

IN THE SUPREME COURT OF OHIO

Benjamin Joltin :
Attorney Reg. No. 0072993 : **CASE NO. 2016-0261**
 :
Respondent, :
 :
vs. :
 :
Disciplinary Counsel :
250 Civic Center Drive, Suite 325 :
Columbus, Ohio 43215-7411 :
 :
Relator. :

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

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Respondent

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INTRODUCTION

This case came before the panel for hearing on December 16, 2015. The panel heard the arguments by Relator, the undersigned, as well as testimony of the Respondent, Benjamin Joltin. This matter came before the panel as a result of a Four-Count Complaint filed against the Respondent on April 13, 2015. The Complaint includes three counts of misconduct in specific cases, and one count of IOLTA misconduct. The three specific incidences of misconduct addressed in the Complaint involve Respondent’s representation of Lisa Torok, involvement with Dr. Michael Cayavec, and representation of Mark Patterson. None of the three individuals at issue in the Complaint against Respondent appeared to testify at the hearing on December 16, 2015. The parties stipulated to the underlying facts and violations committed by the Respondent. However, the parties could not reach an agreement as to the appropriate sanction.

Based on the hearing conducted on December 16, 2015, as well as an independent analysis of precedent, relevant case law, the panel recommended the appropriate sanction to be a suspension of two (2) years, with 18 months stayed on stringent conditions, including (1) during Respondent's stayed suspension he be subject to monitoring probation, (2) he complete three hours of continuing legal education addressing trust account maintenance, (3) that Respondent complete his current OLAP contract and any and all directives and advice given to him by OLAP, and (4) he commit no further acts of misconduct.

The panel found Respondent violated all of the previously stipulated to rule violations aside from Prof. Cond. R. 1.5 (a) [a lawyer shall not charge a clearly excessive fee]. On February 16, 2016, the Board of Professional Conduct (herein referred to as "the Board"), adopted the panel's finding of fact, conclusions of law, as well as it's recommended sanction. Thereafter, this Honorable Court issued an Order to Show Cause on February 23, 2016. Subsequently, on April 4, 2016, Relator filed an Objection to the Board's Recommended Sanction, arguing this Court should impose a two-year sanction, with no stay.

Respondent respectfully moves this Court to impose the sanction recommended by the panel, and adopted by the Board. Respondent's supporting argument as to why the recommended sanction of a two-year suspension, with 18 months, accompanied by stringent conditions, is laid out below, and incorporated herein.

FACTS

Respondent's recitation of the facts will be brief due to the meticulously detailed findings of fact contained in the Panel's Report (herein referred to as "Report"). Further, as was stated above, the facts have been previously stipulated to amongst the parties and thus a detailed

explanation is not warranted. However, Respondent believes it is necessary to address important facts as they relate to the finding of the Panel.

Benjamin Joltin, the Respondent, was admitted to the practice of law in the State of Ohio on November 20, 2000. Stip. 1. Respondent is a sole practitioner and is routinely hired to represent clients in domestic relations, criminal, and civil matters. Hearing Tr. 36-42. Aside from the current proceedings, in Respondent's nearly 16 years of legal practice, Respondent had not one prior disciplinary offense. See Stipulated Mitigating Factors. Respondent is immensely respected by his peer attorneys in the several counties in which he practices, as was evidenced by the 17 character letters submitted to the panel. Joint Ex. 77, Respondent's Ex. B.

Torok Matter

Lisa Torok (herein referred to as "Torok") hired Respondent to represent her in a complex, contested divorce matter, involving custody of minor children. Stip. 3. Torok and Respondent agreed to a flat fee price of \$2,500.00, however, this was subsequently increased to \$3,000.00 upon agreement by Torok and Respondent. Stip. 3. Torok gave Respondent a check for \$18,000.00 which he placed in his IOLTA Account. Stip. 3; Exhibit 1. Upon Torok requesting \$15,000.00 of her monies back in January 2013, Respondent wrote her a check from his IOLTA account, but when Torok attempted to cash it in September 2013, the check bounced for insufficient funds. Stip. 4-5. Respondent provided Torok with a \$1,800.00 check on September 16, 2013, a \$5,000.00 check on December 15, 2013, a \$4,900.00 check on April 8, 2014, and a \$3,000.00 check on December 7, 2015. Stip. 6,7,13, and 20. Thus, Torok has received all monies owed to her by Respondent. Additionally, on December 10, 2015, Respondent wrote a letter to Torok, in a sincere effort to apologize for his transgressions in her case. Hearing Tr. 58-59, 61, 78, 83-85, 117; Respondent's Ex. A.

