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IN THE SUPREME COURT OF OHIO

Benjamin Joltin Attorney Reg. No. 0072993	:	**CASE NO. 2016-0261**
Respondent,	:	
	:	
	:	
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Relator	:	

RELATOR'S OBJECTION TO THE BOARD OF PROFESSIONAL CONDUCT'S RECOMMENDED SANCTION

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RELATOR'S OBJECTION TO THE BOARD OF PROFESSIONAL CONDUCT'S RECOMMENDED SANCTION

INTRODUCTION

On April 13, 2015, the Board of Professional Conduct (the "board") certified a four-count complaint against respondent, Benjamin Joltin, alleging several violations of the Ohio Rules of Professional Conduct. The parties stipulated to all of the facts and violations, but were unable to reach an agreement on the appropriate sanction. After a hearing on December 16, 2015, the panel found that respondent violated all but one of the stipulated rule violations.

On February 16, 2016, the board adopted the panel's findings of fact, conclusions of law, and recommendation, prompting this Court to issue an Order to Show Cause on February 23, 2016. Relator objects solely to the board's recommended sanction of a two-year suspension with 18 months stayed and asks this Court to impose a two-year suspension with no stay.

FACTS

Although the facts are cogently set forth in the Board's Findings of Fact, Conclusions of Law, and Recommendation ("Report"), attached as Appendix A, relator presents the following summary.

Torok Matter

In September 2012, Lisa Torok hired respondent to represent her in a divorce. She gave him a check for $18,000 to hold in trust and they agreed to a flat fee of $2,500, which was later increased to $3,000. Stipulation 3. Six days after he deposited Torok's $18,000 check into his IOLTA, he wrote himself a check for $4,000, with the subject line of "Torok." Stip. 9; Exhibit 10. By the end of October 2012, six weeks after he began representing Torok, respondent had misappropriated $13,147 of Torok's money that was supposed to be held in trust for safekeeping. Transcript p. 87; Ex. 8, 10. Respondent never told Torok that he misappropriated her money. Tr. p. 87.

In January 2013, Torok asked respondent to return $15,000. Although respondent complied with Torok's request, she waited until September 2013 to cash the check; however, when she presented the check for payment, it was returned for insufficient funds. Ex. 2, 3. Torok informed respondent that the check had bounced, but instead of admitting that he had misappropriated her funds, respondent told Torok that the domestic relations court had placed a restraining order on the funds. Stip. 6; Ex. 4. Respondent then wrote Torok piecemeal checks, one for $1,800 and another for $5,000, as she needed money for living and child-related expenses. Ex. 5-6.

Torok terminated respondent's representation in February 2014, and requested her file, as well as the remaining $11,200 of her funds that should have been in his trust account. Stip. 8;

Ex. 7. Torok wanted the entire balance of her monies, from which she planned to write respondent a check for the agreed-upon $3,000 fee. Ex. 7. Instead, respondent wrote her a check, but only for $4,900, leaving a balance of $3,000 due to Torok. Stip. 13-14. Despite Torok's numerous requests for her funds, respondent waited almost two years, until December 7, 2015, to return the remaining balance to her. Stip. 14, 20.

Relator sent numerous letters to respondent in connection with its investigation of the Torok matter but respondent failed to respond to all but one of those inquiries. Stip. 11-12, 15; Ex. 13, 15-16. When relator requested follow-up information after receiving respondent's only response, respondent never replied. Stip. 17-18; Ex. 18-19. Relator also rescheduled multiple depositions at respondent's request, but he still failed to appear under subpoena at the last deposition scheduled for November 5, 2014. Stip. 19; Ex. 20-25.

Respondent admitted, by stipulation, that his conduct in the Torok matter violated Prof. Cond. R. 1.5(a) [a lawyer shall not charge a clearly excessive fee]; 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 only as fees are earned or expenses incurred]; Prof. Cond. R. 1.15(d) [requiring a lawyer to promptly deliver to the client any funds that the client is entitled to receive]; Prof. Cond. R. 1.16(e) [a lawyer shall promptly refund any part of a fee paid in advance that has not been earned]; Prof. Cond. R. 8.4(c) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.1(b) [prohibiting a lawyer from knowingly failing to respond to a demand for information from a disciplinary authority]; and Gov. Bar R. V(9)(G) (former Gov. Bar R. V(4)(G))[requiring a lawyer to cooperate with a disciplinary investigation]. The panel dismissed the violation of Prof. Cond. R. 1.5(a), stating that insufficient evidence was presented. Report at ¶ 28.

Cayavec Matter

Dr. Michael Cayavec treated Roger Johnson after he was injured in a car accident in September 2009. Stip. 21. Respondent represented Johnson in the subsequent personal injury case that was filed in 2011. Stip. 22. Cayavec sent respondent a Notice of Assignment for the payment of his $3,400 fee and, in return, respondent provided Cayavec with a Letter of Protection. Stip. 23-24; Ex. 29-30. The case settled on September 10, 2013, but Cayavec did not receive payment for his medical services. Stip. 25. Despite Cayavec's numerous attempts to contact respondent for payment, respondent did not provide Cayavec with his funds until December 7, 2015, more than two years later. Stip. 31; Ex. 32. Relator sent two Letters of Inquiry to respondent regarding the Cayavec grievance, but did not receive a response until after respondent was served with a Notice of Intent to File and draft Complaint. Stip. 27-30; Ex. 33-35.

Respondent admitted, by stipulation, that his conduct in the Cayavec matter violated Prof. Cond. R. 1.15(d) [a lawyer shall promptly notify a client or third person with a lawful interest upon receipt of funds and shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive]; Prof. Cond. R. 8.1(b); and Gov. Bar R. V(9)(G) (former Gov. Bar R. V(4)(G)).

Patterson Matter

In March 2014, Mark Patterson retained respondent to file a forcible eviction on his behalf. Patterson paid respondent $205, of which $105 was for the filing fee. Stip. 33. Between March 17, 2014 and June 4, 2014, Patterson attempted to call respondent multiple times, but never actually spoke to respondent. Stip. 34. Patterson also emailed respondent three times and never received a response. Stip. 35-37; Ex. 40-42. Notwithstanding the lack of communication,

respondent attempted to file the eviction, but it was rejected twice for technical deficiencies. Stip. 38. Patterson terminated respondent's representation on April 30, 2014, and asked for a refund but respondent did not reply. Stip. 36; Ex. 41. Patterson sent respondent another email on May 28, 2014, again asking for a refund but respondent failed to reply. Stip. 37; Ex. 42. Respondent finally refunded the fees to Patterson on December 7, 2015, more than 18 months later. Stip. 44; Ex. 46. Relator sent two Letters of Inquiry to respondent regarding the Patterson grievance, but did not receive a response until after respondent was served with a Notice of Intent to File and draft Complaint. Stip. 40-43; Ex. 44-45, 47.

Respondent admitted, by stipulation, that his conduct in the Patterson matter violated Prof. Cond. R. 1.3 [a lawyer shall act with reasonable diligence and promptness in representing a client]; Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the matter]; Prof. Cond. R. 1.15(d); Prof. Cond. R. 1.16(d) [a lawyer shall promptly deliver all papers and property to a client upon termination of representation]; Prof. Cond. R. 1.16(e); Prof. Cond. R. 8.1(b); and Gov. Bar R. V(9)(G)(former Gov. Bar R. V(4)(G)).

