

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In Re:	:	Case No. 2014-001
Complaint against	:	
Stephen John Ball	:	Findings of Fact,
Attorney Reg. No. 0087242	:	Conclusions of Law, and
Respondent	:	Recommendation of the
Cincinnati Bar Association	:	Board of Professional Conduct of
Relator	:	the Supreme Court of Ohio

OVERVIEW

{¶1} This matter was heard on July 21, 2014, in Columbus before a panel consisting of Alvin Bell, McKenzie Davis, and Robert L. Gresham, chair. 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).¹

{¶2} Respondent was present at the hearing represented by Brian M. Spiess. Paul M. Laufman and Sarah Tankersley appeared on behalf of Relator.

{¶3} On February 3, 2014, Relator filed a complaint against Respondent alleging violation of the following disciplinary rules:

- Prof. Cond. R. 5.5(a) [practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction];
- Prof. Cond. R. 8.1(a) [knowingly making a false statement of material fact in connection with a disciplinary matter];
- Prof Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness];
- Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and

¹ Effective January 1, 2015, the Supreme Court amended Gov. Bar R. V and the Board's Procedural Regulations. This report distinguishes between the former and current versions of Gov. Bar R. V and the Procedural Regulations, as appropriate.

- Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶4} On July 21, 2014, Relator and Respondent filed agreed stipulations. Evidence was presented by way of stipulations; Relator's Exhibits A and B; Respondent's Exhibits 1 through 11; testimony of Respondent; and character testimony from attorney Shelby McMillan. All the exhibits were admitted into evidence. Additionally, Respondent stipulated to all of the violations charged in the complaint.

{¶5} Relator and Respondent stipulated to aggravating and mitigating factors pursuant to former BCGD Proc. Rule 10(B)(1) and (B)(2). The aggravating factors include multiple offenses, submitting false statements during the disciplinary process, and noncompliance with his OLAP recovery contract. The mitigating factors include absence of a prior disciplinary record, self-reporting his conduct to Relator, evidence of good character or reputation, and alcohol addiction.

{¶6} The panel does not accept the mitigating factor of alcohol addiction because neither party submitted evidence that alcohol dependency contributed to any misconduct. The panel accepts all remaining stipulations of the parties.

FINDINGS OF FACT CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on May 9, 2011 and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

December 23, 2012 Incident

{¶8} On December 23, 2012, Respondent was driving home to his residence following a Xavier University basketball game and a Christmas party. He had consumed a beer at the game and roughly seven to eight beers at the party and was too inebriated to drive. As a result, a

Hamilton County sheriff's deputy observe Respondent's vehicle and attempted to execute a traffic stop. Respondent did not slow down or immediately pull over, but rather continued into his subdivision, driving toward his residence with the deputy in pursuit, Respondent came to a stop at the end of a cul-de-sac near the driveway to his home. Respondent exited his vehicle and began to run as the deputy yelled for him to stop. Respondent eventually stopped, at which point the deputy caught up and physically restrained him.

{¶9} Respondent was arrested and charged with OVI, Obstructing Official Business, Driving under Suspension, and a felony of the fifth degree for Receiving Stolen Property. A Hamilton County grand jury reduced the latter charge to a first degree misdemeanor.

{¶10} On September 6, 2013, Respondent pled guilty to OVI, disorderly conduct. Respondent was placed on probation, ordered to participate in a residential treatment program, and granted driving privileges only with the use of an ignition interlock device.

{¶11} Respondent reported this guilty plea to Relator by letter dated July 30, 2013, and Relator opened an investigation.

Misconduct during Relator's Investigation

{¶12} When questioned about the license plates by Relator, Respondent stated he purchased the car from his father in 2011 and insisted the plate on the vehicle was still his father's license plate. However, Respondent could not adequately explain why registration documents showed the number on the stolen plate was different than the number registered for his father's plate.

{¶13} On October 8, 2013, Respondent admitted he obtained the stolen plate from a friend and that he knew the plate was stolen when he received it. Respondent also admitted he previously obtained a different plate from the same friend back in 2011, which he also knew was

stolen when he received it. Respondent's use of stolen license plates was an effort to conceal from law enforcement the fact that he did not have a valid driver's license.

Respondent's Pattern of Conduct

{¶14} Respondent has a history with alcohol consumption. He is a self-admitted alcoholic. He originally applied to sit for the July 2008 Bar Examination but withdrew that application when the Board of Commissioners on Character and Fitness determined that additional investigation of his character and fitness was needed. Respondent was eventually approved to sit for the Bar Examination and subsequently passed the February 2011 Bar Examination.

