

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

ORIGINAL

In re: : 14-1404

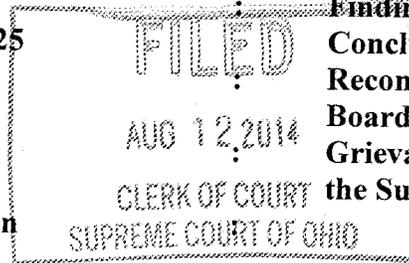
Complaint against : Case No. 2013-059

Beverly J. Corner
Attorney Reg. No. 0042725

Respondent

Disciplinary Counsel and
Columbus Bar Association

Co-Relators



Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

OVERVIEW

{¶1} This matter was heard on April 22, 2014, in Columbus before a panel consisting of Keith Sommer, Robert Gresham, and Lawrence A. Sutter, chair. Commissioner Gresham did not attend the hearing, but reviewed the transcript post hearing. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Respondent was present and represented by Alvin Matthews, Jr. Karen H. Osmond appeared on behalf of Disciplinary Counsel. Robert Morje appeared on behalf of Columbus Bar Association.

{¶3} This matter commenced as a three-count complaint filed by Relator-Disciplinary Counsel in November 2014. Approximately six weeks prior to the scheduled hearing, the Board received a new complaint filed by Relator-Columbus Bar Association that alleged additional rule violations arising from Respondent's representation of Tonya Packer. BCGD Case No. 2014-

022. Upon motion of co-Relators and with the consent of Respondent, the Board chair consolidated the two cases for hearing under BCGD Case No. 2013-059.

{¶4} Based upon the parties' stipulations and other evidence at the hearing, the panel concludes that Relator has established multiple violations by clear and convincing evidence.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to practice law in the state of Ohio on November 6, 1989 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

ODC Complaint, Count One—Failure to Keep Required IOLTA Records

{¶6} Prior to November 15, 2010, Respondent maintained client funds in a nontrust account at PNC Bank, account no. XXXXXX4488. Respondent was under the mistaken impression that this account was an IOLTA; however, Respondent did not treat this account as an IOLTA, *i.e.* she deposited earned fees into the account, paid personal and business expenses from the account, and commingled personal and client funds in the account.

{¶7} On November 15, 2010, Respondent opened an IOLTA at PNC Bank, account no. XXXXXX5822.

{¶8} On or about March 7, 2011, Respondent overdrew her IOLTA at PNC Bank.

{¶9} As a result of this overdraft, Relator-Disciplinary Counsel initiated an investigation of Respondent's IOLTA. During the investigation, it became clear that Respondent was not managing her IOLTA in a manner consistent with Prof. Cond. R. 1.15, *i.e.* she was depositing earned fees in her IOLTA, she was failing to maintain proper records of client funds in her possession, she was paying client expenses from the account without having first received

and/or deposited supporting funds from her clients, and she was withdrawing earned fees from the account on an “as needed” rather than “as earned” basis.

{¶10} Over the course of a seven-month investigation, which involved the exchange of several letters and phone calls with Respondent, Relator-Disciplinary Counsel advised Respondent of proper IOLTA management techniques, including but not limited to the following:

- Client Ledgers and General Ledgers, i.e. what information each ledger had to contain and how each ledger worked with each other;
- Respondent’s obligation to perform a monthly reconciliation of her IOLTA;
- Respondent’s obligation to withdraw attorney fees from her IOLTA as earned rather than as needed;
- Respondent’s obligation to ensure that she has received *and* deposited supporting funds from a client into her IOLTA prior to paying any expenses on behalf of that client from her IOLTA; and
- Respondent’s obligation to use her business/operating account to advance client expenses for which she has not received supporting funds.

{¶11} By the end of Relator-Disciplinary Counsel’s investigation in November 2011, Respondent assured Relator-Disciplinary Counsel that she understood her Prof. Cond. R. 1.15 obligations and would maintain her IOLTA in a manner consistent with those obligations, including but not limited to, maintaining client and general ledgers, not advancing fees from her IOLTA, and not withdrawing fees before they were earned.

{¶12} In addition, Respondent assured Relator-Disciplinary Counsel that both she and her bookkeeper would be attending a continuing legal education (CLE) seminar at the Columbus Bar Association on November 30, 2011 regarding the “nuts and bolts” of IOLTA management.

{¶13} As a result of Respondent’s assurances, i.e. that she knew how to properly manage her IOLTA and that she would be attending an IOLTA CLE, Relator-Disciplinary Counsel terminated its investigation of Respondent on November 29, 2011.

