



2014 Navigating Through Statutes, Insurance Policies, and Regulations

January 15, 2015 – Columbus, OH | January 22, 2015 – Cleveland, OH |

January 29, 2015 – Cincinnati, OH

**Subrogation and Rule 1.15(d) and (e.): Balancing
Your Clients' Rights and Responsibilities**

Margaret Murray, Esq., Sandusky, OH

Rule 1.15: SAFEKEEPING FUNDS AND PROPERTY
(Effective Feb. 1, 2007, amended effective Sept. 1, 2007 and April 1, 2009)

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, *confirmed in writing*, a lawyer shall promptly delivery to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

Comment

[4] Division (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

**PROPOSED AMENDMENTS TO
THE OHIO RULES OF PROFESSIONAL CONDUCT**

Comments Requested: The Supreme Court of Ohio will accept public comments until September 30, 2009 on the following proposed amendments to the Ohio Rules of Professional Conduct (Prof. Cond. Rule 1.15).

The proposed amendment to Prof. Cond. Rule 1.15(d) and Comment [4] is a joint proposal submitted to the Supreme Court by the Ohio State Bar Association (OSBA) and the Board of Commissioners on Grievances and Discipline (Board). The proposed amendment is based, in part, on Board Advisory Opinion 2007-7 issued in December 2007 and, in part, on a 2008 report and recommendation from a special OSBA committee that reviewed Prof. Cond. Rule 1.15.

Comments on the proposed amendments should be submitted in writing to: Richard A. Dove, Assistant Administrative Director, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215-3431, or rick.dove@sc.ohio.gov not later than September 30, 2009. Please submit your comment by either regular or electronic mail and include your full name and mailing address in any comments submitted by electronic mail.

Key to Proposed Amendment:

1. Original language of the rule appears as regular typescript.
2. Language to be deleted appears ~~thus~~.
3. Language to be added appears thus.

THE OHIO RULES OF PROFESSIONAL CONDUCT

* * *

RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

* * *

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, *confirmed in writing*, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

* * *

Comment

* * *

[4] ~~Division~~ Divisions (d) and (e) also recognizes address situations in which third parties persons may have claim a lawful claims against interest in specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect ~~such third-party claims~~ third-person interests of which the lawyer has actual knowledge against wrongful interference by the client. ~~In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may~~ When there is no dispute regarding the funds or property in the lawyer's possession, the lawyer's ethical duty is to promptly notify and deliver the funds or property to which the client or third person is entitled. When the lawyer has actual knowledge of a dispute between the client and a third person who has a lawful interest in the funds or property in the lawyer's possession, the lawyer's ethical duty is to notify both the client and the third person, hold the disputed funds in accordance with division (a) of this rule until the dispute is resolved, and consider whether it is necessary to file an action to have a court resolve the dispute. The lawyer should not unilaterally assume to arbitrate the dispute between the client and the third person. When the lawyer knows a third person's claimed interest is not a lawful one, a lawyer's ethical duty is to notify the client of the interest claimed and promptly deliver the funds or property to the client.

* * *

**AMENDMENTS TO
THE OHIO RULES OF PROFESSIONAL CONDUCT**

On November 2, 2009 the Supreme Court of Ohio adopted the following amendments to Rule 1.15 of The Ohio Rules of Professional Conduct. The amendments to Prof. Cond. Rule 1.15 are effective January 1, 2010.

Following a review of sixteen public comments on the proposed amendment, the Supreme Court approved three revisions to the proposed amendment and comment:

- The word “lawful” was inserted in the first sentence of division (d) in light of the decision in *W. Broad Chiropractic v. Am. Family Ins.*, 122 Ohio St.3d 497, 2009-Ohio-3506. This change also conforms the rule and Comment [4].
- The word “specific” was inserted in the second sentence of division (d) to clarify that an otherwise lawful claim must provide for payment from specific funds or property in the lawyer’s possession, and not from any client funds or property that the lawyer may possess. This change also conforms the rule and Comment [4].
- Use of the word “resolve” rather than “arbitrate” in the next-to-last sentence of Comment [4]. Some viewed the use of “arbitrate” in the former rule and proposed amendment as referring to the process of arbitration.

