BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re:	:	
		Case No. 2014-020
Complaint against	:	
John Joseph Scaccia **Attorney Reg. No. 0022217**	:	**Findings of Fact, Conclusions of Law, and Recommendation to the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Dayton Bar Association	:	
Relator		

OVERVIEW

{¶ 1} This matter was heard on October 15, 2014, in Columbus before a panel consisting of Alvin R. Bell, Sanford E. Watson, 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 a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶ 2} Brian D. Weaver appeared on behalf of Relator. Respondent was represented by David P. Williamson.

{¶ 3} This case involves an experienced Dayton trial lawyer who provided a closing statement pursuant to a personal injury settlement that contained no signatures, failed to promptly distribute all the settlement funds as required by the closing statement, failed to effectively communicate to a client the nature and scope of his representation, failed to provide a client with written notice that his professional liability insurance policy had recently lapsed, and certain other trust account irregularities. Respondent's violations were caused by his failure to

pay sufficient personal attention to the details of his practice, but in the end his clients were not harmed.

{¶ 4} The amended complaint contains four counts. At the commencement of the hearing, Relator dismissed Counts Two and Four.

{¶ 5} The parties presented stipulations and admissions of disciplinary violation and a summary of charges. Joint Ex. 1, 2. Pursuant to these documents, which were signed by Respondent and his attorneys in the presence of the panel, the parties stipulated to certain rule violations regarding Counts One and Three and agreed to the withdrawal of other claimed violations. The parties also agreed to two rule violations contained in Counts One [Prof. Cond. R. 1.15(e)] and Three [Prof. Cond. R. 1.15(c)] which had not been alleged in the amended complaint. The panel, after questioning Respondent on the record concerning his voluntary agreement, accepted these agreed violations as amendments to the amended complaint to conform to the evidence pursuant to Civil Rule 15(B). Hearing Tr. 9-20.

{¶ 6} Respondent is currently under suspension from the practice of law. *Dayton Bar Assn. v. Scaccia*, Slip Opinion No. 2014-Ohio-4278. This panel recommends that Respondent be suspended from the practice of law for one year, with six month stayed on the conditions set forth below to be served concurrently with Respondent's existing suspension.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 7} Respondent was admitted to the practice of law in the state of Ohio on November 1, 1983 and subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶ 8} Respondent is 60 years old and a graduate from the University of Dayton Law School. Respondent worked as an assistant prosecutor and later chief prosecutor for the City of

Dayton until about 2000. In 2000, he entered into private practice as a law firm associate. In 2006, he opened his own law firm and at one time employed as many as four attorneys and five or six staff people, but he downsized his firm in 2012. The focus of Respondent's legal practice includes criminal defense and civil litigation.

{¶ 9} Approximately two weeks before the hearing in this case, Respondent was sanctioned by the Supreme Court for misconduct in connection with three separate clients. In Count One, he was found to have violated DR 6-101 [neglect] and DR 9-102(B)(3) and Prof. Cond. R. 1.15(a)(2), (3), and (4) [failure to maintain complete records regarding client funds and other financial records] from 2007 to 2010. In Count Two, Respondent was found to have violated Prof. Cond. R. 1.5(d)(3) [prohibiting non-refundable fee agreements], Prof. Cond. R. 1.15(a), and Prof. Cond. R. 1.15(c) for trust account irregularities in 2010. In Count Three, Respondent was found to have violated Prof. Cond. R. 1.15(a) and Prof. Cond. R. 1.15(c) for trust account irregularities in 2011. *Dayton Bar Assn. v. Scaccia, supra.*

{¶ 10} The Court suspended Respondent from the practice of law for one year, with six months stayed on the conditions that he complete 12 hours of continuing legal education addressing law office management, that he make client restitution, and that he commit no further misconduct. The Court further ordered that upon reinstatement Respondent must serve a one year period of monitored probation in accordance with Gov. Bar R. V, Section 9. *Id.* ¶38.

