


## **Professionalism, Ethics, & Substance Abuse Seminar**

Ethics

*Richard Alkire, Esq.*

*Independence, OH*

Ohio Association for Justice  
December 12, 2011



Richard C. Alkire  
6969 Rockside Woods Blvd.,  
Suite 200  
Independence, OH 44131  
216-478-0550  
ralkire@alkirelawyer.com

---

---

---

---


---

---

---

---

### Disciplinary Procedure



- Discipline handled by Supreme Court, not the legislature.
  - Ohio Constitution
- Supreme Court Rules for the Government of the Bar, Rule V.
  - Grievances involving alleged misconduct of justices, judges and attorneys
  - Mental illness proceedings
  - Discipline of justices, judges and attorneys
  - Reinstatement proceedings

---

---

---

---

---

---

---

---

### Structure of Disciplinary System

- Trial Court – Board of Commissioners on Grievances and Discipline of the Supreme Court
- “Prosecutor”/ Relator
  - Certified Grievance Committees
  - Ohio State Bar Association
  - Disciplinary Counsel
- “Defendant”/Respondent
  - May be represented by counsel
- Grievant/complaining party

---

---

---

---

---

---

---

---

### Disposition of Grievance

- Investigation
  - Letter of inquiry (“LOI”)
  - Duty to cooperate
  - No parochialism
  - 60 days to investigate/ 30 days to decide
    - Extensions of time by Secretary of Board
      - Good cause after 150 days
      - 1 year presumption
  - Can be referred to Disciplinary Counsel
  - Each Grievance Committee devises own procedures
  - Appeal of disposition by grievant



---

---

---

---

---

---

---

---

### Probable Cause

- Notice of intent to file
  - Trial committee or Disciplinary Counsel
- Probable Cause Panel of BCGD
  - Substantial, credible evidence of misconduct attached to complaint
    - Response
    - Investigation reports
    - Summaries
    - Depositions
    - Statements
  - Appeal from dismissal by Probable Cause Panel

---

---

---

---

---

---

---

---

### Formal Hearing on the Record

- Assignment to hearing panel
  - How constituted
  - Time limits
    - 1<sup>st</sup> Prehearing Conference
    - Hearing Date; other deadlines
  - 60 days within which to file Consent to Discipline - BCGD Proc. Reg. 11.
  - Ohio Rules of Civil Procedure; Ohio Rules of Evidence
    - Answer
    - Motion for Default Judgment
  - Burden of Proof



---

---

---

---

---

---

---

---

### Aggravation and Mitigation

- BCGD Proc. Reg. 10 – Guidelines for Imposing Lawyer Sanctions
  - Aggravation
    - Prior disciplinary offenses
    - Dishonest or selfish motive
    - Pattern of misconduct
    - Multiple offenses
    - Lack of cooperation in the disciplinary process
    - Submission of false evidence, etc. during disciplinary process
    - Refusal to acknowledge wrongful nature of conduct
    - Vulnerability of and resulting harm to victims of misconduct
    - Failure to make restitution

---

---

---

---

---

---

---

---

### Aggravation and Mitigation, cont.

- Mitigation
  - Absence of a prior disciplinary record
  - Absence of a dishonest or selfish motive
  - Timely good-faith effort to make restitution
  - Full and free disclosure to Board or cooperative attitude
  - Character or reputation
  - Other penalties or sanctions
  - Chemical dependency or mental disability if:
    - Dx by qualified healthcare professional or alcohol/substance abuse counselor
    - Contributed to cause misconduct
    - Successful completion or sustained period of successful tx
    - Prognosis that can return to competent, ethical professional practice
  - Other interim rehabilitation
  - Remorse

---

---

---

---

---

---

---

---

### Proceedings after Hearing

- Panel report
  - 40 days within filing of transcript
  - Board meetings
  - How report presented
- Recommendations
  - Dismissal
  - Public Reprimand
  - Suspension
  - Disbarment
- Board report
- Supreme Court Review



---

---

---

---

---

---

---

---

### Current Issues – Case Law Update

- 2011 Statistics (52 Cases through 11/15/11)
  - Most Common Violations:
    - Dishonesty: 20
    - Neglect : 12
    - Fee/trust issues: 6
    - Theft: 5
    - Client Communication: 4
    - Sexual Misconduct: 2
    - Conflict of Interest: 1



---

---

---

---

---

---

---

---

### 2011 Statistics Continued

- Sanctions
  - Public Reprimand: 4
  - Suspensions: 27
    - (12 entirely stayed)
  - Indefinite Suspensions: 13
  - Disbarment: 8



---

---

---

---

---

---

---

---

### Trust Account Issues

- Rule 1.5 (old rule DR 2-106(A) -Fees and Expenses)
  - Safekeeping Funds and Property
    - New Amendment (1/1/10)
      - Incorporates much of Adv. Op. 2007-7
        - 3<sup>rd</sup> Person's interest
          - Must have actual knowledge
          - Limited to
            - Statutory Lien
            - Final judgment re: funds
            - Written agreement guaranteeing payment



---

---

---

---

---

---

---

---

### Trust Account Case

- *DC v. Simon*, 2011 Ohio 627
  - Deposited into his trust account both client and personal funds, including earned attorney's fees, retainers and money from his PERS account
  - Used the account as if it were a personal bank account and law office operating account between 6/05 and 3/09
  - One year suspension, all stayed. Consent-to-discipline agreement

---

---

---

---

---

---

---

---

### Neglect

- Rule 1.3 (old rule DR 6-101(A)(3) requiring that a lawyer act with reasonable diligence and promptness)
- *Columbus Bar Association v. VanSickle*, 2011 Ohio 774
  - Represented Wife while under atty. reg. suspension
  - Neglected 3 other matters
    - Didn't prepare will
    - Didn't file certain Bankruptcy documents
    - Failed to fulfill oral agreement to represent client in multiple business matters
  - Failed to return client documents and fees
  - Failed to cooperate in disciplinary investigation
  - Indefinite Suspension; documented depression which was untreated and no prognosis provided. Increased recommended sanction.

---

---

---

---

---

---

---

---

### Neglect, continued

- *Cleveland Metro Bar Assoc. v. Freeman*, 2011 Ohio 1447
  - Neglected two foreclosure matters
  - Failed to communicate status to clients
  - Charged with and stipulated to advertising violation
    - Ct. did not impose since had a prior professional relationship with client to whom direct advertising was provided
  - One year suspension, all stayed.

---

---

---

---

---

---

---

---

### Neglect, continued

- *Cleveland Metropolitan Bar v. Freeman*, 2011 Ohio 1483
  - Neglected a personal injury case, allowing its dismissal
  - Neglected a DUI case
  - Failed to pay restitution
  - Failed to promptly return a client file
  - Failed to promptly distribute 4 personal injury settlements
  - Dismissed a personal injury case without permission
  - Failed to cooperate in discipline investigation
  - Permanent disbarment. Master commissioner recommended indefinite suspension in default proceeding. Misappropriating client funds accounts for harsher penalty.

---

---

---

---

---

---

---

---

### Stole Money

- Rule 8.4(c) (old rule DR 1-102(A) prohibiting conduct involving fraud, deceit, dishonesty or misrepresentation); usually combined with Rule 8.4(h) (old rule DR 1-102(A)(6) prohibiting conduct that adversely reflects on the lawyer's fitness to practice law)
- *DC v. Longino*, 2011 Ohio 1524
  - Settled case without consent and stole proceeds
  - 12 count complaint including failure to communicate, improper affidavit notarizing, conflicts of interest, mishandled client's trust account and two bankruptcies
  - Permanent disbarment. Began practice in 2007 and failed to acknowledge wrongdoing. Board increased panel's recommendation. No mitigation, and only aggravating factors.

---

---

---

---

---

---

---

---

### Stole Money, cont.

- *Cincinnati Bar v. Sanz*, 2011 Ohio 766
  - Stole over \$180,000 from a trust he administered calling money loans to his businesses
  - Paid very little back
  - Failed to register for 2007/2009 biennium and meet 2008 CLE requirements
  - Failed to defend discipline case
  - Permanent disbarment. Presumptive sanction for misappropriating client funds.

---

---

---

---

---

---

---

---

### Dishonesty

- *DC v. Grigsby*, 2011 Ohio 1446
  - Used company credit card for personal expenses and failed to make timely payments
  - Pled guilty to misuse of a credit card, 1<sup>st</sup> degree misdemeanor
  - Paid restitution
  - Self reported conviction to Relator
  - 18 month suspension, all stayed. Longer stayed suspension rather than shorter actual suspension sufficient to protect public in this case.

---

---

---

---

---

---

---

---

### Dishonesty, cont.

- *Toledo Bar v. Scott*, 2011 Ohio 4185
  - Represented client on a charge of aggravated murder, never tried a murder case
  - Had client sign General POA, client gave him ATM card and PIN number
  - Made ATM withdrawals, depositing none in IOLTA
  - Closed client's 401K account depositing about \$25,000 in his business account
  - Used POA to take 2 cars
  - During investigation produced fabricated hourly bills
  - 2 year suspension, 1 year stayed

---

---

---

---

---

---

---

---

### Felony/Crime

- Rule 8.4(b) (prohibition against committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness)(old rule DR 1-102(A)(43) prohibiting engaging in illegal conduct involving moral turpitude)
- *Columbus Bar v. Larkin*, 2011 Ohio 762
  - After a serious auto accident a crack pipe with residue and used heroin syringes were discovered in the attorney's car
  - Previously suspended for failing to register for 2009/2001 biennium and compliance with CLE requirements
  - Failed to answer complaint and further participate after depo.
  - Indefinite suspension. Failed to deal with OLAP. Will consider readmission after rehabilitation.

---

---

---

---

---

---

---

---



### Conduct during discovery/litigation

- *DC v. Stafford*, 2011 Ohio 1484
  - Obstructed discovery process in a domestic relations matter by failing to diligently provide required documents, including fee records.
    - Violation of Rule 3.4(c) (knowing disobedience to rule of tribunal) and Rule 8.4(h) (conduct adversely reflecting on fitness to practice) and Rule 3.4(a) (lawyer shall not obstruct another's access to evidence)
  - Misdemeanor trial and appellate courts with privilege objections concerning fee documentation
  - 18 month suspension, 6 months stayed. No mitigation evidence and only aggravating factors shown.

