

# **DISCIPLINARY HANDBOOK: VOLUME VI**

[CASES FROM 2012; CURRENT THROUGH 12/31/2012]

## **BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

Links within this document lead either to publications on the Supreme Court's website or to other pages within this document. Links in the Table of Cases will direct the user to the corresponding Case Summary; links within the Case Summaries will direct the user to the Index. Links within the Index will direct the user back to the Case Summaries. This document is also fully searchable (hit Ctrl+F, type in the exact term or phrase, and then hit Enter).

The case summaries were prepared by Board staff and may not reflect all aspects of a case in their entirety. The summaries are meant to assist the reader by providing a brief overview of the misconduct committed by the attorney, the rules violated, and the sanction imposed. The summaries should be a beginning point that ends with reading the actual court opinion.



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6/7/2012.

## CASE SUMMARIES

*Alexander, Disciplinary Counsel v.*  
[133 Ohio St.3d 232, 2012-Ohio-4575](#). Decided 10/9/2012.

**OVERVIEW:** Respondent engaged in improper division of fees, failed to segregate client property, failed to keep a record of client funds and perform a monthly reconciliation of trust account funds, and engaged in conduct that adversely reflects on his fitness to practice law.

**FINDINGS:** Respondent was a solo practitioner who had maintained an IOLTA since 2007. Both business accounts were closed due to overdrafts. Respondent wrote checks against his IOLTA to pay personal and business expenses, including office and apartment rent, car payments, medications, newspaper, phone services, and internet and cable-television services. In addition, Respondent permitted his wife to write checks on the IOLTA. Respondent did not maintain a ledger of client funds and he reconciled his IOLTA only intermittently. Respondent also represented a client in juvenile court and was paid \$500. Respondent then shared \$200 of the \$500 with another attorney, who never practiced in the same firm, because the attorney attended the initial hearings. Respondent never received written consent from his client to split the fee with a lawyer not in the same firm.

**SANCTION:** The parties stipulated to a sanction of a one-year suspension, all stayed on conditions. The Board adopted the findings of fact and conclusions of law and recommended a one-year stayed suspension, but omitted two of the conditions and required a sixth hour of CLE. The Court disagreed with the Board's recommended sanction and suspended Respondent for one year, with six months stayed on conditions, including law office management and IOLTA CLE, one year of probation with IOLTA monitoring, restitution, and no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Freeman* (2008); *Hauck* (2011);

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**Rules Violated:** Prof.Cond.R. [1.5\(e\)\(2\)](#), [1.15\(a\)](#), [1.15\(a\)\(2\)](#), [1.15\(a\)\(5\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- (other); M- (a) (no prior discipline), (d) (cooperative attitude)

<b>Court Modified Sanction:</b> YES		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension, six months stayed</a> on conditions			

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*Asante, Disciplinary Counsel v.*  
[133 Ohio St.3d 102, 2012-Ohio-3906](#). Decided 9/4/2012.

**OVERVIEW:** Respondent was convicted of a federal felony charge for entering into a fraudulent marriage for purposes of evading the U.S. immigration law. Respondent received an interim felony suspension and was charged with multiple violations of Prof.Cond.R. 8.4 and its predecessor.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement that included stipulated findings of fact and misconduct. The Board recommended that the agreement be accepted, but the Court rejected it and remanded the matter back to the Board for a hearing and “consideration of a harsher sanction.” At the hearing, the parties again stipulated to facts and misconduct.

**FINDINGS:** Respondent entered the U.S. from Ghana to attend law school. Respondent’s husband also entered the U.S. to attend college. Their marriage was dissolved in Ghana, and Respondent then married a citizen of the U.S. who resided in Florida. Respondent submitted an application to become a permanent legal resident of the U.S. and attended an immigration interview in Florida. During her second marriage, Respondent resided in Ohio with her ex-husband, with whom she conceived a child. Respondent pleaded guilty to entering into a fraudulent marriage for purpose of evading U.S. immigration law and was sentenced to two years of probation. Respondent stipulated to an order of removal and returned to Ghana.

**SANCTION:** The Board adopted the parties’ stipulations of fact and misconduct and recommended an indefinite suspension, which the Court imposed. In its opinion, the Court identified Respondent’s attempts to defraud the U.S. Bureau of Citizenship and Immigration services while practicing immigration law as a basis for the indefinite suspension.

**CASE AUTHORITY FOR SANCTION:** *Hunter* (2011); *Smith* (2011); *Kellogg* (2010); *Gittinger* (2010); *Bennett* (2010); *Brunner* (2001)

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**Rules Violated:** Prof.Cond.R. [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude), [\(f\)](#) (other penalties/sanctions)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> YES		<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Berk, Cleveland Metro. Bar Assn. v.*  
[132 Ohio St.3d 132, 2012-Ohio-2167](#). Decided 5/17/2012.

**OVERVIEW:** In August 2007, Respondent was suspended for one year, with the entire suspension stayed on conditions, including that Respondent complete two years of monitored probation. At the time of this case, Respondent had not applied for termination of probation. Respondent's conduct was comparable to the conduct that led to his first disciplinary sanction.

**FINDINGS:** Respondent neglected two client matters by twice failing to attend scheduled conferences. Respondent's conduct resulted in dismissal of each case. The parties entered into stipulations of fact and the panel heard testimony from Respondent and three character witnesses. The panel found that Respondent violated Prof.Cond.R. 1.3 in both cases.

**SANCTION:** The majority of the panel declined to recommend an actual suspension, instead recommending an 18-month stayed suspension and two years of monitored probation. The Board adopted the panel's findings of fact and misconduct, but adopted the dissenting panel member's recommendation that Respondent's license be suspended for 18 months, with 12 months stayed. The Court adopted the sanction recommended by the majority of the panel and suspended Respondent for 18 months, all stayed, on the condition that Respondent complete two years of monitored probation. In determining the sanction, the Court recognized Respondent's extensive pro bono work.

**CASE AUTHORITY FOR SANCTION:** *Rohrer* (2009)

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**Rules Violated:** Prof.Cond.R. [1.3](#)

**Aggravation/ Mitigation:** A- (a) (prior discipline), (c) (pattern of misconduct), (d) (multiple offenses);  
 M- (b) (no dishonest or selfish motive), (c) (restitution or rectified consequences), (d) (cooperative attitude), (e) (good character)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Eighteen-month suspension, stayed</a> on conditions			

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*Bhatt, Columbus Bar Assn. v.*  
[133 Ohio St.3d 131, 2012-Ohio-4230](#). Decided 9/19/2012.

**OVERVIEW:** Respondent neglected two client matters, failed to keep the clients reasonably informed about their cases, failed to hold funds in his client trust account until the disputes about the funds were resolved, and failed to notify the clients that he did not maintain professional liability insurance.

**FINDINGS:** The parties entered into stipulations of fact and misconduct and agreed to the dismissal of five charged rule violations. First, Respondent served as legal counsel for a corporation that purchased and operated several business. The corporation later sold the businesses, receiving a down payment of \$72,000 with the balance to be paid in monthly installments of \$5,065. The shareholders agreed that certain bills should be paid from the down payment but could not agree on how to disburse the remaining proceeds. The buyer sent Respondent monthly payments, who received them on behalf of the corporation. However, Respondent did not deposit these checks into his client trust account because they were made payable to the corporation. Respondent stopped responding to the shareholders' requests for information and accountings. Eventually, Respondent contacted the buyer to replace the monthly checks with a single check made payable to Respondent's client trust account. Respondent deposited the check into his client trust account, the shareholders resolved their dispute, and Respondent disbursed the funds pursuant to the purchase agreement. Second, Respondent represented a client in a legal custody matter. Respondent failed to monitor the deadline for filing an agreed entry, and although one extension of time was granted, Respondent failed to request another extension or attempt to submit the entry to the court. Consequently, the court dismissed the case.

**SANCTION:** The Board adopted the parties' stipulations of fact and misconduct, dismissed five of the alleged violations, and recommended a public reprimand. The Court adopted the Board's findings of fact and misconduct and issued a public reprimand.

**CASE AUTHORITY FOR SANCTION:** *Freeman* (2011); *Dundon* (2011)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(3\)](#), [1.4\(c\)](#), [1.15\(e\)](#)

**Aggravation/ Mitigation:** A- NONE; M- (a) (no prior discipline), (b) (no dishonest or selfish motive), (d) (cooperative attitude), (e) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public Reprimand</a>			

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*Braun, Trumbull Cty. Bar Assn. v.*  
 133 Ohio St.3d 541, 2012-Ohio-5136. Decided 11/8/2012.

**OVERVIEW:** Respondent failed to act with reasonable diligence in representing a client, failed to consult with the client about the means by which the client’s objectives are to be accomplished, failed to keep the client reasonably informed, failed to comply with reasonable requests for information from the client, and failed to cooperate with the disciplinary investigation. Respondent was previously suspended for one year, with six months stayed. He was reinstated six years prior to this decision.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed, made findings of fact and conclusions of law, and recommended an indefinite suspension. The Board adopted the master commissioner’s findings and recommended sanction.

**FINDINGS:** Respondent represented a client in a divorce action and was paid a \$250 retainer. Respondent’s client provided papers and documents to pursue the divorce action and directed Respondent to file the proceedings in Trumbull County. Respondent promised to promptly prepare and file the divorce complaint. Respondent’s client did not hear anything from Respondent or receive copies of the divorce papers. The client called on several occasions, but Respondent did not return any of the phone calls. In the meantime, the client’s spouse filed for divorce in another county. Because of Respondent’s inaction, the client had to secure new counsel and defend the divorce in the other county. Respondent also failed to enter an appearance in a criminal case involving the same client and would not return any of the client’s telephone calls. Again, the client had to secure other counsel.

**SANCTION:** The Board recommended that the charged violations of Prof.Cond.R. 1.15(a), 1.15(a)(2), 1.15(c), and 1.15(d) be dismissed. The Court adopted the Board’s findings and dismissed these charges, along with the charged violation of Prof.Cond.R. 1.15(a)(1). The Court adopted the Board’s recommended sanction of an indefinite suspension.

**CASE AUTHORITY FOR SANCTION:** *Mathewson* (2007); *Hoff* (2010)

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4); Gov. Bar R. V(4)(G)

**Aggravation/ Mitigation:** A- (a) (prior discipline), (e) (lack of cooperation), (g) (refusal to acknowledge wrongdoing), (h) (harm to vulnerable victim), (i) (no restitution); M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> Indefinite suspension			

*Brickley, Disciplinary Counsel v.*  
[131 Ohio St.3d 228, 2012-Ohio-872](#). Decided 3/6/2012.

**OVERVIEW:** Respondent pled guilty to felony theft, forgery, and receiving stolen property. Respondent was previously indefinitely suspended in 2002, and had not been reinstated.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner recommended disbarment and the Board agreed.

**FINDINGS:** While working as a paralegal, Respondent wrote himself seven checks from an attorney's trust account without authorization. Respondent pled no contest to charges of felony theft, forgery, and receiving stolen property. He was accepted into a diversion program. The Board found that Respondent's conduct was an illegal act that reflected adversely on his honesty or trustworthiness, involved dishonesty, fraud, deceit, or misrepresentation, and adversely reflected on his fitness to practice law. The Court adopted the Board's findings of fact and conclusions of law.

**SANCTION:** Finding that the presumptive sanction for misappropriation is disbarment, and that the appropriate sanction for an attorney theft conviction is also disbarment, the master commissioner and the Board recommended disbarment. The Court adopted the recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Dixon* (2002); *Muhlback* (2004)

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**Rules Violated:** Prof.Cond.R. [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation); M- [\(c\)](#) (restitution or rectified consequences)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Disbarment</a>			

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*Britt, Cincinnati Bar Assn. v.*  
[133 Ohio St.3d 217, 2012-Ohio-4541](#). Decided 10/3/2012.

**OVERVIEW:** Respondent neglected numerous client matters, failed to communicate with his clients, failed to preserve the identity of client funds and property, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct that is prejudicial to the administration of justice, and conduct that adversely reflects on his fitness to practice law.

**FINDINGS:** The parties’ stipulated that Respondent collected over \$40,000 in retainers and filing fees from more than 40 bankruptcy clients, converted those funds, and failed to perform services for his clients. Respondent had a client trust account, but he regularly deposited client money, whether earned or unearned, into his operating account. Respondent spent the clients’ money on other matters and failed to file their bankruptcy petitions. As a result of Respondent’s failure to withhold federal income taxes or pay unemployment taxes, the IRS had filed two levies totaling more than \$16,000 against Respondent in the bankruptcy court. Consequently, the bankruptcy trustee had remitted fees earned by Respondent to the IRS.

**SANCTION:** Relator objected to the Board’s recommended sanction, arguing that Respondent’s misconduct warranted permanent disbarment. The Board adopted the parties’ stipulations of fact and misconduct and recommended that Respondent be indefinitely suspended and make restitution to those clients affected by his misconduct. The Court adopted the Board’s recommendation of an indefinite suspension and restitution. The Court also ordered Respondent to complete 12 hours of CLE in law-office and trust account management, serve one-year of monitored probation upon reinstatement, and provide a monthly accounting to Relator of all restitution payments.

**CASE AUTHORITY FOR SANCTION:** *France* (2000); *Garrity* (2003); *Gerren* (2004); *Harris* (2002); *Smith* (2003); *Squire* (2011); *Smithern* (2010)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4](#), [1.5](#), [1.15\(a\)](#), [1.15\(c\)](#), [5.3\(b\)](#), [5.5\(a\)](#), [7.1](#), [1.15\(a\)](#), [1.15\(c\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Bruner, Ohio State Bar Assn. v.*  
[133 Ohio St.3d 163, 2012-Ohio-4326](#). Decided 9/27/2012.

**OVERVIEW:** In three client matters, Respondent failed to act with reasonable diligence, failed to communicate, and charged a clearly excessive fee.

**PROCEDURE:** The panel and Board recommended acceptance of a consent-to-discipline agreement, with a stipulated sanction of a two-year suspension, all stayed on the condition that Respondent make restitution to all three clients.

**FINDINGS:** Respondent neglected three client matters by filing inaccurate documents and failing to timely file an appeal. He also failed to advise his clients of his hourly rate, failed to maintain time sheets, notes, or records to document billable time, and charged excessive fees.

**SANCTION:** The Court adopted the parties' consent-to-discipline agreement and issued a two-year suspension, all stayed on the condition that Respondent make restitution to the three clients in accordance with the payment schedule set forth in the consent agreement.

**CASE AUTHORITY FOR SANCTION:** None cited.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4](#), [1.5\(a\)](#)

**Aggravation/ Mitigation:** A- NONE; M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year</a> suspension, stayed on conditions			

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***Bunstine, Disciplinary Counsel v.***  
[131 Ohio St.3d 302, 2012-Ohio-977](#). Decided 3/13/12.

**OVERVIEW:** Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; conduct prejudicial to the administration of justice; and conduct that adversely reflected on his fitness to practice law.

**FINDINGS:** Respondent prepared affidavits for longtime friends. The affidavits contained information that could have led to criminal liability for the friends, who had a practice of sharing prescription medications. Respondent refused to turn over the affidavits to the sheriff's department upon request, claiming attorney-client privilege. The evidence suggested that no attorney-client privilege existed. Respondent pled no contest to two counts of disorderly conduct stemming from the assertions he made to the sheriff regarding the affidavits. Respondent also took \$1,000 from an individual who was implicated in the friend's affidavits and failed to report it. The evidence suggests that Respondent's actions with the affidavits were less about protecting the friends and more about protecting himself and the third party. The Court adopted the Board's findings of fact and conclusions of law.

**SANCTION:** Respondent objected to the Board's identified aggravating factors (dishonest or selfish motive and refusal to acknowledge wrongdoing). The Court overruled the objections, finding that Respondent had a selfish motive in protecting himself and that Respondent's "if I did anything wrong, I'm sorry" attitude was not an acknowledgement of wrongdoing. The panel recommended a public reprimand, and the Board instead recommended a six-month suspension. The Court ordered a six-month suspension, stayed on condition that Respondent commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Potter* (2010); *Ricketts* (2010)

**DISSENT:** Chief Justice O'Connor and Justices Lanzinger and McGee Brown dissented. They would have imposed an actual six-month suspension.

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**Rules Violated:** Prof.Cond.R. [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- [\(b\)](#) (dishonest or selfish motive), [\(g\)](#) (refusal to acknowledge wrongdoing); M- [\(a\)](#) (no prior discipline), [\(f\)](#) (other penalties/sanctions)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> <a href="#">YES</a>	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a> on conditions			

*Burchinal, Disciplinary Counsel v.*  
[133 Ohio St.3d 38, 2012-Ohio-3882](#). Decided 8/29/2012.

**OVERVIEW:** Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct that adversely reflected on his fitness to practice law; failed to keep his client informed; failed to act with reasonable diligence and promptness; and failed to deposit advance payments in a trust account for withdrawal as fees are earned and expenses incurred.

**FINDINGS:** Respondent misappropriated funds on three occasions totaling \$13,879.27. Instead of paying claims on behalf of his clients, Respondent misappropriated settlement funds to pay his mortgage, and firm and other personal expenses. Respondent admitted misappropriating the funds and self-reported his misconduct to Relator. Respondent also missed a statute of limitations deadline in a personal injury case and failed to inform the clients for two years. Respondent made a full restitution.

**SANCTION:** Respondent objected to the Board’s recommendation of a two-year suspension, with 12 months stayed on conditions. The Court overruled the Board’s recommendation and ordered a two-year suspension, with the final 18 months stayed on the conditions that Respondent serve 18 months of monitored probation and complete his four year OLAP contract.

**CASE AUTHORITY FOR SANCTION:** *Dixon* (2002); *Gerren* (2004); *Miller* (2012); *Clafin* (2005); *Poley* (2002); *Mishler* (2008); *Kraemer* (2010)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(3\)](#), [1.15\(c\)](#), [8.4\(c\)](#), [8.4\(h\)](#),

**Aggravation/ Mitigation:** A- [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses); M- [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character), [\(g\)](#) (chemical/mental illness)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year suspension, 18 months stayed</a> on conditions			

*Carr, Akron Bar Assn. v.*  
[131 Ohio St.3d 210, 2012-Ohio-610](#). Decided 2/22/2012.

**OVERVIEW:** Respondent charged a clearly excessive fee. Relator originally charged violations of Prof.Cond.R. 1.4(a)(2), 1.4(b), 1.5(a), 1.5(b), 8.4(c), 8.4(d), and 8.4(h), but the panel dismissed all but Prof.Cond.R. 1.5(a). Respondent was registered as inactive at the time of this case.

**FINDINGS:** Respondent represented a client in a fraud matter, set an hourly fee, and the client paid \$6,750. Respondent settled the client's case for \$7,500, but billed the client for an additional \$7,250. Respondent then had the settlement check made out to himself and gave the client \$250. An expert witness testified that the time Respondent spent on various items relating to the representation was unreasonable and that Respondent's fee was clearly excessive.

**SANCTION:** The Board recommended a six-month suspension, stayed on the conditions of no further misconduct, completion of six CLE hours, monitoring, restitution to the client in the amount of \$7,250, and payment of costs. The Court adopted the Board's findings and recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Smith* (2009); *Johnson* (2009); *Character-Floyd* (1998)

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**Rules Violated:** Prof.Cond.R. [1.5\(a\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a> on conditions			

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*Cicero, Disciplinary Counsel v.*  
[134 Ohio St.3d 311, 2012-Ohio-5457](#). Decided 11/28/2012.

**OVERVIEW:** Respondent communicated information received from a prospective client to a third party and engaged in conduct that adversely reflected on his fitness to practice law. The Court had previously suspended Respondent’s license for one year for boasting about his intimate relationship with a judge while Respondent had a case pending before the judge.

**FINDINGS:** Federal law enforcement officials conducted a raid of a house and seized about \$20,000 worth of Ohio State University football memorabilia as part of a drug-trafficking investigation. The resident of the house and owner of the memorabilia met with Respondent the day after the raid to discuss his criminal case. On the day of the meeting, Respondent emailed the head coach of the Ohio State football team about the raid and included information about the memorabilia and the background of the prospective client. Respondent had a second meeting with the prospective client about two weeks later, during which they discussed legal options. The day after the second meeting, Respondent again emailed the football coach with additional specifics about the prospective client’s case. Respondent sent another email the same day with further information about the prospective client. The Board found that Respondent improperly disclosed confidential information received from a prospective client.

**SANCTION:** The hearing panel and Board recommended a six-month suspension. Respondent filed objections, arguing that the information in the emails was “generally known” and that the disclosure was permitted by Prof.Cond.R. 1.9(c)(1). The Court rejected this argument and found that Respondent violated the trust that prospective clients place in lawyers. Relying upon the aggravating factors identified by the Board, the Court imposed a one-year suspension.

**CASE AUTHORITY FOR SANCTION:** None cited.

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**Rules Violated:** Prof.Cond.R. [1.18](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(b\)](#) (dishonest or selfish motive), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim); M- [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">One-year suspension</a>			

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*Cicirella, Cleveland Metro. Bar Assn. v.*  
[133 Ohio St.3d 448, 2012-Ohio-4300](#). Decided 9/25/2012.

**OVERVIEW:** Respondent violated numerous Disciplinary Rules and Rules of Professional Conduct by practicing law while her license was under suspension and failing to cooperate with a disciplinary investigation. Her discipline history included a term suspension, indefinite suspension, and attorney registration suspension.

**PROCEDURE:** Respondent failed to answer the complaint and Relator filed a motion for default. A master commissioner was appointed, made findings of fact and conclusions of law, and recommended disbarment. The Board adopted the recommendation of disbarment.

**FINDINGS:** In September 1999, Respondent was suspended for two years with one year stayed on conditions and ordered to make restitution of \$1,000. Several months later, the Court held Respondent in contempt for failing to surrender her certificate of admission and attorney-registration card, and file a timely affidavit of compliance. In January 2002, the Court suspended Respondent indefinitely for neglecting an entrusted legal matter, failing to maintain complete records of client funds, failing to promptly deliver funds, engaging in dishonesty, fraud, deceit, and misrepresentation, engaging in conduct prejudicial to the administration of justice, engaging in conduct adversely reflecting on her fitness to practice law, and failing to cooperate with a disciplinary investigation. In 2005, the Court imposed an attorney-registration suspension. Respondent's license has been continuously suspended since 1999, but in 2005, she drafted living trusts for a client and never advised them that she was suspended. In 2010, Respondent performed legal services for the same client and received a \$250 retainer but did not return calls or complete the legal work. Respondent did not refund the retainer or return the client's original documents.

**SANCTION:** The Court adopted the Board's findings of fact and conclusions of law, permanently disbarred Respondent, and ordered her to make restitution of \$250 and return the client's complete file within 30 days.

**CASE AUTHORITY FOR SANCTION:** *Frazier* (2006); *Sabroff* (2009)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.15\(d\)](#), [5.5\(a\)](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR [1-102\(A\)\(4\)](#), [1-102\(A\)\(6\)](#), DR [3-101\(B\)](#); Gov. Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(a\)](#) (prior discipline), [\(b\)](#) (dishonest or selfish motive), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(g\)](#) (refusal to knowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Cowden, Disciplinary Counsel v. Nagorney, Disciplinary Counsel v.*  
 131 Ohio St.3d 272, 2012-Ohio-877. Decided 3/6/2012.

