APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

THE SUPREME COURT OF OHIO

Case No. 2013-1984

[Filed February 6, 2019]

Cincinnati Bar Association, Relator,	)
v.	)
Geoffrey Parker Damon, Respondent.	)

O R D E R

This matter came on for further consideration upon the filing by respondent of a motion for relief from judgment.

Upon consideration thereof, it is ordered by the court that the motion is denied.

/s/Marureen O'Connor
Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio/gov/ROD/docs/

THE SUPREME COURT OF OHIO

CASE ANNOUNCEMENTS

February 6, 2019

[Cite as *02/06/2019 Case Announcements #2*, 2019-Ohio-357.]

* * *

DISCIPLINARY CASES

2013-1984. Cincinnati Bar Assn. v. Damon.

On respondent's motion for relief from judgment. Motion denied.

Fischer, J., not participating.

APPENDIX B

140 Ohio St.3d 383, 2014-Ohio-3765

THE SUPREME COURT OF OHIO

No. 2013-1984

[Filed September 3, 2014]

CINCINNATI BAR ASSOCIATION)
)
v.)
)
DAMON)

Attorney misconduct—Violations of the Rules of Professional Conduct, including conviction of a felony, failing to act with reasonable diligence in representing a client, failing to maintain client funds in a separate account and to render a full accounting of a client's funds, and failing to consult with a client as to the means of pursuing the objectives of representation—Permanent disbarment.

(Submitted May 28, 2014—
Decided September 3, 2014.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 2011-046.

KENNEDY, J.

{¶ 1} Respondent, Geoffrey Parker Damon of Independence, Kentucky, Attorney Registration No. 0029397, was admitted to the practice of law in Ohio in 1984. On May 21, 2013, we suspended his license to practice law on an interim basis following his March 11, 2013 felony conviction for theft. *In re Damon*, 135 Ohio St.3d 1311, 2013-Ohio-2032, 988 N.E.2d 570.

{¶ 2} On April 19, 2011, relator, Cincinnati Bar Association, filed a complaint charging Damon with violations of the Rules of Professional Conduct arising from the conduct that led to his felony conviction. The complaint was amended on July 18, 2011, December 29, 2011, and April 12, 2013. On April 9, 2012, the parties filed comprehensive stipulations of fact. Supplemental stipulations of fact were filed by the parties on May 29, 2012. A hearing was held on June 11, 2013, before a panel of the Board of Commissioners on Grievances and Discipline.

{¶ 3} The panel unanimously accepted the stipulated facts. After considering those facts, the testimony of the witnesses, including respondent's testimony, and all the admitted exhibits, the panel found that some of the violations alleged in the complaint had been established by clear and convincing evidence, but others had not, and it recommended dismissal of those allegations that had not been established. The panel recommended that Damon be disbarred.

{¶ 4} The board considered this matter on December 13, 2013. The board adopted the panel's

report and recommendation in its entirety. Damon filed objections to the board's findings of fact and conclusions of law and the recommended sanction of disbarment.

{¶ 5} Upon consideration of the allegations for which the board found no violation, we agree with the board and dismiss those allegations. For the reasons that follow, we overrule Damon's objections, adopt the board's findings of fact and conclusions of law, and conclude that disbarment is the appropriate sanction in this case.

Misconduct

Factual Findings of the Panel and the Board

Butkovich & Crosthwaite Company, L.P.A.

{¶ 6} On January 1, 2009, Damon became employed as a full-time associate by the law firm of Butkovich & Crosthwaite Company, L.P.A., in Cincinnati, Ohio. In return for an annual salary, Damon agreed to remit to the firm all the fees he would earn during his employment, whether from work in progress before joining the firm or from new client matters undertaken after January 1, 2009.

{¶ 7} Notwithstanding this agreement, Damon accepted payments from clients and deposited those funds into his own trust account, rather than into the firm's trust account. Damon did not report or remit any of these receipts to Butkovich & Crosthwaite. The exact amount stolen from the law firm is unknown. However, Damon declared approximately $84,000 in gross

receipts for the "Damon Law Office" on his 2009 federal tax filings.

{¶ 8} After he was no longer employed by the firm, Damon began making restitution to the firm. The parties stipulated that he had paid approximately $55,000 to the law firm.

Terry and Veronica Patterson

{¶ 9} Terry and Veronica Patterson paid Damon an initial retainer of $5,000 when Damon began representing them in a legal-malpractice claim in December 2008. A written fee contract was not executed in this matter. In July 2009, the Pattersons paid him an additional $3,700 for an expert witness. In December 2009, Damon dismissed the lawsuit. Damon failed to provide an accounting as requested by the clients and failed to return the $3,700 that was never used for an expert.

Lisa Thompson

{¶ 10} In April 2008, Lisa Thompson hired Damon to represent her in a disability-discrimination law suit against the University of Louisville College of Law and the Law School Admission Council ("LSAC"). She paid Damon a $5,000 retainer.

{¶ 11} Over a year later, and more than a year after the law school and LSAC had granted Thompson the requested accommodation, Damon filed a lawsuit in federal court under the Americans with Disabilities Act ("ADA"), 42 U.S.C. 12101 et seq., and state civil-rights statutes. At that time, the only viable cause of action under the ADA was for the attorney fees that

Thompson had paid in obtaining the accommodation. The complaint, however, did not include a claim for those attorney fees or an allegation that the client was damaged by having to pay such fees. When the defendants in the action threatened sanctions against Thompson for filing a frivolous complaint, Damon dismissed it with prejudice. Damon has not refunded any money to Thompson. Damon kept neither an itemized record of Thompson's funds nor records of the time that he spent on the case.

Timothy Robinson

{¶ 12} Around December 2008, Timothy Robinson hired Damon to file a legal-malpractice claim on his behalf. Robinson paid Damon a total of $25,000, which consisted of a $10,000 retainer and $15,000 for expenses.

{¶ 13} On March 18, 2009, Damon filed the action. He dismissed the suit without prejudice when he could not find an expert witness to support the malpractice claim. Damon has not refunded any of Robinson's money. Damon did not keep itemized records of Robinson's funds or of the time that he spent on the case.

Mose Jemison

{¶ 14} In July 2010, Mose Jemison hired Damon to represent him in a workers' compensation retaliation claim and paid Damon a $1,500 retainer. Damon failed to file an action, and Jemison discharged Damon in November 2010. Damon refunded $500 of Jemison's money but failed to account for either the remainder of the funds or the time that he spent on the case.

Stephen Johnson

{¶ 15} In April 2009, Damon undertook to represent Stephen Johnson in an employment-discrimination action. Johnson paid Damon an initial retainer, but the amount paid is disputed; the remainder of the fee was contingent upon an award of attorney fees by the court. Damon failed to enter into a written fee agreement with Johnson.

{¶ 16} On November 12, 2009, Damon filed a complaint on Johnson's behalf. The defendant filed a motion for summary judgment. Instead of filing a memorandum in opposition, Damon filed a voluntary dismissal of the case without prejudice. Damon has no time records for this matter and has not returned any of the money that Johnson paid him.

Michael Long

{¶ 17} Prior to hiring Damon, Michael Long had filed suit against Long's former union, the United Auto Workers ("UAW"), and summary judgment had been entered in favor of the UAW. The time for appeal had run months before Long hired Damon. In September 2008, Damon undertook the representation of Long in two separate but related suits against the UAW and his former employer, General Motors Corporation ("GM"). Long paid Damon a $2,500 flat fee to represent him in the UAW matter and $5,000 to represent him in the GM matter.

{¶ 18} On January 20, 2009, Damon filed a motion to vacate the summary judgment issued in favor of the UAW. The UAW filed a memorandum opposing the motion to vacate judgment and also sent a letter to

Damon stating that if Damon did not withdraw the motion within 21 days, the union would file a motion for sanctions. Damon withdrew the motion to vacate. Damon has not provided an accounting of either the $2,500 fee or of the time he spent on the matter.

{¶ 19} On October 29, 2009, knowing that GM had filed for bankruptcy on June 2, 2009, Damon filed a complaint against "Motors Liquidation Company FKA General Motors Corp." in the Warren County Common Pleas Court. Damon was advised by GM's counsel that any claim against GM would have to be pursued in the bankruptcy proceedings. Damon took no further action on the complaint, and the action was dismissed without prejudice for lack of prosecution on July 9, 2010. Damon has failed to produce records of the time that he spent on the GM lawsuit and has failed to either account for or refund any of the $5,000 retainer.

Lori Gehring

{¶ 20} On April 6, 2011, Lori Gehring hired Damon to represent her in a medical-malpractice claim. At that time, Gehring paid Damon $1,500 for consultation with and review of her records by a medical professional.

{¶ 21} Notwithstanding Damon's representations that her medical records would be sent to a nurse practitioner for review, he did nothing with the records for almost four months. Upon learning this, Gehring requested, on two separate occasions, a return of her medical records and the retainer. Damon failed to refund Gehring's retainer. Moreover, he returned Gehring's medical files only after he received a letter from relator's investigator regarding this grievance.

Valerie DuBose

{¶ 22} In August 2009, Valerie DuBose hired Damon to represent her in an employment matter. She paid Damon a total of $4,800. The defendants in the action filed a motion for summary judgment. Damon filed a memorandum in opposition only after the trial court issued an order requiring Damon to either file the memorandum in opposition or show cause why the matter should not be dismissed for lack of prosecution. At the oral argument on the motion for summary judgment, Damon voluntarily dismissed the case without prejudice, without discussing the dismissal with DuBose. Shortly thereafter, DuBose learned that her case had been dismissed, and she terminated her relationship with Damon. Damon provided neither an accounting of DuBose's funds nor of the time that he spent in representing her.

Criminal Conviction

{¶ 23} Damon entered a plea of guilty on March 11, 2013, in the Hamilton County Court of Common Pleas to grand theft, a felony of the fourth degree. The offense involved the theft of fees from Butkovich and Crosthwaite. On April 4, 2013, the court sentenced Damon to three years' community control, with a prison term of 12 months to be imposed if he violated the terms and conditions of that control. Damon was further ordered to pay restitution to the law firm in the amount of $59,553.98. This amount is in addition to the more than $55,000 Damon has already paid.

Damon's Objections to Factual Findings

{¶ 24} Damon objects to the board's findings with regard to restitution. He contends that the board ignored the stipulation regarding the amount taken from the law firm and instead found that the exact amount stolen from the firm was unknown and could not be ascertained. Damon contends that Joseph Butkovich testified that they had arrived at a final restitution figure. Damon argues that there was a finite number of clients that he represented while employed by the law firm and that his cases were a matter of record.

{¶ 25} Butkovich testified that Damon provided "some of his bank records." Additionally, during questioning by Damon, Butkovich responded, "[Y]ou don't have records for us to make an accounting. And it doesn't account for the cash payments that you received that we have no idea who and when retained you because you didn't inform us of your clients. So, I can't tell you what you owe us because you don't have records."

{¶ 26} "Unless the record weighs heavily against a hearing panel's findings, we defer to the panel's credibility determinations, inasmuch as the panel members saw and heard the witnesses firsthand." *Cuyahoga Cty. Bar Assn. v. Wise*, 108 Ohio St.3d 164, 2006-Ohio-550, 842 N.E.2d 35, ¶ 24; *see also Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649, 800 N.E.2d 1117, ¶ 8. Therefore, we defer to the panel's reasonable decision to credit Butkovich's testimony that Damon had not provided records from

which the exact amount of funds stolen could be calculated.

{¶ 27} In light of the above, we overrule Damon's objection and adopt the board's factual findings.

Findings of Misconduct

{¶ 28} The board found by clear and convincing evidence that Damon violated Prof.Cond.R. 1.15(a)(2) (a lawyer shall not fail to maintain a record of client funds) in his representation of Thompson, Robinson, and Jemison; 1.15(d) (a lawyer shall not fail to render a full accounting of a client's funds upon request by the client) in his representation of the Pattersons, Thompson, Robinson, Jemison, Johnson, Long, Gehring, and DuBose; 1.2(a) (a lawyer shall not fail to consult with a client as to the means of pursuing the objectives of representation), 1.3 (a lawyer shall not fail to act with reasonable diligence and promptness in representing a client), 1.4(a) (a lawyer shall not fail to inform a client of a decision or circumstance with respect to which the client's informed consent is required), and 1.4(b) (a lawyer shall not fail to explain the nature of the representation to permit the client to make informed decisions regarding that representation) in his representation of DuBose; 1.5(a) (a lawyer shall not charge or collect a clearly excessive fee) in his representation of Thompson, Long, and Gehring; 1.5(c) (a lawyer shall not enter into a contingent-fee agreement without a written fee contract signed by the client and the lawyer) in his representation of Johnson; 1.15(e) (a lawyer shall not fail to maintain legal fees and expenses that had been paid in advance in a client's trust account until the fees

are earned or the expenses incurred) in his representation of the Pattersons; 8.4(c) (prohibiting an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) by misappropriating funds from Butkovich and Crosthwaite; and 8.4(b) (prohibiting an attorney from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness) due to his criminal conviction.

{¶ 29} We adopt the board's findings of misconduct.

Sanction

{¶ 30} When imposing sanctions for attorney misconduct, we consider several relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16. In making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc.Reg. 10(B). *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21. However, because each disciplinary case is unique, we are not limited to the factors specified in BCGD Proc.Reg. 10(B) but may take into account all relevant factors in determining which sanction to impose.

{¶ 31} The panel and the board found as aggravating factors that Damon acted dishonestly or with a selfish motive, engaged in a pattern of misconduct, committed multiple offenses, failed to cooperate in the disciplinary process by refusing to answer specific questions or giving evasive answers,

refused to acknowledge the wrongful nature of his conduct, took advantage of clients who were vulnerable and caused harm to clients, and failed to make restitution voluntarily. *See* BCGD Proc.Reg. 10(B)(1)(b), (c), (d), (e), (g), (h), and (i).

{¶ 32} The panel and the board found the following mitigating factors. First, Damon has not been previously disciplined. *See* BCGD Proc.Reg. 10(B)(2)(a). "Our precedent indicates that a prior interim felony suspension has not heretofore been considered as a prior disciplinary offense." *Disciplinary Counsel v. Cantrell,* 130 Ohio St.3d 46, 2011-Ohio-4554, 955 N.E.2d 950, ¶ 16, citing *Disciplinary Counsel v. Ulinski,* 106 Ohio St.3d 53, 2005-Ohio-3673, 831 N.E.2d 425, ¶ 1 and 14. Damon has also demonstrated that aside from the present matter, he has a reputation in the community for being of good character. *See* BCGD Proc.Reg. 10(B)(2)(e). Finally, Damon has received other penalties or sanctions. *See* BCGD Proc.Reg. 10(B)(2)(f).

