ORIGINAL

IN

THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	
Relator,	:	**CASE NO. 2012-1324**
v.	:	
Leo Johnny Talikka,	:	
Respondent.	:	

RELATOR'S ANSWER TO RESPONDENT'S OBJECTION TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS

Jonathan E. Coughlan (0026424)
Disciplinary Counsel
Relator

Philip A. King (0071895)
Assistant Disciplinary Counsel
Counsel of Record for Relator
Office of Disciplinary Counsel of
The Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
Telephone (614) 461-0256
Facsimile (614) 461-7205
P.King@sc.ohio.gov

Leo Johnny Talikka (0006613)
Respondent

Richard S. Koblentz (0002677)
Bryan L. Penvose (0074134)
Kevin R. Marchaza (0087965)
Counsel of Record for Respondent
Koblentz & Penvose, LLC
55 Public Square, Suite 1170
Cleveland, Ohio 44113
Telephone (216) 621-3012
Facsimile (216) 621-6567

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES	**PAGE NUMBER(S)**
Gov. Bar R. V(9)(B)	14, 17
Prof. Cond. Rule 1.3	13, 15
Prof. Cond. Rule 1.4(a)(3)	13
Prof. Cond. Rule 1.4(a)(4)	13
Prof. Cond. Rule 1.5(c)(2)	5, 12, 13
Prof. Cond. Rule 1.15(a)(2)	13, 15
Prof. Cond. Rule 1.15(a)(5)	13, 15
Prof. Cond. Rule 1.15(d)	13
Prof. Cond. Rule 1.16(e)	13, 15
Prof. Cond. Rule 8.4(c)	13, 15
Prof. Cond. Rule 8.4(d)	13
Prof. Cond. Rule 8.4(h)	13, 15

IN

THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	
Relator,	:	CASE NO. 2012-1324
v.	:	
Leo Johnny Talikka	:	RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS
Respondent.	:	
	:	

Relator, Disciplinary Counsel, submits this answer to respondent's objection to the Report and Recommendations ("Report") filed by the Board of Commissioners on Grievances and Discipline ("board").

STATEMENT OF THE FACTS

The following are the stipulated facts contained in the parties' Agreed Stipulations that hearing panel accepted and the Board incorporated by reference and adopted as its Findings of Fact. (Stip. ¶4.)

Respondent, Leo Johnny Talikka, was admitted to the practice of law in the State of Ohio on May 4, 1968. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio. *Id.* at ¶1. Respondent has been a sole practitioner since the early 1990's. *Id.* at ¶2. Respondent primarily practices in the areas of criminal defense and personal injury. *Id.* at ¶3.

From the early 1980s to January 8, 2010, respondent maintained an Interest on Lawyer's Trust Account (IOLTA) account at First Merit Bank, account number xxxxxx0978. *Id.* at ¶4. Since early 2001, respondent was the only authorized user of his First Merit IOLTA account. *Id.* at ¶5. At the same time that respondent had his First Merit IOLTA account, respondent had a business operating account at First Merit Bank, account number xxxxxx3053. *Id.* at ¶6. Since November 18, 2009, respondent maintained an IOLTA account at Northwest Savings Bank, account number xxxxxx6207. *Id.* at ¶7. Respondent was the only authorized user of his Northwest IOLTA account. *Id.* at ¶8.

COUNT 1 – TOPAZIO

On June 4, 2008, Michelle Topazio hired respondent to appeal a Judgment Entry, dated May 13, 2008, in which the Cuyahoga County Juvenile Court awarded custody of Topazio's minor children to their biological father, Walter Ackley. *Id.* at ¶9. On June 5, 2008, respondent received a $15,000 flat fee from Topazio by credit card payment and deposited the funds into his First Merit business operating account. *Id.* at ¶10. There was no written fee agreement in Topazio's case. *Id.* at ¶11.

On June 16, 2008, respondent filed a notice of appeal for Topazio in the Eighth Appellate District under Appeal No. 08-CA-91642. *Id.* at ¶12. Respondent never filed Topazio's appellate brief. *Id.* at ¶13. On September 29, 2008, the appellate court sua sponte dismissed Topazio's appeal for respondent's failure to file a brief. *Id.* at ¶14. Respondent did not advise Topazio that her appeal was dismissed. *Id.* at ¶15.