**OVERVIEW:** Respondent Cowden accepted employment in which his personal interests could affect his professional judgment, entered into a business transaction with a client, and failed to disclose potential conflicts. Respondent Nagorney used a confidence to the disadvantage of a client and failed to disclose potential conflicts.

**FINDINGS:** Cowden negotiated financing for a client and his company with a venture capital firm in which Cowden was a partner. Cowden also represented the other partners in the venture capital firm. Cowden did not disclose the inherent conflict, or suggest that the client obtain other counsel before signing the financing agreements. Nagorney drafted a financing agreement for the client's company and then sought to enforce the agreement on behalf of another client who was a business associate of Cowden. The record was unclear as to whether the client or the client's business suffered any harm. The Board found that Respondents both engaged in conduct adversely reflecting on their fitness to practice law and failed to disclose potential conflicts of interest. In addition, Cowden accepted employment where his professional judgment could be affected and entered into a business transaction with a client; Nagorney failed to preserve his client's confidences or secrets. The panel did not find that Nagorney accepted representation that would affect his professional judgment and dismissed that charge. The Court adopted these findings.

**SANCTION:** In mitigation, the Board noted that both respondents had taken steps to ensure that this type of misconduct would not reoccur. Cowden sought a six-month stayed suspension and Nagorney sought either dismissal or a public reprimand; Relator argued for a one-year stayed suspension for both respondents. The panel and Board recommended a one-year suspension stayed for Cowden and a six-month stayed suspension for Nagorney. The Court adopted the Board's recommended sanctions.

**CASE AUTHORITY FOR SANCTION:** *McNamee* (2008); *Schmelzer* (1999)

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**Rules Violated:** (Cowden) DR 1-102(A)(6), 5-101(A)(1), 5-104, 5-105(A); (Nagorney) DR 1-102(A)(6), 4-101(B)(2), 5-105(A)

**Aggravation/ Mitigation:** **A-** (c) (pattern of misconduct), (d) (multiple offenses); **M-** (a) (no prior discipline), (b) (no dishonest or selfish motive), (d) (full and free disclosure), (e) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <b>One-year suspension, stayed</b> (Cowden); <b>Six-month suspension, stayed</b> (Nagorney)			

*Craig, Columbus Bar Assn. v.*  
[131 Ohio St.3d 364, 2012-Ohio-1083](#). Decided 3/20/2012.

**OVERVIEW:** Respondent engaged in dishonesty, fraud, deceit, or misrepresentation; failed to keep his client informed; and knowingly made a false statement of material fact or law.

**PROCEDURE:** The panel and Board recommended acceptance of a consent-to-discipline agreement, with a stipulated sanction of a public reprimand. The Court adopted the agreement.

**FINDINGS:** Respondent forged his client's signature on an affidavit of transfer on death, notarized the signature, and filed the affidavit with the recorder's office.

**SANCTION:** The Court adopted the parties' consent-to-discipline agreement and issued a public reprimand.

**CASE AUTHORITY FOR SANCTION:** None cited.

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**Rules Violated:** Prof.Cond.R. [1.4\(a\)\(3\)](#), [4.1\(a\)](#), [8.4\(c\)](#)

**Aggravation/ Mitigation:** A- NONE; M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public Reprimand</a>			

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*Crosby, Disciplinary Counsel v.*  
[132 Ohio St.3d 387, 2012-Ohio-2872](#). Decided 6/27/2012.

**OVERVIEW:** Respondent was charged with five counts alleging violations of the Code of Professional Responsibility including illegal conduct involving moral turpitude, and conduct that is prejudicial to the administration of justice, adversely reflects on his fitness to practice law, and involves dishonesty, fraud, deceit, or misrepresentation. Respondent’s license was suspended in 2009 for two years, and in 2010 Respondent’s license was suspended due to a felony conviction. In addition, Respondent was under an attorney registration suspension at the time of this case.

**FINDINGS:** Respondent pled guilty in 2010 to federal charges of attempted income tax evasion for failing to file tax returns for six years. Respondent was ordered to pay \$314,637 to the IRS and had not made any restitution. Respondent used his IOLTA account to hide his income from the IRS. Respondent also failed to inform the bankruptcy court about settlement proceeds, and failed to turn over funds and provide documentation resulting in summary judgment against Respondent and his client. Respondent further failed to advise his clients that he did not maintain malpractice insurance and provide the required written notification.

**SANCTION:** The Board recommended disbarment and Respondent objected, arguing that his misconduct warranted a two-year suspension. The Court adopted the Board’s recommendation and disbarred Respondent.

**CASE AUTHORITY FOR SANCTION:** *Schram* (2009); *Fernandez* (2003); *Dixon* (2002); *Belock* (1998)

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**Rules Violated:** DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 1-104(A), 7-102(A)(3), 7-102(A)(7), 9-102(B)(3); 9-102(B)(4); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** (a) (prior discipline), (b) (dishonest or selfish motive), (c) (pattern of misconduct), (d) (multiple offenses), (f) (false or deceptive practices during investigation), (h) (harm to vulnerable victim), (i) (no restitution); **M-** (f) (other penalties/sanctions), (g) (chemical/ mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> <a href="#">YES</a>	
<b>Procedure/ Process Issues:</b> NO		<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Culbreath, Columbus Bar Assn. v.*  
 134 Ohio St.3d 24, 2012-Ohio-5031. Decided 11/1/2012.

**OVERVIEW:** Respondent failed to keep funds of clients in a separate interest-bearing account, failed to keep a record of client funds and perform a monthly reconciliation, failed to make reasonable efforts to ensure that the conduct of his nonlawyer employees was compatible with his professional obligations, made a false statement of law or fact to a nonclient, and engaged in conduct that is prejudicial to the administration of justice and that adversely reflected on his fitness to practice law. Twelve years earlier, Respondent was suspended for six months, with the entire six months stayed, for assisting a nonlawyer in the unauthorized practice of law and failing to disclose the assistance.

**FINDINGS:** Respondent neglected to document a settlement and distribute the funds and failed to properly maintain his client trust account. Respondent also failed to fully cooperate in the disciplinary process by not making himself available for a deposition or producing various requested documents. Respondent admitted that he had commingled funds in his trust account, used his trust account to pay personal and business expenses, and made unauthorized withdrawals from the account. Respondent failed to maintain ledgers for the trust account, overdrawed the account three times, and had a number of judgments against him.

**SANCTION:** The Board recommended disbarment and Respondent objected, arguing that the Board erroneously concluded that Respondent had failed to cooperate in the disciplinary process and did not consider his medical diagnosis in mitigation. The Court sustained Respondent's objection and ordered an indefinite suspension, with conditions on reinstatement. The conditions included 12 additional hours of CLE in ethics and office management, a mental health evaluation, completion of an OLAP contract, and one year of probation upon reinstatement.

**CASE AUTHORITY FOR SANCTION:** *Wilson* (2010); *Wise* (2006); *Ranke* (2011); *Weaver* (1975)

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**Rules Violated:** Prof.Cond.R. [1.15](#), [4.1](#), [5.3](#), [8.1](#), [8.4\(d\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(a\)](#) (prior discipline), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(g\)](#) (refusal to acknowledge wrongdoing); **M-** [\(e\)](#) (good character), [\(g\)](#) (chemical/ mental illness)

<b>Court Modified Sanction:</b> YES	<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES
<b>Sanction:</b> Indefinite suspension		

*Dann, Disciplinary Counsel v.*  
[134 Ohio St.3d 68, 2012-Ohio 5337](#). Decided 11/20/2012.

**OVERVIEW:** Respondent engaged in conduct that adversely reflected on his fitness to practice law while serving as the Ohio attorney general. He was convicted of soliciting improper compensation and filing false financial disclosures, both first degree misdemeanors. Respondent had also received a prior public reprimand for handling a legal matter without adequate preparation.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement that included stipulated findings of fact and misconduct and a recommended sanction of a six-month stayed suspension. The Board rejected the agreement and remanded the matter to the hearing panel for further proceedings.

**FINDINGS:** While serving as the Ohio attorney general, Respondent provided his director of general services and communications director with free rental housing and associated benefits. Respondent's campaign committee paid at least \$7,178 in living expenses for the director of general services and more than \$30,000 to the communications director. Respondent also authorized the Marc Dann OAG Transition Corp. to provide a \$5,000 interest-free loan to the director of general services. In addition, as a candidate and an elected official, Respondent was required to file annual financial disclosure forms. In 2007, Respondent filed the required form but failed to disclose 15 expense-reimbursement checks totaling \$17,540.86. In 2008, Respondent failed to disclose that a campaign contributor and his companies paid \$20,803.52 to lease a private jet that transported Respondent, his two minor children, the director of general services' two minor children, and two others to Arizona.

**SANCTION:** The hearing panel and Board adopted the parties' stipulations of fact and misconduct and recommended a six-month suspension. Respondent objected to the recommended sanction, arguing that the Board did not assign the appropriate weight to the applicable aggravating and mitigating factors. The Court agreed with the Board and imposed a six-month suspension. The Court found that Respondent's prior discipline and position as the state's chief legal officer at the time of the misconduct did not justify a public reprimand or stayed suspension.

**CASE AUTHORITY FOR SANCTION:** *Rohrer* (2009); *Lieberman* (1955); *Hennekes* (2006); *Stein* (1972); *Allen* (1997); *Hoskins* (2008); *Taft* (2006); *Carroll* (2005); *Forbes* (2009); *Engel* (2012)

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**Rules Violated:** Prof.Cond.R. [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- (a) (prior discipline); M- (d) (full and free disclosure and cooperative attitude), (e) (good character), (f) (other penalties/sanctions)

<b>Court Modified Sanction:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> YES	<b>Prior Discipline:</b> YES
<b>Sanction:</b> Six-month suspension		

*Davis, Cleveland Metro. Bar Assn. v.*  
[133 Ohio St.3d 327, 2012-Ohio-4546](#). Decided 10/4/2012.

**OVERVIEW:** Respondent failed to disclose information sought in a disciplinary matter; engaged in dishonesty, fraud, deceit, or misrepresentation; engaged in conduct that is prejudicial to the administration of justice and reflects on his fitness to practice law; and failed to cooperate in the disciplinary proceedings. Respondent was indefinitely suspended at the time of this case and also under an attorney registration suspension.

**PROCEDURE:** Respondent failed to answer the complaint and Relator moved for default. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner recommended disbarment and the Board agreed.

**FINDINGS:** Three weeks after Respondent was indefinitely suspended, he opened a client trust account and deposited \$11,190.46. Six days later, he overdrew the account. Respondent overdrew the account for a second time the following year. The record indicated that Respondent continually used the account for personal expenses and that he had more than \$22,000 in outstanding judgment liens. The Court noted that by placing personal funds into a trust account, Respondent improperly represented to his creditors that the funds were being held for a third party.

**SANCTION:** The Court adopted the Board’s findings of fact and conclusions of law and permanently disbarred Respondent. The Court concluded that Respondent engaged in the charged misconduct whether he was practicing under suspension, shielding funds from creditors, or both.

**CASE AUTHORITY FOR SANCTION:** *Mazer* (1996); *Koury* (1977)

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**Rules Violated:** Prof.Cond.R. [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); Gov. Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(a\)](#) (prior discipline), [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation); **M-** NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Davis, Cincinnati Bar Assn. v.*  
[133 Ohio St.3d 525, 2012-Ohio-4998](#). Decided 10/30/2012.

**OVERVIEW:** Respondent failed to notify clients that he did not carry malpractice insurance, failed to deposit client funds in his IOLTA and provided in his fee contract for automatic withdrawal from representation when local rules required the filing of a motion to withdraw.

**PROCEDURE:** The panel and Board recommended acceptance of a consent-to-discipline agreement, with a stipulated sanction of a one-year suspension, with six months stayed.

**FINDINGS:** Respondent undertook to represent a client in a divorce case and was paid a \$1,200 retainer. The retainer was paid in cash and was not placed in any bank account. Respondent admitted that he rarely holds unearned funds in his IOLTA account, instead he cashes client retainer checks or deposits them in the IOLTA account for a short time before writing himself a check from the account. Respondent did not maintain malpractice insurance and failed to provide written notice to clients of same. Respondent’s fee agreement stated that he may automatically withdraw from representation if the client does not make timely payments. This provision conflicted with the local rules of the Hamilton County Domestic Relations Court, which require the filing of a motion to withdraw from a case.

**SANCTION:** The Court adopted the parties’ consent-to-discipline agreement and issued a one-year suspension, with six months stayed on condition that Respondent commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Miles* (1996); *Lubitsky* (1992); *Helbling* (2010)

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**Rules Violated:** Prof.Cond.R. [1.4\(c\)](#), [1.15\(a\)](#), [1.16\(c\)](#)

**Aggravation/ Mitigation:** **A-** [\(d\)](#) (multiple offenses); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension, six months stayed</a> on conditions			

*DeLoach, Akron Bar Assn. v.*  
[133 Ohio St.3d 329, 2012-Ohio-4629](#). Decided 10/10/2012.

**OVERVIEW:** Respondent failed to give written notice to two clients that she did not maintain professional liability insurance. In 2011, Respondent received a stayed suspension with two years' probation and was on probation at the time of this case.

**FINDINGS:** Respondent failed to properly notify two clients in writing that she did not have malpractice insurance and failed to have the clients sign a written notice.

**SANCTION:** The Board accepted the parties' stipulations of fact and misconduct and recommended a public reprimand. The Court adopted the recommendation of the Board, noting that Respondent is on probation and working with a monitor to improve the organization and integrity of her practice.

**CASE AUTHORITY FOR SANCTION:** *Scott* (2011); *Trainor* (2006)

**Rules Violated:** Prof.Cond.R. [1.4\(c\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline); M- [\(b\)](#) (no dishonest or selfish motive) , [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Public reprimand</a>			

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*Derby, Erie-Huron Counties Joint Certified Grievance Commt. v. 131 Ohio St.3d 144, 2012-Ohio-78.* Decided 1/17/2012.

**OVERVIEW:** Respondent neglected eight bankruptcy matters, failed to communicate with his clients, and failed to notify his clients that he lacked professional liability insurance.

**FINDINGS:** Respondent ran a practice that focused primarily on bankruptcy. His wife assisted him as a paralegal and secretary. Beginning in 2006, Respondent faced significant stress as his wife became gravely ill and Respondent was her primary caregiver. Respondent’s wife later died, causing Respondent to “shut down” mentally. Respondent admitted that he took retainers from several clients, but did little to no work, failed to communicate with the clients, failed to respond to requests for information, and failed to notify the clients that he lacked professional liability insurance. The bankruptcy cases at issue were either never filed or dismissed, causing great stress and frustration to the clients. Respondent admitted all of the alleged violations.

**SANCTION:** At Relator’s urging, Respondent either refunded all money owed or completed the bankruptcy work for seven of the eight clients. The final client was still owed \$400. The Board gave some credit for Respondent’s alcohol abuse and depression, but did not accord it full mitigation under BCGD Proc.Reg. 10(B)(2)(g). The Board recommended an 18-month suspension with 12 months stayed, on the conditions that Respondent renew and fully comply with his OLAP contract, make remaining restitution, commit no further misconduct, be subject to a monitor upon his return to practice, and provide documentation from a psychiatrist that he is ready to return to practice. The Court opted for a two-year suspension with 18 months stayed on the above conditions.

**CASE AUTHORITY FOR SANCTION:** *Stoll* (2010); *Hunt* (2010)

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(c)

**Aggravation/ Mitigation:** A- (c) (pattern of misconduct), (d) (multiple offenses), (h) (harm to vulnerable victim), (i) (no restitution); M- (a) (no prior discipline), (c) (restitution or rectified consequences), (d) (full and free disclosure)

<b>Court Modified Sanction:</b> YES		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> Two-year suspension, 18 months stayed on conditions			

*Dockry, Disciplinary Counsel v.*  
 133 Ohio St.3d 527, 2012-Ohio-5014. Decided 10/31/2012.

**OVERVIEW:** The parties stipulated that Respondent failed to hold client funds in an interest-bearing client trust account, failed to maintain a record for each client on whose behalf funds are held, failed to perform monthly reconciliation of the funds held in the client trust account, and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and that adversely reflected on his fitness to practice law.

**FINDINGS:** Respondent deposited and maintained personal funds in his client trust account, used the account to pay his personal and business expenses, borrowed client funds from the account for his personal use, failed to maintain client ledgers, and failed to reconcile the account on a monthly basis. This conduct occurred during a three-year period.

**SANCTION:** The Board adopted the panel's findings of fact, conclusions of law, and recommended sanction of a one-year suspension, with six months stayed. Respondent objected to the recommended sanction, and the Court sustained Respondent's objection in part. The Court imposed a one-year suspension, all stayed on the conditions that Respondent serve one year of monitored probation and commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Fletcher* (2009); *Fowerbaugh* (1995); *Fumich* (2007); *Johnston* (2009); *Karris* (2011); *Kraemer* (2010); *Nance* (2008); *Newcomer* (2008); *Peden* (2008); *Vivyan* (2010);

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**Rules Violated:** Prof.Cond.R. 1.15(a), 1.15(a)(2), 1.15(a)(5), 8.4(c), 8.4(h)

**Aggravation/ Mitigation:** **A-** (b) (dishonest or selfish motive); **M-** (a) (no prior discipline), (c) (restitution or rectified consequences), (d) (full and free disclosure), (e) (good character)

<b>Court Modified Sanction: YES</b>		<b>Criminal Conduct: NO</b>	
<b>Procedure/ Process Issues: NO</b>	<b>Public Official: NO</b>	<b>Prior Discipline: NO</b>	
<b>Sanction: One-year</b> suspension, stayed on conditions			

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*Edwards, Disciplinary Counsel v.*  
 134 Ohio St.3d 271, 2012-Ohio-5643. Decided 12/5/2012.

**OVERVIEW:** Respondent failed to deposit client funds in an interest bearing client trust account, engaged in conduct that adversely reflected on his fitness to practice law, and engaged in dishonesty, fraud, deceit, or misrepresentation.

**FINDINGS:** Respondent maintained a client trust account, which primarily contained proceeds withheld from his clients' personal injury settlements to cover subrogated interests in those cases. Respondent wrote ten checks, totaling \$69,500, to himself from the account. The last of the checks caused the account to be overdrawn. Respondent testified that during the 17 months that he was misappropriating funds from his client trust account, he continued to negotiate the subrogated interests of his clients and pay them as they became due. Respondent made full restitution to his trust account, and no clients were harmed as a result of his misconduct.

**SANCTION:** The Board recommended a two-year suspension, all stayed on conditions (the panel recommended a one-year, fully stayed suspension). Relator objected to the recommended sanction, arguing that Respondent's deceitful misappropriation of client funds warranted an actual suspension. In consideration of the significant mitigating factors, the Court adopted the Board's recommended sanction, and conditioned the stay on an additional two-year OLAP contract and mental health counseling.

**CASE AUTHORITY FOR SANCTION:** *Hunter* (2005); *Bubna* (2007); *Gerren* (2004); *O'Neill* (2004)

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**Rules Violated:** Prof.Cond.R. 1.15(a), 8.4(c), 8.4(h)

**Aggravation/ Mitigation:** A- (c) (pattern of misconduct); M- (a) (no prior discipline), (c) (restitution or rectified consequences), (d) (full and free disclosure), (e) (good character), (g) (chemical/mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> Two-year suspension, stayed on conditions			

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*Elum, Disciplinary Counsel v.*  
[133 Ohio St.3d 500, 2012-Ohio-4700](#). Decided 10/18/2012.

**OVERVIEW:** The parties stipulated that Respondent, a Massillon Municipal Court judge, committed several violations of the Code of Judicial Conduct and the Rules of Professional Conduct.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement that included stipulated findings of fact and misconduct. The panel rejected the agreement, including the jointly recommended sanction of a public reprimand. At hearing, the parties submitted stipulated facts, exhibits, violations, and a recommended sanction of a public reprimand. The panel adopted the stipulations, but rejected the sanction, recommending instead that Respondent receive a six-month stayed suspension.

**FINDINGS:** Respondent committed six violations of the Code of Judicial Conduct and two violations of the Rules of Professional Conduct by using vulgar and intemperate language and behaving in an undignified, unprofessional, and discourteous manner towards litigants in his courtroom. Respondent injected himself into an administrative investigation, impairing the independence of the judiciary. Respondent allowed his history of conflicts with the Massillon Police Department to cloud his judgment, resulting in a failure to fairly and impartially apply the law. The Court stated, “[r]ather than promoting the even handed administration of justice, these actions have served to erode public confidence in the integrity of the judiciary.”

**SANCTION:** The Board accepted the findings of fact, conclusions of law, and recommended sanction of a six-month stayed suspension. The Court adopted the recommended sanction of a six-month suspension, stayed on the condition that Respondent commit no misconduct during the suspension.

**CASE AUTHORITY FOR SANCTION:** *Campbell* (2010); *Evans* (2000); *Ferreri* (1999); *Franko* (1958); *Gaul* (2010); *Goldie* (2008); *Hoague* (2000); *Runyan* (2006); *Russo* (2010); *Sargeant* (2008)

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**Rules Violated:** Jud.Cond.R. [1.2](#), [2.2](#), [2.8\(B\)](#), [2.11\(A\)](#); Prof.Cond.R. [8.4\(d\)](#)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct); **M-** [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> <a href="#">YES</a>	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month</a> suspension, stayed on conditions			

*Engel, Disciplinary Counsel v.*  
[132 Ohio St.3d 105, 2012-Ohio-2168](#). Decided 5/17/2012.

**OVERVIEW:** Respondent engaged in conduct prejudicial to the administration of justice and adversely reflecting on his fitness to practice law.

**PROCEDURE:** The Board rejected the parties’ consent-to-discipline agreement, which recommended a public reprimand. The parties entered into stipulated findings of fact, misconduct, and mitigation. The panel heard testimony from Respondent and three character witnesses.

**FINDINGS:** Respondent served as chief legal counsel to the Ohio Department of Public Safety (OPS). While serving as chief counsel, Respondent used a filter to intercept e-mail to and from the media and also from the Inspector General’s Office. The e-mail filter captured confidential communications, and as a result Respondent pled guilty to three third-degree misdemeanor charges of disclosing confidential information belonging to the Inspector General’s Office.

**SANCTION:** The Board adopted the panel’s report in its entirety and recommended a public reprimand. The Court, however, found that Respondent’s distribution of confidential information about pending law-enforcement and ethics investigations while serving as chief counsel for DPS worked to undermine public trust not only in the legal system, but in state government as well. The Court also distinguished *Taft*, concluding that case only involved a Prof.Cond.R. 8.4(d) violation. For those reasons, the Court ordered a six-month suspension.

**CASE AUTHORITY FOR SANCTION:** *Taft* (2006)-distinguished

**DISSENT:** Justice Stratton dissented, stating that the panel had the opportunity to personally observe Respondent and judge his credibility. Justice Stratton indicated that the Court should not second-guess the panel and that based on *Forbes*, the penalty was out of proportion to the violation.

