

ORIGINAL

14-0967

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

FILED  
JUN 09 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**In re:** :  
**Complaint against** : **Case No. 2013-033**  
**Jason Daniel Seabury** : **Findings of Fact,**  
**Attorney Reg. No. 0069413** : **Conclusions of Law, and**  
**Respondent** : **Recommendation of the**  
: **Board of Commissioners on**  
**Disciplinary Counsel** : **Grievances and Discipline of**  
: **the Supreme Court of Ohio**  
**Relator** :  
:

OVERVIEW

{¶1} This matter was heard on December 20, 2013, in Columbus before a panel consisting of Sanford E. Watson, Alvin R. Bell, and David E. Tschantz, 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} Respondent appeared pro se. Stacy Solochek Beckman appeared on behalf of Relator.

{¶3} The parties submitted stipulations and waived the formal hearing on this matter, with the exception of the presentation of mitigation evidence by Respondent.

{¶4} Respondent was charged in the complaint with the following violations: Prof. Cond. R. 1.15(b) [a lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges]; Prof. Cond. R. 1.15(c) [a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in

advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on fitness to practice law].

{¶5} At the beginning of the hearing, Relator withdrew Prof. Cond. R. 8.4(h).

{¶6} At the conclusion of the hearing, and without objection from Relator, the panel chair ordered the record held open to permit Respondent to submit additional written mitigating evidence, and the parties were asked to submit their closing arguments and recommendations for appropriate sanction.

{¶7} In the closing argument brief, Relator withdrew Prof. Cond. R. 1.15(b).

{¶8} Despite being given almost three weeks after the hearing, without objection from Relator, to submit additional mitigating evidence, and even after asking for and receiving an extension of time of over two months in which to do so, Respondent failed to submit any mitigating evidence and likewise failed to submit closing arguments.

{¶9} Respondent did stipulate that his conduct violated the remaining rules as charged. The panel finds that the stipulated conduct supports the stipulated violations and, accordingly, finds that Relator proved said violations by clear and convincing evidence.

{¶10} Based on the above, the stipulations of the parties concerning matters in mitigation and aggravation, case precedents established by the Supreme Court of Ohio, and the recommendation of the parties, the panel recommends the imposition of a two-year suspension, with the final year stayed, with reinstatement only upon fulfillment of certain conditions.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶11} Respondent was admitted to the practice of law in the state of Ohio on November 9, 1998 and is subject to the Rules of Professional Conduct and Rules for the Government of the Bar of Ohio.

{¶12} On May 3, 2012, Respondent reported to Relator that he had withdrawn client funds totaling \$14,888 from his IOLTA account on ten occasions in the three-month period from October 2010 through January 2011 for personal use, without having earned the funds or incurred appropriate expenses. Stipulations ¶¶4, 6.

{¶13} Respondent, prior to his report to Relator and not certain of the total amount he had withdrawn, deposited \$20,000 of his own money into said IOLTA account for the purpose of ensuring that he had restored the funds he had taken. After said report, Respondent withdrew \$5,000 from his IOLTA account when it became clear that he had fully repaid the funds taken and that this amount was unquestionably in excess of the amount improperly withdrawn. Stipulation ¶5.

{¶14} Because Respondent replaced the funds he had improperly withdrawn, had he not reported his conduct to Relator said conduct would not have come to light. Hearing Tr. 15.

{¶15} Respondent has stipulated to the violations alleged in the complaint. Stipulations ¶¶2-3.

{¶16} At the hearing, Relator withdrew the Prof. Cond. R. 8.4(h) violation. Hearing Tr. 8.

{¶17} Based on the stipulated facts set forth in ¶10 of this report, Relator, in the closing brief, withdrew its allegation of Prof. Cond. R. 1.15(b).

{¶18} Based on the stipulated conduct, and the violations stipulated by the parties, the panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.15(c) and Prof. Cond. R. 8.4(c). The hearing panel dismisses the alleged violations of Prof. Cond. R. 1.15(b) and 8.4(h).

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

{¶19} With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in BCGD Proc. Reg. 10(B)(1), the panel finds by clear and convincing evidence that Respondent has engaged in a pattern of misconduct and acted with a dishonest and selfish motive.

{¶20} With regard to the factors in mitigation that may be considered in favor of a less severe sanction for professional misconduct listed in BCGD Proc. Reg. 10(B)(2), the panel finds by clear and convincing evidence that Respondent has no prior disciplinary record, cooperated with Relator's investigation and the subsequent disciplinary proceedings against him, and has made restitution in full.

{¶21} Respondent also submitted evidence that he is a recovering alcoholic and that his date of sobriety is March 5, 2011. Stipulation Ex. 6. The panel was impressed by his testimony that his misappropriation of client funds was due to his alcoholism and his decision to self-report his misconduct to Relator was an important part of his recovery. Hearing Tr. 15. Respondent testified that he has had no relapses since his date of sobriety and that he has been a party to a recovery contract with OLAP since March 14, 2011. Hearing Tr. 16, 17; Stipulation Ex. 7.