{¶14} On November 30, 2011, Respondent and her bookkeeper attended an IOLTA seminar at the Columbus Bar Association, which was taught in part by former Disciplinary Counsel Jonathan E. Coughlan and a paralegal from the Office of Disciplinary Counsel, Heath

A. Rambo. The following topics were covered at the seminar:

- Trust account requirements;
- Funds belonging in a trust account;
- Reconciliation requirements and how to reconcile your account;
- Common errors and violations;
- Delegation of trust account responsibilities;
- How to set up client ledgers; and
- How to set up a general ledger.

{¶15} On July 13, 2012 and July 17, 2012, Respondent overdrew her IOLTA at PNC bank.

{¶16} As a result of these overdrafts, Relator-Disciplinary Counsel initiated a second investigation of Respondent's IOLTA. During the investigation, it was determined that despite the previous investigation and her attendance at an IOLTA CLE, Respondent was still mishandling client funds and still not managing her IOLTA in a manner consistent with Prof. Cond. R. 1.15.

{¶17} Specifically, between January 2012 and May 2013:

- Respondent failed to maintain client ledgers or a general ledger of client funds in her possession that were consistent with Prof. Cond. R. 1.15;
- Respondent withdrew funds from her IOLTA on an "as-needed" basis rather than on an "as-earned" basis oftentimes leaving earned fees in her IOLTA or causing a shortage of client funds in her IOLTA;
- Respondent used funds from her IOLTA to pay expenses on behalf of clients without first receiving funds from her clients and/or without first depositing funds that she had received from clients into her IOLTA; and
- Respondent failed to reconcile her IOLTA on a monthly basis.

{¶18} Respondent stipulates that her conduct in Count One of the complaint filed by Relator-Disciplinary Counsel violates the following:

- Prof. Cond. R. 1.15(a) [a lawyer shall keep client funds in an interest-bearing trust account separate from the lawyer's own property];
- Prof. Cond. R. 1.15(a)(2) [a lawyer shall maintain a record for each client that sets forth the name of the client; the date, amount, and source of all funds received on behalf of the client; the date, amount, payee, and purpose of each disbursement made on behalf of the client; and the current balance for each client];
- Prof. Cond. R. 1.15(a)(3) [a lawyer shall maintain a record for each bank account that sets forth the name of the account; the date, amount, and client affected by each credit and debit; and the balance in the account]; and
- Prof. Cond. R. 1.15(a)(5) [a lawyer shall perform a monthly reconciliation of the lawyer's IOLTA and related documents].

ODC Complaint, Count Two –Misappropriation of Client Funds

{¶19} Respondent has misappropriated funds belonging to clients or third parties on at least eight occasions as described below.

William and Allene McCoy

{¶20} On November 25, 2008, William and Allene McCoy retained Respondent to represent them in a personal injury matter.

{¶21} Respondent agreed to represent the McCoy's on a 1/3 contingency fee basis; however, Respondent's fee was to be based on the McCoy's net settlement, *i.e.* gross settlement minus filing fees, medical bills, etc.

{¶22} On April 14, 2010, the McCoy's agreed to settle their personal injury matter for \$12,000.

{¶23} On or about April 27, 2010, Respondent deposited a \$12,000 settlement check from Auto Owners Insurance, which represented the settlement proceeds for the McCoy's, into her business account (XXXXXX4488).

{¶24} Pursuant to Respondent's fee agreement with the McCoy's, the \$12,000 should have been disbursed as follows:

Gross Settlement	\$12,000
Expenses/Liens	- \$2,944
<i>Axis Chiropractic (\$2,719)</i>	
<i>Filing Fees (\$225)</i>	
Net Settlement	\$9,056
Minus (-) Attorney Fees (1/3)	\$3,018.66
McCoy Disbursement	\$6,037.34

{¶25} Respondent did not disburse the McCoy settlement pursuant to the above table.

{¶26} Instead, Respondent based her 1/3 contingency fee on the McCoy's gross settlement rather than the net settlement.

{¶27} Accordingly, in or about May 2010, Respondent determined that the McCoy's were due \$4,796 of the \$12,000 settlement.

{¶28} Although Respondent had determined in May 2010 that the McCoy's were due \$4,796, she did not disburse any funds to the McCoy's at that time.

{¶29} Instead, Respondent used the McCoy's settlement funds to pay personal or business expenses and/or to pay the obligations of other clients. By May 28, 2010, the balance in Respondent's business account was only \$1,385.39. By June 30, 2010, the balance in Respondent's business account was only \$49.84.

{¶30} As noted above, on November 15, 2010, Respondent opened an IOLTA at PNC Bank. By this time, Respondent had already misappropriated funds belonging to the McCoy's. Accordingly, she did not transfer any funds belonging to the McCoy's into her IOLTA.