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**Rules Violated:** Prof.Cond.R. [8.4\(d\)](#) and [\(h\)](#)

**Aggravation/ Mitigation:** A- NONE; M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character), [\(f\)](#) (other penalties/sanctions)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> <a href="#">YES</a>	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> <a href="#">YES</a>	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension</a>			

*Ford, Disciplinary Counsel v.*  
[133 Ohio St.3d 105, 2012-Ohio-3915](#). Decided 9/5/2012.

**OVERVIEW:** In a case involving two clients, Respondent failed to act with diligence, inform his clients about the status of the matter, consult with his clients, comply with reasonable client requests, and cooperate in the disciplinary process.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner recommended a two-year suspension, with six months stayed on conditions and the Board agreed.

**FINDINGS:** Respondent neglected the first client's matter by failing to submit a qualified domestic-relations order (QDRO). The client called Respondent more than 50 times in three years attempting to discuss the matter and sent the presiding judge a letter complaining about Respondent's lack of communication and the failure to complete the representation. The judge sent Respondent a letter instructing him to contact his client and take care of the outstanding QDRO. As of the date the motion for default was filed, Respondent had not filed the QDRO. Respondent agreed to represent a second client for a flat fee of \$5,000 to file a motion to vacate, correct, or set aside his federal sentence for conspiracy, money laundering, and fraud. Respondent's client sent the client a letter noting strict deadlines to file such a motion. When Respondent's client did not hear from Respondent, he filed a motion pro se, but the government moved to strike his motion for exceeding the page limitation. Respondent did not file a revised motion to vacate on behalf of his client and the court dismissed the action. The client requested a refund, but Respondent refused.

**SANCTION:** The Court adopted the Board's recommendation that Respondent be suspended for two years, with six months stayed on the conditions that he make restitution within 30 days to the individuals who paid the second client's fee and that he commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Torian* (2005); *Snyder* (1999); *Boylan* (1999); *Hallquist* (2011); *Noel* (2010)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [8.1\(b\)](#), [8.4\(d\)](#); Gov. Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year suspension, six months stayed</a> on conditions			

*Gallo, Disciplinary Counsel v.*  
[131 Ohio St.3d 309, 2012-Ohio-758](#). Decided 2/29/2012.

**OVERVIEW:** Respondent recklessly made allegations against a judge that were untrue.

**FINDINGS:** Respondent, while waiting for a court appearance, believed that a judge, who was also a third-party intervener in Respondent's case, was standing in the court hallway in an attempt to intimidate his client. The man standing in the hallway was actually the judge's bailiff. Based on the client's reaction, a picture of the judge he found on the internet, and his supervising lawyer's comment that the man "sound[ed] like [the judge]," Respondent accused the judge of violating ethical rules in a subsequent motion and accompanying affidavit. When Respondent learned that the man in the hallway was not the judge, he filed a motion to withdraw his affidavit. The Board found that Respondent recklessly made false statements about a judge and engaged in conduct prejudicial to the administration of justice; the Board dismissed allegations of Prof.Cond.R. 8.4(c) and 8.4(h). The Court adopted these findings.

**SANCTION:** The Board found Respondent's inexperience and recent admission to the bar to be a mitigating factor. Respondent requested dismissal or a public reprimand; Relator sought a six-month suspension. The panel and Board recommended a public reprimand. Respondent objected to the Board's finding that his statements were reckless. The Court overruled the objection, finding that Respondent could have taken more steps to confirm the identity of the judge, and that he failed to do so. The Court adopted the Board's recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Mullaney* (2008)

**DISSENT:** Justice Lundberg Stratton, joined by Justice O'Donnell, believed that Respondent made a simple good-faith mistake against a judge who was not presiding over a case in which Respondent was involved, but was instead a third-party intervenor. Furthermore, because Respondent took steps to correct the error upon learning of his mistake, the dissenters would have dismissed.

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**Rules Violated:** Prof.Cond.R. [8.2\(a\)](#), [8.4\(d\)](#)

**Aggravation/ Mitigation:** A- NONE; M- (a) (no prior discipline), (b) (no dishonest or selfish motive), (c) (restitution or rectified consequences), (d) (full and free disclosure), (e) (good character), (f) (other penalties/ sanctions)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public Reprimand</a>			

*Gildee, Disciplinary Counsel v.*  
[134 Ohio St.3d 374, 2012-Ohio-5641](#). Decided 12/5/2012.

**OVERVIEW:** Respondent failed to hold property of clients in an interest bearing client trust account, failed to promptly deliver funds or other property that a client or third party is entitled to receive, knowingly made a false statement of material fact in connection with a disciplinary matter, engaged in conduct that adversely reflected on the fitness to practice law, and engaged in dishonesty, fraud, deceit, or misrepresentation.

**FINDINGS:** Respondent represented a client and his company on a one-third contingent-fee basis in a commercial-lease dispute against a sports club. The case settled and the defendants agreed to pay the client a lump-sum payment of \$32,500, followed by quarterly lease payments. Respondent gave the client a check drawn on Respondent's client trust account in the amount of \$21,669, which represented two-thirds of the \$32,500 settlement payment. The defendants sent Respondent lease payments, but she did not deposit all of the payments into her client trust account. Instead, she either cashed them or deposited them into her operating account. The contingent-fee agreement required Respondent to disburse \$8,347 of the lease payments made by the defendants to the client, but she misappropriated these funds. In an attempt to justify the misappropriation, Respondent fabricated a letter to the client stating that she was applying the lease payments to unpaid fees. Respondent fabricated two additional letters in an effort to establish that she had made promised payments to her client.

**SANCTION:** The Board recommended a two-year suspension, with one year stayed on conditions. The Court adopted the recommended sanction and conditioned reinstatement on full restitution to the client.

**CASE AUTHORITY FOR SANCTION:** *Burchinal* (2012); *Clafin* (2005)

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(d\)](#), [8.1](#), [8.4\(c\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(d\)](#) (multiple offenses), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year suspension, with one year stayed</a> on conditions			

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*Gregory, Toledo Bar Assn. v.*  
[132 Ohio St.3d 110, 2012-Ohio-2365](#). Decided 5/30/2012.

**OVERVIEW:** Respondent failed to promptly deposit retainers in her client trust account and failed to maintain a record of the funds held on behalf of each client.

**PROCEDURE:** The panel rejected the parties’ consent-to-discipline agreement because it addressed only counts six and seven of Relator’s complaint. The parties stipulated facts and misconduct with respect to counts six and seven. The Board agreed with the panel’s recommended sanction of a six-month suspension stayed with conditions and the Court adopted the recommended sanction.

**FINDINGS:** Respondent mishandled the retainers received by two clients. Respondent failed to promptly deposit the retainers in her client trust account and maintain an accurate record of the funds held for each client and records for her client trust account in general. Relator requested dismissal of counts one through five of the complaint and the panel agreed. The Board dismissed the charged violations of Prof.Cond.R. 1.1, 8.1(a), and 8.1(b). The Court approved the dismissed violations and also dismissed the 1.15(a)(3) violation.

**SANCTION:** Given Respondent’s full acknowledgment of her deficiencies, her timely good-faith effort to make restitution, and her sincere assurance that she will not commit similar misconduct in the future, the Court adopted the Board’s recommendation of a six-month suspension, all stayed, on the conditions that Respondent complete a one-year term of monitored probation, attend at least six hours of CLE in law-office management, and commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Fletcher* (2009); *Vivyan* (2010)

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(a\)\(2\)](#), [1.15\(a\)\(4\)](#), [1.15\(a\)\(5\)](#), [1.15\(c\)](#)

**Aggravation/ Mitigation:** A- [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses); M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (full and free disclosure)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a> on conditions			

*Groner, Akron Bar Assn. v.*

131 Ohio St.3d 194, 2012-Ohio-222. Decided 1/25/2012.

**OVERVIEW:** Respondent filed a pleading containing false accusations and misrepresentations about an individual who applied to administer a probate estate.

**FINDINGS:** Respondent was retained to file a motion to oppose an individual's sister as administrator of their deceased mother's estate. Respondent used an online service that provides background checks to obtain information on the sister. Respondent obtained a 16-page report that listed various bankruptcy filings and criminal sanctions for a person with the same name as the sister. The information in this report was used in Respondent's motion to the court. However, the report contained information about anyone in the United States with the same name as the sister. There were 19 entries that varied in location, age, race, and sex. The Board found that Respondent had no basis in law or fact to make the accusations she did, that she filed a pleading containing false information, and that she made a misrepresentation to the court.

**SANCTION:** The Board recommended a 12-month suspension with 6 months stayed, and Respondent filed objections. The Court, in response to Respondent's objections, dismissed the charged violations of 8.4(c), 8.4(d), and 8.4(h) as not proven by clear and convincing evidence. The Court stated that while it did not condone Respondent's recklessness and sloppy conduct, the mitigating circumstances present in this case warranted a lesser sanction. The Court ordered a six-month stayed suspension.

**CASE AUTHORITY FOR SANCTION:** *Agopian* (2006); *Rohrer* (2009); *Robinson* (2010)

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**Rules Violated:** Prof.Cond.R. [3.1](#), [3.3\(a\)\(1\)](#), [3.3\(a\)\(3\)](#), [4.1](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(d\)](#) (multiple offenses), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>			

*Gusley, Cleveland Metro. Bar Assn. v.*  
[133 Ohio St.3d 534, 2012-Ohio-5012](#). Decided 10/31/2012.

**OVERVIEW:** Respondent failed to act with reasonable diligence and promptness, failed to keep one client informed about the status of the matter, and failed to enter into a written contingent fee agreement signed by the client.

**PROCEDURE:** The panel and Board recommended acceptance of a consent-to-discipline agreement, with a stipulated sanction of a public reprimand.

**FINDINGS:** Respondent failed to enter into a written contingent-fee agreement with a client and failed to register for the electronic filing system of the United District Court for the Northern District of Ohio, which resulted in Respondent's not receiving notices of filings in the client's case and missing a filing deadline.

**SANCTION:** The Court adopted the parties' consent-to-discipline agreement and imposed a public reprimand. The Court also dismissed the charged violation of Prof.Cond.R. 3.4(c) upon Relator's recommendation.

**CASE AUTHORITY FOR SANCTION:** None cited.

**DISSENT:** Justice Pfeifer dissented and would dismiss the complaint.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(3\)](#), [1.5\(c\)\(1\)](#)

**Aggravation/ Mitigation:** A- NONE; M- (a) (no prior discipline), (b) (no dishonest or selfish motive), (c) (restitution or rectified consequences), (d) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public Reprimand</a>			

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*Hall, Disciplinary Counsel v.*  
[131 Ohio St.3d 222, 2012-Ohio-783](#). Decided 3/1/2012.

**OVERVIEW:** Respondent took money from nine clients and did not do the associated legal work. The parties stipulated to the facts and violations.

**FINDINGS:** Respondent was originally charged with thirteen counts of misconduct. Based on the stipulations, the Board dismissed four of those counts. Respondent took money from clients and performed little or no work. Respondent also made misrepresentations to a client. The Board accepted the stipulated violations and the Court agreed.

**SANCTION:** The Board recommended the stipulated sanction of a two-year suspension with six months stayed, followed by a one-year probation. The Board also recommended full restitution to all of the clients. The Court adopted the Board’s recommended sanction, and ordered restitution in specific amounts to seven clients totaling \$11,900. The Court conditioned reinstatement on payment of the restitution.

**CASE AUTHORITY FOR SANCTION:** *Gresley* (2010); *Ellis* (2008)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.16\(e\)](#), [8.4\(c\)](#), [8.4\(h\)](#); DR 1-102(A)(6)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(h\)](#) (harm to vulnerable victim); **M-** [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year suspension, six months stayed</a> and probation			

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*Hartke, Cincinnati Bar Assn. v.*  
[132 Ohio St.3d 116, 2012-Ohio-2443](#). Decided 6/6/2012.

**OVERVIEW:** Respondent threatened a client with criminal action to gain advantage in a civil matter and engaged in conduct that adversely reflected on his fitness to practice law. In 1993, the Court had suspended Respondent for one year.

**PROCEDURE:** The panel rejected the parties’ consent-to-discipline agreement and the matter proceeded to a hearing.

**FINDINGS:** In 2009, Respondent represented a client in a divorce proceeding. The client owed Respondent over \$5,000 in legal fees. Respondent agreed to accept one half of the distribution from his client’s ex-husband’s 401(k) plan to satisfy the legal fees. Respondent began calling his client to determine the status of the distribution and when Respondent refused his phone calls, Respondent went to the client’s apartment and demanded the payment. Respondent threatened criminal action against his client and insisted that she go to the bank. The client went to the bank, but she was so upset that the tellers escorted her to the back of the bank and called police. The Board concluded that Respondent violated Prof.Cond.R. 1.2(e) and 8.4(h).

**SANCTION:** The Board adopted the panel’s report in its entirety and recommended a six-month stayed suspension. The Court, however, found that Respondent’s actions warranted a six-month suspension due to his selfish motive, failure to admit wrongdoing, and his client’s vulnerability.

**CASE AUTHORITY FOR SANCTION:** *Freeman* (2005); *Booher* (1996); *Moore* (2004)

**DISSENT:** Justice Lanzinger dissented, stating that she would impose a six-month stayed suspension.

**Rules Violated:** Prof.Cond.R. [1.2\(e\)](#) and [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(b\)](#) (dishonest or selfish motive), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim); M- [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Six-month</a> suspension			

*Harvey, Toledo Bar Assn. v.*  
[133 Ohio St.3d 228, 2012-Ohio-4545](#). Decided 10/4/2012.

**OVERVIEW:** Respondent failed to act with reasonable diligence in representing a client, failed to keep the client informed about the status of the matter, and engaged in conduct that is prejudicial to the administration of justice. The parties submitted joint stipulations of fact and misconduct regarding seven bankruptcy cases and one small claims case. Respondent denied the violations charged concerning seven additional bankruptcy cases.

**FINDINGS:** Respondent failed to file required documents in seven client bankruptcy cases which resulted in the closing of the cases without discharge. Respondent was once verbally admonished on the record and was twice sanctioned by the bankruptcy court for his failure to timely file documents. In seven other bankruptcy cases, Respondent blamed the clients for his failure to file documents. The panel rejected Respondent's position in regard to five of the cases and dismissed the charges connected to the remaining two cases.

**SANCTION:** The Board recommended a one-year suspension, with six months stayed. The Court adopted the findings of fact and misconduct, but in light of the significant mitigating factors present, imposed a one-year suspension, fully stayed, on the conditions that Respondent complete a one-year period of monitored probation and commit no further misconduct. The mitigating factors relied upon by the Court included the stress caused to Respondent by his divorce and the sudden death of his mother.

**CASE AUTHORITY FOR SANCTION:** *Fidler* (1998); *Spencer* (1994)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(3\)](#), [8.4\(d\)](#)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (**multiple offenses**), [\(g\)](#) (refusal to acknowledge wrongdoing); **M-** [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year</a> suspension, stayed on conditions			

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*Heck, Medina Cty. Bar Assn. v.*  
[134 Ohio St.3d 77, 2012-Ohio-5319](#). Decided 11/20/2012.

**OVERVIEW:** Respondent failed to act with reasonable diligence in representing a client, failed to inform the client that she did not maintain professional-liability insurance, and failed to preserve the identity of client funds and promptly deliver funds that the client was entitled to receive.

**PROCEDURE:** The panel and Board recommended acceptance of a consent-to-discipline agreement, with a stipulated sanction of a one-year suspension, all stayed on conditions.

**FINDINGS:** Respondent missed a deadline to file a signed agreed judgment entry with the court, failed to notify a client that she did not carry malpractice insurance, and failed to deposit client funds in an interest-bearing client trust account.

**SANCTION:** The Court adopted the parties’ consent-to-discipline agreement and imposed a one-year suspension, all stayed on the conditions that Respondent enter into a contract with OLAP, follow all OLAP recommendations, and commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** None cited.

**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(c\)](#), [1.15](#)

**Aggravation/ Mitigation:** A- NONE; M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year</a> suspension, stayed on conditions			

*Hennekes, Cincinnati Bar Assn. v.*  
[135 Ohio St.3d 106, 2012-Ohio-5689](#). Decided 12/6/2012.

**OVERVIEW:** In a case involving two criminal clients, Respondent failed to provide competent representation, act with diligence, and deliver client funds. He also collected an excessive fee, engaged in undignified or discourteous conduct that is degrading to a tribunal, and failed to cooperate in the disciplinary process. Respondent had a prior two-year suspension after he was convicted of conspiracy to distribute cocaine and possession of cocaine with intent to distribute. Respondent had been reinstated, but was under an attorney registration suspension at the time of this case.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed, made findings of fact and conclusions of law, and recommended an indefinite suspension. Respondent’s conduct included failing to appear for a client at an arraignment and refund the client’s fee, failing to appear for a second client’s criminal trial, and ignoring the court’s attempts to contact Respondent about the trial. The Board adopted the findings of fact and conclusions of law, but recommended permanent disbarment.

**FINDINGS:** Respondent took his clients’ money, failed to render any services, failed to return the clients’ money, and failed to cooperate in the disciplinary investigation.

**SANCTION:** The Court adopted the Board’s recommendation that Respondent be permanently disbarred. The Court also ordered Respondent to make restitution to one of the clients within 30 days and the Clients’ Security Fund within 90 days.

**CASE AUTHORITY FOR SANCTION:** *Moushey* (2004)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.5](#), [1.15\(d\)](#), [3.5\(a\)\(6\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(i\)](#) (no restitution); M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Hilburn, Disciplinary Counsel v.*  
[135 Ohio St.3d 1, 2012-Ohio-5528](#). Decided 12/3/2012.

**OVERVIEW:** Respondent was charged with misconduct in four client matters. She failed to act with reasonable diligence, failed to keep clients informed about the status of the matter, failed to consult with clients about the means by which the clients' objectives are to be accomplished, engaged in conduct prejudicial to the administration of justice and that adversely reflected on Respondent's fitness to practice law, and failed to cooperate in the disciplinary investigation.

**FINDINGS:** Respondent neglected several client matters, did not respond to client requests for information and documents, failed to return phone calls, and failed to file court documents. Respondent misrepresented her involvement with OLAP to a court and failed to cooperate in the disciplinary investigation. The Court detailed ten instances of Respondent's lack of cooperation in its opinion.

**SANCTION:** The Board recommended an 18 month suspension, with 12 months stayed on conditions. The Court adopted the recommended sanction with the conditions that Respondent remain in compliance with her OLAP contract and the treatment recommendations of her mental health professionals. Upon reinstatement, Respondent must serve a period of monitored probation. The Court specifically recognized a nurse practitioner as a health care professional capable of diagnosing a mental disability for purposes of BCGD Proc. Reg. 10(B)(2)(g).

**CASE AUTHORITY FOR SANCTION:** None cited.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(2\)](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [8.1\(b\)](#), [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation); **M-** [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(g\)](#) (chemical/mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Eighteen-month suspension, with 12 months</a> stayed on conditions			

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*Hines, Disciplinary Counsel v.*  
[133 Ohio St.3d 166, 2012-Ohio-3929](#). Decided 9/6/2012.

**OVERVIEW:** Respondent engaged in an inappropriate relationship with a client.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement that included stipulated findings of fact and misconduct and an agreed sanction of a public reprimand. The Board recommended that the agreement be accepted, but the Court rejected it and remanded the matter back to the Board for further proceedings.

**FINDINGS:** Respondent agreed to represent a client in an ongoing domestic-relations dispute. After several meetings, Respondent invited his client to dinner and expressed his interest in dating her. Respondent indicated to the client that a personal relationship would not be a conflict of interest and they became sexually intimate. Respondent continued to represent the client in the domestic-relations dispute during their relationship and hired her as a bookkeeper for his law firm. Respondent leased a car for his client to use, and contributed to her mortgage and utility payments. Eventually, the personal relationship fell apart, and Respondent mailed a letter to the client notifying her of an adverse ruling in the domestic-relations case, and notifying her that he was ending their attorney-client relationship. When Respondent mailed the letter, his client had 11 days to protect her legal rights by objecting to the adverse ruling. Respondent did not seek leave for an extension of the deadline, refer the client to another attorney, or assist her in protecting her rights.

**SANCTION:** The Board adopted the panel's report in its entirety and recommended a 12-month suspension with the final six months stayed. The Court, however, found that although Respondent made a serious mistake his cooperative approach to the investigation and limited nature of misconduct warrants a six-month stayed suspension on condition that Respondent commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Siewert* (2011); *Burkholder* (2006)

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**Rules Violated:** Prof.Cond.R. [1.8\(j\)](#) and [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> YES		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension</a> , stayed on condition			

*Johnson, Disciplinary Counsel v.*  
[131 Ohio St.3d 372, 2012-Ohio-1284](#). Decided 3/28/2012.

**OVERVIEW:** Respondent failed to hold client funds separate from personal funds, maintain records of client funds, and deposit advance fees and expenses into a client trust account. Respondent also engaged in conduct that is prejudicial to the administration of justice, adversely reflects on his fitness to practice law, and involves dishonesty, fraud, deceit, or misrepresentation. Respondent further failed to respond to a demand for information by a disciplinary authority and cooperate with the disciplinary investigation.

**PROCEDURE:** Relator filed a motion for default, which a master commissioner considered. The master commissioner recommended that Respondent be suspended for two years with six months stayed on conditions. The Board adopted the findings of the master commissioner. Respondent timely filed objections to the Board’s report and moved to both supplement the record and remand the matter to the Board. The Court remanded the case back to the Board to consider supplementary mitigation evidence.

**FINDINGS:** Respondent commingled personal and client funds in his client trust account and wrote numerous checks to himself, his wife, his assistant, and various other entities for his personal and business expenses. Respondent failed to maintain ledgers for the client funds in his possession and his trust account was either overdrawn or checks were returned for insufficient funds at least nine times. Respondent also failed to abide by a court order to produce client funds in a divorce proceeding and made false statements to the court about his client ledgers.

**SANCTION:** The Board found that Respondent suffers from a number of physical and mental disabilities, including major depressive disorder. The licensed independent social worker who diagnosed and treated Respondent testified on remand that the disabilities contributed to the cause of his misconduct. The Board rejected Relator’s request for a two-year suspension with six months stayed on conditions because, Relator failed to account for the mitigating evidence submitted on remand. The Court adopted the Board’s recommendation of a two-year suspension, with the last 18 months stayed on the condition that Respondent commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Crosby* (2009)

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(a\)\(2\)](#), [1.15\(b\)](#), [1.15\(c\)](#), [1.15\(d\)](#), [3.3\(a\)\(1\)](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 9-102(A), 9-102(B)(3); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(e\)](#) (lack of cooperation); **M-** [\(a\)](#) (no prior discipline), [\(c\)](#) (restitution or rectified consequences), [\(e\)](#) (good character), [\(g\)](#) (chemical/ mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year suspension, 18 months stayed on conditions</a>			

*Kelly, Cleveland Metro. Bar Assn. v.*  
[132 Ohio St.3d 292, 2012-Ohio-2715](#). Decided 6/20/2012.

**OVERVIEW:** Respondent neglected a client’s divorce, collected and retained a fee without performing work, and failed to cooperate in the disciplinary proceedings. Respondent’s suspension for failure to register for the 2009-2011 biennium also remained in effect during this case.