{¶ 11} The Honorable John S. Pickrel, Judge in the Dayton Municipal Court, testified by deposition in Respondent's previous disciplinary proceeding, the transcript of which was received by the panel in this case pursuant to the stipulation of the parties. Judge Pickrel testified as to Respondent's excellent professional skills, his diligence in the practice of law, and his character for truthfulness. Ex. 4.

as to Respondent's excellent professional skills, his diligence in the practice of law, and his character for truthfulness. Ex. 4.

{¶ 12} Respondent's misconduct in this case is set forth in the stipulation and admissions of disciplinary violations which the panel accepts and incorporates into its findings of fact to the extent not inconsistent with the findings set forth below.

Count One-Elghouati

{¶ 13} In 2007, Boucha Elghouati retained Respondent to represent her with regard to securing compensation for injuries to her and her daughter as a result of an automobile accident. Elghouati and Respondent entered into a written contingent fee contract whereby Respondent was to receive a fee equal to one-third of any funds collected and Elghouati was to be responsible for the expenses of suit. Stipulation 3, 4.

{¶ 14} Respondent settled the claims of Elghouati and her daughter in November 2008. Respondent received and presented to Elghouati for endorsement checks totaling $13,000 representing settlement of her claim ($11,500) and her daughter's claim ($1,500). Respondent deposited the settlement proceeds into his trust account that he maintained at LCNB on November 15, 2008. Stipulation 5-7.

{¶ 15} There was no evidence presented at the hearing regarding the disposition of the daughter's $1,500 share of the settlement proceeds; however, Relator has not disputed the daughter's receipt of the distribution to which she was entitled.

{¶ 16} Respondent provided Elghouati with a settlement breakdown of the receipt of the $11,500 settlement and the purported distribution of the settlement amount, which included expenses for litigation ($147.15), reimbursement to her medical providers who were to be paid

from the settlement proceeds ($5,982.35), Respondent's one-third contingent fee ($3,833.33), and the distribution to Elghouati ($1,537.17). Relator's Ex. A.

{¶ 17} The settlement breakdown described above was not signed by the client and the lawyer and therefore does not meet the requirements of a closing statement under Prof. Cond. R. 1.15(c)(2). *Id.* Stipulation 8.

{¶ 18} Respondent disbursed a check on his trust account to his law firm for fees, a check to Elghouati for her share of the settlement proceeds, and checks to two of the seven medical providers. Respondent's trust account records do not reflect disbursements to the remaining five medical providers in the total amount of $2,304.70. Relator's Ex. B, C, D; Stipulation 10, 11.

{¶ 19} Respondent's trust account balance at LCNB did not, on several occasions during 2009, contain sufficient funds to cover the balance of the remaining monies owed to the five medical care providers, and the account was on at least one occasion on May 11, 2009 overdrawn. Stipulation 12.

{¶ 20} Respondent does not have in his current possession adequate trust account records to document the proper disbursement of the settlement proceeds. Respondent's trust account records are either grossly inadequate, lost, or missing. Respondent testified at length about the causes for his records deficiencies, including his own lack of attention to the details of this part of his practice, his own personal distraction because of health problems, family problems, and staff problems, as well as problems associated with an office move in 2012, and a computer crash in 2013. Hearing Tr. 161-175, Ex. 3.

Cooperation

{¶ 21} The initial grievance related to the confusion on the part of Elghouati as to the amount of the settlement, but Respondent was able to satisfy her as to the correct settlement in the amount of $13,000. Hearing Tr. 49-50.

{¶ 22} Relator's investigation regarding Respondent's trust account commenced in January 2013. Relator's investigator was initially unable to reach Respondent, but on January 23, 2013 while in Respondent's office on another matter, he was able to communicate with Respondent about the investigation. At that time, Respondent said that he was not ready to discuss the matter on that date. The investigator requested copies of checks showing the distribution settlement proceeds. They agreed on a date when the checks should be provided. The checks were not provided by the agreed date, so the investigator sent Respondent a letter concerning some document requests. That letter was not provided by either party at the hearing. There was little or no evidence produced at the hearing as to what documents were actually requested by the investigator in that letter. Hazlett Depo. 4-13, 24-26; Hazlett Depo. Ex. FF.

