

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

In Re:	:	Case No. 2014-007
Complaint against	:	
Ronald John Denicola	:	Findings of Fact,
Attorney Reg. No. 0022593	:	Conclusions of Law, and
Respondent	:	Recommendation of the
	:	Board of Professional Conduct
Disciplinary Counsel	:	of the Supreme Court of Ohio
	:	
Relator	:	

OVERVIEW

{¶1} This matter was heard on November 5, 2014, in Columbus before a panel consisting of Alvin Bell, Lisa Eliason, and Janica Pierce Tucker, 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 former Gov. Bar R. V, Section 6(D)(1).¹

{¶2} Respondent was present at the hearing represented by George D. Jonson. Karen Osmond appeared on behalf of Relator.

{¶3} This case involved financial scams and financial problems. Respondent fell victim to “representing” a Japanese manufacturing company to collect past due debts in Ohio. As a result of this scam with the Japanese manufacturing company, Respondent’s bank accounts, including his IOLTA, were closed. Respondent also represented Mary First, an elderly woman, with limited financial resources. She too was a victim of a scam alleging she won \$2.8 million from a United Kingdom sweepstakes fund. Respondent attempted to assist First with obtaining

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.

obtaining her “award” including using his own personal funds and obtaining payday loans. At the advice of Respondent to continue to pursue the award from the United Kingdom, First has experienced severe personal and financial loss.

{¶4} Lastly, Respondent served as a volunteer treasurer for Southwest Ohio District Equipment Company (“SWOD”), affiliated with the Knights of Columbus, for 20 years. During his years as treasurer he took money from SWOD and used for his personal benefit. Respondent currently owes Knights of Columbus/SWOD \$2,261.38.

{¶5} Based upon the parties’ stipulations and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent be suspended from the practice of law for six months and ordered to pay restitution in the amount of \$2,261.38.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was admitted to the practice of law in the state of Ohio on October 27, 1967 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

Count One—Chen Ken Boon

{¶7} In or about 2008, Respondent was contacted by an individual calling himself Chen Ken Boon.

{¶8} Boon represented himself to be an agent for a Japanese manufacturing company called Daibea Co., Ltd. Boon informed Respondent that he had full authority to collect Daibea’s past due debts from companies in Ohio.

{¶9} Boon also advised Respondent that he performed similar types of work for other

international companies, and he requested Respondent's assistance in collecting past due debts for these companies as well.

{¶10} Between 2008 and 2011, Respondent corresponded with Boon via email or phone on a periodic basis regarding various collection matters.

{¶11} On or about September 23, 2011, Respondent received a check for \$210,500 from the Royal Bank of Canada. Boon advised Respondent that this check was from an individual named Terry Williams. Williams allegedly represented Akron Gear, Inc. – a company that owed money to Daibea or one of Boon's other clients.

{¶12} Akron Gear, Inc. has never engaged in a business relationship with any Japanese company, nor has it ever been represented by an individual named Terry Williams.

{¶13} On September 27, 2011, Respondent deposited the \$210,500 check into an account at Lebanon Community National Bank (LCNB), which he opened specifically for the purpose of depositing this \$210,500 check.

{¶14} On September 29, 2011, Boon instructed Respondent to wire \$67,250 immediately to Sun Trust Bank in Miami, Florida and \$107,230 to Bank of America in Greensboro, North Carolina. The remainder of the \$210,500 was to be held in trust and/or used to cover Respondent's attorney fees of approximately \$25,000.

{¶15} On September 29, 2011, Respondent wired \$107,230 to Bank of America per Boon's instructions.

{¶16} Respondent also withdrew \$2,000 in cash from LCNB and obtained a cashier's check for \$23,000. Respondent deposited \$10,000 of the cashier's check into his IOLTA at U.S. Bank (account no. x-xxx-xxxx-0815) and the remaining \$13,000 into other accounts at U.S. Bank.

{¶17} Shortly thereafter, LCNB received notice that the check for \$210,500 was fraudulent. LCNB successfully stopped the \$107,230 wire transfer and recalled the \$23,000 cashier's check.

{¶18} When U.S. Bank received notice that the \$23,000 cashier's check had been recalled, they swept all of Respondent's accounts to recoup the \$23,000 in funds, including, but not limited to, \$700 in client funds that had been in Respondent's IOLTA at the time.

{¶19} U.S. Bank was able to recover all but \$2,402.41 in funds.

{¶20} LCNB was able to recover all but \$1,919.64 in funds.