The “Form of Citation, Effective Date, and Application” section of the Rules of Professional Conduct is revised to include the April 1, 2009 effective date of amendments to Prof. Cond. Rule 7.4 as well as the January 1, 2010 effective date of the amendments to Prof. Cond. Rule 1.15.

THE OHIO RULES OF PROFESSIONAL CONDUCT

* * *

RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

* * *

(d) Upon receiving funds or other property in which a client or third person has a lawful interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, *confirmed in writing*, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

* * *

Comment

* * *

[4] Divisions (d) and (e) address situations in which third persons may claim a lawful interest in specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect third-person interests of which the lawyer has actual knowledge against wrongful interference by the client. When there is no dispute regarding the funds or property in the lawyer's possession, the lawyer's ethical duty is to promptly notify and deliver the funds or property to which the client or third person is entitled. When the lawyer has actual knowledge of a dispute between the client and a third person who has a lawful interest in the funds or property in the lawyer's possession, the lawyer's ethical duty is to notify both the client and the third person, hold the disputed funds in accordance with division (a) of this rule until the dispute is resolved, and consider whether it is necessary to file an action to have a court resolve the dispute. The lawyer should not unilaterally assume to resolve the dispute between the client and the third person. When the lawyer knows a third person's claimed interest is not a lawful one, a lawyer's ethical duty is to notify the client of the interest claimed and promptly deliver the funds or property to the client.

* * *

FORM OF CITATION, EFFECTIVE DATE, APPLICATION

(a) These rules shall be known as the Ohio Rules of Professional Conduct and cited as "Prof. Cond. Rule _____."

(b) The Ohio Rules of Professional Conduct shall take effect February 1, 2007, at which time the Ohio Rules of Professional Conduct shall supersede and replace the Ohio Code of Professional Responsibility to govern the conduct of lawyers occurring on or after that effective date. The Ohio Code of Professional Responsibility shall continue to apply to govern conduct occurring prior to February 1, 2007 and shall apply to all disciplinary investigations and prosecutions relating to conduct that occurred prior to February 1, 2007.

(c) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 5.5(d) and Comment [17] of the Ohio Rules of Professional Conduct effective September 1, 2007.

(d) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 7.4 of the Ohio Rules of Professional Conduct effective April 1, 2009.

(e) The Supreme Court of Ohio adopted amendments to Prof. Cond. Rule 1.15 of the Ohio Rules of Professional Conduct effective January 1, 2010.

Rule 1.15: SAFEKEEPING FUNDS AND PROPERTY

(Effective Feb. 1, 2007, amended effective Sept. 1, 2007, April 1, 2009, Jan. 1, 2010 and June 1, 2014)

(d) Upon receiving funds or other property in which a client or third person has a lawful interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with the client or a third person, *confirmed in writing*, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

(e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.

Comment

[4] Divisions (d) and (e) address situations in which third persons may claim a lawful interest in specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect third-person interests of which the lawyer has actual knowledge against wrongful interference by the client. When there is no dispute regarding the funds or property in the lawyer's possession, the lawyer's ethical duty is to promptly notify and deliver the funds or property to which the client or third person is entitled. When the lawyer has actual knowledge of a dispute between the client and a third person who has a lawful interest in the funds or property in the lawyer's possession, the lawyer's ethical duty is to notify both the client and the third person, hold the disputed funds in accordance with division (a) of this rule until the dispute is resolved, and consider whether it is necessary to file an action to have a court resolve the dispute. The lawyer should not unilaterally assume to resolve the dispute between the client and the third person. When the lawyer knows a third person's claimed interest is not a lawful one, a lawyer's ethical duty is to notify the client of the interest claimed and promptly deliver the funds or property to the client.

*Note that the June 1, 2014 amendment was only to Prof. Cond. Rule 8.2 – Judicial Officials.



DISCIPLINARY COUNSEL v. WEISS.

No. 2012-0314

SUPREME COURT OF OHIO

133 Ohio St. 3d 236; 2012-Ohio-4564; 977 N.E.2d 636; 2012 Ohio LEXIS 2437

April 24, 2012, Submitted
October 9, 2012, Decided

SUBSEQUENT HISTORY: Reconsideration granted by, in part, Cause remanded by *Disciplinary Counsel v. Weiss*, 133 Ohio St. 3d 1501, 2012 Ohio 5693, 979 N.E.2d 347, 2012 Ohio LEXIS 3123 (2012) Later proceeding at *Disciplinary Counsel v. Weiss*, 2013-PDOMOHIO-4748, 2013 Ohio LEXIS 2463 (Ohio, Oct. 31, 2013)

PRIOR HISTORY:

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 11-090.