IOLTA

On September 13, 2013, relator received an overdraft notice from PNC Bank pertaining to respondent's IOLTA account. Stip. 45. Relator sent three letters to respondent asking for an explanation for the overdraft, but respondent never provided a response. Stip. 46-48; Ex. 49-51. While waiting for a response, relator received two more overdraft notices on December 4, 2013 and December 6, 2013. Stip. 49-50; Ex. 52-53. After respondent failed to provide satisfactory responses to three more inquiry letters, relator scheduled respondent's deposition at the Mahoning County Bar Association for April 14, 2014. Stip. 51-55; Ex. 54-58. Respondent was personally served with a subpoena for the April 14, 2014 deposition which required his personal

appearance, but instead he had someone drop off documents for him. He did not comply with the subpoena, which required him to personally appear for his scheduled deposition. Stip. 55; Ex. 58.

Respondent's IOLTA records revealed that he essentially used his IOLTA account as a personal checking account. Between December 11, 2012 and February 11, 2014, respondent wrote checks for personal expenses on at least 85 occasions and deposited personal funds multiple times into the account, which resulted in the commingling and misappropriation of client funds. Stip. 60-61; Ex. 61-62. At the hearing, respondent testified that he failed to maintain any records for his IOLTA since 2008. Respondent claimed that he started maintaining the required records again after he bounced the Torok check, but he never provided any IOLTA records or client ledgers to relator even though they were requested on multiple occasions. Tr. p. 98-100; Stip. 52.

Respondent admitted, by stipulation, that his conduct in the IOLTA matter violated Prof. Cond. R. 1.15(a)(2) [requiring a lawyer to maintain a record for each client that sets forth the name of the client; the date, amount, and source of all funds received on behalf of the client; the date, amount, payee, and purpose of each disbursement made on behalf of the client; and the current balance for each client]; Prof. Cond. R. 1.15(a)(3) [requiring a lawyer to maintain a record for each bank account that sets forth the name of the account; the date, amount, and client affected by each credit and debit; and the balance in the account]; Prof. Cond. R.1.15(a)(4) [requiring a lawyer to maintain all bank statements, deposit slips, and canceled checks for each bank account]; Prof. Cond. R. 1.15(a)(5) [requiring a lawyer to perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (5) of Rule 1.15]; Prof. Cond. R. 1.15(b) [lawyer may deposit the lawyer's own funds in an IOLTA for the sole purpose of paying

or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose]; 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 only as fees are earned or expenses incurred]; Prof. Cond. R. 8.1(b); and Gov. Bar R. V(9)(G) (former Gov. Bar R. V(4)(G)).

OBJECTION

RESPONDENT'S CONDUCT WARRANTS A TWO-YEAR SUSPENSION WITH NO STAY

This Court has repeatedly held that disbarment is the presumptive sanction for the misappropriation of client funds, but that the presence of significant mitigating circumstances may warrant an indefinite suspension. *Disciplinary Counsel v. McCauley*, 114 Ohio St.3d 461, 2007-Ohio-4259, 873 N.E.2d 269, ¶ 22, citing *Cincinnati Bar Assn. v. Rothermel*, 104 Ohio St.3d 413, 2004-Ohio-6559, 819 N.E.2d 1009, ¶ 18, citing *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, 769 N.E.2d 816, ¶ 15. This Court has also continually emphasized that, with respect to Prof. Cond. R. 1.15, "it is 'of the utmost importance that attorneys maintain their personal and office accounts separate from their clients' accounts' and that any violation of that rule 'warrants a substantial sanction whether or not a client has been harmed.'" *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763, 921 N.E.2d 225, ¶ 15, citing *Disciplinary Counsel v. Wise*, 108 Ohio St.3d 381, 2006-Ohio-1194, 843 N.E.2d 1198, ¶ 15, quoting *Erie-Huron Counties Joint Certified Grievance Commt. v. Miles*, 76 Ohio St.3d 574, 669 N.E.2d 831 (1996).

In the case at bar, it is undisputed that respondent engaged in multiple acts of misconduct, including:

- Misappropriating client funds;

- Misleading a client in an effort to conceal his theft;
- Commingling personal and client funds;
- Failing to safeguard client funds;
- Neglecting a client;
- Failing to adequately communicate with a client;
- Failing to pay settlement proceeds to a third-party with a claim to the funds; and
- Repeatedly failing to cooperate with relator in its investigation.

Starting at the baseline of disbarment for misappropriation, the weight of respondent's egregious conduct warrants a two-year actual suspension from the practice of law because his mitigation is clearly not "significant" enough to warrant staying 18 months of the recommended two-year suspension.

In reaching its decision that 18 months of respondent's suspension should be stayed, the panel and board relied heavily on *Disciplinary Counsel v. Coleman*, 144 Ohio St.3d 35, 2015-Ohio-2489, 40 N.E.3d 1092. In *Coleman*, this Court imposed a two-year suspension with 18 months stayed. *Id.* at ¶ 17. Coleman was entrusted with $18,000 from a client to invest at the client's direction. *Id.* at ¶ 5. After Coleman began misappropriating the funds for personal expenses, he falsely assured his client that the funds were still in trust. *Id.* at ¶ 6. Coleman also failed to maintain adequate records of client funds in his possession; failed to reconcile his client trust account; and failed to hold the property of his client in an interest-bearing account that was separate from his own property. *Id.* at ¶ 10. In aggravation, the Court found that Coleman acted with a dishonest or selfish motive; that he caused financial harm to the client; that the client was vulnerable; and that he had a prior one-day attorney registration suspension in 2001. In mitigation, Coleman fully cooperated with the disciplinary proceedings; was found to have good

character and reputation; and he secured a mentor. *Id.* at ¶ 10. It was also noted that he had personal hardships at the time of the misconduct, including that he was solely responsible for the care and support of his daughter and two nephews without any outside financial support. *Id.* at ¶ 14. Coleman also paid full restitution by March 22, 2014, only three weeks after the complaint was filed against him. *Id.* at ¶ 2, 7.

Although there are some factual similarities between *Coleman* and the case at bar, including the amount that was misappropriated and the mismanagement of the IOLTA, respondent's conduct was much more egregious and warrants a harsher sanction. Respondent's conduct involved three different clients, as well as egregious IOLTA mismanagement and commingling of personal and client funds. Respondent misappropriated funds from Torok, a mother whom he was representing in a divorce. He falsely assured her that her funds were in trust, but claimed they were subject to a restraining order entered by the court. Stip. 6. In fact, respondent had spent Torok's funds, which is why the check respondent wrote to her for $15,000 bounced when Torok attempted to cash it. Stip. 6.

Respondent also failed to pay Cayavec, the chiropractor who had treated his client, for services rendered after he signed a Letter of Protection, promising to protect his fee. Report at ¶ 29-33; Ex. 30. The client's case settled on September 10, 2013, but despite Cayavec's multiple requests for payment of his fee, respondent waited more than two years, until December 7, 2015 to finally pay Cayavec. Ex. 28, 32, 36.