**PROCEDURE:** Respondent failed to answer the two-count complaint. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner recommended an indefinite suspension but the Board recommended a two-year suspension, with one year stayed, on the condition that Respondent refund \$1,200 to his client.

**FINDINGS:** As to count one of the complaint, a client paid Respondent \$1,000 in three installments for a divorce. After three weeks of unreturned phone calls from the client, Respondent spoke with the client and requested another \$200 for filing fees. The client paid Respondent the \$200, but never heard from Respondent again. Respondent has not refunded any of the client’s payments. In count two of the complaint, Relator charged Respondent with dismissing a malpractice action without client consent and causing the dismissal of the refilled case by failing to attach a Civ.R. 10(d) affidavit of merit. The Board found that the only evidence submitted was a certified copy of the malpractice complaint on behalf of the affected client and concluded that it did not clearly and convincingly demonstrate that Respondent committed the misconduct. The Board dismissed count two because the malpractice complaint contained mere statements of the misconduct and therefore Relator had not provided sworn or certified evidence as required under Gov.Bar R. V, Section 6(F)(1)(b).

**SANCTION:** The Board recommended that Respondent be suspended for two years, with one year stayed on the condition of restitution. However, the Court agreed with the master commissioner and imposed an indefinite suspension.

**CASE AUTHORITY FOR SANCTION:** *Hoff* (2010); *Mathewson* (2007)

**DISSENT:** Justices Pfeifer and O’Donnell would impose a two-year suspension, with one year stayed on condition, as recommended by the Board.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(4\)](#), [1.5\(a\)](#), [1.16\(e\)](#), [8.1\(b\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable), [\(i\)](#) (no restitution); **M-** NONE

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Indefinite</a> suspension			

*King, Columbus Bar Assn. v.*  
[132 Ohio St.3d 501, 2012-Ohio-873](#). Decided 3/6/2012.

**OVERVIEW:** Respondent engaged in dishonesty, fraud, deceit, and misrepresentation, failed to keep client funds separate from his own, failed to notify his clients about his lack of liability insurance, failed to promptly deliver client funds, and failed to keep adequate trust account records. Respondent stipulated to the facts and misconduct.

**FINDINGS:** Respondent used client money from his trust account for personal and office expenses and then deposited personal funds to cover these expenses. Respondent’s record keeping was haphazard, and he made false statements during the disciplinary process and to his client about the trust account funds. Respondent failed to maintain professional liability insurance and did not disclose this to his clients. Respondent stipulated that his conduct reflected adversely on his fitness to practice law and that he engaged in dishonesty, fraud, deceit, and misrepresentation. Respondent further stipulated that he failed to keep client funds separate from his own, and did not notify his clients about his lack of liability insurance, promptly deliver client funds, or keep adequate records.

**SANCTION:** Although the parties stipulated that Respondent cooperated in the disciplinary process, the Board rejected the stipulation as outweighed by Respondent’s fabrications and misrepresentations during the early stages of the process. The Board recommended a two-year suspension, 12 CLE hours on accounting and law-office management, and one year of monitored probation. The Court adopted the Board’s recommendation.

**CASE AUTHORITY FOR SANCTION:** *Crosby* (2009)

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**Rules Violated:** Prof.Cond.R. [1.4\(c\)](#), [1.15\(a\)](#), [1.15\(c\)](#), [1.15\(d\)](#), [1.15\(e\)](#), [8.4\(c\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(f\)](#) (false or deceptive practices during investigation); **M-** [\(a\)](#) (no prior discipline)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year suspension</a>			

*Kish, Mahoning Cty. Bar Assn. v.*  
[131 Ohio St.3d 105, 2012-Ohio-40](#). Decided 1/11/2012.

**OVERVIEW:** Respondent committed multiple acts of misconduct in 12 client relationships, including failing to act with diligence, charging a clearly excessive fee, and failing to return unearned fees and other client money promptly.

**FINDINGS:** While representing clients in a variety of matters, Respondent accepted retainers and/or full fee payments but did little or no work. Respondent’s lack of work in some instances caused his clients hardship; in other instances, Respondent eventually completed the legal work. The Board found that Respondent failed to act with reasonable diligence, failed to promptly respond to requests for information, failed to keep the clients reasonably informed about the matter, charged clearly excessive fees, and failed to deliver client funds and unearned fees promptly. The Court agreed with these findings, except that it did not find that Respondent failed to respond to clients’ requests for information. Prof.Cond.R. 1.4(a)(4) states that the response must be done “as soon as practicable” and there was not clear and convincing evidence that Respondent failed to do so.

**SANCTION:** Although the parties stipulated to mental health mitigation, the Board did not find a sustained period of successful treatment, and thus did not consider Respondent’s mental health as a mitigating factor. Furthermore, while the Board found that Respondent had no prior discipline, the Court noted Respondent’s brief attorney registration suspension in 2005. Respondent sought a one-year suspension with conditions; the Board instead recommended an indefinite suspension. The Court agreed, and ordered an indefinite suspension, as well as \$12,500 in restitution to 10 clients within 30 days. The Court further ordered that Respondent, prior to reinstatement, must provide proof of on-going mental health counseling, and after reinstatement, shall be subject to a two-year probationary period and monitoring of his practice and trust account.

**CASE AUTHORITY FOR SANCTION:** *Pullins* (2010); *Andrews* (2010); *Holland* (2005)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4](#), [1.4\(a\)\(3\)](#), [1.5\(a\)](#), [1.15\(d\)](#), [1.16\(e\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(i\)](#) (no restitution); M- [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> Indefinite suspension			

*Koehler, Disciplinary Counsel v.*  
[132 Ohio St.3d 465, 2012-Ohio-3235](#). Decided 7/19/2012.

**OVERVIEW:** Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct that adversely reflected on his fitness to practice law, and engaged in conduct that is prejudicial to the administration of justice.

**FINDINGS:** Respondent was hired to probate an estate and serve as administrator. Respondent was informed that an account at Key Bank in the amount of \$13,736.86 was going to be remitted to unclaimed funds. Respondent's client asked him to secure the funds and gave Respondent verbal authorization to take any necessary steps to do so. Key Bank informed Respondent that he would have to obtain authorization from his client. After unsuccessfully trying to contact his client, Respondent took his secretary's notary stamp and notarized the authorization letter, signing both his secretary's and client's name to the letter. Respondent used the authorization to obtain the funds, deposited them in his trust account, finalized the estate, and paid his client the proper amount.

**SANCTION:** The parties stipulated to the facts and a six-month stayed suspension. The Board recommended, and the Court adopted, the stipulated sanction of a six-month suspension, stayed on the condition that Respondent commit no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Papcke* (1998); *Roberts* (2008)

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**Rules Violated:** Prof.Cond.R. [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- NONE; M- (a) (no prior discipline), (b) (no dishonest or selfish motive), (d) (full and free disclosure)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>			

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*Large, Trumbull Cty. Bar Assn. v.*  
 134 Ohio St.3d 172, 2012-Ohio-5482. Decided 11/29/2012.

**OVERVIEW:** Respondent failed to act with reasonable diligence and promptness in representing a client, failed to deliver client property, failed to hold client property separate from his own property, and failed to deposit advance legal fees and expenses into a client trust account. He also engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, conduct that adversely reflected on his fitness to practice law, and conduct that is prejudicial to the administration of justice, and knowingly made a false statement to a tribunal. The Court had previously suspended Respondent’s license for failure to pay income taxes, and was reinstated approximately 21 months prior to this decision.

**FINDINGS:** This case involved three client matters. First, Respondent was retained by a client to file a divorce. Respondent eventually filed the divorce case, but only once the client became dissatisfied after a number of calls to Respondent’s office. Respondent did not return any of the client’s calls. Respondent also deposited the client’s retainer into his business account, rather than his trust account. Second, Respondent was retained by another client to file a bankruptcy. Respondent deposited the client’s retainer in his business account instead of his trust account. After paying Respondent, the client did not hear from him and Respondent did not file the bankruptcy. Thereafter, Respondent was suspended from the practice of law and failed to inform the client of his suspension. The third matter was a child support modification. Respondent accepted a retainer from this client and deposited it into his business account. Respondent failed to notify the client and the court that he was suspended from the practice of law. He failed to file the proper child support paperwork with the court and as a result caused the client financial harm. Respondent failed to have written fee agreements with all three clients. Respondent violated the Court’s previous suspension order and made misrepresentations when applying for reinstatement.

**SANCTION:** The Board recommended a two-year suspension, with six months stayed on the condition that Respondent reimburse the Clients’ Security Fund for any money paid to Respondent’s clients. Respondent filed objections, challenging the Board’s application of the aggravating factors. The Court adopted the Board’s recommendation.

**CASE AUTHORITY FOR SANCTION:** None cited.

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**Rules Violated:** Prof.Cond.R. 1.3, 1.4(a)(3), 1.15(a), 1.15(c), 1.15(d), 3.3(a), 8.4(c), 8.4(d), 8.4(h); Gov.Bar R. V(4)(G)

**Aggravation/ Mitigation:** A- (a) (prior discipline), (b) (dishonest or selfish motive), (c) (pattern of misconduct), (e) (lack of cooperation), (f) (false or deceptive practices during investigation), (g) (refusal to acknowledge wrongdoing), (h) (harm to vulnerable victim); M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> Two-year suspension, with six months stayed on conditions			

*Lorenzon, Disciplinary Counsel v.*  
[133 Ohio St.3d 332, 2012-Ohio-4713](#). Decided 10/16/2012.

**OVERVIEW:** Respondent engaged in conduct that adversely reflected on his fitness to practice law by permitting others to use his attorney-registration number and electronic signature.

**FINDINGS:** Respondent entered into an “of counsel” agreement with Consumer Law Group, P.A. (“CLG”), a Florida law firm that negotiates debt on behalf of consumers. The agreement provided that Respondent would be paid \$1,000 annually to serve as local counsel and that he would execute a contract with each Ohio client and provide telephone consultation as needed. To facilitate the execution of the contracts, Respondent provided CLG with his electronic signature and attorney-registration number. Respondent later learned that CLG had used his name, electronic signature, and attorney-registration number to enter into client contracts without his knowledge.

**SANCTION:** The parties submitted stipulated facts, mitigation, and aggravation. The panel found that Respondent violated Prof.Cond.R. 8.4(h), but recommended the dismissal of the six counts charged in the complaint. The panel and Board recommended a six-month stayed suspension. The Court agreed and also dismissed the allegations in counts two through six of Relator’s complaint.

**CASE AUTHORITY FOR SANCTION:** *Ball* (1993); *Maley* (2008); *Watson* (2005)

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**Rules Violated:** Prof.Cond.R. [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- [\(g\)](#) (refusal to acknowledge wrongdoing); M- [\(a\)](#) (no prior discipline), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension, stayed</a>			

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*Luther, Columbiana Cty. Bar Assn. v.*  
[133 Ohio St.3d 135, 2012-Ohio-4196](#). Decided 9/19/2012.

**OVERVIEW:** Respondent neglected a client matter, failed to communicate with his client, failed to hold funds in a client trust account until a dispute was resolved, failed to promptly return any unearned fees upon his withdrawal, and failed to cooperate in the disciplinary investigation. Respondent was under an attorney-registration suspension at the time of this case.

**PROCEDURE:** Respondent failed to answer the two-count complaint and Relator filed a motion for default. A master commissioner was appointed and made findings of fact and conclusions of law. Finding that the only evidence to support count one was a hearsay-filled affidavit of a grievance committee member, the matter commissioner dismissed all rule violations regarding that count except failure to cooperate. The master commissioner determined the second count was supported by clear and convincing evidence and recommended an indefinite suspension.

**FINDINGS:** Respondent agreed to file a complaint for divorce for his client. He accepted \$125 for the initial consultation, \$2,675 for legal services, and \$299 for filing fees. Respondent failed to file the complaint (the client's spouse then filed the divorce), attended only one pretrial hearing, and failed to appear at the final divorce hearing. Throughout the representation, Respondent failed to return his client's phone calls. Respondent advised the client that if she would dismiss the grievance she filed against him, he would refund some of her money.

**SANCTION:** The Board recommended and the Court adopted the master commissioner's findings of fact and misconduct. The Court imposed an indefinite suspension.

**CASE AUTHORITY FOR SANCTION:** *Hoff* (2010); *Davis* (2009); *Mathewson* (2007)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(2\)](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.16\(e\)](#), [8.1\(b\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation); M-NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

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*Maguire, Disciplinary Counsel v.*  
[131 Ohio St.3d 412, 2012-Ohio-1298](#). Decided 3/29/2012.

**OVERVIEW:** Respondent misused her client trust account by depositing personal funds into the account and commingling personal and client funds. Respondent also engaged in conduct that adversely reflected on her fitness to practice law and failed to cooperate with the disciplinary proceedings.

**PROCEDURE:** Respondent failed to answer the complaint and Relator filed a motion for default. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner recommended a one-year suspension from the practice of law.

**FINDINGS:** Respondent had been working primarily as a nurse and was not taking any new legal clients. Respondent kept her client trust account open, deposited several of her nursing paychecks and legal client’s checks into the account, paid personal expenses out of the account, and overdrew the account three times. Respondent paid the overdrafts and closed the account. The Board found no aggravating factors and a single mitigating factor of no prior disciplinary record.

**SANCTION:** The Board recommended, and the Court adopted, a one-year suspension from the practice of law. The Court noted that Respondent’s failure to cooperate with the disciplinary investigation warranted a more severe sanction.

**CASE AUTHORITY FOR SANCTION:** *Simon* (2011); *Johnston* (2009)

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(b\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** A- NONE; M- [\(a\)](#) (no prior discipline)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension</a>			

*Malynn, Medina Cty. Bar Assn. v.*  
[131 Ohio St.3d 377, 2012-Ohio-1293](#). Decided 3/28/12.

**OVERVIEW:** Respondent committed multiple acts of misconduct, including conduct involving dishonesty, fraud, deceit, or misrepresentation. Respondent also failed to act with diligence in representing a client, preserve the identity of client funds, inform his clients of decisions requiring informed consent, consult with his clients, comply with reasonable client requests, and cooperate in the disciplinary process.

**FINDINGS:** This case involved four client matters. Respondent accepted retainers from these clients, but did little work and missed deadlines. His lack of work caused a default judgment and a lapsed statute of limitations. Respondent also deposited funds he received from the clients in to his operating account, not a client trust account, and failed to issue funds.

**SANCTION:** While the Board found that Respondent had no prior discipline, the Court noted Respondent’s attorney registration suspension and continuing legal education suspension. Respondent argued that a sanction no greater than a six-month suspension would be appropriate due to his diagnosed anxiety disorder. Finding that Respondent did not satisfy the mental disability standards of BCGD Proc.Reg. 10(B)(2)(g), the Board recommended a two-year suspension, with six months stayed. The Court agreed, and ordered a two-year suspension, with six months stayed. The Court further ordered that Respondent, prior to reinstatement, must provide proof that he completed a mental-health evaluation, followed all treatment recommendations, and is competent to return to the ethical, professional practice of law.

**CASE AUTHORITY FOR SANCTION:** *Dismuke* (2011)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(1\)](#), [1.4\(a\)\(2\)](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.15](#), [8.4\(c\)](#); DR 9-102

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(f\)](#) (false or deceptive practices during investigation), [\(h\)](#) (harm to vulnerable victim); **M-** [\(a\)](#) (no prior discipline), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Two-year suspension, six months stayed</a>			

*Matlock, Dayton Bar Assn. v.*  
[134 Ohio St.3d 276, 2012-Ohio-5638](#). Decided 12/5/2012.

**OVERVIEW:** Respondent committed multiple acts of misconduct, including failing to communicate, failing to obtain a written contingent fee agreement, failing to act with reasonable diligence, commingling, and failing to provide written notice of a lack of professional liability insurance. Respondent had four attorney registration suspensions, and was under a registration suspension at the time of this case.

**FINDINGS:** Respondent's conduct involved two client matters. In the first, Respondent's client paid him \$35 for a collection letter. There was no written fee agreement, but Respondent claimed that there was an oral agreement in which Respondent would receive a one-third contingent fee. The debt was paid, and Respondent informed the client that he would deduct his one-third fee and forward the balance. The check that Respondent wrote to the client was dishonored by the bank and Respondent ultimately paid the client with a money order. In the second client matter, Respondent received \$450 from his client to file QDRO forms with the court in a divorce case. Respondent failed to file the forms and the domestic relations court found Respondent in contempt. Also, during his representation of clients, Respondent did not properly communicate that he did not have professional malpractice insurance. Respondent also deposited personal funds into his client trust account and paid personal expenses from the account. Respondent did not retain sufficient records documenting the transactions involving his trust account.

**SANCTION:** The Board adopted the hearing panel's findings and conclusions, and recommended a two-year suspension, with one-year stayed on certain conditions, and reinstatement subject to specified conditions. The Court imposed the recommended sanction and conditions, which included an OLAP contract and monitoring.

**CASE AUTHORITY FOR SANCTION:** *Riek* (2010); *Crosby* (2009); *McNerny* (2009)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(2\)](#), [1.4\(a\)\(3\)](#), [1.4\(c\)](#), [1.5\(b\)](#), [1.5\(c\)](#), [1.15\(a\)](#), [8.1\(b\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(a\)](#) (prior discipline), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation); **M-** [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Two-year suspension, one-year stayed</a> on conditions			

*McCormack, Disciplinary Counsel v.*  
[133 Ohio St.3d 192, 2012-Ohio-4309](#). Decided 9/26/2012.

**OVERVIEW:** The parties stipulated that Respondent, a magistrate until 2009, committed several violations of the Code of Judicial Conduct and the Rules of Professional Conduct.

**FINDINGS:** This was a fully-stipulated case in which the parties waived a hearing. In a postdecree custody and support case, Respondent conducted himself in an undignified and discourteous manner, treated litigants and their counsel with disdain, permitted a guardian ad litem to lecture the parties on the record, terminated hearings before the parties presented all their evidence and had made a record of their objections, acted on his own whims rather than inquiring into the best interests of the child, failed to resolve any of the matters pending before him for more than a year and a half, and failed to conduct hearings in a manner that would permit the judge assigned to the case to resolve the issues. Respondent's actions caused the judge to declare a mistrial in the postdecree custody and support case.

**SANCTION:** The Board recommended the stipulated sanction of a six-month, fully stayed suspension. The Court adopted the facts and violations but ordered a one-year suspension, all stayed on the conditions that Respondent submit to a mental health evaluation by OLAP and comply with OLAP's recommendations. The Court concluded that the record failed to demonstrate that Respondent's mental health condition contributed to his misconduct. The Court was also "troubled" by the brief duration of Respondent's treatment for adjustment disorder and anxiety.

**CASE AUTHORITY FOR SANCTION:** *Greene* (1995); *Lukey* (2006); *Olivito* (2006); *Shaffer* (2003)

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**Rules Violated:** Jud.Cond.R. [1.2](#), [2.2](#), [2.5\(A\)](#), [2.6\(A\)](#), [2.6\(B\)](#), [2.8\(B\)](#); Canon [1](#), [2](#), [3\(B\)\(4\)](#), [3\(B\)\(8\)](#); Prof.Cond.R. [8.4\(d\)](#)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(h\)](#) (harm to vulnerable victim); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (full and free disclosure), [\(g\)](#) (chemical/mental illness)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> <a href="#">YES</a>	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year</a> suspension, stayed on conditions			

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*McNeal, Disciplinary Counsel v.*  
[131 Ohio St.3d 224, 2012-Ohio-785](#). Decided 3/1/2012.

**OVERVIEW:** Respondent submitted false pay forms for hours not worked and used his employer’s LexisNexis account for personal purposes related to his private practice. Respondent was a lieutenant colonel in the U.S. Air Force Reserve JAG Corps until he resigned to avoid formal separation proceedings.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner accepted Relator’s proposed one-year suspension, but the Board instead recommended an indefinite suspension.

**FINDINGS:** This case centered on Respondent’s resignation from his JAG position after he had submitted false timesheets and improperly used his LexisNexis account for his private law practice. The Board found that Respondent engaged in dishonesty, fraud, deceit, or misrepresentation, conduct prejudicial to the administration of justice, and conduct that adversely reflects on his fitness to practice law. Respondent also failed to respond to a disciplinary investigator’s requests for information, and failed to cooperate in the disciplinary investigation. The Court adopted the Board’s findings.

**SANCTION:** The Court held that Respondent’s misconduct was serious, but noted that Respondent had not been charged with a crime and there was not any evidence of chemical dependency. The Court rejected the Board’s recommended sanction, instead imposing the master commissioner’s recommendation of a one-year suspension.

**CASE AUTHORITY FOR SANCTION:** *Carroll* (2005); *Kraemer* (2010); *Crossmock* (2006); *Yajko* (1997); *Crowley* (1994)

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**Rules Violated:** Prof.Cond.R. [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** A- [\(e\)](#) (failure to cooperate); M- [\(a\)](#) (no prior discipline)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension</a>			

*Meehan, Disciplinary Counsel v.*  
 133 Ohio St.3d 51, 2012-Ohio 3894. Decided 8/29/2012.

**OVERVIEW:** Respondent practiced law while on an attorney registration suspension, engaged in conduct that adversely reflected on his fitness to practice, and engaged in conduct that is prejudicial to the administration of justice.

**PROCEDURE:** The panel rejected the parties' consent-to-discipline agreement, which recommended a 12-month stayed suspension, and the matter proceeded to a hearing.

**FINDINGS:** Respondent's practice was primarily limited to eviction actions. Respondent's license was suspended for registration violations, and Respondent continued filing eight eviction complaints. Neither Respondent's client nor the signatories on the deeds notarized by Respondent were aware of his suspension. Respondent admitted that he received the letter notifying him of the suspension, however he never opened any of his mail because he was experiencing a "major depressive episode." Once Respondent became aware of his suspension, he took the necessary steps and had his license reinstated.

**SANCTION:** The parties stipulated and the Board agreed that Respondent violated 5.5(a), 8.4(d) and (h). The Board recommended that Respondent be suspended for a period of 24 months, with all 24 months stayed on conditions and the Court adopted the Board's recommended sanction. The conditions included mental health treatment, compliance with an OLAP contract, and two years of monitored probation.

**CASE AUTHORITY FOR SANCTION:** *Thorpe* (1988); *McDonald* (1995); *Shabazz* (1995); *Blackwell* (1997); *Carson* (2001); *Scott* (2011)

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**Rules Violated:** Prof.Cond.R. [5.5\(a\)](#), [8.4\(d\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses); **M-** [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character), [\(g\)](#) (chemical/mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Twenty-four</a> months suspension, stayed on conditions			

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*Meyer, Disciplinary Counsel v.*  
[134 Ohio St.3d 180, 2012-Ohio-5487](#). Decided 11/29/2012.

**OVERVIEW:** Respondent continued to practice while under a CLE suspension, knowingly made a false statement of material fact in connection with her disciplinary case, and failed to disclose a material fact in response to a demand for information by a disciplinary authority. During these proceedings, Respondent also received a reciprocal 61-day suspension for CLE violations in Kentucky.