{¶ 33} Damon contends that the board ignored as a mitigating factor that he fully cooperated with Butkovich and Crosthwaite and that he made significant restitution, having paid over $55,000 to the law firm. Instead, Damon argues, the board erroneously found in aggravation that he demonstrated a lack of cooperation in the disciplinary process and that the amount of money misappropriated could not be calculated. Further, Damon asserts that the board failed to give him any credit for remorse.

{¶ 34} As stated above, Butkovich testified that the firm was unable to complete an accounting because

Damon did not have the appropriate records. Moreover, Damon did not make a timely, good-faith effort toward restitution. Damon did begin making restitution to the law firm upon his termination. However, this was only after the firm had discovered Damon's theft and demanded restitution. Further, Damon filed for Chapter 13 bankruptcy and listed the law firm and the aggrieved clients as creditors. Although the bankruptcy was dismissed because Damon was unable to make the payment required by the plan, by pursuing it, Damon attempted to either eliminate or lessen some of these obligations. Finally, Damon has refused to acknowledge the wrongfulness of his actions. To the contrary, he expresses the belief that he had no duty to return unearned fees unless the client asked for them. Accordingly, we reject Damon's arguments.

{¶ 35} Damon also objects to the recommendation that he be disbarred. Damon argues that his efforts toward restitution, his fully cooperative attitude, including the production of financial documents to the law firm, and his lack of a prior disciplinary record warrant an indefinite suspension.

{¶ 36} We conclude that disbarment is the appropriate sanction under the circumstances. We have held that in most instances, "[t]he continuing public confidence in the judicial system and the bar requires that the strictest discipline be imposed in misappropriation cases." *Cleveland Bar Assn. v. Belock*, 82 Ohio St.3d 98, 100, 694 N.E.2d 897 (1998). Damon committed two distinct courses of misconduct, each of which carries the presumption of disbarment. First, Damon was convicted of theft for misappropriating

funds from his employer. We have determined that disbarment is warranted when an attorney is convicted of theft offenses. *See, e.g., Cincinnati Bar Assn. v. Banks*, 94 Ohio St.3d 428, 763 N.E.2d 1166 (2002) (attorney convicted of interstate transportation of stolen laptop computers disbarred for violations of former DR 1-102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude], (4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation], and (5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]).

{¶ 37} Second, we have recognized that accepting legal fees but failing to carry out contracts of employment is tantamount to theft of the fee from the client and that the presumptive sanction for that offense is disbarment. *See, e.g., Columbus Bar Assn. v. Moushey*, 104 Ohio St.3d 427, 2004-Ohio-6897, 819 N.E.2d 1112, ¶ 16, citing *Disciplinary Counsel v. Sigall*, 14 Ohio St.3d 15, 17, 470 N.E.2d 886 (1984), and *Disciplinary Counsel v. France*, 97 Ohio St.3d 240, 2002-Ohio-5945, 778 N.E.2d 573, ¶ 11. Damon knowingly accepted and kept retainers that were intended to be used for pursuing claims that he knew or should have known were frivolous. He also accepted a $2,500 retainer from Long for a claim that he should have known was meritless. The same is true with respect to the action he filed for Thompson in federal court. Second, he took fees from clients and failed to do any work. Gehring paid him $1,500, he did nothing, and he failed to return any of the money. Robinson paid him $25,000, but he failed to account for his work and failed to return any of the money.

{¶ 38} Further, the harm caused by Damon goes beyond the sum of money he stole from the law firm and the fees he has yet to return to his clients. The law firm spent more than $60,000 in an attempt to calculate the amount Damon stole and to defend malpractice suits filed against the firm arising from Damon's misconduct. Additionally, as a result of Damon's misconduct, the firm suffered increased unemployment-compensation expenses, a 40 percent increase in its malpractice-insurance premiums, and a reduction in work force and was forced to spend countless hours dealing with disgruntled clients.

{¶ 39} Finally, Damon relies upon a number of cases in support of his argument for an indefinite suspension. However, these cases are distinguishable. For example, in *Cincinnati Bar Assn. v. Britt,* 133 Ohio St.3d 217, 2012-Ohio-4541, 977 N.E.2d 620, which was cited by Damon at the hearing, the wrongdoing engaged in and the rules violated by Curtis Britt parallel Damon's wrongdoing and violations. However, Britt was not charged with or convicted of a crime, and the mitigating evidence in Britt's case exceeds that presented by Damon. Further, his conduct was not dishonest or selfish. *Id.* at ¶ 27. Instead, "[i]t was born of his inexperience and lack of guidance * * *." *Id.* Additionally, Britt, in a letter to each of the affected clients, openly acknowledged his misconduct, sincerely apologized, and made arrangements for substitute counsel for his clients if they decided to accept it. *Id.* at ¶ 30-32. Moreover, in contrast to Damon, Britt provided documentation indicating the amount of money he had accepted from his clients, which allowed for an accurate calculation of the amount

misappropriated. *Id.* at ¶ 13. Finally, Britt "expressed both his remorse and his desire to make amends for his misconduct." *Id.* at ¶ 33.

{¶ 40} Accordingly, we find that the aggravating facts significantly outweigh the mitigating factors present in this case. Therefore, we overrule Damon's objection to the recommended sanction and adopt the board's recommendation of disbarment.

{¶ 41} This court hereby disbars Damon from the practice of law. Costs are taxed to Damon.

Judgment accordingly.

O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, FRENCH, and O'NEILL, JJ., concur.

Robert J. Hollingsworth, E. Hanlin Bavely, and Edwin W. Patterson III, for relator.

Reminger Co., L.P.A., and Joseph W. Borchelt, for respondent.

APPENDIX C

THE SUPREME COURT OF OHIO

Case No.: 2013-1984

[Filed December 21, 2018]

CINCINNATI BAR ASSOCIATION,	)
Relator,	)
-vs.-	)
GEOFFREY P. DAMON,	)
Respondent.	)

MOTION FOR RELIEF FROM JUDGMENT FILED BY RESPONDENT

NOW COMES Respondent Geoffrey P. Damon, and pursuant to Rule 18.2 of the Rules of Practice of the Supreme Court of Ohio, respectfully moves this Court for Relief from Judgment as it was based, in part, on reverse race discrimination, in which Respondent, as a Caucasian attorney, was denied Equal Protection under the law, vis-à-vis African-American attorney comparators, who have been subjected to disciplinary sanctions. Accordingly,

Respondent moves this Court for an Order which modifies his sanction from permanent disbarment to an indefinite suspension. A concise memorandum with supporting evidentiary materials follows to which this Court's attention is respectfully drawn.

Respectfully Submitted,

/s/Geoffrey P. Damon
Geoffrey P. Damon
Respondent Pro Se
7092 Jeannie Avenue
Cincinnati, Ohio 45230
(513) 484-7573
(513) 721-5557 (FAX)
E-mail: gdamon1806@gmail.com
gdamon@insightbb.com

MEMORANDUM

A. Introduction

Respondent, a Caucasian attorney was subjected to permanent disbarment in 2014; this sanction was a product of reverse race discrimination, in which the penalties for Caucasian attorneys are more severe than their African American counterparts who are similarly situated. Respondent seeks to have the sanction modified from permanent disbarment to an indefinite suspension. Civil Rule 60(B) provides this Court with the authority to vacate a judgment for the reasons enumerated in the rule. Further, this Court has the inherent authority to modify its judgments and orders.

In order to prevail on a motion for relief from judgment, pursuant to Civ.R. 60(B) the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable amount of time, and, where the grounds of relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken. *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. Civ.R. 60(B) is used to vacate judgments that are voidable. *Howell v. Howell,* 10th Dist. No. 12AP-961, 2014-Ohio-2195, 2014 WL 2159124, ¶ 8 (voidable judgments attacked by direct appeal or Civ. R. 60(B)).

Further, the Court has the inherent authority to vacate a void judgment. Trial courts have inherent authority to vacate void judgments; a party need not seek relief under Civ.R. 60(B) in order to have the judgment vacated. *Patton v. Diemer,* 35 Ohio St.3d 68, 70, 518 N.E.2d 941 (1988); see also, *Ross v. Olsavsky,* 7th Dist. No. 09MA95, 2010-Ohio-1310, 2010 WL 1204532, ¶ 11. See *Am. Tax Funding, L.L.C. v. Robertson Sandusky Properties,* 7th Dist. No. 14 MA 1, 2014-Ohio-5831, 26 N.E.3d 1202, ¶¶ 40-41 "A court's inherent authority is a power that is neither created nor assailable by acts of the legislature." See *Welty v. Casper,* 10th Dist. Franklin Nos. 13AP-618 and 13AP-714, 2014-0hio-2903, 2014 WL 2969942, ¶ 11, citing Hale v. State, 55 Ohio St. 210, 215, 45 N.E. 199 (1896). "[A] juvenile court is a creature of statute and, therefore, has only such powers as are conferred upon

it by the legislature." Welty at ¶ 11, citing In re Agler, 19 Ohio St.2d 70, 72-74, 249 N.E.2d 808 (1969). But even statutory courts have inherent authority "to do those things that are reasonable and necessary for the administration of justice within the scope of their jurisdiction, absent contrary legislation or constitutional limitations." See Stumpf, Inherent Powers of the Courts, p. 8 (1994). R.C. 3119.65 provides the "contrary legislation" here. See *Hayslip v. Hanshaw,* 4th Dist. No. 15CA20, 2016-Ohio-3339, 54 N.E.3d 1272, ¶ 19.

B. Equal Protection and Reverse Race Discrimination

The prohibition against the denial of equal protection of the laws does not require that the law shall have an equality of operation, in the sense of an indiscriminate operation on persons merely as such, but on persons according to their relation. It does not prevent the State from distinguishing, selecting and classifying objects of legislation within a wide range of discretion, provided only that the discretion must be based upon some reasonable ground. So long as the statute is applicable to all persons under like circumstances and does not subject individuals to an arbitrary exercise of power and operates alike upon all persons similarly situated it suffices the constitutional prohibition against the denial of equal protection of the laws. *Senior v. Ratterman,* 44 Ohio St. 661, 11 N.E. 321; *City of Xenia v. Schmidt,* 101 Ohio St. 437, 130 N.E. 24.

The effect of the prohibition is the prevention from deprivation of equal and impartial justice under the

law. The claim that the statute favors the rich and discriminates against the poor is untenable. In law, equality means likeness in possessing the same rights and being liable to the same duties. The word equal implies, not identity, but duality; the use of one thing as the measure of another. *State v. Schutzler,* 20 Ohio Misc. 79, 84, 249 N.E.2d 549, 553 (Ohio Com.Pl.1969)

Chapter 4112. R.C. 4112.02(A) states:

> It shall be an unlawful discriminatory practice * * * [f]or any employer, because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

See *Pohmer v. JPMorgan Chase Bank, N.A.,* 10th Dist. Franklin No. 14AP-429, 2015-Ohio-1229, ¶ 28

In claims of reverse discrimination, the plaintiff bears the burden of demonstrating that his or her employer intentionally discriminated against him or her despite his or her majority status, and courts have altered the elements of the prima facie case of discrimination to reflect the unique nature of the claim. *Mowery v. Columbus,* 10th Dist. No. 05AP-266, 2006-Ohio-1153, ¶ 44, citing *Murray v. Thistledown Racing Club, Inc.,* 770 F.2d 63, 67 (6th Cir.1985). Therefore, in order to establish a prima facie case of reverse race discrimination, Pohmer must show (1) background circumstances supporting the inference that JPMC was

the unusual employer who discriminated against non-minority employees, (2) that JPMC took an action adverse to Pohmer's employment, (3) that Pohmer was qualified for the position, and (4) that JPMC treated Pohmer disparately from similarly situated minority employees. Id., citing Courie v. ALCOA, 162 Ohio App.3d 133, 832 N.E.2d 1230, 2005-Ohio-3483, ¶ 20 (8th Dist.), citing *Grooms v. Supporting Council of Preventative Effort,* 157 Ohio App.3d 55, 809 N.E.2d 42, 2004-Ohio-2034, ¶ 20 (2d Dist.); see *Pohmer v. JPMorgan Chase Bank, N.A.,* 10th Dist. Franklin No. 14AP-429, 2015-Ohio-1229, ¶ 32 There is ample evidence which provides factual circumstances to support the inference and conclusion that the Supreme Court of Ohio engages in reverse race discrimination.

There are two comparators, who were contemporaries of the undersigned Respondent, Kenneth Lawson and Clyde Bennett, II. The case of Kenneth Lawson demonstrates that the African American attorney was entitled to multiple serious disciplinary investigations prior to being disbarred.

Discipline History

Disciplinary Action	Case Number	Effective Date
Interim Remedial Suspension	GEN-2007-0800	05-15-2007
Suspended Indefinitely	GEN-2008-0107	07-09-2008
Felony Suspension	GEN-2009-1163	07-31-2009
Disbarred	GEN-2011-0131	09-20-2011

It was not until Mr. Lawson threatened to kill a physician that he was disbarred. The undersigned Respondent is simply requesting to be given the same opportunities as were afforded Mr. Lawson. Mr. Lawson, the African-American attorney was given multiple opportunities by Supreme Court at rehabilitation. The undersigned Respondent was given none.

Another comparator, Clyde Bennett, II, has had multiple disciplinary infractions, served a federal prison term, has been subsequently suspended and is still not facing disbarment. The disciplinary history of African American attorney, Clyde Bennett, II demonstrates that the Supreme Court of Ohio engages in reverse race discrimination, for either political appearance sake or for political correctness.

Discipline History

Disciplinary Action	Case Number	Effective Date
Felony Suspension	GEN-2008-0177	02-15-2008
Suspended Indefinitely	GEN-2009-1100	02-04-2010
Reinstated To Practice	GEN-2009-1100	04-29-2011
Suspended For Term	2018-0252	10-02-2018

Even after having served a federal prison term, the African-American defense attorney was reinstated and has been praised by the Cincinnati media for his emergence from the disciplinary process, as a changed man. [See Cincinnati.com article attached hereto as

Exhibit 1]. The undersigned Respondent is asking to be treated in the same or similar manner as his African American counterparts.