Relator sent Respondent a Letter of Inquiry on March 27, 2014, and when Respondent did not reply, Relator thereafter sent a second Letter of Inquiry on April 16, 2014; Respondent sent a response to Relator which was received on April 23, 2014. Stip. 11,15 16; Ex. 13, 15, 16. Respondent then retained Attorney Juhasz to represent him in the proceedings. Stip. 17. Attorney Juhasz sent a letter to Relator advising he was retained on April 30, 2014, and subsequently provided information requested by Relator on May 15, 2014. Stip. 17; Ex. 17. Although Attorney Juhasz advised Relator he would promptly provide any other information Relator might need, no further requested information was provided by Respondent. Stip. 17-18. As a result, Relator attempted to schedule a deposition of Respondent. Stip. 18. The deposition was rescheduled once based on Respondent's request. Stip. 18.

Respondent's deposition was ultimately scheduled for September 24, 2015; however, on September 23, 2015, Attorney Wilson entered an appearance as Respondent's counsel and thus the deposition was rescheduled for November 5, 2014. Stip. 18; Ex, 24. Respondent did not attend the deposition, but did have documents requested by Relator dropped off at the deposition location. Hearing Tr. 111-112. Respondent testified during trial that an attorney advised him his deposition had been postponed and thus Respondent was confused as to the status of said deposition. Hearing Tr. 111-112.

The parties stipulated as to what rules were violated by Respondent in the Torok matter. See Stipulated Rule Violations. The Board found Relator proved, by clear and convincing evidence, all of the rules previously stipulated by the parties, aside from one. Report at ¶27-28. The panel dismissed the violation of Prof. Cond. R. 1.5(a), providing that Relator had failed to provide sufficient evidence Respondent charged a clearly excessive fee. Report at ¶28.

Cayavec Matter

Respondent represented Roger Johnson in a personal injury suit stemming from a car accident in 2009. Stip. 22; Ex. 28. Dr. Michael Cayavec treated Mr. Johnson for injuries sustained after the accident. Stip. 21; Ex. 27. Respondent provided Cayavec with a Letter of Protection accepting the assignment of payment for treatment. Stip. 24; Ex. 29-30. Although the case settled on September 10, 2013, Respondent did not cause Dr. Cayavec's monies to be sent to him until December 7, 2015. Stip. 24, 25, 31; Ex. 32. Respondent testified during the hearing that he placed the Notice of Assignment and acceptance documents in another file and subsequently forgot about them. Hearing Tr. 72-74. Respondent did not reply to either of the two Letter of Inquiries sent to Respondent inquiring into the Cayavec matter, until March 2015 when he responded to the Notice of Intent. Stip. 27, 29, 30; Ex. 33-25. .

Respondent and Relator stipulated to the rules violated by Respondent in the Cayavec matter. See Stip. Rule Violations. The Board granted Relator's motion to dismiss the claimed violation of Prof. Cond. R. 8.4 (h) [conduct that adversely reflects on a lawyer's fitness to practice law]. The Panel found Relator proved Respondent violated the remaining stipulated rules by clear and convincing evidence.

Patterson Matter

Respondent represented Mark Patterson in a forcible eviction matter, as a favor to a fellow attorney who was initially retained by Patterson, but ultimately could not represent him, due to his own disciplinary matters. Stip. 33. Patterson paid Respondent \$205.00, with \$105.00 going to the filing fee. Stip. 33. Respondent filed the necessary paperwork with the Court two times, unfortunately it was rejected by the Court both times for technical deficiencies. Stip. 38. During this time, Patterson attempted to contact Respondent by both telephone and email, and

received no response other than from Respondent's secretary. Stip. 34-25. Ultimately, Patterson terminated the attorney client-relationship on April 30, 2014 and requested a refund. Stip. 36; Ex. 41. Respondent did not respond to Patterson's request and did not provide a refund of the \$205.00 until December 7, 2015. Stip. 44; Ex. 46.