DISPOSITION: Judgment accordingly.

HEADNOTES

Attorneys--Misconduct--Failing to promptly deliver funds that client is entitled to receive and engaging in conduct that adversely reflects on the attorney's fitness to practice law--Indefinite suspension.

COUNSEL: Jonathan E. Coughlan, Disciplinary Counsel, and Karen H. Osmond, Assistant Disciplinary Counsel, for relator.

JUDGES: O'CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O'DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.

OPINION

[**637] [*237] **Per Curiam.**

[**P1] Respondent, Stephen Michael Weiss, formerly of Columbus, Ohio, Attorney Registration No. 0017566, was admitted to the practice of law in Ohio in 1968. His license was registered as inactive effective

September 1, 2009. In a complaint filed on October 10, 2011, relator, disciplinary counsel, alleged that Weiss received a \$98,580 check in settlement of a client's personal-injury claim, that he wrongfully retained \$36,333.93 that the client was entitled to receive, and that he failed to cooperate in the resulting disciplinary investigation.

[**P2] Although relator's complaint was delivered by certified mail to the address Weiss had registered with the Office of Attorney Services--where he admitted he had received mail from relator--he did not submit an answer. Relator's investigator sent Weiss a certified letter on December 2, 2011, advising him that relator would move for default judgment no later than December 15, 2011. Having received no response, relator moved for default on December 21, 2011.

1 The signature on the return receipt begins with the letter "D" but the remainder is undecipherable.

[**P3] The Board of Commissioners on Grievances and Discipline appointed a master commissioner, who found that Weiss had committed the charged misconduct and recommended that he be indefinitely suspended from the practice of law. The board adopted the master commissioner's report and filed it with this court. We adopt the board's findings of fact and misconduct, and we indefinitely suspend Weiss from the practice of law and order him to make restitution of \$36,333.93 to the affected client within 30 days of this order.

[**638] **Misconduct**

[**P4] Based on the sworn evidence submitted by relator, the board found that following an accident in 2004, John Lilley retained Weiss to represent him in a personal-injury matter. Although Weiss advised Lilley

that his fee would be one-third of any proceeds recovered, he did not provide him with a written fee agreement.

[**P5] In early 2006, Lilley agreed to settle his claim for \$100,000. On January 27, 2006, American Family Insurance issued two checks--a \$1,420 check to Lilley's chiropractor and a \$98,580 check to Lilley and Weiss. Respondent [*238] deposited the check into his client trust account and distributed a total of \$29,386.07 to Lilley and two medical-service providers. Based upon the oral fee agreement, respondent should have received a fee of one-third of \$98,580 or \$32,860. Thus, Lilley was entitled to receive an additional \$36,333.93 in settlement proceeds. Weiss, however, did not distribute those funds to Lilley or return his phone calls.

[**P6] In summer 2009, Lilley retained attorney Gregory Barwell to assist him in collecting the remainder of his settlement proceeds from Weiss. Barwell left several messages at the Ohio telephone number listed on Weiss's attorney-registration records. He reviewed real estate records and hired a private investigator to locate Weiss. Barwell eventually found Weiss in Sarasota, Florida. At some point, Weiss changed his attorney registration to inactive and provided the Office of Attorney Services with the Sarasota address. Although Barwell sent Weiss two letters at the Sarasota address, requesting Lilley's file and a full accounting of the settlement funds, he did not receive a response.

[**P7] Relator sent a letter of inquiry to Weiss in March 2011 but did not receive a response. In response to a second letter sent April 15, 2011, by relator, Weiss stated that he had several health problems, that he was scheduled to have open-heart surgery on April 26, 2011, and that if he made it through the surgery, he would get in touch with relator. Of the next three letters relator sent to Weiss, Weiss responded to only one, providing information on his health and stating that he would attempt to find the information relator had requested.