{¶ 23} At some point during Relator's investigation, Respondent produced for Relator the fronts of three checks written on his trust account to two of the seven medical providers and the check to Elghouati. Relator requested that Respondent also produce the backs of the checks so as to demonstrate that the checks were in fact cashed. Respondent did not produce the backs of these checks. However, at the time of his meeting with Relator, he produced copies of the relevant bank records that confirmed that the three checks had been cashed and debited from his trust account. Hearing Tr. 51-54, 198-200; Relator's Ex. B, C, D.

{¶ 24} Relator apparently requested other information from Respondent. Respondent testified that he produced all of the information requested by Relator that he was able to locate.

Relator ultimately obtained Respondent's bank records for his trust account pursuant to a subpoena issued to the bank. *Id.* 53-56, 160-161, 173-174.

Restitution

{¶ 25} At the time of Relator's investigation, Respondent attempted to verify that the five medical providers had been paid. Respondent had received no demands for payment from them over the previous five years and had assumed that these providers had been paid. Due to the lack of adequate trust account and office financial records, and his failed attempt to receive confirmation of payment from the providers themselves, he was not able to confirm that they had been paid from either his trust account or his office account. *Id.* 57-59, 175-176.

{¶ 26} On the morning of the hearing, Respondent tendered to Relator a check payable to Elghouati in the amount of $2,304.70, representing the amounts that were supposed to have been distributed from his trust account to the five medical providers. *Id.* 23-25.

{¶ 27} Respondent had known since at least February 2014 when the complaint was filed in this case that there was a claim that the medical providers had not been paid from his trust account. Yet, he delayed until the morning of the hearing on October 15, 2014 to tender restitution to his client.

{¶ 28} Relator proved by clear and convincing evidence pursuant to Count One of the amended complaint that Respondent violated Prof. Cond. R. 1.5(c)(2) by failing to provide the client with a closing statement signed by the client and the lawyer; Prof. Cond. R. 1.15(a) by failing to maintain a proper record of trust account funds disbursed on behalf of the client; and Prof. Cond. R. 1.15(e) by failing to promptly distribute all portions of the settlement funds to the five remaining medical providers, all as stipulated by the parties.

{¶ 29} Relator failed to prove by clear and convincing evidence pursuant to Count One that Respondent violated Prof. Cond. R. 8.1(b) [failure to respond to Relator's demand for information] and Gov. Bar R. V, Section 4(G) [duty to cooperate]. Respondent's failure to provide the information that Relator requested was due to Respondent's inadequate or missing records rather than a knowing refusal to provide the information or to cooperate in Relator's investigation. The panel therefore recommends dismissal of these claimed violations.

{¶ 30} Relator withdrew the claimed violations pursuant to Count One of Prof. Cond. R. 1.15(b) [deposit of lawyer's own funds in his trust account]; Prof. Cond. R. 8.4(b) [conduct adversely reflecting on the lawyer's honesty and trustworthiness]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice].

Count Two-Brown

{¶ 31} Relator voluntarily dismissed Count Two at the hearing.

Count Three-Brewer

{¶ 32} In June 2012, James Buckner lived in a home owned by his mother, Darla Brewer, in Miamisburg, Ohio. Brewer did not live in the home with her son. Stipulation 13, 14.

{¶ 33} In June 2012, the Miamisburg police arrested Nathan Powers for possession of drugs which Powers claimed to have received from Buckner. In June 2012, the police obtained a search warrant to search the residence that was occupied by Buckner and owned by Brewer. Stipulation 15, 16.