---

---

---

---

---

---

---

---

### Advisory Opinions

- 2010-2 - What portion of file must be turned over to client
  - Lawyer's notes in certain circumstances
  - No charge for copies
- 2010-3 – When settle legal malpractice case, can't require withdrawal of grievance or refrain from filing one
- 2010-6 - No sweeping POA's in contingent fee agreements
- 2011-1 – Can't agree, as a condition of settlement, to indemnify opposing party from 3<sup>rd</sup> party claims to the settlement funds. Can't participate in requiring such an agreement either.
- 2011-2 - Out-of-state lawyer may not provide debt settlement legal services, including non-litigation activities on a temporary basis, under Rule 5.5(c)(4).

---

---

---

---

---

---

---

---

# **A TRIAL LAWYER'S PERSPECTIVE** **ON OHIO'S PROFESSIONAL DISCIPLINE SYSTEM**

The following outline is meant to briefly describe Ohio's disciplinary procedure applicable to lawyers licensed to practice law in the State of Ohio and to highlight certain case law and Advisory Opinions issued in 2010 and early 2011 as such information may be applicable to litigators.

The first section, Disciplinary Procedure, provides a brief overview of the discipline system as it relates to its structure, how grievances are disposed of and the basic proceedings leading up to a sanction.

The second and third sections consist of compilations of Ohio Supreme Court case law and Advisory Opinions issued by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court in 2010 and 2011 as those items have particular application to litigators. This compilation is by no means meant to be exhaustive, but representative of the application of Rules of Professional Conduct applicable to lawyers engaging in litigation in the State of Ohio.

## **I. DISCIPLINARY PROCEDURE**

### **A. INTRODUCTION**

Unless you have volunteered as a member of a Certified Grievance Committee of the Ohio State Bar Association or a local bar association, or have been the subject of a grievance from a client, the chances are you are unfamiliar with Ohio's handling of the discipline of justices, judges and attorneys practicing law. Ohio is among the vast majority of states in the country which provide for the discipline of lawyers and judges by the judiciary and mechanisms devised by that branch of government. However, a small minority of states have assigned the responsibility for disciplining the bench and bar to the legislature. For the Supreme Court to retain its constitutional jurisdiction over the bench and the bar, it is incumbent upon all the participants in the disciplinary system to hold paramount the goal of protecting the public and disposing of grievances fairly, effectively and efficiently.

Toward this end, Rule V of the Supreme Court Rules for the Government of the Bar (Gov. Bar R. V) sets forth the disciplinary procedures which apply to 1) grievances involving alleged misconduct by justices, judges or attorneys, 2) all proceedings with regard to mental illness, 3) all proceedings for the discipline of justices, judges, attorneys, persons under suspension, probation or disbarred from the practice of law, and 4) all proceedings for the reinstatement as an attorney. See Gov. Bar R. V, Sec. 2(A).

This summary is meant to expose the procedure designed by the Ohio Supreme Court to dispose of grievances as set forth in Gov. Bar R. V.

B. THE STRUCTURE OF THE DISCIPLINARY SYSTEM

The trial court for the disciplinary system is the Board of Commissioners on Grievances and Discipline of the Supreme Court (hereinafter "The Board"). Gov. Bar R. V, Sec. 1 sets forth its composition. Essentially, a panel of three of the members of The Board conducts a hearing for disciplinary Complaints which are filed with the Board and withstand probable cause review of a Probable Cause Panel of The Board.

The "prosecutor" may be Disciplinary Counsel, who is appointed by The Board with the approval of the Supreme Court and is charged with the responsibility of investigating allegations of misconduct of judges and attorneys, allegations of mental illness affecting judges and attorneys, initiating Complaints as a result of investigations conducted under Rule V and to certify bar counsel designated by Certified Grievance Committees. See Gov. Bar R. V, Sec. 3(B). Disciplinary Counsel is appointed for a term of four years.

In addition to Disciplinary Counsel, Certified Grievance Committees are also "prosecutors" and may file Complaints with The Board when they find that there is probable cause to believe that misconduct has occurred or that a condition of mental illness exists. See Gov. Bar R. V, Sec. 4(C).

Certified Grievance Committees may be an organized committee of the Ohio State Bar Association or may be comprised of a Committee of one or more local bar associations. Cuyahoga County is the only county where there may be more than one Certified Grievance Committee. When membership on joint Certified Grievance Committees consists of individuals from more than one bar association, the attorneys employed in each geographic area served by the bar association define the proportion applicable to membership on such Committee. See Gov. Bar R. V, Sec. 3(C).

Disciplinary Counsel and Certified Grievance Committees file Complaints in the name of the Committee or Disciplinary Counsel as Relator. See Gov. Bar R. V, Sec. 4(1)(7) and (8). The Grievant may sign Complaints by the Certified Grievance Committee.

The justice, judge or attorney who is the subject of a disciplinary Complaint is known as the Respondent, and many times is represented by counsel.

C. THE DISPOSITION OF A GRIEVANCE

All Complaints and any matters that The Board wishes to refer must be investigated by either a Certified Grievance Committee or Disciplinary Counsel (Gov. Bar R. V, Sec. 4(A) and (C)). Additionally, the chair of a Certified Grievance Committee may direct a written request for assistance to Disciplinary Counsel, who then must investigate the matters contained in the request and provide a report concerning the results. See Gov. Bar R. V, Sec. 4(B). Certified Grievance Committees may not investigate allegations of misconduct against attorneys who are members of such Committees, but instead such allegations must be referred to the Secretary of The Board.

Certified Grievance Committees and Disciplinary Counsel are required to conduct their investigation within 60 days of their receipt of the grievance. The disposition of a grievance

must then be decided upon within 30 days after the investigation is over. See Gov. Bar R. V, Sec. 4(D) Extensions of time to complete investigations may be granted by the Secretary of The Board, in which event such investigation must be completed within 150 days from the date of receipt of the grievance. See Gov. Bar R. V, Sec. 4(D)(1). The Board Chair or Secretary may provide extensions beyond 150 days for good cause as set forth in the Rule. Good cause may consist of pending litigation, appeals, unusually complex investigations, the investigation of multiple grievances, time delays in obtaining evidence or testimony of witnesses or for other reasons. Should such time limits not be met, the Secretary of The Board may refer the matter to another geographically appropriate Certified Grievance Committee or to Disciplinary Counsel, who then must complete the investigation within 60 days. Investigations, under no circumstances, should extend beyond one year from the date of the filing of the grievance. See Gov. Bar R. V, Sec. 4(D)(2). Adherence to time limits, though, is not jurisdictional. See Gov. Bar R. V, Sec. 4(D)(3).

During the course of an investigation, the chair of the Certified Grievance Committee, the president of a bar association or Disciplinary Counsel may direct a written inquiry concerning procedural questions to the chair of The Board, who then must consult with the Secretary and provide a response. See Gov. Bar R. V, Sec. 4(H).

Certified Grievance Committees may devise their own procedures in disposing of grievances. These procedures must provide a method to notify Grievants that they also have the option to file a grievance with Disciplinary Counsel rather than the Certified Grievance Committee. Certified Grievance Committees frequently have several levels of review which screen grievances to determine whether Complaints should be filed with The Board. Generally speaking, a trial committee of the Certified Grievance Committee will vote on whether a Complaint should be filed with The Board upon the completion of an investigation. In any event, the Grievant is informed of the results of the investigation and recommendation concerning further discipline. Any Grievant who is dissatisfied with a Certified Grievance Committees disposition of a grievance not resulting in the filing of a Complaint may, in writing, request the Secretary of The Board to refer a request for review to Disciplinary Counsel. Disciplinary Counsel must conduct such a review within 30 days and notify the Grievant of the results. Again, extensions of time may be granted for such review upon the showing of good cause. There is no appeal from Disciplinary Counsel's determination. See Gov. Bar R. V, Sec. 4(I)(5)

Once a grievance has made its way to a formal Complaint, the Complaint is filed with the Secretary of The Board. See Gov. Bar R. V, Sec. 4(I)(7). Six copies of the Complaint are to be filed with the Secretary of The Board, and in addition, copies are to be forwarded to Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association and any Certified Grievance Committee serving the county or counties in which the Respondent resides and maintains an office for the county from which the Complaint arose. See Gov. Bar R. V, Sec. 4(I)(9).

Upon the filing of a Complaint, the Ohio Rules of Civil Procedure apply which govern the time for filing an Answer, Motions under Rule 12, Briefs and Affidavits. See Rules and Regulations Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court, Sec. 2(A).

Once a Complaint is filed alleging misconduct<sup>1</sup>, the Secretary of The Board directs the Complaint and the necessary investigation materials which accompany it at filing (See Gov. Bar R. V, Sec. 4(I)(6)) to a probable cause panel comprised of three members of The Board which had been appointed by the chair which then reviews the Complaint and investigation materials to determine whether probable cause exists for the filing of the Complaint. This panel may dismiss the Complaint. See Gov. Bar R. V, Sec. 6(D)(1) and (2). A dismissal may be appealed to the full Board by filing a written appeal with the Secretary. If The Board affirms the dismissal, there is no further appeal. See Gov. Bar R. V, Sec. 6(D)(2).

Upon passing probable cause muster, the Secretary assigns the Complaint to a hearing panel composed of three members of the Board. Either an attorney or judge member of the panel is assigned to serve as chair of the panel, whose responsibility is then is to rule on motions and interlocutory matters and ultimately draft the panel's report and present it to The Board. See Gov. Bar R. V, Sec. 6(D)(3).

If the Respondent fails to file a timely Answer, a motion for default judgment may be filed and ruled upon by the panel, a member of The Board or a Master Commissioner who then presents a report on the motion to The Board for further disposition. A panel hearing may be required if the motion is denied or if the chair of The Board, upon a showing of good cause, sets aside a default entry. See Gov. Bar R. V, Sec. 6(F)(2).

Under the rules and regulations governing procedure before The Board, a pre-hearing conference is to be conducted within 60 days of the date upon which the assignment of the Complaint was made to a hearing panel. The panel chair conducts this pre-hearing conference usually by telephone. See Board Procedure Rules, Sec. 9(A)(1).