On October 15, 2008, four months into the representation, Topazio terminated respondent's representation and requested a refund of the unused portion of the retainer. *Id.* at ¶16. Two days later, Topazio sent respondent an e-mail requesting that respondent refund to her

$13,500 in unearned fees. *Id.* at ¶17. At no time did respondent send Topazio a bill for his legal services. *Id.* at ¶18. Upon termination in October, respondent had determined that, after deducting his expenses, he owed Topazio $10,000 in unearned fees but he held on to the funds. *Id.* at ¶19.

Almost five months later on March 6, 2009, after learning that respondent possessed Topazio's funds, Steven Wolkin, the guardian ad litem (GAL) in the case, filed a motion for garnishment to order respondent to release Topazio's funds to Wolkin for Topazio's unpaid GAL fees. *Id.* at ¶20. On April 17, 2009, the Lake County Court of Common Pleas filed an Entry ordering respondent to immediately deposit Topazio's $10,000 with the Clerk of Courts. *Id.* at ¶21. A month later, on May 15, 2009, respondent deposited the $10,000 with the Clerk of Courts using check #2413 drawn on respondent's First Merit IOLTA account. *Id.* at ¶22. None of the funds in respondent's First Merit IOLTA account belonged to Topazio; therefore, respondent used other clients' funds in his First Merit IOLTA account to pay IOLTA check #2413. *Id.* at ¶23.

COUNT 2 – HOMKES

In 2008, Jeffrey Homkes hired respondent to represent him in a personal injury case. *Id.* at ¶24. Homkes agreed to pay respondent a one-third contingent fee for the representation. *Id.* at ¶25. In April 2009, respondent settled Homkes' personal injury claim for a $33,000 payment to Homkes. *Id.* at ¶26.

Earlier that month on April 16, 2009, respondent's First Merit IOLTA account balance was $792.66. *Id.* at ¶27. On April 28, 2009, respondent deposited into his First Merit IOLTA account a $1,500 retainer from Esther Nash, thereby, increasing the account balance to $2,292.66. *Id.* at ¶28. Respondent received the $33,000 settlement check, and on April 30,

2009, respondent deposited the check into his First Merit IOLTA account, thereby, increasing the account balance to $35,292.66. *Id.* at ¶29.

On May 1, 2009, respondent disbursed $1,225.25 to Michael Yates, thereby, reducing the First Merit IOLTA balance to $34,067.41. *Id.* at ¶30. At that time, none of the funds in respondent's IOLTA account belonged to Yates. *Id.* On May 6, 2009, respondent disbursed $11,325.41 to Homkes, and on May 7, 2009, respondent withdrew his one-third fee of $11,000 from Homkes' settlement funds leaving an $11,742 First Merit IOLTA balance, $10,674.59 of which belonged to Homkes. *Id.* at ¶31. Respondent did not have Homkes sign a closing statement, pursuant to Prof. Cond. Rule 1.5(c)(2). *Id.* at ¶32.

From May 8, 2009, to May 15, 2009, respondent made a number of deposits and withdrawals from his First Merit IOLTA account that were unrelated to the Homkes case resulting in an IOLTA balance of $17,800.50. *Id.* at ¶33. On May 15, 2009, respondent wrote First Merit IOLTA check #2413 for $10,000 to the Clerk of Courts on Topazio's behalf leaving a $7,800.50 IOLTA account balance. *Id.* at ¶34. As a result, respondent used at least $2,874.09 of the $10,674.59 belonging to the Homkes for Topazio's benefit. *Id.*

On May 18, 2009, respondent continued to misuse Homkes's funds by writing IOLTA check #2414 for $5,500 to himself, thereby, reducing the First Merit IOLTA account balance to $2,300.50. *Id.* at ¶35. On January 8, 2010, respondent closed his First Merit IOLTA account and transferred $9,478.89 to his Northwest IOLTA account. *Id.* at ¶36. On January 12, 2010, respondent disbursed $2,000 from his Northwest IOLTA account to AR Systems on Homkes's behalf, thereby, reducing the amount owed Homkes to $8,674.59. *Id.* at ¶37. Respondent never disbursed the remaining $8,674.59 to Homkes. *Id.* at ¶38.