{¶ 34} Respondent was retained by Buckner to represent him in connection with the Miamisburg police investigation in 2012. Respondent was not retained to represent Brewer at that time.[1]

Respondent's Conduct Prior to the Attorney-Client Relationship with Brewer

{¶ 35} Respondent did not meet Brewer until March 28, 2013 and did not believe that she was in any way implicated in the potential drug case against his client, Buckner. Hearing Tr. 69, 134.

{¶ 36} Respondent testified on cross-examination at the hearing that it is possible that at some point prior to his representation of Brewer he may have told the Miamisburg police investigator that he represented the "Buckner family." No witness testified that Respondent made this statement. No evidence was presented as to the context of this statement, even if it was made. The panel finds that Relator failed to prove that Respondent made this statement. Hearing Tr. 68, 189.

{¶ 37} At some point, while Respondent was representing Buckner, but prior to his representation of Brewer, the assistant prosecutor in charge of the case told Respondent that the prosecutor wished to talk with Brewer. Respondent stated that Brewer was not interested in testifying against her son and would not be willing to cooperate in the investigation. The prosecutor testified by deposition in this case that she "assumed" that Respondent was acting as Brewer's attorney. Respondent admitted that in the course of normal bantering between lawyers, he may have said that Respondent would not testify against her son, but he never represented to the assistant prosecutor that he was speaking for Brewer as a lawyer for Brewer. Henne Depo. 9, 24-26; Henne Depo. Ex. GG; Hearing Tr. 131-133.

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[1] He was eventually retained to represent Brewer on March 28, 2013.

Establishment of Attorney Client Relationship with Brewer

{¶ 38} Darla Brewer was a licensed practical nurse. On March 27, 2013, she received a telephone call from the Ohio State Board of Nursing. The gist of the call was that Brewer's nursing license was in jeopardy because, according to the Miamisburg police, she was about to be indicted in the drug case with her son. Buckner called Respondent on that date to report his mother's conversation with the Board of Nursing. Hearing Tr. 68-69, 86, 106, 137.

{¶ 39} On March 28, 2013, Buckner and Brewer met with Respondent in his office. This was the first time that Respondent had met Brewer. At the time, there were no criminal charges pending against either Buckner or Brewer. Respondent told them that he doubted that Brewer would be indicted, as he was not aware of any involvement by Brewer in the drug-related activities of her son, and further that the Miamisburg police investigators were probably attempting to scare them in order to increase pressure on Buckner. *Id.* 86-88, 105-106, 137.

{¶ 40} At that meeting, Buckner paid Respondent $1,500 to represent his mother. The nature and scope of the representation was unclear at that point because there was no pending criminal indictment and it was unclear as to whether there would be any state nursing board proceedings that would require Respondent's legal services. *Id.* 88, 107, 137.

{¶ 41} Respondent did not deposit the $1,500 into his trust account. Stipulation 23.

The Criminal Proceedings against Brewer

{¶ 42} Both Buckner and Brewer were indicted by the Montgomery County Grand Jury on April 19, 2013 for certain drug offenses that carried potential mandatory prison sentences upon conviction. Stipulation 19.

{¶ 43} On approximately April 20, 2013, Respondent met with Buckner and Brewer at Brewer's home to discuss the criminal proceedings. *Id.* 75-76, 95, 108-112, 139-143, 151-153.

{¶ 44} As of the April 20, 2013 meeting, there was an outstanding arrest warrant against Brewer and a scheduled arraignment date of May 2, 2013. One of Respondent's purposes for the meeting was to determine whether he would be representing both Buckner and Brewer or whether they would need separate counsel. Respondent explained to both of them in the presence of each other his strategy of filing a motion on behalf of both of them to suppress the search warrant of the house. Respondent also gave them copies of cases in which he had prevailed on motions to suppress under similar circumstances. Respondent explained that the interests of Buckner and Brewer would be aligned with each other, but if there later developed a conflict of interest, he would withdraw. Respondent asked them to think about the possibilities of dual representation "leading up to the arraignment date." *Id.* 75-76, 139-143, 151-153.