By this same Rule, the hearing date is to be assigned no more than 150 days following the date of the assignment of the Complaint to a panel. This date is not to be continued, as all participants in this system are entitled to participate without conflict with any other imposed trial date by any other court in Ohio. See Rules of Superintendence for Courts of Ohio, R. 41(B)(2). Courts within the State of Ohio must grant priority to matters before the Board.

Once the hearing is conducted, the report of the panel which sets forth the panel's Findings of Fact, Conclusions of Law and Recommended Sanction is to be submitted to the full Board within 40 days of the filing of the transcript, at the next regularly scheduled meeting of The Board. The Board meets bimonthly in the months of February, April, June, August, October and December. This panel report is presented to The Board by the panel chair and then voted on by the entire Board.

A panel must determine by clear and convincing evidence whether the Respondent is guilty of misconduct. If such a finding is made, the panel may recommend a public reprimand, a suspension of six months to two years, probation, suspension for an indefinite period or

---

<sup>1</sup> **(1) Misconduct.** "Misconduct" means any violation by a justice, judge, or an attorney of any provision of the oath of office taken upon admission to the practice of law in this state or any violation of the Code of Professional Responsibility or the Code of Judicial Conduct, disobedience of these rules or of the terms of an order imposing probation or a suspension from the practice of law, or the commission or conviction of a crime involving moral turpitude. See Gov. Bar R. V, Sec. 6(A)(1)

disbarment. The panel may also dismiss a Complaint at the conclusion of a hearing. This may only be done if the hearing panel is unanimous. See Gov. Bar R. V, Sec. 6(H). If the hearing panel unanimously dismisses the Complaint at the conclusion of the Relator's evidence or of all the evidence, the panel chair then gives written notice of this action taken to The Board, Respondent, all counsel of record, Disciplinary Counsel, the affected Certified Grievance Committee and Ohio State Bar Association. Alternatively, the hearing panel may recommend dismissal and present that recommendation to The Board for its determination as well.

Once a matter is submitted to The Board and The Board makes a determination, a final Certified Report of Proceedings, including findings of fact and recommendations is filed with the Supreme Court. This report is accompanied by the transcript of the testimony taken. See Gov. Bar R. V, Sec. 6(L).

Once this final report of The Board is filed, the Supreme Court issues the Respondent an order to show cause why the report of The Board shall not be confirmed and a disciplinary order entered. The Respondent may file objections to the findings or recommendations of The Board and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued within 20 days after the issuance of this show cause order. The objections are accompanied by a brief in support of them. An answer brief may be filed within 15 days after the objections are filed. The Supreme Court then conducts a hearing on the objection and enters an order that it finds proper. See Gov. Bar R. V, Sec. 8 (A), (B), (C) and (D).

D. CONCLUSION

The foregoing discussion was simply meant to summarize the procedures applicable to grievances brought against judges and lawyers in the State of Ohio pursuant to the rules promulgated by the Ohio Supreme Court. Hopefully, this brief summary provides you basic information which will enable you to understand Ohio's disciplinary procedure. As you can see, great care has been taken to assure that the grievance of a client or member of the bar is taken seriously, properly investigated and disposed of in a fair and efficient manner.

**Survey of Case Law from 1/1/11 to 11/15/11**

**Discipline Cases (52 cases)**

<b>Case Name</b>	<b>Dispositive Facts</b>	<b>Sanction</b>
	<b>Client Communication</b>	
<i>DC v. Hallquist</i> , 2011 Ohio 1819	The attorney failed to reasonably communicate with two of his clients, neglected their legal matters and failed to cooperate in the disciplinary investigation. Failure to communicate arose after a personal injury case had been settled and after the clients began to receive medical bills which they thought were paid as part of the settlement. The attorney failed to respond to their inquiries in this regard which caused them to file a grievance.	Two-year suspension, six months stayed. The Master Commissioner who granted the default judgment motion recommended an indefinite suspension while the Board recommended a two-year suspension with the last six months stayed, the sanction adopted by the court. The lesser sanction was adopted because the attorney had practiced law for more than 20 years without a disciplinary violation, and his misconduct did not cause irreparable harm to his clients. He was therefore suspended for two years with the last six months stayed, assuming he commits no further misconduct and makes restitution to his clients.
<i>Akron Bar v. Freedman</i> , 2011 Ohio 1959	The attorney stipulated to the facts and sanction in this matter after being paid a flat fee to examine personal and business finances, deal with the couple's creditors and make a determination about filing for bankruptcy, either for the business or them personally. He did not advise them that they would be entitled to a refund of all or part of the fee if he did not complete the representation. He also failed to advise them that he did not carry malpractice insurance. Ultimately, the couple terminated their relationship with him after they could not reach him and requested a refund of their retainer. Then, the couple filed for bankruptcy and did not list any portion of the \$3,500 fee, and the Trustee in the bankruptcy has not sought any portion of it from the attorney.	Public Reprimand. There were only mitigating factors and no aggravating factors. This was his only disciplinary matter in 30 years of practice. There was an absence of a dishonest or selfish motive and the attorney acknowledged his errors and willingness to apologize to his clients for a lack of communication. The Panel and Board refused to characterize the attorney's acknowledgement of his errors and willingness to apologize as a mitigating factor, since the record did not contain evidence that he, in fact, apologized to the clients. The Board and Panel did accept the attorney's expression of remorse as a mitigating factor.
<i>Cincinnati Bar v. Trainor</i> , 2011 Ohio 2645	This attorney, who had been the subject of three prior disciplinary proceedings, two in Ohio and one in Kentucky, failed to notify his client at the time of engagement that he did not carry malpractice insurance. He also failed to promptly return funds which the client was entitled to receive, which was a refund of filing fees of \$225.00 which had been returned to the attorney after he had tried the client's case to a successful verdict. When the client requested information concerning the refunded filing fee, the attorney	24-month suspension with 18 months stayed. Although this type of conduct would generally warrant a public reprimand, the Court imposed a stricter sanction because of the previous disciplinary proceedings, one involving the failure to inform clients about his lack of malpractice insurance.

	claimed that he had earned that money for additional work he had performed.	
<i>DC v. Lape</i> , 2011 Ohio 5757	Attorney answered complaint after default judgment motion filed. Failed to answer client's questions and return property after bankruptcy concluded. Lost client's file. Initially failed to cooperate in investigation.	Six month suspension, all stayed, and required to take CLE on office management.
	<b>Conflict of Interest</b>	
<i>Toledo Bar v. Pheils</i> , 2011 Ohio 2906	After the attorney negotiated a \$20,000 settlement with defense counsel, the attorney advised his client not to sign the Settlement Agreement, because he believed it imposed obligations about which there had been no agreement. He overheard his client indicating that the client needed money and therefore arranged a loan to the client through the attorney's wife. He did not recommend that the client seek independent counsel concerning this loan transaction and did not acquire informed consent before he represented his own wife in connection with the loan with his client. After the trial court granted a motion to enforce the loan, the attorney encouraged his client to file an appeal and then arranged another loan. Ultimately, the client hired a new attorney who then allowed the client to sign the Settlement Agreement, and he received his settlement. The attorney then filed suit against his former client to receive repayment of the money that had been loaned. Upon repayment of the money loaned, the lawsuit was dismissed. This conduct violated R. 1.8(e) even though the money came from the attorney's wife. The Court noted that this conduct promoted maintenance and/or champerty. This conduct also amounted to a conflict of interest, since the attorney represented both his own wife and his client in the same transaction, in violation of R. 1.7(a) and (b).	One-year suspension, six months stayed. The Court found that aggravating factors significantly outweighed mitigating factors. The attorney engaged in deceptive practices during discovery in the discipline matter and did not cooperate during the discovery process. He was also demeaning to Relator's counsel in an email, which the Court cited as uncooperative behavior. Thus, while in mitigation, he had no prior disciplinary violations, he did have several aggravating factors, including committing multiple offenses, not cooperating in the discipline process, engaging in deceptive practices and refusing to acknowledge the wrongful nature of his conduct.
	<b>Dishonesty</b>	
<i>Akron Bar v. Gibson</i> , 2011 Ohio 628	Attorney entered into a business transaction with client without making all necessary disclosures (she and her husband did home repairs on marital property, expecting payment for services, while representing one of the spouses in the divorce proceeding), and made material misrepresentations of fact to the escrow agent and the court in seeking payment for the non-legal services. She also withdrew from another case without protecting the interests of the client and without obtaining the court's approval.	One-year suspension, all stayed. Mitigation evidence allowed for stayed suspension even in light of dishonest conduct.
<i>DC v. Blair</i> , 2011 Ohio 767	Attorney mishandled and misappropriated over \$16,000 of an incompetent ward's funds and also	Two-year suspension, 18 months stayed, with conditions, including



	failed to supervise staff which filed false information (inaccurate accounting and a forged affidavit) with the Probate Court concerning the Guardianship.	compliance with OLAP contract, continue alcohol and mental-health treatment and 12 hours of Office Management CLE. A monitor was appointed by DC to supervise.
<i>DC v. Smith</i> , 2011 Ohio 957	Attorney was convicted in Federal Court of one count of conspiracy to defraud the IRS, four counts of making false tax returns and one count of corruptly endeavoring to obstruct and impede an IRS investigation. The conduct giving rise to these felony convictions began in the late 1990's when he began receiving his annual salary of \$250,000 from the Cleveland Catholic Diocese through the company of a codefendant, not through diocese payroll. The money went to the attorney's own businesses, and he did not pay tax on it.	Indefinite suspension. Attorney can petition for reinstatement only after his federal sentence is complete (1/2012) and after he has entered into a final agreement for restitution (about \$400,000) with the government.
<i>DC v. Stafford</i> , 2011 Ohio 1484	Attorney Vincent Stafford was found to have obstructed the discovery process in a domestic relations matter through a lack of diligence in providing the documentation that was a legitimate subject of the domestic relations matter. Further, in a separate matter, he was found to have misled the trial court and the court of appeals on an issue connected with a client's damages based on his fees which had never been charged to the client. While the Court did not determine that the obstruction of the discovery process was dishonest behavior, it did find such conduct to violate Rules 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal) and 8.4(h) (a lawyer shall not engage in conduct that adversely reflects on a lawyer's fitness to practice law), as well as 3.4(a) (a lawyer shall not unlawfully obstruct another party's access to evidence). With respect to the representations before the trial court and court of appeals, the Court adopted the Board's assessment of the evidence that his conduct violated DR 1-102(A)(5) and (6) (a lawyer shall not engage in conduct prejudicial to the administration of justice and which adversely reflects upon his fitness to practice law), both arising from his lack of candor before the tribunals.	18-month suspension, six months stayed. Because no mitigation evidence was presented and only aggravating factors were presented, which included prior discipline and a pattern of misconduct, the Court suspended the attorney for 18 months with six months stayed.
<i>DC v. Hoppel</i> , 2011 Ohio 2672	Attorney accepted \$14,000 in attorney's fees and did no work in 14 separate matters. During his hearing, he proved that he was a crack cocaine addict, but has become rehabilitated.	Two-year suspension, 18 months stayed. The mitigation evidence far outweighed the aggravating circumstances, including stealing client funds. The Court permitted the attorney to supplement the record after the Panel Hearing was completed to demonstrate that he had made restitution to each of the clients