Since February 1, 2007, respondent has neither maintained a client ledger of Homkes's funds contained in his IOLTA accounts, nor has he reconciled his IOLTA account on a monthly basis. *Id.* at ¶39.

COUNT 3 – WACLAWSKI

In June 2008, Theresa Waclawski hired respondent to handle her personal injury claim against Cheryl Lefelhoc. *Id.* at ¶40. Waclawski agreed to pay respondent a one-third contingent fee for the representation. *Id.* at ¶41. On November 28, 2008, respondent filed a civil lawsuit on Waclawski's behalf against Lefelhoc in the Lake County Court of Common Pleas under Case No. 08CV003740. *Id.* at ¶42.

On October 14, 2009, despite not having any funds belonging to Waclawski, respondent disbursed $1,200 from his First Merit IOLTA account to Great Lakes Pain Management on Waclawski's behalf. *Id.* at ¶43. A few weeks later, respondent settled the case on Waclawski's behalf for $70,000. *Id.* at ¶44. The $70,000 settlement check was issued to respondent and made payable to him and Waclawski. *Id.* at ¶45. On November 8, 2009, respondent's First Merit IOLTA account balance was $199.31. *Id.* at ¶46. The next day, on November 9, 2009, respondent deposited Waclawski's settlement check into his First Merit IOLTA account, thereby, increasing the IOLTA account balance to $70,199.31. *Id.* at ¶47.

Shortly thereafter, respondent made the following two disbursements on Waclawski's behalf from his First Merit IOLTA account:

- $23,331.33 to Waclawski on11/18/09; and
- $23,331.33 to respondent on 11/18/09 for attorney fees.

Id. at ¶48. Respondent never had Waclawski sign a closing statement for the $70,000 settlement, pursuant to Prof. Cond. Rule 1.5(c)(2). *Id.* at ¶49.

Respondent did not deposit any of Waclawski's funds into his Northwest IOLTA account; nonetheless, in December 2009, respondent used funds from his Northwest IOLTA account to make the following disbursements on Waclawski's behalf:

- $365.00 to Litigation Management on 12/28/09
- $257.25 to Susan Goodell & Associates on 12/21/09
- $276.90 to Parise & Associates on 12/22/09
- $2,068.36 to Mentor Way Nursing on 12/23/09
- $861.48 to Renillo Record Services on 12/23/09

Id. at ¶50.

Six months earlier, on June 29, 2009, respondent had disbursed $4.75 to the Willoughby Municipal Court from his business checking account on Waclawski's behalf. *Id.* at ¶51. As a result, respondent had disbursed $51,696.40 of the $70,000 settlement funds by December 28, 2009, thereby, leaving $18,303.60 belonging to Waclawski in respondent's possession. *Id.* at ¶52.

Between November 19, 2009 and January 8, 2010, respondent's First Merit IOLTA account balance dropped to $9,478.89 indicating that respondent had misappropriated at least $8,824.71 of Waclawski's settlement funds during that period. *Id.* at ¶53. On January 8, 2010, respondent closed his First Merit IOLTA account and transferred the remaining $9,478.89 balance to his Northwest IOLTA account. *Id.* at ¶54.

On April 28, 2010, respondent disbursed an additional $7,910.01 to Waclawski from his Northwest IOLTA account, thereby, leaving an outstanding balance of $10,393.59 belonging to Waclawski. *Id.* at ¶55. On June 22, 2010, respondent disbursed $10,425.92 to the Ohio Department of Job and Family Services (ODJFS) on Waclawski's behalf from his Northwest IOLTA account. *Id.* at ¶56. Because respondent only had $1,568.88 of Waclawski's funds left

in his Northwest IOLTA account, respondent used $8,857.04 in other clients' funds already in the account to pay ODJFS. *Id.* As a result, respondent misused other clients' funds from his Northwest IOLTA account to repay the funds belonging to Walclawski that he had misused. *Id.* at ¶57.

Since February 1, 2007, respondent has neither maintained a client ledger of Waclawski's funds contained in his IOLTA accounts, nor reconciled his IOLTA account on a monthly basis. *Id.* at ¶58.