By way of comparison, the undersigned Respondent has the following Disciplinary History:

Discipline History

Disciplinary Action	Case Number	Effective Date
Felony Suspension	GEN-2013-0770	05-21-2013
Disbarred	GEN-2013-1984	09-03-2014

The undersigned Respondent is requesting that his sanction be modified from permanent disbarment to an indefinite suspension. Respondent is entitled to Equal Protection under the law.

There are clearly "background circumstances [to] support the suspicion that the Supreme Court of Ohio has engaged in conduct which evidences discrimination against the majority." *Murray v. Thistledown Racing Club, Inc.*, 770 F.2d 63, 67 (6th Cir.1985) (quoting *Parker v. Baltimore & Ohio R.R. Co.*, 652 F.2d 1012, 1017 (D.C.Cir.1981)); see also *Zambetti v. Cuyahoga Community College*, 314 F.3d 249, 256 (6th Cir.2002) (stating that such evidence "justifies a suspicion that incidents of capricious discrimination against whites because of their race may be likely"). To satisfy the fourth prong, a plaintiff must show that the defendant treated differently employees who were similarly situated but were not members of the protected class. *Sutherland v. Mich. Dept. of Treasury*, 344 F.3d 603,

614 (6th Cir.2003). *Vitt v. City of Cincinnati,* 97 Fed.Appx. 634, 639 (6th Cir.2004).

Respondent has been denied the equal protection under the laws, and respectfully requests that his sanction be modified from permanent disbarment to an indefinite suspension. Indefinite suspension is the appropriate sanction for the Respondent's misconduct. Permanent disbarment is disproportionate to the misconduct and is evidence of reverse race discrimination being perpetrated by this Court.

C. Conclusion

Respondent in this case has never been previously sanctioned until this matter arose in 2010. Respondent was licensed to practice law in the State of Ohio in 1984 and was in good standing until the interim felony suspension in May of 2013, a period of twenty-nine years. Respondent has taken and continues to take steps to remedy the misconduct, including the payment of $750.00 per month to pay off restitution. Accordingly, Respondent respectfully moves this Court for an Order which modifies the previously entered judgment from permanent disbarment to an indefinite suspension.

Respectfully Submitted

/s/Geoffrey P. Damon
Geoffrey P. Damon
Rspondent Pro Se
7092 Jeannie Avenue
Cincinnati, Ohio 45230
(513) 484-7573
(513) 721-5557 (FAX)

E-mail: gdamon1806@gmail.com
gdamon@insightbb.com

* * *

[*Certificate of Service Omitted in the Printing of this Appendix*]

EXHIBIT 1

THE RISE, FALL AND RISE AGAIN OF A CINCINNATI DEFENSE ATTORNEY

Byron McCauley, bmccauley@enquirer.com
Published 6:21 a.m. ET July 28, 2017 | Updated 12:02 p.m. ET July 28, 2017

The Cincinnati legal community is accustomed to Brooks Brothers-inspired uniformity: suits in grays and blues, button-down Oxfords, wingtips, horizontal-striped Repp neckties. Our old-line Downtown law firms spawned mayors, senators and governors. Veteran Defense Attorney Clyde Bennett II, then, is an outlier. He is bald, goateed and stands 6 foot 3 inches tall. His big-shouldered suit jackets taper like a "V," but his trousers are more Cab Calloway than Prince Charles. Bennett grew up in the subsidized housing projects of Cincinnati's English Woods neighborhood.

His dream? To become a lawyer, an ambition fueled partly by the poor legal representation received by people he knew, he told me. Along the way, he was inspired practicing African-American attorneys like the late Judge Leslie Isaiah Gaines among others.His teachers recognized his academic gifts and encouraged him to shoot for the moon. Bennett earned a degree in biochemistry from the University of Cincinnati in 1987 and earned a law degree from the University of Dayton in 1992. Retired Common Pleas Judge Norbert Nadel once called Bennett "one of the best trial lawyers I've ever seen" and "somewhat of a throwback to the more flamboyant lawyers of the past."

After practicing for more than two decades, Bennett's law practice is more successful than it has ever been. Most recently, he has offered expert commentary as a Fox19 legal analyst covering the Ray Tensing trial. This is particularly remarkable, considering that in 2008 and 2009, Bennett spent many months in a federal prison in Huntington, West Virginia.Bennett pleaded guilty to "structuring," or making bank deposits in sums of less than $10,000 to avoid the threshold amount that requires banks to report deposits to the IRS.
He would leave behind his wife and two children and be subject to public scrutiny. He also saw his license to practice law suspended for a time.

"I was very angry at a lot of people but was angry at myself for committing a crime against the United States, a great country," he says. "I was really mad myself for my family, for my children and the position I put them in. I left them without a father, I left them to be ridiculed by other students. "My father was absent from my life, and I always hung my hat on the fact that I would be a great father, and here I am gone to prison away from my children for two years."Bennett did not allow his children to see him while he was away. He credits his corporate executive wife, Tracy, for keeping things stable at home.
A Christian, Bennett said he had always had a relationship with God, but time away helped him recalibrate his life. "I was worried about so many things," he says. "Worried about the law, worried about material things, worried about success, enjoying life excessively. From a spiritual perspective, suffice it to say that I was a delinquent in some respects. Prison

allowed me to focus on God and not have distractions to developing my relationship with God."Today, the kids he left are both honor students in college, there is a renewed focus on his family and a heightened awareness about what his own clients experience. Among those clients has been former judge Tracie Hunter.Bennett has even tied his mistakes and experiences to the strengths of his current law practice."As a result of personally being investigated, prosecuted, convicted and incarcerated and the resulting distress, suffering and destruction to my family and myself, I now actually know what a criminal defendant experiences," his website states. "Now more so than ever, I have the power, commitment and spirit to defend -- and win on behalf of the accused."
Brokenness, redemption, and restoration are stuff from which many movies have been made.Bennett, perhaps a combination of Atticus Finch and Johnnie Cochran, is getting to write his own ending.

Byron McCauley writes a general interest column on Wednesdays and Fridays and is a member of The Enquirer editorial board. He can be reached at bmccauley@enquirer.com, (513) 768-8565 Twitter: @byronmccauley.

APPENDIX D

117 Ohio St.3d 1401, 881 N.E.2d 270 (Table)2008 - Ohio- 594 *(Approx. 2 pages)*

SUPREME COURT OF OHIO

NO. 2008-0177

[Filed February 15, 2008]

In re Bennett)
_____)

DISCIPLINARY CASES

Opinion

On January 23, 2008, and pursuant to Gov.Bar R. V(5)(A)(3), the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio certified to the Supreme Court a certified copy of a judgment entry of a felony conviction against Clyde Bennett II, an attorney licensed to practice law in the state of Ohio.

Upon consideration thereof and pursuant to Gov.Bar R. V(5)(A)(4), it is ordered and decreed that Clyde Bennett II, Attorney Registration No. 0059910, last known business address in Cincinnati, Ohio, is suspended from the practice of law for an interim period, effective as of the date of this entry.

It is further ordered that this matter is referred to the Disciplinary Counsel for investigation and commencement of disciplinary proceedings.

It is further ordered that respondent immediately cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency, or other public authority.

It is further ordered that effective immediately, respondent is forbidden to counsel or advise or prepare legal instruments for others or in any manner perform legal services for others.

It is further ordered that respondent is divested of each, any, and all of the rights, privileges, and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that pursuant to Gov.Bar R. X(3)(G), respondent shall complete one credit hour of continuing legal education for each month or portion of a month of the suspension. As part of the total credit hours of continuing legal education required by Gov.Bar R. X(3)(G), respondent shall complete one credit hour of instruction related to professional conduct required by Gov.Bar R. X(3)(A)(1) for each six months, or portion of six months, of the suspension.

It is further ordered that respondent shall not be reinstated to the practice of law in Ohio until (1) respondent complies with the requirements for reinstatement set forth in the Supreme Court Rules for the Government of the Bar of Ohio, (2) respondent complies with this and all other orders issued by this

court, (3) respondent complies with the Supreme Court Rules for the Government of the Bar of Ohio, and (4) this court orders respondent reinstated.

It is further ordered, sua sponte, by the court that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered, sua sponte, by the court that if, after the date of this order, the Clients' Security Fund awards any amount against the respondent pursuant to Gov.Bar R. VIII(7)(F), the respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

It is further ordered that on or before 30 days from the date of this order, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of respondent's suspension and consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in respondent's place;

2. Regardless of any fees or expenses due respondent, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling

attention to any urgency for obtaining such papers or other property;

3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in respondent's possession or control;

4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of respondent's disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;

5. Send all such notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;

6. File with the Clerk of this court and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of notices required herein, and setting forth the address where the affiant may receive communications; and

7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

It is further ordered that respondent shall keep the Clerk and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Office of Attorney Services.

It is further ordered that the Clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.

APPENDIX E

124 Ohio St.3d 314, 921 N.E.2d 1064, 2010-Ohio-313

SUPREME COURT OF OHIO

No. 2009–1100

[Filed February 4, 2010]

DISCIPLINARY COUNSEL)
)
v.)
)
BENNETT)
)

Submitted Aug. 11, 2009

Decided Feb. 4, 2010

Attorneys and Law Firms

Jonathan E. Coughlan, Disciplinary Counsel, and Joseph M. Caliguri, Assistant Disciplinary Counsel, for relator.

Clyde Bennett II, pro se.

Opinion

PER CURIAM.

{¶ 1} Respondent, Clyde Bennett II, formerly of Mason, Ohio, Attorney Registration No. 0059910, was admitted to the practice of law in Ohio in 1992. On

February 15, 2008, we suspended respondent's license to practice on an interim basis pursuant to Gov.Bar R. V(5)(A)(4) upon receiving notice that he had been convicted of a felony. See *In re Bennett,* 117 Ohio St.3d 1401, 2008-Ohio-594, 881 N.E.2d 270.

{¶ 2} The Board of Commissioners on Grievances and Discipline recommends that we now suspend respondent from practice for one year and give him credit for the time his license has been under the interim suspension. The board made this recommendation based on findings that respondent had structured financial transactions to avoid federal reporting requirements for transfers in excess of $10,000, the illegal conduct that led to his conviction. We agree that respondent violated ethical standards incumbent upon Ohio attorneys but hold that an indefinite suspension, with credit for the interim suspension, is the appropriate sanction.

{¶ 3} Relator, Disciplinary Counsel, charged respondent with violating two Disciplinary Rules of the Code of Professional Responsibility: DR 1–102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and 1–102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law). The parties waived an evidentiary hearing and filed agreed stipulations in which respondent admitted the cited misconduct and the parties proposed that he receive a one-year suspension with credit for the time served since his February 15, 2008 interim suspension. A panel of three board members recommended acceptance of the agreed stipulations and proposed

sanction. The board adopted the panel's report, accepting the stipulations and recommendation.

Misconduct

{¶ 4} The parties stipulated to respondent's violations of DR 1–102(A)(4) and (6), and to the following underlying facts:

{¶ 5} 1. "On September 26, 2007, respondent pled guilty to a one-count Bill of Information alleging a Class C Felony in violation of 31 USC § 5342(a)(3) and (d)(2) [sic, 5324(a)(3) and (d)(2)] and 18 USC § 2 for unlawfully structuring financial transactions, Case No. 3:07CR144."

{¶ 6} 2. "On December 28, 2007, U.S. District Court Judge Thomas Rose sentenced respondent to 24 months in prison and a $4,000 fine."

{¶ 7} 3. "Under 31 USC § 5313, certain federal regulations, namely 31 CFR §§ 103.11 and 103.22, required domestic financial institutions to prepare and file FINCEN Form 104 whenever they were involved in the payment, receipt, or transfer of U.S. Currency exceeding $10,000."

{¶ 8} 4. "At all times herein, respondent was aware of such regulations."

{¶ 9} 5. "Structuring occurs when a person conducts one or more currency transactions at one or more financial institutions (or different branches of the same financial institution), on one or more days. One does this with the purpose of evading currency transaction reporting requirements. Structuring includes breaking

down a single sum of currency over $10,000 into smaller sums or conducting a series of case [sic] transactions all at or below $10,000 with the purpose of evading currency transaction reporting requirements."

{¶ 10} 6. "During a five-month period, respondent unlawfully structured approximately $124,300 with various financial institutions located around Cincinnati, Ohio for the express purpose of evading the above-mentioned reporting requirements."

{¶ 11} 7. "A majority of $124,300 was currency respondent had obtained from previously cashed paychecks that were issued to respondent by his employer * * *."

{¶ 12} 8. "A certain unspecified portion of the currency transactions identified below originated from income that respondent received, but improperly failed to report and account to the Internal Revenue Service. The following paragraphs illustrate respondent's criminal activity."

{¶ 13} 9. "On August 15 and 16, 2002, respondent unlawfully structured $18,000 in U.S. Currency by making the following deposits:

"• $4,000 at Fifth Third Bank, 916 Main St., Cincinnati

"• $5,000 at Fifth Third Bank, 201 E. Fourth St., Cincinnati

"• $3,000 at Fifth Third Bank 38 Fountain Square, Cincinnati

"• $6,000 at Fifth Third Bank, 916 Main St., Cincinnati."

{¶ 14} 10. "Between September 11, 2002 and September 13, 2002, respondent unlawfully structured $29,300 in U.S. Currency by making the following deposits:

"• $7,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $8,000 at Fifth Third Bank, 916 Main St., Cincinnati

"• $5,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $3,000 at Fifth Third Bank, 5th & Broadway, Cincinnati

"• $6,300 at Fifth Third Bank, 201 E. Fourth St., Cincinnati."

{¶ 15} 11. "Between September 18, 2002 and September 20, 2002, respondent unlawfully structured $20,000 in U.S. Currency by making the following deposits:

"• $5,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $8,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $7,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati."

{¶ 16} 12. "Between September 23, 2002 and September 27, 2002, the respondent unlawfully structured $32,000 in U.S. Currency by making the following deposits:[1] [Footnote sic.]

"• $8,000 at Fifth Third Bank, 916 Main St., Cincinnati

"• $7,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $3,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $4,000 at Fifth Third Bank, 5th & Broadway, Cincinnati

"• $4,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $6,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati."

{¶ 17} 13. "Between September 28, 2002 and October 1, 2002, respondent unlawfully structured $12,000 in U.S. Currency by making the following deposits:

"• $2,500 at Fifth Third Bank, 1212 West Kemper, Cincinnati

---

[1] "Respondent pled guilty to unlawfully structuring transactions between September 23, 2002 and September 27, 2002. The remainder of the transactions were not included in the Bill of Information."

