

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

In re:

Case No. 2014-054

Complaint against

**David Keith Roland
Attorney Reg. No. 0037125**

Respondent

Trumbull County Bar Association

Relator

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

OVERVIEW

{¶1} This matter was heard on September 9, 2015 in Columbus before a panel consisting of David E. Tschantz, Roger Gates, and Hon. John R. Willamowski, 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 11.

{¶2} Relator was represented by William M. Flevares. Respondent did not attend either in person or through counsel.

{¶3} This case involves an attorney who assisted an individual in hiding hundreds of thousands of dollars in assets from that individual's spouse during the individual and individual's spouse's divorce (1 count); failed to notify a client of lack of minimal malpractice insurance (1 count); and accepted fees while failing to do the services for which the fees were paid (2 counts); failed to respond to Relator's discovery requests and comply with orders of the Board; had a contempt finding issued against him by the Supreme Court of Ohio; and who did not appear for his formal hearing.

{¶4} The panel recommends that Respondent be disbarred.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in the state of Ohio on November 12, 1986 and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶6} Respondent is presently under a registration suspension as of November 3, 2015. *In re Roland*, 143 Ohio St.3d 1509, 2015-Ohio-4567.

Count One—Eric Martin

{¶7} Respondent performed legal services for Dr. Denise Carradine, then spouse, now former spouse, of Eric Martin. Respondent performed these services both before and after the commencement of their divorce action. Based on Respondent's failure to comply with the panel chair's June 25, 2015 order, which directed Respondent to produce discovery requests no later than July 25, 2015, the panel chair filed an order dated September 8, 2015 that deemed the following facts admitted:

- During 2006, Carradine paid Respondent \$270,436.95 that were not funds to pay Respondent for legal services or advancements, but were instead funds that Respondent placed in his IOLTA by agreement with Carradine.
- During 2007, Carradine paid Respondent \$360,184.01 that were not funds to pay Respondent for legal services or advancements, but were instead funds that Respondent placed in his IOLTA by agreement with Carradine.
- During 2008, Carradine paid Respondent \$195,260 that were not funds to pay Respondent for legal services or advancements, but were instead funds that Respondent placed in his IOLTA by agreement with Carradine.
- During 2009, Carradine paid Respondent \$135,545.30 that were not funds to pay Respondent for legal services or advancements, but were instead funds that Respondent placed in his IOLTA by agreement with Carradine.
- Carradine transferred a total of \$854,261.10 to Respondent that Respondent placed in his IOLTA by agreement with Carradine for the purpose of hiding these assets from her husband, Eric Martin.

- Of the \$854,261.10 in Carradine's assets, Respondent transferred \$814,105.96 to Carradine's account at Maerki Baumann & Co. located in Zurich, Switzerland as of April 9, 2009.
- Respondent transferred the remaining \$40,155.14 in Carradine's money of the \$854,261.10 out of Respondent's IOLTA.

Relator's Ex. 1, Request for Admission 1-7.

{¶8} Martin filed a motion to add Respondent as a party defendant and to depose Respondent in *Eric Martin v. Denise M. Carradine, et al.*, Case No. 2009 DR 333 in the Trumbull County Court of Common Pleas, domestic relations division. Following the hearing, the motion was granted and Respondent was added as a third-party defendant. Relator's Ex. 2, p. 1.

{¶9} Significantly in the above domestic relations action, Judge Harwood found the relevant facts to be:

- Within the three-year time period immediately prior to the parties' separation, Defendant-Wife [Dr. Carradine] committed [intentional] and fraudulent acts in an effort to accomplish the disposition and concealment of marital assets.
- Beginning in August 2006 and continuing through 2007, 2008, and 2009, Defendant-Wife [Dr. Carradine] transferred substantial funds totaling \$854,261.10 as of April 9, 2009 to Third-Party Defendant, Attorney D. Keith Roland.
- Defendant-Wife [Dr. Carradine] engaged in the regular pattern and practice of withdrawing cash from her business or her personal accounts by checks payable to "cash" or herself, and using the checks together to form an official check that she made payable to Attorney Roland.
- The transfers were in small increments, typically less than \$10,000 each. Defendant-Wife [Dr. Carradine] was unable to give adequate explanation as to her reason for writing several different checks to the same individual – i.e., Roland – on the same date or within a few days of each other. The method and manner in which Defendant-Wife [Dr. Carradine] accomplished the transactions are evidence of the purposeful structuring of transactions to avoid detection under the banking laws.
- Records from Attorney Keith Roland showed that the transactions totaled \$854,261.10 and the funds were deposited into his two IOLTA trust accounts.