{¶31} Respondent did not begin disbursing settlement funds to the McCoy's until January 2011 because she did not have the necessary funds until that time. Even then,

Respondent disbursed the McCoys' settlement funds in parts because she did not have enough funds to distribute the entire settlement amount due to the McCoys at one time.

{¶32} Pursuant to her calculations, Respondent disbursed \$4,796 to the McCoys as follows: \$1,400 in January 2011, \$1,300 in March 2011, and \$2,096 in April 2011.

{¶33} Sometime after April 2011 and before July 14, 2011, it was determined that the McCoys were owed additional funds from their settlement.

{¶34} On July 14, 2011, Respondent entered into an agreement with the McCoys whereby she agreed to pay them a total of \$5,695 from their settlement plus 15 percent interest in the amount of \$854.25 for a total of \$6,549.25.

{¶35} On July 14, 2011, the day the agreement was entered into, Respondent paid the McCoys an additional \$1,100 and she agreed to pay them the remaining \$653.25 in \$200 monthly installments starting September 15, 2011.

{¶36} To the best of Relator-Disciplinary Counsel's knowledge, Respondent has paid the McCoys in full.

Shannon Smoot

{¶37} On or about March 1, 2010, Shannon Smoot retained Respondent to represent him in a personal injury matter. Respondent agreed to represent Smoot on a 33 percent contingency fee basis.

{¶38} Respondent retained Attorney Kristin J. Bryant to assist her with Smoot's case. Respondent orally agreed to pay Bryant 1/3 of her fee in the *Smoot* case.

{¶39} Although Smoot was aware that both Respondent and Bryant were working on his case, Respondent did not obtain Smoot's written consent to share fees with Bryant pursuant to Prof. Cond. R. 1.5(e).

{¶40} In or about November 2010, Smoot agreed to settle his personal injury matter for \$3,250. At the time, Smoot owed \$1,231 to the Ohio State University Hospital and \$294 to OSU Physicians for medical services performed in connection with his personal injury matter.

{¶41} On or about November 26, 2010, Progressive Insurance sent Respondent a check for \$3,250, which represented the proceeds of Smoot's personal injury matter.

{¶42} Respondent deposited this check into her IOLTA on December 3, 2010.

{¶43} On Respondent's settlement disbursement sheet, Respondent incorrectly noted that Smoot's settlement was \$3,520, not \$3,250.

{¶44} Using this incorrect figure, Respondent calculated her attorney fees to be \$1,173.34 and Bryant's share of her fees to be \$391.11.

{¶45} On Respondent's disbursement sheet, Respondent also incorrectly noted that Smoot owed OSU Physicians \$240 instead of the \$294 that Smoot actually owed.

{¶46} Using the incorrect figures on her disbursement sheet, Respondent calculated Smoot's share of the settlement to be \$875.66, which she disbursed to Smoot on or about December 21, 2010.

{¶47} On or about December 21, 2010, Respondent also disbursed \$391.11 to Bryant for her services in the *Smoot* case.

{¶48} Respondent kept the remainder of Smoot's settlement for her attorney fees and to pay Smoot's Ohio State University Hospital and OSU Physicians medical bills.

{¶49} Despite having received funds to do so, Respondent did not pay Smoot's OSU Physicians bill until April 27, 2011. Respondent did not pay Smoot's OSU Hospital bill until on or about June 27, 2012, and only then after the Ohio Attorney General (on behalf of the Ohio State University) had filed a lawsuit against Smoot for nonpayment of his medical bill.

{¶50} Instead, Respondent used funds set aside for Smoot's medical bills to pay personal or business expenses and/or to satisfy obligations on behalf of other clients.

{¶51} Between December 3, 2010 and June 27, 2012, Respondent should have had at least \$1,231 in trust at all times, but she did not. By December 31, 2010, less than one month after she had deposited Smoot's settlement proceeds into her IOLTA, the balance in Respondent's IOLTA was only \$317.53. By January 21, 2011, the balance in Respondent's IOLTA was only \$130.69, and by February 18, 2011, the balance in Respondent's IOLTA was only \$14.

Donna Denney

{¶52} Respondent is currently representing Donna Denney in a personal injury matter for a 25 percent contingency fee.

{¶53} Between March 2011 and June 2011, Respondent received a total of \$5,826.53 on behalf of Denney. Specifically, on or about March 16, 2011, Respondent received three checks from Geico Casualty Insurance Company totaling \$5,326.53 and on or about July 18, 2011 she received an additional \$500 check from Geico on behalf of Denney.

{¶54} The funds that Respondent received from Geico on behalf of Denney were for the purpose of paying or negotiating Denney's outstanding medical bills with EMPI, Inc. and NovaCare and should have been held in trust pending payment of Denney's medical bills.