		identified by the Relator in the Complaint. During the Hearing, he was able to prove all required factors to permit his crack cocaine addiction to be a mitigating factor through the testimony of Paul Caimi, Regional Director of OLAP. While the presumptive sanction for misappropriation of client funds is disbarment, such presumption may be rebutted. Here, probable recovery from drug addiction, which caused the ethical breaches, can serve to mitigate an otherwise harsh sanction. He also had no prior disciplinary record and made full and free disclosure to the Board.
<i>Cincinnati Bar v. Farrell</i> , 2011 Ohio 2879	The attorney failed to timely file federal, state and local income tax returns or pay corresponding tax liabilities for himself and his former wife for the years 2001 through 2005. This was self-reported during the course of another disciplinary proceeding wherein he was suspended from the practice of law for two years with the second year stayed on conditions. In addition, he filed a false affidavit before a Domestic Relations Court, indicating that he had timely filed the aforementioned tax returns, paying the taxes for himself and his wife. He also failed to file his 2006 individual tax return or pay the tax liability which was required by a divorce decree.	Permanent disbarment. Because of the attorney's proclivity for deceit, the court felt that the deceit occurred even after he had been sanctioned for dishonest behavior, and it should result in this harsh sanction, although an indefinite suspension had been recommended by the Panel. The Board, however, recommended the disbarment which was imposed by the Court.
<i>DC v. Raso</i> , 2011 Ohio 2900	The attorney accepted a \$900 retainer to file a civil action, which he did indeed file. Thereafter, an \$8,000 arbitration award was obtained, and the defendant received a \$3,000 arbitration award on the counterclaim. The attorney never notified his client of this and misled the client into believing that the case was still pending. The trial court ultimately closed the case after no attempt to collect the judgment was made. After the disciplinary matter was instituted, the attorney collected \$5,500 of the arbitration award. In a second count, the attorney was paid \$450 to pursue a small claims action which the attorney did not file. The attorney also failed to refund the fee despite the client hiring another attorney to collect the fee. The attorney made misrepresentations to that lawyer about returning the fee.	Six-month suspension. As mitigating factors, the Court found that the attorney had no prior disciplinary record and had made an, albeit late, effort at restitution. The Court also noted that this attorney's license had been suspended for failing to comply with the attorney-registration rules. In suspending this lawyer, the Court noted that it is appropriate to impose an actual suspension when an attorney exhibits dishonesty toward a client.
<i>DC v. Character</i> , 2011 Ohio 2902	The attorney engaged in multiple acts of dishonesty, charged excessive fees, and also claimed to be part of a firm when, in fact, she was a sole practitioner. In defense, she claimed she was not afforded due process. The Court made it	Permanent disbarment. The attorney had engaged in a pattern of misconduct over a period of years involving multiple clients, multiple acts of dishonesty, charging excessive

	<p>clear that in attorney-discipline proceedings, as long as the attorney is afforded a hearing, the right to issue subpoenas and depose witnesses and an opportunity to prepare to explain the circumstances surrounding her actions, due process has been afforded. Thus, that the attorney was incarcerated and unable to attend her disciplinary hearing and observe all the testimony against her was not so prejudicial as to have rendered the proceedings inappropriate. She also felt that it was inappropriate to require her to respond to the disciplinary proceedings while a criminal prosecution was pending against her, which indeed resulted in a conviction. Significantly, counsel for Relator and the attorney bifurcated the one count that dealt with the conduct underlying the criminal proceeding. At oral argument before the Ohio Supreme Court, her counsel indicated that she did not wish to stay the proceeding pending the outcome of the criminal appeal.</p>	<p>fees, handling client legal matters without adequate preparations, multiple examples of neglect, intentionally damaged her clients and entered into business relationships with her clients without making required disclosures. She failed to keep client money separate from her own. She failed to disclose the lack of malpractice insurance. She falsely represented that she was a part of a law firm when she was not.</p>
<p><i>Cincinnati Bar v. Thompson</i>, 2011 Ohio 3095</p>	<p>The attorney notarized a number of documents. In one set of documents, he entered the month, day and year into the <i>jurats</i> and notarized two documents that his former partner had signed. In another document, an affidavit, he did not enter the date on the <i>jurat</i>, but notarized the unsigned document. Later, his former partner entered the name of a business associate and presented the pre-notarized documents for signature, but the associate did not sign either document. This conduct violated R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).</p>	<p>Public reprimand. The Court departed from its usual practice of requiring an actual suspension by citing another case in a similar situation involving the notarization of an affiant's signature without witnessing the signature. Thus, the Court adopted the parties' Consent-to-Discipline Agreement concerning a single, isolated incident involving significant mitigating evidence, including lack of a prior disciplinary record, the acknowledgement of misconduct, a sincere apology and cooperation in the disciplinary proceedings.</p>
<p><i>Northwest Ohio Bar v. Archer</i>, 2011 Ohio 3142</p>	<p>The attorney failed to submit the requisite returns and also failed to pay unemployment taxes and failed to remit federal, state and local income tax and Medicare and Social Security withholdings from his secretary's wages to the proper governmental authorities. This conduct, in violation of R. 8.4(c) and (h), involved dishonesty, fraud, deceit or misrepresentation and adversely reflected on his fitness to practice law.</p>	<p>One-year suspension. This attorney had been previously publicly reprimanded for neglecting a client's bankruptcy matter. Further, he failed to inform his client that his malpractice coverage had lapsed. Yet, as an aggravating factor, it was found that his conduct was driven by a dishonest or selfish motive, and that he had offered several explanations for his misconduct with inconsistent expressions of remorse. Because his conduct demonstrated a four-year pattern of misconduct, along with the other factors noted above, the Court felt that an actual one-year suspension with no part stayed was appropriate as a sanction here.</p>

<p><i>DC v. Folwell</i>, 2011 Ohio 3181</p>	<p>This attorney mishandled six cases. In one, he took fees, performed no work and did not timely return fees. He settled a case for a minor and did not obtain the proper permission to settle the claim. He then allowed the minor, who was incarcerated at a juvenile facility, to endorse the settlement check, which he then deposited in his client trust account, withdrawing his fee and leaving the remainder of the money in the trust account without first obtaining Probate Court approval. After the client turned 18, he still had not obtained Probate Court approval, although the Court had advised him that it was a requirement. While the money withheld from the settlement remained in his trust account, the balance of the trust account went below the amount withheld. In another case, he accepted a flat fee of \$750 and although the very next day he was told to do nothing by the client, he only returned \$400 of such fee almost three years later. His pattern of taking fees and doing no work was also shown in other probate matters and a domestic relations matter. In one final case, he shared a fee with his secretary from a case referred to him by her.</p>	<p>Two-year suspension, one year stayed. The Court adopted the stipulated sanction of the parties by weighing the aggravating and mitigating factors which included no prior disciplinary record and his cooperation in the disciplinary proceedings. However, he did engage in a pattern of misconduct and committed multiple offenses in addition to having a dishonest or selfish motive in respect to his various representations.</p>
<p><i>Butler County v. Minamy</i>, 2011 Ohio 3642</p>	<p>The attorney filed a Complaint on behalf of the grievant which was later dismissed because he failed to oppose it. When he learned of the dismissal, he was not honest with his client, but instead, advised her that she did not need to appear for trial. After receiving a statement of court costs, the grievant learned that her case had been dismissed. In responding to the Bar Association, the grievant admitted that he did not have malpractice coverage and proffered excuses for his neglect, including misdirection of mail by the court, an office move and an illness. He provided no documentary evidence to support these excuses. Ultimately, a default judgment was rendered and the Relator and the Board determined that the attorney violated Rules 1.4(c) (failure to advise of the lack of malpractice coverage), DR 6-101(A)(3) and 1.3 (failure to represent a client with reasonable diligence), 1.4(a)(3) (failure to keep a client reasonably informed about the status of a matter), 1.4(a)(4) (failure to comply as soon as practicable with reasonable requests for information from a client) and DR 1-102(A)(4) and 8.4(c) (dishonest conduct).</p>	<p>One-year suspension, all stayed on conditions. After the oral argument before the Supreme Court, the matter was remanded so that the Board could receive and consider further evidence regarding the attorney's health conditions. An independent psychiatric evaluation occurred where it was determined that the attorney had sustained a traumatic brain injury and PTSD as a result of his service in the Navy Reserves overseas. Since the primary purpose of the disciplinary process is not to punish the offender, but to protect the public, the Court felt that the attorney's diagnosis, treatment and remedial actions do not require an actual suspension to protect the public. Instead, while the parties agreed during oral argument that a two-year suspension, all stayed, would adequately protect the public, the Court required a one-year suspension, all stayed, with the attorney to be supervised by a monitor and limit his practice to certain practice areas while continuing to follow the recommendation of his treating professionals. The Court declined to allow the attorney to</p>