Respondent did not timely reply to the two Letter of Inquiries sent by Relator inquiring into the Patterson matter. Stip. 40-43; Ex. 44-45, 47.

Respondent and Relator stipulated to the rules violated by Respondent in the Patterson matter. See Stip. Rule Violations. The Panel granted Relator's motion to dismiss the claimed violation of Prof. Cond. R. 1.5(a) [a lawyer shall not charge a clearly excessive fee]. The Panel found Relator proved Respondent violated the remaining stipulated rules by clear and convincing evidence. Hearing Tr. 34-35.

IOLTA

From December 2012 through March 2014 Respondent misused and commingled the funds in his IOLTA Account. Stip. 60-61, Ex. 61-62. During this time, Respondent also failed to maintain proper records of the IOLTA account or client ledgers. Stip. 60. However, Respondent has ensured to correct his admitted deficiencies. Hearing Tr. 138-140.

Respondent did not provide a timely response to the Letter of Inquiries sent by Relator as they related to the IOLTA matter. Stip. 45-54; Ex. 48-57. As is stated above in regard to the Torok Matter, Respondent did not attend the deposition scheduled on November 5, 2014 deposition. Stip. 55. However, he did have documents dropped off that Relator had previously requested. Hearing Tr. 111-112. Respondent testified during trial that an attorney advised him his deposition had been postponed and thus Respondent was confused as to the status of said deposition. Hearing Tr. 111-112.

Respondent and Relator stipulated to the rules violated by Respondent as they relate to Respondent's IOLTA matter. See Stip. Rule Violations.

LAW AND ARGUMENT

THE BOARD'S RECOMMENDATION OF A TWO-YEAR SUSPENSION WITH 18 MONTHS STAYED ON CONDITIONS IS THE APPROPRIATE SANCTION IN THIS MATTER

Based on testimony and evidence presented at the hearing on December 16, 2015, as well as an independent review of applicable case law, the Panel recommended, and the Board agreed, that Respondent should be suspended from the practice of law for two years, with 18 months stayed on conditions. Report at ¶65, Report at P. 19. Respondent believes this recommendation is appropriate and in line with precedent case law. Relator argues Respondent should be suspended for two years, with no stay. Relator supports her argument with case law. However, the case law cited by Relator within her Objection, akin to the cases she cited during the December 16, 2015 hearing, are vastly different than Respondent's in terms of the facts and the rules violated.

When determining a proper sanction for attorney misconduct the board considers numerous factors including, (1) the ethical rules violated, (2) aggravating and mitigating circumstances, and (3) sanctions imposed in prior, factually similar cases. *Disciplinary Counsel v. Coleman*, 144 Ohio St. 3d 35, 2015- Ohio-2489, 40 N.E.3d 1092, ¶9.

The parties stipulated to the entirety of the ethical duties/rules violated by Respondent. Relator, in her Objection, provides a list of Respondent's misconduct. Respondent has admitted to the listed infractions. Arguably, as the Panel stated in its Report, one of the most significant ethical duties violated by Respondent was his neglectful management of his IOLTA account which spanned several years, and resulted in him misappropriating and inappropriately

commingling client funds. Report at ¶49. Respondent stipulated this misconduct is a clear violation of Prof. Cond. R. 8.4(c) and Prof. Cond. R. 1.15.