{¶22} However as argued by Relator, the panel cannot consider Respondent's alcoholism as a mitigating factor. Respondent did not present anything other than his own testimony with regard to this issue. Respondent did not present evidence of a diagnosis by a

qualified health care professional of alcoholism and he did not present evidence of the successful completion of an approved treatment program or a prognosis from a qualified health care professional or alcohol/substance abuse counselor that he can return to the competent, ethical, and professional practice of law. Therefore, the evidence presented does not meet the factors set forth in BCGD Proc. Reg. 10(B)(2) that must be met in that regard.

{¶23} In addition, the panel was troubled by Respondent's testimony that "I am not as compliant with OLAP as I should be." Hearing Tr. 24. Respondent stated that he doesn't know why he is not fully compliant, but that he believes that he "doesn't need to be" fully compliant and that he "reaches out [to OLAP] when he feels at risk." Hearing Tr. 25.

{¶24} The panel was further troubled by Respondent's failure to submit any additional evidence in mitigation or closing arguments, after being given permission to do so at the hearing, and even after asking for and receiving an extension of time, which was granted on January 30, 2014, and imposed a deadline of March 18, 2014.

{¶25} Finally, Relator observed and Respondent admitted at the hearing that Respondent was not as responsive to Relator's investigation and attempts to craft a consent-to-discipline agreement and stipulations as he should have been. Hearing Tr. 26, 27. The panel concurs, given that it was provided with the stipulations of the parties on the morning of the hearing. Respondent attributed this nonresponsiveness to "anxiety." *Id.*

{¶26} The panel understands the anxiety felt by Respondent concerning the proceedings against him, but is of the opinion that this does not excuse his lack of responsiveness to Relator. The panel is also troubled by Respondent's lack of desire to be in full compliance with the terms of his OLAP contract. While the panel declines to find these concerns as aggravating factors, we do find that they have a bearing on his ability to practice law in a competent and ethical manner.

{¶27} The parties requested at the hearing and were granted the option of briefing their closing arguments and recommendations for sanction.

{¶28} In the closing brief, Relator withdrew its allegation of Prof. Cond. R. 1.15(b) and recommended the sanction of a two-year suspension, with reinstatement only upon the condition that he demonstrate full compliance with his OLAP contract and the completion of any treatment required therein.

{¶29} Respondent failed to file a closing brief.

{¶30} The panel reviewed Relator's recommendation on sanction in light of the findings of fact, conclusions of law, factors in mitigation/aggravation, and precedent established by the Supreme Court of Ohio.

{¶31} With regard to precedent established by the Supreme Court of Ohio, the panel reviewed *Disciplinary Counsel v. Zapor*, 127 Ohio St.3d 372, 2010-Ohio-5769 in which the respondent received an indefinite suspension after he was convicted of a felony theft charge for misappropriating, as a court-appointed guardian, \$20,000 of his ward's funds over a period of eighteen months. In that disciplinary case, the Court cited the absence of a prior disciplinary record, the payment of restitution, a cooperative attitude, and the imposition of other penalties as mitigating factors. Also in that case, the respondent attempted to introduce evidence of alcohol abuse as a mitigating factor, but the Court declined to consider it for reasons which included the fact that the respondent had not established that he had successfully completed a treatment program or a professional prognosis that he would be able to return to the competent and ethical practice of law.

{¶32} The panel also reviewed the case of *Disciplinary Counsel v. Leksan*, 136 Ohio St.3d 85, 2013-Ohio-2415. In that case, the respondent misappropriated almost \$90,000 of his

client's funds over a period exceeding two and one-half years, was found in violation of the Rules of Professional Conduct on 22 occasions, and was suspended indefinitely by the Court. In that case, evidence was introduced showing that the respondent battled long-term depression and a gambling addiction.

{¶33} The panel agrees with Relator that this case is distinguishable from the above-cited cases in view of Respondent's self-report, relatively short period in which the violations occurred, absence of criminal charges, and the relatively small number of violations.

{¶34} However, the panel is convinced that Respondent should not be permitted to practice law until he is able to present evidence to a panel of the Board and the Court that he is able to engage in the competent and ethical practice of law and has dealt effectively with his alcoholism. The panel recognizes that requiring Respondent to petition for reinstatement after a two-year suspension, as recommended by Relator, is tantamount to an indefinite suspension, but the panel does not believe that an indefinite suspension is appropriate in this case due to the mitigating factors. However, the panel is convinced that it is necessary that Respondent submit to the more rigorous requirement of a reinstatement proceeding before the Board and the Court to ensure that Respondent has effectively addressed the alcoholism that gave rise to his misconduct and thus satisfy the paramount concern of protection of the public.

{¶35} In light of the above considerations and the Court's rulings cited in the above cases, the panel unanimously recommends that Respondent be suspended from the practice of law for two years, with one year stayed but with reinstatement only upon petition of Respondent and conditioned upon a showing that Respondent is in full compliance with his contract with the Ohio Lawyer's Assistance Program and has completed all courses of treatment required by said contract or other qualified health care professional.

## **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 June 6, 2014. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Jason Daniel Seabury, be suspended from the practice of law in Ohio for two years, with one year stayed. Respondent shall be required to petition for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 10(B)-(D), with his reinstatement subject to all of the following conditions: (1) compliance with the requirements of Gov. Bar R. V, Section 10(E); (2) a showing that he is in full compliance with his contract with the Ohio Lawyer's Assistance Program; and (3) a showing that he has completed all courses of treatment required by the OLAP contract or recommended by a qualified health care professional. 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