[**P8] On July 8, 2011, relator advised Weiss by letter that relator had subpoenaed Weiss's client-trust-account records from January 1, 2006, through April 29, 2011, and that if the records showed he had not fully and properly disbursed Lilley's settlement proceeds, relator intended to file a formal complaint. Weiss did not respond.

[**P9] Having reviewed the subpoenaed bank records of Weiss's trust account, the master commissioner and board found that Weiss used his client trust account as a personal account, writing checks to himself from January 2006 through April 2011 in various amounts. Some of the checks identify the source of the funds in the memo line, while others do not. He also

wrote checks to Coldwell Banker with the memo "property," to Robert Ambrogia with a notation identifying it as payment for a lease contract, to Andrew Weiss, and to the Ohio State University with the memo "Andrew Weiss." Following his move to Florida, he wrote a \$300 check to Cape Surgery from his client trust account. We also find that as alleged in relator's complaint, the balance in Weiss's trust account dropped below the \$36,333.93 that Lilley was entitled to receive. As of April 30, 2007, the balance in the trust account dropped to \$33,640.84. Though the balance has fluctuated since that time, due to the deposit and withdrawal of funds [*239] belonging to other clients and Weiss's [***639] distributions to himself, it has routinely remained below the amount owed to Lilley. And as of April 29, 2011, the balance was only \$30,296.97.

[**P10] Relator sent Weiss a notice of intent to file and a draft copy of the formal complaint on August 24, 2011. The certified mail was received, and the return receipt was signed by "Sarah Potts" on August 26, 2011. The formal complaint was served on October 15, 2011, but Weiss has not filed an answer or otherwise appeared in this action.

[**P11] The master commissioner and board found that Weiss's conduct prior to February 1, 2007,² violated DR 9-102(B)(4) (requiring a lawyer to promptly pay or deliver funds and property to which a client is entitled) and 1-102(A)(6) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law), and that his conduct after that date violated *Prof. Cond. R. 1.15(d)* (requiring a lawyer to promptly deliver funds or other property that the client is entitled to receive), *1.4(a)(4)* (requiring a lawyer to comply as soon as practicable with reasonable requests for information from the client), *8.1(b)* (prohibiting a lawyer from knowingly failing to respond to a demand for information by a disciplinary authority during an investigation), *8.4(c)* (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and *8.4(h)* (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law) and *Gov. Bar R. V(4)(G)* (requiring a lawyer to cooperate with a disciplinary investigation). We adopt these findings of fact and misconduct.

2 Relator charged respondent with misconduct under applicable rules for acts occurring before and after February 1, 2007, the effective date of the Rules of Professional Conduct, which supersede the Code of Professional Responsibility. When both the former and current rules are cited for the same act, the allegation constitutes a single ethical violation. *Disciplinary Counsel v.*

133 Ohio St. 3d 236, *, 2012-Ohio-4564, **, 977 N.E.2d 636, ***; 2012 Ohio LEXIS 2437

Freeman, 119 Ohio St.3d 330, 2008 Ohio 3836, 894 N.E.2d 31, ¶ 1, fn. 1.

Sanction

[**P12] When imposing sanctions for attorney misconduct, we consider relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. But-tacavoli, 96 Ohio St.3d 424, 2002 Ohio 4743, 775 N.E.2d 818, ¶ 16.* In making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc.Reg. 10(B). *Disciplinary Counsel v. Broeren, 115 Ohio St.3d 473, 2007 Ohio 5251, 875 N.E.2d 935, ¶ 21.*

[**P13] Weiss has engaged in conduct that adversely reflects on his fitness to practice law not only by failing to deliver funds that his client is entitled to receive, but by using dishonesty, fraud, deceit, or misrepresentation to convert a [*240] portion of those funds to his own use. He has also failed to respond to that client's reasonable requests for information and failed to cooperate in the ensuing disciplinary investigation.

[**P14] As mitigating factors, the board found that Weiss has no prior disciplinary record and has been licensed to practice law for more than 40 years. BCGD Proc.Reg. 10(B)(2)(a). Aggravating factors, however, include Weiss's dishonest and selfish motive in using his

client trust account as a personal account, his failure to cooperate in the disciplinary process, the harm to Lilley, who has been deprived of more than \$36,000 of his settlement proceeds for more than six years, and Weiss's [***640] failure to make restitution. BCGD Proc.Reg. 10(B)(1)(b), (e), (h), and (i).