Pursuant to this Court's precedent case law, the presumptive sanction for misappropriation of client funds is disbarment. *Cleveland Bar Association v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, 769 N.E.2d 816, ¶15. However, this Court has consistently held that the presence of sufficient mitigating factors can lead to a lesser sanction. *Disciplinary Counsel v. Burchinal*, 133 Ohio St.3d 38, 2012-Ohio-3882, 975 N.E.2d 960, ¶ 17 citing *Dayton Bar Association v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110, 812 N.E.2d 1280, ¶14. The Court also gives weight to the presence of aggravating factors, as listed in BCGD Proc. Reg. 10(B), when determining an appropriate sanction. *Disciplinary Counsel v. Breren*, 115 Ohio St.3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶21.

Relator cited *Disciplinary Counsel v. Crosby*, 124 Ohio St.3d 226, 2009-Ohio-6763, 921 N.E.2d 225, in asserting this Court has continuously held that violations of Prof. Cond.1.15 warrant "a substantial sanction whether or not a client has been harmed". *Id.* at ¶ 15. Although Relator is correct in this assertion, she failed to also include that in the days since the *Crosby* decision, the Court has stayed portions of attorney suspensions depending on the severity of the Prof. Cond. R. 1.15 violation, as well as the presence of other violations in the case not involving Prof. Cond. R. 1.15, and on aggravating as well as mitigating circumstances. Report at ¶61, citing *Disciplinary Counsel v. Coleman*, 144 Ohio St.3d 35, 2015-Ohio-2489. Additionally, this Court has repeatedly held the primary purpose of sanctioning attorneys for violations of the ethical rules is to ensure the public is protected, not to punish the attorney. *Disciplinary Counsel v. Edwards*, 134 Ohio St.3d 271, 2012-Ohio-5643, 981 N.E.2d 857, ¶ 19, citing *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 53.

MITIGATING FACTORS

The parties stipulated that the following mitigating factors listed in BCGD Proc. Reg. 10(B), are present in Respondent's case:

- In Respondent's nearly 16 years of practice, he has never before been subject to disciplinary proceedings;
- Respondent gave a full and free disclosure of his actions to the Disciplinary Board;
- Respondent made a good faith effort to make restitution;
- Respondent provided abundant evidence of his good character and reputation in the community

The Panel, in its report addressed Respondent's mitigating circumstances and specifically mentioned the 17 letters Respondent provided from his fellow practitioners. Report at ¶53. The attorneys who submitted letters on Respondent's behalf range vastly in terms of age, year of admittance to the bar, and counties in which they practice law. Ex. 77; Respondent's Ex. B. These letters show Respondent is well respected in several counties, including Trumbull, Mahoning, and Columbiana County. Ex. 77; Respondent's Ex. B. Additionally, the letters show Respondent skillfully represents clients in the fields of civil, domestic, and criminal law. Ex. 77; Respondent's Ex. B. The Panel found the letters submitted provide "several impressive examples" of Respondent's "professional competence, attention to detail in representing his clients, his zealous advocacy, his courteous behavior inside and outside of the courtroom, and his character and good reputation for truth and veracity" Report at ¶ 53, citing Ex. 77; Respondent's Ex. B.

The Panel found, as an additional mitigating factor, that Respondent's testimony in the December 16, 2015 trial showed he felt remorse for his misbehavior, and freely acknowledged the wrongfulness of what he has done. Report at ¶56. In addition to showing his remorsefulness

by his sworn testimony at the trial, Respondent also wrote letters of apology to Torok, Cayavec, and Patterson. Respondent's Ex. A. Relator argues within her Objection that these letters of apology lacked remorse and were made in an effort by Respondent to save his law license. Respondent drafted these letters on his own free will and would have propounded them sooner but for the pending disciplinary proceedings. Respondent did not want Torok, Cayavec, or Patterson to misconstrue that the letters were sent in an attempt to dodge responsibility for his actions. Rather, Respondent sent the letters, after admitting and stipulating to his misconduct.