{¶ 45} Brewer's testimony about the discussion at the April 20, 2013 meeting partially corroborated Respondent's recollection in that she did recall Respondent having brought with him to the meeting materials regarding previous cases that he had handled. But she was unclear as to the meaning of these documents and why he presented these documents to her. Moreover, she did not remember any discussion at that meeting about a motion to suppress, Respondent's litigation strategy, or any discussion about potential future conflicts of interest. She believed that Respondent would be representing both of them and she was "okay with that." *Id.* 95, 108-112.

{¶ 46} The panel finds, based on the testimony of Respondent that he did attempt to orally explain to Brewer his proposed strategy and that her interests coincided with her son's interest, but in the unlikely event that their interests would in the future diverge, then they would need separate counsel. However, the panel finds, based on the testimony of Brewer, that she did not understand Respondent's explanation.

{¶ 47} At no time did Respondent provide Brewer with any written fee agreement, letter of representation, or other writing that explained the nature and scope of his proposed representation of Brewer or that disclosed the consequences of any future conflicts. *Id.* 79; Stipulation 22.

{¶ 48} Sometime between the April 20, 2013 meeting and the May 2, 2013 arraignment date, Respondent learned that Buckner and Brewer had chosen the dual representation option. Respondent advised Brewer to make sure that she had someone available on the date of the scheduled arraignment in the event that bail was ordered. *Id.* 80, 197.

{¶ 49} The arraignment of both Buckner and Brewer occurred on May 2, 2013. Both clients appeared in Respondent's office just prior to the court appearance. Respondent told the clients that the prosecutor may request that they sign some sort of a written "waiver" regarding potential conflicts of interest resulting from his dual representation of two defendants in the same proceeding. Respondent was unable to locate a copy of a waiver form that morning, but he intended to get it signed at a later date. *Id.* 89, 151-153.

{¶ 50} Also on the morning of May 2, 2013, Respondent verbally informed the clients that his malpractice insurance policy had recently lapsed. Respondent did not provide them with written notice on a separate form as required by Prof. Cond. R. 1.4. *Id.* 149-150; Stipulation 20.

{¶ 51} At the arraignment hearing on May 2, 2013, Respondent "walked his client into court," rather than requiring formal service of an arrest warrant and he waived the "24-hour rule" regarding service of the indictment at least 24 hours before arraignment, and the reading of the indictment in open court. Respondent had not seen the formal indictment prior to the arraignment proceeding, but he was likely familiar with its contents because of his involvement

in the Buckner investigation for the past ten months. Both defendants pled not guilty. *Id.* 143-146.

{¶ 52} Following the arraignment, Brewer was arrested and confined overnight pending the posting of a bail bond by her father. Respondent did not see Brewer after the arraignment proceeding. At her father's insistence, Brewer discharged Respondent as her counsel on May 9, 2013. *Id.* 146-148; Stipulation 21.

{¶ 53} Except for the arraignment on May 2, 2013, no significant events occurred in this criminal proceeding during the approximately two weeks that Respondent represented Brewer. *Id.* 156-157.

{¶ 54} The panel concludes that as of April and early May 2013, there was no substantial risk that Respondent's ability to consider, recommend, or carry out an appropriate course of action for his two clients would be materially limited by the dual representation of Buckner and Brewer. Brewer did not reside at the residence where the drugs were found. No information had been given to Respondent that Brewer was involved in any way in her son's drug activities or that she would or could testify as to any information against her son. There was never any discussion about immunity to testify against her son and no proffer to do so.[2] *Id.* 133-136, 150-156.

{¶ 55} Relator proved by clear and convincing evidence pursuant to Count Three of the amended complaint that Respondent violated Prof. Cond. R. 1.15(c) by failing to deposit the $1,500 fee into his trust account and Prof. Cond. R. 1.4(c) by failing to provide his client with written notice that his professional liability insurance policy had lapsed, as stipulated by the parties.