In addition, respondent neglected his representation of Patterson, a landlord, by not acting diligently, failing to communicate, and failing to return his file upon the termination of representation. Report at ¶ 35-39. Patterson, who lives in Florida, hired respondent to assist him in getting tenants evicted from a property he maintained in Ohio. Ex. 43. Because the evictions

were not properly filed, the tenants did an enormous amount of damage to the property. Ex. 43.

In addition to the misconduct involving these three clients, respondent also failed to maintain any IOLTA records dating back to 2008. Tr. p. 98-100. Moreover, respondent used his IOLTA as a personal checking account by commingling funds and writing checks drawn on his IOLTA for personal expenses on at least 85 occasions. Stip. 60-61.

While the board did not find that any clients were harmed by respondent's actions, relator emphatically disagrees and submits that all of them were harmed. Torok was harmed because she needed money for living and child-related expenses and respondent wrote her piecemeal checks to cover her expenses after he misappropriated her monies. Further, in order to conceal his misappropriation, respondent disingenuously informed her that the court had imposed a restraining order. Stip. 6; Ex. 4; Report at ¶ 20. Torok had to wait almost two years for respondent to finally make full restitution of the funds he had stolen from her. Stip. 5, 20; Ex. 26. Cayavec had to wait over two years for respondent to pay him for services rendered after respondent signed a Letter of Protection that would guarantee payment. Stip. 24, 31; Ex. 30, 36. Patterson's tenants did an enormous amount to damage to his property during the delay caused by respondent's failure to properly file the eviction, which was rejected twice for technical deficiencies. Stip., 38; Ex. 43.

Another critical distinction between *Coleman* and the present case is respondent's almost complete failure to cooperate in relator's investigation of his conduct, whereas Coleman fully cooperated with Disciplinary Counsel's investigation. Respondent not only failed to respond to almost every letter relator sent, but he also failed to appear for two depositions despite being personally served with subpoenas. Respondent's first deposition was scheduled for April 14, 2014, at the Mahoning County Bar Association. Ex. 58. Instead of personally appearing as

instructed by the subpoena, respondent had a third-party drop off documents to relator's counsel, who drove three hours to take his deposition. Stip. 55. Relator accommodated respondent's numerous requests for continuances of subsequently scheduled depositions, but he still failed to appear at the last scheduled deposition on November 5, 2014. Stip. 57-59; Ex. 20-25, 57-60. Respondent's failure to cooperate makes his conduct significantly more egregious than Coleman's and demonstrates that staying 18 months of a two-year suspension is wholly inadequate in light of the breadth and seriousness of his misconduct.

At the hearing, relator relied on *Disciplinary Counsel v. McCauley* for its position on the appropriate sanction. *McCauley,* 114 Ohio St.3d 461, 873 N.E. 2d 269. The board disregarded this case because it felt McCauley's conduct was more egregious because he misappropriated approximately $200,000. Report at ¶ 58. McCauley commingled personal and client funds, misappropriated client funds, and failed to manage his IOLTA. *Id.* Although McCauley misappropriated approximately $200,000, he paid full restitution, ultimately cooperated in the disciplinary proceedings, had no previous discipline, and expressed remorse for his actions. *Id.* at ¶ 23. In aggravation, he was found to have committed multiple offenses and engaged in a pattern of misconduct. *Id.* at ¶ 23. Based upon the presence of several mitigating factors, this Court imposed an indefinite suspension rather than disbarment. *Id.* at ¶ 24.

Respondent's misconduct and McCauley's misconduct have many similarities. Respondent may not have misappropriated as much money as McCauley, but the amount misappropriated is not the determining factor when deciding an appropriate sanction. In fact, this Court has repeatedly stated that disbarment is the presumptive sanction for misappropriation, and has never assigned a minimum dollar amount to the application of that baseline standard. *Id.* at ¶ 22; See *supra*, p. 7. Like McCauley, respondent used his IOLTA account as a personal

checking account by paying personal expenses on at least 85 occasions from December 11, 2012 to February 11, 2014. Stip. 61. Like McCauley, respondent was also less than forthcoming throughout the disciplinary investigation, ultimately cooperating in the proceeding, but not until after the complaint was filed. For these reasons, respondent's misconduct is more similar to that in *McCauley*, which warranted an indefinite suspension.

Respondent's extensive IOLTA violations are another reason why a more substantial sanction than was recommended by the board is warranted. In addition to the failure to maintain any records pertaining to his IOLTA since 2008, respondent was also less than forthcoming when it came to explaining an $88,000 personal deposit into his IOLTA account. Tr. p. 98. When he testified at the hearing, respondent stated that the $88,000 check was from an inheritance, so it was not subject to his pending divorce proceeding. Tr. p. 91-92. But respondent also testified that, because his wife had control of the accounts they shared, he deposited the check into his IOLTA account. Tr. p. 31-32. Under questioning from the panel, respondent was forced to admit that the money was not an inheritance, but rather was paid to him as Executor of the estate. As such, the monies were actually income and subject to division in the divorce. Tr. p. 119. Although there was no finding on this particular issue, respondent's testimony suggests that he was hiding assets from his wife during the divorce proceedings.

During the hearing, respondent also admitted that he withdrew $4,000 from his IOLTA with respect to the *Torok* matter on September 18, 2012, only six days after he received the check from Torok, when the agreed upon fee was $2,500[1]. Stip. 1, 9; Ex. 9. Respondent further admitted that he had not earned those funds when he withdrew them. Tr. p. 87-88. Yet, at the hearing, respondent denied stealing Torok's money, even though he misappropriated $13,147 between September 12, 2012 and October 31, 2012. Tr. p. 88; Ex. 8, 10. Respondent's denial

[1] This flat fee amount was later increased to $3,000 through agreement between Torok and respondent. Stip. 3.

that he stole Torok's money during the hearing seriously undermines the board's finding that respondent "freely acknowledges the wrongfulness of his conduct." Report at ¶ 56.

Respondent's lack of candor with respect to the misappropriated funds demonstrates that he does not take full responsibility for his actions in stealing Torok's money. His failure to accept responsibility warrants a more lengthy actual suspension from the practice of law than six months. The board even acknowledged that it was, "troubled by the fact that these steps have been taken so recently, and by his inability to satisfactorily answer the panel's questions about why his personal funds were deposited into his trust account during the pendency of his divorce proceeding, suggesting that he may still not fully appreciate the scope of his obligations regarding his trust account." Report at ¶ 64. The board questioned whether respondent actually appreciates the scope of his IOLTA violations and commingling of funds, and although the primary purpose of the disciplinary system is to protect the public, another important purpose of the process "'is to ascertain whether the conduct of the attorney involved has demonstrated his unfitness to practice law, and if so to deprive him of his previously acquired privilege to serve as an officer of the court.'" *Ohio State Bar Assn. v. Weaver*, 41 Ohio St.2d 97, 100, 322 N.E.2d 665 (1975), quoting *In re Pennica*, 36 N.J. 401, 418, 177 A.2d 721 (1962). In this case, respondent has failed to demonstrate his fitness to practice law.

Respondent's repeated misuse of his IOLTA account warrants a "substantial sanction." *Crosby,* 124 Ohio St.3d at ¶ 15, 921 N.E.2d 225. Crosby received an actual two-year suspension for utilizing his IOLTA as a personal and operating account; failing to properly maintain and safeguard his IOLTA; and failing to promptly remove earned fees. *Id.* In mitigation, Crosby had no prior disciplinary violations and there was no evidence that a client was affected. *Id.* at ¶ 16. In aggravation, Crosby was found to have acted with a dishonest and selfish motive, engaged in a

pattern of misconduct, and failed to fully cooperate with the disciplinary process. *Id.* at ¶ 17.