{¶21} Respondent has agreed to repay the unrecovered amounts to U.S. Bank and LCNB; however, to date, he has not done so.

{¶22} Respondent is aware that he has been the victim of a financial scam; however, he does not believe that Boon is involved in the scam in any way.

{¶23} To this day, Respondent periodically receives calls from Boon and continues to believe that Boon will provide him with funds to repay U.S. Bank and LCNB.

{¶24} As proven by clear and convincing evidence and the agreed stipulations, Respondent violated Prof. Cond. R. 1.15(a) [a lawyer shall hold property of clients or third persons in an interest bearing trust account].

{¶25} Relator dismissed the alleged violation of Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law], and the panel agreed to this dismissal. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35; 2013-Ohio-3998.

Count Two—IOLTA Misconduct

{¶26} As a result of the scam described in Count One, all of Respondent's accounts at U.S. Bank and LCNB were closed.

{¶27} In addition, Respondent was unable to open new accounts at banks in which he had deposited bad checks, including Chase Bank.

{¶28} Respondent was, however, able to open an IOLTA at PNC bank (account no. xx-xxxx-9779) in February 2012. He also had at least one personal savings account at Kemba Credit Union, which he opened in or around April 2011.

{¶29} Although he was aware of his professional obligations, Respondent did not keep accurate records of client funds in his possession between February 2012 and November 2012. Respondent did not maintain a general ledger or individual client ledgers of client funds in his IOLTA. In addition, Respondent did not reconcile his IOLTA on a monthly basis as required by Prof. Cond. R. 1.15.

{¶30} During this same period of time, Respondent also deposited and/or left earned fees in his IOLTA, which he withdrew as needed, rather than as earned.

{¶31} During at least August and September 2012, Respondent received and deposited the following loans from his friend and former client, James Black, into his IOLTA:

- \$150 on September 21, 2012;
- \$700 on August 15, 2012;
- \$925 on August 15, 2012; and
- \$1,500 on August 22, 2012.

{¶32} In or about February 2013, PNC notified Respondent that they were closing his IOLTA because he had deposited a large check into his IOLTA that did not clear. Thereafter, Respondent opened an IOLTA at Huntington Bank where Respondent currently maintains his IOLTA.

{¶33} As proven by clear and convincing evidence and Respondent's stipulations, Respondent violated in relation to Count Two: Prof. Cond. R. 1.15(a); Prof. Cond. R. 1.15(a)(2) [a lawyer shall maintain a record for each client on whose behalf funds are held that sets forth the

name of the client; the date, amount, and source of all funds received on behalf of such client; the date, amount, payee, and purpose of each disbursement made on behalf of such client; and the current balance for such client]; Prof. Cond. R. 1.15(a)(3) [a lawyer shall maintain a record for each bank account that sets forth the name of such account; the date, amount and client affected by each credit and debit; and the balance in the account]; Prof. Cond. R. 1.15(a)(5) [a lawyer shall perform and retain a monthly reconciliation of the lawyer's IOLTA]; and 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 the waiver of bank services charges].

Count Three—Mary First

{¶34} Mary First is 90 years old. She has known Respondent since he was a young boy, and she considers him to be her attorney, legal advisor, and trusted confidant. Respondent also considered First to be his client and friend.

{¶35} As First's attorney, friend, and advisor, Respondent was aware that First had limited financial resources.

{¶36} Over the years, Respondent has performed a number of legal services for First.

For example:

- In 1993, Respondent drafted a Last Will and Testament for First, which he revised in 1999 and 2007.
- In 2007, Respondent represented First in a civil matter filed by Fifth Third Bank against First. The matter involved a VISA card with a past due balance of over \$39,000.
- In 2011, Respondent drafted a Durable Power-of-Attorney for First wherein First appointed Respondent as her attorney-in-fact.
- In 2012, Respondent drafted a trust agreement for First wherein First appointed Respondent trustee of a trust that was to be funded by First's "sweepstakes award" as explained more fully below.

{¶37} In or about 2006, First received an email stating that she had won \$2.8 million from a United Kingdom sweepstakes fund.

{¶38} First responded to this email and was placed in contact with an individual alternately referred to as Mac Gaughy or Mr. McGaughy (hereinafter referred to as McGaughy).

{¶39} McGaughy advised First that in order to claim her award, she had to pay certain costs and expenses allegedly associated with the transfer of funds.

{¶40} Sometime prior to June 20, 2008, First notified Respondent of the UK sweepstakes and her anticipated award.