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[2] Respondent represented Brewer for only about two weeks. His only appearance in the case was at the arraignment. Subsequently, while Brewer was represented by another attorney, the drug charges against Brewer were dismissed and she pled no contest to a separate bill of information to obstruction of justice. *Id.* 97-99.

{¶ 56} Relator proved by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.5(b) by failing to effectively communicate to Brewer the nature and scope of the representation. Respondent agreed to multiple representations in a felony case which in and of itself is discouraged (but not prohibited). See ¶57 *infra*. A clear explanation about possible future conflict between his two clients was necessary. Respondent provided no such clear explanation. Respondent did attempt to orally explain to Brewer that he would be required to withdraw his representation in the unlikely event that her interests would diverge from her son's at some point in the future, but she did not understand his explanation. Prof. Cond. R. 1.5(b) states that communications about the nature and scope of the representation should be "preferably in writing." There is no requirement that the communication in all cases be in writing[3] but in this case, Respondents failure to explain in writing contributed to Brewer's confusion, and thereby prevented Respondent's complete compliance with his obligation under Prof. Cond. R. 1.5(b).

{¶ 57} Relator failed to prove by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.7 because neither of the conditions specified in Prof. Cond. R. 1.7(a) existed in the beginning of or at any time during his dual representation of Buckner and Brewer, to wit (1) the representation of one client was not directly adverse to the other client, and (2) there was no substantial risk that Respondent's ability to consider, recommend, or carry out an appropriate course of action would be materially limited by the dual representation.[4] The panel acknowledges that Comment 15 to Prof. Cond. R. 1.7 states that ordinarily a lawyer should

[3] In *Akron Bar Assn. v. White*, 136 Ohio St.3d 51, 2013-Ohio-2153, the Court noted the Board's dismissal of a stipulated violation of Prof. Cond. R. 1.15(b) because the terms of the representation need not have been communicated in writing because the terms "were clearly communicated to the client within a reasonable time after commencing representation." *Id.* ¶ 9.

[4] Since neither of the requisites of Prof. Cond. R. 1.7(a) for a conflict of interest existed, Prof. Cond. R. 1.7(b) and Prof. Cond. R. 1.7(c) do not apply.

decline to represent multiple defendants in a criminal case. However, the facts of this case are unique in that Respondent represented both clients only at the arraignment stage where they both pleaded not guilty and there was no indication at that time that their interests would become adverse to each other. The panel therefore recommends dismissal of this claimed violation.

{¶ 58} Relator failed to prove by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(d) because Relator failed to prove that Respondent misrepresented to the Miamisburg Police Department or to the assistant prosecutor that he represented Brewer prior to March 28, 2013 or that his communications were otherwise improper. The panel recommends dismissal of this claimed violation.

{¶ 59} Relator failed to prove by clear and convincing evidence, that Respondent violated Prof. Cond. R. 1.1. Relator failed to present any testimony or other evidence tending to show that Respondent's professional judgment to "walk his client into Court" was unreasonable under the circumstances. The panel therefore recommends dismissal of this claimed violation.

{¶ 60} Relator failed to prove by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.4(a). Except as described elsewhere in this report, there were no significant events that occurred during the two-week period that Respondent represented Brewer that required further communication or consultation with Brewer. The panel therefore recommends that this claimed violation be dismissed.

Count Four-Baker

{¶ 61} Relator voluntarily dismissed Count Four at the hearing.

AGGRAVATION, MITIGATION, AND SANCTION

{¶ 62} Among the factors considered by the panel in making its recommended sanction are the ethical duties violated, the injuries caused by the misconduct, the mental state of

Respondent at the time of the misconduct, the aggravating and mitigating factors, the necessity to protect the public, and the sanctions imposed by the Supreme Court in similar cases.