- From Attorney Roland's IOLTA accounts, the funds were then transferred via wire transfer to a foreign account in the name of Renaissance Investment Services Inc. located at a bank by the name of Maerki Baumann & Co. in Zurich, Switzerland. The amount transferred to the overseas account was \$814,105.96.
- Defendant-Wife [Dr. Carradine] provided [on the Friday prior to the Monday trial commencement date] account records pertaining to this account, showing that at least a portion of the funds in the account had been transferred on June 5, 2010, during the pendency of these divorce proceedings, to another account, this time located in the Turks & Caicos Islands.

Relator's Ex. 2, p. 21-23.

{¶10} Significantly in the above domestic relations action, Judge Harwood made the following relevant conclusions of law:

- Subsequent to the commencement of the divorce proceedings, beginning in August of 2006 and continuing up to the date of separation on April 9, 2009, Defendant-Wife [Dr. Carradine] committed financial misconduct by the fraudulent disposition of marital assets in the sum of \$854,261.10, constituting the assets she transferred to Third-Party Defendant Attorney D. Keith Roland.
- Throughout the course of the divorce proceedings that commenced on September 14, 2009 and have continued through August 2014, Defendant-Wife [Dr. Carradine] committed financial misconduct by the concealment, nondisclosure, and the substantial and willful failure to disclose marital property, including the assets in the accounts at Consumers National Bank, the assets transferred to Third-Party Defendant Roland, and the assets transferred to the account located at Maerki Baumann & Co., in Zurich, Switzerland.
- This Court finds that Defendant-Wife's [Dr. Carradine's] conduct was a willful failure to disclose substantial marital assets as well as a deceitful scheme in which she engaged with Third-Party Defendant Roland in an attempt to fraudulently conceal substantial marital assets.

Relator's Ex. 2, p. 32.

{¶11} As of December 11, 2013, all funds had been removed from Respondent's IOLTA with First National Bank (Pennsylvania) and the account was closed. Relator's Ex. 3.

{¶12} As of June 30, 2015, Respondent's IOLTA with the Huntington National Bank had a balance of only \$709.57 that included a deposit of \$643.44 on June 23, 2015.

{¶13} The remaining \$40,155.14 from Carradine, which was deposited into Respondent's IOLTA, is clearly in neither of Respondent's IOLTAs and is unaccounted for by Respondent.

{¶14} Relator proved, by clear and convincing evidence, pursuant to Count One of the second amended complaint, that Respondent violated Prof. Cond. R. 1.2(d) [a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal or fraudulent] and Prof. Cond. R. 1.15(a) [a lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from a lawyer's own property].

{¶15} At the hearing in this matter, Relator moved to amend its complaint to add violations of Prof. Cond. R. 1.15(e) and Prof. Cond. R. 8.4(c) to conform to the evidence presented. Without any objection thereto, the amendment was granted. Hearing Tr. 60-61. We find that Relator proved, by clear and convincing evidence, pursuant to Count One of the second amended complaint, that Respondent violated Prof. Cond. R. 1.15(e) [a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved] and Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation].

Count Two—Wolk Matter

{¶16} Respondent performed legal services for Mark and Marcia Wolk. Pursuant to the requests for admission that were deemed admitted by order dated September 8, 2015, Respondent has admitted that:

- During his representation of Mark and Marcia Wolk, Respondent neither had professional liability insurance in the amounts of \$100,000 per occurrence and \$300,000 aggregate nor provided the Wolk with the notice required by Prof. Cond. R. 1.4(c) when a lawyer does not have such coverage.

Relator's Ex. 1, Request for Admission 8.

{¶17} Relator proved, by clear and convincing evidence, pursuant to Count Two of the second amended complaint, that Respondent violated Prof. Cond. R. 1.4(c).

Count Three—Donatelli Matter

{¶18} On July 8, 2013, Richard J. Donatelli paid a \$750 retainer to Respondent to file suit against an individual on behalf of Donatelli. Respondent's April 8, 2015 Answer to Second Amended Complaint, ¶2.