"• $6,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $3,500 at Fifth Third Bank, 201 E. Fourth St., Cincinnati."

{¶ 18} 14. "On January 14 and 15, 2003, respondent unlawfully structured $13,000 in U.S. Currency by making the following deposits:

"• $9,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati

"• $4,000 at Fifth Third Bank, 38 Fountain Square, Cincinnati."

{¶ 19} 15. "As part of the plea agreement, respondent agreed, that if necessary, he would file corrected U.S. Federal Income Tax returns for 2003 and 2004 within 120 days of the plea."

{¶ 20} 16. "For the year 2003 and 2004, respondent and his wife filed joint tax returns and paid $75,540 and $76,153 in federal income taxes respectively."

{¶ 21} 17. "To date, neither the IRS nor the U.S. Department of Probation has advised respondent of the need to amend his 2003 and 2004 taxes."

{¶ 22} We accept these stipulations and find that respondent violated DR 1–102(A)(4) and (6).

Sanction

{¶ 23} In determining the appropriate sanction for a lawyer's misconduct, we consider sanctions imposed in similar cases and whether aggravating or mitigating factors under BCGD Proc.Reg. 10(B) weigh in favor of

a harsher or more lenient disposition. Citing no aggravating features, the parties stipulated to the mitigating factors that respondent (1) does not have a prior disciplinary record, (2) provided full and free disclosure to the board with a cooperative attitude toward the proceedings, and (3) offered positive character evidence. See BCGD Proc.Reg. 10(B)(2)(a), (d), and (e).

{¶ 24} The parties have also stipulated in mitigation that other penalties and sanctions have been imposed for respondent's illegal conduct—he was sentenced to two years in prison and ordered to pay a $4,000 fine. See BCGD Proc.Reg. 10(B)(2)(f). Although this is true, the punishment was for only a portion of the violations committed. As part of a plea agreement with prosecutors, respondent pleaded guilty to structuring $32,000 in transactions from September 23 through 27, 2002, but he admits in the stipulations in this case that he structured other transactions as well. This reduces the weight of that mitigating factor.

{¶ 25} We also find a number of aggravating factors applicable to this case that the parties, panel, and board do not mention. First, although respondent's motive for illegally structuring financial transactions is not clear from the record before us, the bill of information to which he pleaded guilty stated that he structured the $32,000 transaction by making each deposit "into another individual's savings account." Respondent apparently thought it was worth the risk of prosecution for evading the reporting requirements for domestic financial institutions. His criminal conduct thus manifests dishonest and selfish motives,

aggravating factors under BCGD Proc.Reg. 10(B)(1)(b). Respondent also engaged in his illegal activity over a five-month period, making 23 separate deposits at various banks, which constitutes a pattern of misconduct, an aggravating factor under BCGD Proc.Reg. 10(B)(1)(c). An indefinite suspension is therefore appropriate.

{¶ 26} We accept the parties' proposal to credit respondent for his interim felony suspension. In their stipulations, the parties list the following cases in which lawyers who were convicted of felonies were given credit for the time their licenses were under interim suspensions:

{¶ 27} "In *Disciplinary Counsel v. Blaszak,* 104 Ohio St.3d 330, 819 N.E.2d 689, 2004-Ohio-6593, the Supreme Court of Ohio imposed a two-year suspension with credit for time served after the respondent pled guilty to selling witness testimony in a pending case. In *Cuyahoga County Bar Assn. v. Garfield,* 109 Ohio St.3d 103, 846 N.E.2d 45, 2006-Ohio-1935, the Ohio Supreme Court imposed an 18–month suspension with credit for time served after finding that the respondent pled guilty to one count of bank fraud for pledging a company's certificate of deposit as collateral for a personal loan. Id. In *Disciplinary Counsel v. Petroff,* 85 Ohio St.3d 396, 709 N.E.2d 111, 1999-Ohio-400, the Ohio Supreme Court suspended Mark Petroff for one year with credit for time served after the respondent pled guilty to attempting to evade federal income taxes. Id. After Attorney William Seall was sentenced to four months in prison and a $7,000 fine for conspiring to commit tax fraud, the Supreme Court of Ohio

suspended Seall for one year with credit for time served under the interim suspension. *Dayton Bar Assn. v. Seall,* 81 Ohio St.3d 280, 690 N.E.2d 1271, 1998-Ohio-630."

{¶ 28} Respondent is therefore indefinitely suspended from the practice of law in Ohio; however, we grant credit for the time he has served under the February 15, 2008 interim suspension order, *In re Bennett,* 117 Ohio St.3d 1401, 2008-Ohio-594, 881 N.E.2d 270, toward the two-year period that respondent must wait before petitioning for reinstatement under Gov.Bar R. V(10)(B). Respondent may petition for reinstatement upon completion of respondent's supervised release. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., and LUNDBERG STRATTON, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

PFEIFER, J., dissents and would impose the one-year suspension recommended by the board.

APPENDIX F

154 Ohio St.3d 314, 114 N.E.3d 167, 2018-Ohio-3973

SUPREME COURT OF OHIO

No. 2018-0252

[Filed October 2, 2018]

DISCIPLINARY COUNSEL)
)
v.)
)
BENNETT)
)

Submitted April 10, 2018

Attorneys—Misconduct—Violations of the Rules of Professional Conduct, including failing to provide competent representation to a client, failing to keep a client reasonably informed about the status of a matter, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation—One-year suspension.

(No. 2018-0252—Submitted April 10, 2018—Decided October 2, 2018.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2016-065.

Per Curiam.

{¶ 1} Respondent, Clyde Bennett II, of Cincinnati, Ohio, Attorney Registration No. 0059910, was admitted to the practice of law in Ohio in 1992.

{¶ 2} On September 26, 2007, Bennett pleaded guilty to structuring financial transactions to avoid federal reporting requirements for transfers in excess of $10,000. Consequently, we suspended his license to practice law on an interim basis on February 15, 2008. *In re Bennett*, 117 Ohio St.3d 1401, 2008-Ohio-594, 881 N.E.2d 270. On February 4, 2010, we indefinitely suspended him from the practice of law with credit for time served for the conduct underlying his criminal conviction and we reinstated him to the practice of law on April 29, 2011. *Disciplinary Counsel v. Bennett*, 124 Ohio St.3d 314, 2010-Ohio-313, 921 N.E.2d 1064, reinstatement granted, 128 Ohio St.3d 1220, 2011-Ohio-2248, 946 N.E.2d 757.

{¶ 3} In a complaint certified to the Board of Professional Conduct on December 6, 2016, relator, disciplinary counsel, charged Bennett with multiple ethical violations arising out of his representation of a single client. Based on the parties' stipulations and evidence adduced at a hearing, a panel of the board issued a report finding that Bennett violated four professional conduct rules and recommending that three other alleged violations be dismissed and that Bennett be suspended from the practice of law for six months. The board adopted the panel's report in its entirety, and no objections have been filed.

{¶ 4} We adopt the board's findings of fact and misconduct, but find that the appropriate sanction for Bennett's misconduct is a one-year suspension from the practice of law.

Misconduct

{¶ 5} On January 17, 2014, John Kelley was convicted of two counts of attempted murder and four counts of felonious assault and sentenced to 25 years in prison. The First District Court of Appeals affirmed Kelley's conviction on December 19, 2014, and he had 45 days—until February 2, 2015—to perfect his appeal to this court. *See* S.Ct.Prac.R. 7.01(A).

{¶ 6} In January 2015, Kelley's mother asked Bennett to represent him in that appeal. Bennett agreed to undertake the representation for a flat fee of $5,000, but he did not reduce the agreement to writing and failed to effectively communicate that he did not intend to begin work until the entire flat fee had been paid. Kelley's mother paid Bennett $2,500 on January 12, 2015. Treating the fee as a flat fee earned upon receipt, Bennett deposited the money into his operating account without simultaneously advising Kelley's family of the possibility of a refund.

{¶ 7} Bennett claimed that he had been under the mistaken belief that his representation did not commence until the client paid the agreed retainer in full, he filed a notice of appearance in a case, or he otherwise conducted some public legal matter on behalf of the client. Although he began to do some preliminary work on Kelley's case after receiving half of the agreed

retainer, he did not consider that work to have commenced the representation.

{¶ 8} Bennett's stated legal strategy was to pursue Kelley's state remedies before filing a petition for habeas corpus in federal court. But Bennett did not have an adequate understanding of the legal requirement that prisoners exhaust all state court remedies before raising claims in a federal habeas corpus proceeding. Believing that a direct appeal to this court would be unsuccessful, and recognizing that Kelley's principal arguments required evidence outside the record, Bennett determined that a petition for postconviction relief in state court followed by a federal habeas petition was a better course of action. He therefore elected not to file a timely direct appeal to this court. However, he failed to inform Kelley of that fact during a meeting between the two men shortly after the February 2, 2015 filing deadline had passed. Eventually, after receiving an additional $1,000 toward the retainer—including a $500 payment from Kelley on February 3, 2015—Bennett decided that he had received enough money to enter an appearance and undertake the representation.

{¶ 9} On March 3, 2015, Bennett filed a perfunctory one-page motion for delayed appeal in this court. His affidavit in support of that motion stated:

> The Defendant did not file for an appeal on time because counsel for Defendant was not retained until several days after the expiration of the 45 day time period. Counsel immediately filed the instant Motion for Delayed Appeal. Defendant's family could not procure funds to retain counsel

> until after the expiration of the 45 day time period.

{¶ 10} Bennett has acknowledged that his affidavit intentionally omitted relevant information and is misleading. Specifically, Bennett admitted that the omissions were significant and designed to mislead a court considering a subsequent habeas petition into believing that "a good faith attempt was made to avail Mr. Kelley of his state remedies." In his testimony before the board, Bennett maintained that he had no expectation that the motion would be granted because it was a pro forma filing intended only to exhaust Kelley's state-court remedies before filing a petition to vacate Kelley's sentence in the state trial court. He did not send a copy of the motion to Kelley or his family, nor did he disclose his purported litigation strategy to them.

{¶ 11} Kelley's mother made two additional $500 payments to Bennett on April 6 and May 4, 2015. And we denied Bennett's motion for delayed appeal on April 29, 2015. The following week, Bennett wrote to Kelley and stated:

> Unfortunately, the Ohio Supreme Court denied our request for a delayed appeal. This concludes my representation of you. However, your next legal procedure is a federal habeas petition. I will do [sic] same if your mother and/or family continues to make payments. The habeas petition must demonstrate that you experienced a constitutional deprivation.
>
> Please write back as soon as possible.

Bennett received no response and made several unsuccessful attempts to contact Kelley's family. But he ceased all communications after receiving Kelley's grievance in August 2015.

{¶ 12} Kelley retained new counsel, who alleged that Bennett's ineffective assistance of counsel constituted good cause for the filing of Kelley's second motion for delayed appeal, but we denied that motion. The United States District Court for the Southern District of Ohio, Western Division, later found that Bennett's deficiencies in performance excused Kelley's failure to timely appeal his conviction to this court, but nonetheless dismissed his habeas petition on other grounds.

{¶ 13} The board found that the above-described conduct violated Prof.Cond.R. 1.1 (requiring a lawyer to provide competent representation to a client), 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a matter), 1.5(d)(3) (prohibiting a lawyer from charging a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms without simultaneously advising the client in writing that the client may be entitled to a refund of all or part of the fee if the lawyer does not complete the representation), and 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The parties jointly requested that four other alleged violations be dismissed, and the board agreed.

{¶ 14} Based on the foregoing, we agree that Bennett's conduct violated Prof. Cond.R. 1.1, 1.4(a)(3),

1.5(d)(3), and 8.4(c) and hereby dismiss the remaining allegations of relator's complaint.

Sanction

{¶ 15} When imposing sanctions for attorney misconduct, we consider all relevant factors, including the ethical duties that the lawyer violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases.

{¶ 16} The parties stipulated and the board found that the relevant aggravating factors include Bennett's prior indefinite suspension from the practice of law for conduct involving dishonesty, fraud, deceit, or misrepresentation, his commission of multiple offenses, and the fact that his misconduct involved a vulnerable criminal defendant. *See* Gov.Bar R. V(13)(1), (4), and (8).

{¶ 17} The board deemed Bennett's misrepresentations to be "a most serious offense" and noted that it had no way of knowing whether this court would have exercised jurisdiction over Kelley's direct appeal had it been timely filed. It also found that despite Bennett's arguments to the contrary, his misconduct caused harm to his client by depriving him of the opportunity to directly appeal his convictions and sentence, leaving him to retain new counsel and creating additional procedural hurdles in his quest for federal habeas relief.

{¶ 18} Moreover, the board could not reconcile Bennett's testimony regarding his litigation strategy with his actions. He testified that he intended to file a delayed appeal followed by a petition for postconviction

relief on Kelley's behalf. Yet he received payments totaling $4,500, filed a single-page motion for delayed appeal with a one-page supporting affidavit, and then told his client that his representation was complete—without even mentioning the possibility of filing a petition for post-conviction relief in state court.

{¶ 19} Mitigating factors include Bennett's cooperative attitude toward the disciplinary proceedings and strong evidence of his character and reputation from a significant number of lawyers and judges, though few of those letters suggest that their authors have specific knowledge of the misconduct alleged in this case. *See* Gov.Bar R. V(13)(C)(4) and (5). The board also attributed mitigating effect to Bennett's payment of $4,500 in full restitution to Kelley's family, *see* Gov.Bar R. V(13)(C)(3), the fact that his misconduct did not procedurally bar his client's federal habeas action, his sincere and contrite appearance during his hearing testimony, and his acceptance of responsibility for his misconduct.

{¶ 20} The board recommends that the appropriate sanction for Bennett's misconduct is a six-month suspension from the practice of law. In support of that sanction, the board cites six cases in which we have imposed one-year suspensions with six months stayed on conditions on attorneys who, like Bennett, made false or misleading statements to a court. *See Disciplinary Counsel v. Schuman*, 152 Ohio St.3d 47, 2017-Ohio-8800, 92 N.E.3d 850; *Disciplinary Counsel v. Shaffer*, 98 Ohio St.3d 342, 2003-Ohio-1008, 785 N.E.2d 429; *Toledo Bar Assn. v. Miller*, 132 Ohio St.3d 63, 2012-Ohio-1880, 969 N.E.2d 239; *Disciplinary*

Counsel v. Rohrer, 124 Ohio St.3d 65, 2009-Ohio-5930, 919 N.E.2d 180; *Toledo Bar Assn. v. DeMarco*, 144 Ohio St.3d 248, 2015-Ohio-4549, 41 N.E.3d 1237; *Warren Cty. Bar Assn. v. Vardiman*, 146 Ohio St.3d 23, 2016-Ohio-352, 51 N.E.3d 587.