{¶15} Prior to the December 23, 2012 incident, Respondent had previously had the following contacts with law enforcement:

- **August 18, 2000** - underage consumption of alcohol in Tippecanoe County, Indiana while attending Purdue University.
- **January 20, 2002** - OVI in Butler County, Ohio while visiting Miami University.
- **April 15, 2002** – OVI in Tippecanoe County, Indiana while attending Purdue University. Respondent was also admittedly driving in willful and intentional violation of the suspension of his license which had been ordered only 30 days prior.
- **December 13, 2003** —Public intoxication in Tippecanoe County, Indiana while attending Purdue University. This charge was dismissed.
- **April 22, 2007** —Possession of an open container of alcohol in Hardin County, Ohio while attending law school.
- **May 26, 2007** — OVI in Hamilton County, Ohio after leaving a Cincinnati Reds game. Respondent was also found to be in possession of drug paraphernalia (2 marijuana pipes) and an unloaded firearm. Respondent plead guilty to the OVI and a misdemeanor weapon charge and was ordered to serve 10 days in a residential treatment program followed by an intensive outpatient program while on a period of probation. A probation violation was later filed against Respondent alleging his failure to complete the outpatient program and report as required. His probation was successfully terminated when he showed compliance with those issues.

{¶16} Respondent has been involved with OLAP and other treatment programs following his OVI arrests, including the December 23, 2012 arrest. After his 2007 arrest, but

before 2009, he was initially very involved with OLAP, but he failed to fulfill his OLAP contracts. He returned to drinking about nine months after his 2007 arrest. Respondent again connected with OLAP following the December 23, 2012 arrest and signed a five-year recovery contract on June 27, 2013, but again failed to fulfill his OLAP contract. Respondent's last contact with OLAP was on December 2, 2013.

Respondent's Overdrawn IOLTA—The Uhlhorn Check

{¶17} Respondent maintains an IOLTA with First Financial Bank.

{¶18} Respondent took over representation of Paul Duncan after attorney Richard H. Johnson had obtained a settlement for Duncan with payments to be made over time.

{¶19} At the time Respondent took over the case, he was required only to accept payments from the debtor, Clem Uhlhorn, and forward them to Duncan. Respondent ran these payments through his IOLTA, but did not accept legal fees or expenses for this service.

{¶20} In the summer 2013, Uhlhorn defaulted on his payments. Respondent spoke to him about the necessity of remaining current on his payments.

{¶21} On July 11, 2013, Uhlhorn made a \$325.44 payment, which was deposited in the IOLTA account, but he needed to pay a total of \$1,100 to bring the debt up to date. Uhlhorn assured Respondent that he would send a second check to bring the debt up to date. Based on this assurance, but with certain knowledge that the IOLTA contained only the \$325.44, Respondent issued a check for \$1,100 from the account to Duncan. Subsequently, Uhlhorn advised Respondent that he was not going to be able to make the second payment.

{¶22} Respondent issued another check to Duncan in the amount of \$325.44 and attempted to stop payment on the previous \$1,100 check. Respondent was advised by the bank

in order to effectuate the stop payment he would need to come to the bank within in a set time frame and sign the order. Respondent failed to do so.

{¶23} In September 2013, the temporary stop payment order had expired. The check for \$1,100 was processed for payment, which created an overdraft on the IOLTA.

Respondent's Overdrawn IOLTA—The Closed Account

{¶24} In September 2013, Respondent and an accountant named James Kraft entered into an agreement together to open a nonprofit organization. Respondent agreed to do the legal work, and it was agreed that the corporation should be segregated from the law firm and billed as a separate client. They also agreed the legal fees and expenses for setting up the nonprofit would be approximately \$1,550.

{¶25} On September 9, 2013, Respondent wrote a check for \$1,650 and deposited it into the IOLTA. The check, however, was written on a closed Huntington Bank account owned by Stephen J. Ball, LLC.

{¶26} On September 11, 2013, the check was charged back and a fee of \$12 was incurred. Respondent and Kraft then agreed they would pay the filing fee to incorporate separately and that Respondent would deposit \$1,500 into the IOLTA for legal fees.

{¶27} On September 11, 2013, Respondent wrote a check for \$1,500 on a Chase bank account owned by Respondent, but this account was also closed; another \$12 fee was incurred.

{¶28} In June 2013, Respondent let his paralegal go and took over his own accounting.

{¶29} In September 2013, Respondent was unaware of which of his various accounts were open and which were not.

{¶30} On September 13, 2013, a deposit of \$1,524 was made that brought the account current and paid off the overdraft fees. The \$1,500 remains in the IOLTA account.

Practicing with an Inactive License

{¶31} On January 31, 2014, Respondent changed his Ohio attorney registration to “inactive.” He remained on inactive status until March 7, 2014.

{¶32} On February 13, 2014, Respondent spoke with an insurance adjuster in connection with a matter involving his clients, the Gessendorfs. They discussed the case, but Respondent did not inform the adjuster that he was inactive.

{¶33} On March 1, 2014, Respondent sent a letter to the Gessendorfs terminating his representation and returning their file. The letter contained opinions about their case and about the feasibility of certain actions going forward. It also stated he heard nothing from the insurance companies involving their case. The letter stated he would be willing to speak with them after March 7. Respondent failed to inform any of his clients that his license was inactive. Respondent advised his regular clients that he would be “on hiatus” for a month, but did not advise them that his license was inactive.