Respondent has also taken several other steps, of his own volition, which show he freely admits his behavior, and has taken measures to ensure it never occurs again. Respondent made an appointment with OLAP on December 1, 2015 and voluntarily entered into a three-year contract, and is also participating in individual counseling. Ex. 75. Further, Respondent contacted a fellow attorney to become his mentor. Respondent and said attorney have developed a plan in which they meet, or converse on a weekly basis to ensure Respondent is being conscientious of his IOLTA account, client management, and to troubleshoot any problems Respondent may be having. Respondent's Ex. D. Lastly, Respondent proactively sought out continuing education courses focusing on ethics and professionalism. Ex. 76. Respondent attended a course entitled Professionalism, Law Office Management, and Client Fund Management on December 4, 2015. Respondent has also registered to take continuing education classes amounting to above and beyond the 12 hours required by the Supreme Court of Ohio. Respondent's Ex. C. Respondent has taken these steps, not in a attempt to save his law license as Relator contends, but in a genuine and proactive attempt to ensure he never again commits the misconduct at issue in these proceedings.

Respondent does find it necessary to point out that although the Panel did not find his mental state to be a contributing factor to his misconduct, he was in fact under a great deal of stress and turmoil during the pendency of the period his misbehavior took place. Respondent does not point this out as an excuse, or as justification as to why he violated his ethical duties as an officer of the Court, but rather to depict the inner turmoil and depression he was battling while still attempting to run a law practice. Respondent had several deaths in his family from 2009 through 2011 including his grandfather, whom he was extremely close with, his grandmother, his uncle, and one of his closest friends. Ex. 65,66, 67, 68, 69, 70.

In addition to several deaths in the family, Respondent's marriage began to deteriorate beginning in 2007 stemming from religious differences as well as an extramarital affair, which resulted in a child. Ex. 64, 71. Respondent's marriage ultimately failed and his divorce was finalized in January 2014. During this time Respondent was also diagnosed with diabetes. Ex. 73-74. Additionally, although Relator contends that Respondent sought out counseling at the 11th hour, he did in fact voluntarily seek out a professional counselor, Marilyn Burns, in 2012. Ex. 72. Burns advised Respondent was suffering from depression and anxiety. Ex. 72.

Lastly, Respondent finds it important to address the previously stipulated mitigating factor that Respondent made a good faith effort to provide the affected individuals with restitution monies. See Stip. Mitigating Factors. The Board gave little weight to this factor because Respondent did not make the restitution payments timely. Report at ¶ 55. Respondent admits he did not provide restitution to Torok, Cavayec, or Patterson until nine (9) days prior to the December 16, 2015 hearing. Respondent would point out that although tardy, he did make the payments of his own volition.

AGGRAVATING FACTORS

The parties stipulated Respondent's behavior encompassed the following aggravating factors pursuant to listed in BCGD Proc. Reg. 10(B):

- Respondent engaged in a pattern of misconduct;
- Multiple offenses have stemmed from Respondent's misconduct;
- Respondent failed to cooperate with the disciplinary process until after a Complaint was filed

In addition, the Panel found, and the Board agreed, that the Respondent acted with a dishonest and selfish motive by withdrawing \$4,000.00 from his IOLTA account, as and for the Torok case, only six days after he was retained by Torok, as well as his misappropriation of almost the entirety of the \$18,000.00 Torok entrusted to him. Report at ¶53. Respondent has admitted to this behavior and does believe based on his misappropriation the Board recommendation sanction of a two-year suspension with 18 month stayed, on stringent conditions, is appropriate.

Respondent finds it pivotal to address the important finding by the panel that "no client was shown to be harmed by Respondent's misconduct, except for any misconduct caused by Respondent's delay in providing restitution". Report at ¶49. Relator emphatically disagrees with this finding. However, a look at the facts support the contention that Torok, Cavayec, and Patterson were not harmed by Respondent's misbehavior.

Respondent misappropriated the monies Torok entrusted to him. However, Respondent represented Torok well in her divorce proceedings and was able to successfully advance her case. Respondent worked diligently and zealously on Torok's behalf and was able to negotiate a separation agreement and shared parenting plan. Report at ¶ 28. Although Torok terminated Respondent before the divorce was finalized, no major changes were made to the already prepared agreements negotiated by Respondent and opposing counsel. Relator points out that

Torok was harmed because she needed money for childcare expenses and was forced to take piecemeal checks to cover her expenses. However, this argument was not supported by testimony from Torok because Relator did not introduce her as a witness in the December 16, 2015 hearing. No substantial evidence was presented as to how Torok suffered as a result of not having the entirety of the monies she entrusted to Respondent at one time. The only evidence presented to the panel was Relator's opinion as to how Torok was affected.