{¶41} Since learning of First's award, Respondent has regularly assisted First with obtaining her "award," including but not limited to driving First to and from her local bank to withdraw funds to wire, driving First to and from her local grocery store to wire funds, and assisting First with obtaining payday loans so that she has funds available to wire McGaughy and/or other individuals at his direction.

{¶42} Due to First's limited financial resources, Respondent has regularly contributed his own money to assist First with paying costs and expenses associated with the award. Sometimes Respondent provided First with cash and/or transferred funds from his account to First's account so that First could wire funds to McGaughy or other individuals, and other times, Respondent wired funds directly from his own accounts, including his trust account.

{¶43} Respondent even assisted First with opening two accounts at Chase Bank in early 2013. McGaughy instructed First to open these accounts and advise him of the account numbers so that he could deposit the sweepstakes award into the accounts. When Respondent assisted First with opening these accounts, he also placed his name on the accounts.

{¶44} As a fee for his services, First agreed to pay Respondent ten percent of her sweepstakes award.

{¶45} In addition, First has agreed to reimburse Respondent for any contributions that

he makes towards the attainment of her award; however, neither Respondent nor First have maintained any records as to how much either have wired or contributed towards “costs and expenses” associated with First’s award.

{¶46} Western Union records show that between January 2007 and January 2013, First and/or Respondent have wired over \$147,000 to various individuals in connection with the purported United Kingdom Sweepstakes award. Most, if not all, all of these funds have been claimed outside of the United States in places such as Costa Rica, the United Kingdom, and the United Arab Emirates.

{¶47} Since 2007, the nature of First’s award has changed several times. For instance, her award has “expired” several times for failure to pay various costs and expenses within a specified period of time; however, the award has been “reinstated” several times. Each reinstatement requires that new costs and expenses be paid. In consideration of the additional costs and expenses that First incurred, Respondent reports that First was recently notified that her award would be increased from \$2.8 million to \$5.8 million.

{¶48} To date, First has not received any “award” funds. In the six years that she has been trying to obtain her award, First has experienced severe personal and financial loss. She has had lawsuits filed against her for unpaid debts; she has lost her health care insurance and phone service; and at one point, she faced eviction from her apartment.

{¶49} Due to Respondent’s participation and assistance in the scam directed at First, as well as his continued communication with Boon (Count One), Relator requested that Respondent voluntarily submit to a competency evaluation. Respondent agreed. The evaluation showed no signs of significant mental illness or cognitive decline.

{¶50} As proven by clear and convincing evidence and Respondent’s stipulations,

Respondent violated Prof. Cond. R. 1.1 [competence]; and Prof. Cond. R. 8.4(h) [other conduct that adversely reflects on the lawyer's fitness to practice law].

Count Four—Knights of Columbus

{¶51} The Knights of Columbus (KOC) is a Catholic fraternal organization that provides members and their families with volunteer opportunities within the Catholic Church and their local communities.

{¶52} At all times relevant to this count, the Archdiocese of Cincinnati had 17 active KOC assemblies. These assemblies formed the Southwest Ohio District Equipment Company (SWOD) to manage equipment used by the KOC at their annual exemplification ceremony, as well as other events held by the individual assemblies.

{¶53} Respondent served as the volunteer treasurer of SWOD for at least 20 years. Respondent ceased being the treasurer in or about July 2011 for conduct more fully described below.

{¶54} As treasurer, Respondent collected annual fees and other funds from the assemblies and used the funds to pay invoices and make reimbursements related to SWOD's equipment.

{¶55} Respondent deposited SWOD's funds into one of his client trust accounts at U.S. Bank (account no. XXX6870).

{¶56} Although he was acting in a fiduciary capacity for SWOD, Respondent did not hold SWOD's funds in trust. Instead, Respondent used SWOD's funds for his own personal benefit.

{¶57} For a majority of the time between September 25, 2007 and July 14, 2011, the balance in Respondent's trust account was less than what he should have been holding in trust

for SWOD. Moreover, during this same period of time, Respondent was repeatedly depositing personal funds and earned fees into his trust account, thereby impermissibly commingling personal funds with funds held in trust for clients and others.

{¶58} Sometime between April and July 2009, Respondent stopped paying invoices and/or making reimbursements on behalf of SWOD.

{¶59} Throughout the remainder of 2009 and continuing until April 2010, the KOC attempted to reach Respondent regarding his failure to pay invoices and make reimbursements.

{¶60} In or about April 2010, Respondent told the KOC that US Bank had swept the funds from his trust account, including funds belonging to SWOD. Respondent further told KOC that US Bank had swept funds from his trust account in order to cover a bad check that Respondent had deposited into his trust account.