{¶55} Respondent deposited the three checks totaling \$5,326.53 into her IOLTA on March 16, 2011; however, she deposited the \$500 check into her business account on July 18, 2011.

{¶56} Over the course of her representation, Respondent was able to successfully negotiate Denney's EMPI, Inc. invoice from \$1,811.48 to \$1,126.53. Similarly, she was able to

negotiate Denney's NovaCare invoice from \$7,815 to \$4,700. The negotiated total of these two bills was \$5,826.53, which is the exact amount that Respondent received from Geico on behalf of Denney.

{¶57} Respondent did not pay EMPI, Inc. until on or about August 14, 2013 and she did not pay NovaCare until on or about September 13, 2013.

{¶58} Between the time that Respondent received funds from Geico on behalf of Denney (March and June 2011) and the time that she paid Denney's medical bills (August and September 2013), Respondent should have had Denney's funds in trust, but she did not.

{¶59} With regard to the \$5,326.53 that Respondent deposited into her IOLTA in March 2011, a majority of these funds had been expended by June 30, 2011 as a result of Respondent's withdrawal of funds from her IOLTA to pay personal or business expenses and/or Respondent's use of funds in her IOLTA to pay obligations on behalf of other clients, including, but not limited to, the second \$1,300 installment payment to William and Allene McCoy. By March 31, 2011, the balance in Respondent's IOLTA was only \$3,159.78. By April 29, 2011, the balance in Respondent's IOLTA was only \$1,040.09 and by June 30, 2011 the balance in Respondent's IOLTA was only \$94.24.

{¶60} With regard to the \$500 that Respondent deposited into her business account on July 18, 2011, all of these funds had been used by July 29, 2011. Specifically, after depositing the \$500 check from Geico into her business account, Respondent began using the funds in her business account to pay personal and business expenses. By July 29, 2011, the balance in Respondent's business account was a negative \$650.66.

Meredith Rogan

{¶61} On May 11, 2011, Respondent deposited a check for \$2,986.47 into her IOLTA on behalf of Meredith Rogan. This check represented the proceeds of a property damage settlement that Respondent had obtained for Rogan.

{¶62} Of the \$2,986.47, Rogan was entitled to \$2,780.93.

{¶63} Shortly after depositing the \$2,986.47 into her IOLTA, Respondent began withdrawing funds from her IOLTA, including a \$2,200 withdrawal on May 13, 2011 and a \$1,600 check to herself on May 27, 2011. By May 31, 2011, the balance in Respondent's IOLTA was only \$1,776.34.

{¶64} During June 2011, Respondent continued to withdraw funds from her IOLTA, including but not limited to, a \$700 withdrawal on June 1, 2011, a \$200 check to herself on June 2, 2011, and a \$700 check to herself on June 11, 2011. By June 13, 2011, the balance in Respondent's IOLTA was only \$164.24.

{¶65} On or about June 6, 2011, Rogan contacted Respondent regarding her property damage claim.

{¶66} On June 15, 2011, Respondent wrote a letter to Rogan and informed her that she had received a check on behalf of Rogan on May 9, 2011 and she implied that the check had been deposited into her IOLTA. Respondent falsely stated, however, that since June 6, 2011 she had "been unable to write checks on the account due to the account being compromised." She further falsely stated that the bank had informed her that all funds will be available after June 30, 2011 and that a check will be issued to Rogan "once the bank matter has been reconciled." Near the end of her letter, Respondent apologized for the "inconvenience regarding [her] bank institution."

{¶67} On or about July 14, 2011, Respondent issued a \$2,780.93 check to Rogan from her business operating account.

Marvin Dennis

{¶68} On May 13, 2011, Respondent deposited a check for \$2,439.27 into her IOLTA. This check represented the proceeds of a personal injury settlement that Respondent had obtained on behalf of her client, Marvin Dennis.

{¶69} Of the \$2,439.27, Dennis was entitled to \$1,519.27.

{¶70} Due to purported health problems, Dennis did not sign the settlement distribution sheet until February 2, 2012.

{¶71} At the time that Dennis signed the settlement distribution sheet, Respondent was unable to provide Dennis with his share of the settlement proceeds because she had already misappropriated Dennis's funds.

{¶72} As of February 2, 2012, the balance in Respondent's IOLTA was only \$14.24. Moreover, the balance in Respondent's IOLTA had been less than the \$1,519.27 that she should have been holding in trust for Dennis since June 2, 2011, approximately three weeks after she deposited Dennis's settlement proceeds into her trust account.

{¶73} Respondent did not disburse Dennis's settlement proceeds to him until June 27, 2012. When she disbursed the settlement proceeds, Respondent did so using earned fees that she had left in her IOLTA from another client's personal injury settlement.