[**P15] Based upon these factors, and citing *Disciplinary Counsel v. Smith, 101 Ohio St.3d 27, 2003 Ohio 6623, 800 N.E.2d 1129* (imposing an indefinite suspension, rather than disbarment, for an attorney who after more than 40 years of practice, misappropriated client funds, failed to make restitution, and failed to cooperate in the ensuing disciplinary investigation), the master commissioner and board adopted relator's recommendation that Weiss be indefinitely suspended from the practice of law and that any future reinstatement be conditioned upon his payment of restitution. We adopt the board's recommended sanction.

[**P16] Accordingly, Stephen Michael Weiss is indefinitely suspended from the practice of law in Ohio and is ordered to make restitution of \$36,333.93 to Lilley within 30 days of this order. Costs are taxed to Weiss.

Judgment accordingly.

O'CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O'DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur.



DISCIPLINARY COUNSEL v. WEISS.

No. 2012-0314

SUPREME COURT OF OHIO

137 Ohio St. 3d 306; 2013-Ohio-4748; 998 N.E.2d 1169; 2013 Ohio LEXIS 2463

June 5, 2013, Submitted
October 31, 2013, Decided

PRIOR HISTORY:

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 11-090.

Disciplinary Counsel v. Weiss, 133 Ohio St. 3d 236, 2012 Ohio 4564, 977 N.E.2d 636, 2012 Ohio LEXIS 2437 (2012)

HEADNOTES

Attorney discipline--Allocation of previously ordered restitution.

COUNSEL: Jonathan E. Coughlan, Disciplinary Counsel, and Karen H. Osmond, Assistant Disciplinary Counsel, for relator.

Stephen Michael Weiss, Pro se.

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

OPINION

[**1169] [*307] **Per Curiam.**

[**P1] This matter is currently before the court after a remand to the Board of Commissioners on Grievances and Discipline for the sole purpose of determining who is entitled to receive the restitution that we ordered respondent, Stephen Michael Weiss, to make in *Disciplinary Counsel v. Weiss, 133 Ohio St.3d 236, 2012-Ohio-4564, 977 N.E.2d 636 ("Weiss I")*, reconsideration granted in part in *Disciplinary Counsel v. Weiss, 133 Ohio St.3d 1501, 2012-Ohio-5693, 979 N.E.2d 347 ("Weiss II")*. The board recommends that the restitution be paid as follows: \$18,000 to Anthem Blue Cross/Blue

Shield and \$18,333.93 to John Lilley. We adopt the board's recommendation.

Procedural History

[**P2] Weiss, formerly of Columbus, Ohio, Attorney Registration No. 0017566, was admitted to the practice of law in Ohio in 1968. His license was registered as inactive effective September 1, 2009.

[**P3] In October 2011, relator, disciplinary counsel, charged Weiss with misconduct arising from his representation of John Lilley in a personal-injury matter and his failure to cooperate in the ensuing disciplinary investigation. We granted relator's default motion on October 9, 2012, found that Weiss committed the charged misconduct, and ordered him to pay Lilley \$36,333.93 in restitution. *Weiss I*.

[**P4] In October 2012, Weiss moved this court to reconsider its judgment asserting that Lilley was not entitled to the full amount of restitution ordered because Anthem Blue Cross/Blue Shield had a pending subrogation claim. We granted his motion in December and remanded the matter to the board to determine the proper allocation of the restitution due, *Weiss II*, and we ordered Weiss to forward the full restitution of \$36,333.93 to Lilley's current attorney Gregory P. Barwell, to hold in escrow pending the outcome of the remand.

[**P5] The parties submitted stipulations to the board indicating that Weiss had only \$30,296.97 in his client trust account and stating that Barwell had negotiated Anthem's original subrogation interest of \$32,040.60 down to \$18,000. At the conclusion of this matter, Barwell will forward \$18,000 to Anthem and return the remainder of the funds held in escrow--\$12,296.97--to Lilley (less his attorney fees).