**FINDINGS:** The parties stipulated that Respondent practiced law while under suspension, made false and misleading statements in a letter to Disciplinary Counsel about her unauthorized practice, and failed to update the Supreme Court's Office of Attorney Services with the name she was using professionally in her practice.

**SANCTION:** The Board adopted the panel's findings of fact and conclusions of law, but amended the recommended sanction of an 18-month suspension with 12 months stayed to an 18-month suspension, with six months stayed on the condition that Respondent comply with her OLAP contract. The Board rejected the stipulated mitigating factor of no prior discipline, in light of the order of reciprocal discipline entered after the panel hearing. The Court adopted the recommended sanction of the Board.

**CASE AUTHORITY FOR SANCTION:** *Fowerbaugh* (1995)

**DISSENT:** Justice Lanzinger dissented and would impose an 18-month suspension, with 12 months stayed, as recommended by the panel.

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**Rules Violated:** Prof.Cond.R. [1.16\(a\)\(1\)](#), [5.5\(a\)](#), [8.1\(a\)](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- NONE; M- [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperation)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Eighteen-month suspension, with six months stayed on conditions</a>			

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*Mezher, Cincinnati Bar Assn. v. Espohl, Cincinnati Bar Assn. v.*  
 134 Ohio St.3d 319, 2012-Ohio-5527. Decided 12/3/2012.

**OVERVIEW:** Respondents practiced in the same firm, and Respondent Mezher was the firm’s owner. Respondent Mezher engaged in misleading advertising and Respondent Espohl failed to communicate to a client the basis or rate of the fee charged.

**FINDINGS:** Respondents’ firm website advertised free initial consultations. Respondent Mezher controlled the content of the website, which did not indicate any limitation on the free consultation. Respondent Espohl conducted an initial 30-minute consultation with a client on a probate matter. The client then signed a fee agreement and met with Respondent Espohl for another 30 minutes. Three weeks later, the client discharged Espohl, who then billed the client \$250 for an “ATTY-CONFERENCE,” and \$125 for additional time spent on the matter. The client paid the bill in full, but questioned the \$250 conference charges as the firm advertised free consultations. The Board found that Respondent Mezher engaged in misleading advertising by failing to state on the firm website that the free consultation ended upon the signing of a fee agreement. The Board also determined that Respondent Espohl did not communicate the basis for his fee when he failed to tell the client that the free consultation ended when the client signed the fee agreement.

**SANCTION:** The Board recommended a public reprimand for both respondents. The Court adopted the Board’s findings of fact, conclusions of law, and recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Reid* (1999); *Cleary* (2001); *Filkins* (2000); *Zauderer* (U.S. Sup. Ct. 1985); *Shane* (1998); *Britt* (2012)

**DISSENT:** Justices Stratton and Pfeifer would have dismissed the charges because the rules for advertising a free consultation have “never been made clear.”

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**Rules Violated:** (Mezher) Prof.Cond.R. [7.1](#); (Espohl) Prof.Cond.R. [1.5\(b\)](#)

**Aggravation/ Mitigation:** A- [\(i\)](#) (no timely restitution); M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public Reprimand</a>			

*Miller, Toledo Bar Assn. v.*  
[132 Ohio St.3d 63, 2012-Ohio-1880](#). Decided 5/2/2012.

**OVERVIEW:** The parties stipulated that Respondent knowingly made false statements to a tribunal, engaged in conduct that adversely reflects on his fitness to practice law, and diverted funds from a client trust account of a law firm to pay the expenses of one of his clients.

**FINDINGS:** Respondent was a partner in a Toledo law firm who was a debtor in a garnishment proceeding. In the garnishment case, Respondent twice denied being employed by the law firm. Respondent was also a debtor in a Chapter 13 bankruptcy case in which he failed to inform the court of separation disbursements from the law firm. Respondent further used the escrow account of another firm client to pay the filing fee for a pro bono client of Respondent.

**SANCTION:** The Board recommended the stipulated sanction of a one-year suspension with six months stayed on conditions, with the six-month actual suspension followed by a year of monitoring. The Court adopted the Board’s recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Greene* (1995); *Lukey* (2006); *Olivito* (2006); *Shaffer* (2003)

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [3.3\(a\)\(1\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses); **M-** [\(a\)](#) (no prior discipline), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension, six months stayed on conditions</a>			

*Motylnski, Disciplinary Counsel v.*  
[134 Ohio St.3d 562, 2012-Ohio-5779](#). Decided 12/7/2012.

**OVERVIEW:** Respondent failed to comply as soon as practicable with reasonable requests for information from a client, failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions, and practiced law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement, which included stipulated findings of fact and misconduct and an agreed sanction of a public reprimand. The Board recommended that the agreement be accepted, but the Court rejected it and remanded the matter to the Board for further proceedings.

**FINDINGS:** In 2009, a New York law firm referred its client to Respondent to handle a collection matter on a contingent-fee basis. The firm forwarded Respondent a check in the amount of \$125 for court costs. Respondent filed a complaint in the Cuyahoga County Court of Common Pleas on behalf of the client. In the meantime, Respondent received an offer of employment in the Virgin Islands, which he accepted. Respondent subsequently moved out of the country and changed his license status to inactive. Respondent did not respond to the New York law firm’s numerous phone calls and emails regarding the status of the case. It was not until the law firm demanded that Respondent return the file that Respondent responded to any of the law firm’s messages. Respondent continued to work on the case after registering as inactive. The court discovered that Respondent was registered as inactive and dismissed the case without prejudice. Respondent continued to attempt to negotiate a settlement for his client until the law firm discovered Respondent’s inactive status and terminated his services.

**SANCTION:** On remand from the Court, the parties submitted stipulated findings of fact, misconduct, mitigation, and recommended a six-month stayed suspension. The panel agreed to accept the parties’ stipulations in lieu of a hearing. The Board adopted the panel’s proposed sanction, and the Court imposed a six-month suspension, with the entire suspension stayed on the condition that Respondent pay restitution of \$125 to the client for reimbursement of the court costs.

**CASE AUTHORITY FOR SANCTION:** None cited.

**Rules Violated:** Prof.Cond.R. [1.4\(a\)\(4\)](#), [1.4\(b\)](#), [5.5\(a\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (no dishonest or selfish motive); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> Six-month suspension, stayed on condition			

*Noel, Disciplinary Counsel v.*  
[134 Ohio St.3d 157, 2012-Ohio-5456](#). Decided 11/28/2012.

**OVERVIEW:** Respondent failed to maintain client funds in a separate interest-bearing trust account, engaged in conduct that adversely reflected on his fitness to practice law and that involved dishonesty, fraud, deceit, or misrepresentation, and failed to cooperate in the disciplinary process. Respondent had been previously suspended for two years, with six months stayed on conditions. Respondent’s term of suspension had expired, but he had not applied for reinstatement.

**FINDINGS:** Respondent’s misconduct involved two client matters. First, Respondent received \$700 to represent a criminal client and deposited the money into his business checking account. The client attempted to contact Respondent several times, but Respondent did not return any of the phone calls. Respondent refunded the fee on the day of the disciplinary hearing. Respondent also failed to respond to numerous letters during the disciplinary process. Respondent answered only after Relator filed a complaint and motion for entry of default, at which time Respondent stipulated to most of the allegations and the charged misconduct.

**SANCTION:** The Board adopted the findings of fact, conclusions of law, and recommended sanction of an indefinite suspension. The Court agreed with the Board and imposed an indefinite suspension.

**CASE AUTHORITY FOR SANCTION:** *Davis* (2011); *Gottelher* (2010); *Clovis* (2010); *Van Sickle* (2011); *Wagner* (2007)

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(i\)](#) (no restitution); M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Nagorney, Disciplinary Counsel v. Cowden, Disciplinary Counsel v.*  
 131 Ohio St.3d 272, 2012-Ohio-877. Decided 3/6/2012

**OVERVIEW:** Respondent Cowden accepted employment in which his personal interests could affect his professional judgment, entered into a business transaction with a client, and failed to disclose potential conflicts. Respondent Nagorney used a confidence to the disadvantage of a client and failed to disclose potential conflicts.

**FINDINGS:** Cowden negotiated financing for a client and his company with a venture capital firm in which Cowden was a partner. Cowden also represented the other partners in the venture capital firm. Cowden did not disclose the inherent conflict, or suggest that the client obtain other counsel before signing the financing agreements. Nagorney drafted a financing agreement for the client's company and then sought to enforce the agreement on behalf of another client who was a business associate of Cowden. The record was unclear as to whether the client or the client's business suffered any harm. The Board found that Respondents both engaged in conduct adversely reflecting on their fitness to practice law and failed to disclose potential conflicts of interest. In addition, Cowden accepted employment where his professional judgment could be affected and entered into a business transaction with a client; Nagorney failed to preserve his client's confidences or secrets. The panel did not find that Nagorney accepted representation that would affect his professional judgment and dismissed that charge. The Court adopted these findings.

**SANCTION:** In mitigation, the Board noted that both respondents had taken steps to ensure that this type of misconduct would not reoccur. Cowden sought a six-month stayed suspension and Nagorney sought either dismissal or a public reprimand; Relator argued for a one-year stayed suspension for both respondents. The panel and Board recommended a one-year suspension stayed for Cowden and a six-month stayed suspension for Nagorney. The Court adopted the Board's recommended sanctions.

**CASE AUTHORITY FOR SANCTION:** *McNamee* (2008); *Schmelzer* (1999)

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**Rules Violated:** (Cowden) DR 1-102(A)(6), 5-101(A)(1), 5-104, 5-105(A); (Nagorney) DR 1-102(A)(6), 4-101(B)(2), 5-105(A)

**Aggravation/ Mitigation:** A- (c) (pattern of misconduct), (d) (multiple offenses); M- (a) (no prior discipline), (b) (no dishonest or selfish motive), (d) (full and free disclosure), (e) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension, stayed</a> (Cowden); <a href="#">Six-month suspension, stayed</a> (Nagorney)			

*Nowicki, Dayton Bar Assn. v*  
[133 Ohio St.3d 74, 2012-Ohio-3912](#). Decided 9/4/2012.

**OVERVIEW:** Respondent failed to act with reasonable diligence in representing a single client. Respondent also had a previous five-day attorney registration suspension.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement that included a stipulated sanction, and the Board recommended acceptance of the agreement.

**FINDINGS:** Respondent was hired to represent a client in a civil matter but failed to prepare for trial, enter an appearance, file timely objections to the magistrate’s decision, and appeal the judgment. Respondent’s lack of diligence resulted in an \$8,262.94 judgment against the client.

**SANCTION:** The consent-to-discipline agreement recommended a six-month stayed suspension on the condition that Respondent reimburse his client \$2,142.36 in monthly installments of at least \$250. The Court accepted the agreement and clarified that the payments must be completed within six months of the Court’s decision.

**CASE AUTHORITY FOR SANCTION:** *Drain* (2008)

**Rules Violated:** Prof.Cond.R. [1.3](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(h\)](#) (harm to vulnerable victim); M- [\(c\)](#) (restitution or rectified consequences), [\(h\)](#) (other interim rehabilitation)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Six-month suspension</a> , stayed on condition			

*O'Neal, Dayton Bar Assn. v.*  
[134 Ohio St.3d 361, 2012-Ohio-5634](#). Decided 12/5/2012.

**OVERVIEW:** Respondent failed to provide competent representation to a client, failed to act with reasonable diligence in representing a client, failed to hold client property in an interest bearing client trust account, failed to deposit advance legal fees and expenses into a client trust account, and failed to deliver client funds. Respondent was previously suspended for six months, all stayed, and placed on a two-year probation for handling a client's legal matter without adequate preparation and neglecting an entrusted matter. Respondent's probation was terminated in that case fifteen years prior to these proceedings.

**FINDINGS:** Respondent received a \$100 initial consultation fee and \$2,000 retainer to represent a client in two probate cases. Respondent did not deposit the money into a client trust account. Over the next year, Respondent missed three consecutive deadlines to file the commissioner's report and failed to appear for the ensuing show cause hearing. The probate court cited Respondent and fined his client, who eventually filed the report without Respondent's assistance. The client, however, wrongfully distributed the estate funds, and the court ordered that she recover the funds and file an amended report. Neither Respondent nor the client filed the amended report, and the court issued two additional citations for missed deadlines. The client sent Respondent a letter terminating their attorney-client relationship and demanding a refund and files. Respondent received the letter, but did not refund the money or seek to withdraw as counsel. Instead, Respondent filed a commissioner's report, which showed a distribution of legal and commissioner fees that had not been approved by the court. The court immediately ordered Respondent to appear for a show cause hearing. The client and her new counsel filed a fiduciary's account report, which listed a \$3,050 distribution to Respondent. These fees had not been approved by the court, and the court ordered Respondent to appear for a hearing. Respondent failed to appear, but later requested additional time to submit applications for attorney fees. Respondent did not timely file the fee applications. The probate court ultimately found Respondent in contempt. Only then did Respondent disgorge his client's funds.

**SANCTION:** The parties submitted stipulations of fact and misconduct. At the time of the hearing, Respondent was seventy-one years old. The hearing panel, concerned about Respondent's cognitive abilities and memory, ordered a psychiatric examination. The appointed physician diagnosed "age-associated cognitive decline." The parties jointly recommended a one-year suspension, with six months stayed on conditions. The Board adopted the findings of fact and misconduct but recommended that Respondent be suspended for two years, with the entire suspension stayed on conditions. The Court, however, agreed with the panel that a two-year suspension, with eighteen months stayed on conditions, was the appropriate sanction. The Court found that although Respondent's cognitive decline did not qualify as a mitigating factor under BCGD Proc. Reg. 10(B)(2)(g), it was relevant to determining the appropriate sanction. The conditions imposed by the Court included ten additional hours of CLE in law office management and estate and probate law, evidence of a geriatric psychological assessment, an OLAP contract, and two years of probation.

**CASE AUTHORITY FOR SANCTION:** *Hartke* (2012); *Parker* (2007); *Wise* (2006); *Agopian* (2006);

**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.15\(a\)](#), [1.15\(c\)](#), [1.15\(d\)](#)

**Aggravation/ Mitigation:** A- (c) (pattern of misconduct), (d) (multiple offenses); M- (b) (no dishonest or selfish motive), (c) (restitution or rectified consequences), (d) (cooperative attitude), (g) (chemical/mental illness)

<b>Court Modified Sanction:</b> YES		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> Two-year suspension, with eighteen months stayed			

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*Parisi, Dayton Bar Assn. v.*  
[131 Ohio St.3d 345, 2012-Ohio-879](#). Decided 3/8/2012.

**OVERVIEW:** Respondent represented both a proposed guardian and ward in a guardianship proceeding, collected fees from the ward’s account without court approval, and collected a clearly excessive fee from an elderly client with diminished capacity. The parties stipulated to many of the facts and exhibits.

**FINDINGS:** This case involved Respondent’s representation of two elderly clients. First, Respondent represented an elderly woman with diminished capacity and the woman’s niece, the proposed guardian, in a guardianship case. Respondent accepted fees as the elderly woman’s attorney in fact while the guardianship was pending without first obtaining court approval. The Board found this conduct to be a conflict of interest and prejudicial to the administration of justice, however, the Board dismissed a charged violation of Prof.Cond.R. 8.4(c). Respondent objected, arguing that she was permitted to perform these actions under previous case law, was denied due process, was denied an evidentiary hearing before the probate court, and that she properly used her power of attorney to pay the elderly woman’s fees. The Court overruled these objections, noting that Respondent had reason to believe the client was incompetent, and that case law does not allow an attorney to represent both a ward and a proposed guardian in a guardianship application. Second, Respondent provided an elderly client with diminished capacity both legal and nonlegal services, but charged for all of the services at Respondent’s rate for legal work. By doing so, the Board found that Respondent charged a clearly excessive fee (\$220,000 over three years). The Board recommended dismissal of the charged violations of Prof.Cond.R. 8.4(a), 8.4(c), 8.4(d), and DR 1-102(A)(1), DR 1-102(A)(4), and DR 1-102(A)(5). Respondent objected to the Board’s finding of an excessive fee on the grounds that it violates her constitutional right to contract, the applicable rules are void for vagueness, Relator failed to provide expert testimony regarding the reasonableness of Respondent’s fee, and the rules require Respondent to abide by her client’s decisions. The Court overruled these objections and adopted the Board’s findings.

**SANCTION:** The Board recommended a six-month stayed suspension. Respondent recommended dismissal of the complaint, while Relator recommended a suspension with actual time off from practice. After reviewing and distinguishing cases cited by Respondent and Relator, the Court overruled the parties’ objections and adopted the Board’s recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Watkins* (2008); *Alsfelder* (2004); *Dettinger* (2009); *Jacobs* (2006)

**CONCURRENCE:** Justice Cupp concurred with the decision of the Court, but would have added six months of monitoring as a condition of the stay.

**DISSENT:** Chief Justice O’Connor dissented; she would have imposed an indefinite suspension. Justice Lanzinger also dissented and would have imposed a one-year suspension with six months stayed.

**Rules Violated:** Prof.Cond.R.1.5(a), 1.7(a)(2), 8.4(d); DR 2-106(A)

**Aggravation/ Mitigation:** **A-** (b) (dishonest or selfish motive), (d) (multiple offenses), (h) (harm to vulnerable victim); **M-** (a) (no prior discipline), (c) (restitution or rectified consequences), (d) (full and free disclosure), (e) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> Six-month suspension, stayed			

*Peden, Columbus Bar Assn. v.*

134 Ohio St.3d 579, 2012-Ohio-5766. Decided 12/7/2012.

**OVERVIEW:** Respondent engaged in a pattern of misconduct involving multiple violations of the Rules of Professional Conduct. Respondent previously received a six-month stayed suspension for repeatedly overdrawing his client trust account, not maintaining a trust account for a period of time, depositing unearned funds into his operating account, failing to immediately refund any unearned fees, and failing to cooperate. In that case, the Court found Respondent in contempt and imposed the actual suspension for not paying the Board costs. Respondent was reinstated three years prior to this decision and has been under monitored probation since that time.

**FINDINGS:** Relator filed a seven count complaint against Respondent, charging him with misconduct similar to that in the previous case. Respondent mismanaged his client trust account, failed to return unearned fees to his clients, failed to keep his clients informed of their case status, failed to notify clients of his suspension, failed to notify his clients that his malpractice insurance had lapsed, failed to provide reasonable notice of withdrawal of representation, failed to protect the client's interest following withdrawal, and failed to cooperate in the disciplinary investigation.

**SANCTION:** The Board recommended an indefinite suspension with several conditions for reinstatement. Respondent objected to the recommended sanction, arguing the his conduct warranted either probation or a six-month suspension. The Court adopted the recommendation of the Board, imposed an indefinite suspension, and conditioned reinstatement on mental health counseling, compliance with an OLAP contract, law office management CLE, restitution, probation, and an independent trust account monitor. Although there was evidence of a mental disability in Respondent's prior disciplinary case, Respondent failed to present evidence that his mental health qualified as a mitigating factor.

**CASE AUTHORITY FOR SANCTION:** *Boggs* (2011); *Van Sickle* (2011)

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**Rules Violated:** Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(c), 1.15(a), 1.15(d), 1.16(d), 1.16(e), 8.1(b), 8.4(c), 8.4(h)

**Aggravation/ Mitigation:** A- (a) (prior discipline), (b) (dishonest or selfish motive), (c) (pattern of misconduct), (d) (multiple offenses), (e) (lack of cooperation), (h) (harm to vulnerable victim), (i) (no restitution); M- (g) (chemical/mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> Indefinite suspension			

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*Peterson, Disciplinary Counsel v.*  
[135 Ohi St.3d 110, 2012-Ohio-5719](#). Decided 12/6/2012.

**OVERVIEW:** Respondent stole funds from a corporate client, improperly entered into a business transaction with a client without properly advising the client of the possible conflicts or obtaining the client's informed consent, failed to safeguard the client's funds, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, and engaged in conduct that adversely reflected on his fitness to practice law. At the time of this case, Respondent was under an interim felony suspension, which stemmed from the misconduct at issue.

**FINDINGS:** Respondent prepared documents to create a limited liability corporation on behalf of his client. The purpose was to buy, refurbish, and sell homes to supplement his client's income. Respondent paid some of his personal expenses from the LLC account, including credit card bills and travel. During this same time period, Respondent, without authorization, paid himself \$1,200 a month from the LLC account. Respondent pled no contest to a charge of fourth-degree felony theft for his use of the LLC funds. The information charged that Respondent had stolen funds from the LLC of at least \$5,000 and less than \$100,000. Respondent was sentenced to 30 days in jail and five years of community control and was ordered to pay \$80,000 in restitution.

**SANCTION:** The panel recommended an indefinite suspension. The Board adopted the panel's findings of fact and conclusions of law, but recommended disbarment. The Court adopted the panel's recommendation of an indefinite suspension with reinstatement conditioned on Respondent receiving treatment for his bipolar mood disorder and providing evidence of competency from a psychiatrist.

**CASE AUTHORITY FOR SANCTION:** *Kelly* (2009); *Harris* (2002); *Muntean* (2010)

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**Rules Violated:** Prof.Cond.R. [1.7\(a\)\(2\)](#), [1.8\(a\)\(1\)](#), [1.8\(a\)\(2\)](#), [1.8\(a\)\(3\)](#), [1.15\(a\)](#), [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(h\)](#) (harm to vulnerable victim); **M-** [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character), [\(f\)](#) (other penalties/sanctions), [\(g\)](#) (chemical/mental illness)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> <a href="#">YES</a>	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

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*Polke, Cleveland Metro. Bar Assn. v.*  
[135 Ohio St.3d 121, 2012-Ohio-5852](#). Decided 12/12/2012.

**OVERVIEW:** Respondent was originally charged with the misconduct at issue six years prior to this decision. However, the hearing panel at that time ordered Respondent to submit to a psychiatric examination, and ultimately the Court imposed a mental illness suspension without adjudicating the underlying misconduct. Here, Respondent sought to have the mental illness suspension lifted.

**FINDINGS:** Based on the mental health evidence presented and an independent mental health evaluation, the hearing panel determined that Respondent was no longer mentally ill. In addition to considering Respondent's mental illness suspension, the hearing panel considered the underlying misconduct. Respondent accepted retainers from six clients and failed to complete the legal services he agreed to provide, failed to refund the unearned portion of his fee in four cases, and failed to appear at scheduled court proceedings in two criminal matters.

**SANCTION:** The Court adopted the Board's recommendation to terminate Respondent's mental illness suspension and the parties' stipulated findings of fact and misconduct, and imposed a one-year suspension, all stayed on conditions. The Court also declined to waive Respondent's outstanding CLE obligations, and conditioned the stay on satisfaction of any CLE deficiencies, reimbursement to the Clients' Security Fund, compliance with an OLAP contract, monitored probation, and payment of costs.

**CASE AUTHORITY FOR SANCTION:** *Pfundstein* (2010)

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**Rules Violated:** DR 1-102(A)(5), 6-101(A)(3), 7-101(A)(2), 9-102(B)(4)

**Aggravation/ Mitigation:** A- (a) (prior discipline), (c) (pattern of misconduct), (d) (multiple offenses), (i) (no restitution); M- (a) (no prior discipline), (b) (no dishonest or selfish motive), (g) (chemical/mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> One-year suspension, stayed on conditions			

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*Pritchard, Mahoning Cty. Bar Assn. v.*  
[131 Ohio St.3d 97, 2012-Ohio-44](#). Decided 1/11/2012.