{¶19} Robert L. Root III, was appointed as the investigator of the grievance that Donatelli filed against Respondent. Relator's Ex. 7, ¶4.

{¶20} Root reviewed court dockets for the court in which the complaint could have been filed. He did not find any complaints filed on behalf of Donatelli by Respondent. Relator's Ex. 7, ¶¶6 & 7.

{¶21} Respondent did not respond to Root's letters regarding said grievance which were sent to Respondent by ordinary and by certified mail. Relator's Ex. 7, ¶¶8 & 9.

{¶22} Respondent stated that he was with clients and abruptly hung up on Root when Root called him by phone and identified himself. Relator's Ex. 7, ¶10-12.

{¶23} Respondent failed to communicate with Root in any way whatsoever regarding the Donatelli grievance. Relator's Ex. 7, ¶13.

{¶24} As of December 11, 2013, all funds had been removed from Respondent's IOLTA with First National Bank (Pennsylvania) and the account was closed. Relator's Ex. 3.

{¶25} As of June 30, 2015, Respondent's IOLTA with the Huntington National Bank had a balance of only \$709.57 which included a deposit of \$643.44 on June 23, 2015.

{¶26} Relator proved, by clear and convincing evidence, pursuant to Count Three of the second amended complaint, that Respondent violated Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.15(c) [a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred]; Prof. Cond. R. 8.1(b) [a lawyer shall not fail to respond to a demand for information by a disciplinary authority]; and Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice].

{¶27} Relator failed to prove, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter] in that there was no testimony as to the communication, if any, or to the lack thereof, between Donatelli and Respondent. The panel therefore recommends the dismissal of the claimed violation of Prof. Cond. R. 1.4(a)(3).

{¶28} Relator failed to prove, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.5(a) [a lawyer shall not charge a clearly excessive fee] in that there was no testimony as to the unreasonableness of the \$750 fee between Donatelli and Respondent. The panel therefore recommends the dismissal of the claimed violation of Prof. Cond. R. 1.5(a).

Count Four—Villas at Heron’s Landing

{¶29} The condominium association of which Ernest C. Ramhoff was an officer, Villas at Heron’s Landing, paid Respondent \$750 total on October 15, 2013 to file two civil complaints. Relator’s Ex. 6; Relator’s Ex. 7, ¶15.

{¶30} Root again was appointed as the investigator of the grievance that Ramhoff filed against Respondent. Relator’s Ex. 7, ¶14.

{¶31} Root reviewed court dockets for the court in which the complaints could have been filed. He did not find any complaints filed on behalf of Villas at Heron's Landing by Respondent. Relator's Ex. 7, ¶¶16 & 17.

{¶32} Respondent did not respond to Root's letters regarding said grievance which were sent to Respondent by ordinary and by certified mail. Relator's Ex. 7, ¶¶18 & 19.

{¶33} Respondent stated that he was with clients and abruptly hung up on Root when Root called him by phone and identified himself. Relator's Ex. 7, ¶20-22.

{¶34} Respondent failed to communicate with Root in any way whatsoever regarding the Ramhoff grievance. Relator's Ex. 7, ¶23.

{¶35} As of December 11, 2013, all funds had been removed from Respondent's IOLTA with First National Bank (Pennsylvania) and the account was closed. Relator's Ex. 3.

{¶36} As of June 30, 2015, Respondent's IOLTA with the Huntington National Bank had a balance of only \$709.57 that included a deposit of \$643.44 on June 23, 2015.

{¶37} Relator proved, by clear and convincing evidence, pursuant to Count Four of the second amended complaint, that Respondent violated Prof. Cond. R. 1.3; Prof. Cond. R. 1.15(c); Prof. Cond. R. 8.1(b); and Prof. Cond. R. 8.4(d).

{¶38} Relator failed to prove, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.4(a)(3) in that there was no testimony as to the communication, if any, or to the lack thereof, between Ramhoff and Respondent. The panel therefore recommends the dismissal of the claimed violation of Prof. Cond. R. 1.4(a)(3).

{¶39} Relator failed to prove, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.5(a) in that there was no testimony as to the unreasonableness of the \$750 total fee between Ramhoff on behalf of the Villas at Heron's Landing and Respondent for filing two

cases. The panel therefore recommends the dismissal of the claimed violation of Prof. Cond. R. 1.5(a).