Crosby's misconduct and associated violations are similar to respondent's actions with respect to his mismanagement of and failing to safeguard funds in his IOLTA account. However, in addition to the IOLTA violations, and commingling of funds, respondent has committed additional misconduct with respect to his handling of the Patterson and Cayavec cases and the misappropriation of Torok's funds. Therefore, respondent's conduct in this case warrants an actual two-year suspension from the practice of law.

As stated above, the board was "troubled" by the fact that respondent only recently took steps to rectify his deficiencies with respect to managing his IOLTA, to pay restitution, to secure a mentor, and to meet with OLAP. The timing of respondent's efforts to address the issues that resulted in the disciplinary complaint against him calls into question his true intentions and understanding of the gravity of his misconduct. The original hearing date was initially set to begin on September 24, 2015, and was later continued to December 16, 2015. Respondent took no action to mitigate his conduct until the 11th hour. In fact, respondent did not pay restitution until December 7, 2015, nine days before the continued hearing date. In order to have a mitigating effect, there must be a "timely, good faith effort to make restitution or to rectify consequences of misconduct." Gov. Bar R. V 13(C)(3). This Court has previously recognized that, "the circumstances surrounding the repayment determine its weight." *Dixon*, 95 Ohio St.3d at 495, 769 N.E.2d 816. Here the panel correctly gave minimal weight to the payment of restitution as it was not paid timely. Report at ¶ 55.

The panel also ascribed minimal weight to respondent's "full and free disclosure of his actions to the disciplinary board," as he only began to cooperate in the final weeks before the hearing. Report at ¶ 54. This Court has afforded little weight to cooperation as a mitigating

factor when the respondent is less than forthcoming throughout the disciplinary process. See *Cleveland Metro. Bar Assn v. Wrentmore*, 138 Ohio St.3d 16, 2013-Ohio-5041, 3 N.E.3d 149, 20-21. Similarly, respondent met with OLAP on December 1, 2015, just two weeks before the hearing, but no mitigating diagnosis was rendered. Respondent also asked a local attorney to be his mentor, who supplied a letter dated December 7, 2015, again just days before the hearing. Respondent's Ex. D.

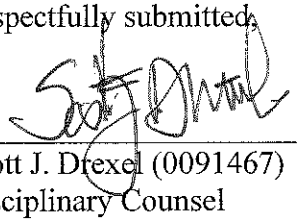
Because the board ascribed minimal weight to the repayment of restitution and respondent's level of cooperation, the only mitigation that remains is: remorse; no prior discipline; and evidence of good character and reputation. Report at ¶ 53, 56. However, little weight should be ascribed to remorse as a mitigating factor, as the board admitted that it was "troubled" by respondent's conduct, his failure to satisfactorily answer the panel's questions about his trust account, and his failure to fully appreciate the scope of his trust account obligations. Further, the example of remorse cited by the board is respondent's testimony that "I screwed up. I put my practice and my clients and my family in jeopardy because I did not get the help I should have. I did not respond. I just pushed it to the back burner based on the justification that I was doing client's work, and it was ok." Report at ¶ 56, footnote 6. This is not an expression of remorse, but is simply another transparent attempt to spare his law license. And, while respondent provided Torok and Patterson with letters of apology, the lack of sincerity of those letters is also a demonstration that respondent is not truly remorseful. The letters are mirror images of each other. Resp. Ex. A. Respondent does not admit that he misappropriated Torok's funds, nor does he acknowledge the harm that was caused to her by not promptly returning her funds. In the letter to Patterson, respondent also fails to acknowledge that his inaction in the eviction case caused harm to Patterson.

Overall, this is not a case involving "significant" mitigation that it warrants a downward departure from the presumptively appropriate sanction of disbarment to staying 18 months of a two-year suspension. Although respondent made attempts to address his disciplinary issues and make restitution, his 11th hour efforts are a transparently self-serving attempt to protect his law license rather than a sincere effort to demonstrate his understanding of the gravity of the misconduct he committed or his remorse for the harm suffered by his victims. Because of respondent's lack of understanding of the significance of his disciplinary violations, no portion of his two-year suspension should be stayed.

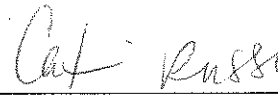
CONCLUSION

This Court has continually stated that disbarment is the presumptive sanction for the misappropriation of client funds, but that significant mitigation would warrant an indefinite suspension. While the respondent has some mitigation, it is not significant enough to warrant staying 18 months of his two-year suspension. Relator respectfully requests that this Court impose the entire two year-suspension with no portion stayed.

Respectfully submitted,



Scott J. Drexel (0091467)
Disciplinary Counsel



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Relator's Objection to the Board of Professional Conduct's Recommended Sanction has been served upon the Board of Professional Conduct, c/o Richard A. Dove, Director, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, and respondent's counsel Tracey Ann Laslo, 325 E Main St, Alliance, Ohio 44601, via regular U.S. mail, postage prepaid, this 4th day of April, 2016.

Catherine Russo

Catherine M. Russo (0077791)

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

In re:

Complaint against

Benjamin Joltin
Attorney Reg. No. 0072993

Respondent

Disciplinary Counsel

Relator

Case No. 2015-022

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 December 16, 2015 in Columbus before a panel consisting of Hon. John R. Willamowski, Charles J. Faruki, and Lawrence R. Elleman, 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 Catherine M. Russo. Respondent was represented by Tracey A. Laslo.

{¶3} The basic facts and violations were stipulated. The disputed issue was the sanction.

{¶4} The stipulations were supplemented by 77 stipulated exhibits including a composite exhibit containing 17 character letters. Respondent was the only witness at the hearing.

{¶5} This case involves a sole practitioner who ignored his professional obligations regarding office management and his IOLTA account, misappropriated client funds, failed to cooperate with Relator's investigation, and committed other misconduct.

{¶6} The panel recommends that Respondent be suspended for two years, with 18 months stayed on stringent conditions designed to reduce the likelihood of future misconduct.

APPENDIX
A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on November 20, 2000 and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶8} Respondent is 41 years old and a 2000 graduate from Cleveland Marshall College of Law. After graduation, Respondent worked as an assistant prosecutor for the City of Youngstown. From 2002 to 2004, he worked with a small suburban law firm. Beginning in 2004, he practiced with an experienced lawyer, who became his mentor. When that lawyer retired in 2012, Respondent became a sole practitioner.

{¶9} Respondent has a busy practice. He spends 80-90 percent of his time in court, sometimes six or seven criminal and family law cases per day, including DUIs, driving under suspension, child support, and contempt proceedings. The evidence suggests that Respondent is effective in his client work, as confirmed by numerous character letters submitted by his peers. However, he ignored his duty to efficiently and effectively manage his office and his IOLTA account. Hearing Tr. 36-42, 68-69; Joint Ex. 77.