**OVERVIEW:** Respondent accepted money from clients without performing legal work, failed to respond to reasonable requests for information, and refused to refund retainers. Respondent previously received an attorney registration suspension and also an interim suspension in 2009. The parties entered into stipulations of fact and misconduct.

**FINDINGS:** Respondent was charged in a 20-count complaint. Among the charges were failures to appear at hearings, neglect of legal matters, accepting money and doing little to no work, failure to respond to reasonable requests for information from clients, failure to notify clients that Respondent lacked professional liability insurance, failure to return or refund unearned fees and entering into business transactions with clients. The Board dismissed one violation of Prof.Cond.R. 1.4 (reasonably inform client about the matter) as not proven by clear and convincing evidence. The Court agreed, and also dismissed a violation of Prof.Cond.R. 1.3 (reasonable diligence), even though it was stipulated to by the parties and found by the Board. *See Donlin* (1996). The Court adopted the Board’s findings of fact and conclusions of law.

**SANCTION:** Although the Board found Respondent had no prior discipline, the Court noted that his attorney registration suspension constitutes prior discipline. Respondent presented evidence pertaining to his wife’s illness and the stress he encountered as her primary caregiver. She also served as his only support staff person. Respondent argued for a two-year suspension. The Board recommended an indefinite suspension, with no credit for time served and full restitution. The Board recognized the hardship Respondent had faced, but noted that he had harmed 20 clients, some irreversibly. Furthermore, the Board determined that some misconduct preceded Respondent’s personal hardships. The Court agreed that an indefinite suspension was the appropriate sanction, and added the conditions that Respondent provides proof of continuing mental health counseling, comply with his OLAP contract, attend a course in law office management, comply with CLE requirements, make full restitution, and, upon reinstatement, submit to two years of monitored probation.

**CASE AUTHORITY FOR SANCTION:** *Broschak* (2008); *Andrews* (2010); *Holland* (2005)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.4\(c\)](#), [1.8](#), [1.15\(d\)](#), [1.16\(d\)](#), [1.16\(e\)](#); DR 5-104(A), 6-101

**Aggravation/ Mitigation:** A- [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (failure to cooperate), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); M- [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character), [\(g\)](#) (chemical/ mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Proctor, Disciplinary Counsel v.*

[131 Ohio St.3d 215, 2012-Ohio-684](#). Decided 2/23/2012.

**OVERVIEW:** Respondent made allegations of impropriety against opposing counsel and a judge while knowing the allegations were false, or with reckless disregard as to their truth or falsity. The parties stipulated to the findings of fact and conclusions of law, leaving only the sanction at issue.

**FINDINGS:** Respondent was ordered to pay attorney fees totaling \$31,995.90 in a case he initiated but was later dismissed by his client. Respondent paid \$26,000 and moved to vacate the order, which the court denied. Respondent then alleged in court documents that the judge and opposing counsel had engaged in ex parte communications and gone to great lengths to cover up the action. Respondent stipulated that these allegations were made recklessly. The panel found that Respondent engaged in undignified conduct towards a tribunal, recklessly made false statements about a judicial officer, and failed to maintain a respectful attitude toward the courts. The Court agreed with the findings of fact and misconduct.

**SANCTION:** Although the parties stipulated to the imposition of other fines as a mitigating factor, the panel found that Respondent's \$26,000 sanction was the impetus for the conduct charged here. The parties stipulated to a six-month stayed suspension. The Board, based on the aggravating and mitigating factors present, recommended a six-month suspension. Respondent objected, stating that 1) the Board should have reviewed his motions to dismiss after the panel chair overruled them; 2) he is protected by the judgmental-immunity doctrine because he was required to report judicial misconduct; 3) he should be protected because he discussed the issue with Relator prior to making any allegations; and 4) that his conduct was less egregious than that in *Gardner* (2003). Because Respondent had stipulated to the violation, the Court refused to consider Respondent's first three objections. The Court overruled Respondent's fourth objection and adopted the Board's recommended sanction of a six-month suspension.

**CASE AUTHORITY FOR SANCTION:** *Gardner* (2003); *Fowerbaugh* (1995); *DiCato* (2011)

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**Rules Violated:** Prof.Cond.R. [3.5\(a\)\(6\)](#), [8.2\(a\)](#); Gov.Bar R. IV(2)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(g\)](#) (refusal to acknowledge wrongdoing); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (full and free disclosure)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension</a>			

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*Royer, Toledo Bar Assn. v.*  
[133 Ohio St.3d 545, 2012-Ohio-5147](#). Decided 11/8/2012.

**OVERVIEW:** Respondent failed to hold property of clients in an interest-bearing client trust account, separate from his own property, failed to deposit advance fees into a client trust account, failed to maintain complete records of all client property coming into his possession and render appropriate accounts to each client, failed to maintain records for his client trust account, failed to maintain all bank statements, deposit slips, and canceled checks, and failed to preserve the identity of client funds and properly and promptly deliver client funds. Respondent also neglected an entrusted legal matter and failed to act with reasonable diligence in representing a client.

**FINDINGS:** Respondent was retained to represent a client in a medical-malpractice claim and received \$3,000 for his services and an additional \$4,500 in costs. Respondent did not deposit the advance fee or any subsequent payments made by the client into his client trust account prior to earning his fee. Respondent also failed to maintain records to account for the costs and failed to render an account to his client. Respondent was retained to file patent applications for a second client. Respondent failed to timely file three separate applications during a ten-year period and did not advise his client that the applications were not filed.

**SANCTION:** The Board adopted the parties’ stipulations of fact and misconduct and recommended that Respondent be suspended for one year, all stayed on conditions. The Court adopted the Board’s recommendation and conditioned the stay on Respondent serving a two-year period of monitored probation, retaining a certified public accountant within two months of the final disposition of this case to review bookkeeping procedures for his trust account, and to provide an accountant’s report to the bar association within six months of disposition showing compliance with Prof. Cond. R. 1.15.

**CASE AUTHORITY FOR SANCTION:** *Rutherford* (2006); *Holda* (2010);

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.15\(a\)](#), [1.15\(c\)](#), [1.15\(a\)\(2\)](#), [1.15\(a\)\(3\)](#), [1.15\(a\)\(4\)](#); DR 6-101(A)(3), 9-102(A), 9-102(B)(3)

**Aggravation/ Mitigation:** **A-** [\(d\)](#) (multiple offenses), [\(h\)](#) (harm to vulnerable victim); **M-** [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (full and free disclosure)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year</a> suspension, stayed on conditions			

*Rozanc, Lake Cty. Bar Assn. v.*  
[132 Ohio St.3d 114, 2012-Ohio-2408](#). Decided 6/5/2012.

**OVERVIEW:** Respondent was previously suspended for one year with six months stayed on conditions for failing to diligently represent and properly communicate with a client while serving as the executor of a decedent's estate. In November 2009, Respondent was suspended for failure to register for the 2009-2011 biennium. Both suspensions remained in effect at the time of the Court's decision.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed and made findings of fact and conclusions of law and recommended an indefinite suspension. The Board agreed with the recommended sanction.

**FINDINGS:** While serving as the executor of an estate, Respondent was found to have committed a fraud upon the court and concealed assets of the estate. Respondent submitted a final accounting to the probate court that falsely stated that he disbursed over \$19,000 to the guardian of the only beneficiary. Respondent attached a receipt to the accounting acknowledging receipt of the distribution that purported to have been signed by the guardian, but the signature was forged. After the forgery came to light, Respondent wrote a check to the guardian, but the check was returned unpaid. Respondent ultimately reimbursed the beneficiary upon order of the probate court.

**SANCTION:** Although not found by the Board, in aggravation the Court noted that Respondent had a prior disciplinary record and failed to cooperate in the disciplinary process. The Court adopted the recommendation of the Board that Respondent be indefinitely suspended from the practice of law.

**CASE AUTHORITY FOR SANCTION:** *Saumer* (1999)

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**Rules Violated:** Prof.Cond.R. [8.4\(a\)](#), [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(e\)](#) (failure to cooperate), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim); M- [\(c\)](#) (restitution or rectified consequences)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Rucker, Trumbull Cty. Bar Assn. v.*  
[134 Ohio St.3d 282, 2012-Ohio-5642](#). Decided 12/5/2012.

**OVERVIEW:** Respondent committed professional misconduct in a single client matter.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement, which included stipulated facts, misconduct, and sanction. The Board recommended acceptance of the agreement.

**FINDINGS:** Respondent neglected the client matter, failed to reasonably communicate with the client, failed to deposit the client’s funds in an interest-bearing client trust account, and charged the client a fee denominated as “nonrefundable” without also advising the client in writing that the client may be entitled to a refund of the fee.

**SANCTION:** The consent-to-discipline agreement recommended a public reprimand and the Court adopted the agreement.

**CASE AUTHORITY FOR SANCTION:** None cited.

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4](#), [1.5\(d\)\(3\)](#), [1.15\(a\)](#), [1.15\(c\)](#), [1.15\(d\)](#), [8.4\(a\)](#)

**Aggravation/ Mitigation:** A- NONE; M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public reprimand</a>			

*Saunders, Greene Cty. Bar Assn. v.*  
[132 Ohio St.3d 29, 2012-Ohio-1651](#). Decided 4/17/2012.

**OVERVIEW:** Respondent committed several violations of the Code of Professional Responsibility and the Rules of Professional Conduct in his representation of four clients, including the city of Xenia, where he served as an assistant prosecutor.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner recommended disbarment and the Board agreed.

**FINDINGS:** During the pendency of this case, Respondent received an interim felony suspension. The Board found that Respondent neglected several of his clients; misappropriated more than \$40,000 in client funds; lied to a government official about his failure to file a brief while serving as an assistant prosecutor for the city of Xenia; and failed to respond to the disciplinary investigation. The Board also found that Respondent engaged in dishonesty, fraud, deceit, and misrepresentation; failed to seek lawful objectives through reasonable means; and failed to maintain clients’ funds in a trust account. The Court rejected several findings of the Board for lack of sworn or certified documentary prima facie evidences as required by Gov.Bar R. V, Section 6(F).

**SANCTION:** The Court found that disbarment is the presumptive sanction for the misappropriation of client funds. In light of Respondent’s pattern of misconduct; misappropriation of client funds; his complete disregard for the disciplinary process; and the suspension imposed for unrelated misconduct, the Court agreed with the Board that disbarment was warranted.

**CASE AUTHORITY FOR SANCTION:** *Kafantaris* (2009); *Dixon* (2002)

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**Rules Violated:** Prof.Cond.R. [8.1\(b\)](#), [8.4\(a\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 1-102(A)(4), 6-101(A)(3), 7-101(A)(1), 9-102(E)(1)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (failure to cooperate), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> YES	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Scacchetti, Disciplinary Counsel v.*  
[131 Ohio St.3d 165, 2012-Ohio-223](#). Decided 1/26/2012.

**OVERVIEW:** Respondent was charged with commingling funds, using his trust account as an operating account, neglecting a client matter, and failing to cooperate in the disciplinary investigation. Respondent was suspended for two years with 18 months stayed in 2007, reinstated in 2008, and was again suspended in 2011 for failure to comply with registration requirements.

**PROCEDURE:** Respondent failed to answer the complaint and Relator filed a motion for default. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner rejected Relator’s proposed two-year suspension, and instead recommended an indefinite suspension, which was accepted by the Board.

**FINDINGS:** Relator received notice that Respondent’s trust account was overdrawn. Upon an investigation, Respondent was cooperative at first, but then failed to attend depositions to which he was subpoenaed. Respondent’s trust account was overdrawn on five occasions. Respondent also kept money from a client that was supposed to be used to pay a restitution order from a criminal court. The Board found that Respondent failed to keep personal and client property in separate accounts, failed to cooperate and respond during the disciplinary investigation, failed to act with reasonable diligence, failed to promptly deliver funds to a third party, and engaged in conduct prejudicial to the administration of justice and which adversely reflected on his fitness to practice law. The Court adopted these findings, except for the charge of commingling personal and client funds. Regarding that count, the Court found that Relator did not provide sworn or certified evidence as required under Gov.Bar R. V, Section 6(F)(1)(b). The Court disregarded 54 exhibits submitted in support of the commingling charge (1.15(a)) because Relator’s affidavit did not state that the exhibits were true and accurate copies.

**SANCTION:** In aggravation, Respondent pled guilty to a misdemeanor for possession of drug paraphernalia while the case was pending. Despite the lack of sworn evidence supporting a violation of Prof.Cond.R. 1.15(a), the Court adopted the Board’s recommendation of an indefinite suspension. The Court conditioned reinstatement on Respondent completing a two-year OLAP contract, showing complete compliance with the sanctions from his misdemeanor conviction, and the completion of 12 CLE hours in law office management.

**CASE AUTHORITY FOR SANCTION:** *Wilson* (2010); *Goodlet* (2007)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.15\(d\)](#), [8.1\(b\)](#), [8.4\(d\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(c\)](#) (pattern of misconduct), [\(e\)](#) (failure to cooperate);  
M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a> (x2)	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a> (x2)	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Schmidt, Disciplinary Counsel v.*  
[134 Ohio St.3d 557, 2012-Ohio-5712](#). Decided 12/6/2012.

**OVERVIEW:** Respondent engaged in conduct that adversely reflected on his fitness to practice law. While serving as an elected county treasurer, Respondent also practiced law part-time. As a result of conduct related to his private law practice, Respondent pled guilty to four misdemeanor ethics violations. Respondent was sentenced to three years' probation and community service, had to pay fines and restitution, and was required to resign as treasurer. He self-reported his misconduct.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement that included stipulated findings of fact and misconduct. The panel recommended that the agreement be accepted, but the Board rejected it and remanded the matter to the panel for hearing. At the hearing, the parties submitted stipulations of fact and misconduct.

**FINDINGS:** For twenty years, Respondent often served as a guardian for indigent and mentally ill individuals in need of legal representation. For these services, Respondent received a nominal fee from the probate court. Also, while serving as the Greene County Treasurer, Respondent performed title-abstract work for law firms outside Greene County. The firms occasionally used the title work to file foreclosures or land-sale proceedings against real estate property in Greene County. Respondent was named as a defendant in these actions because the unpaid real property taxes acted as a lien on the property. As a result, Respondent was performing legal services for law firms that were suing his public office. Because Respondent was being paid for title work that included tax information, he was in part being paid for work he was required to do as treasurer. Further, Respondent paid an employee of the treasurer's office to do miscellaneous typing, title reports, and eviction complaints. At first, the employee did the work during her lunch hour or at home. The employee gradually began doing more of Respondent's work during hours she was being paid by the county. Also, Respondent used the treasurer's office fax machine to send documents relating to his private practice.

**SANCTION:** The Board recommended a 12-month suspension, with 12 months stayed on the condition of no further misconduct. The Court adopted the Board's recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Carroll* (2005); *Forbes* (2009); *Taft* (2006); *Engel* (2012); *Dann* (2012)

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**Rules Violated:** Prof.Cond.R. [8.4\(h\)](#); DR 1-102(A)(6)

**Aggravation/ Mitigation:** **A-** (d) (multiple offenses); **M-** (a) (no prior discipline), (c) (restitution or rectified consequences), (d) (cooperative attitude), (e) (good character), (f) (other penalties/sanctions)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> YES	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension</a> , stayed on conditions			

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*Schwartz, Disciplinary Counsel v.*  
 135 Ohio St.3d 127, 2012-Ohio-5850. Decided 12/12/2012.

**OVERVIEW:** Respondent engaged in illegal conduct involving moral turpitude, conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct that adversely reflected on his fitness to practice law. In a previous disciplinary case, Respondent was issued a public reprimand because of a conflict-of-interest situation. Respondent was subsequently found guilty of two felony counts. As a result, the Court issued an interim felony suspension.

**FINDINGS:** Relator filed a two-count complaint against Respondent that parallels the two counts of Respondent’s felony conviction. First, Respondent engaged in mail fraud in connection with his scheme to defraud Hadassah Hospital, a beneficiary of the estate of a client, of approximately \$2,492,469. Second, Respondent filed a false tax return for tax year 2007, in which Respondent failed to report three types of income; income he paid himself from the client’s trust, income Respondent diverted from the trust to care for his mother, and income from other legal fees. Respondent also filed materially false returns for tax years 2002 through 2006, underreporting his income by approximately \$2,533,515. Respondent’s criminal sentence was four years in prison plus three years of supervised release. He was also ordered to pay restitution of \$2,292,469 to Hadassah Hospital and \$935, 217.12 to the IRS.

**SANCTION:** The Board adopted the panel’s findings of fact and conclusions of law, but recommended permanent disbarment. Respondent objected to the Board’s recommendation and urged the Court to adopt the panel’s recommended sanction of an indefinite suspension. The Court adopted the recommended sanction of the Board.

**CASE AUTHORITY FOR SANCTION:** *Bertram* (1999); *Sabroff* (2009); *Ritson* (2010); *Hunter* (2005); *Smith* (2001)

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**Rules Violated:** Prof.Cond.R. 8.4(b), 8.4(c), 8.4(h); DR 1-102(A)(3), 1-102(A)(4), 1-102(A)(6)

**Aggravation/ Mitigation:** A- (a) (prior discipline), (b) (dishonest or selfish motive); M- (c) (restitution or rectified consequences), (d) (full and free disclosure), (e) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Seabrook, Disciplinary Counsel v.*  
[133 Ohio St.3d 97, 2012-Ohio-3933](#). Decided 9/6/2012.

**OVERVIEW:** Respondent represented two clients while on an attorney registration suspension and failed to cooperate in the disciplinary investigation.

**FINDINGS:** During an attorney registration suspension, Respondent accepted payment from a client for representation in a child support matter and appeared before a domestic relations court magistrate. Also during the suspension, Respondent represented a client in court in an eviction proceeding. Respondent did not respond to Relator’s inquiries concerning either of these representations.

**SANCTION:** The Board adopted the parties’ stipulations of fact and misconduct and recommended that Respondent be suspended for two years, all stayed on conditions. The Court adopted the Board’s findings of fact and misconduct but found that a two-year suspension with the second year stayed on conditions is warranted due to concerns about Respondent’s mental health. The Court’s conditions included compliance with an OLAP contract and CLE in law office management.

**CASE AUTHORITY FOR SANCTION:** *Blackwell* (1997); *Bancsi* (1997)

**DISSENT:** Justice Pfeifer would impose a two-year stayed suspension. Justice McGee Brown did not participate in the decision.

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**Rules Violated:** Prof.Cond.R. [5.5\(a\)](#), [5.5\(b\)\(2\)](#), [8.1\(b\)](#), [8.4\(d\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline); M- [\(b\)](#) (no dishonest or selfish motive)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Two-year suspension, one-year stayed on conditions</a>			

*Seibel, Cincinnati Bar Assn. v.*  
[132 Ohio St.3d 411, 2012-Ohio-3234](#). Decided 7/19/12.

**OVERVIEW:** Respondent charged a non-refundable fee without advising his client that she might be entitled to a refund of all or part of the fee if Respondent did not complete her representation, failed to memorialize a contingent fee agreement in writing signed by his client, failed to hold his client’s funds in an interest-bearing trust account, and failed to promptly deliver the unearned fees and file upon his termination.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement that included stipulated findings of fact and misconduct. The panel recommended that the agreement be accepted, but the Board rejected it and sent the matter to the panel for hearing. At the hearing, the parties submitted stipulations of fact and misconduct.

**FINDINGS:** Respondent was hired to pursue a sexual harassment action against the University of Cincinnati. Respondent’s client paid him a \$500 retainer, which Respondent treated as nonrefundable and deposited into his operating account. Respondent and the client entered into a verbal contingent fee agreement that was never put in writing. When his client decided to file a federal lawsuit, Respondent requested another \$2,000, which his client understood to be for litigation costs. Over the next two years, his client attempted to contact Respondent and spoke to him a few times. Respondent requested a right-to-sue letter from the EEOC numerous times to no avail, and eventually discovered that the EEOC had destroyed his client’s case file. Unhappy with the progress, the client sent Respondent a letter requesting an accounting of the retainer she paid and her file. Several months later, Respondent refunded the \$2,000 retainer and forwarded a copy of the file to the client’s new counsel.

**SANCTION:** The Board adopted the parties’ stipulations of fact and misconduct, but rejected the proposed sanction of a six-month stayed suspension. The Board recommended a public reprimand, which the Court imposed.

**CASE AUTHORITY FOR SANCTION:** *Schmalz* (2009); *Finan* (2008); *Godles* (2010)

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**Rules Violated:** Prof.Cond.R. [1.5\(c\)\(1\)](#), [1.5\(d\)\(3\)](#), [1.15\(a\)](#), [1.15\(d\)](#)

**Aggravation/ Mitigation:** A- NONE; M- (a) (no prior discipline), (b) (no dishonest or selfish motive), (c) (restitution or rectified consequences), (d) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public Reprimand</a>			

*Shimko, Disciplinary Counsel v.*  
 134 Ohio St.3d 544, 2012-Ohio-5694. Decided 12/6/2012.

**OVERVIEW:** Respondent made allegations of impropriety against a judge while knowing the allegations were false, or with reckless disregard as to their truth or falsity, and engaged in conduct that adversely reflected on his fitness to practice law. Respondent had previously received a public reprimand in a reciprocal discipline case.

**FINDINGS:** Respondent’s conduct involved statements made about the judge who presided over a lengthy case involving Respondent’s client. The statements occurred during three separate periods of time. First, Respondent filed an affidavit of disqualification against the judge, arguing bias and prejudice after the judge allegedly disparaged Respondent in a pretrial conference. Second, during an eight-day trial (later declared a mistrial), Respondent on several occasions interacted with the judge in a disrespectful and confrontational manner. Third, in post trial appellate briefs and additional affidavits of bias and prejudice, Respondent made several comments questioning the judge’s integrity. The hearing panel concluded that no objective, reasonable evidence existed to support Respondent’s claimed impropriety or bias of the judge.

**SANCTION:** The Board adopted the panel’s findings and conclusions and recommended a six-month suspension. Respondent objected to the Board’s recommended sanction and sought instead a dismissal or a stayed suspension. The Court ordered a one-year suspension, all stayed on the condition that Respondent commit no further misconduct. The Court based its lesser sanction on the fact that Respondent’s comments were made out of earshot of the jury or in court filings and there was no apparent damage to the judge’s reputation.

**CASE AUTHORITY FOR SANCTION:** *Gardner* (2003); *Proctor* (2012); *Getsy* (1998); *Trout* (2002); *West* (1990)

**DISSENT:** Chief Justice O’Connor dissented, stating the majority ignored a long-standing, bright-line rule that “[u]nfounded attacks against the integrity of the judiciary require an actual suspension from the practice of law.” The dissent states that a six-month suspension, as recommended by the Board, should have been imposed. Justices Lanzinger and McGee Brown concurred in the dissent.