{¶61} In April 2010, Respondent promised to repay the KOC funds that had allegedly been swept by U.S. Bank. Given Respondent's assurances, the KOC allowed Respondent to continue serving as treasurer of SWOD until July 2011.

{¶62} Between April 2010 and July 2011, Respondent continued to misappropriate SWOD's funds by using the funds that he received in the form of annual fees/dues for his own personal benefit.

{¶63} In or about July 2011, the KOC dissolved SWOD. It has since reformed a similar organization with a different name and treasurer.

{¶64} The KOC filed a grievance against Respondent in June 2013.

{¶65} To date, Respondent has failed to provide any information in response to the grievance, and he has failed to repay the KOC despite several follow-up promises to do so.

{¶66} Upon information and belief, Respondent owes the KOC approximately

\$2,261.38.

{¶67} As proven by clear and convincing evidence and Respondent's stipulations, Respondent violated: Prof. Cond. R. 1.15(b); Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

{¶68} The parties stipulated and the panel agreed to dismiss the alleged violation of Prof. Cond. R. 8.4(h). *Disciplinary Counsel v. Bricker, supra*.

MITIGATION, AGGRAVATION, AND SANCTION

{¶69} In this case, with respect to Count One and Count Three, Respondent did not fully appreciate the wrongfulness of his conduct. He did not believe that Boon was a scam artist, but described him as a friend. He further believed that First's "award" is still available. However, during the case, at the request of Relator, Respondent agreed to a competency evaluation. The evaluation showed no signs of significant mental illness or cognitive decline.

{¶70} Relator and Respondent agree to the following aggravating factors: Respondent engaged in multiple offenses; Respondent has engaged in a pattern of misconduct; and Respondent's conduct caused harm to vulnerable victims.

{¶71} In addition to the stipulated aggravating factors, the panel finds the additional aggravating factor of a failure to make restitution.

{¶72} Relator and Respondent agree to the following mitigating factors: Respondent has no prior discipline in a career of more than 45 years; Respondent cooperated in the disciplinary investigation; and Respondent has a good reputation in the community.

{¶73} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties violated by Respondent and the sanctions imposed in similar cases.

{¶74} In *Disciplinary Counsel v. Kelly*, 121 Ohio St. 3d 39, 2009-Ohio-317, Kelly served as volunteer treasurer for Greene County Humane Society and embezzled over \$40,000. Kelly was indefinitely suspended with reinstatement conditioned on Kelly's treatment for her asserted diagnosis of obsessive compulsive disorder and full restitution of the embezzled funds. In regards to Respondent's conduct and involvement with the scams, there was not an Ohio case on point. In the Supreme Court of Iowa in the case of *Iowa Supreme Court Attorney Disciplinary Board v. Robert Allan Wright Jr.*, 840 N.W.2d 295 (Iowa 2013). Wright was the victim of a Nigeria scam. While representing his client in a criminal matter, he was also asked to represent the client in recovering an inheritance from Nigeria in the amount of \$18.8 million. Wright borrowed money from his clients with promises to pay upon receipt of monies from Nigeria. The client never received any money despite Wright sending his personal money, including money from his clients to pay the "taxes" on the inheritance. The Iowa Court found that Wright's conduct violated four Iowa Rules of Professional Conduct for which Wright was suspended for 12 months: Rule 32:1.1 (competence) (prohibiting representation of a client if the representation involves a concurrent conflict of interest); Rule 32:1.8(b) (prohibiting use of information relating to the representation of a client to the disadvantage of the client); Rule 32:8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

{¶75} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for six months and pay restitution to the Knights of Columbus in the amount of \$2,261.38. Although there is some evidence that Respondent's conduct set forth in Counts One and Three includes a failure to make restitution, the panel does not make a specific recommendation of restitution in connection with those counts. In Count One, the panel believes U.S. Bank and LCNB can pursue collection actions to recover any funds lost as a result of

Respondent's conduct. In Count Three, relator failed to provide evidence sufficient to support a finding of restitution to First.

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 to find Respondent's lack of competence and failure to be truthful to his client, as detailed in ¶¶34-50 of 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 findings of fact and conclusions of law, as amended. To better protect the public, the Board amended the sanction recommended by the panel and recommends that Respondent, Ronald John Denicola, be suspended from the practice of law in Ohio for a period of one year, with six months stayed, on the conditions that he make restitution to the Knights of Columbus in the amount of \$2,261.38, engage in no further misconduct, and 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