AGGRAVATION, MITIGATION, AND SANCTION

{¶40} Among the factors that have been considered by the panel in making its recommended sanctions are the ethical duties violated, the injuries caused by the misconduct, the mental state of Respondent at the time of the misconduct, the aggravating and mitigating factors, the sanctions imposed by the Supreme Court in similar cases, and the overall goal of protecting the public.

{¶41} Among the significant ethical duties violated by Respondent are that he misappropriated funds entrusted to him by his clients in violation of Prof. Cond. R. 8.4(c) and counseled a client to engage, or assisted a client, in conduct that he knew was fraudulent in violation of Prof. Cond. R. 1.2(d). Ohio case law treats these offenses seriously, warranting an actual suspension from the practice of law in the absence of strong mitigation evidence. In this case, the mitigation evidence is not strong.

{¶42} In this case, Respondent's acts have caused actual harm to Martin substantially in Count One, Donatelli in Count Three, and The Villas at Heron's Landing in Count Four.

{¶43} There is nothing in the record which indicates that Respondent suffers from any disorder that contributed to the cause of the misconduct.

{¶44} The following aggravating factors found to exist in this case, while not controlling the discretion of the panel, were considered in favor of recommending a more severe sanction:

- *Prior disciplinary offenses*—while Respondent appears to have had no disciplinary offenses prior to this matter, he is not currently registered to practice law having incurred an attorney registration suspension on November 3, 2015.

- *A dishonest or selfish motive*—as a result of Respondent’s actions, of the \$854,261.10 of Martin’s and Carradine’s marital assets which deposited into Respondent’s IOLTA account \$814,105.96 were transferred to an overseas account, at this time believed to be located in the Turks & Caicos Islands. As to the remaining \$40,155.14 which should still be in Respondent’s IOLTA account, it has been transferred out and is unaccounted for.
- *A pattern of misconduct*—Respondent’s misconduct in Count One repeated itself over a number of years. Respondent’s misconduct in Count Three is virtually the same as his misconduct in Count Four.
- *Multiple offenses*—Respondent was found to have committed misconduct in each of the four counts charged.
- *Lack of cooperation in the disciplinary process*—while initially filing responsive pleadings in this matter and taking part in a telephone pre-hearing, Respondent has failed to cooperate in this case since April 2015; Respondent failed to attend the formal hearing of this matter; and, in fact, Respondent has subsequently had a finding of contempt issued against him based upon his failure to respond to Relator’s discovery requests and comply with the orders of the Board. See, *Trumbull Cty. Bar Assn. v. Roland*, 143 Ohio St.3d 1491, 2015-Ohio-4364.
- Respondent has never acknowledged the *wrongful nature of his conduct*.
- *Vulnerability of and resulting harm to victims of the misconduct*—as to Count One, Martin was completely in the dark as to what Respondent was assisting his wife in doing. As a result of Respondent’s actions, \$814,105.96 of Martin’s and Carradine’s marital assets were transferred to an overseas account, at this time believed to be located in the Turks & Caicos Islands. As to the remaining \$40,155.14 which should still be in Respondent’s IOLTA account, it has been transferred out and is unaccounted for. In addition, having accepted fees to file lawsuits and having filed no lawsuits in Counts Three and Four, Respondent has essentially stolen \$750 from Donatelli and stolen \$750 from the Villas at Heron’s Landing.
- Respondent has made *no attempt at making restitution*.

{¶45} There was arguably only one mitigating factor found to possibly weigh in Respondent’s favor in this case. Upon review of the following mitigating factors that would have been considered in favor of recommending a less severe sanction, the panel finds:

- *Absence of a prior disciplinary record*—while at the time of the formal hearing, which Respondent did not attend, he had no prior disciplinary record. Since

then, Respondent received an attorney registration suspension on November 3, 2015 and thus we give very little weight to this factor.

