

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

In re:	:	Case No. 2014-063
Complaint against	:	
David Charles Watson, Jr.	:	Findings of Fact,
Attorney Reg. No. 0025989	:	Conclusions of Law, and
Respondent	:	Recommendation of the
	:	Board of Professional Conduct of
Columbus Bar Association	:	the Supreme Court of Ohio
Relator	:	

OVERVIEW

{¶1} This matter was heard on February 12, 2015, in Columbus before a panel consisting of John A. Polito, Judge Karen Lawson, and Judge C. Ashley Pike, 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 6.¹

{¶2} Respondent was present at the hearing represented by John M. Gonzales. Robert J. Morje, Bruce A. Campbell, and A. Alysha Clous appeared on behalf of Relator.

{¶3} Based on 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 herein. Upon consideration of the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent be indefinitely suspended from the practice of law.

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.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Respondent was admitted to the practice of law in the state of Ohio on May 13, 1985 and is subject to the Rules of Professional Conduct and the Rules for Government of the Bar of Ohio.

{¶5} On August 12, 2012, the Supreme Court issued an order suspending Respondent for a period of 12 months, fully stayed with conditions, and imposed a period of monitored probation until the expiration of Respondent's contract with the Ohio Lawyers Assistance Program (OLAP) or 12 months from the effective date of the order, whichever was later. See *Columbus Bar Assn. v. Watson*, 132 Ohio St.3d 496, 2012-Ohio-3830. The OLAP contract expired February 14, 2014. Respondent remains under probation. Stipulations ¶¶1, 2, and 3.

Count I—Antiveros Matter

{¶6} From about January 11 through November 2012, Respondent represented Mr. and Mrs. Musetti-Antivero in an eviction action. Respondent was paid by them a retainer of \$500, which he placed not into his IOLTA account, but into his general business account. In February, March, and April of the same year, the Antiveros paid Respondent the following sums: \$2,020; \$2,500; and \$5,000. These payments were mostly unearned retainers, but were not deposited into Respondent's IOLTA account. Stipulations ¶¶4, 5, and 6.

{¶7} In July 2013, the Antiveros requested fee arbitration which resulted in a settlement and refund of \$3,862 that has been paid. Stipulation ¶7.

{¶8} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.15(a) by failing to maintain client funds in an IOLTA.

Count II—Adams Matter

{¶9} From about June 2012 through April 2013, Respondent represented John and Lynn Adams. Respondent was paid a retainer of \$3,500, which he deposited not into his IOLTA account, but into his general business account. Stipulations ¶¶9 and 10.

{¶10} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.15(a) by failing to maintain client funds in an IOLTA.

{¶11} Respondent's representation consisted of preparing a proof of claim including calculation of interest on the original obligation, and preparation and filing of a two-page objection to confirmation of the plan based on incorrect information gleaned from the divorce case of unrelated parties. No appearance was ever made in court by Respondent. The objection was ultimately overruled by the bankruptcy court due to the nonappearance of counsel. The proof of claim is a document often prepared by non-lawyers, staff or paralegals, including layperson creditors themselves. Stipulation ¶12.

{¶12} With respect to the Adams, the panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.5(a) by charging a clearly excessive fee.

{¶13} By separate entry issued contemporaneous with its report, the panel unanimously dismissed the following alleged rule violations:

- **Count I:** Prof. Cond. R. 1.1; Prof. Cond. R. 1.4(a)(3); Prof. Cond. R. 1.5(a); Prof. Cond. R. 1.14; Prof. Cond. R. 1.15(d); Prof. Cond. R. 2.1; and Prof. Cond. R. 8.4(h).
- **Count II:** Prof. Cond. R. 1.1; Prof. Cond. R. 1.4(a)(3); Prof. Cond. R. 1.15(a); and Prof. Cond. R. 2.1.

MITIGATION, AGGRAVATION, AND SANCTION

{¶14} Relator and Respondent agree that the following aggravating and mitigating factors apply. Stipulations ¶¶24 and 25.

{¶15} Aggravating factors: prior disciplinary offenses; selfish motive; and multiple offenses.

{¶16} Mitigating factors: timely, good-faith effort to make restitution; full and free disclosure to disciplinary Board; and cooperative attitude toward proceedings.

{¶17} The panel accepts these stipulations but finds that the mitigating factor of timely, good-faith effort to make restitution applies only in relation to the Antiveros matter.

{¶18} The parties jointly recommended imposition of a two-year suspension, with one year stayed. The parties cited five decisions of the Court to justify their proposed sanction as set forth in the following four paragraphs that are taken directly from the parties “Joint Memorandum of Law in Support of Stipulated Sanction,” pp. 2-3.