{¶ 21} While each of those attorneys engaged in conduct similar to Bennett's, we find that just one of them had prior discipline—for a brief attorney-registration suspension, *Vardiman*, at ¶ 13—and none of them had committed prior offenses involving dishonesty, fraud, deceit, or misrepresentation, as Bennett has.

{¶ 22} We have recognized that the primary purpose of a disciplinary sanction is not to punish the offender, but to protect the public by demonstrating that this type of conduct will not be tolerated. *See, e.g., Schuman* at ¶ 17. But we have also acknowledged:

> If a prior attempt at discipline has been ineffective to provide the protection intended for the public, then such further safeguards should be imposed as will either tend to effect the reformation of the offender or remove him entirely from the practice. The discipline for a repeated offense may be much greater than would have been imposed were it a first offense, yet such greater discipline is not a meting out of further punishment for prior acts but is a determination of the attorney's fitness to practice.

In re Disbarment of Lieberman, 163 Ohio St. 35, 41, 125 N.E.2d 328 (1955); *see also Disciplinary Counsel v.*

Dann, 134 Ohio St.3d 68, 2012-Ohio-5337, 979 N.E.2d 1263, ¶ 20.

{¶ 23} Here, Bennett has a prior indefinite suspension for engaging in dishonest conduct that also resulted in a felony conviction and a two-year prison term, and he has gone on to engage in additional dishonesty and misrepresentation just four years after being reinstated to the practice of law. Therefore, we conclude that this misconduct warrants a greater sanction than the six-month suspension recommended by the board or the one-year suspensions with six months stayed on conditions that we imposed in the cases relied upon by the board.

{¶ 24} Accordingly, Clyde Bennett II is suspended from the practice of law in Ohio for one year. Costs are taxed to Bennett.

Judgment accordingly.

O'CONNOR, C.J., and O'DONNELL, FISCHER, and DEGENARO, JJ., concur.

KENNEDY, FRENCH, and DEWINE, JJ., dissent and would suspend respondent from the practice of law for six months.

Scott J. Drexel , Disciplinary Counsel, and Donald M. Sheetz , Assistant Disciplinary Counsel, for relator.

Montgomery, Rennie, and Jonson, L.P.A., George D. Jonson, and Lisa M. Zaring, Cincinnati, for respondent.

APPENDIX G

119 Ohio St.3d 58, 891 N.E.2d 749, 2008-Ohio-3340

SUPREME COURT OF OHIO

No. 2008–0107

[Filed July 9, 2008]

CINCINNATI BAR ASSOCIATION et al.	)
	)
v.	)
	)
LAWSON	)

Submitted Feb. 27, 2008

Decided July 9, 2008

Attorneys and Law Firms

Robert J. Hollingsworth, Cincinnati, and Peter Rosenwald, for relator Cincinnati Bar Association.

Jonathan E. Coughlan, Disciplinary Counsel, and Robert Berger, Assistant Disciplinary Counsel, for relator Disciplinary Counsel.

David C. Greer and Carla J. Morman, Dayton, for respondent.

Opinion

PER CURIAM.

{¶ 1} Respondent, Kenneth L. Lawson of Cincinnati, Ohio, Attorney Registration No. 0042468, was admitted to the practice of law in Ohio in 1989. We ordered an interim remedial suspension of respondent's license on May 15, 2007, pursuant to Gov.Bar R. V(5a)(B), upon receiving evidence that his continued practice posed a substantial threat of serious harm to the public. See *Disciplinary Counsel v. Lawson,* 113 Ohio St.3d 1508, 2007-Ohio-2333, 866 N.E.2d 508.

{¶ 2} The Board of Commissioners on Grievances and Discipline recommends that we now indefinitely suspend respondent's license, based on findings that he repeatedly violated ethical standards in representing clients and then failed to cooperate in investigations as to much of that misconduct. We agree that respondent engaged in a pervasive pattern of professional misconduct and that an indefinite suspension is the appropriate sanction.

{¶ 3} Relator Cincinnati Bar Association charged respondent with 16 counts of misconduct, alleging various violations of the Code of Professional Responsibility, the Ohio Rules of Professional Conduct ("Prof.Cond.R."),[1] and Gov.Bar R. V(4)(G) (requiring a lawyer to cooperate in a disciplinary investigation). In

---

[1] Some events underlying the Cincinnati Bar Association's charges took place after February 1, 2007, the effective date of the Ohio Rules of Professional Conduct, which supersede the Disciplinary Rules of the Ohio Code of Professional Responsibility.

a separate complaint, relator Disciplinary Counsel charged respondent with four additional counts of misconduct. A panel of the board heard all the allegations on October 15 and 16, 2007, in consolidated proceedings. The panel then made numerous findings of misconduct and recommended the indefinite suspension, a recommendation the board adopted.

{¶ 4} Neither party objects to the board's report.

Misconduct

Failure to Cooperate in the Disciplinary Investigation

{¶ 5} Respondent stipulated that he violated Gov.Bar R. V(4)(G) during investigations of nine grievances lodged against him prior to February 1, 2007, by failing to respond to relators' inquiries and to provide requested records. On that date, respondent admitted himself to a rehabilitation facility after more than seven years of drug abuse. Respondent has participated appropriately in the disciplinary proceedings since his discharge, providing truthful, cooperative, and forthcoming responses to authorities.

{¶ 6} We find that respondent repeatedly violated Gov.Bar R. V(4)(G).

The Chambers Grievance

{¶ 7} Janette Hanson Chambers hired respondent's law firm, Lawson and Washington L.P.A. ("L & W"), in August 2005 to represent her in a potential criminal matter arising out of her administration of her mother's estate. Though Chambers had intended to retain respondent, she met initially with his partner,

David Washington, who took the case on the firm's behalf. Chambers understood that respondent would be working in conjunction with Washington on her case.

{¶ 8} Chambers advanced the firm $10,000, expecting to be charged against that amount at $175 per hour. L & W did not place these unearned funds in an interest-bearing client trust account as required, depositing the money instead into the firm's office operating account. Respondent admits that he immediately received his share of the $10,000 in fees.

{¶ 9} Except for three consultations, L & W did nothing for Chambers's $10,000. Chambers had to appear in court without her lawyers, and the dispute eventually ended with Chambers losing her inheritance. She tried to discharge L & W in December 2005, only to learn that the firm had dissolved. Chambers asked respondent to account for her funds and refund unearned fees, but respondent has never replied.

{¶ 10} Respondent testified that he did not realize his former law firm's debt to Chambers until her demand for a refund. He admitted owing the debt and that he had repaid nothing. He also admitted that he committed the misconduct charged against him with respect to this client.

{¶ 11} Respondent did not represent Chambers in accordance with the duties set forth in DR 9–102(A) (requiring a lawyer to maintain client funds in a separate identifiable bank account), 9–102(B)(4) (requiring a lawyer to deliver funds in the lawyer's possession to which the client is entitled), and

9–102(E)(1) (requiring lawyers to maintain clients' funds in interest-bearing client trust accounts in accordance with statutory requirements). We find him in violation of these rules.

The Collins Grievance

{¶ 12} Joseph Collins hired respondent in February 2006 to defend him against a charge of menacing, paying respondent $750. Some confusion as to the date of an arraignment ensued, and neither Collins nor respondent appeared on the scheduled court date. The court issued a warrant for Collins's arrest, but respondent's associate had the proceeding rescheduled, and respondent managed to prevent the client's arrest. Respondent failed to appear with Collins on the new arraignment date.

{¶ 13} Collins discharged respondent, attempted to represent himself, and was convicted of disorderly conduct. Collins sued respondent for the $750 fee he had paid in small claims court, and respondent has sought a jury trial. Respondent has not returned any of the fee.

{¶ 14} By missing the court date, abandoning his client's defense, and keeping unearned fees, respondent did not represent Collins in accordance with the duties set forth in DR 6–101(A)(2) (prohibiting a lawyer from providing representation without adequate preparation), 6–101(A)(3) (prohibiting a lawyer from neglecting an entrusted legal matter), 7–101(A)(2) (prohibiting a lawyer from intentionally failing to carry out a contract of employment), 7–101(A)(3) (prohibiting a lawyer from intentionally prejudicing or damaging a

client during their professional relationship), and 9–102(B)(4). We therefore find him in violation of these rules.

The William Richardson Grievance

{¶ 15} William Richardson hired respondent in late 2003 to file a defamation suit on his behalf, paying $1,500 in fees. Respondent's associates researched the claim, determined that it was not viable, and advised his client. Respondent offered to return $500 of Richardson's money or to pursue other claims that he considered more feasible, but Richardson wanted to pursue the defamation claim. Respondent did nothing more in the case but did not return any part of his fee.

{¶ 16} Respondent stipulated that he did not represent this client in accordance with the duties set forth in DR 6–101(A)(1) (prohibiting a lawyer from knowingly attempting to provide representation that the lawyer is not competent to handle), 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), and 9–102(B)(4). We find him in violation of these rules.

The Antwan Richardson Grievance

{¶ 17} In May 2004, respondent represented Antwan Richardson in federal district court at his sentencing on a drug-trafficking conviction. The court denied respondent's motion to withdraw Richardson's guilty plea, and respondent filed an appeal. On appeal, respondent failed to comply with a briefing schedule, even after he received three extensions over two months. In February 2005, the appellate court dismissed Richardson's appeal for failure to prosecute.

{¶ 18} Respondent then moved for resentencing in the trial court, asserting various constitutional arguments. Because no one had raised these arguments at the original sentencing proceeding or on direct appeal, the court denied the motion. Respondent informed Richardson that he was filing the motion for resentencing but said nothing about the reason the appeal had been dismissed.

{¶ 19} Respondent stipulated that he did not represent this client in accordance with the duties set forth in DR 6–101(A)(2), 6–101(A)(3), and 7–101(A)(2). We find him in violation of these rules. Because respondent's failure to file a brief despite ample opportunity caused the dismissal of his client's appeal, we also find him in violation of DR 7–101(A)(3).

The Harris Grievance

{¶ 20} In 2003, Ronald and Paulette Harris paid respondent $1,400 to represent them in various legal actions, including a civil rights action. Respondent filed the civil rights claim in June 2004 but then took no action in the case for over one year. When the defendant moved for summary judgment, respondent failed to file any response.

{¶ 21} Upon respondent's request, the court granted an extension, allowing him nearly one month more to oppose summary judgment. Respondent again missed his deadline, and the court granted summary judgment against his clients. Respondent failed to tell his clients about the defendant's motion until after the court's ruling.

{¶ 22} Respondent stipulated that he did not represent the Harrises in accordance with the duties set forth in DR 6–101(A)(1), 6–101(A)(2), 6–101(A)(3), and 7–101(A)(2). We find him in violation of these rules. Because respondent's failure to oppose the motion for summary judgment caused judgment to be entered against his clients, we also find him in violation of DR 7–101(A)(3).

The Onwuzuruigo Grievance

{¶ 23} Nelson Onwuzuruigo paid respondent $1,500 in April 2005 to prosecute an appeal from a criminal conviction in municipal court. The court of appeals dismissed the case when respondent failed to file his brief on time. Respondent managed to have the appeal reinstated, but again failed to file a brief, even after the court issued an order to show cause why the case should not be dismissed.

{¶ 24} In the meantime, Onwuzuruigo tried many times to contact respondent about the status of his case without success. Respondent failed to communicate with the client, return unearned fees, or account for his client's money.

{¶ 25} Respondent stipulated that he did not represent Onwuzuruigo in accordance with the duties set forth in DR 6–101(A)(1), 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), and 9–102(B)(4). He admitted during the panel hearing that he had also violated 7–101(A)(3). We find him in violation of these rules.

The Leahr Grievance

{¶ 26} Michelle Leahr retained respondent in December 2003 to file a wrongful-death action, agreeing to pay him a contingent fee upon recovery. No one filed the lawsuit or responded to Leahr's telephone calls about the case.

{¶ 27} Finally, in mid-May 2005, Leahr sent a letter discharging respondent and requesting the return of her case file. Just days later, she received a letter in which respondent's associate refused to return the file unless Leahr paid an unspecified amount of legal fees. The letter also threatened legal action if Leahr did not pay.

{¶ 28} As of the date of the panel hearing, Leahr had paid respondent nothing, and he had not returned her file. The statute of limitations for Leahr's wrongful-death action had elapsed by that time, precluding her from pursuing damages for her loss.

{¶ 29} Respondent stipulated that he did not represent Leahr in accordance with the duties set forth in DR 2–110(A)(2) (precluding a lawyer's improper withdrawal from employment), 6–101(A)(1), 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), and 9–102(B)(4). Agreeing that his associate had tried to convert the contingent fee into an hourly fee, he also admitted during the panel hearing to a violation of DR 2–106(B) (precluding a lawyer from charging a clearly excessive fee). We find him in violation of these rules. Moreover, because respondent kept his client's file until it was too late to file her claim, we find a violation of DR 7–101(A)(3).

The Hammond Grievance

{¶ 30} Charles Hammond paid respondent $1,000 in October 2005 to appeal his son's conviction. Respondent filed the notice of appeal; however, he did nothing more in the case, and in March 2006, the court of appeals dismissed it. Respondent failed to advise his client or the client's father of the dismissal and did not account for any of Hammond's money.

{¶ 31} Respondent stipulated or does not dispute that he failed to represent Hammond's son in accordance with the duties set forth in DR 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), 7–101(A)(3), 9–102(B)(3) (requiring a lawyer to maintain complete records and account for clients' property in lawyer's possession), and 9–102(B)(4). We find him in violation of these rules.

The Love Grievance

{¶ 32} Lynette Love hired respondent in September 2006 to represent her in a dispute with a former employer, paying a $500 fee. Respondent did not do the work he promised, and Love had to try to resolve the dispute on her own. As of the hearing date, respondent had neither accounted to Love for her money nor refunded any unearned fees.

{¶ 33} Respondent stipulated or does not dispute that he failed to represent Love in accordance with the duties set forth in DR 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), 7–101(A)(3), 9–102(B)(3), and 9–102(B)(4). We find respondent in violation of these rules.