Demetra Canon

{¶74} Sometime during the late spring or summer 2011, Respondent began providing legal services to Demetra Canon regarding a custody matter.

{¶75} On November 8, 2011, Respondent formally opened a file on Canon's legal matter and began charging Canon for her services at the rate of \$85 per hour.

{¶76} On January 31, 2012, Respondent formalized her attorney/client relationship with Canon by entering into a fee agreement with Canon.

{¶77} Per the fee agreement, Canon was to pay a \$750 retainer, which she paid that same day.

{¶78} On January 31, 2012, Respondent deposited the entire \$750 from Canon into her business operating account even though she had only performed \$120.42 worth of services on behalf of Canon at the time she received the \$750 from Canon.

{¶79} On February 1, 2012, Respondent withdrew \$820 from her business operating account, including the \$750 from Canon, leaving only \$91.62 in her operating account.

Respondent did not transfer any portion of this withdrawal to her IOLTA.

{¶80} As of February 6, 2012, the balance in Respondent's operating account was a negative \$10.95. As of this same date, Respondent had only performed \$269.15 worth of services on behalf of Canon.

Alida Powell

{¶81} On or about March 2, 2012, Respondent began representing Alida Powell in a custody matter.

{¶82} Respondent required Powell to pay \$750 up front, which according to Respondent's fee agreement was to be billed against at the rate of \$200 per hour. Respondent actually charged Powell \$175 per hour.

{¶83} On or about March 5, 2012, Karen Taylor paid Respondent \$750 on behalf of Powell.

{¶84} Rather than holding the funds from Taylor in trust for Powell, on March 6, 2012 Respondent deposited the entire \$750 check into her business operating account even though she had only performed \$43.75 worth of services on behalf of Powell at the time she received the check from Taylor.

{¶85} After depositing the \$750 into her operating account, Respondent proceeded to use Powell's funds for various business and personal expenses.

{¶86} As of March 19, 2012, the balance in Respondent's operating account was a negative \$4.73. As of this same date, Respondent had still only performed \$43.75 of services on behalf of Powell.

Antonio Sledge

{¶87} Respondent represented Antonio Sledge in a personal injury matter.

{¶88} In or about June 2012, Sledge agreed to settle his personal injury matter for \$59,000.

{¶89} On June 22, 2012, Respondent deposited a check for \$57,511.15 into her IOLTA. This check represented the proceeds of Sledge's personal injury settlement minus \$1,488.85 that had been paid directly to the Ohio Department of Job and Family Services.

{¶90} Per Respondent's distribution sheet, the \$57,511.15 was to be disbursed as follows:

- \$36,936.61 to Sledge;
- \$19,666.67 to Respondent for attorney fees; and
- \$907.87 to Respondent for expenses that Respondent had purportedly advanced on behalf of Sledge and/or agreed to pay on his behalf with settlement funds.

{¶91} On or about June 27, 2012, Respondent issued a check to Sledge for \$36,936.61. She also began withdrawing earned attorney fees and expenses from her IOLTA; however, she

did not withdraw all her earned fees and expenses at one time, nor did she withdraw the exact amount of her earned fees and expenses.

{¶92} Between June 26, 2012 and July 31, 2012, Respondent withdrew \$17,985 from her IOLTA for what appears to be attorney fees and expenses related to the *Sledge* case. She used the remainder of her earned fees and expenses to pay financial obligations on behalf of other clients. By July 31, 2012, the balance in Respondent's IOLTA was only \$29.59.

{¶93} Among other things, the \$907.87 that Respondent received to pay Sledge's expenses included three Healthport invoices for medical records for \$28.89, \$110.62, and \$26.04.

{¶94} Although Respondent received funds to pay these invoices, she did not pay the Healthport invoices for \$26.04 and \$110.62 until January 2013 and only then after the invoices had been referred for collection. Respondent did not pay the invoice for \$28.89 until July 2013 and only then after the invoice had been referred for collection.

{¶95} The \$907.87 also included an invoice from Dr. James C. Latshaw for \$350. On or about June 27, 2012, Respondent wrote a check from her IOLTA to Dr. Latshaw for \$350; however, when Dr. Latshaw and/or his staff attempted to negotiate the check on July 17, 2012 the check was returned for insufficient funds.

{¶96} Between June 27, 2012 and July 17, 2012, Respondent should have had at least \$350 in her trust account; however, due to her failure to keep appropriate records of funds in her IOLTA, Respondent did not have these funds in trust.

{¶97} Respondent did not pay Dr. Latshaw for his services until February 27, 2013.