137 Ohio St. 3d 306, *, 2013-Ohio-4748, **,
998 N.E.2d 1169, ***; 2013 Ohio LEXIS 2463

[**P6] [*308] The board now has adopted the parties' stipulations regarding the distribution of the \$30,296.97 currently held by Barwell and recommends that Weiss should be ordered to make restitution of \$6,036.96 to Lilley, which will result in a total restitution award of \$36,333.93 in accordance with our October 9, 2012 order. The parties and the board recognize, however, that Weiss will be unable to make the recommended restitution due to his current financial circumstances. Therefore, they anticipate that Lilley will file a claim with the Clients' Security Fund.

[**P7] In addition to the order of restitution, the board recommends that we tax [***1170] the costs of these proceedings to Weiss and make the payment of restitution to Lilley or the reimbursement of the Clients' Security Fund a condition of his reinstatement to the practice of law.

[**P8] Based on the evidence submitted, we adopt the board's recommendation with the understanding that \$18,000 of the settlement funds currently held in escrow by attorney Gregory Paul Barwell will be distributed to Anthem Blue Cross/Blue Shield and \$12,296.97 (less attorney fees) will be distributed to Lilley, and we order Weiss to pay an additional \$6,036.96 in restitution to Lilley. Payment of the full amount of restitution or reimbursement to the Clients' Security Fund for the full amount of all claims paid to Lilley is a condition of any future reinstatement. Costs are taxed to Weiss.

Judgment accordingly.

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



4 of 74 DOCUMENTS

CINCINNATI BAR ASSOCIATION v. ALSFELDER.

No. 2013-0223

SUPREME COURT OF OHIO*138 Ohio St. 3d 333; 2014-Ohio-870; 6 N.E.3d 1162; 2014 Ohio LEXIS 464***June 4, 2013, Submitted
March 13, 2014, Decided****PRIOR HISTORY:**

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 10-076.

Cincinnati Bar Ass'n v. Alsfelder, 103 Ohio St. 3d 375, 2004 Ohio 5216, 816 N.E.2d 218, 2004 Ohio LEXIS 2342 (2004)

Cincinnati Bar Ass'n v. Alsfelder, 128 Ohio St. 3d 1495, 2011 Ohio 2384, 947 N.E.2d 177, 2011 Ohio LEXIS 1254 (2011)

DISPOSITION: Judgment accordingly.

HEADNOTES

Attorney discipline--Failure to cooperate in disciplinary proceeding--Indefinite suspension.

COUNSEL: Michael P. Foley, Stephen M. Nechemias, and Edwin W. Patterson III, for relator.

Richard C. Alkire, for respondent.

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

OPINION

[**1163] [*334] **Per Curiam.**

[**P1] Respondent, Robert F. Alsfelder Jr. of Cincinnati, Ohio, Attorney Registration No. 0014829, was admitted to the practice of law in Ohio in 1981.¹ In October 2004, we imposed a one-year suspension, fully stayed on conditions, for Alsfelder's conduct in accepting employment without disclosing that his professional

judgment could be affected by his own personal interests, charging a clearly excessive fee, and failing to maintain complete records of client funds in his possession. *Cincinnati Bar Ass'n v. Alsfelder*, 103 Ohio St.3d 375, 2004-Ohio-5216, 816 N.E.2d 218.

1 Alsfelder testified that he is also licensed to practice law in Kentucky and Florida.

[**P2] In August 2010, a probable-cause panel of the Board of Commissioners on Grievances and Discipline certified a two-count complaint submitted by relator, Cincinnati Bar Association. The complaint alleged that Alsfelder had failed to maintain records of client funds in his possession, converted client funds to his own use, and failed to provide a full accounting to his client, that he had engaged in dishonesty, fraud, deceit, or misrepresentation by using information obtained in the course of his representation to the client's disadvantage, and that he had entered into a business relationship with the client to the client's detriment. In an amended complaint filed in July 2012, relator added two additional counts, alleging that over a five-year period, Alsfelder had failed to report certain income on his state and federal income tax returns and that he had failed [**1164] to cooperate in relator's investigation of his alleged misconduct.