{¶ 63} Respondent's misconduct in this case was limited to two clients, neither of whom suffered any injuries as a result of his misconduct. Respondent's ethical violations were caused by his failure to pay sufficient personal attention to the details of his practice rather than by conscious misconduct.

{¶ 64} Respondent was not shown to have suffered from any mental disability or chemical dependency. However, some of the violations, including the improper maintenance of trust account records, occurred during a time of substantial turmoil in his personal life, which, according to his testimony, contributed to his inattention to detail. These issues included personal health issues, his daughter's brain surgery, his mother's health issues, and conflicts with his brother over his mother's finances and health care. Hearing Tr. 163-169; 178-183.

{¶ 65} The panel finds as aggravating factors that Respondent committed multiple violations and that he has a previous disciplinary record. The panel notes, however, that the violations in this case and in his October 2, 2014 disciplinary case were caused by the same inattention to detail and cover overlapping timeframes.

{¶ 66} The panel finds as mitigating factors the absence of a dishonest or selfish motive, free disclosure to the disciplinary board, a cooperative attitude toward these proceedings, and a good reputation as to his professional skills and truthfulness.

{¶ 67} The panel finds as a further mitigating factor that Respondent has taken corrective measures to reduce the likelihood of repeating his past mistakes. Prior to his October 2, 2014 suspension, he had hired a new associate with a degree in accounting, brought his former main office secretary in to manage the office and clean up the records, and resolved to devote "more

time with my staff to make sure about where their minds were at on a regular basis and what they were doing and to make sure that the protocols and procedures were being followed; and most importantly that records and information was secured and maintained." *Id.* 184-186.

{¶ 68} The panel finds as a further mitigating factor that Respondent acknowledges the wrongful nature of the conduct. Respondent testified "I should have been less busy and less distracted, or I should have shut things down." *Id.* 186.[5]

{¶ 69} The Court has repeatedly held that the primary purpose of the sanctions imposed in attorney discipline matters is not to punish the offender, but to protect the public. See *e.g., Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. The panel is convinced by the testimony in this case that Respondent is not a risk of committing conscious intentional misconduct in the future. None of his misconduct has resulted from selfishness or dishonesty.

{¶ 70} The Supreme Court has dealt with similar problems in other cases by imposing additional conditions on stayed suspensions such as requiring extra training in office management and trust account rules, and the imposition of monitored probations in order to insure future compliance. See *e.g., Toledo Bar Assn. v. Royer*, 133 Ohio St.3d 545, 2012-Ohio-5147; *Mahoning Cty. Bar Assn. v. Zena*, 137 Ohio St.3d 456, 2013-Ohio-4585; *Disciplinary Counsel v. Dockry*, 133 Ohio St.3d 527, 2012-Ohio-5014.

{¶ 71} Relator recommends a sanction of an indefinite suspension, but has cited no case law to support this recommendation. Respondent recommends that he be suspended from the practice of law for one year, with six months stayed on conditions, to be served concurrently

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[5] On the morning of the hearing, Respondent tendered a check in the amount of $2,304.70 to Elghouati, representing the amounts that were supposed to have been distributed from his trust account to five medical providers. The panel ascribes little mitigating value to this action by Respondent, because there was not a "timely" effort to make restitution. BCGD Proc. Reg. 10(B)(2)(c). See, *Medina Cty. Bar Assn. v. Malynn*, Slip Opinion No. 2014-Ohio-5261; *Cincinnati Bar Assn. v. Grote*, 127 Ohio St.3d 1, 2010-Ohio-4833.

with his October 2, 2014 suspension. Respondent relies on *Toledo Bar Assn. v. Royer*. The panel agrees with Respondent's recommendation.