{¶10} Respondent testified at length and with considerable emotion, regarding troubles in his personal life, which has caused him grief and emotional distress. In 2009, Respondent's grandfather died. Respondent testified that his grandfather had been his best friend, confidant, and supporter. Two years later, his grandmother and uncle each died. These events created a void in his life. Respondent's marriage was in trouble from at least 2007, primarily over religious differences regarding the children. By 2009, Respondent was paying child support for a child conceived in an extramarital encounter. Nevertheless, the marriage continued in the legal sense until Respondent's wife filed for a divorce in March 2013. Respondent stayed in the marriage for

as long as he did out of fear of losing contact with his two children from the marriage. The divorce was finalized in January 2014. Respondent has remained active in the lives of his children after the divorce and is paying child support as ordered. Hearing Tr. 43-56; Joint Ex. 64-71.

{¶11} In 2013 and 2014, Respondent experienced a number of health problems including Type 2 diabetes which is now under control, a concussion due to a vehicle accident, and sleep issues. Hearing Tr. 56, 125-126; Joint Ex. 73-74.

{¶12} In 2012, a friend recommended that Respondent consult with a mental health counselor. At that time, he consulted with Marilyn Burns, a Licensed Professional Counselor, who told him that he was suffering from depression and anxiety. Respondent did not, at that time, follow up with the counselor. However, after the grievances were filed against him in 2014, he resumed his consultation with Burns. Hearing. Tr. 57, 109-111; Joint Ex. 72.

{¶13} During the investigative phases of the grievances, Respondent failed to cooperate, failed to timely respond to demands for information, and failed to appear at depositions pursuant to subpoena. However, after the complaint was filed, Respondent became fully engaged in the process. In addition to agreeing to comprehensive stipulations of fact and violations, he, in the days immediately prior to the final hearing took several steps to demonstrate his good faith. Respondent limited the scope of his practice, changed his general office procedures to become more efficient, and began to comply with Prof. Cond. R. 1.15 regarding IOLTA accounts. On December 7, 2015, he voluntarily engaged a fellow attorney to act as his mentor. Also on December 7, he made full restitution to the effected clients, and on December 10 made written apology to each of them. Hearing Tr. 69-78, 98-110; Respondent's Ex. A & D.

{¶14} On December 1, 2015, Respondent signed a three-year OLAP contract and has subsequently begun counseling with psychiatrist. However, it is too early in the process for a psychiatric assessment. Hearing Tr. 81-83, 109-111; Joint Ex. 75.

{¶15} Respondent's misconduct in this case is set forth in the agreed stipulations that are summarized below and that the panel accepts and incorporates into its findings of fact.

Count One—Lisa Torok

{¶16} On or about September 11, 2012, Lisa Torok hired Respondent to represent her in a complex divorce case. Torok gave Respondent a check for $18,000 to hold in trust. Respondent deposited the check in his IOLTA account. The purpose of the deposit was to cover Respondent's attorney fees with the balance to be distributed to Torok at her direction. Respondent stipulated that the agreed fee was a flat fee of $2,500, which was later increased to a $3,000 flat fee. Stipulation 3; Hearing Tr. 60, 114-116, 127; Joint Ex. 1.[1]

{¶17} At the time Respondent deposited Torok's check on September 12, 2012, he had a beginning balance in his IOLTA account of $28.70. Six days later on September 18, 2012, Respondent wrote himself a check on his IOLTA account for $4,000, with a subject line of "Torok." At that time he had not earned that amount as a fee or for expenses. Stipulation 9; Joint Ex. 8-9; Hearing Tr. 87.

{¶18} In November 2012, Respondent deposited $88,000 of personal funds into his IOLTA account and thereafter continued to comingle his personal funds with funds belonging to his clients without maintaining proper records. Hearing Tr. 31-33.[2]

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[1] The record is unclear as to the purpose of the deposit of the amount in excess of the expected fees and expenses. Relator has not claimed, and Respondent does not think the purpose was to conceal assets from the divorce proceeding. In any event, the existence of these funds became known to husband's attorney and presumably dealt with as part of Torok's ultimate divorce settlement. Hearing Tr. 127-128; Joint Ex. 4.

[2] The source of these funds was an executor's fee earned from his grandparents' estate. Respondent testified that he deposited these funds in his IOLTA account because his other accounts were tied up in his personal divorce

{¶19} On or about January 25, 2013, Torok asked for $15,000 of her money from Respondent. Respondent wrote an IOLTA check in that amount but the check was returned for insufficient funds. Stipulations 4-5; Joint Ex. 2-3.

{¶20} Torok contacted Respondent and told him that the check had bounced. On September 16, 2013, Respondent sent an email message informing Torok that the Trumbull County Domestic Court had put a restraining order on the distribution of these funds. This statement was literally true but was seriously misleading. In fact, the $15,000 check had bounced because Respondent had used a portion of Torok's funds for his own personal and family purposes, and there were insufficient funds left in Respondent's IOLTA to cover the check. Stipulation 6; Joint Ex. 4; Hearing Tr. 122-123, 129-132, 146-149.

{¶21} On September 16, 2013 and December 15, 2013, Respondent wrote personal checks to Torok for $1,800 and $5,000 respectively. After these payments, Respondent should have been holding $11,200 for Torok in his IOLTA account. But, as of January 1, 2014, Respondent's IOLTA balance was only $421.78. Stipulations 6-7, 9; Joint Ex. 5-6, 11.

{¶22} On February 25, 2014, Torok terminated Respondent's representation. A disagreement arose as to the amount of attorney fees to which Respondent was entitled. Torok claimed that there was a fixed fee agreement for $2,500. Respondent claimed that the $18,000 deposit was a retainer and that the amount of the fee for a complex, contested divorce with child custody and support issues was in excess of $4,000, calculated on an hourly basis. There was no

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proceeding, and that the deposit was not made with the purpose of shielding these funds from his wife, who, in any event, was aware of those funds. He also testified as to his belief, which appears to have been mistaken, that the funds were not marital property because they were inherited funds rather than earned income. Under questioning by the panel, he conceded that source of the funds was an executor's fee rather than an inheritance. However, Relator did not plead the $88,000 deposit, and did not seriously attempt to prove by clear and convincing evidence that the deposit was made with the intent of concealing assets from Respondent's divorce proceeding. Hearing Tr. 31-33, 61-62, 91-92, 117-120.

concrete proof presented at the final hearing to establish the reasonable value of Respondent's legal services. However, Respondent ultimately agreed to accept $3,000 as his fee plus $300 for filing fees and expenses. Stipulations 8, 14; Joint Ex. 7; Hearing Tr. 132-136, 141-143.

{¶23} On April 8, 2014, Respondent returned the file to Torok and gave Torok a cashier's check for $4,900. At this point, Respondent had refunded to Torok a total of $11,700. Taking into account the agreed fee and expenses of $3,300, Respondent still owed Torok $3,000 ($18,000 minus $11,700 minus $3,300 equals $3,000). Stipulations 13-14; Joint Ex. 14.

{¶24} After April 2014, Torok made numerous attempts to obtain the remaining funds from Respondent but Respondent failed to respond or to pay the remaining funds owed until December 7, 2015 (nine days prior to the final hearing). Stipulations 8, 14; Joint Ex. 14, 26.

{¶25} Relator sent Respondent a letter of inquiry on March 27, 2014 to which Relator received no immediate response. On April 30, 2014, Relator sent a letter to an attorney for Respondent with additional requests. The requested information was not received. Stipulations 11-12, 15-18; Joint Ex. 13, 15-18.