{¶34} During the period his license was inactive, Respondent’s voicemail remained active, his website remained up, with all of his advertising removed, and his letterhead did not indicate he was inactive.

{¶35} During the period Respondent’s license was inactive, he sporadically returned phone calls and spoke with potential clients without advising them that his license was inactive. Only one potential client had not yet found another attorney and Respondent referred that person to someone else for a divorce.

{¶36} The panel finds by clear and convincing evidence through exhibits, stipulations and testimony that Respondent violated the following: Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.1(a), Prof. Cond. R. 8.4(b), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

AGGRAVATION, MITIGATION, AND SANCTION

{¶37} Based upon the stipulations, exhibits, and testimony adduced at the hearing, the panel finds the following aggravating factors: Respondent engaged in multiple offenses; Respondent submitted false statements during the disciplinary process; and Respondent is currently in violation of his recovery contract with OLAP.

{¶38} Based upon the stipulations, exhibits, and testimony adduced at the hearing, the panel finds the following mitigating factors: absence of a prior disciplinary record; Respondent self-reported his conduct to relator as to the December 2012 incident; and Respondent submitted evidence of good character or reputation.

{¶39} Relator is requesting a sanction of indefinite suspension. Respondent argued for a range from 18 to 24 months with six months stayed. There is no question Respondent engaged in misconduct by overdrawing his IOLTA account on multiple occasions, failing to properly maintain required documentation and failing to provide documentation to Relator.

{¶40} In determining whether or not this sanction is appropriate for Respondent's misconduct, all relevant factors must be considered including duties of Respondent, the violations incurred, and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2012-Ohio-4743. We therefore direct our attention to a few relevant cases. Additionally, in making a final determination, evidence of aggravating and mitigating factors are considered. *Disciplinary Counsel v. Broeren*, 131 Ohio St.3d 272, 2007-Ohio-5251.

{¶41} In *Stark Cty. Bar Assn. v. Zimmer*, 135 Ohio St.3d 462, 2013-Ohio-1962, the respondent received in indefinite suspension with reinstatement conditioned upon proof that he had complied with an established substance-abuse program and that he was capable of returning

to the competent, ethical practice of law. Evidence revealed that Zimmer crashed his car into a parked vehicle and building and fled the scene without reporting the accident. He failed to comply with an order requiring him to appear in court and provide the court with proof of a valid driver's license. Zimmer was convicted of operating a vehicle while intoxicated. He subsequently failed to report to the home-arrest supervisor as ordered and failed to appear for a deposition conducted by the bar association during the investigation of this disciplinary matter. Although Zimmer had not been shown to have neglected or mishandled client matters entrusted to him, he had on multiple occasions, through his conduct in both the criminal and disciplinary proceedings against him, neglected his legal obligations to respect and honor the law; thus, an indefinite suspension, with reinstatement conditioned on proof that he had complied with an established substance-abuse program, was the appropriate sanction.

{¶42} In *Columbus Bar Assn. v. Larkin*, 128 Ohio St.3d 368, 2011-Ohio-762, the respondent received an indefinite suspension with conditions. Larkin was seriously injured in an automobile accident. While investigating the accident, police officers discovered a used crack-cocaine pipe and used heroin syringes in the attorney's automobile. At her deposition in a criminal proceeding, Larkin testified she had a long-standing problem with drugs and alcohol and that the treatment she had received for this problem had been unsuccessful. Larkin admitted at the time of her automobile accident, she possessed drug paraphernalia that contained residue of heroin and cocaine. Larkin further testified she had been on her way to see the person who had encouraged her to use illegal drugs. During the pendency of the disciplinary action, the attorney was sanctioned and suspended for failing to comply with the continuing-legal-education requirements. The Court found that an indefinite suspension of the attorney was appropriate.

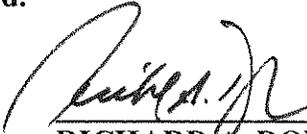
{¶43} For the foregoing reasons and taking into account the aggravating and mitigating factors, this panel agrees with Relator's recommendation of an indefinite suspension from the practice of law, with the conditions Respondent successfully complete OLAP-approved treatment for substance abuse and establishes he is capable of returning to the competent, ethical, and professional practice of law.

{¶44} Additionally, the panel recommends the additional condition that, upon reinstatement, Respondent must complete his professionally required legal education requirements, including six hours of CLE related to law-office management and accounting.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 13, 2015. The Board amended the findings of fact and conclusions of law proposed by the panel to find Respondent's conduct, as outlined in this report, was egregious and thus merits a separate finding of the Prof. Cond. R. 8.4(h) violation. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998. The Board adopted the amended findings of fact and conclusions of law and adopted the sanction recommended by the panel. Accordingly, the Board recommends that Respondent, Stephen John Ball, be suspended indefinitely from the practice of law in Ohio, with reinstatement subject to the conditions set forth in ¶¶43-44 of this report and the further condition that Respondent pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct 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, Director