{¶98} Respondent stipulates that her conduct in Count Two of the complaint filed by Relator-Disciplinary Counsel violates the following:

- Prof. Cond. R. 1.5(e) [a lawyer shall obtain written consent from a client to share fees with a lawyer not in the same firm];
- Prof. Cond. R. 1.15(d) [a lawyer shall promptly deliver to the client or third party any funds to which the client or third party are entitled to]; and
- Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

{¶99} Relator has agreed to recommend dismissal of Prof. Cond. R. 8.4(h).

ODC Complaint, Count Three—Floyd Evans Matter

{¶100} Floyd Evans was employed as a driving instructor by the Columbus Driving Academy.

{¶101} On July 1, 2010, Evans was teaching a student how to drive when another vehicle stuck his car killing the student and injuring Evans.

{¶102} On July 2, 2010, Evans retained Attorney Michael Gertner to represent him for a 30 percent contingency fee. After Gertner had worked on the case, Evans terminated Gertner's representation and retained Respondent to represent him also for a 30 percent contingency fee. Evans retained Respondent on June 2, 2011.

{¶103} After learning that Evans had retained Respondent, Gertner contacted Respondent and advised Respondent that he had a lien for \$11,133.49 on Evans' settlement proceeds for services that he had previously provided to Evans.

{¶104} Respondent disputed Gertner's services, but ultimately agreed to pay him \$9,333.49 for services rendered to Evans.

{¶105} In total, Evans' personal injury matter settled for \$145,000 – \$65,000 from Evans' employer and \$80,000 from the tortfeasor.

{¶106} On December 26, 2011, Respondent deposited a check for \$65,000 from Erie Insurance into her IOLTA. This check represented the portion of Evans' settlement from Evans' employer.

{¶107} On the same day, Respondent distributed \$45,500 to Evans and his wife.

Respondent also wrote a check to herself for \$19,000 for her attorney fees; however, her fees should have been \$19,500. Respondent left the remaining \$500 of her earned fees in her IOLTA thus commingling personal funds and client funds.

{¶108} On February 1, 2013, Respondent deposited a check for \$70,666.51 from Nationwide Insurance into her IOLTA. This check represented the portion of the settlement from the tortfeasor's insurance company minus \$9,333.49 that was paid directly to Gertner for his attorney fees.

{¶109} The \$9,333.49 was paid directly to Gertner with the prior consent of Respondent.

{¶110} At the time that Respondent received the \$70,666.51 settlement, Evans also owed the following to various medical providers:

- \$20,884.95 to Grant Medical Center;
- \$2,505 to Grandview Family Practice;
- \$6,701 to Clinic Medical Services;
- \$4,585 to Roy M. Gottlieb, D.D.S.; and
- \$180 to Ortho Neuro.

{¶111} From the \$70,666.51 settlement, Respondent received \$24,000 in attorney fees and \$100 in expenses. When disbursing the proceeds of the \$70,666.51 to Evans, Respondent did not deduct the \$9,333.49 that had been paid to Gertner from her 30 percent contingency fee. Instead, she took her full 30 percent fee and treated Gertner's attorney fees like any other expense and deducted it from Evans' share of the settlement proceeds.

{¶112} In total, Evans paid \$52,833.49 of his \$145,000 settlement in attorney fees to Respondent and Gertner.

{¶113} Respondent also paid Evans \$14,215.56, which was \$2,505 more than what she believed he was owed due to her failure to include the \$2,505 payment to Grandview Family Practice on her settlement disbursement sheet.

{¶114} With respect to Count Three, the following violations are in dispute:

- Prof. Cond. R. 1.5(a) [prohibiting a lawyer from making an agreement for, charging, or collecting an illegal or clearly excessive fee]; and
- Prof. Cond. R. 1.15(d).

{¶115} Relator has agreed to recommend dismissal of Prof. Cond. R. 8.4(h).

Columbus Bar Association Complaint—Tonya Packer Matter

{¶116} On March 31, 2011, Respondent filed a Chapter 13 bankruptcy on behalf of her client, Tonya Packer, which was assigned to Bankruptcy Judge Charles Caldwell, case number 11-53436.

{¶117} On May 19, 2011, an objection to plan confirmation was filed by the Chapter 13 trustee, outlining numerous deficiencies in the case, including an incorrect social security number.

{¶118} On June 15, 2011, Respondent filed documents to correct the social security number.

{¶119} On June 16, 2011, the court entered the order directing service of notice of amended statement of social security number.

{¶120} On June 29, 2011, the court scheduled a hearing for July 12, 2011 to determine the status of the social security number correction.

{¶121} On June 30, 2011, the Chapter 13 trustee filed an amended objection, reflecting the unaddressed deficiencies in the bankruptcy.

{¶122} On July 12, 2011, the court denied confirmation of the Chapter 13 plan and dismissed the bankruptcy.

{¶123} On July 22, 2011, Respondent filed a motion for reconsideration regarding the court's July 12, 2011 dismissal.