		supplement the record a second time in order to address the underlying merits of the matter, already having remanded the matter once to permit the attorney to submit mitigating evidence of his mental disability.
<i>Akron Bar v. DeLoach</i> , 2011 Ohio 4201	The attorney represented a client in a criminal appeal to the 9 <sup>th</sup> Dist. Court of Appeals. The attorney failed to file an Affidavit of Indigency and supporting financial documents, justifying the Court's Order that the client pay a deposit or request a waiver of the deposit. Ultimately, the Court dismissed the appeal, because the documents were not filed. During the course of the investigation, the attorney claimed that she had sent letters to the client about the need to prepare an Affidavit of Indigency and obtain information regarding the finances. She provided the investigator Microsoft Word documents that were not signed or scanned copies of the actual letters sent to the client. The metadata on the letters created suspicion concerning the authenticity of the letters. In explaining the matter to the investigator, she misrepresented that she had found the paper copies, but retyped them to get them to the investigator more quickly, ultimately admitting that she was unable to find the originals due to poor recordkeeping and organizational deficiencies. However, after the Complaint was filed, she did locate the original letters and provided them to the investigator. She was found to have violated R. 8.4(c) (a lawyer is prohibited from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).	Six-month suspension, all stayed. While dishonesty usually requires an actual suspension, the Court felt that significant mitigating factors were present, including no prior disciplinary record and a demonstration of remorse. The Court felt that this was a single case of misconduct with no intent to obtain financial gain. Further, although the attorney misrepresented the recreated letter, she gained no unfair advantage from this deception and no one was harmed. She ultimately acknowledged her misconduct and misrepresentation and has made attempts to correct her organizational system at her office.
<i>DC v. Karris</i> , 2011 Ohio 4243	The attorney was engaged to prepare documents to protect a client's investment. The attorney prepared a Promissory Note secured by a mortgage, as well as a Quit Claim Deed on the same property to be held in escrow. There was a dispute concerning who executed the Promissory Note which was allegedly witnessed and then notarized by the attorney. The evidence at the hearing conflicted, and a document examiner provided an opinion that the signatures allegedly witnessed by the attorney were not made by the person who purportedly signed them. In another count, the testimony of the attorney at another hearing involving the same signatures was brought into question because of the forensic evidence presented during the disciplinary hearing. This count was dismissed due to the confusing testimony, and therefore, clear and convincing evidence did not show that the testimony in the other proceeding was false.	Six-month suspension. Here, Relator sought a one-year suspension, while the attorney sought a dismissal of both counts. The Court again recognized its precedent that as a general rule, misconduct involving dishonesty warrants an actual suspension. Because this attorney engaged in multiple acts of improperly notarizing documents (three separate occasions), and that he steadfastly refused to acknowledge the wrongful nature of his conduct even after being confronted with forensic evidence, the Court distinguished this case from others which resulted in a lesser sanction.

<p><i>DC v. Cantrell</i>, 2011 Ohio 4554</p>	<p>The attorney pled guilty to two counts of felony grand theft and one count of possession of cocaine. She stipulated to a violation of Rules 8.4(b) (a lawyer shall not commit an illegal act that reflects adversely on the lawyer’s honesty or trustworthiness and 8.4(h) (a lawyer shall not engage in any other conduct that adversely reflects on the lawyer’s fitness to practice law.) The attorney did not appear or submit additional mitigating evidence at a hearing which was conducted.</p>	<p>Indefinite suspension. The Panel and Board recommended permanent disbarment. Upon the attorney’s object to this recommendation, she asserted that her dual diagnosis of chemical dependency and mental illness contributed to the cause of her misconduct and that due to successful treatment, this will enable her to return to the competent, ethical, professional practice under specified conditions. She attached to her objections additional medical, psychological and testimonial reports and letters. This evidence was rejected by the Court, because it was not presented during the hearing. However, the Court reduced the sanction, because the Board indicated that the interim felony suspension related to the current charges constituted a prior disciplinary offense. Prior precedent belies this contention. This sanction was reduced even though the lawyer had previously been indefinitely suspended for using a client trust account to pay personal expenses, representing a decedent’s estate while her license remained inactive and receiving additional fees not approved by the Probate Court. The Court ruled that this indefinite suspension shall be served consecutively to the previous one.</p>
<p><i>DC v. Gerchak</i>, 2011 Ohio 5075</p>	<p>The attorney was held in contempt twice by a bankruptcy judge, because he failed to respond to show-cause orders in two separate cases, resulting in a 60-day suspension of his electronic filing privileges. During this 60-day period, through another attorney, he filed a bankruptcy petition, received \$800 in fees from a client, but sought the Court’s permission, through the other attorney, to pay the fees electronically in installments. The statement filed in support of this request was untrue, because the client had already given the attorney the filing fee and was unaware of the attorney filing such application. When the attorney appeared before the judge pursuant to a show-cause order, he admitted that he had violated the previous order by electronically filing the bankruptcy petition in which he had made the false statement to the Court concerning the debtor’s ability to pay the filing fee.</p>	<p>One-year suspension, all stayed. The Court found that the attorney’s depression and significant stress due to his son’s chronic, genetic illness could be considered to have clouded his judgment, contributing to his bad decision concerning the nonpayment of a filing fee. However, the Court indicated that the mental state did not qualify as a mitigating factor. The Court did deviate from its usual presumption of time off for a dishonest act by following the Panel’s recommendation based upon substantial mitigating factors, including its judgment that a suspension was not necessary to protect the public.</p>

<p><i>DC v. Zaccagnini</i>, 2011 Ohio 4703</p>	<p>This attorney pled guilty to one felony count of conspiracy arising out of his participation with his law partners and others to unlawfully obtain contracts for certain businesses substantially controlled by one of his partners, to perform commercial appraisals for the Cuyahoga County Auditor. This activity took place between March 1998 and January 2008, resulting in \$1.4 million in kickbacks to two employees of the Auditor's Office and the collection of almost \$9 million in fees by the attorney's law firm in one of the businesses for which he worked. After one of the partners died, a second business was formed in 2006 and additional revenue of almost \$3.7 million was collected in connection with this same conspiracy. The attorney was found to have violated DR 1-102(A)(3) (prohibiting a lawyer from engaging in illegal conduct involving moral turpitude), DR 1-102(A)(4) and R. 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), DR 1-102(A)(5) and R. 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice, and finally DR 1-102(A)(6) and R. 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on a lawyer's fitness to practice law.</p>	<p>Permanent disbarment. The attorney failed to respond to the disciplinary Complaint, and therefore, the Master Commissioner's recommendation of permanent disbarment was adopted.</p>
<p><i>DC v. Lawson</i>, 2011 Ohio 4673</p>	<p>The attorney had previously been indefinitely suspended, because he neglected and failed to properly represent 15 clients, failed to return unearned fees, stole settlement funds from six clients, misused his IOLTA account to conceal his personal funds from creditors, failed to cooperate in numerous grievance investigations and made repeated, dishonest statements to clients and Relator during the investigation of those matters. This disciplinary Complaint arose from conduct which, at least in part, underlaid the previous disciplinary case. Here, the attorney was indicted by Federal Court on conspiracy to obtain Schedule II controlled substances by deception and pled guilty. He was sentenced to 24 months incarceration, one year of supervised release and 1,000 hours of community service. An interim suspension order was issued by this Court resulting from this felony conviction. The underlying conduct involved his conspiracy with a physician to obtain prescription drugs based on misrepresentations he made to the physician who he represented and was working without fee in exchange for the prescriptions.</p>	<p>Permanent disbarment. The Court rejected the claim that this case was part of the initial misconduct and therefore the matter was <i>res judicata</i>. The Court observed that the criminal misconduct which underlaid this matter was only charged after the previous disciplinary matter had been heard. Although the Board recommended an indefinite suspension, the Court rejected it in order to protect the public, which is the primary goal of the attorney disciplinary system. The Court issued this sanction even though there was evidence of chemical dependency and mental health impairment which has been addressed by the attorney.</p>
<p><i>Cleve. Bar v. Brown</i>, 2011 Ohio 5198</p>	<p>The attorney neglected 3 cases, child support, bankruptcy and collection. He took fees and did little or no work. He failed to pay restitution</p>	<p>Indefinite suspension. Although the Master Commissioner recommended disbarment, the Board recommended</p>

	although he had promised the Bar he would.	indefinite suspension. The Court agreed noting the few years he had been practicing. He is required to pay restitution, less than \$4,000.00 for all three cases.
<i>Columbus Bar v. Hunter</i> , 2011 Ohio 5788	Failed to report cash payment of more than \$10,000 in his law practice resulting in a felony conviction. Neglected a personal injury case. Took a retainer, did minimal work and returned case to client. Overdrew his trust account.	Indefinite suspension. Resitution and completion of Federal supervised release.
	<b>Misuse of Trust Account</b>	
<i>DC v. Stubbs</i> , 2011 Ohio 553	Attorney failed to keep accurate records concerning her trust account, comingled earned fees and court appointed case fees. She paid personal and office expenses from the account. In a personal injury case, she retained over \$5,000 to pay medical liens, but used the money to pay her own bills. She has not returned the money to the client. She did not respond to the investigation of this client's grievance.	Indefinite suspension. Aggravating factors included prior disciplinary history (falsified a document to convince OBMV that she had insurance) and two attorney-registration suspensions; a pattern of misconduct involved multiple offenses, caused harm to vulnerable client and failed to make restitution. She also stopped working with OLAP.
<i>DC v. Simon</i> , 2011 Ohio 627	Deposited into his trust account both client and personal funds, including attorney fees and retainers and money from his PERS account. He used the account as if it were a personal bank account and law office operating account between 6/05 and 3/09.	One-year suspension, all stayed. Consent-to-Discipline Agreement. Only aggravating factor was failure to give all information requested to DC during investigation. Gave the information (personal tax returns) after the complaint was filed and before the Consent-to-Discipline Agreement.
<i>Columbus Bar v. Boggs</i> , 2011 Ohio 2637	In one of five separate matters, the attorney failed to deposit money received, in part, for anticipated court costs and as a retainer in a client trust account rather than his operating account. His representation was then terminated, and the refund was paid out from a trust account after he had deposited funds from the business operating account into the trust account. He also failed to maintain malpractice coverage and to inform his client of this. In a second matter, while the neglect count was dismissed, the count relative to failing to notify the client about his lack of malpractice coverage and providing a refund from his business account were found to have merit. In another matter, he deposited a retainer in his operating account in a wrongful termination matter. He also deposited a retainer in his business account, failed to maintain malpractice coverage and failed to inform his client as to the status of the case and as to the lack of insurance.	Indefinite suspension. Although the Panel recommended a two-year suspension, one year stayed, the Board recommended a harsher penalty, given the attorney's previous sanctions on two occasions, one resulting in a public reprimand and the other resulting in a one-year stayed suspension which involved his trust account.
<i>Cincinnati Bar v. Hauck</i> , 2011 Ohio 3281	The attorney distributed a settlement check from his National City Bank account to a minor. After two months, he stopped payment on the check,	12-month suspension, six months stayed. Even though the parties stipulated to a 12-month suspension,