COUNT 4 – KOOYMAN

Early in 2008, Dana Kooyman contacted respondent to represent her in a divorce case against her now ex-husband Terry. *Id.* at ¶59. Respondent told Kooyman that he would charge an hourly rate for the representation and requested a $2,000 retainer. *Id.* at ¶60. At engagement, Kooyman paid respondent the $2,000 retainer in cash but respondent did not give her a receipt for the payment. *Id.* at ¶61. Kooyman neither signed nor received a written fee agreement. *Id.* at ¶62. On May 6, 2008, respondent filed a complaint for divorce on Kooyman's behalf in the Lake County Court of Common Pleas under Case No. 08DR000261. *Id.* at ¶63. During the representation, Kooyman paid respondent an additional $2,000 in cash and again, respondent did not give her a receipt for the payment. *Id.* at ¶64.

At the conclusion of the divorce proceedings, the court awarded Kooyman one-half of her ex-husband's 401K account. *Id.* at ¶65. Shortly after July 9, 2009, respondent received a $25,045.83 check made payable to Kooyman that represented half the proceeds of the 401K account. *Id.* at ¶66. On July 13, 2009, respondent's First Merit IOLTA account balance was $1,011.06. *Id.* at ¶67. The next day on July 14, 2009, respondent deposited Kooyman's check

into his First Merit IOLTA account, thereby, increasing the IOLTA account balance to $26,056.89. *Id.* at ¶68.

On July 15, 2009, respondent withdrew $1,100 from his First Merit IOLTA account unrelated to Kooyman's case, thereby, reducing his IOLTA balance to $24,956.89. *Id.* at ¶69. On July 17, 2009, respondent withdrew $14,500 from his First Merit IOLTA account for attorney fees in Kooyman's case. *Id.* at ¶70. That same day, respondent deposited $3,000 into his First Merit IOLTA account, thereby, increasing the IOLTA balance to $13,456.89 of which $11,556.89 belonged to Kooyman. *Id.*

Between July 17, 2009 and July 23, 2009, respondent made the following deposits and disbursements resulting in a $22,772.06 balance in his First Merit IOLTA account on July 23, 2009:

- $2,500 deposit from Ralph Smith on 7/20/09;
- $260 disbursement to the Geauga County Clerk of Courts for filing fees on 7/20/09;
- $1,846.25 deposit from Richard Hennig Co. LPA on 7/21/09;
- $771.08 disbursement to Kobria on 7/23/09; and
- $6,000 deposit of a settlement check for Debra and Eugene Daugherty.

Id. at ¶71. Despite having only $11,556.89 belonging to Kooyman in his First Merit IOLTA account, on July 23, 2009, respondent disbursed $16,053.85 to Kooyman, an overpayment of $4,496.96. *Id.* at ¶72. Respondent did not have $4,496.96 of personal funds in his First Merit IOLTA account when he paid Kooyman on July 23, 2009, so respondent misappropriated other clients' funds in his First Merit IOLTA account to pay Kooyman. *Id.* at ¶73. Respondent is yet to account for the other client funds he used to overpay Kooyman. *Id.* at ¶74.

Since February 1, 2007, respondent has neither maintained a client ledger of Kooyman's funds contained in his IOLTA accounts, nor reconciled his IOLTA account on a monthly basis. *Id.* at ¶75.

COUNT 5 – PRICE

On April 6, 2009, Timothy Price hired respondent to represent him in a tort employment case against Price's employer, Avery Dennison, and its insurer, Aetna. *Id.* at ¶76. On that day, Price signed a one-third contingent fee agreement with respondent. *Id.* at ¶77.

On December 21, 2009, respondent filed the case against Avery and Aetna for Price in the Lake County Court of Common Pleas, under case no. 09cv4108. *Id.* at ¶78. On February 1, 2010, Avery and Aetna removed the case from the Common Pleas Court to the United States District Court for the Northern District of Ohio under case no. 1:10cv214. *Id.* at ¶79. During the pendency of the federal case, respondent was Price's counsel of record. *Id.* at ¶80. At no time did respondent file a motion to withdraw. *Id.*

On March 19, 2010, Avery and Aetna filed a motion to dismiss. *Id.* at ¶81. Respondent did not respond to the motions to dismiss. *Id.* at ¶82. On April 29, 2010, the court dismissed all claims against Avery and the state claims against Aetna. *Id.* at ¶83.