{¶26} A deposition of Respondent was scheduled for September 10, 2014. The deposition was rescheduled twice at the request of Respondent or his attorney. Ultimately, the deposition was set to take place on November 5, 2014. Relator issued a subpoena for a personal appearance for that date. Respondent did not appear at the deposition.[3] Stipulations 18-19; Joint Ex. 19-25.

{¶27} Relator proved by clear and convincing evidence pursuant to Count One of the complaint that Respondent violated Prof. Cond. R. 1.15(c) [a lawyer shall deposit into a client trust

[3] At the final hearing, Respondent testified that he understood from an attorney friend who told him that the deposition had been postponed. However, this understanding was undocumented, and Respondent had previously received a letter from Relator dated October 1, 2014 stating that "this deposition will not be rescheduled for any reason. Your failure to appear will result in a formal complaint being filed against you." Hearing Tr. 111-112; Joint Ex. 25.

account legal fees and expenses that have been paid in advance to be withdrawn only as fees are earned or expenses incurred]; Prof. Cond. R. 1.15(d) [a lawyer shall promptly deliver to the client any funds that the client is entitled to receive]; Prof. Cond. R. 1.16(e) [a lawyer shall promptly refund any part of a fee paid in advance that has not been earned]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation];[4] Prof. Cond. R. 8.1(b) [prohibiting a lawyer from knowingly failing to respond to a demand for information from a disciplinary authority]; and Gov. Bar R. V, Section 9(G) [a lawyer shall cooperate with a disciplinary investigation], all as stipulated.

{¶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]. The divorce proceeding was highly contentious and complex and included issues of child custody and support. The parties ultimately agreed to the fee of $3,000. Regardless of whether the fee was to be calculated on an hourly basis, as Respondent contended, or on a fixed fee basis, there was no evidence or analysis at the hearing of the factors enumerated in the rule to be considered in determining the reasonableness of a fee. The panel therefore recommends the dismissal of the claimed violation of Prof. Cond. R. 1.5(a).

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[4] In *Disciplinary Counsel v. Edwards*, 134 Ohio St.3d 271, 2012-Ohio-5643, ¶8, the Supreme Court stated we "find that Edwards' unauthorized removal of funds from his client trust account and the use of those funds for his own purposes necessarily involves dishonesty, regardless of whether he made any false representations regarding his conduct." (Emphasis added.)

Count Two—Dr. Michael Cayavec

{¶29} In 2009, Respondent represented Roger Johnson in a personal injury suit. Prior to his settlement of the case on behalf of his client, he received a Notice of Assignment dated September 8, 2009 from Dr. Michael Cayavec, his client's treating physician, to pay Cayavec from the proceeds of any settlement or judgment. On October 29, 2009, Respondent sent Cayavec a letter of protection accepting the assignment of payment for treatment. Stipulations 21-24; Joint Ex. 27-30.

{¶30} Respondent placed the Notice of Assignment and acceptance documents in a different file and forgot about it. On September 10, 2013, the Johnson case was settled. Respondent distributed the settlement proceeds to his client without notifying or paying Cayavec. Stipulation 25; Joint Ex. 31; Hearing Tr. 72-74.

{¶31} Two years later, on December 7, 2015, Respondent paid Cayavec the sum of $3,400 for his medical services. Stipulation 31; Joint Ex. 36.

{¶32} Respondent failed to provide a timely response to two letters of inquiry from Relator regarding the Cayavec grievance. Stipulations 27-30; Joint Ex. 33-35.

{¶33} Relator proved by clear and convincing evidence pursuant to Count Two of the complaint that Respondent violated Prof. Cond. R. 1.15(d) [a lawyer shall promptly notify a client or third person with a lawful interest upon receipt of funds and shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive]; Prof. Cond. R. 8.1(b); and Gov. Bar R. V, Section 9(G).

{¶34} At the hearing, Relator moved to dismiss the claimed violation of Prof. Cond. R. 8.4(h) [conduct that adversely reflects on a lawyer's fitness to practice law]. Relator's motion to dismiss was granted. Hearing Tr. 34-35.

Count Three—Mark Patterson

{¶35} Respondent agreed to take over an eviction matter for Mark Patterson as a favor to another lawyer who was unable to continue representing Patterson. Patterson paid Respondent $205 of which $105 was for the filing fee. Stipulations 32-33; Joint Ex. 37-38; Hearing Tr. 65-68, 120-121.

{¶36} Respondent attempted to file the eviction, but it was rejected by court staff twice for technical deficiencies. Between March 17, 2014 and June 4, 2014, Patterson called Respondent multiple times to inquire about the status of the case. Patterson spoke only with Respondent's secretary, who assured him that Respondent was working on the case. Patterson also sent Respondent an email detailing the eviction issues for the eviction motion, to which Respondent did not respond. Finally, on May 28, 2014, Patterson sent Respondent another email terminating their attorney-client relationship and asking for a refund, to which Respondent did not reply. Stipulations 34-38; Joint Ex. 39-42.

{¶37} On December 7, 2015, Respondent finally refunded $205 to Patterson. Stipulation 44; Joint Ex. 47.

{¶38} Respondent failed to provide a complete and timely response to two letters of inquiry from Relator regarding the Patterson grievance. Stipulations 40-43; Joint Ex. 44-46.

{¶39} Relator proved by clear and convincing evidence pursuant to Count Three of the complaint that Respondent violated Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of a matter]; Prof. Cond. R. 1.15(d); Prof. Cond. R. 1.16(d) [a lawyer shall promptly deliver all papers and property to a client upon termination of representation]; Prof. Cond. R. 1.16(e); Prof. Cond. R. 8.1(b); and Gov. Bar R. V, Section 9(G).

{¶40} At the hearing, Relator moved to dismiss the claimed violation of Prof. Cond. R. 1.5(a). Relator's motion to dismiss was granted. Hearing Tr. 34-35.

Count Four--IOLTA

{¶41} Respondent completely stopped keeping IOLTA records in 2008, and did not resume until 2013 when Relator's investigation was commenced. Respondent admitted at the hearing that in 2012, he had no idea what his IOLTA balance was. Hearing Tr. 98-100, 150.

{¶42} Respondent admitted at the hearing that during that period he did not maintain a record for each individual client, did not maintain a record of each bank, and did not maintain all bank statements or do a monthly reconciliation. Respondent has since corrected these deficiencies. Hearing Tr. 138-140.

{¶43} Respondent stipulated that his IOLTA bank records for the period December 2012 through March 2014 reflect that Respondent repeatedly misused his IOLTA and failed to safeguard client funds. Respondent repeatedly commingled client and personal funds in his IOLTA. He also failed to maintain client ledgers, which resulted in his spending of client moneys before they were earned. Stipulation 60.

{¶44} Respondent stipulated that he wrote checks for personal and family expenses from his IOLTA on at least 85 occasions between December 11, 2012 and February 11, 2014. Stipulations 61; Joint Ex. 61-62.

{¶45} Respondent's IOLTA account was overdrawn on numerous occasions, which prompted Relator to send Respondent multiple letters of inquiry. Respondent failed to provide a timely and complete response to at least four letters of inquiry regarding his IOLTA account. Stipulations 45-54; Joint Ex. 48-57.