	<p>since it had not been negotiated. He appeared before the Probate Court at a guardianship hearing and explained that he had comingled personal and business funds with client funds in a single account. He did not remit the funds for another two months that had been due the minor. He also failed to maintain adequate records of client funds in his possession. The actual checking account that he used was registered to an ABC Company. Yet the checks themselves did not identify the ABC Company as the accountholder. Instead, the check bore the attorney's name followed by "Attorney at Law" and "IOLTA," which was false. He did this to avoid tax garnishments by the IRS. He stipulated that this was dishonest conduct which violated R. 8.4(c) even though that had not been alleged in the Complaint. He also stipulated to misuse of his trust account under R. 1.15(a) and (b), as well as failing to inform his client that he lacked malpractice coverage violated R. 1.4(c).</p>	<p>all stayed, because of overwhelming mitigation evidence, the Court gave an actual suspension for a portion of this stipulated time period, because of the dishonest conduct that was admitted.</p>
<p><i>DC v. Ranke</i>, 2011 Ohio 4730</p>	<p>After having previously received a public reprimand for neglecting an entrusted legal matter, the attorney failed to initially respond to Disciplinary Counsel's inquiry concerning a notification by the bank of an overdraft of her IOLTA account. She did not respond to two letters of inquiry and to a first subpoena <i>duces tecum</i>. She did appear for a subpoenaed deposition on a second occasion, but failed to bring the required documents. Eventually, she supplied the documents which substantiated her misuse of the account. Although charged with failure to promptly deliver funds to a client whose funds had been deposited in the IOLTA account, the Court dismissed that charge, but did agree with Board's recommendation that she be found to have violated Rules 1.8(e) (prohibiting a lawyer from providing financial assistance to a client for expenses other than court or litigation costs), 1.15(a)(2) (requiring a lawyer to maintain a record for each client on whose behalf funds are held) and 1.15(a)(5) (requiring a lawyer to perform and retain a monthly reconciliation of trust account funds). In a second count, she was found to have failed to file an appellate brief in a criminal matter, although she had entered an appearance in the court of appeals for that purpose. The matter was dismissed, and she never responded to requests for information from the client. As such, she was found to have violated Rules 1.2(a) (requiring a lawyer to abide by a client's decisions regarding the objectives of the representation), 1.3 (requiring a lawyer to act with reasonable diligence and promptness in representing a</p>	<p>Indefinite suspension. The Court cited analogous precedent which supported the Master Commissioner's recommendation that the attorney be indefinitely suspended, since she neglected matters, misused her trust account and failed to cooperate in the ensuing investigation.</p>

	client), 1.4(a)(3) requiring a lawyer to keep the client reasonably informed about the status of a legal matter, 8.4(d) (prohibiting conduct that is prejudicial to the administration of justice) and 8.4(h) (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law). Finally, she was found to have failed to cooperate with the disciplinary investigation which was a violation of both R. 8.4(b) and Gov Bar R. V(4)(G).	
<i>Cincinnati Bar v. Dearfield</i> , 2011 Ohio 5295	Attorney failed to deposit retainer and expected expenses into trust account. Client signed a non-refundable fee agreement. After about 6 weeks, and several conversations, the client chose not to file for bankruptcy requesting a refund of the expenses he had advanced. At first the attorney refused to refund him claiming he earned all the money paid initially. Eventually, after the grievance was filed, the attorney returned the expenses (\$399) with the client signing a document acknowledging that the payment satisfied all claims, including the ethical violations.	One year suspension, all stayed. The court treated the waiver as an aggravating factor tantamount to failing to cooperate with the disciplinary investigation. Also, the old rule (DR 9-102(A)) did not require costs to be deposited into an IOLTA account, a misunderstanding under which this attorney labored. The new rules, 1.15(c) require otherwise.
	<b>Neglect</b>	
<i>Columbus Bar v. Van Sickle</i> , 2011 Ohio 774	In a five-count complaint, largely stipulated, it was found that the attorney provided representation to his wife, while under an attorney-registration suspension, neglected three other matters, failed to return client documents and fees and failed to cooperate in the disciplinary investigation.	Indefinite suspension. Although the Panel and Board recommended two-year suspension, one year stayed, the Court ordered a more severe sanction, because documented depression was neither treated nor was a prognosis provided.
<i>Akron Bar v. Dismuke</i> , 2011 Ohio 1444	The attorney neglected two criminal matters and failed to promptly refund money he had accepted as a retainer and return the file. He then failed to cooperate in the ensuing investigation. He admitted that he had abandoned client files at a location where Relator was forwarding letters of inquiry. He also failed to timely register as an attorney with the court.	Two-year suspension, one year stayed. Although asserting depression, he failed to prove all four factors of the test necessary to permit a mental illness to be a mitigating factor. He received a two-year suspension with one year stayed wherein he remained on probation. He was ordered to immediately cure his registration deficiency, bring his CLE current, take six hours of law management, enter into an OLAP contract, and in order to be reinstated, provide a mental health provider report concerning his mental fitness to return to the competent, professional and ethical practice of law. While under probation he is to be monitored by an appointed attorney.
<i>Cleveland Metro Bar v. Freeman</i> , 2011 Ohio 1447	The attorney neglected two foreclosure matters and failed to keep his clients reasonably informed of the status of their matters. Although charged with a direct advertisement violation, that charge was dismissed because he had a previous,	One-year suspension, stayed. Although the parties stipulated to a one-year suspension, all stayed, which included a stipulated violation of the direct advertising rule, the court

	<p>professional relationship with the client and therefore did not have to comply with the direct advertising rule.</p>	<p>adopted the recommended sanction and dismissed the direct advertising violation. The attorney was further required to complete at least 12 hours of CLE in law office management in addition to his other CLE requirements, with a further requirement to prove he completed six hours of CLE within the first six months of his stayed suspension.</p>
<p><i>Cleveland Metro Bar v. Freeman</i>, 2011 Ohio 1483</p>	<p>The attorney failed to promptly distribute personal injury settlement proceeds in four separate cases. He further dismissed a personal injury case without permission. In one case, he failed to promptly return the client's file. In another, he neglected a personal injury case, and it was dismissed. He also neglected a DUI case and failed to pay restitution. Finally, he failed to cooperate in the investigation, and a default judgment was rendered against him.</p>	<p>Permanent disbarment, although the Master Commissioner recommending the granting of the default judgment further recommended an indefinite suspension. Because of the extensive misconduct alleged in the 18 count Complaint, which included misappropriation of client funds, and the subsequent failure to cooperate in the investigation, the Court levied the harsher penalty.</p>
<p><i>Columbus Bar v. Troxell</i> 2011 Ohio 3178</p>	<p>The attorney neglected two personal injury matters. In one, he settled the case for \$236,000 and retained \$15,000 to cover a potential Medicare lien. After almost five years, he failed to provide an accounting for the \$15,000, despite the client's efforts to communicate with him. The Court characterized this conduct as not only neglect, but also dishonesty in failing to promptly deliver funds due a client. In connection with the Bar Association's inquiry into this charge, the attorney called to cancel his deposition, promising to provide documentation regarding the client's case. However, the attorney never provided the requested documents and failed to attend the second scheduled deposition. In a second matter, the attorney was retained to represent a client in a personal injury matter and failed to communicate with his client concerning the matter. The client found out from the insurance adjuster that the claim had been settled for \$4,000 and that the settlement check had never been cashed and an executed release had not been returned. Ultimately, this client settled the claim with the insurance company. Again, the attorney failed to respond to Relator's letters of inquiry regarding this matter. Finally, in a third matter, the attorney failed to respond to Relator's letter of inquiry.</p>	<p>Indefinite suspension. The Master Commission recommended an indefinite suspension in respect to this matter. The Court felt that the aggravating factors involving a dishonest or selfish motive, multiple offenses, the failure to cooperate in the disciplinary process, the refusal to acknowledge the wrongful nature of his conduct, harm caused to vulnerable clients and the failure to make restitution far outweighed the only mitigating factor of no prior disciplinary record. The Court noted that a lawyer's neglect of legal matters and the failure to cooperate in the ensuing disciplinary investigation generally warrants an indefinite suspension.</p>
<p><i>DC v. Shuler</i>, 2011 Ohio 4198</p>	<p>The attorney neglected two separate matters. One involving five real estate transactions in which the client believed he had been defrauded. The client paid a substantial retainer which the attorney drew down on two occasions, but only</p>	<p>Six-month suspension, all stayed. The parties stipulated to a six-month suspension with the entire suspension stayed on the condition that the attorney completes a three-year</p>

