

No. 2013-1984

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION,
Relator,

vs.

GEOFFREY P. DAMON (#0029397)
Respondent

RELATOR'S MEMORANDUM IN RESPONSE
TO RESPONDENT'S MOTION FOR RECONSIDERATION

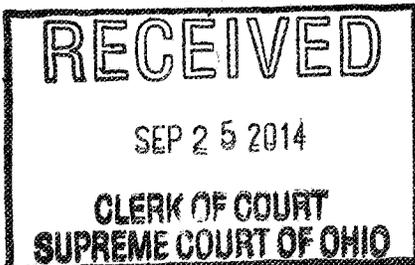
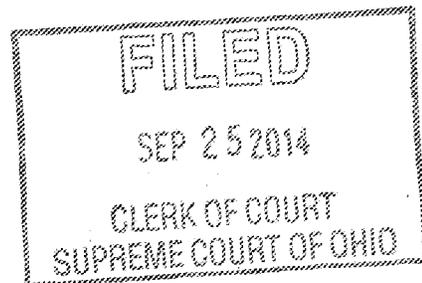
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law, and concluded that disbarment was the appropriate sanction in this case. *Id.* at ¶ 5.

Subsequently, Respondent filed a Motion for Reconsideration, which this Memorandum seeks to address. For the reasons set forth below, the Court should reject Respondent's Motion for Reconsideration.

I. THE COURT DID NOT COMMIT A PROCEDURAL ERROR WHEN IT CONCLUDED THAT RESPONDENT HAD NOT PROVIDED RECORDS FROM WHICH THE EXACT AMOUNT OF FUNDS STOLEN COULD BE CALCULATED.

Respondent's alleged "procedural error" in these proceedings reiterates an objection to the Board's findings which this Court has already considered and rejected. Here, he argues that "...permitting evidence which contradicted and invalidated the Stipulation of Facts, constitutes a procedural error and basis for reconsideration of [this Court's] decision." (Motion, p.3) In the decision rendered September 3, 2014, this Court noted: "Damon objects to the board's findings with regard to restitution. He contends that the board ignored the stipulation regarding the amount taken from the law firm and instead found that the exact amount stolen from the firm was unknown and could not be ascertained...." *Cincinnati Bar v. Damon*, 2014-Ohio-3765, ¶ 24.

The testimony of Relator's witness, Joseph Butkovich, did not contradict the Stipulation of Facts which was filed in the Board on April 9, 2012. The parties stipulated that Respondent was employed as a full-time associate by the law firm of Butkovich & Crosswaith Co., LPA ("Butkovich") from January 1, 2009, to July 30, 2010. Further, that during Respondent's employment as an associate attorney at Butkovich, he accepted payments from clients totaling about \$84,000 and deposited those funds into his own account rather than into the firm's trust account, without the knowledge or permission of the firm. Further, that he filed an IRS Form

1040 “Schedule C” with his tax return for calendar year 2009, which report gross receipts from the “Damon Law Office” in the amount of \$84,066. However, that tax return and the Stipulation of Facts itself covered only twelve months of the nineteen months during which Respondent was employed by Butkovich.

Mr. Butkovich testified at hearing, in response to a question posed by Respondent:

The problem, Mr. Damon, is that you don’t have records for us to make an accounting. And it doesn’t account for the cash payments that you received that we have no idea who and when retained you because you didn’t inform us of your clients. So I can’t tell us what you owe us because you don’t have records. (T, p. 59)

The witness’s testimony thus supplemented, but did not contradict, the Stipulation of Facts. This is consistent with the findings of the Panel and the Board, as adopted by this Court: “...The exact amount stolen from the law firm is unknown. However, Damon declared approximately \$84,000 in gross receipts for the ‘Damon Law Office’ on his 2009 federal tax filings.” Id at ¶ 7.

II. THE COURT DID NOT COMMIT A SUBSTANTIVE ERROR WHEN IT ADOPTED THE BOARD’S RECOMMENDATION OF DISBARMENT.

In addition to arguing that this Court committed a procedural error in finding that the amount of restitution was “unknown,” Respondent argues this Court committed a substantive error by imposing a sanction that is disproportionate to the misconduct of the Respondent. Respectfully, Relator opposes Respondent’s assertion and requests this court to stay the imposed sanction because it is proportionate to the misconduct of the Respondent.

This Court concluded that Respondent committed two distinct courses of misconduct: (1) Respondent was convicted of theft for misappropriating funds from his employer, and (2) Respondent accepted legal fees but failed to carry out contracts of employment. *Cincinnati Bar v. Damon*, 2014-Ohio-3765, ¶ 36-37. Both courses of misconduct carry a presumptive sanction

of disbarment. *Id. See, e.g., Cincinnati Bar Assn. v. Britt*, 2012-Ohio-4541, 133 Ohio St.3d 217, 977 N.E.2d 620, ¶ 22 (holding that disbarment is the presumptive sanction for misappropriation...); *Cleveland Metro Bar Assn. v. Gruttadaurio*, 2013-Ohio-3662, 136 Ohio St.3d 283, 995 N.E.2d 190, ¶ 48 (recognizing that accepting retainers or legal fees and failing to carry out contracts of employment is tantamount to theft from the client and carries a presumptive sanction of disbarment).

In appropriate circumstances, a sanction may be lessened with sufficient evidence of mitigating or extenuating circumstances. *Cincinnati Bar Assn. v. Britt*, 2012-Ohio-4541, 133 Ohio St.3d 217, 977 N.E.2d 620, ¶ 22. The panel and the board found Respondent exhibited the following mitigating factors: (1) Respondent has not been previously disciplined; (2) aside from this present matter, Respondent has demonstrated a reputation in the community for being of good character; and (3) Respondent has received other penalties or sanctions. *Cincinnati Bar v. Damon*, 2014-Ohio-3765, ¶ 32 (citing BCGD Proc.Reg.10(B)(2)(a), (e), and (f)). While the panel and the board found some mitigating factors for Respondent, this Court found that Respondent's numerous aggravating factors, for example, but not limited to, acting with dishonest or selfish motive, refusing to acknowledge the wrongful nature of his conduct, and taking advantage of clients who were vulnerable and causing harm to clients, significantly outweighed Respondent's mitigating factors. *Cincinnati Bar v. Damon*, 2014-Ohio-3765, ¶ 31, 40 (citing BCGD Proc.Reg. 10(B)(1)(b), (f), (g), and (h)).

Wherefore, Relator respectfully requests that this Court uphold the sanction of disbarment against Respondent.

CONCLUSION

For the foregoing reasons, Respondent's claims of alleged procedural and substantive error committed by this Court are unavailing, and Respondent's Motion for Reconsideration should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Relator's Memorandum In Response To Respondent's Motion For Reconsideration was mailed by United States mail, first class postage prepaid, this 24th day of September, 2014 to:

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