{¶ 72} In *Royer*, the attorney failed to deposit money received for unearned fees and expenses into his trust account, to hold client funds separate from his own funds, and to maintain proper trust account records. He also neglected client matters for one client and did not advise the client of his failure to properly handle such matters. In considering the sanction, the Court found as aggravating factors that Royer had committed multiple offenses and that both of his clients were vulnerable. In mitigation, the Court found that Royer had no prior disciplinary record, that he had cooperated in the disciplinary process and had made restitution. The Court further noted that the "ethical violations lack a dishonest motive and appear to be the result of bad time management and recordkeeping." The Court imposed a one-year suspension, all stayed on conditions that he (1) serve a two year period of monitored probation, (2) retain a certified public accountant to review his bookkeeping procedures with respect to his client trust account, and (3) provide an accountant's report to Relator within six months after disposition, showing compliance with Prof. Cond. R. 1.15. Id. at ¶15.

{¶ 73} In *Mahoning Cty. Bar Assn. v. Zena*, the attorney failed to notify his client that he did not carry malpractice insurance, failed to distribute settlement proceeds in accordance with his agreement with a client, and failed to render a full accounting to the client. He also neglected two client's cases. The Court found as aggravating factors a pattern of misconduct and multiple offenses. As mitigating factors, the Court found that Zena had no prior disciplinary record, made full and free disclosures, cooperated in the proceedings, and demonstrated good character and reputation. The Court also noted that "much of Zena's misconduct occurred during a time of great turmoil in his personal life." The Court suspended Zena from the practice of law for one

year, all stayed on the conditions that he: (1) attend at least three hours of CLE on law office management within 90 days; (2) serve a one-year probation in accordance with Gov. Bar R. V, Section 9; (3) make restitution; and (4) commit no further misconduct. *Id.* ¶¶22 and 25.

{¶ 74} In *Disciplinary Counsel v. Dockry*, the attorney committed misconduct by depositing and maintaining personal funds in his client trust account, using that account to pay his personal and business and expenses, borrowing client funds from the account for his personal use, failing to maintain ledgers of the client funds held in that account, and failing to reconcile the account. The Court approved as the sole aggravating factor that Dockry's misconduct was motivated by a dishonest or selfish motive. The Court found as mitigating factors the absence of a prior disciplinary record, payment of restitution, cooperation in disciplinary proceedings, and good character and reputation. The Court further noted that Dockry had taken "corrective measures to ensure that he does not repeat his past mistakes." The Court suspended Dockry from the practice of law for one year stayed on condition that he submit to a one year monitored probation in accordance with Gov. Bar R. V, Section 9 and commit no further misconduct. *Id.* ¶ 25-27.

{¶ 75} In each of the above cited cases, the attorney received a one-year fully stayed suspension with conditions. However in each of those cases, the respondents had no prior discipline whereas Respondent has been previously disciplined. The panel therefore concludes that the sanction should include at least some time off from the practice of law. On the other hand, since none of Respondent's misconduct in the earlier case or this case involved a dishonest or selfish motive and all the misconduct was caused by the same thing, *i.e.,* inattention to detail, over essentially the same period of time, the panel recommends that the sanction be served concurrently with Respondent's October 2, 2014 suspension.

{¶ 76} After consideration of all the relevant factors discussed above, the panel recommends that Respondent be suspended from the practice of law for one year, with six months stayed on conditions that he: (1) complete 12 hours of continuing legal education addressing law office management, including trust account maintenance, in addition to the general requirements of Gov. Bar R. X, Section 13; (2) during the period of the stayed suspension and for one year thereafter the Respondent be subject to monitored probation in accordance with Gov. Bar R. V, Section 9; and (3) that he commit no further misconduct. The panel recommends that this sanction be served concurrently with Respondent's October 2, 2014 sanction.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 12, 2014. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, John Joseph Scaccia, be suspended from the practice of law for one year, with six months stayed, and further that the suspension and conditions contained in ¶76 to be concurrent and not in addition to those imposed in *Dayton Bar Assn. v. Scaccia*, Slip Opinion No. 2014-Ohio-4278. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline 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, Secretary