{¶124} On July 25, 2011, Judge Caldwell denied Respondent's motion and ordered Respondent to disgorge all fees paid in the bankruptcy to Packer.

{¶125} On August 8, 2011, Respondent filed a second motion for reconsideration addressing the dismissal of the bankruptcy and the disgorgement of fees.

{¶126} The second motion for reconsideration was denied the same day it was filed.

{¶127} On August 17, 2011, Respondent filed a second Chapter 13 bankruptcy for Packer and was given case number 11-58528.

{¶128} On August 18, 2011, Respondent filed a motion to impose automatic stay, thus protecting Packer from her creditors.

{¶129} On September 9, 2011, the court held a hearing and extended the stay until September 21, 2011.

{¶130} The court further ordered Respondent to prepare and tender an order extending the stay to September 21, 2011.

{¶131} Respondent did not file an order extending the stay in the bankruptcy to the date directed by the court.

{¶132} When confronted, Respondent, among other things, advised Judge Caldwell that she "forgot."

{¶133} Due to Respondent's failure to follow the court's order, the stay expired, and in the opinion of the court, the bankruptcy was rendered "pointless."

{¶134} On October 17, 2011, a new attorney entered his appearance to represent Packer in her Chapter 13 bankruptcy proceedings. With the assistance of new counsel, Packer filed a third Chapter 13 bankruptcy and confirmed her plan in that case.

{¶135} On October 21, 2011, the court filed another order requiring Respondent to disgorge fees to Packer.

{¶136} Respondent proceeded to file numerous responses to the October 21, 2011 order. Because Respondent was no longer attorney of record for the matter, each was deemed erroneous by the court case administrator.

{¶137} On November 1, 2011, Respondent filed a first amended disclosure of compensation showing Respondent had received no prior payments from Packer.

{¶138} However, in an invoice dated January 28, 2011 three payments to Respondent from Packer are summarized showing \$500 was paid on February 12, 2010, \$625 was paid on January 4, 2011, and \$675 was paid on January 28, 2011.

{¶139} On October 24, 2013, the court ordered a show cause hearing.

{¶140} In the aftermath of the hearing, the court issued two orders in the second Chapter 13 bankruptcy case.

{¶141} The first was a judgment order awarding disgorgement of fees to debtor pursuant to amended order to show cause, awarding \$1,806.65 to Packer.

{¶142} In its order, the court found that Respondent "...failed to adequately represent debtor..." and "...Ms. Corner does not have sufficient skills to adequately represent debtors. Ms. Corner's defense of lack of formal notice of the October 24, 2011, disgorgement order is reprehensible..."

{¶143} In its second order, the court suspended Respondent’s electronic filing privileges until “proof of payment of the judgment is filed . . .,” and “...until further order of the Court.”

{¶144} On November 15, 2013, Respondent filed a notice of appeal with respect to the November 1, 2013 order. That appeal was dismissed by the bankruptcy appellate panel.

IOLTA Issues

{¶145} On January 3, 2011, Respondent deposited a check from Packer for \$625 into the “B J Corner LPA IOLTA Client Trust Fund.”

{¶146} On January 4, 2011, the balance of the IOLTA was \$612.34.

{¶147} Between January 19, 2011 and January 27, 2011, the IOLTA balance varied between \$139.89 and \$530.69. On January 31, 2011, Respondent deposited a check from Packer for \$675 into the “B J Corner LPA IOLTA Client Trust Fund.”

{¶148} On February 18, 2011, despite holding funds for Packer in her account, Respondent’s IOLTA total fell to \$14, and during the entire month of February, rarely rose above \$570.

{¶149} Respondent failed to maintain Packer’s retainer in her IOLTA.

{¶150} Respondent agrees that the amount ordered in the disgorgement decision is due and payable to Packer and agrees to pay the ordered amount to Packer.

{¶151} Although denied in her answer to the formal complaint, Respondent now stipulates that her conduct in the complaint filed by Relator-Columbus Bar Association violates the following:

- Prof. Cond. R. 1.1 [failing to provide competent representation];
- Prof. Cond. R. 1.3 [failing to act with reasonable diligence in representing a client];
- Prof. Cond. R. 1.15(a)(c)(d) [failing to promptly return property in the possession of the lawyer that the client is entitled to receive]; and

- Prof. Cond. R. 8.4(d)[conduct that is prejudicial to the administration of justice].

{¶152} Relator has agreed to recommend dismissal of Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(h).