Similarly, no evidence was provided as to how Cavayec was harmed by Respondent's behavior. Again, Relator did not present Cavayec as a witness at the hearing. Thus, any argument made as to how he was injured is speculative. In regards to Patterson, Relator argues Patterson was injured because the tenants he wanted to evict from his rental property caused significant damage to the property. Relator contends this damage would not have occurred if the eviction paperwork was properly filed. However, again Relator did not present Patterson to testify at the hearing as to what specific damage occurred to the property. Thus, Relator's argument as to how Patterson was harmed holds very little weight.

RELEVANT CASE LAW

A review of precedent cases with similar rule violations, facts, and mitigating, as well as aggravating circumstances show Respondent's case is similar to those in which a two-year suspension, with 18 months stayed is appropriate. The panel provides the instructive precedent case of *Disciplinary Counsel v. Coleman*, 144 Ohio St.3d 35, 2015-Ohio-2489, 40 N.E.3d 1092. Respondent agrees with the panel that *Coleman* is stunningly factually analogous to his own. Importantly, *Coleman* was decided less than a year ago, on June 25, 2015. In *Coleman*, the Court found the appropriate sanction to be a two-year suspension, with 18 months stayed on conditions. *Id.* at ¶ 3. At the time of the disciplinary proceedings Coleman had been practicing for approximately seven years, whereas Respondent had been practicing law for approximately 16

years prior to his first disciplinary proceeding. *Id.* at ¶ 1. However, eerily similar to Respondent, Coleman was before the disciplinary panel based on commingling and misappropriating client funds, lying to a client about holding monies held in a trust, failing to keep appropriate records of client funds, and neglecting to reconcile his trust account on a monthly basis. *Id.* at ¶ 2.

Coleman was retained to represent a client in a civil matter whom also gave Coleman \$18,000.00 to hold in trust and buy stock at the client's direction as the client was incarcerated. *Id.* at ¶ 5. Coleman soon after began misappropriating the \$18,000.00 and using it for his every day living expenses. *Id.* at ¶ 5. Further, when the client inquired as to the status of his monies, Coleman falsely advised him they were in trust, when in actuality they were in his personal bank account. *Id.* at ¶ 6. Coleman stopped returning the client's calls and ultimately, in February 2012 the client requested Coleman provide him with the remainder of his money, \$13,066.00. *Id.* at ¶ 7. Coleman did not have the money, however, he gave a \$13,066.00 check to the client's criminal attorney, all the while knowing he did not have the funds to cover the check. *Id.* Coleman requested that the criminal attorney refrain from cashing the check until he obtained the necessary monies to ensure the check cleared. *Id.* Thereafter, Coleman made piecemeal check payments to the client, and ultimately did not make full restitution until March 2014, over two (2) years after the client initially requested the money back. *Id.*

The facts of *Coleman* are arguably mirror images of the facts in Respondent's case. Just as in Respondent's case, Coleman was found to have violated Prof. Cond. R. 1.15(a), 1.15(a)(2), 1.15(a)(3), 1.15(a)(5), and 8.4(c). *Id.* at ¶ 8. Respondent, like Coleman, failed to return the entirety of his client's restitution monies until approximately two years after the client first requested its disbursement. In *Coleman*, the Court made no finding that the attorney's behavior harmed the client. *Id.* generally. Coleman also had less mitigating factors present than

Respondent. Both Respondent and Coleman were found to have made a full disclosure to the disciplinary board, although unlike Coleman, Respondent did not cooperate with the investigation immediately. *Id.* at ¶ 10. Both men were also found to have good reputations in the community. *Id.* at ¶ 10. Additionally, both men reached out to fellow attorneys, voiced their misbehavior, and requested the fellow attorney be their mentors. *Id.* at ¶ 10.