- *Absence of a dishonest or selfish motive*—while we make this finding as to Count Two of the second amended complaint, it is heavily outweighed by the existence of a dishonest or selfish motive in Counts One, Three, and Four.
- *Timely, good faith effort to make restitution or to rectify consequences of misconduct*—there was no evidence of any such effort by Respondent. Accordingly, this factor cannot be weighed in Respondent’s favor.
- *Full and free disclosure to the Board or cooperative attitude toward proceedings*—while initially filing responsive pleadings in this matter and taking part in a telephone pre-hearing, Respondent has failed to cooperate in this case since April 2015; Respondent failed to attend the formal hearing of this matter; and, in fact, Respondent has subsequently had a finding of contempt issued against him based upon his failure to respond to Relator’s discovery requests and comply with the orders of the Board. Accordingly, this factor cannot be weighed in Respondent’s favor.
- *Character or reputation*—there was no evidence offered in mitigation as to Respondent’s favorable character or reputation. Accordingly, this factor cannot be weighed in Respondent’s favor.
- *Imposition of other penalties or sanctions*—there was no evidence offered in mitigation as to the imposition of any other penalty or sanction received by Respondent for Respondent’s misconduct. Accordingly, this factor cannot be weighed in Respondent’s favor.
- *Existence of a disorder*—there was no evidence offered in mitigation as to the existence of any diagnosed disorder contributing to cause Respondent’s misconduct. This factor cannot be weighed in Respondent’s favor.
- *Other interim rehabilitation*—there was no evidence offered in mitigation as to other interim rehabilitation. Accordingly, this factor cannot be weighed in Respondent’s favor.

Sanctions Imposed in Similar Cases

{¶46} This matter involves adjudicated violations of Prof. Cond. R. 1.2(d), Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(c), Prof. Cond. R. 1.15(a), Prof. Cond. R. 1.15(c), Prof. Cond. R. 1.15(e), Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(d).

{¶47} There is a dearth of case law regarding Prof. Cond. R. 1.2(d); however, many cases do address DR 7-102(A)(7), which is the analogous rule under the former Code of Professional Responsibility. In the case of *Disciplinary Counsel v. Lombardi*, 96 Ohio St.3d 54, 2002-Ohio-2990, the sanction given to the respondent was a two-year suspension, with 18 months stayed.

{¶48} With respect to the remaining adjudicated violations, the Supreme Court of Ohio has decided a number of cases in the past four years dealing with the violations found in this case.

{¶49} In *Disciplinary Counsel v. Scacchetti*, 131 Ohio St.3d 165, 2012-Ohio-223, Scacchetti was charged with commingling funds, using his trust account as an operating account, neglecting a client matter, and failing to cooperate in the disciplinary investigation. Scacchetti was suspended for two years, with 18 months stayed in 2007, reinstated in 2008, and was again suspended in 2011 for failure to comply with registration requirements. The Court adopted the Board's recommendation of an indefinite suspension, conditioning reinstatement upon Scacchetti completing a two year OLAP contract, and other conditions. In the case before us, there is no OLAP involvement by Respondent.

{¶50} In *Columbus Bar Assn. v. King*, 132 Ohio St.3d 501, 2012-Ohio-873, King was charged with engaging in dishonesty, fraud, deceit, and misrepresentation, failed to keep client funds separate from his own, failed to notify his clients about his lack of liability insurance, failed to promptly deliver client funds, and failed to keep adequate trust account records. King stipulated to the facts and misconduct. King cooperated in the disciplinary process, but offered fabrications and misrepresentations during the early stages of the process. The Court adopted the Board's recommendation of a two-year suspension, requiring 12 hours of CLE on accounting and law office management, and one-year of monitored probation. In the case before us, Respondent stipulated to nothing and there was no cooperation by Respondent with the disciplinary process

herein after April 2015. Respondent did not attend his formal hearing and has been found in contempt by the Supreme Court of Ohio relating to this matter.

{¶51} In *Disciplinary Counsel v. Johnson*, 131 Ohio St.3d 372, 2012-Ohio-1284, Johnson was charged with failing to hold client funds separate from personal funds, maintain records of client funds, and deposit advance fees and expenses into a client trust account. Johnson also engaged in conduct that is prejudicial to the administration of justice, conduct that adversely reflected on his fitness to practice law, and conduct involving dishonesty, fraud, deceit, or misrepresentation. Johnson further failed to respond to a demand for information by a disciplinary authority and failed to cooperate with the disciplinary investigation. The Board found that Johnson suffered from a number of physical and mental disabilities, including major depressive disorder, that contributed to the cause of his misconduct. The Court adopted the Board's recommendation of a two-year suspension, with the last 18 months stayed on the condition that Johnson commit no further misconduct. In the case before us, there is no evidence in the record that Respondent suffers from any physical or mental disorder.