{¶46} On April 14, 2014 and on November 5, 2014, Respondent failed to appear for testimonial depositions pursuant to subpoena.[5] Stipulations 55, 59.

{¶47} Relator proved by clear and convincing evidence pursuant to Count Four of the complaint that Respondent violated Prof. Cond. R. 1.15(a)(2) [a lawyer shall maintain a record for each client that sets forth the name of the client, the date, amount, and source of all funds received on behalf of the client; the date, amount, payee, and purpose of each disbursement made on behalf of the client; and the current balance for each client]; Prof. Cond. R. 1.15(a)(3) [a lawyer shall maintain a record for each bank account that sets forth the name of the account; the date, amount, and client affected by each credit and debit; and the balance in the account]; Prof. Cond. R. 1.15(a)(4) [a lawyer shall maintain all bank statements, deposit slips, and canceled checks for each bank account]; Prof. Cond. R. 1.15(a)(5) [a lawyer shall perform and retain a monthly reconciliation); Prof. Cond. R. 1.15(b) [a lawyer shall deposit the lawyer's own funds in an IOLTA for the sole purpose of paying or obtaining a waiver of bank service charges on that account]; Prof. Cond. R. 1.15(c); Prof. Cond. R. 8.1(b); and Gov. Bar R. V, Section 9(G).

AGGRAVATION, MITIGATION, AND SANCTION

{¶48} Among the factors that have been considered by the panel in making its recommended sanctions are the ethical duties violated, the injuries caused by 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.

{¶49} Among the significant ethical duties violated by Respondent are that he ignored his obligations regarding his IOLTA for several years and in the process misappropriated funds

[5] The failure to attend the November 5, 2014 deposition has been previously referenced in regard to Count One and is therefore, to a limited extent, duplicative of Count One.

entrusted to him by his client in violation of Prof. Cond. R. 8.4(c). Ohio case law treats these offenses seriously, warranting an actual suspension from the practice of law in the absence of strong mitigation evidence. However, in this case, no client was shown to be harmed by Respondent's misconduct, except for any misconduct caused by Respondent's delay in providing restitution. See e.g., *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763 and *Disciplinary Counsel v. Karris*, 129 Ohio St.3d 499, 2011-Ohio-4243.

{¶50} Respondent was not shown to have suffered from any mental disorder that contributed to the cause of the misconduct. The misconduct occurred during a time of substantial turmoil in Respondent's personal life. The panel does not find his personal problems to be a mitigating factor because there was insufficient proof that they were a cause of his misconduct. Moreover, the panel is not convinced that the steps Respondent has only recently taken to address any mental health issues associated with these problems, will prove effective over time.

Aggravating and Mitigating Factors

{¶51} The parties stipulated, and the panel finds, as aggravating factors that Respondent committed multiple offenses, engaged in a pattern of misconduct, and failed to cooperate in the disciplinary process until after the complaint was filed.

{¶52} The panel finds as an additional aggravating factor that Respondent acted with a dishonest and selfish motive by distributing to himself $4,000 from his trust account attributable to Torok only six days after the initial deposit at a time when he had not earned such amount as an attorney fee or otherwise, and his subsequent misappropriation of almost the entire amount that Torok entrusted to him.

{¶53} The parties have stipulated as mitigating factors that Respondent has no prior disciplinary offenses and evidence of good character and reputation. Respondent submitted 17

character letters from friends and colleagues in the legal community attesting to his professional competence, attention to detail in representing his clients, his zealous advocacy, his courteous behavior inside and outside the courtroom, and his character and good reputation for truth and veracity. These letters provide several impressive examples of the above described personal traits and behavior. Joint Ex. 77; Respondent's Ex. B.

{¶54} The parties also stipulated as a mitigating factor that Respondent made full and free disclosure of his actions to the disciplinary board. The panel accepts this as a mitigating factor but ascribes minimal weight to it because Respondent only began to cooperate in the last weeks prior to the final hearing. Before that time, he failed to fully cooperate with Relator's investigation.

{¶55} The parties also stipulated as a mitigating factor that Respondent made a "good faith effort to make restitution." However, this stipulation does not fully qualify as a mitigating factor pursuant to Gov. Bar R. V, Section 13(C)(3) because the restitution was not timely made, having been completed only nine days prior to the hearing. The panel ascribes little mitigating value to this action. See *Medina Cty. Bar Assn. v. Malynn*, 142 Ohio St.3d 435, 2014-Ohio-5261, ¶10 and *Cincinnati Bar Assn. v. Grote*, 127 Ohio St.3d 1, 2010-Ohio-4833, ¶18. See also *Akron Bar Assn. v. DeLoach*, 143 Ohio St.3d 39, 2015-Ohio-494, ¶12 where the Supreme Court approved a Board finding that the delay in refunding a client's money was in that case "on the whole, an aggravating factor."

{¶56} The panel finds as an additional mitigating factor that Respondent feels remorse, freely acknowledges the wrongfulness of his conduct,[6] and has written formal letters of apology to the effected clients. Hearing Tr. 58-59, 61, 78, 83-85, 117; Respondent's Ex. A.

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[6] For example, he testified that "I screwed up. I put my practice and my clients and my family in jeopardy because I did not get the help I should have. I did not respond. I just pushed to the back burner based on the justification that I was doing client's work, and it was ok." Hearing Tr. 83-84.

Sanctions Imposed In Similar Cases

{¶57} Relator recommends a sanction of an indefinite suspension. Respondent recommends a fully stayed suspension. The case law suggests that the appropriate sanction is a two-year suspension, with 18 months stayed on stringent conditions designed to reduce the likelihood of future misconduct.

{¶58} The case law cited by Relator does not, in the opinion of the panel, justify the imposition of an indefinite suspension in this case. Three of the indefinite suspension cases cited involved misconduct that was more egregious than Respondent's misconduct. In *Cleveland Metro. Bar Assn. v. Wrentmore*, 138 Ohio St.3d 16, 2013-Ohio-5041, the attorney lied to his client, to his law firm, and to the relator, and was guilty of theft of services of the OSBA regarding CLE courses. *Disciplinary Counsel v. McCauley*, 114 Ohio St.3d 461, 2007-Ohio-4259, involved an attorney who failed to remit to his client over $200,000 collected by the attorney for his client in collection cases. *Disciplinary Counsel v. Golden*, 97 Ohio St.3d 230, 2002-Ohio-5934, involved an attorney who violated a series of disciplinary rules while representing clients in eight different cases. In the remaining two indefinite suspension cases cited by Relator, the attorney did not even file an answer to the complaint, and the aggravating factors greatly outweighed the mitigating factors. *Dayton Bar Assn. v. Wilson*, 127 Ohio St.3d 10, 2010-Ohio-4937 and *Cleveland Metro. Bar Assn. v. Gottehrer*, 124 Ohio St.3d 519, 2010-Ohio-929. The panel therefore concludes that an indefinite suspension is not warranted in this case.