The Jones Grievance

{¶ 34} William and Dorothy Jones hired respondent in November 2006 to counsel them on the viability of an action to obtain their son's early release from prison. The couple paid respondent $750 and two weeks later began inquiring about the status of their son's case. The couple called respondent at least ten times but were never able to speak with him. They scheduled two appointments, but both were canceled.

{¶ 35} In January 2007, the Joneses sent respondent a letter discharging him. The couple also requested the return of their file and a refund. As of the panel hearing, respondent had neither returned the Joneses' file nor repaid any unearned fees.

{¶ 36} Respondent stipulated or does not dispute that he failed to represent the Joneses in accordance with the duties set forth in DR 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), 7–101(A)(3), 9–102(B)(3), and 9–102(B)(4). We find him in violation of these rules.

Client Trust–Account Improprieties

{¶ 37} In February 2007, respondent's assistant drew a check for $1,230 from his client trust account to pay rent for the firm's office space. In addition to this improper withdrawal of funds held in trust, the bank's return of the check for insufficient funds signaled other improper withdrawals. Respondent was in treatment for his addiction by this time, but he had been misusing funds in his client trust account, authorizing employees to pay office expenses from that account.

{¶ 38} Prof.Cond.R. 1.15(a) requires a lawyer to "hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property * * * in a separate interest-bearing account in a financial institution." By using entrusted client funds for purposes other than the client's representation, respondent did not maintain his client trust account in accordance with this rule. We therefore find him in violation of Prof.Cond.R. 1.15(a).

{¶ 39} With respect to nonlawyer assistants, Prof.Cond.R. 5.3(a) requires a lawyer who individually possesses managerial authority over the assistant to "make *reasonable* efforts to ensure that the *firm* * * * has in effect measures giving *reasonable* assurance that the person's conduct is compatible with the professional obligations of the lawyer." (Emphasis added.) Section (b) of the rule requires a lawyer having direct supervisory authority over the assistant to "make *reasonable* efforts to ensure that the person's conduct is compatible with professional obligations of the lawyer." (Emphasis added.) "Reasonable" denotes the conduct of a "reasonably prudent and competent lawyer." Prof.Cond.R. 1.0(i).

{¶ 40} Violations of Prof.Cond.R. 5.3(a) and (b) occur when (1) a lawyer orders an assistant to perform an act incompatible with professional obligations or knowingly ratifies such conduct, or (2) a lawyer having managerial or supervisory authority knows of conduct that is incompatible with professional obligations and could, but fails to, take reasonable remedial action. "Knowingly" or "knows" denotes "actual knowledge of

the fact in question" and "may be inferred from circumstances." Prof.Cond.R. 1.0(g).

{¶ 41} Respondent allowed his employee to misuse funds in his client trust account, conduct that is incompatible with a lawyer's professional obligation to protect client property. He does not dispute that he acted knowingly, nor does he suggest that his actions were those of a reasonably prudent and competent lawyer. We therefore find him in violation of Prof.Cond.R. 5.3(a) and (b).

The Hickey Grievance

{¶ 42} In December 2004, respondent agreed to file a civil rights suit for James Hickey in federal district court, accepting a $3,500 fee. He filed the suit in February 2005. In mid-April 2006, respondent moved for a voluntary dismissal after the court threatened dismissal for his failure to comply with outstanding discovery requests.

{¶ 43} Shortly thereafter, the district court dismissed Hickey's claim for failure to comply with the discovery order. Though the dismissal was without prejudice, the court ordered as a condition of refiling that Hickey pay the defendant's costs. Respondent told his client that he had dismissed the case but did not mention the reason for the dismissal or the sanction that the court imposed.

{¶ 44} Respondent refiled Hickey's civil rights suit in December 2006 but failed to perfect service on defendants. On April 23, 2007, the district court gave respondent until May 18, 2007, to obtain service. Our interim suspension order took effect three days before

this deadline, requiring respondent to withdraw from Hickey's case and seek successor counsel. Respondent never accounted to Hickey for the $3,500 fee.

{¶ 45} Respondent stipulated or does not dispute that he failed to represent Hickey during 2005 and 2006 in accordance with the standards set forth in DR 1–102(A)(4) (prohibiting a lawyer from engaging in conduct involving fraud, dishonesty, deceit, or misrepresentation) 6–101(A)(1), 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), 7–101(A)(3), and 9–102(B)(3). We find him in violation these rules.

{¶ 46} Prof.Cond.R. 1.1 requires a lawyer to "provide competent representation to a client." "Competent representation" under the rule requires "the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation." Prof.Cond.R. 1.3 requires a lawyer to act with "reasonable diligence and promptness in representing a client."

{¶ 47} A reasonably prudent and competent lawyer does not ignore a failed attempt to serve a complaint and summons for over four months. Nor does such a lawyer delay several more weeks after a court order directing him to perfect service. Finally, a reasonably prudent and competent lawyer conscientiously accounts for client funds and, at the end of the representation, retains only fees owed for his or her services.

{¶ 48} Respondent conceded at the panel hearing that his failure to obtain service of process during the first half of 2007 and to account for and refund any

unearned fees violated Prof.Cond.R. 1.1 and 1.3. We find respondent in violation of these rules.

The Montgomery Grievance

{¶ 49} Jodie Montgomery paid respondent $3,000 in November 2006 to represent her son after his arrest. Respondent did some work in the case during 2007 but not enough to justify his fee. Later, after our interim suspension, respondent failed to give up the Montgomery case file. Though he produced the file after Montgomery filed a grievance, he never accounted for her money or refunded unearned fees.

{¶ 50} Respondent stipulated or does not dispute that he failed to represent Montgomery's son in accordance with the duties set forth in DR 6–101(A)(2), 6–101(A)(3), 7–101(A)(2), 7–101(A)(3), 9–102(B)(3), and 9–102(B)(4). We therefore find him in violation of these rules.

{¶ 51} Except in situations not relevant here, Prof.Cond.R. 1.15(d) requires a lawyer to "promptly deliver to the client * * * any funds or other property that the client * * * is entitled to receive." Upon request, the lawyer is also required to "promptly render a full accounting regarding such funds or property." Id. Because respondent does not dispute that Montgomery asked for her file during 2007 or that he did not produce it promptly, we find him in violation of this rule.

{¶ 52} Prof.Cond.R. 1.16(d) requires a lawyer to "take steps, to the extent reasonably practicable, to protect the client's interest" upon termination of the representation. These steps include "delivering to the

client all papers and property to which the client is entitled." We find respondent in violation of this rule because he withdrew from Montgomery's case without contemporaneously locating or returning her file.

{¶ 53} Except in a situation not relevant here, Prof.Cond.R. 1.16(e) requires a lawyer who withdraws from employment to "refund promptly any part of a fee paid in advance that has not been earned." We find respondent in violation of this rule because he failed to repay Montgomery the unearned portion of her $3,000 after his 2007 withdrawal.

The Moore Grievance

{¶ 54} Clarence Moore hired respondent in January 2007 to defend him in a criminal case. Moore paid respondent $2,000 of a quoted $4,000 fee at that time, and by April 2007, Moore had paid the $2,000 balance. Respondent did nothing in Moore's case except file an appearance, move for continuances, and meet twice with a prosecutor. Moreover, respondent had to withdraw from Moore's case because of his interim suspension, but he has been unable to locate and return Moore's case file and has neither accounted for Moore's $4,000 nor refunded unearned fees.

{¶ 55} Respondent did not provide Moore the competent representation required by Prof.Cond.R. 1.1 because he did not conscientiously prepare and thoroughly pursue his client's defense. At the same time, he did not act with reasonable diligence and promptness as required by Prof.Cond.R. 1.3 because he did little for his client for nearly six months. We therefore find respondent in violation of these rules.

{¶ 56} Moreover, we find respondent in violation Prof.Cond.R. 1.15(d) because he has been unable to locate Moore's file and has not disputed Moore's 2007 request for it. We also find respondent in violation of Prof.Cond.R. 1.16(d) and (e) because he withdrew from Moore's case without providing Moore's new attorney the case file or promptly refunding unearned portions of Moore's $4,000 fee.

Misappropriation of Clients' Settlement Proceeds and Related Improprieties

{¶ 57} Respondent won acquittals for six clients charged with criminal offenses after the riots in Cincinnati during 2000. In 2002, he brought civil rights actions on behalf of his clients against the city. The parties ultimately settled their claims for $21,000 and agreed on how to divide the proceeds, including that respondent would receive a one-third share for his services.

{¶ 58} In early July 2005, respondent received separate settlement checks made out to each of the six clients. He endorsed the checks without the clients' knowledge and deposited the funds in his client trust account. The next day, respondent withdrew $15,787.07, more than twice his fee, from the client trust account and used the money to pay past-due amounts on his personal mortgage. Respondent used the remaining settlement proceeds for purposes unrelated to the interests of his six clients.

{¶ 59} When respondent failed to distribute the settlement proceeds, his clients began to inquire about their money. At the end of 2005, respondent sent a

letter informing the clients that he was calculating his expenses and would be sending out their share of the settlement on January 15, 2006. Three of the clients filed grievances when they did not receive their checks as promised. As of the panel hearing, respondent had paid only three of the six clients.

{¶ 60} Respondent also misled representatives of the Disciplinary Counsel. When asked during a deposition what he had done with the settlement proceeds, respondent falsely testified that he thought he had distributed the money to his clients. Respondent later retracted his statement and confessed that he had misappropriated the funds in question. Respondent also lied during the investigation about his illegal abuse of prescription and other drugs, claiming that manifestations of his addiction were instead symptoms of multiple sclerosis.

{¶ 61} Respondent stipulated that he did not represent these clients in accordance with the duties set forth in DR 1–102(A)(6), 9–102(B)(1) (requiring a lawyer to promptly notify a client of the receipt of all funds, securities, and other properties), and 9–102(B)(3). We find him in violation of these rules. Because respondent misappropriated client funds and then lied about the theft and his illegal drug use to authorities, we also him find in violation of DR 1–102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude), 1–102(A)(4), 1–102(A)(5), and 9–102(B)(4).

Additional Client Trust Account Improprieties

{¶ 62} Since at least 2005, respondent has used his client trust account at PNC Bank for personal expenses and for cash withdrawals and has commingled his personal and client funds. Respondent admitted that he misused his client trust account to avoid creditors, particularly the Internal Revenue Service, to which he owed substantial sums, and to purchase drugs. He also admitted having lied about these improprieties during the Disciplinary Counsel's investigation, including having attributed overdrafts in his client trust account to employee theft.

{¶ 63} Respondent stipulated that he did not manage his client trust account in accordance with the duties in DR 1–102(A)(6), 9–102(A), and 9–102(B)(3). We find him in violation of these rules. Because respondent lied to authorities about commingling his personal and client funds, we also find him in violation of DR 1–102(A)(4) and 1–102(A)(5).

Sanction

{¶ 64} As the panel and board observed, we typically disbar lawyers for misconduct as pervasive and devastating as that in which respondent has engaged. See, e.g., *Cuyahoga Cty. Bar Assn. v. Jurczenko,* 114 Ohio St.3d 229, 2007-Ohio-3675, 871 N.E.2d 564, ¶ 34 (lawyer disbarred for 17 counts of misconduct involving misappropriation of client funds, practicing under a suspended license, commingling personal and client funds, failing to return client case files, and failing to cooperate in the disciplinary investigation); *Cincinnati Bar Assn. v. Selnick* (2001),

94 Ohio St.3d 1, 9, 759 N.E.2d 764 (lawyer disbarred for a systemic pattern of misconduct); and *Columbus Bar Assn. v. James* (1999), 84 Ohio St.3d 379, 704 N.E.2d 241 (same). Indeed, when misconduct permeates a law practice, "disbarment is often the only sanction available for preserving the public confidence in the judicial system." *Disciplinary Counsel v. Golden,* 97 Ohio St.3d 230, 2002-Ohio-5934, 778 N.E.2d 564, ¶ 23, citing *Cleveland Bar Assn. v. Glatki* (2000), 88 Ohio St.3d 381, 726 N.E.2d 993.

{¶ 65} To determine the appropriate sanction, however, we factor into our decision the aggravating and mitigating factors of respondent's case. See Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg.").

{¶ 66} The aggravating factors are significant. Respondent acted dishonestly and selfishly in misappropriating his clients' money and neglecting their cases. See BCGD Proc.Reg. 10(B)(1)(b). At the same time, he was obtaining painkilling medication illicitly by obtaining phony prescriptions from his doctor. Respondent's pattern of misconduct and multiple offenses spanned years, jeopardized numerous clients' interests, and cost clients more than $40,000, which he may never be able to repay. BCGD Proc.Reg. 10(B)(1)(c), (d), (h), and (i). On top of these misdeeds, respondent lied to investigators, impeding the disciplinary process. BCGD Proc.Reg. 10(B)(1)(e).

{¶ 67} But the mitigating evidence is also significant. Of great weight were the testimonials

describing what had once been respondent's thriving practice and the contributions he has made to clients and the community. Many witnesses, including two federal district court judges and a federal magistrate, described respondent as a talented trial attorney committed to an underserved segment of the Cincinnati area, extolling his skill, dedication, and professional largesse. Though a prominent and successful practitioner, respondent had routinely taken criminal cases pro bono to defend basic rights of the accused, as he did for the six clients acquitted after the riots in 2001, or pursuing civil rights actions to end injustices against the underprivileged. And when the city experienced racial unrest, respondent provided invaluable assistance in establishing a collaborative relationship between police and the local African–American leaders. Witnesses insisted that respondent's expertise in and devotion to such causes would be greatly missed if he were never able to practice law again, with his absence leaving a huge void in the legal profession.

{¶ 68} Also compelling was evidence showing how respondent's chemical dependence had contributed to cause his misconduct. Respondent's prescription drug use began innocently in 1999, when he needed medication to manage pain from a shoulder injury. He started with the painkillers Percodan and Percocet, but as his tolerance increased, he graduated to OxyContin. In time, respondent required approximately 180 pills per day at a cost of approximately $1,000. He also used at various times cocaine, marijuana, and Valium.

{¶ 69} Respondent emotionally recounted how his addiction overshadowed and then destroyed his ability to practice law in accordance with ethical standards. Apologizing for his many misdeeds, respondent admitted that he had been "high" for seven years prior to his February 2007 hospitalization, all the while still trying cases, advising clients, writing briefs, and otherwise attempting to manage his practice. His personal life also suffered. As just one example, respondent confessed that he had been high at the births of his two youngest children and that until his detoxification, those children had never seen him any other way.