{¶52} In *Disciplinary Counsel v. Crosby*, 132 Ohio St.3d 387, 2012-Ohio-2872, Crosby was charged with five counts which included illegal conduct involving moral turpitude, conduct that is prejudicial to the administration of justice, adversely reflected on his fitness to practice law, and involves dishonesty, fraud, deceit, or misrepresentation. Crosby had previously been disciplined. In this matter, Crosby used his IOLTA account to hide his income from the IRS, failed to inform the bankruptcy court about settlement proceeds, and failed to turn over funds, and provide documentation resulting in summary judgment against Crosby and his client. Crosby further failed to advise his clients that he did not maintain malpractice insurance and provide the written notification. The Court adopted the Board's recommendation and disbarred Crosby.

{¶53} In *Cleveland Metro. Bar Assn. v. Cicirella*, 133 Ohio St.3d 448, 2012-Ohio-4300, Cicirella was charged with violating Prof. Cond. R. 1.3, Prof. Cond. R. 1.4(a)(3), Prof. Cond. R. 1.4(a)(4), Prof. Cond. R. 1.15(d), Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), Prof. Cond. R. 8.4(h); DR 1-102(A)(4), DR 10-102(A)(6), DR 3-101(B); and Gov. Bar R. V, Section 4(G). Cicirella was suspended for two years, with one year stayed in 1999, indefinitely suspended in 2002, had an attorney registration suspension in 2005, and hadn't actually been licensed since 1999, although she did legal work for clients in 2005 and 2010, which work in 2010 was never completed, although a \$250 retainer was received. The Court adopted the Board's recommendation and permanently disbarred Cicirella.

{¶54} In *Cincinnati Bar Assn. v. Britt*, 133 Ohio St.3d 217, 2012-Ohio-4541, Britt was charged with neglecting numerous client matters, failing to communicate with his clients, failing to preserve the identity of client funds and property, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct that is prejudicial to the administration of justice, and conduct that adversely reflected on his fitness to practice law. The Court adopted the Board's recommendation of an indefinite suspension, conditioning reinstatement upon Respondent completing 12 hours of CLE in law office and trust account management, serve one year of monitored probation upon reinstatement, and provide a monthly accounting to the relator of all restitution payments.

{¶55} In *Trumbull Cty. Bar Assn. v. Large*, 134 Ohio St.3d 172, 2012-Ohio-5482, Large was charged with failing to act with reasonable diligence and promptness in representing a client, failing to deliver client property, failing to hold client property separate from his own property, and failing to deposit advance legal fees and expenses into a client trust account. He also engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct that adversely

reflected on his fitness to practice law, and conduct that is prejudicial to the administration of justice, and knowingly made a false statement to a tribunal. The Court had previously suspended Large's license for failure to pay income taxes, and he was reinstated approximately 21 months prior to this decision. The Court adopted the Board's recommendation of a two-year suspension, with six months stayed on the condition that Large reimburse the Client's Security Fund for any money paid to Large's clients. In the case before us, it isn't a matter that Respondent failed to deposit advance legal fees and expenses into his client trust account. It appears that he deposited them and then withdrew them without performing the services for which they were tendered. In effect, he stole the fees.

{¶56} In *Dayton Bar Assn. v. Matlock*, 134 Ohio St.3d 276, 2012-Ohio-5638, Matlock was charged with committing multiple acts of misconduct, including failing to communicate, failing to obtain a written contingent fee agreement, failing to act with reasonable diligence, commingling, and failing to provide written notice of a lack of professional liability insurance. Matlock had four attorney registration suspensions and was under a registration suspension at the time of Matlock's case. The Court adopted the Board's recommendation of a two-year suspension, conditioning reinstatement upon Respondent completing an OLAP contract and other conditions. In the case before us, there is no OLAP involvement by Respondent.