	<p>billed his client on one of the two occasions. The attorney then ceased communicating with his client and did not provide a requested status report concerning the balance of the retainer. In connection with this grievance, the attorney did not respond to the initial letter of inquiry from the Relator and failed to appear for a deposition after he was issued a subpoena. The second matter involved representation of a client for a claim arising out of defective materials and workmanship related to painting and restoring a classic car. No fees were ever paid, and the attorney stopped communicating with the client after some initial communications and activity. This attorney also failed to respond to the Columbus Bar Association's letter of inquiry in connection with this matter. The parties stipulated that the attorney's conduct violated Rules 1.13 (failure to act with reasonable diligence and promptness), 1.4(a)(2), (3) and (4) (a lawyer shall reasonably consult with a client concerning the client's objectives, shall keep the client reasonably informed about the status of the matter, and shall comply as soon as practicable with reasonable requests for information from the client), 1.15(d) (a lawyer shall promptly deliver to a client property that the client is entitled to receive), 8.1 (a lawyer shall not knowingly fail to respond in a disciplinary investigation) and 8.4(h) (a lawyer shall not engage in conduct which adversely reflects on his fitness to practice).</p>	<p>contract with OLAP. The OLAP contract involved his diagnosed depression which contributed to the misconduct and for which he had been undergoing treatment. The Court recognized that a six-month suspension stayed in circumstances involving a condition of compliance with an OLAP contract is an appropriate sanction for a lawyer who has neglected client matters. The Court imposed the condition that the attorney successfully completes his three-year OLAP contract.</p>
<p><i>DC v. Dundon</i>, 2011 Ohio 4199</p>	<p>An attorney who was retiring from his law firm who, prior to his retirement, had accepted a retainer to develop an estate plan which included creating limited-liability companies to protect rental properties. A trust book was never returned to the attorney after it was provided to the trustee so that it could be turned over to the client. Ultimately, the client hired another attorney to complete the work after the client alleged that follow-up did not occur once the file was transferred from the attorney to one of his partners after his retirement. Even though a substantial amount of work had been done by the attorney on this matter when he learned that the new attorney who had been hired drafted an entirely new set of estate planning documents, he refunded the entire fee of \$10,000. The parties stipulated that the attorney's conduct violated DR 6-101(A)(3) (neglect of a legal matter) and DR 9-102(B)(4) (promptly delivering client funds to which a client is entitled) and Rules 1.13 (a lawyer shall act with reasonable diligence and promptness), 1.4(a)(2) (a lawyer shall reasonably consult with the client), 1.4(a)(3) (a lawyer shall</p>	<p>Public reprimand. The Court adopted the Board's recommendation of a public reprimand even though the parties stipulated to a six-month stayed suspension, giving credence to the mitigating factors of no prior disciplinary record, not acting with a dishonest or selfish motives, acknowledging wrongful conduct, cooperation during the disciplinary process and making full restitution. No aggravating factors existed.</p>

	keep a client reasonably informed) and 1.4(a)(4) (a lawyer shall comply as soon as practicable with reasonable requests for information from the client.	
<i>Columbus Bar v. Williams</i> , 2011 Ohio 4381	The attorney failed to file a Brief in a criminal appeal. He admitted that he failed to notify his client, that he did not intend to file a Brief and acknowledged that he probably should have filed an Anders Brief on his client's behalf. He also admitted that he failed to appear for a trial of an aggravated robbery and aggravated murder case, even though he had received notice of the trial. Ultimately, another attorney was appointed to represent the client. The parties stipulated that this conduct was a violation of Rules 1.1 (requiring a lawyer to provide competent representation), 1.3 (requiring a lawyer to act with reasonable diligence), 1.4(a)(1) (requiring a lawyer to promptly inform the client of any decision or circumstance with respect to which the client's informed consent is required, 1.4(a)(2) (requiring a lawyer to reasonably consult with a client about the means by which the client's objectives are to be accomplished), 1.4(a)(3) (requiring the lawyer to keep the client reasonably informed about the status of the matter), 1.4(a)(4) (requiring a lawyer to comply as soon as practicable with reasonable requests for information), 1.16(a)(2) (requiring a lawyer to withdraw from representation when the lawyer's physical or mental condition materially impairs his ability to represent the client) and 6.2 (permitting a lawyer to seek to avoid an appointment by a court to represent a person if representation of a client is likely to result in a violation of the Ohio Rules of Professional Conduct or other law).	Two-year suspension, all stayed on conditions. The attorney admitted that he was impaired in his ability to represent the client due to his suffering from depression and routinely using marijuana, but failing to seek treatment or otherwise advise the Court of these problems. He entered into an OLAP contract after meeting with a former treating psychologist who provided expert testimony in some of the attorney's capital murder cases. The attorney also presented two compelling character witnesses. While the mental illness and substance abuse evidence did not rise to the level of a mitigating factor, he did show a lack of prior disciplinary offenses in more than 37 years of practice, lack of a selfish or dishonest motive, full and free disclosure to Relator and the Board, full cooperation in the disciplinary proceedings, and he expressed sincere remorse for his conduct. Thus, in the Consent-to-Discipline Agreement, the parties had stipulated that an appropriate sanction for his misconduct was a two-year suspension, all stayed, as long as he committed no further misconduct and fully complied with an OLAP contract. The Court ruled similarly, requiring that he serve two years of monitored probation in addition to fully complying with his OLAP contract and then submitting to any drug tests requested by OLAP or the Relator at any time and that he refrain from alcohol and drug use.
<i>Lake County v. Troy</i> , 2011 Ohio 4913	The attorney failed to institute proceedings in Domestic Relations Court for two separate clients, having taken retainers and other fees. In one case, he took a fee for a paternity test and never turned over the results, despite the client's request. In another matter, which had been the subject of a previous license suspension, a malpractice action was subsequently filed against him. After obtaining a judgment, the attorney's insurer would not pay, because it had not been informed of the claim during the policy period.	Indefinite suspension. The Court reiterated its general rule that in cases involving neglect of legal matters and the failure to cooperate in the ensuing disciplinary investigation, an indefinite suspension is warranted.

	<p>He lacked professional liability insurance at the time that the judgment was obtained, and therefore, it could not be satisfied from insurance proceeds. Further, he failed to cooperate with the disciplinary investigation, never responding to Relator's letters of inquiry or the Complaints attempted to be served upon him by the Board. He did not respond to the Motion for Default Judgment which was rendered against him and which concluded that he had violated Rules 1.1 (requiring a lawyer to provide competent representation), 1.3 (requiring a lawyer to act with reasonable diligence and promptness), 1.4 (requiring a lawyer to keep a client informed), and 8.4(c) (prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation and Gov. Bar R. V(4)(G) (neglecting or refusing to assist or testify in a disciplinary investigation).</p>	
<p><i>Geauga County v. Corrigan</i>, 2011 Ohio 4731</p>	<p>The attorney failed to respond to a former client's grievance which had been first filed with the Cleveland Metropolitan Bar Association. When it was discovered that the lawyer's office was in Geauga County, the grievance was transferred there. Again, the lawyer did not respond to letters which were sent both by certified and ordinary mail. Relator placed calls to the attorney on at least 30 occasions and once or twice left messages when his voicemail box was not full. Ultimately, the attorney sent a letter to the Grievance Committee apologizing for the inadequate response and was invited to attend a Grievance Committee meeting which he failed to attend. Later the same day, he did come to the Committee Chairman's office, but it was too late. The attorney did respond to the Complaint filed with the Board and explained why he had neglected to respond.</p>	<p>Six-month suspension, all stayed. Although Relator had initially planned to recommend a public reprimand, the attorney's continuing lack of cooperation and failure to accept responsibility for his actions, even after the Complaint had been filed, caused Relator to seek a harsher sanction. The Court observed analogous precedent and agreed with the recommendation of the Board as to a six-month suspension, all stayed.</p>
<p><i>Akron Bar v. Wittbrod</i>, 2011 Ohio 4706</p>	<p>The attorney failed to return a client's telephone calls after withholding money in his trust account to pay the client's medical bills after a personal injury automobile accident settlement. He also failed to inform his client that he did not maintain malpractice coverage. He did not cooperate with the disciplinary investigation which ensued from this client's grievance. In a second matter, he ceased communicating with bankruptcy clients after their mortgage company failed to accept mortgage payments, and allegedly returned \$5,000 to the attorney. Ultimately, they were forced to sell their home at a substantial loss to avoid foreclosure. In a final grievance, a client's automobile was repossessed even though the attorney had been retained to represent her in a bankruptcy proceeding and had been assured that the car lease had been reaffirmed.</p>	<p>Indefinite suspension. Because of the attorney's previous suspensions, one stayed, but then imposed because of an ensuing attorney registration suspension, the Court ruled that this case fell within the general rule that neglect of an entrusted legal matter, coupled with the failure to cooperate in the ensuing disciplinary investigation warrants an indefinite suspension.</p>

	Originally, this matter was submitted to the Court on default judgment, but the Court remanded it to the Board so that the record could be supplemented with appropriate evidence of misconduct. Upon resubmission to the Court, the various samples of neglect were found, as well as the lack of cooperation with the disciplinary process.	
<i>DC v. Nittskoff</i> , 2011 Ohio 5758	Attorney neglected and estate tax return resulting in penalty and interest of over \$450,000. He has no insurance and did not tell clients. He failed to cooperate in the disciplinary investigation.	Indefinite suspension, with restitution as condition of reinstatement. Presumptive sanction for neglect and failure to cooperate.
	<b>Sexual Misconduct</b>	
<i>Akron Bar v. Miller</i> , 2011 Ohio 4112	The attorney, during a recorded portion of a telephone call which lasted approximately four minutes, asked his client about her breast size and stated that she should show him her breasts as a reward, given that he was performing a great deal of work for her for very little compensation. He also suggested that the client should perform oral sex on him. The client recorded this call, because in earlier calls, the attorney had made inappropriate suggestions.	Six-month suspension, all stayed. The attorney presented evidence from a mental health therapist and licensed clinical counselor concerning his anxiety and depression. This witness related the attorney's mental health condition to the inappropriate statements he made to this client. Further, other applicable mitigating factors included no prior disciplinary record, free disclosure and a cooperative attitude toward the disciplinary proceedings and character evidence in his favor. Also, the Court recognized that the diagnosis and treatment of mental illness contributed to the cause of the misconduct, and was therefore a legitimate, mitigating factor. The Court did recognize the aggravating factor of the attorney's selfish motive and the client's vulnerability with resulting harm to the client. The Court distinguished those cases of consensual sexual conduct from this one, and therefore declined to issue a public reprimand.
<i>DC v. Williams</i> , 2011 Ohio 5163	The attorney was convicted of child rape (3 Counts) and kidnapping involving his seven-year-old nephew.	Permanent disbarment. Only appropriate sanction for this behavior.
	<b>Theft</b>	
<i>Cincinnati Bar v. Sanz</i> , 2011 Ohio 766	Attorney admitted to the Bar in 1986 failed to register for 2007/2009 biennium, failed to meet CLE requirements since June 2008 and stole money from a trust he had administered as trustee since 2002. He stole over \$180,000 which he called loans to his other businesses and paid back very little. He failed to defend the discipline case.	Permanent disbarment. Presumptive sanction for misappropriating client funds.
<i>DC v. Grigsby</i> ,	Attorney used a company credit card for personal	18-month suspension, all stayed. The