On June 28, 2010, Aetna filed a motion for judgment on the pleadings for the remaining claims. *Id.* at ¶84. Respondent did not respond to Aetna's judgment on the pleadings motion. *Id.* at ¶85. On September 20, 2010, the court dismissed the remaining claims against Aetna, thereby, dismissing the entire case. *Id.* at ¶86. Respondent did not tell Price about the dismissal. *Id.* at ¶87. In July 2011, Price first learned about the dismissal when he contacted an attorney from the Elk & Elk law firm. *Id.* at ¶88.

COUNT 6 - CANTRELL

Fran Cantrell's daughter, Florence Rowles, is incarcerated at Ohio Reformatory for Women. *Id.* at ¶89. In October 2009, Cantrell hired respondent to file and litigate a motion for judicial release for Rowles and to get Rowles moved to a prison closer to Cantrell's residence. *Id.* at ¶90. On October 15, 2009, Cantrell paid respondent a $1,500 flat fee to perform both services. *Id.* at ¶91.

By July 2011, respondent still had not filed a motion for judicial release for Rowles. *Id.* at ¶92. That month, Cantrell discharged respondent before he filed anything for Rowles, and hired Attorney David Patterson, who filed the motion for judicial release on July 15, 2011. *Id.* at ¶93. Later that month, Attorney Patterson asked respondent for a refund for Cantrell. *Id.* at ¶94. In response, on July 25, 2011, respondent sent Cantrell and Attorney Patterson an invoice indicating that respondent had provided 8.2 hours of legal service and that no refund was due, despite his failure to complete his representation. *Id.* at ¶95. Respondent has not refunded the unearned portion of his flat fee to Cantrell. *Id.* at ¶96.

COUNT 7 – MONTAGINO

Diana Montagino was allegedly assaulted on May 2, 2008, at Perry Middle School by a student who put ink in her coffee. *Id.* at ¶97. More than a year later on May 21, 2009, Montagino hired respondent to handle the related personal injury case for a one-third contingent fee. *Id.* at ¶98. Respondent mistakenly assured Montagino that the statute of limitations was two years and indicated that he would file the complaint before May 2010. *Id.* at ¶99.

On April 30, 2010, respondent filed the complaint on Montagino's behalf against the student, the parents, the school, and the education board in the Lake County Court of Common Pleas under case no. 10cv1298. *Id.* at ¶100. On July 9, 2010, the school and the board of

education filed a motion for judgment on the pleadings. *Id.* at ¶101. On August 4, 2010, the student and parents filed a motion for summary judgment arguing that the complaint was filed beyond the applicable one-year statute of limitations. *Id.* at ¶102. The court agreed with the defendants and dismissed the case in August 2010. *Id.* at ¶103. Respondent received notice of the dismissal but did not tell Montagino. *Id.* at ¶104. Beginning May 2010, Montagino attempted to contact respondent by phone and letters about her case to no avail. *Id.* at ¶105. On August 3, 2011, Montagino sent respondent a letter requesting a meeting to discuss what had been filed and the status of her claim. *Id.* at ¶106. Respondent met with Montagino on September 15, 2011, and told her that her case had been dismissed for more than a year. *Id.* at ¶107.

COUNT 8 – INGRAM

At the beginning of December 2006, a vehicle driven by Emma Crouser struck pedestrian John Ingram seriously injuring him. *Id.* at ¶108. About December 7, 2006, Ingram hired respondent to handle the related personal injury case for a one-third contingent fee. *Id.* at ¶109. The contingent fee agreement was in writing. *Id.* at ¶110.

On November 17, 2008, respondent filed a complaint against Crouser in the Lake County Court of Common Pleas under case no. 08CV003643 on Ingram's behalf. *Id.* at ¶111. In November 2009, respondent settled Ingram's personal injury case for $300,000 and deposited the funds into his Northwest Savings IOLTA account on November 20, 2009. *Id.* at ¶112. The following shows the deposits and disbursements for respondent's Northwest IOLTA account on Ingram's behalf.[1]

[1] Relator created this chart for purposes of the disciplinary proceedings; it is not an actual client ledger maintained by respondent.