The other mitigating factor the Court attributed to the attorney in *Coleman* was that he also applied for teaching positions in an attempt to obtain a different stream of income. *Id.* at ¶ 10. The Court did discuss Coleman's familial strife and its potential impact on his misbehavior. *Id.* at ¶ 14. Although the panel in that case did not find Coleman had mental illness, it still gave weight to Coleman's personal turmoil, in turn giving it a mitigating effect. *Id.* at ¶ 14. Unlike Coleman, Respondent was found to exhibit the mitigating factors of being remorseful for his misconduct, and never before being involved in a disciplinary proceeding.

In terms of aggravating circumstances, both men were found to have acted with dishonest or selfish motives. *Id.* at ¶ 10. However, unlike Coleman, none of Respondent's misconduct involved a client whom was incarcerated and therefore arguably, more vulnerable. *Id.* Respondent and Coleman also differ in that Respondent took affirmative steps to become involved with OLAP, as well as personal counseling. Ex. 72, 75. Thus, although both men acted with dishonest and selfish motives, Respondent has taken more steps to ensure he never again acts with dishonest or selfish motives.

Relator argues Respondent's violations were more egregious than Coleman's. Specifically, Relator contends that Respondent's conduct involved three different clients, and IOLTA mismanagement and commingling of personal and client funds. It is correct that Respondent's complaint contains four counts of misconduct. However, Relator does not

acknowledge the rule she repeatedly addresses in her objection that mandates an actual suspension is Prof. Cond. R. 1.15, which involves the mismanagement and commingling of client monies. The *Coleman* case focuses entirely on violations of Prof. Cond. R. 1.15, yet Relator argues Respondent's behavior is more egregious. It only takes a brief look at the facts in *Coleman* and Respondent's case to ascertain Relator's assertion is incorrect.

Relator argues Respondent's behavior was more egregious because he misappropriated money from a mother going through a divorce. Coleman misappropriated money from an incarcerated client who was, according to the Court, vulnerable. Relator argues Respondent falsely assured Torok that her funds were in trust, but claimed they were subject to a restraining order by the Court. Literally, the statement was correct that Torok's funds were subject to a temporary restraining order through the domestic court. In *Coleman*, the attorney falsely assured his client the client's money was in trust, when in actuality he had never placed it in his trust account, instead he placed it in his own personal account.

Relator asserts Respondent's conduct was more egregious than Coleman's because Respondent spent Torok's funds which is why the \$15,000.00 he provided to Torok bounced. In *Coleman*, the attorney, knowingly gave his client's criminal attorney a check when he knew he did not have the funds for the check to clear, and requested the attorney hold the check until he had said funds. Coleman's behavior in this aspect was more egregious than Respondent's because he involved another attorney, and when he provided the check his account was actually overdrawn. Relator also differentiates *Coleman* from Respondent because Respondent was not cooperative in Relator's investigation in the beginning stages. This is correct. However, Respondent corrected this behavior and ultimately provided every document he was able to that Relator requested. Respondent's cooperation in the disciplinary proceedings is shown by the

parties 61 stipulated facts, 77 stipulated exhibits, stipulated rule violations, as well as stipulated mitigating and aggravating factors. In fact, aside from agreeing upon what Respondent's sanction should be, Respondent came to an agreement with Relator on every aspect of his case.

Relator contends Respondent's case is more analogous to *Disciplinary Counsel v. McCauley*, 114 Ohio St. 3d 461, 873 N.E. 2d 269. The panel found *MaCauley* to be inapplicable because the attorney's conduct was more egregious than Respondent's. Report at ¶58. This is accurate. Relator argues the panel discredited the case because the attorney in *MaCauley* misappropriated more money, a total of \$200,000. However, Relator does not divulge within her objection the specific misbehavior *MaCauley* committed which lead the Court to impose an indefinite suspension.