{¶153} The panel finds that through stipulation and testimony Relator-Disciplinary Counsel and Relator-Columbus Bar Association has established by clear and convincing evidence that Respondent violated the following rules:

- **ODC Complaint, Count One:** Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.15(a)(2), Prof. Cond. R. 1.15(a)(3), and Prof. Cond. R. 1.15(a)(5);
- **ODC Complaint Count Two:** Prof. Cond. R. 1.5(e), Prof. Cond. R. 1.15(d), and Prof. Cond. R. 8.4(c);
- **ODC Complaint, Count Three:** Prof. Cond. R. 1.5(a) and Prof. Cond. R. 1.15(d);
- **CBA Complaint:** Prof. Cond. R. 1.1, Prof. Cond. R. 1.3, Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.15(c), Prof. Cond. R. 1.15(d), and Prof. Cond. R. 8.4(d).

{¶154} Based on the stipulations of the parties and evidence presented at the hearing, the panel dismisses Prof. Cond. R. 1.5(a) [CBA Complaint], Prof. Cond. R. 3.3(a)(1) [CBA Complaint], Prof. Cond. R. 8.4(c) [CBA Complaint], and Prof. Cond. R. 8.4(h) [ODC Complaint, Counts Two and Three and CBA Complaint].

AGGRAVATION, MITIGATION, AND SANCTION

{¶155} Respondent hereby agrees and stipulates to the presence of the following aggravating factors as listed under BCGD Proc. Reg. 10(B)(1):

- Respondent engaged in a pattern of misconduct; and
- Respondent engaged in multiple offenses.

{¶156} Respondent hereby agrees and stipulates to the presence of the following mitigating factors listed under BCGD Proc. Reg. 10(B)(2):

- Respondent has not been previously disciplined; and
- Respondent cooperated with the investigations.

{¶157} Respondent offered the testimony of Jason Coale, a licensed Ohio clinical social worker. Coale testified that he began treating Respondent in July 2013 and at that time she was diagnosed with a depressive disorder. As his treatment continued, he discovered that Respondent's depression reached deep into her past and that her depression contributed to her ethical issues. Coale is not a medical doctor and did not prescribe any medication, only therapy sessions.

{¶158} Coale opined that if Respondent stays current with her professional treatment and has systems in place such as CLE's to keep her up-to-date with the legal profession she should be competent to practice law. The panel did not find Coale a particularly credible witness, but considered Respondent's condition as a mitigating factor under BCGD Proc. Reg. 10(B)(2)(g).

{¶159} In considering the factual situation as outlined in the stipulations and testimony, this matter is very similar to the *Disciplinary Counsel v. Talikka*, 135 Ohio St.3d 323, 2013-Ohio-1012. In *Talikka*, the attorney committed numerous violations of the rules including failing to act with reasonable diligence in representing clients in three separate cases; failing to inform two clients their cases were dismissed; failing to refund unearned portions of retainers of clients'; and he violated Prof. Cond. R. 1.4(a)(4) by failing to respond to reasonable requests for information from a client. *Talikka* also failed to put \$10,000 belonging to a client into his client trust account; failed to maintain records of funds he should have been holding in his trust account for five separate clients; and failed to properly administer those funds. Additionally, he failed to have his clients sign closing statements in three different personal injury contingency fee matters and failed to promptly distribute all of the funds his clients were entitled to receive. Finally, the attorney's conduct in five of the client matters involved dishonesty, fraud, deceit, or misrepresentation. The sanction in *Talikka* was a two-year suspension, with one year stayed on

conditions, including payment of restitution along with statutory interest on the amounts owed and a one-year period of monitored probation.

{¶160} Similarly, in *Disciplinary Counsel v. Folwell*, 129 Ohio St.3d 297, 2011-Ohio-3181, the Court issued a two-year suspension, with second year stayed on the condition that the respondent submitted to a one-year period of monitored probation. Folwell had engaged in pattern of misconduct involving seven separate client matters, failed to provide competent representation, failed to act with reasonable diligence by settling case for minor client without probate court approval, failed to maintain separate ledgers for client trust account, failed to perform monthly reconciliations of trust account, and improperly used client funds.

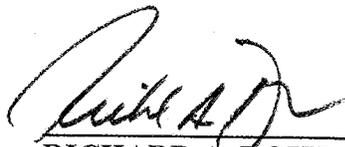
{¶161} After consideration of all of the relevant facts, admissions and stipulations, as well as the aggravating and mitigating factors, the panel recommends that Respondent be suspended from the practice of law for two years, with one year stayed. Further, the panel recommends that reinstatement be conditioned on her continued treatment for depression with a certified health care professional under an OLAP contract, and that she be required to produce a letter from an OLAP or other medical professional indicating that she is competent to return to the practice of law.

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 August 8, 2014. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Beverly J. Corner, be suspended from the practice of law in Ohio for two years, with one year stayed on conditions contained in ¶161. 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.

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

RICHARD A. DOVE, Secretary