Date	Source	IOLTA check #	Payee	Purpose of disbursement	$ Amount received	$ Amount disbursed	Client IOLTA balance
11/20/09	Cincinnati Insurance				200,000		200,000
11/20/09	Cincinnati Insurance				100,000		300,000
11/30/09		Counter check	John Ingram	Partial client disbursement		100,000	200,000
12/1/09		Counter check	Talikka	Attorney fee		100,000	100,000
12/24/09		1106	Mehler Hagestrom	Court Reporter		216.80	99,783.20
12/24/09		1107	Cefaratti Group	Court Reporter		130.83	99,652.37
12/29/09		1105	Beloit Clinic	Medical bill		650	99,002.37
12/8/10		1205	John Ingram	Partial client disbursement		50,698.42	48,303.95
12/22/10		1213	Susan Goodell	Court Reporter		107.25	48,196.70

Id. at ¶113. In October or November 2011, respondent disbursed an additional $9,000 to Ingram, thereby, reducing the amount owed Ingram to $39,196.70. *Id.* at ¶114. Since January 2011, respondent has regularly maintained a balance in his Northwest IOLTA account below the $39,196.70 to which Ingram is entitled (as low as 664.47 on May 26, 2011) showing that respondent has misused Ingram's funds since then. *Id.* at ¶115. Respondent never disbursed the remaining $39,196.70 to Ingram. *Id.* at ¶116. Respondent never prepared a closing statement for Ingram, pursuant to Prof. Cond. Rule 1.5(c)(2). *Id.* at ¶117.

Since February 1, 2007, respondent has neither maintained a client ledger of Ingram's funds contained in his IOLTA accounts, nor reconciled his IOLTA account on a monthly basis. *Id.* at ¶118.

CONCLUSIONS OF LAW

Based on the foregoing stipulated facts, the hearing panel found by clear and convincing evidence that respondent violated the following Ohio Rules of Professional Conduct: Rule 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.4(a)(3) (a lawyer shall keep the client reasonably informed about the status of a legal matter); Rule 1.4(a)(4) (a lawyer shall not fail to comply as soon as practicable with *reasonable* requests for information from the client); Rule 1.5(c)(2) (a lawyer who is entitled to compensation under a contingent-fee agreement shall not fail to prepare a closing statement and provide it to the client at the time of or prior to the lawyer's receiving compensation); Rule 1.15(a) (a lawyer shall keep client funds in the lawyer's possession separate from the lawyer's funds); Rule 1.15(a)(2) (a lawyer shall maintain a record for each client on whose behalf funds are held); Rule 1.15(a)(5) (a lawyer shall not fail to perform and retain a monthly reconciliation of the funds in his trust account); Rule 1.15(d) (a lawyer shall not fail to promptly deliver funds or other property that the client is entitled to receive); Rule 1.16(e) (a lawyer who withdraws from employment shall refund promptly any unearned fee); Rule 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); Rule 8.4(d) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice); and Rule 8.4(h) (a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law). (Report ¶¶5-12.)

In addition, the hearing panel found respondent's dishonest or selfish motive, his pattern of misconduct, his multiple offenses, the harm to vulnerable victims, and his failure to make restitution aggravating factors. *Id.* at ¶¶13 and 14. However, the hearing panel found the

absence of prior disciplinary offenses and evidence of respondent's good character mitigating factors. *Id.* at ¶15. The hearing panel recommended a two-year suspension with one year stayed.