{¶57} In *Columbus Bar Assn. v. Peden*, 134 Ohio St.3d 579, 2012-Ohio-5766, Peden was charged with engaging in a pattern of misconduct involving multiple violations of the Rules of Professional Conduct. Peden previously received a six-month stayed suspension for repeatedly overdrawing his client trust account, not maintaining a trust account for a period of time, depositing unearned funds into his operating account, failing to immediately refund any unearned fees, and failing to cooperate. In his prior case, the Court found Peden in contempt and imposed an actual

suspension for not paying the Board costs. Thereafter, Peden was on monitored probation. The Court adopted the Board's recommendation of an indefinite suspension, conditioning reinstatement upon mental health counseling, compliance with an OLAP contract, and other conditions. In the case before us, there is no OLAP involvement by Respondent.

{¶58} In *Disciplinary Counsel v. Bogdanski*, 135 Ohio St.3d 235, 2013-Ohio-398, Bogdanski was charged with twice forging a client's signature and notarizing the signatures, and for incompetence and neglect of a legal matter. Bogdanski answered the complaint, admitted to most of the factual allegations lodged against her, and denied that her conduct amounted to professional misconduct. Bogdanski did not appear at the panel hearing. The Court adopted the Board's recommendation of an indefinite suspension, conditioning reinstatement upon Bogdanski completing a substance abuse and mental health evaluation, and compliance with any treatment recommendation, and other conditions. In the case before us, there is no OLAP involvement by Respondent, nor is there any indication that any substance abuse or mental health disorder contributed to cause the misconduct.

{¶59} In *Cleveland Metro. Bar Assn. v. Axner*, 135 Ohio St.3d 241, 2013-Ohio-400, Axner was charged with neglecting two client matters, failing to communicate with the clients, employing a suspended lawyer for approximately 13 years, and initially failing to cooperate in the resulting disciplinary investigation. The parties submitted stipulations of fact and misconduct. The Court adopted the Board's recommendation of an indefinite suspension, conditioning reinstatement upon Axner fully comply with an OLAP contract. In the case before us, there is no OLAP involvement by Respondent.

{¶60} In *Columbus Bar Assn. v. McGowan*, 135 Ohio St.3d 368, 2013-Ohio-1470, McGowan was charged with engaging in illegal conduct involving dishonesty, fraud, deceit, or

misrepresentation, neglecting two client matters, failing to deliver funds that a client was entitled to receive, failing to reasonably communicate with a client, failing to advise a client that he did not carry malpractice insurance, and failing to cooperate in the disciplinary proceedings until the relator filed its complaint. McGowan was suspended on an interim basis following his felony convictions. The parties submitted stipulations of fact, misconduct, and aggravating and mitigating factors, and jointly waived a formal hearing. The Court adopted the Board's recommendation of an indefinite suspension, but with no credit for time served under the interim felony suspension and with conditions for reinstatement. Unlike McGowan, in the case before us, Respondent ultimately did not cooperate in the disciplinary proceedings.

{¶61} In *Disciplinary Counsel v. Tomson*, 136 Ohio St.3d 71, 2013-Ohio-2154, Tomson was charged with engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct that adversely reflected on his fitness to practice law, and conduct that was prejudicial to the administration of justice. Tomson also failed to act with reasonable diligence, failed to seek the lawful objectives of the client, failed to carry out a contract of employment, collected an excessive fee, neglected an entrusted legal matter, and failed to cooperate with the disciplinary investigation. Tomson had never previously been disciplined. The Court adopted the Board's recommendation of a permanent disbarment.

{¶62} In *Cleveland Metro. Bar Assn. v. Gruttadaurio*, 136 Ohio St.3d 283, 2013-Ohio-3662, Gruttadaurio was charged with failing to act with reasonable diligence, failing to place fees into a client trust account, failing to refund unearned fees, perform contracted work, and advise his clients that he did not carry malpractice insurance. He also engaged in conduct that adversely reflected on his fitness to practice law and knowingly made false statements during the disciplinary proceedings. The Board recommended a two-year suspension, with 18 months stayed. The Court

adopted the Board's findings of fact and misconduct, but rejected the Board's recommended sanction and imposed an indefinite suspension, indicating that the mitigating factors identified by the Board did not warrant a lesser sanction.

