, and the Board of Commissioners agreed as contained in their Recommendation, that Mr. Scaccia had violated the following;

Mound Case:

- DR6-101 - Failing to Act Competently, including neglecting a matter entrusted to him.
- DR9-102(B)(3) - Failing to maintain complete records of client funds.
- Prof. Cond.
Rule 1.15(a)(2) - Failing to keep a record of client funds held in trust.
- Prof. Cond.
Rule 1.15(a)(3) - Failing to maintain a record for each bank account with client funds.
- Prof. Cond.
Rule 1.15(a)(4) - Failing to maintain bank statements, deposit slips, etc. for trust account.
- Prof. Cond.
Rule 1.15(a)(2); Prof. Cond. Rule 1.15(a)(3); Prof. Cond. Rule 1.15(a)(4) –
By failing to maintain client and bank records for the years 2007, 2008, 2009 and 2010.

Kimberly Grider Matter:

- Prof. Cond.
Rule 1.5(d)(3) - Charging a non-refundable fee without referencing a possible refund.
- Prof. Cond.
Rule 1.15(a)&(c) - Failing to deposit client funds in a trust account.

Jason Willis Matter:

Prof. Cond.

Rule 1.15(a)&(c) - Failing to deposit client funds in a trust account.

Mr. Scaccia does not dispute the factual findings contained in the Board of Commissioner's Recommendation. His position appears to be that his actions were not serious enough to require this Court issuing an actual suspension of practice. Mishandling of client funds in regard to a lawyer's trust account have resulted in more severe sanctions for attorneys. *Columbus Bar Assn. v. King*, 132 Ohio St. 3d 501, 2012-Ohio-873 (two year suspension); *Disciplinary Counsel v. Leksan*, 136 Ohio St. 3d 85, 2013-Ohio-2415 (indefinite suspension). There were of course other matters at work in both *King* and *Leksan*. Just as there are other matters at work involving the case of Mr. Scaccia.

Mr. Scaccia just didn't miss one filing deadline causing the Mound clients to have their case dismissed. Mr. Scaccia's missed filing was just one of a long list of rules violations and ignoring of court orders that comprised his conduct throughout the Mound Case. Mr. Scaccia also spent \$17,000.00 of his client's money and cannot account for how or where he spent it. Mr. Scaccia failed for four years, 2007 through 2010, to properly maintain his trust account records. And during this time he used that trust account to pay personal expenses, while comingling his funds with his client's funds. Mr. Scaccia had a printed lawyer-client fee contract that provided the client would pay a "flat, non-refundable fee", with no provision for repaying the client for work not done. And Mr. Scaccia accepted fees not once, but twice before doing any work on either case, and deposited those unearned fees in an operating, not a trust, account.

Relator, Dayton Bar Association, requests this Court approve the Board of Commissioners on Grievances and Discipline Recommendation of December 12, 2013 and suspend Respondent John J. Scaccia for one year with six months stayed.

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 28th day of January, 2014, upon the following:

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