The board adopted the hearing panel's Conclusions of Law regarding the violations and the aggravating and mitigating factors proven in this case. The board rejected the hearing panel's sanction recommendation and recommended that respondent be indefinitely suspended as a result of his misconduct. Neither respondent nor relator objects to the board's Finding of Facts or the Conclusions of Law in this case. Respondent's objection is limited to the board's recommendation that he be indefinitely suspended from the practice of law in Ohio.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

BASED ON THIS COURT'S PRECEDENT, A TWO-YEAR SUSPENSION WITH ONE YEAR CONDITIONALLY STAYED IS AN APPROPRIATE SANCTION FOR RESPONDENT.[2]

During the disciplinary proceedings in the instant case, the parties stipulated that the appropriate sanction based upon the duties violated and the other relevant factors was a two-year suspension from the practice of law with the second year stayed upon the following conditions: 1) respondent commit no further misconduct; 2) respondent not be reinstated until he makes restitution to Jeffery Homkes in the amount of $8,674.59, to Fran Cantrell in the amount of $1,000, and to John Ingram in the amount of $39,196.70; and 3) respondent, upon reinstatement, completes one year of probation and is monitored by an attorney appointed by relator in accordance with Gov. Bar R. V(9)(B). (Stip. ¶129.)

The hearing panel also recommended that respondent be suspended for two years with one year conditionally stayed upon the repayment of restitution with interest. (Stip. ¶20.) The

[2] Given the similarity in the two arguments advanced by respondent, relator will address both arguments simultaneously.

board increased the hearing panel's recommended sanction to an indefinite suspension. Relator acknowledges the board's recommendation; however, based on *Disciplinary Counsel v. Folwell,* 129 Ohio St.3d 297; 2011 Ohio 3181; 951 N.E.2d 775, a two-year suspension with one year stayed may be the appropriate sanction.

In *Folwell,* the attorney converted client funds, neglected client matters, failed to return promptly unearned fees, deceived a client, failed to maintain trust account records, failed to reconcile his trust account monthly, and shared attorney fees with a non-lawyer. *Id.* at ¶¶4-31. This Court found that Attorney Folwell violated eight disciplinary rules including Prof. Cond. R. 1.3, Prof. Cond. R. 1.15(a)(2), Prof. Cond. R. 1.15(a)(5), Prof. Cond. R. 1.16(e), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(h). *Id.* Folwell's misconduct affected six clients. *Id.* at ¶¶4-28. Attorney Folwell avoided a harsher sanction because he had no prior discipline and displayed a cooperative attitude during the disciplinary process. *Id.*

Similar to *Folwell*, respondent converted client funds, neglected client matters, failed to return an unearned fee, failed to maintain trust account records, and failed to reconcile his trust account monthly. This case also involves aggravating factors similar to *Folwell*: a selfish or dishonest motive, a pattern of misconduct, and multiple offenses. Respondent, like Attorney Folwell, has no prior disciplinary record.

Acknowledging the board's concern as reflected in its recommendation of an indefinite suspension, the conditions attendant to the sanction proposed will prevent respondent from returning to the practice of law until he makes full restitution. The proposed conditions address the extensiveness of respondent's misconduct and the aggravating factors involved in this case. As this case is markedly similar to *Folwell*, a two-year suspension with one year conditionally stayed is an appropriate sanction for respondent.

Notwithstanding the board's recommendation, a two-year suspension conditionally stayed may be more appropriate than an indefinite suspension considering several recent disciplinary cases that resulted in an indefinite suspension. The vast majority of such cases decided by this Court in the past four years, with few exceptions, involve either felony convictions[3] or a failure to cooperate with the disciplinary investigation and/or failure to participate in the resulting disciplinary case[4].

Relator recommended a lesser sanction in the instant case because respondent was not convicted of a felony, did not fail to cooperate with these disciplinary proceedings, and fully stipulated to the misconduct charged. Such mitigation distinguishes this case from the cases involving neglect and conversion in which indefinite suspensions are imposed. This, coupled with the need for parity between this case and *Folwell* indicates that a two-year suspension with one year stayed may be the more appropriate sanction in this case.

"[T]he purpose of the disciplinary process is not to punish the offender, but rather to protect the public." *Disciplinary Counsel v. O'Neill,* 103 Ohio St.3d 204, 2004 Ohio 4704, 815 N.E.2d 286, ¶53. In this matter, the hearing panel recommended that,

---

[3] *Columbus Bar Assn. v. Hunter,* 130 Ohio St.3d 355, 2011-Ohio-5788, 958 N.E.2d 567; *Disciplinary Counsel v. Zapor,* 127 Ohio St.3d 372, 2010-Ohio-5769; 939 N.E.2d 1230; and *Disciplinary Counsel v. Cantrell,* 125 Ohio St.3d 458, 2010-Ohio-2114, 928 N.E.2d 1100.