In *MaCauley*, not only did the misappropriated monies significantly surpass those in Respondent's case, but *MaCauley* was engaged in a fraudulent scheme wherein he also instructed other employees of his law office to write checks from his trust account, for personal and office expenses. *Id.* at ¶5. *MaCauley* conducted a debt collecting service for a company called UCFS. *Id.* at ¶9. Between July 2002 and May 2004 *MaCauley* collected \$400,000.00 in monies for debts on behalf of UCFS. *Id.* at ¶9. Egregiously, out of the \$400,000.00 collected, *MaCauley* remitted only \$23,949.00 to UCFS. *Id.* Eventually, this caused *MaCauley's* accounts to be audited which lead to *MaCauley* signing a cognovit note to UCFS for \$197,315.00 for monies owed. *Id.* *MaCauley* found it hard to continue misusing his fee income for office expenses while making his required payments to UCFS. *Id.* at ¶10. Thus, he began transferring unearned monies from the IOLTA account to pay for office expenses. *Id.*

Further exacerbating his misconduct, *MaCauley's* firm ultimately defaulted on the cognovit note to UCFS which resulted in UCFS obtaining a \$178,054.00 judgment against

MaCauley. *Id.* MaCauley was also personally sued by UCFS for malpractice, conversion, fraud, and breach of contract. *Id.* at ¶11. Respondent agreed to pay to UCFS an additional \$35,049.00 in settlement. Lastly, in further explanation of MaCauley's extensively deplorable behavior, in a separate matter, respondent's bank, mistakenly deposited \$60,000.00 belonging to another customer into Respondent's law office operating account; Respondent knowingly utilized these monies with the explicit understanding the monies were placed in the account by a bank error. *Id.* at 15.

Relator contends that because Respondent and MaCauley have similar aggravating and mitigating circumstances, their sanction should be similar. However, the facts of *MaCauley* adamantly support the Panel's finding that MaCauley's behavior was far more egregious than Respondent's and thus the sanction is more severe. Based on the case summary discussed above, Respondent's misbehavior and violations are more congruous with those in *Coleman*, than *MaCauley*.

CONCLUSION

This Court has recently held that the presence of mitigating factors can justify staying a portion of an attorney sanction for violations of Prof. Cond. R. 1.15. Upon reviewing the mitigating circumstances in Respondent's case, as well as recent precedent case law, the proper and most appropriate sanction for Respondent's admitted misbehavior is a two-year suspension, with 18 months stayed, on conditions. The four conditions the Panel and Board issued will ensure Respondent does not again violate the rules, thus protecting the public. Respondent, even before reviewing the Panel's decision, had taken strides to complete the conditions, including contacting OLAP and entering into a three-year contract, completing a three-hour continuing education class involving client fund management on December 4, 2015, and ensuring he does

not commit any further attorney misconduct. Respondent fully understands and acknowledges his misbehavior, and has proactively taken steps to ensure it does not occur again. Respondent respectfully requests this Court impose the sanction recommended by the Panel, and upheld by the Board- a two-year suspension with 18 months stayed, on stringent conditions.

Respectfully submitted,

/s/ Tracey A. Laslo
Tracey A. Laslo (0070873)
Counsel of Record for Respondent
325 E. Main Street
Alliance, Ohio 44601
330.823.9757

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Respondent's Reply to 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, Catherine M. Russo, Assistant Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411, this 9 day of May 2016.

/s/ Tracey A. Laslo
Tracey A. Laslo
Counsel of Record for Respondent

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

In re:

Case No. 2015-022

Complaint against

Benjamin Joltin
Attorney Reg. No. 0072993

Respondent

Disciplinary Counsel

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 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.

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 commingle his personal funds with funds belonging to his clients without maintaining proper records. Hearing Tr. 31-33.²

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

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).

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.

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 be 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.

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.

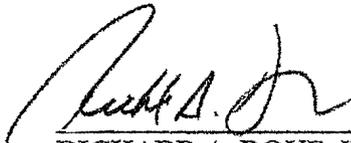
{¶65} After consideration of all relevant factors discussed above, the panel recommends that Respondent be suspended from the practice of law in Ohio for two years, with the final 18 months stayed on the conditions that: (1) during the period of the stayed suspension, Respondent be subject to monitored probation in accordance with Gov. Bar R. V, Section 21⁹; (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