{¶59} Similarly, the three fully stayed suspension cases involving Prof. Cond. R. 1.15 IOLTA violations cited by Respondent do not necessarily require a fully stayed suspension. In *Disciplinary Counsel v. Oberholtzer*, 136 Ohio St.3d 314, 2013-Ohio-3706 (12-month suspension fully stayed on conditions) the attorney was not found to have violated Prof. Cond. R. 8.4(c)

[conduct involving dishonesty, fraud, deceit, or misrepresentation] whereas Respondent did violate that rule.[7] In *Akron Bar Assn. v. Tomer*, 138 Ohio St.3d 302, 2013-Ohio-5494 (two-year suspension fully stayed on conditions), Prof. Cond. R. 1.15 violations were less pervasive than Respondent's misconduct. In addition to misappropriation of client funds, Respondent violated multiple subsections of Prof. Cond. R. 1.15 by essentially ignoring the requirements of that rule for several years. In *Disciplinary Counsel v. Edwards*, 134 Ohio St.3d 271, 2012-Ohio-5643, (two-year suspension fully stayed on conditions) the balance of aggravation and mitigating factors arguably weighed more heavily in favor of Edwards than in this case. Edwards fully cooperated in the relator's investigation, whereas Respondent did not. Edwards made more timely restitution, whereas Respondent waited until nine days prior to the final hearing to make complete restitution. Edwards did not wait until the eve of the final hearing to take steps to reduce the likelihood of future violations. The panel concludes that an actual suspension is appropriate for this case.

{¶60} In *Disciplinary Counsel v. Crosby, supra*, (two-year suspension for extensive Prof. Cond. R. 1.15 IOLTA violations) the Supreme Court stated: "[w]e have also reiterated a number of times that 'it is "of the utmost importance that attorneys maintain their personal and office accounts separate from their clients' accounts" and that any violation of that rule "warrants a substantial sanction whether or not the client has been harmed."'" *Id.* at ¶15, citations omitted.

{¶61} Since *Crosby* was decided in 2009, the Court has frequently imposed lengthy suspensions in cases involving pervasive violations of Prof. Cond. R. 1.15 regarding trust accounts but with some portion of the suspensions stayed depending on the egregiousness of Prof. Cond. R. 1.15 violations, the other violations in the case not involving Prof. Cond. R. 1.15, and on the aggravating and mitigating factors. See *e.g.*, *Disciplinary Counsel v. Coleman*, 144 Ohio St.3d

[7] The Court has repeatedly held that generally, misconduct involving dishonesty, fraud, deceit, or misrepresentation warrants an actual suspension from the practice of law. *Disciplinary Counsel v. Karris, supra*, ¶16.

35, 2015-Ohio-2489 (two-year suspension, 18 months stayed on conditions with a monitor upon reinstatement); *Disciplinary Counsel v. Burchinal*, 133 Ohio St.3d 38, 2012-Ohio-3882 (two-year suspension, 18 months stayed on conditions); *Disciplinary Counsel v. Talikka*, 135 Ohio St.3d 323, 2013-Ohio-1012 (two-year suspension, 18 months stayed on conditions); *Disciplinary Counsel v. Wallace*, 138 Ohio St.3d 350, 2014-Ohio-1128 (two-year suspension, one year stayed on conditions and one year monitored probation upon reinstatement); and *Disciplinary Counsel v. Simon-Seymour*, 131 Ohio St.3d 161, 2012-Ohio-114 (two-year suspension, six months stayed on conditions).

{¶62} The most recent of the above-cited cases located by the panel involving extensive violations of Prof. Cond. R. 1.15 comingling and dishonesty regarding same is *Disciplinary Counsel v. Coleman, supra*, decided on June 25, 2015. In that case, attorney Coleman commingled personal funds with those belonging to his client. He accepted $18,000 from his client to purchase stocks at his direction. He then began to misappropriate his client's funds which were supposed to been deposited in his trust account. He falsely assured his client that the funds were held in trust, failed to maintain adequate records of client funds in his possession, and failed to reconcile his client trust on a monthly basis. He was found to have violated Prof. Cond. R. 1.15(a)(1) [maintenance of client funds in separate IOLTA account]; Prof. Cond. R. 1.15(a)(2) [maintenance of appropriate records of trust funds and disbursements]; Prof. Cond. R. 1.15(a)(3) [maintenance of records for each bank account]; Prof. Cond. R. 1.15(a)(5) [monthly reconciliation-of funds in trust account]; and Prof. Cond. R. 8.4(c) [dishonesty, fraud, deceit, or misrepresentation]. The aggravating factors included a dishonest or selfish motive; that he caused financial harm to the client; that his client was vulnerable; and that he had a prior one day attorney registration suspension. The mitigating factors were full disclosure and a cooperative attitude for the

disciplinary proceedings; his good character and reputation; and that he had voluntarily recruited a mentor willing to assist him with his office management. The Court also noted that he faced personal hardships at the time of his misconduct.

{¶63} Coleman was suspended for a period of two years, with 18 months stayed on the conditions that he work with a law practice monitor approved by the relator for the duration of the stayed suspension and engage in no further misconduct. While there are some differences, the panel is struck by the substantial factual similarities between this case and the facts in *Coleman.*[8]

{¶64} The Court has repeatedly held that the primary purpose of the sanctions imposed in attorney discipline matters is to protect the public. See *e.g., Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, ¶53. While Respondent was remorseful at the hearing, and has taken admirable steps to reduce the likelihood of future violations, the panel is troubled by the fact that these steps have been taken so recently, and by his inability to satisfactorily answer the panels questions about why his personal funds were deposited into his trust account during the pendency of his divorce proceeding, suggesting that he may still not fully appreciate the scope of his obligations regarding his trust account. This further suggests the need for an actual suspension and the need for stringent conditions to the stayed portion of his suspension.

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[8] The panel has also reviewed the recent case of *Disciplinary Counsel v. Corner*, Slip Opinion No. 2016-Ohio-359 decided on February 3, 2016, in which the Court imposed a two-year suspension, with one year stayed on conditions. The facts in *Corner* are less similar to the instant case than in *Coleman.* The *Corner* case involved extensive violations of Prof. Cond. R. 1.15 and other very significant violations including misappropriation of client funds in connection with eight separate clients. Among the dishonest devices used in the misappropriation were depositing client funds in Corner's business account, using client funds to pay personal and business expenses, issuing incorrect statements that resulted in inflation of her fees, and lying to a client regarding same. *Corner* was found to have violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]. Attorney Corner's misconduct was more egregious than Respondent's misconduct. However, the aggravating and mitigating factors arguably weighed more heavily in Corner's favor because she was found to have suffered from a mental disorder that contributed to the cause of her misconduct under former BCGD Proc. Reg. 10(B)(2), sought treatment in a more timely manner and fully cooperated in the relators' investigations.

{¶65} After consideration of all relevant factors discussed above, the panel recommends that Respondent be suspended from the practice of law in Ohio for two years, with the final 18 months stayed on the conditions that: (1) during the period of the stayed suspension, Respondent be subject to monitored probation in accordance with Gov. Bar R. V, Section 21[9]; (2) he complete three-hours of continuing legal education addressing trust account maintenance, in addition to the requirements of Gov. Bar R. X, Section 13; (3) Respondent complete his current OLAP contract and follow all directions and advice of OLAP regarding his treatment and otherwise; and (4) he commit no further misconduct.

[9] If approved by Relator, the monitor may be the attorney that Respondent previously recruited as his mentor.

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, Benjamin Joltin, be (1) suspended from the practice of law in Ohio for two years, with 18 months stayed on the conditions set forth in ¶65 of this report, and (2) 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