{¶ 70} Respondent checked into Talbot Hall at the Ohio State University Hospital detoxification unit, where his addiction was confirmed, and he remained there for five days. Upon discharge, he at first commuted between Cincinnati and Columbus three times per week to participate in intensive outpatient treatment. When weather conditions prevented his travel, he enrolled in another intensive outpatient treatment program at Christ Hospital in Cincinnati. He completed that program successfully in August 2007.

{¶ 71} Contemporaneous with his medical care, respondent joined Alcoholics Anonymous ("AA") and embraced its "12–Step" program. He attends meetings at least three times a day, seven days a week, and works every day at the AA facility near his home, trying to help other addicts and performing chores as needed. In April 2007, respondent also signed a five-year Ohio Lawyers Assistance Program ("OLAP")

contract with which he is in compliance. He has been drug- and alcohol-free since February 1, 2007, and his treatment counselor rated his prognosis for continued sobriety at nine on a scale of ten.

{¶ 72} Chemical dependence is of mitigating effect when the test in BCGD Proc.Reg. 10(B)(2)(g)(i) through (iv) is met. The test requires (1) a diagnosis of chemical dependency by a qualified health-care professional or substance-abuse counselor, (2) proof that the condition contributed to cause the misconduct, (3) certification that the lawyer has successfully completed an approved treatment program, and (4) a prognosis from a qualified health-care professional or substance-abuse counselor that the lawyer will be able to return, with conditions if necessary, to competent and ethical practice. Respondent has satisfied these requirements.

{¶ 73} "[T]he primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." *Disciplinary Counsel v. O'Neill,* 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 53. Accord *Disciplinary Counsel v. Fumich,* 116 Ohio St.3d 257, 2007-Ohio-6040, 878 N.E.2d 6, ¶ 17, and *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 100, 70 O.O.2d 175, 322 N.E.2d 665. Thus, even in cases of egregious misconduct and illegal drug use, we have decided against permanent disbarment based on the lawyer's probable recovery from the drug addiction that caused the ethical breaches. See, e.g., *Disciplinary Counsel v. Garrity,* 98 Ohio St.3d 317, 2003-Ohio-740, 784 N.E.2d 691, ¶ 12 (lawyer and former pharmacist convicted of stealing prescription drugs suspended indefinitely after showing renewed dedication to his

treatment for his addiction). We tailor the sanction, when appropriate, to assist in and monitor the attorney's recovery. *Cincinnati Bar Assn. v. Washington*, 109 Ohio St.3d 308, 2006-Ohio-2423, 847 N.E.2d 435, ¶ 9.

{¶ 74} From the evidence of respondent's character, reputation, remorse, chemical dependence, and recovery efforts, the panel and board concluded that he had made a case for eventually practicing law again. We agree. Respondent's addiction severely compromised the interests of his clients, the legal system, the legal profession, and the public. But many have expressed confidence is his ability to maintain sobriety and regain his ethical bearings.

{¶ 75} We accept the recommendation for an indefinite suspension, complete with the conditions for respondent's reinstatement. Respondent is indefinitely suspended from the practice of law in Ohio. In addition to the requirements of Gov.Bar R. V(10)(B), respondent shall show the following upon petitioning for reinstatement: (1) that he has been continuously sober during his suspension and has otherwise complied with his OLAP contract, (2) that he has maintained his active involvement in AA, (3) through the report of a qualified health-care professional or substance abuse counselor, that he is capable of returning to the ethical and professional practice of law, and (4) that he has made restitution to all grievants. Costs are taxed to respondent.

Judgment accordingly.

PFEIFER, O'CONNOR, LANZINGER, and CUPP, JJ., concur.

MOYER, C.J., and LUNDBERG STRATTON and O'DONNELL, JJ., dissent.

MOYER, C.J., dissenting.

{¶ 76} I respectfully dissent. In view of the seriousness and frequency of the misconduct at issue, I would disbar the respondent.

{¶ 77} As the majority notes, we ordered an interim remedial suspension of respondent's license in May 2007, pursuant to Gov.Bar R. V(5a)(B). An interim remedial suspension is an extraordinary remedy that we order only when there is evidence that a lawyer's continued practice poses a substantial threat of serious harm to the public. See *Columbus Bar Assn. v. Smith*, 100 Ohio St.3d 278, 2003-Ohio-5751, 798 N.E.2d 592, ¶ 1. I continue to believe that an extraordinary remedy is appropriate in the present case.

{¶ 78} The majority's account of the respondent's behavior reveals a pattern of neglect and financial malfeasance. The respondent committed 21 acts of misconduct, all from 2003 to 2007, thereby violating numerous Disciplinary Rules, including 11 violations of DR 6–101(A)(3) (prohibiting a lawyer from neglecting an entrusted legal matter), 11 violations of DR 7–101(A)(2) (prohibiting a lawyer from intentionally failing to carry out a contract of employment), nine violations of DR 7–101(A)(3) (prohibiting a lawyer from intentionally prejudicing or damaging a client during their professional relationship), and ten violations of

DR 9–102(B)(4) (requiring a lawyer to deliver funds in the lawyer's possession to which the client is entitled). As the majority recognizes, "we typically disbar lawyers for misconduct as pervasive and devastating as that in which respondent has engaged." We should follow our precedent here.

{¶ 79} The respondent's financial malfeasance is of particular concern. We have previously recognized that violations of DR 9–102(B)(4) "are tantamount to a misappropriation of client funds and property" and that "the normal sanction for misappropriation of client funds coupled with neglect of client matters is disbarment." *Cleveland Bar Assn. v. Glatki* (2000), 88 Ohio St.3d 381, 384, 726 N.E.2d 993. In *Glatki,* we disbarred an attorney who had violated DR 9–102(B)(4) in three client matters. Id. at 383, 726 N.E.2d 993. The respondent here violated that rule in ten client matters. We typically disbar lawyers for misappropriation of client funds and property, and we should disbar the respondent for the egregious acts of financial malfeasance committed here.

{¶ 80} I recognize the existence of the two mitigating factors cited by the majority: first, the contributions the respondent has made to clients and the community; second, the influence of the respondent's chemical dependence on his misconduct, as well as the respondent's subsequent completion of an approved treatment program and the positive prognosis for his continued stability. Nevertheless, "any mitigating factor * * * must be weighed against the seriousness of the rule violations that the lawyer has committed." *Disciplinary Counsel v. Phillips,* 108

Ohio St.3d 331, 2006-Ohio-1064, 843 N.E.2d 775, ¶ 13. We have previously disbarred an attorney despite the influence of the attorney's chemical dependency on his misconduct. Id. In the present case, the respondent ignored his clients' interests and stole their money. He used his client trust-fund account to avoid creditors and purchase drugs. He lied to the Disciplinary Counsel about his illegal use of drugs, as well as his use of settlement proceeds and a client trust fund for personal uses. The great weight of his misconduct cannot be lifted by the mitigating factors cited by the majority. I would therefore disbar the respondent.

LUNDBERG STRATTON and O'DONNELL, JJ., concur in the foregoing opinion.

APPENDIX H

130 Ohio St.3d 184, 2011-Ohio-4673

THE SUPREME COURT OF OHIO

No. 2011-0131

[Filed September 20, 2011]

DISCIPLINARY COUNSEL)
)
v.)
)
LAWSON)

Attorneys—Misconduct—Felony conviction for conspiracy to obtain Schedule II drugs by deception—Advising client to engage in illegal activity—Prior disciplinary violations—Permanent disbarment.

(No. 2011-0131—Submitted May 25, 2011—Decided September 20, 2011.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 09-098.

Per Curiam.

{¶ 1} Respondent, Kenneth L. Lawson, Attorney Registration No. 0042468, was admitted to the practice

of law in Ohio in 1989. In 2007, pursuant to Gov.Bar R. V(5a), this court ordered an interim remedial suspension against respondent, pending final disposition of disciplinary proceedings based on multiple instances of professional misconduct. *Disciplinary Counsel v. Lawson*, 113 Ohio St.3d 1508, 2007-Ohio-2333, 866 N.E.2d 508.

{¶ 2} On July 9, 2008, this court ordered respondent indefinitely suspended, finding that he had neglected and failed to properly represent 15 clients, failed to return unearned fees, stole settlement funds from six clients, misused his IOLTA account to conceal his personal funds from creditors, failed to cooperate in numerous grievance investigations, and made repeated dishonest statements to clients and relator during investigation of these matters. *Cincinnati Bar Assn. v. Lawson*, 119 Ohio St.3d 58, 2008-Ohio-3340, 891 N.E.2d 749.

{¶ 3} On December 7, 2009, a second disciplinary complaint was filed against respondent, alleging that in August 2003, respondent entered into a conspiracy with Dr. Walter Broadnax and George Beatty to obtain Schedule II prescription drugs by deception. Relator recommended that respondent be permanently disbarred. Respondent recommended dismissal or a second indefinite suspension. The Board of Commissioners on Grievances and Discipline concluded that respondent had committed the infractions alleged in the complaint and recommended an indefinite suspension, to run consecutively to the indefinite suspension that respondent was currently serving. For the reasons that follow, we depart from the board's

recommendation and order that respondent be permanently disbarred.

Misconduct

{¶ 4} Beginning in August 2003, respondent entered into a conspiracy with Dr. Walter Broadnax and George Beatty to illegally obtain the prescription drugs Percodan, Percocet, and OxyContin by deception. Throughout this conspiracy, respondent was also acting as Dr. Broadnax's attorney, working for free in exchange for prescriptions.

{¶ 5} Later in the conspiracy, in November 2004, respondent orchestrated an elaborate scheme to bilk his client/coconspirator, Dr. Broadnax, out of $50,000. Respondent falsely advised the doctor that his phone had been tapped and that he was about to be indicted as the result of a criminal investigation by the Bureau of Workers' Compensation for irregular billing practices. Respondent told Dr. Broadnax that for $50,000, respondent could bribe state officials to make the investigation "go away." Respondent then promised Dr. Broadnax that he would provide him with the incriminating evidence, which the doctor could then destroy.

{¶ 6} All of these claims respondent made to his client, Dr. Broadnax, were false. Respondent admitted that he had made these false claims to frighten the doctor into giving him $50,000. After Dr. Broadnax was unable to come up with the $50,000, respondent and Beatty falsely advised him that they would "loan" him the $50,000 for the bribe that respondent would deliver to the state official. When Dr. Broadnax was later

unable to repay the "loan," respondent used this indebtedness to pressure the doctor into writing illegal prescriptions without any further compensation from respondent.

{¶ 7} Between November 2004 and January 2007, Dr. Broadnax wrote approximately 700 to 800 prescriptions for respondent and Beatty. To avoid triggering an investigation by law enforcement, respondent went so far as to provide Dr. Broadnax with names of people for him to record as the recipients of the prescriptions. Some of the names used on the prescriptions were those of former or current clients, sometimes with their knowledge and/or assistance and sometimes without. Sometimes respondent would pay the party for whom the prescription was written to fill the prescription and return it to him. For example, respondent used two clients whom he had represented in multiple felony charges for drug trafficking and possession in this fraudulent scheme, further jeopardizing them. In addition, respondent used at least three employees from his law office to fill the prescriptions made out in their names and then provide the drugs to respondent. Respondent even obtained a prescription in the names of his daughter and a friend of his daughter.

{¶ 8} Sometimes respondent would pay Dr. Broadnax $100 per prescription. Other times, he provided free legal services for the drugs. Moreover, respondent also purchased prescription drugs and cocaine from his coconspirator, George Beatty, and others, including his wife's cousin. To cover up his behavior, respondent lied to judges and other

attorneys, telling them he had M.S. or Lou Gehrig's disease.

{¶ 9} In September 2008, respondent was indicted in federal court on conspiracy to obtain Schedule II controlled substances by deception in violation of Section 843(a)(3), Title 21, U.S.Code, between August 2003 and January 2007, a felony. A plea agreement was filed under which respondent pleaded guilty to conspiring with Dr. Broadnax, George Beatty, and others to unlawfully obtain possession of Schedule II controlled substances by deception. On April 14, 2009, respondent was sentenced to 24 months' incarceration, one year of supervised release, and 1,000 hours of community service.

{¶ 10} As a result of respondent's felony conviction, this court entered an interim suspension order in July 2009. *In re Lawson,* 122 Ohio St.3d 1485, 2009-Ohio-3752, 910 N.E.2d 1038.

Violations

{¶ 11} The panel found and the board agreed that respondent had violated the following Disciplinary Rules of the Code of Professional Responsibility: DR 1-102(A)(3), prohibiting illegal conduct involving moral turpitude; 1-102(A)(4), prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; 1-102(A)(5), prohibiting conduct that is prejudicial to the administration of justice; 1-102(A)(6), prohibiting conduct that adversely reflects on the lawyer's fitness to practice law; 5-101(A)(1), prohibiting a lawyer from accepting employment if the lawyer's professional judgment will be affected by the lawyer's financial and

personal interests; 7-102(A)(7), prohibiting a lawyer from counseling a client in conduct that the lawyer knows to be illegal; and 7-102(A)(8), prohibiting a lawyer from knowingly engaging in illegal conduct.

Aggravation and Mitigation

{¶ 12} Pursuant to Section 10(B) of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."), the panel found the following aggravating factors: (1) prior disciplinary offense (BCGD Proc.Reg. 10(B)(1)(a)), (2) dishonest or selfish motive (BCGD Proc.Reg. 10(B)(1)(b)), (3) pattern of misconduct (BCGD Proc.Reg. 10(B)(1)(c)), and (4) multiple offenses (BCGD Proc.Reg. 10(B)(1)(d)).

{¶ 13} The panel further found the following factors in mitigation to be present: (1) full and free disclosure to the disciplinary authority or cooperative attitude toward the proceedings (BCGD Proc.Reg. 10(B)(2)(d)), (2) character and reputation (BCGD Proc.Reg. 10(B)(2)(e)), (3) imposition of other penalties or sanctions (BCGD Proc.Reg. 10(B)(2)(f)), (4) chemical dependency (BCGD Proc.Reg. 10(B)(2)(g)), and (5) other interim rehabilitation (BCGD Proc.Reg. 10(B)(2)(h)).