2011 Ohio 1446	expenses and did not make payments on a timely basis. The attorney pled guilty to the misuse of a credit card, a first degree misdemeanor, and paid restitution to her employer. She self-reported her conviction to Relator.	Court permitted a lengthy stayed suspension with the condition of monitored probation to provide greater protection to the public than a shorter, actual suspension which is usually called for in a matter involving dishonesty.
<i>DC v. Longino</i> , 2011 Ohio 1524	The attorney, who began practicing law in 2007, was charged under a 12-count Complaint for failing to keep her clients informed about the status of their cases, improperly notarizing affidavits, notarizing documents that had not been signed by the purported signer, notarizing affidavits which contained false information, settling a client's legal matter without consent and then misappropriating the settlement proceeds, representing two clients with conflicting interests and neglecting client matters. She also was alleged to have mishandled her client's trust account and two clients' bankruptcies.	Permanent disbarment. Although the Panel recommended an indefinite suspension, the Board, because of the attorney's "extraordinary record of misconduct" in her brief legal career, recommended disbarment which the Court adopted. This more harsh sanction arose because the attorney ultimately avoided and denied the allegations which had been proven against her and failed to acknowledge the wrongfulness of her conduct or that harm had been caused to her vulnerable clients. The Court recognized that disbarment is a presumptive disciplinary sanction for the misappropriation of client funds. This, combined with the lack of mitigating factors and only aggravating factors, led to the sanction of permanent disbarment.
<i>Toledo Bar v. Scott</i> , 2011 Ohio 4185	The attorney was hired by a client to represent him on a charge of aggravated murder, even though the attorney had never tried a murder case. The client signed a General Power of Attorney in favor of the attorney, giving the attorney his ATM card and PIN number. Thereafter, the attorney made seven ATM withdrawals and deposited none of them in his trust account. Thereafter, he closed the client's 401K account, depositing almost \$25,000 from that account into his business account before he had earned the fee. He also used the POA to gain access to the client's home, taking possession of certain personal property, including a pair of tickets to a Cleveland Browns football game. He ultimately used the tickets to attend the game with a friend. He failed to keep records of or account to the client for the personal property he received, which included a 1983 Porsche 928 and a 1990 Cadillac Fleetwood. During the course of the disciplinary investigation, he fabricated hourly bills to mislead the investigator. These bills overstated the time he met with the client at jail by at least 22 hours. In another matter, he failed to advise the client that he did not carry malpractice coverage, and finally, he failed to properly use his trust account, allowing a credit	Two-year suspension, with the final one year stayed on conditions. The conditions included serving six months of probation under the supervision of a monitor and taking an additional three hours of law office management CLE within the first six months of his suspension. The Court felt that despite the parties' stipulation to a one-year suspension with six months stayed that the attorney's conduct involving lying to disciplinary authorities and taking advantage of his client while the client was in jail required more than this stipulated sanction.



	card company to process credit card charges for the attorney's clients, causing the account to become overdrawn. He stipulated to violations of Rules 1.15(c) (failure to deposit fees paid in advance into a trust account), 8.1(a) (making a false statement of material fact in connection with a disciplinary matter, 8.4(h) (requesting a notary public to notarize his client's signature improperly), 1.15(a) (misuse of trust account) and 1.4(c) (failure to advise of no malpractice coverage).	
<i>DC v. Squire</i> , 2011 Ohio 5578	Attorney misappropriated and mishandled a substantial amount of client funds. He also borrowed money from clients. He lied to the Board about his behavior. He misused his trust account.	Indefinite suspension. Although Squire engaged in multiple acts of misconduct, for more than a year, his 25 years without discipline militates against disbarment, the presumptive sanction for misappropriation. He must provide a full accounting concerning withdrawals and deposits from a certain account and make restitution to the fund for any unverified fees, loan, or expenses, with statutory interest.
<b>Miscellaneous</b>		
<i>Columbus Bar v. Larkin</i> , 2011 Ohio 762.	After a serious automobile accident attorney's car was found to have a crack pipe with residue and used syringes for heroin for which she was indicted. She had previously been suspended for failing to register for the 2009/2011 biennium, and during the discipline case, she failed to comply with CLE requirements. She also failed to answer the complaint and after giving her deposition failed to participate any further in the discipline case. Her conduct violated Rules 8.4(b)(committing an illegal act reflecting adversely on the lawyer's honesty or trustworthiness) and 8.4(h)(prohibition against conduct reflecting adversely on the lawyer's fitness to practice law)	Indefinite suspension. Failed to deal with OLAP. Court indicated that the goal of the discipline system is not only to protect the public, but also not to deprive the public of attorneys who, through rehabilitation, can ethically and competently serve in a professional capacity.
<i>Cincinnati Bar v. Hackett</i> 2011 Ohio 3096	The attorney attempted to enforce an onerous employment agreement upon a departing associate which required the associate to provide 95% of the fees earned after the associate left the firm. The trial court, in which the action to collect these fees was filed, dismissed the Complaint as against public policy, and because it most likely violated Rules 1.15 (prohibiting a lawyer from making an agreement for charging or collecting an illegal or clearly excessive fee) and 5.6 (prohibiting a lawyer from offering or participating in an employment agreement that restricts the right of a lawyer to practice after termination of the relationship).	Public reprimand. The parties entered into a Consent-to-Discipline Agreement. Such Agreement required the attorney to admit to the allegations of the Complaint and agree with the Relator as to the appropriate sanction. Although the Panel, the Board and the Court are not bound by this Agreement, it was adopted here. A specific finding was made that there was an absence of a dishonest or selfish motive. The Court agreed that there was not a dishonest motive, but disagreed that there was a selfish one.

		Nonetheless, the Court felt that a public reprimand was the appropriate sanction, given the circumstances of this matter.

## **Pertinent Advisory Opinions of the Board of Commissioners on Grievances and Discipline**

At least five Advisory Opinions have been issued in 2010 and 2011 which have some application to trial lawyers in Ohio. They are summarized as follows.

1. **Opinion 2010-2:**

This opinion concerns exactly what must be turned over by a lawyer when a client requests his or her file. The Board advises that even the notes of a lawyer must be turned over if the notes are concerning facts about the case and are most likely reasonably necessary to the client's continued representation. A lawyer's notes to himself or herself regarding passing thoughts and internal office memoranda of a management nature, including personnel assignments or conflicts of interest checks, are probably not items reasonably necessary to a client's representation. Finally, this opinion makes clear that any expense for copying costs must be incurred by the lawyer and not an expense to be billed to the client. The rationale supporting this opinion can be found in Rule of Professional Conduct 1.16(d) requiring, to the extent reasonably practicable, that a client's interest be protected upon termination of representation; Rule 1.4(a)(3) and (4) requiring that clients be reasonably informed about the status of their cases and that reasonable requests for information from clients be complied with as soon as possible; Rule 1.8(i) prohibiting the acquisition of a proprietary interest by a lawyer in the cause of action, the subject matter of litigation, except that a lawyer may acquire a lien to secure fees and expenses, and Rule 1.15 which sets forth the ethical duties associated with the safekeeping of funds and property of a client.

It is interesting to note that in Ohio, this opinion indicates that there is no common law lien on a client's file in a contingent fee case. There is also no statutory lien on a client's file.

2. **Opinion 2010-3:**

This opinion indicates that in connection with the settlement of a legal malpractice claim, it is improper for a lawyer to require a current or former client to withdraw a disciplinary grievance or to refrain from filing a disciplinary grievance. Such a requirement would run afoul of Professional Conduct Rule 8.4(d) (conduct prejudicial to the administration of justice) and Professional Conduct Rule 8.4(h) (conduct adversely reflecting on fitness to practice). Also implicated are Professional Conduct Rules 8.1(a) and (b), requiring that attorneys truthfully and fully respond to inquiries and investigation into disciplinary matters by disciplinary authorities.

3. Opinion 2010-6:

This opinion forbids lawyers representing clients in civil matters from entering into contingent fee agreements “whereby the client grants the lawyer a power of attorney to take any action and execute all documents that the attorney deems necessary in the matter, including but not limited to, signing on the client’s behalf a settlement agreement and release, a settlement check, or a closing statement.” This opinion does provide for an exception to this blanket rule in extraordinary circumstances which might involve urgent surgery or travel to a remote location. The opinion sets forth the various Rules of Professional Conduct implicated, which include Rule 1.4(a), addressing client communication in subsection (a) and Rule 1.2(a), which requires that a lawyer abide by a client’s decisions concerning the objectives of representation and consultation specifically required under Rule 1.4.

4. Opinion 2011-1:

This opinion concerns a recent practice of defense counsel requiring plaintiff’s counsel to personally agree, as a condition of a settlement, to indemnify the opposing party from any and all claims by third persons to the settlement funds. This opinion clarifies any question concerning the fact that such an agreement by a plaintiff’s lawyer would violate various rules of the Ohio Rules of Professional Conduct. Further, for defense counsel to require such agreement, Rule 8.4(a) is implicated, which rule prohibits a lawyer to knowingly assist or induce another lawyer to violate or attempt to violate the Ohio Rules of Professional Conduct.

5. Opinion 2011-2:

This opinion construes Rule 5.5(Unauthorized practice of law; Multijurisdictional practice of law) as it applies to the practice of out-of-state debt settlement lawyers representing Ohio clients. The Board advises that the temporary practice provisions of rule 5.5 (C) do not authorize such representation. It applied the 7 factors identified in Comment 14, derived from Restatement (Third) of The Law Governing Lawyers Section 3 cmt. E (2001) and concluded such activity does not warrant temporary practice status. Further a question is raised as to whether lawyers from a self proclaimed National law firm have established a “systematic and continuous presence for the practice of law” in Ohio through internet advertising and representation of a number of Ohio clients. If so, such lawyers would have to be licensed to practice law in Ohio.