{¶63} In *Disciplinary Counsel v. Oberholtzer*, 136 Ohio St.3d 314, 2013-Ohio-3706, Oberholtzer was charged with failing to act with reasonable diligence, failing to keep the client reasonably informed, failing to deposit advanced legal fees and expenses into a client trust account, comply with reasonable requests for information from the client, and engaging in conduct that is prejudicial to the administration of justice and adversely reflecting on his fitness to practice law. Oberholtzer also failed to respond to a demand for information by a disciplinary authority and neglected to assist in the disciplinary investigation. The parties stipulated to the charged misconduct, findings of fact, and recommended sanction of a one-year suspension, stayed on conditions. Oberholtzer agreed to serve a 12-month period of monitored probation, complete a three-hour CLE course on law-office management within 90 days, and commit no further misconduct. The Board adopted the stipulations and the Court imposed the recommended sanction. In its discussion of sanction, the Court noted Oberholtzer's poor health at the time of the misconduct, his efforts to improve office operations, and his apologies to the clients involved. In the case before us, there is no evidence that Respondent is in poor health, of any effort to improve office operations, or of Respondent apologizing to the clients involved.

{¶64} In *Stark Cty. Bar Assn. v. Williams*, 137 Ohio St.3d 112, 2013-Ohio-4006, in five separate client matters, Williams was charged with engaging in a pattern of dishonesty, neglect, serious misuse of her IOLTA, and misappropriation of client funds to support her gambling addiction. The Board recommended a sanction of an indefinite suspension, with conditions for reinstatement. The Court disbarred Williams finding that the Board's heavy reliance on Williams'

character evidence was not justified and that such evidence did not outweigh Williams' misconduct and the Court's established precedent. In the case before us, there is no mitigation evidence as to Respondent's character or reputation.

{¶65} In *Cleveland Metro. Bar Assn. v. Lemieux*, 139 Ohio St.3d 320, 2014-Ohio-2127, Lemieux was charged with, while abusing drugs and alcohol, accepting payment from four clients and then failing to perform their legal work, failing to reasonably communicate with them, failing to maintain a client trust account, issuing misleading solicitation letters, and failing to cooperate in the disciplinary investigation. The Court adopted the Board's recommendation of an indefinite suspension, conditioning reinstatement upon Lemieux executing a new OLAP contract, random drug screens, restitution, and two mental health evaluations. Notably, Chief Justice O'Connor and Justice O'Donnell dissented and would have disbarred Lemieux. In the case before us, there is no OLAP involvement by Respondent, nor is there any evidence of the existence of a disorder determined to have contributed to cause Respondent's misconduct.

{¶66} In *Dayton Bar Assn. v. Scaccia*, 143 Ohio St.3d 144, 2015-Ohio-2487, decided June 25, 2015, Scaccia was charged with failing to maintain records of trust account funds disbursed on behalf of a client, failing to promptly distribute all portions of the client funds, failing to inform the client in writing that he did not maintain professional liability insurance, failing to deposit client funds in a client trust account, and failing to communicate effectively with the client. The Court adopted the Board's recommendation of a one-year suspension, with six months stayed on conditions that Scaccia complete 12 hours of CLE, submit to monitored probation, and commit no further misconduct. Notably in mitigation, Scaccia was found to have no dishonest or selfish motive, a cooperative attitude, and evidence of good character, all factors not in evidence in the case before us.

{¶67} Respondent's lack of cooperation in this process has been noteworthy. His minimal involvement has been worse than if he had defaulted on the complaint, as a default would have already yielded a suspension. This is somewhat offset by the fact that Respondent is currently under an attorney registration suspension which went into effect November 3, 2015 which the suspension has not been lifted to date. Respondent has refused to acknowledge his misconduct or to take accountability for his actions. Respondent has yet to account for the \$40,155.14 that should be in his IOLTA account, that was to be paid to Martin pursuant to the judgment entry in *Martin v. Carradine, et al.* Further, Respondent took retainers from Donatelli and from the Villas at Heron's Landing, but did not perform the contracted work for those clients. The retainers, having been deposited into Respondent's IOLTA account, are no longer in Respondent's IOLTA account. "Taking retainers and failing to carry out contracts of employment is tantamount to theft of the fee from the client." *Columbus Bar Assn. v. Moushey*, 104 Ohio St.3d 427, 2004-Ohio-6897 ¶16 (quoting *Disciplinary Counsel v. Sigall*, 14 Ohio St.3d 15, 17 (1984)).

{¶68} After consideration of all relevant factors discussed above, the panel recommends that Respondent be disbarred.

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 12, 2016. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, David Keith Roland, be permanently disbarred from the practice of law in Ohio 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