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**Rules Violated:** Prof.Cond.R. [8.2\(a\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(a\)](#) (prior discipline); **M-** [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">One-year suspension, stayed on conditions</a>			

*Sigalov, Cincinnati Bar Assn. v*  
[133 Ohio St.3d 1, 2012-Ohio-3868](#). Decided 8/28/2012.

**OVERVIEW:** Respondent was a sole practitioner with a personal injury, immigration, and criminal practice. He was charged with numerous disciplinary violations in the course of representing eight clients. The charges included failing to act with reasonable diligence, provide competent representation, consult with clients and provide a closing statement at the time of or prior to receipt of the fee. Respondent also charged illegal or clearly excessive fees and engaged in conduct that involved dishonesty, fraud, deceit, and misrepresentation.

**FINDINGS:** Respondent would accept clients’ fees and then do little or nothing to earn the fee. He filed inadequate briefs, pursued incorrect legal action, and routinely neglected cases. Respondent would lie to his clients about the progress or status of their cases and conduct settlement discussions on their cases without their knowledge or consent. Almost all of Respondent’s clients eventually sought new counsel to help them recover from the additional legal problems they faced due to Respondent’s misconduct. Respondent took advantage of immigration clients who were particularly vulnerable and the client’s suffered arrest and detention. Many of Respondent’s clients were vulnerable with limited financial means. Respondent also falsified documents in a cover-up effort during the disciplinary process.

**SANCTION:** The Board recommended and the Court adopted the sanction of permanent disbarment.

**CASE AUTHORITY FOR SANCTION:** *Peskin* (2010); *Hunter* (2005); *O’Neill* (2004)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.2\(a\)](#), [1.3](#), [1.4\(a\)\(1\)](#), [1.5\(a\)](#), [1.5\(c\)\(2\)](#), [1.15\(b\)](#), [1.16\(a\)\(3\)](#), [8.4\(c\)](#); DR [1-102\(A\)\(4\)](#), [6-102\(A\)\(3\)](#), [7-101\(A\)\(1\)](#), [7-101\(A\)\(2\)](#), [7-101\(A\)\(3\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(f\)](#) (false or deceptive practices during investigation), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim); **M-** [\(a\)](#) (no prior discipline)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Simon-Seymour, Disciplinary Counsel v.*  
[131 Ohio St.3d 161, 2012-Ohio-114](#). Decided 1/19/2012.

**OVERVIEW:** Respondent mishandled assets from a decedent’s estate by failing to maintain adequate records, misappropriating funds, and failing to promptly deliver funds that the client was entitled to receive. The parties entered into a consent-to-discipline agreement, in which they recommended a two-year suspension with six months stayed.

**FINDINGS:** Respondent was hired to probate an estate. She took funds from the estate without court approval, eventually causing an overdraft on her trust account. To cover this, Respondent falsely reported to the probate court that she made disbursements to pay estate obligations. Respondent repaid the estate more than she owed it, but never provided a full accounting to the estate’s administrator.

**SANCTION:** Although not found by the Board, in mitigation the Court noted that Respondent had made restitution, and in aggravation the Court found that Respondent had committed a pattern of misconduct involving multiple offenses. The Court adopted the Board’s recommendation and accepted the parties’ consent-to-discipline agreement, with the stay conditioned on Respondent’s completion of five hours of CLE in trust account management.

**CASE AUTHORITY FOR SANCTION:** *Blair* (2011); *Gresley* (2010)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.15\(a\)](#), [1.15\(a\)\(2\)](#), [1.15\(a\)\(5\)](#), [1.15\(d\)](#), [3.3\(a\)\(1\)](#), [8.4\(c\)](#), [8.4\(h\)](#); DR [1-102\(A\)\(4\)](#), [1-102\(A\)\(6\)](#)

**Aggravation/ Mitigation:** **A-** [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses); **M-** [\(a\)](#) (no prior discipline), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (full and free disclosure)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year suspension, six months stayed</a>			

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*Sliwinski, Cleveland Metro. Bar Assn. v.*  
[134 Ohio St.3d 368, 2012-Ohio-5640](#). Decided 12/5/2012.

**OVERVIEW:** Respondent failed to set forth a contingent-fee agreement in writing, failed to hold client property in an interest-bearing client trust account, failed to promptly refund unearned fees, failed to record client funds, and failed to perform and retain a monthly reconciliation of his client trust account.

**FINDINGS:** The parties submitted agreed stipulations that included findings of fact and stipulations of misconduct in three client matters. Respondent represented these clients on a contingency basis, but the agreements were never reduced in writing. Respondent would deposit client funds in his trust account, but almost immediately would withdraw the funds to pay personal and office expenses. Respondent did not keep any record of the purpose of the various trust account checks and withdrawals or the source of the deposits. Respondent also failed to maintain account records of the balance due any client or perform a monthly reconciliation of accounts.

**SANCTION:** The Board adopted the panel's findings of fact and misconduct, and recommended a six-month stayed suspension on the conditions that Respondent's accounting practices be monitored during the stayed suspension and that he make restitution. The Court agreed with the Board and imposed the recommended sanction and conditions.

**CASE AUTHORITY FOR SANCTION:** *Halliburton-Cohen* (2005); *Ramos* (2008); *Cook* (2009); *Witt* (2004)

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**Rules Violated:** Prof.Cond.R. [1.5\(c\)\(1\)](#), [1.15\(a\)](#), [1.15\(a\)\(2\)](#), [1.15\(a\)\(5\)](#), [1.16\(e\)](#)

**Aggravation/ Mitigation:** A- [\(c\)](#) (pattern of misconduct); M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (full and free disclosure)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month stayed suspension</a> on conditions			

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*Squeo, Columbus Bar Assn. v.*  
[133 Ohio St.3d 536, 2012-Ohio 5004](#). Decided 10/31/2012.

**OVERVIEW:** Respondent engaged in dishonesty, fraud, deceit, or misrepresentation and conduct that is prejudicial to the administration of justice by holding himself out as an attorney while his license was under suspension, and failed to cooperate in the disciplinary investigation. Respondent was under both a CLE suspension and registration suspension at the time of this case.

**FINDINGS:** Respondent filed a belated answer to Relator’s initial complaint, but failed to answer Relator’s amended complaint or appear at the panel hearing. At the scene of an automobile accident Respondent was involved in, Respondent advised the other driver and passenger that he was insured, but asked them not to call the police, stating that he preferred to pay for their damages. To bolster his credibility, Respondent advised them that he was a lawyer and provided a business card bearing the name of Marco J. Squeo, Esq. At this time, Respondent’s license was suspended for both CLE and registration violations. On the back of the business card, Respondent wrote the make and model of the car, the license plate number, and State Farm followed by a policy number. Respondent did not respond to the other driver’s numerous attempts to reach him, and the insurance information he provided was his ex-wife’s policy. The other driver eventually reported the accident to the local police and their own insurance company. Respondent also executed and filed three documents with the Franklin County recorder, all of which stated, “This instrument was prepared by MARK J. SQUEO, ATTORNEY AT LAW.” Respondent was suspended at the time the documents were filed. The three documents were two special powers of attorney and a survivorship deed.

**SANCTION:** The Board recommended an indefinite suspension. The Court adopted the Board’s recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Kaplan* (2010); *Mitchell* (2010); *Freeman* (2010)

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**Rules Violated:** Prof.Cond.R. [5.5](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 3-101(B), 1-102(A)(4), 1-102(A)(6)

**Aggravation/ Mitigation:** A- (a) (prior discipline), (b) (dishonest or selfish motive), (c) (pattern of misconduct), (d) (multiple offenses), (e) (lack of cooperation), (h) (harm to vulnerable victim), (i) (no restitution); M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Stafford, Disciplinary Counsel v.*  
[131 Ohio St.3d 385, 2012-Ohio-909](#). Decided 3/8/2012.

**OVERVIEW:** Respondent withheld information from a tribunal, promulgated an order to a junior attorney that led to unethical conduct, engaged in dishonesty, fraud, deceit, or misrepresentation, recklessly made a false statement about a judge, and engaged in conduct prejudicial to the administration of justice.

**FINDINGS:** In divorce proceedings, Respondent abused the discovery process and made several inaccurate statements or omissions to the tribunal and opposing counsel. He also misled the court in a motion in order to insert a new charge into a pleading. Respondent engaged in dishonesty, fraud, deceit, or misrepresentation, and failed to inform a tribunal of all relevant facts. The Board dismissed alleged violations of Prof.Cond.R. 3.3(a)(1), 3.3(d), 8.4(c), 8.4(d), and 8.4(h) and count two of the complaint. In another matter, Respondent instructed a subordinate attorney to prepare a motion that maligned a judge and made statements and misrepresentations in a motion that further maligned the judge, which adversely reflected on Respondent's fitness to practice law. The Board recommended dismissal of the charged violations of Prof.Cond.R. 3.3(a)(3), 4.1(b), 5.1(c)(2), and 8.4(h). Relator objected to the Board's dismissal of Prof.Cond.R. 8.4(d) in count one; Respondent objected to the Board's findings of violations, stating they were not proven by clear and convincing evidence. The Court deferred to the panel's credibility determinations, overruled all objections, and adopted the Board's findings of fact and conclusions of law.

**SANCTION:** The Board recommended that Respondent receive a one-year stayed suspension. Relator objected, requesting an actual suspension of at least one year. Respondent also objected and sought dismissal of the charges. The Court cited many cases involving an actual suspension from the practice of law. The Court also distinguished cases where an attorney received a stayed suspension when an actual suspension is usually warranted, including *Ake* (2006), which was cited by the Board in its recommendation. The Court ordered that Respondent be suspended for one year.

**CASE AUTHORITY FOR SANCTION:** *Robinson* (2010); *Farrell* (2008); *Fowerbaugh* (1995); *Gardner* (2003); *Frost* (2009); *Baumgartner* (2003); *Finneran* (1997); *Holland* (2005)

**CONCURRENCE:** Justice O'Donnell, joined by Chief Justice O'Connor and Justice Lundberg Stratton, concurred with the majority opinion, but wrote separately to put attorneys and judges on notice, and to address a potential problem regarding ex parte communication between attorneys and judges in the Cuyahoga County Domestic Relations Court. Statements at oral argument made it seem like the practice was acceptable because it is a common practice in the court, but the concurrence indicates that such ex parte communications violate the Rules of Professional Conduct and the Code of Judicial Conduct.

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**Rules Violated:** Prof.Cond.R. [3.3\(d\)](#), [5.1\(c\)\(1\)](#), [8.2\(a\)](#), [8.4\(c\)](#), [8.4\(d\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(d\)](#) (multiple offenses), [\(g\)](#) (refusal to acknowledge wrongdoing); **M-** [\(a\)](#) (no prior discipline), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension</a>			

*Stuart, Lorain Cty. Bar Assn. v.*  
[135 Ohio St.3d 117, 2012-Ohio-5687](#). Decided 12/6/2012.

**OVERVIEW:** Respondent failed to provide competent representation to a client and failed to inform the client that he did not maintain professional liability insurance.

**FINDINGS:** Respondent represented one of several named defendants in a civil case. Respondent failed to respond to requests for admissions and subsequently the plaintiff moved for summary judgment on liability based on Respondent’s failure to respond to the requests. Respondent did not oppose the motion. The court granted summary judgment against Respondent’s client on liability. Prior to the order granting summary judgment, the parties had agreed to mediate the case. Although Respondent knew that the court had entered summary judgment against his client, Respondent did not advise the client of the court’s decision. Instead, on the morning of mediation, Respondent informed the client that he had not responded to requests for admission and other discovery, and that summary judgment had been entered against her. After negotiations, counsel agreed to settle the case for \$10,000, of which Respondent would pay \$5,000. The written settlement agreement was silent about Respondent’s monetary contribution. When Respondent learned that his client was unable to pay her half of the settlement, Respondent withdrew as counsel and demanded \$4,750 in legal fees. Respondent’s client paid \$5,000 to the plaintiff and ultimately Respondent paid \$5,000 of the agreed settlement.

**SANCTION:** The parties submitted stipulations of fact, rule violations, aggravating and mitigating factors, and recommended a public reprimand. The Board adopted the recommended sanction and the Court imposed a public reprimand. Also, the Court agreed with the Board’s dismissal of the charged violation of Prof. Cond. R. 1.8(e) as Respondent’s conduct did not pose the type of conflict of interest the rule was designed to prevent.

**CASE AUTHORITY FOR SANCTION:** *Godles* (2010); *Johnson* (2009); *Maher* (2006); *Kerek* (2004)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.4\(c\)](#)

**Aggravation/ Mitigation:** **A-(d)** (multiple offenses); **M-** **(a)** (no prior discipline), **(b)** (no dishonest or selfish motive), **(d)** (cooperative attitude), **(e)** (character or reputation)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Public reprimand</a>			

*Stubbs, Columbus Bar Assn. v.*  
 134 Ohio St.3d 162, 2012-Ohio-5481. Decided 11/29/2012.

**OVERVIEW:** Respondent was charged with numerous violations of the Rules of Professional Conduct in a ten-count complaint. She had two prior disciplinary suspensions and two prior registration suspensions. Respondent was indefinitely suspended at the time of this case.

**PROCEDURE:** Respondent failed to answer the complaint. A master commissioner was appointed, made findings of fact and conclusions of law, and recommended an indefinite suspension, to run consecutively to Respondent's previous indefinite suspension. The Board adopted the findings of fact and conclusions of law, but amended the sanction to permanent disbarment.

**FINDINGS:** In five client matters, Respondent's conduct included neglect, accepting client funds without performing work, practicing law while her license was suspended, failing to inform clients of the suspension, and failing to cooperate in the disciplinary process.

**SANCTION:** The Court adopted the Board's recommendation that Respondent be permanently disbarred.

**CASE AUTHORITY FOR SANCTION:** *Sabroff* (2009); *Allison* (2003); *Frazier* (2006); *Moushey* (2004); *Henry* (2010); *Cicirella* (2012)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4\(a\)\(3\)](#), [1.5\(a\)](#), [1.6 \(a\)](#), [1.16\(d\)](#), [5.5\(a\)](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#);  
 Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(a\)](#) (prior discipline), [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> YES	
<b>Sanction:</b> <a href="#">Disbarment</a>			

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*Summers, Disciplinary Counsel v.*  
[131 Ohio St.3d 467, 2012-Ohio-1144](#). Decided 3/22/2012.

**OVERVIEW:** Respondent charged a clearly excessive fee, failed to advise his client in writing that if he failed to complete the representation, the client might be entitled to a refund of all or part of the fee, failed to promptly refund the unearned portion of the fee to his client at the time of withdrawal, and engaged in conduct that adversely reflected on his fitness to practice law.

**FINDINGS:** This case involved the representation of a single client in a criminal case. At the initial meeting with the client and his family, Respondent secured an advance of \$1,000 for expenses and a \$2,500 retainer. When the client received Respondent's first invoice, he discovered that the initial retainer had been exhausted and he owed Respondent an additional \$2,500. Less than one week before a pretrial hearing, Respondent informed his client that he was in breach of the fee agreement and threatened to withdraw unless a new fee agreement was secured. The client and his family agreed to a new flat-fee agreement with Respondent. The agreement specified a nonrefundable flat fee of \$15,000 in addition to any amounts already paid by the client. Four months later, the representation abruptly ended. After withdrawing from the case, Respondent failed to refund any of the \$17,726 in fees he collected. Respondent had not interviewed any witnesses, failed to file any motions, and had not negotiated a plea agreement.

**SANCTION:** The Board recommended a six-month suspension, with full restitution of \$15,000 to the client. The Court adopted the Board's recommended sanction.

**CASE AUTHORITY FOR SANCTION:** *Jackson* (2010); *Johnson* (2007)

**DISSENT:** Justice O'Donnell dissented, concluding that Respondent's conduct was an isolated incident and that Respondent has an unblemished 42-year legal career. Justice O'Donnell stated that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. In Justice O'Donnell's view, an actual suspension is unnecessary to protect the public from future harm, but rather is excessive and punitive in light of Respondent's good character and commitment to the profession. Therefore, he recommended a six-month suspension, all stayed on the condition that no further misconduct is committed and Respondent submits to fee arbitration to determine the amount of refund, if any, owed to the client.

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**Rules Violated:** Prof.Cond.R. [1.5\(a\)](#), [1.5\(d\)\(3\)](#), [1.16\(e\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(e\)](#) (lack of cooperation), [\(f\)](#) (false or deceptive practices during investigation), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Six-month suspension</a>			

*Toohig, Cleveland Metro. Bar Assn. v.*  
[133 Ohio St.3d 548, 2012-Ohio-5202](#). Decided 11/15/2012.

**OVERVIEW:** Respondent was charged with multiple counts of misconduct for federal income tax evasion, repeated misuse of his trust account, and misuse of client funds. Respondent was under an interim felony suspension during these proceedings.

**FINDINGS:** Respondent was convicted of income tax evasion, misused client funds, transferred funds to a corporate account that Respondent used for personal purposes to evade creditors, transferred money to Respondent's trust account and immediately withdrew a fee during a criminal investigation of a person with whom Respondent had no clear attorney-client relationship, and failed to remit settlement money to his clients. Respondent also twice overdrawed his trust account, and failed to maintain records or reconcile the account.

**SANCTION:** The Board recommended permanent disbarment. In mitigation, Relator offered evidence of alcoholism. The Board, however, accorded little weight to the alcoholism as a mitigating factor because the witness from OLAP had little knowledge of the specifics or timing of Respondent's misconduct. The Board also declined to consider a written psychologist report because Relator had no prior knowledge of the report and the psychologist did not appear to testify. The Court imposed the recommended sanction of permanent disbarment.

**CASE AUTHORITY FOR SANCTION:** *Dixon* (2002); *Weaver* (2004); *Dadisman* (2006); *Mason* (2008); *Farrell* (2011)

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**Rules Violated:** Prof.Cond.R. [1.15 \(a\)\(2\)](#), [1.15\(a\)\(5\)](#), [1.15 \(c\)](#), [1.15\(d\)](#), [1.5\(d\)\(3\)](#), [8.4\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline), [\(g\)](#) (chemical/mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Disbarment</a>			

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*Trieu, Disciplinary Counsel v.*  
[132 Ohio St.3d 288, 2012-Ohio-2714](#). Decided 6/20/2012.

**OVERVIEW:** Respondent was admitted in Ohio, but practicing immigration law in Texas. He violated several Texas Disciplinary Rules of Professional Conduct, including neglecting legal matters, failing to promptly return unearned fees, and engaging in dishonesty, fraud, deceit, and misrepresentation.

**PROCEDURE:** Pursuant to Prof.Cond.R 8.5(b)(2), Respondent was charged under the Texas Disciplinary Rules of Professional Conduct. Respondent waived probable-cause review of the complaint and admitted all of the charged allegations. The parties entered into stipulations of fact and misconduct and filed a motion to waive the hearing. The panel adopted the stipulations and granted the motion to waive the hearing.

**FINDINGS:** Respondent was employed by a law firm in Texas, but is not licensed in Texas. Respondent retained six clients, concealed his representation of the clients from the firm, and kept at least \$20,495 in client retainers for himself. He admitted lying to two clients about the work performed, and failed to refund unearned fees. Respondent also used the firm's credit card to obtain cash advances totaling \$3,628 for his own use and falsely assigned the transactions to a client of the firm.

**SANCTION:** The Board adopted the stipulated sanction of an indefinite suspension. The Court agreed and imposed an indefinite suspension.

**CASE AUTHORITY FOR SANCTION:** *Squire* (2011)

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**Rules Violated:** Prof.Cond.R. [8.5\(a\)](#), [8.5\(b\)\(2\)](#); Texas Disciplinary Rules of Professional Conduct 1.01(b)(1) (neglect), 1.15(d) (failure to refund unearned fees), 8.04(a)(3) (conduct involving dishonesty, fraud, deceit, or misrepresentation)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (cooperative attitude)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

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*Trivers, Ohio State Bar Assn. v.*  
[134 Ohio St.3d 139, 2012-Ohio-5389](#). Decided 11/27/2012.

**OVERVIEW:** Respondent engaged in conduct that is prejudicial to the administration of justice and that adversely reflected on his fitness to practice law, neglected an entrusted legal matter, failed to carry out a contract of employment for legal services, failed to provide competent representation, disregarded a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, failed to act with reasonable diligence, engaged in bringing or defending a proceeding that is unsupported by law, and violated or attempted to violate the Ohio Rules of Professional Conduct. Three years prior to this case, Respondent had been suspended for one year, with six months stayed, for abusing his notary power and being present when another party created a fraudulent document.

**FINDINGS:** Respondent initiated a bankruptcy case on behalf of a deceased individual, and failed to file required documents in numerous bankruptcy cases, resulting in the dismissal of several cases. The bankruptcy court issued disgorgement orders in at least seven of the cases. In some of the cases, Respondent failed to appear for bankruptcy hearings, in part, due to his failure to check his own e-mail for court notices. Respondent placed a majority of the blame for his misconduct on his failure to receive notices rather than a failure to stay current on court proceedings or to become familiar with electronic filing.

**SANCTION:** The Board agreed with the stipulated findings of fact and conclusions of law, but amended the recommended sanction to a two-year suspension, with one year stayed on conditions. The Court adopted the recommended sanction, conditioning the stay on six hours of law office management CLE, one year of monitored probation, and no further misconduct.

**CASE AUTHORITY FOR SANCTION:** *Trainor* (2011)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [3.1](#), [8.4\(a\)](#), [8.4\(d\)](#), [8.4\(h\)](#); DR 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(2), 7-106(A)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses); M- [\(b\)](#) (no dishonest or selfish motive), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character), [\(f\)](#) (other penalties/sanction)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Two-year</a> suspension, with one year stayed on conditions			

*Vivo, Mahoning Cty. Bar Assn. v.*  
[135 Ohio St.3d 82, 2012-Ohio-5682](#). Decided 12/6/2012.

**OVERVIEW:** Respondent accepted a medical malpractice case that he was not competent to handle, neglected the malpractice case, and failed to cooperate in the disciplinary investigation.

**PROCEDURE:** Respondent failed to answer the complaint and Relator moved for default. A master commissioner was appointed, made findings of fact and conclusions of law, and recommended a two-year suspension, with one year stayed. Respondent filed objections and the matter was remanded to the Board for consideration of whether Respondent suffered from “a medical condition that disabled him from responding to the allegations.” Upon remand, Relator filed an amended complaint.

**FINDINGS:** The parties stipulated to the findings of fact and conclusions of law, and recommended a sanction. Respondent’s failure to cooperate was the focus of the Court’s order remanding the case to the Board. The parties agreed that Respondent suffered from a mental health condition that prevented him from responding to the allegations. Respondent pursued a medical malpractice lawsuit that he was too inexperienced to pursue, and failed to respond to a motion for summary judgment. As a result, the case was dismissed. Respondent acknowledged that he had committed legal malpractice and advised his client to hire an attorney to file suit. The parties stipulated to dismissal of the violation charged in the amended complaint in regard to a second client matter.

**SANCTION:** The Board adopted the parties’ recommended sanction of a one-year stayed suspension, conditioned on continued treatment with a mental-health professional. The Court agreed, and imposed the Board’s recommended sanction.