Sanction

{¶ 14} Relator recommended that respondent be disbarred from the practice of law. Respondent sought an indefinite suspension. The panel and board recommended that respondent be indefinitely suspended from the practice of law with specified conditions for reinstatement. They also recommended

that the suspension run consecutively to the first indefinite suspension.

{¶ 15} Although respondent in his objections to the board's report argued that his current misconduct was part of his initial misconduct, and therefore this matter is res judicata, respondent's three-and-a-half-year conspiracy with Dr. Walter Broadnax and George Beatty to illegally obtain prescription drugs by deception, respondent's misconduct towards his client, Dr. Broadnax, and respondent's felony conviction were not matters charged in the prior disciplinary complaint.

{¶ 16} In 2008, this court was aware of respondent's chemical dependency issues, but we were unaware of the conduct of which respondent was ultimately convicted. Respondent's prior disciplinary case was decided in July 2008. Respondent was not charged with criminal conduct until September 2008, several months later, and was not sentenced until April 2009. Thus, it was not possible for the board and this court to consider the issues surrounding respondent's felony conviction.

{¶ 17} In respondent's first disciplinary case, this court noted the "pervasive pattern of professional misconduct." Id., 119 Ohio St.3d 58, 2008-Ohio-3340, 891 N.E.2d 749, ¶ 2. However, the majority emphasized the "compelling" evidence "showing how respondent's chemical dependence had contributed to cause his misconduct." Id., ¶ 68. At that time, the court noted the significant evidence of respondent's efforts to address his chemical dependence. Id., ¶ 68-71. The court agreed with the panel and board's conclusion that respondent had made a case for eventually practicing law again

based on the evidence of his character, reputation, remorse, chemical dependence, and recovery efforts. Id., ¶ 74.

{¶ 18} At the time of the first case, Chief Justice Moyer issued a strong dissent in which he concluded that in view of the seriousness and frequency of the misconduct at issue, he would disbar the respondent. Id., ¶ 76 (Moyer, C.J., dissenting). The dissent acknowledged respondent's chemical dependency, but noted that respondent "ignored his clients' interests and stole their money. He used his client trust * * * account to avoid creditors and purchase drugs. He lied to the Disciplinary Counsel about his illegal use of drugs, as well as his use of settlement proceeds and a client trust [account] for personal uses. The great weight of his misconduct cannot be lifted by the mitigating factors cited by the majority." Id., ¶ 80 (Moyer, C.J., dissenting).

{¶ 19} Because we conclude that respondent's pervasive scheme in which he scammed his own clients and exploited dozens of current and former clients, office staff, and his own daughter were not part of the facts this court passed judgment on in respondent's prior disciplinary case, we reject the sanction recommended by the board. We believe that an indefinite suspension would fall short of protecting the public, which this court has articulated is the primary goal of the attorney disciplinary system. *In re Disbarment of Lieberman* (1955), 163 Ohio St. 35, 41, 56 O.O. 23, 125 N.E.2d 328; *Warren Cty. Bar Assn. v. Marshall*, 121 Ohio St.3d 197, 2009-Ohio-501, 903 N.E.2d 280, ¶ 19.

{¶ 20} Chemical dependency and mental-health impairments present a significant problem for attorneys and the disciplinary system. But the harm respondent inflicted on his clients, his office staff, the profession, and the administration of justice through his elaborate and continuing pattern of misconduct outweighs the mitigation of his substance-abuse issues. Although respondent attempts to minimize his criminal acts and illegal conduct involving moral turpitude by arguing that he did not distribute medications to others, the cumulative nature of respondent's misconduct, beginning with his first disciplinary case involving multiple clients, and ending with his scheme to scam clients, staff, and the system, merits disbarment.

{¶ 21} This court has disbarred attorneys for similar or less egregious conduct than that demonstrated by respondent. For example, most recently in *Cincinnati Bar Assn. v. Farrell*, 129 Ohio St.3d 223, 2011-Ohio-2879, 951 N.E.2d 390, this court disbarred an attorney who had previously been suspended from the practice of law for two years, stayed on conditions, based on findings that he had fabricated documents, forged his wife's signature to a power of attorney, lied to secure the notarization of the power of attorney, and then used the forged document to obtain credit. Id., ¶ 6-10, 23.

{¶ 22} In *Farrell*, this court concluded, as we do here, that the attorney displayed the same deceit as he had in his earlier disciplinary case. Id. at ¶ 33. Although we concluded that Farrell's depression appeared to be the result, rather than the cause, of his

misconduct, while respondent's chemical dependence clearly was a contributing factor in his misconduct, the result should be the same. Both Farrell and respondent demonstrated a penchant for lying and deceit. Farrell engaged in a six-year pattern of pathological lying and deceptive conduct. Respondent engaged in a three-and-a-half-year pattern of similar pathological lying and deceit.

{¶ 23} In *Farrell*, we emphasized three cases that are equally relevant here:

{¶ 24} "We have permanently disbarred attorneys who have demonstrated a proclivity for lying and deceit. In *Cincinnati Bar Assn. v. Deaton*, 102 Ohio St.3d 19, 2004-Ohio-1587, 806 N.E.2d 503, ¶ 3-22, an attorney had repeatedly lied and deceived his clients and his firm to cover up his neglect of client matters. Observing that the attorney had deliberately concealed his neglect to protect his personal interests, and adopting a master commissioner's finding that the attorney was predisposed to dishonesty and was lacking in integrity, we concluded that an indefinite suspension was too lenient. Id. at ¶ 27, 30. Therefore, we permanently disbarred the attorney. Id. at ¶ 32.

{¶ 25} "Similarly, in *Disciplinary Counsel v. Manogg* (1996), 74 Ohio St.3d 213, 214-216, 658 N.E.2d 257, we permanently disbarred an attorney who had been convicted on two felony counts of using false Social Security numbers, had created several aliases, and had made up fake property deeds and appraisals to obtain fraudulent mortgage loans. In doing so, we stated that we were 'most troubled * * * by respondent's propensity to scheme and deceive without

any moral appreciation for the lies he tells or the fraud he perpetrates." Id. at 217. And in *Trumbull Cty. Bar Assn. v. Kafantaris*, 121 Ohio St.3d 387, 2009-Ohio-1389, 904 N.E.2d 875, ¶ 6-7, 15, we found that permanent disbarment was the only appropriate sanction for an attorney who, among other things, submitted an affidavit to this court falsely stating that he had complied with the terms of a previous suspension order. Likewise, we agree that respondent's pattern of lying and deceit strongly suggests that he lacks the ability to conform his behavior to the ethical standards incumbent upon attorneys in this state." *Farrell*, 129 Ohio St.3d 223, 2011-Ohio-2879, 951 N.E.2d 390, ¶ 34-35.

{¶ 26} Other examples of disbarment that are relevant to this case include *Disciplinary Counsel v. Longo* (2002), 94 Ohio St.3d 219, 761 N.E.2d 1042, where this court disbarred the respondent after he pleaded guilty to misprision of a felony. Longo was found to have violated three Disciplinary Rules: DR 1-102(A)(3) (illegal conduct involving moral turpitude), 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and 1-102(A)(6) (conduct adversely reflecting on the lawyer's fitness to practice law). Here, respondent has been held responsible for violating those three Disciplinary Rules, as well as four others, including those prohibiting conduct prejudicial to the administration of justice and knowingly engaging in illegal conduct.

{¶ 27} Further, in *Disciplinary Counsel v. Bein*, 105 Ohio St.3d 62, 2004-Ohio-7012, 822 N.E.2d 358, this court disbarred an attorney following felony convictions

for conspiring to engage in the interstate transportation of stolen property and conspiring to engage in money laundering. We noted that "[a] lawyer who engages in the kind of criminal conduct committed by respondent violates the duty to maintain personal honesty and integrity, which is one of the most basic professional obligations owed by lawyers to the public. Respondent's misconduct was harmful not only to the businesses affected but also to the legal profession, which is and ought to be a high calling dedicated to the service of clients and the public good." Id. at ¶ 13. This principle is equally applicable in this case. Respondent's elaborate scheme was harmful not only to his clients, staff, and family, but to the legal profession and the administration of justice.

{¶ 28} In *Cleveland Bar Assn. v. Fatica* (1971), 28 Ohio St.2d 40, 57 O.O.2d 158, 274 N.E.2d 763, the respondent, an attorney and member of city council, was charged with soliciting and accepting money to influence his vote on an application for transfer of a state liquor permit. This court noted that "[a] civilized society cannot long remain without implicit confidence in those who occupy responsible positions of public trust, including both public officials, and members of the bar who are 'officers of the court.' The solicitation and acceptance of a bribe by such a person is, by its very nature, so serious as to warrant, if not to compel, permanent removal from such a position of trust." Id. at 43. In the case at bar, respondent offered to bribe a public official during his scheme to defraud his own client.

{¶ 29} In *Toledo Bar Assn. v. Neller*, 98 Ohio St.3d 314, 2003-Ohio-774, 784 N.E.2d 689, this court disbarred an attorney who was convicted of five felony counts: one count of conspiracy to distribute cocaine, marijuana, and heroin and four counts of unlawful use of a communication facility, all in violation of federal law. Moreover, Neller furthered and promoted the conspiracy by advising his client on ways to avoid detection of illegal activities. In spite of similarly glowing testimonials by the legal community regarding Neller's significant contributions as an outspoken advocate for minorities, this court held that "no mitigating circumstances can undo the harm of respondent's integral role in this drug ring." Respondent, too, engaged in a drug ring of his own creation, which included scamming his own clients and using and abusing other current and former clients, office staff, and his own family. He enlisted these parties and in some cases made them accomplices to his criminal enterprise. He put them all at risk for criminal charges of their own.

{¶ 30} Moreover, this court has permanently disbarred attorneys in the past for less pervasive misconduct in their *first* disciplinary case. For example, in *Disciplinary Counsel v. Phillips*, 108 Ohio St.3d 331, 2006-Ohio-1064, 843 N.E.2d 775, this court disbarred an assistant prosecuting attorney with no prior disciplinary violations when he accepted bribes to fix criminal cases. Id., ¶ 4-6. Although the assistant prosecutor violated the law while he served in a position of public trust, the court also considered his strong evidence of mitigation regarding his chemical dependency. Id., ¶ 13. However, we noted that "any

mitigating factor in a disciplinary case like this must be weighed against the seriousness of the rule violations that the lawyer has committed." Id. Although it can be argued that respondent was not in a position of public trust like the assistant prosecutor, that fact is offset by respondent's prior disciplinary action and commission of a felony. Respondent violated ethical prohibitions against illegal conduct and advising clients to engage in illegal acts. He also solicited a client to participate in a phony scheme to bribe a state official. Moreover, respondent was aware of this deception during the 2008 disciplinary proceeding and failed to disclose it, which conflicts with his protestations of remorse.

Client Security Fund and Money Owed

{¶ 31} Respondent's misconduct affected numerous clients beyond the 15 in his prior disciplinary case and those in his current disciplinary case. The Client Security Fund ("CSF") has made awards to over 30 of respondent's former clients, totaling over $300,000. Over 20 of those clients were in addition to those identified in respondent's current and prior disciplinary cases. All of these clients received CSF awards due to respondent's dishonest conduct. Despite the fact that at the time of the hearing, respondent held a job earning around $40,000 per year, respondent admitted that he had made no effort to begin to reimburse the CSF or this court for the costs associated with his prior disciplinary case, despite this court's order to do so.

OLAP Contract Requirements

{¶ 32} In addition to owing thousands of dollars to former clients and in court costs, respondent has failed to comply with his Ohio Lawyers Assistance Program ("OLAP") contract as this court previously ordered. Respondent entered into a five-year OLAP contract in April 2007. This contract required that respondent contact his OLAP monitor at least weekly and submit monthly logs of his attendance at Alcoholics Anonymous meetings. In this court's prior indefinite-suspension order, respondent was ordered to comply with his OLAP contract. Despite these requirements, respondent has failed to have weekly contact with his OLAP monitor and has failed to submit any AA meeting logs to OLAP.

{¶ 33} At his hearing, respondent attempted to suggest that his volunteer activities with the Hawaii lawyers' assistance program were somehow equivalent to compliance with his OLAP contract. However, the evidence established that respondent's AA sponsor lives in Ohio and has only limited telephone and e-mail contact with respondent in Hawaii. Further, respondent has not entered into a formal, written monitoring contract with the Hawaii lawyers' assistance program. Respondent was ordered to comply with his OLAP contract, and he admitted that he has not done so. This failure to comply with an order from this court further erodes our confidence in respondent's ability to practice law in accordance with the high standards required of all attorneys.

Conclusion

{¶ 34} "The purpose of disbarment is not to punish the individual. It is intended to protect the public, the courts and the legal profession. Thus the moral character of an attorney is at all times to be scrutinized for the purpose of insuring that protection. And such moral character is necessarily at issue in a disbarment proceeding. If a prior attempt at discipline has been ineffective to provide the protection intended for the public, then such further safeguards should be imposed as will either tend to effect the reformation of the offender or remove him entirely from the practice. The discipline for a repeated offense may be much greater than would have been imposed were it a first offense, yet such greater discipline is not a meting out of further punishment for prior acts but is a determination of the attorney's fitness to practice." *Lieberman,* 163 Ohio St. at 41, 56 O.O. 23,125 N.E.2d 328.

{¶ 35} Respondent could have been found unfit to continue to practice law in 2008. Had this court known of the full extent of respondent's abuse of the legal system, of his deception, and of his criminal enterprise in 2008, the court likely would have disbarred him at that time. While we are sensitive to the respondent's struggles with chemical dependency, this elaborate and felonious conspiracy to obtain prescription narcotics by exploiting current and former clients, staff, and family goes far beyond simple drug addiction. Respondent intentionally deceived clients, family, office staff, fellow attorneys, and judges alike.

{¶ 36} Having weighed the aggravating and mitigating factors in this case and having considered the sanctions previously imposed for comparable conduct, we reject the board's recommendation. Accordingly, we permanently disbar Kenneth L. Lawson from the practice of law in Ohio. Costs are taxed to the respondent.

Judgment accordingly.

PFEIFER, LUNDBERG STRATTON, O'DONNELL, CUPP, and MCGEE BROWN, JJ., concur.

O'CONNOR, C.J., and LANZINGER, J., concur in judgment only.

Jonathan E. Coughlan, Disciplinary Counsel, and Robert R. Berger, Senior Assistant Disciplinary Counsel, for relator.

Bieser, Greer & Landis, L.L.P., and David C. Greer, for respondent.