[4] *Cleveland Metro. Bar Assn. v. Brown,* 130 Ohio St.3d 147, 2011-Ohio-5198, 956 N.E.2d 296; *Lake Cty. Bar Assn. v. Troy,* 130 Ohio St.3d 110, 2011-Ohio-4913, 955 N.E.2d 100; *Dayton Bar Assn. v. Wilson,* 127 Ohio St.3d 10, 2010-Ohio-4937, 935 N.E.2d 841; *Columbus Bar Assn. v. Clovis,* 125 Ohio St.3d 434, 2010-Ohio-1859, 928 N.E.2d 1078; *Disciplinary Counsel v. Hoff,* 124 Ohio St.3d 269, 2010-Ohio-136, 921 N.E.2d 636; *Toledo Bar Assn. v. Baker,* 122 Ohio St.3d 45, 2009-Ohio-2371, 907 N.E.2d 1172; *Butler Cty. Bar Assn. v. Portman,* 121 Ohio St.3d 518, 2009-Ohio-1705, 905 N.E.2d 1203; *Cincinnati Bar Assn. v. Brown,* 121 Ohio St.3d 445, 2009-Ohio-1249, 905 N.E.2d 184; *Cleveland Metro. Bar Assn. v. Spector,* 121 Ohio St.3d 271, 2009-Ohio-1155, 903 N.E.2d 637; *Disciplinary Counsel v. Broschak,* 118 Ohio St.3d 236; 2008-Ohio-2224, 887 N.E.2d 1176; and *Disciplinary Counsel v. Higgins,* 117 Ohio St.3d 473, 2008-Ohio-1509, 884 N.E.2d 1070.

> [R]espondent be suspended for a period of two years with one year stayed on the condition that Respondent commit no further misconduct. The panel further recommended that Respondent not be reinstated, regardless of whether or not the term of the above suspension is completed, until he makes restitution to Jeffrey Homkes in the amount of $8,674.59, and interest at the statutory rate on that amount from May 6, 2009 to the date of payment; to Fran Cantrell in the amount of $1,000, and interest at the statutory rate on that amount from July 15, 2011 to the date of payment; and to John Ingram in the amount of $39,196.70, and interest at the statutory rate on that amount from November 30, 2011 to the date of payment. The panel further recommended that Respondent, upon reinstatement, complete one year of probation and be monitored during the probationary period by an attorney appointed by relator in accordance with Gov. Bar R. V, Section 9(B).

(Report ¶¶20-21.) The hearing panel's recommended sanction adequately protects the public due to the significant conditions imposed upon respondent.

First, respondent would be unable to practice law in Ohio for at least a year at which point respondent will be 74 years old. Second and most importantly, respondent cannot regain his Ohio law license until he has paid full restitution with interest. Third, respondent will be monitored for a year should he ever be reinstated to the practice of law.

Essentially, the sanction artfully crafted by the hearing panel may be actually an "indefinite suspension." Accordingly, the distinction is without consequence because respondent must make full restitution before reinstatement. Therefore, the two-year conditionally stayed suspension recommended by the hearing panel may be adequate to protect the public.

CONCLUSION

For the foregoing reasons, respondent's objections to the board's Report may be upheld by this honorable Court. The Court should adopt the findings in the board's Report and impose the hearing panel's recommended sanction of a two-year suspension with one year stayed upon conditions as described in paragraphs 20 and 21 of the Report.

Respectfully submitted,

Jonathan E. Coughlan (0026424)
Disciplinary Counsel
Relator

Philip A. King 0071895
Assistant Disciplinary Counsel
Counsel of Record
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

I hereby certify that the foregoing answer brief was served via U.S. Mail, postage prepaid, upon respondent's counsel, Richard Steven Koblentz, Esq., Bryan Penvose, Esq., and Kevin Marchaza, Esq. at Koblentz & Penvose, 55 Public Square, Suite 1170, Cleveland, Ohio 44113, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, Ohio Judicial Center, 65 S. Front Street, Columbus, Ohio 43215, on September 19, 2012.

Philip A. King
Counsel for Relator