**CASE AUTHORITY FOR SANCTION:** None cited.

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**Rules Violated:** DR 6-101(A)(1), DR 6-101(A)(3); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** A- [\(e\)](#) (lack of cooperation); M- [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (cooperative attitude), [\(e\)](#) (good character), [\(g\)](#) (chemical/mental illness)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension, stayed on conditions</a>			

*Watson, Columbus Bar Assn. v.*  
[132 Ohio St.3d 496, 2012-Ohio-3830](#). Decided 8/28/2012.

**OVERVIEW:** Respondent failed to hold property of clients in an interest-bearing client trust account separate from his own property and failed to promptly deliver funds that the client was entitled to receive. At the hearing, Relator withdrew some of the allegations contained in Count One of the complaint.

**FINDINGS:** Respondent was charged with multiple rule violations in his representation of three clients. Respondent received money from two clients that he deposited into his operating account instead of his client trust account. Respondent also deposited a \$20,000 gift from his mother into his client trust account and issued two checks from that account to pay his personal rent. Respondent’s psychiatrist testified that Respondent had symptoms of depression and that would dissipate with medication, but Respondent did not always take the medication as prescribed. The psychiatrist had also diagnosed Respondent with ADHD, but did not determine that his ADHD contributed to the misconduct.

**SANCTION:** The Board recommended a six-month stayed suspension on conditions. The Court adopted the Board’s findings of fact and misconduct, but imposed a one-year stayed suspension on conditions. The conditions included a mental health evaluation, OLAP contract, and monitored probation.

**CASE AUTHORITY FOR SANCTION:** *Vivyan* (2010); *Newcomer* (2008)

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**Rules Violated:** Prof.Cond.R. [1.15\(a\)](#), [1.15\(d\)](#)

**Aggravation/ Mitigation:** **A-** [\(d\)](#) (multiple offenses); **M-** [\(a\)](#) (no prior discipline), [\(b\)](#) (no dishonest or selfish motive), [\(c\)](#) (restitution or rectified consequences), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character)

<b>Court Modified Sanction:</b> <a href="#">YES</a>		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">One-year suspension</a> , stayed on conditions			

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*Weiss, Disciplinary Counsel v.*  
[133 Ohio St.3d 236, 2012-Ohio-4564](#). Decided 10/9/2012.

**OVERVIEW:** Respondent failed to promptly pay or deliver funds to a client, failed to comply with reasonable requests for information from a client, engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, engaged in conduct that adversely reflected on his fitness to practice law, and failed to cooperate with a disciplinary investigation. Respondent had registered as inactive the year before Relator filed its complaint.

**PROCEDURE:** Respondent failed to answer the complaint and Relator moved for default. A master commissioner was appointed, made findings of fact and conclusions of law, and recommended an indefinite suspension. The Board adopted the master commissioner’s report and also recommended an indefinite suspension.

**FINDINGS:** In 2004, Respondent represented a client in a personal-injury case. Respondent advised the client that his fee would be one-third of any proceeds, but did not provide the client with a written fee agreement. Respondent’s client agreed to settle the case for \$100,000. The insurance company issued two checks, a \$1,420 check to the chiropractor and a \$98,580 check to Respondent and his client. Respondent deposited the check into his client trust account and distributed a total of \$29,386.07 to his client and two medical-service providers. Based upon the oral fee agreement, Respondent should have received a fee of one-third of \$98,580 or \$32,860. The client was entitled to receive an additional \$36,333.93. Respondent, however, did not distribute these funds to the client or return the client’s phone calls. Respondent used his client’s trust account as a personal checking account and held the client’s funds for over six years.

**SANCTION:** The Court adopted the recommended sanction of an indefinite suspension and ordered Respondent to make restitution of \$36,333.93 to the client.

**CASE AUTHORITY FOR SANCTION:** *Smith* (2003)

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**Rules Violated:** Prof.Cond.R. [1.4\(a\)\(4\)](#), [1.15\(d\)](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#); DR [1-102\(A\)\(6\)](#), [9-102\(B\)\(4\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(e\)](#) (failure to cooperate), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

*Westfall, Cleveland Metro. Bar Assn. v.*  
[134 Ohio St.3d 127, 2012-Ohio-5365](#). Decided 11/21/2012.

**OVERVIEW:** Respondent was charged with numerous violations of the Ohio Rules of Professional Conduct for his actions in four bankruptcy matters and his failure to remit payroll taxes to the Internal Revenue Service. Respondent also made false statements during the disciplinary investigation.

**FINDINGS:** Respondent represented several clients in bankruptcy matters. Respondent would inform his clients that he would deactivate their bankruptcy cases if they did not provide additional information and that to reactivate the cases it would cost additional fees. Respondent also failed to obtain informed consent from one client before representing her husband in what was originally a joint bankruptcy. Respondent withheld federal income tax and other payroll taxes from his employees’ paychecks, but failed to remit the amounts, as well as his employer’s share, to the Internal Revenue Service for certain portions of 2009, 2010, and 2011. Respondent also made a false statement during the disciplinary investigation by claiming that he had timely filed all tax returns and failed to provide requested documentation on the tax issue.

**SANCTION:** The Board agreed with the panel’s findings and conclusions, but recommended a two-year suspension with reinstatement contingent on several conditions. The Court adopted the recommended sanction, with reinstatement contingent on restitution to four clients and payment of all unpaid payroll taxes, interest, and penalties, or an agreement with the IRS to pay all such obligations.

**CASE AUTHORITY FOR SANCTION:** *Gresley* (2010); *Ellis* (2008); *Veneziano* (2008); *Bruner* (2003); *Archer* (2011); *Large* (2009)

**DISSENT:** Justice O’Donnell dissented and would impose a two-year suspension with one year stayed.

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**Rules Violated:** Prof.Cond.R. [1.4\(a\)\(2\)](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.16\(d\)](#), [1.16\(e\)](#), [5.3\(b\)](#), [7.1](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(h\)](#); Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (lack of cooperation), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** [\(a\)](#) (no prior discipline), [\(d\)](#) (full and free disclosure), [\(e\)](#) (good character), [\(f\)](#) (other penalties/sanctions)

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> NO	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO	
<b>Sanction:</b> <a href="#">Two-year</a> suspension with reinstatement conditions			

*Whitfield, Disciplinary Counsel v.*  
 132 Ohio St.3d 284, 2012-Ohio 2708. Decided 6/20/2012.

**OVERVIEW:** The Court initially suspended Respondent's license on an interim basis based on a felony conviction for aggravated assault. Respondent was subsequently suspended for failing to comply with registration requirements. Relator filed a two-count complaint alleging Respondent's felony conviction adversely reflected on his fitness to practice law, and that Respondent engaged in the unauthorized practice of law in Kentucky.

**PROCEDURE:** The parties submitted a consent-to-discipline agreement recommending Respondent be suspended for one year with six months stayed, but the Court rejected the agreement and remanded the matter to the Board. On remand, the parties submitted stipulated findings of fact, misconduct, and mitigation and recommended a two-year suspension, all stayed. The Board adopted the parties' stipulations but recommended that Respondent be suspended for two years with credit for time served under his interim felony suspension.

**FINDINGS:** Respondent was involved in an altercation with another man at a bar. Respondent hit the man in the head with a glass bottle causing serious injuries. Respondent pleaded guilty to one count of aggravated assault, a fourth-degree felony. Also, while Respondent was serving as legal-services coordinator for Talbert House in Cincinnati, Respondent represented a client in a paternity action in Kentucky. Although Respondent was not licensed in Kentucky, Respondent signed several documents, including an entry of appearance, which was filed with the court.

**SANCTION:** The Board recommended a two-year suspension with credit for time served under Respondent's interim suspension. The Court adopted the recommendation of the Board, but also required Respondent to extend his OLAP contract for an additional two years and continue to follow the treatment recommendations of his mental-health professionals.

**CASE AUTHORITY FOR SANCTION:** *Goodall* (2004)

**DISSENT:** Justice O'Donnell would indefinitely suspend Respondent for his misconduct.

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**Rules Violated:** Prof.Cond.R. [5.5\(a\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** **A-(h)** (harm to vulnerable victim); **M-** **(a)** (no prior discipline), **(b)** (no dishonest or selfish motive), **(d)** (cooperative attitude), **(f)** (other penalties/sanctions)

<b>Court Modified Sanction:</b> NO	<b>Criminal Conduct:</b> YES	
<b>Procedure/ Process Issues:</b> YES	<b>Public Official:</b> NO	<b>Prior Discipline:</b> NO
<b>Sanction:</b> Two-year suspension with credit for time served		

*Wickerham, Disciplinary Counsel v.*

132 Ohio St.3d 205, [2012-Ohio-2580](#). Decided 6/14/2012.

**OVERVIEW:** The Court initially suspended Respondent’s license on an interim basis for engaging in numerous violations of the Ohio Rules of Professional Conduct and a threat of serious harm to the public. Respondent was also suspended for failing to comply with registration requirements. Relator filed a 30-count complaint against Respondent alleging nearly 300 violations.

**PROCEDURE:** Respondent failed to answer the complaint and Relator filed a motion for default. A master commissioner was appointed and made findings of fact and conclusions of law. The master commissioner recommended permanent disbarment, and the Board agreed.

**FINDINGS:** Respondent accepted retainers from clients and then failed to both reasonably communicate and honor the numerous promises that she made to her clients. Respondent performed few, if any, of the services she agreed to provide and failed to withdraw from representation when her physical or mental conditions, purportedly caused by her addiction to prescription drugs and her child-custody difficulties, materially impaired her ability to represent her clients. Respondent failed to attend numerous hearings, closed her office and disconnected her phone, and misappropriated over \$35,000 from clients. She also borrowed \$13,000 from a client without taking the proper precautions.

**SANCTION:** The Board recommended permanent disbarment and the Court adopted the recommendation. The Court found that Respondent had serious mental health and substance abuse issues, but that they did not qualify as mitigation. Respondent had not undergone treatment or complied with her OLAP contract.

**CASE AUTHORITY FOR SANCTION:** *Jones* (2006); *Fernandez* (2003); *Weaver* (2004)

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**Rules Violated:** Prof.Cond.R. [1.1](#), [1.3](#), [1.4\(a\)\(1\)](#), [1.4\(a\)\(2\)](#), [1.4\(a\)\(3\)](#), [1.4\(a\)\(4\)](#), [1.8\(a\)\(1\)](#), [1.8\(a\)\(2\)](#), [1.8\(a\)\(3\)](#), [1.15\(d\)](#), [1.16\(a\)\(2\)](#), [8.1\(b\)](#), [8.4\(c\)](#), [8.4\(d\)](#), [8.4\(h\)](#); and Gov.Bar R. [V\(4\)\(G\)](#)

**Aggravation/ Mitigation:** **A-** [\(b\)](#) (dishonest or selfish motive), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (failure to cooperate), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); **M-** NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Disbarment</a>			

*Woodley, Toledo Bar Assn. v*  
[132 Ohio St.3d 120, 2012-Ohio-2458](#). Decided 6/7/2012.

**OVERVIEW:** Respondent was charged with neglecting several client matters, failing to refund unearned fees, practicing while suspended, and failing to cooperate in the disciplinary investigation. Respondent had been suspended in 2009 for registration violations.

**PROCEDURE:** Respondent failed to answer the complaint and Relator filed a motion for default. A master commissioner was appointed, made findings of fact and conclusions of law, and recommended an indefinite suspension. The Board agreed with the master commissioner's recommended sanction.

**FINDINGS:** The case involved three of Respondent's clients. Respondent neglected their cases, failed to communicate, and did not refund unearned fees. Respondent also practiced while under suspension and failed to advise clients of his suspension. Respondent further failed to cooperate with the disciplinary investigation.

**SANCTION:** Because Respondent committed multiple offenses and his misconduct resulted in actual prejudice to the affected clients and the administration of justice, the Board recommended an indefinite suspension, which the Court adopted.

**CASE AUTHORITY FOR SANCTION:** *Harris* (2066); *Judge* (2002); *Snyder* (1999); *Higgins* (2008); *Crandall* (2003); *Barron* (1999)

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**Rules Violated:** Prof.Cond.R. [1.3](#), [1.4\(a\)\(2\)](#), [1.5\(a\)](#), [1.15\(d\)](#), [1.16\(e\)](#), [5.5\(a\)](#), [8.1\(b\)](#), [8.4\(h\)](#)

**Aggravation/ Mitigation:** A- [\(a\)](#) (prior discipline), [\(c\)](#) (pattern of misconduct), [\(d\)](#) (multiple offenses), [\(e\)](#) (failure to cooperate), [\(g\)](#) (refusal to acknowledge wrongdoing), [\(h\)](#) (harm to vulnerable victim), [\(i\)](#) (no restitution); M- NONE

<b>Court Modified Sanction:</b> NO		<b>Criminal Conduct:</b> NO	
<b>Procedure/ Process Issues:</b> <a href="#">YES</a>	<b>Public Official:</b> NO	<b>Prior Discipline:</b> <a href="#">YES</a>	
<b>Sanction:</b> <a href="#">Indefinite suspension</a>			

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 Hartke (6/6/2012)  
 Hines (9/6/2012)  
 Kelly (6/20/2012)  
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 Malynn (3/28/2012)  
 McCormack (9/26/2012)  
 Nowicki (9/4/2012)  
 Parisi (3/8/2012)  
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**(i) (no restitution)**

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**CJC Canon 3(B)(8) (disposing of matters, promptly, efficiently, and fairly)**

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**CJC Canon 3(B)(9) (abstaining from public comment about a proceeding)**

**CJC Canon 3(C)(1) (diligently discharging administrative responsibilities without bias or prejudice; maintaining professional competence in judicial administration)**

**CJC Canon 3(C)(2) (requiring staff, court officials, and others observe standards of fidelity and diligence that apply to the judge)**

**CJC Canon 3(E)(1) (disqualifying judge when the judge's impartiality might be questioned)**

**CJC Canon 4 (avoiding impropriety and the appearance of impropriety)**

**CJC Canon 4(A) (allowing relationships to influence conduct or judgment; lending prestige of office to advance interests of judge or others; testifying voluntarily as character witness)**

**CJC Canon 4(F) (practicing law)**

**Jud.Cond.R. 1.1 (compliance with the law)**

**Jud.Cond.R. 1.2 (promoting confidence in the judiciary)**

[Elum \(10/18/2012\)](#)

[McCormack \(9/26/2012\)](#)

**Jud.Cond.R. 1.3 (avoiding abuse of the prestige of judicial office)**

**Jud.Cond.R. 2.1 (giving precedence to the duties of judicial office)**

**Jud.Cond.R. 2.2 (impartiality and fairness)**

[Elum \(10/18/2012\)](#)

[McCormack \(9/26/2012\)](#)

**Jud.Cond.R. 2.3 (bias, prejudice, and harassment)**

**Jud.Cond.R. 2.4 (external influences on judicial conduct)**

**Jud.Cond.R. 2.5 (competence, diligence, and cooperation)**

**Jud.Cond.R. 2.5(A) (perform judicial and administrative duties competently and diligently)**

[McCormack \(9/26/2012\)](#)

**Jud.Cond.R. 2.6 (ensuring the right to be heard)**

**Jud.Cond.R. 2.6(A) (shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard)**

[McCormack \(9/26/2012\)](#)

**Jud.Cond.R. 2.6(B) (encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement)**

[McCormack \(9/26/2012\)](#)

**Jud.Cond.R. 2.7 (responsibility to decide)**

**Jud.Cond.R. 2.8 (decorum, demeanor, and communication with jurors)**

**Jud.Cond.R. 2.8(B) (patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others)**

[Elum \(10/18/2012\)](#)

[McCormack \(9/26/2012\)](#)

**Jud.Cond.R. 2.9 (ex parte contacts and communications with others)**

**Jud.Cond.R. 2.10 (judicial statements on pending and impending cases)**

**Jud.Cond.R. 2.11 (disqualification)**

**Jud.Cond.R. 2.11(A) (disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned)**  
[Elum](#) (10/18/2012)

**Jud.Cond.R. 2.12 (supervisory duties)**

**Jud.Cond.R. 2.13 (administrative appointments)**

**Jud.Cond.R. 2.14 (disability and impairment)**

**Jud.Cond.R. 2.15 (responding to judicial and lawyer misconduct)**

**Jud.Cond.R. 2.16 (cooperation with disciplinary authorities)**

**Jud.Cond.R. 3.1 (extrajudicial activities in general)**

**Jud.Cond.R. 3.2 (appearances before governmental bodies and consultation with government officials)**

**Jud.Cond.R. 3.3 (testifying as a character witness)**

**Jud.Cond.R. 3.4 (appointments to governmental positions)**

**Jud.Cond.R. 3.5 (use of nonpublic information)**

**Jud.Cond.R. 3.6 (affiliation with discriminatory organizations)**

**Jud.Cond.R. 3.7 (participation in educational, religious, charitable, fraternal, or civic**

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**Jud.Cond.R. 3.8 (appointments to fiduciary positions)**

**Jud.Cond.R. 3.9 (service as an arbitrator or mediator)**

**Jud.Cond.R. 3.10 (practice law)**

**Jud.Cond.R. 3.11 (financial, business, or remunerative activities)**

**Jud.Cond.R. 3.12 (compensation for extrajudicial activities)**

**Jud.Cond.R. 3.13 (acceptance and reporting of gifts, loans, bequests, benefits, or other things of value)**

**Jud.Cond.R. 3.14 (reimbursement of expenses and waivers of fees or charges)**

**Jud.Cond.R. 3.15 (reporting requirements)**

**Jud.Cond.R. 4.1 (political and campaign activities of judges and judicial candidates)**

**Jud.Cond.R. 4.2 (political and campaign activities of judicial candidates)**

**Jud.Cond.R. 4.3 (campaign standards and communications)**

**Jud.Cond.R. 4.4 (campaign solicitations and contributions)**

**Jud.Cond.R. 4.5 (activities of a judge who becomes a candidate for nonjudicial office)**

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- [Crosby](#) (6/27/2012) (income-tax evasion)
- [Peterson](#) (12/6/2012) (theft)
- [Saunders](#) (4/17/2012) (theft)
- [Schwartz](#) (12/17/2012) (income-tax evasion and theft)
- [Toohig](#) (11/15/2012) (income-tax evasion)

[Whitfield](#) (6/20/2012) (aggravated assault)

### Misdemeanor Conduct

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- [Dann](#) (11/20/2012) (soliciting improper compensation and filing false financial disclosures)
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[O’Neal](#) (12/5/2012) (+)  
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[Proctor](#) (2/23/2012) (Court did not consider objections that required disregard of stipulations of fact and law)  
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**DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit, or misrepresentation)**

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[Cicirella](#) (9/25/2012)  
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**DR 1-102(A)(5) (conduct prejudicial to the administration of justice)**

[Asante](#) (9/4/2012)  
[Crosby](#) (6/27/2012)  
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**DR 1-102(A)(6) (conduct adversely reflecting on fitness to practice law)**

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[Cicirella](#) (9/25/2012)  
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**DR 1-104 (informing client of lack of professional malpractice insurance)****DR 1-104(A) (informing client of lack of professional malpractice insurance)**

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**DR 2-106(B) (fee in excess of reasonable fee)****DR 2-107(A) (fee division by lawyers not in the same firm)****DR 2-107(A)(1) (fee division in proportion to services performed)****DR 2-107(A)(2) (terms of fee division and identities of lawyers not disclosed in writing)****DR 2-107(A)(3) (total fee is unreasonable)****DR 2-110(A)(2) (withdrawal without steps to avoid foreseeable prejudice to client; failing to return papers)****DR 2-110(A)(3) (failing after withdrawal to promptly refund any unearned fees)****DR 2-110(B)(2) (representing client when continued employment will result rule violation)****DR 3-101(A) (aiding a non-lawyer in the unauthorized practice of law)****DR 3-101(B) (practice of law violating professional regulations)**

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[Squeo](#) (10/31/2012)

**DR 3-102 (sharing fees with a non-lawyer)**

**DR 3-103(A) (forming a partnership with a non-lawyer to practice law)**

**DR 4-101 (failing to preserve the confidences of a client)**

[Nagorney](#) (3/6/2012)

**DR 4-101(B)(1) (knowingly revealing the secrets or confidences of a client)**

**DR 4-101(B)(2) (failure to preserve client confidences and secrets)**

**DR 5-101(A)(1) (employment when attorney's judgment might be influenced by personal interests)**

[Cowden](#) (3/6/2012)

**DR 5-101(A)(2) (preparing a will/trust in which the lawyer is named a beneficiary)**

**DR 5-103(B) (providing financial assistance to client)**

**DR 5-104(A) (entering into a business transaction with client when interests differ)**

[Cowden](#) (3/6/2012)

**DR 5-105(A) (declining employment if judgment is or is likely to be adversely affected)**

[Cowden](#) (3/6/2012)  
[Nagorney](#) (3/6/2012)  
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**DR 5-105(B) (continuing employment when judgment is likely to be adversely affected by representation of another client)**

**DR 5-105(C) (representing multiple clients without full disclosure)**

**DR 6-101(A) (failing to act competently)**

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**DR 6-101(A)(3) (neglecting an entrusted legal matter)**

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**DR 6-102 (attempt to exonerate self from or limit liability to client for malpractice)**

**DR 7-101(A)(1) (failing to seek lawful objectives through reasonable means)**

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[Sigalov](#) (8/28/2012)

**DR 7-101(A)(2) (failure to carry out a contract of employment)**

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[Sigalov](#) (8/28/2012)  
[Trivers](#) (11/27/2012)

**DR 7-101(A)(3) (causing prejudice or damage to client)**

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**DR 7-102(A)(1) (taking legal action merely to harass or injure another)**

**DR 7-102(A)(2) (advancing claim or defense unwarranted under existing law)**

**DR 7-102(A)(3) (concealing or knowingly failing to disclose what the law requires to be revealed)**

[Crosby](#) (6/27/2012)

**DR 7-102(A)(4) (knowingly using perjured testimony or false evidence)**

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**DR 7-102(A)(7) (counseling or assisting a client in illegal or fraudulent conduct)**

[Crosby](#) (6/27/2012)

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**DR 7-106(A) (disregarding ruling of a tribunal)**  
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**DR 7-106(B)(7) (intentionally or habitually violating any established rule of procedure)**

**DR 7-106(C)(1) (making statements unsupported by evidence)**

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**DR 7-106(C)(4) (asserting personal opinion)**

**DR 7-106(C)(6) (undignified or discourteous conduct before a tribunal)**

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**DR 7-110(B) (communicating as to the merits of a cause with a presiding judge or official on a pending matter)**

**DR 8-102(B) (making false accusations against a judge or other adjudicatory officers)**

**DR 9-102 (failing to preserve the identity of a client's funds and property)**

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**DR 9-102(A) (commingling funds)**

[Johnson](#) (3/28/2012)

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**DR 9-102(A)(2) (failure to maintain a trust account; failure to preserve funds and property)**

**DR 9-102(B) (failure to identify or keep record of funds)**

**DR 9-102(B)(1) (failure to promptly notify a client of the receipt of client's funds)**

**DR 9-102(B)(3) (failure to maintain complete records of all client's property)**

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[Johnson](#) (3/28/2012)

[Royer](#) (11/8/2012)

**DR 9-102(B)(4) (failure to promptly pay or deliver client funds, securities or other property)**

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