

THE SUPREME COURT OF OHIO

In re:

LORAIN COUNTY BAR ASSOC.)

CASE NO. 2015-0060

Relator,)

RELATOR'S REPLY TO
RESPONDENT'S OBJECTIONS
TO THE REPORT AND
RECOMMENDATION OF THE
BOARD OF PROFESSIONAL
CONDUCT

MARK R. PROVENZA)

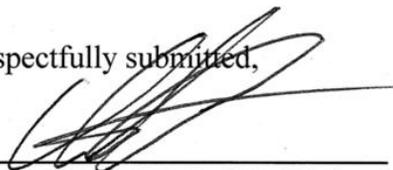
Respondent.)

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Now comes Relator, Lorain County Bar Association, by and through the undersigned Bar Counsel, and hereby respectfully provides this Honorable Court and all parties with its Reply to Respondent's Objections to the Report and Recommendation of the Board of Professional Conduct.

Relator's Brief is attached hereto and incorporated herein.

Respectfully submitted,



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PROOF OF SERVICE

This is to certify that a copy of the foregoing Reply was sent to the following *via*

Email this 19th day of November, 2015:

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THE SUPREME COURT OF OHIO

In re:

LORAIN COUNTY BAR ASSOC.)	CASE NO. 2015-0060
)	
Relator,)	<u>RELATOR'S REPLY BRIEF</u>
)	
)	
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I. THE ADDITIONAL AGGRAVATING FACTOR

As noted by Respondent, Mark R. Provenza (“Respondent”) in his Objections, the parties entered into stipulations as to the Aggravating and Mitigating Factors. *Gov. Bar R V§13(B)(C)*.

Nevertheless, the Board found an additional aggravating factor of “a dishonest or selfish motive” as a result of Respondent’s failure to remunerate Robin Maxwell-Smith, the first grievant, the \$800.00 she advanced him.

Relator does not find Respondent’s “explanation” particularly convincing as to why he failed to promptly refund his client’s money, to wit: his practice faltered due to his assumption of his girlfriend’s medical bills and his financial inability to repay the money.¹ That said, Relator agrees with Respondent that the failure to refund the money resulted from his inability to do so – not from a dishonest or selfish motive.

¹ This is precisely why the Rules of Professional Conduct require attorneys to deposit unearned funds into their IOLTA accounts – so that the funds can be returned if unearned.

Evidence of this fact is that only very recently did Respondent refund the money despite this looming matter and the prospect of losing his law license. Respondent has admittedly struggled over the last few years with his practice and only recently has begun to take regular appointments and become productive. There is not doubt, at least as far as Relator is concerned, that Respondent would have refunded Ms. Maxwell's funds immediately if he could have done so.²

Relator joins with Respondent in respectfully suggesting that the additional aggravating factor of "dishonest or selfish motive" is not supported by the evidence or appropriate in this case.

II. THE SANCTION

As also noted by Respondent, the parties stipulated to an agreed sanction of a six (6) month suspension, all stayed on conditions. The parties submitted numerous cases to the Panel supporting this sanction by providing case comparators with similar facts and a six (or twelve) month stayed suspension.

It is apparent that but for the finding of an additional aggravating factor, the Board would have accepted and recommended the stipulated sanction. However, by finding a "dishonest or selfish motive," the sanction was appropriately elevated.

As argued *infra*, the finding of the additional aggravating factor is inapposite. It follows then that if the court rejects the additional aggravating factor as improvidently found, the original, stipulated sanction should be imposed.

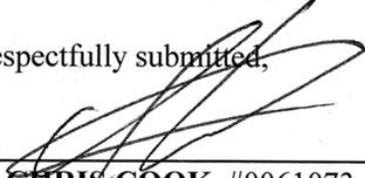
² Relator will also note that since the filing of Respondent's Objections and the date of this Reply, Respondent has now also remunerated Rodney White, per the parties' agreement.

As such, Relator joins with Respondent in requesting that court modify the Board's Report and Recommendation by imposing the originally stipulated stayed, six-month suspension.

III. CONCLUSION

For the foregoing reasons, Relator, the Lorain County Bar Association, respectfully joins Respondent, Mark R. Provenza, in requesting this Honorable Court modify the sanction recommended herein by the Board to the parties' originally agreed upon and stipulated sanction of a stayed, six (6) month suspension on conditions.

Respectfully submitted,



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