In *Dayton Bar Assn. v. Matlock*, 134 Ohio St.3d 276, 2012-Ohio-5638, a lawyer failed to communicate adequately with his clients and misused his trust account in violation of Prof. Cond. R. 1.5(b). He had a prior disciplinary record and multiple offenses; however, he rectified the consequences of the misconduct and cooperated with the disciplinary process after retaining counsel. He was given a two-year suspension, with one year stayed on conditions.

The Court again used this sanction in *Toledo Bar Assn. v. Stewart*, 135 Ohio St.3d 316, 2013-Ohio-795. Here, the lawyer mishandled four client matters and failed to hold property of clients in trust. He had no prior discipline. The Board recommended, and the Court imposed, the sanction at issue.

Upon similar facts shortly after *Stewart*, the Court twice more imposed suspensions of two years with one year stayed. In *Disciplinary Counsel v. Talikka*, 135 Ohio St.3d 323, 2013-Ohio-1012, the panel, based on stipulations, recommended this sanction. The Board opted to recommend an indefinite suspension, but the Court overruled the Board and agreed with the panel’s sanction recommendation. The Court followed this pattern in *Disciplinary Counsel v. DeGidio*, 135 Ohio St.3d 407, 2013-Ohio-1509.

Finally, there is the recent case of *Disciplinary Counsel v. Gonzalez*, 138 Ohio St.3d 320, 2014-Ohio-851. In this matter the lawyer demonstrated a lack of diligence in his representation of clients and violated several portions of Prof. Cond. R. 1.15 by mishandling client money. He had a prior disciplinary record and committed multiple offenses. The sanction was a two-year suspension, with one year stayed.

{¶19} The problem with the cases jointly cited by the parties is that, unlike here, only one of the cases involved prior substantive misconduct, and that was *Gonzalez*. In that case, the respondent had previously received a public reprimand for using undignified language and shouting at an attorney during negotiations before a magistrate. The prior discipline in *Matlock* involved attorney registration suspensions, not what could be accurately described as substantive misconduct.

{¶20} The panel was unable to locate a case with identical facts. But it is the panel's opinion that the cases of *Medina Cty. Bar Assn. vs. Malynn*, 2014-Ohio-5261 and *Dayton Bar Assn. v. Hunt*, 135 Ohio St.3d 386, 2013-Ohio-1486 are more closely aligned with the present matter. *Malynn* received an indefinite suspension for failing to provide competent representation to a client, failing to keep a client reasonably informed about the status of a matter, and failing to advise a client in writing that the client may be entitled to a refund of a fee denominated as "nonrefundable" if the lawyer does not complete representation. The respondent had been previously suspended for failing to register in 2011 and again in 2012 for neglecting client matters.

{¶21} In *Hunt*, the respondent accepted a personal injury case that he was not competent to handle, neglected a malpractice case, and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. He likewise received an indefinite suspension and had previously received a six-month suspension for neglect, lack of communication, and failure to cooperate.

{¶22} Here, it must be remembered that Respondent was still on probation as a result of prior substantive discipline when these violations occurred. The misconduct here involved some of the same misconduct in the prior case for which Respondent was on probation: failure to utilize an IOLTA. Further, with regard to Mr. and Mrs. Adams, no adjustment has been made

with regard to the excessive fee that he collected. Respondent is not practicing law at the present time, and in fact, is driving a delivery truck at what appears to be an auto parts distribution warehouse. When asked at the hearing on a scale of 1 to 10 how likely it was that he would return to the practice of law, he indicated only a “5.” Among other things, Respondent admitted that he was ego-driven during his years of practice, lacked administrative skills, and that any return to the practice should be accompanied by conditions. This alone caused the panel to believe that Respondent harbored serious doubts about his ability to effectively and ethically practice law. Hearing Tr. 26, 42, 55–56.

{¶23} The panel feels that the public needs to be protected from such conduct and instead, recommends an indefinite suspension from the practice of law. As one condition of any reinstatement Respondent should adjust the fee in the Adams matter to the reasonable satisfaction of the parties or, in the alternative, submit the matter to fee dispute resolution. Additionally, Respondent shall reimburse the Lawyers’ Fund for Client Protection for any sums paid as a result of Respondent’s misconduct in charging the clearly excessive fee, successfully complete his current probation as the result of prior discipline, and fully comply with Gov. Bar R. V, Section 25.

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 April 10, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, David Charles Watson, Jr., be indefinitely suspended from the practice of law with reinstatement subject to the conditions set forth in ¶23 and ordered to 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