[**P3] We found Alsfelder in contempt of court on May 19, 2011, and ordered him to comply with orders issued by the board, including a subpoena duces tecum that required him to appear at a deposition and to produce certain documents relevant to this disciplinary proceeding. *Cincinnati Bar Ass'n v. Alsfelder*, 128 Ohio St.3d 1495, 2011-Ohio-2384, 947 N.E.2d 177. On September 7, 2011, we suspended Alsfelder from the practice of law pending proof of his compliance with the pri-

138 Ohio St. 3d 333, *, 2014-Ohio-870, **;
6 N.E.3d 1162, ***; 2014 Ohio LEXIS 464

or orders of this court and the board. *Cincinnati Bar Ass'n v. Alsfelder*, 130 Ohio St.3d 1201, 2011-Ohio-5514, 955 N.E.2d 1011. Because Alsfelder has steadfastly refused to comply with those orders, that suspension remains in effect.

[**P4] On November 2, 2012, the chair of the panel appointed to hear the case issued an entry stating that the panel had unanimously found that the evidence [*335] was insufficient to support the allegations contained in Count Two of the complaint and dismissing that count in its entirety. Later, the panel issued a report, in which it found that Alsfelder had failed to cooperate in relator's investigation as charged in Count Four of the complaint, but that there was insufficient evidence to establish that he committed the misconduct charged in Counts One and Three of the complaint. The panel recommended that Counts One and Three be dismissed and that Alsfelder be indefinitely suspended for his misconduct. The board adopted the findings of fact, conclusions of law, and recommendation of the panel.

[**P5] The parties object to the board's findings and its recommended sanction. Relator contends that it presented sufficient evidence to support one of the violations alleged in Count One and both of the alleged violations in Count Three of its complaint. Alsfelder argues that the board improperly found that certain aggravating factors were present, failed to credit him with certain mitigating factors, and recommended a sanction that is unduly harsh. For the reasons that follow, we overrule their objections, adopt the board's findings of fact and conclusions of law, and indefinitely suspend Alsfelder from the practice of law in Ohio.

Misconduct

Count One--Client Funds and Records

[**P6] In its amended complaint, relator charged Alsfelder with violations of *Prof. Cond. R. 1.15(a)* (requiring a lawyer to hold funds belonging to a client or third party in a client trust account separate from his own property and to maintain certain records regarding the funds held in that account), *1.15(d)* (requiring a lawyer to promptly deliver funds or other property that the client is entitled to receive), and *8.4(c)* (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). These charges arose from Alsfelder's handling of business matters for Eastern Hills Dry Cleaners. Adopting the panel's recommendation, however, the board recommends that this count be dismissed in its entirety based on the insufficiency of the evidence. Relator objects, arguing that it has established, by clear and convincing evidence, that Alsfelder violated *Prof. Cond. R. 1.15(d)*.

[**P7] Alsfelder was a regular customer of Eastern Dry Cleaners. He entered into an agreement with Joseph Witschger, the sole owner of the business, for himself and his wife--an attorney and an accountant--to "take over the business aspects of the cleaners," billing their legal services at \$225 per hour, and their business-related services at \$65 per hour. He testified that he would typically visit Witschger each day to discuss business issues and collect the mail. He would take the mail to his wife, [***1165] who would organize the documents and prepare [*336] checks to pay Eastern's bills. Alsfelder would return the documents to Witschger as soon as his wife was through with them, and Witschger--the only authorized signatory on the account--would sign the checks and prepare them for mailing.

[**P8] It is undisputed that from 2005 to 2008, more than 300 checks, totaling over \$152,000, were issued to Alsfelder on Eastern's account. Two hundred seventy-two of those checks, totaling more than \$141,000, contained no notation on the memo line to describe the purpose of the check. Rather than depositing the checks, Alsfelder cashed them at various Cincinnati banks.

[**P9] Alsfelder did not keep records of the time spent on Witschger's business matters or of bills to him for services rendered. He testified that he spent a minimum of 6 or 7 hours a week and that his wife worked a minimum of 17 to 19 hours per week on Witschger's business, that the payments they received were made in arrears, and that their fee arrangement did not compensate them for all of the hours they put into the business. Thus, the board found that Alsfelder had never held funds belonging to Witschger.

[**P10] Although the board expressed concern about the large number of checks written to Alsfelder and his complete failure to account for them, it noted that Witschger admitted that he had never requested an accounting from Alsfelder. The board also found that relator had not requested an accounting. Therefore, the board determined that relator had failed to prove the alleged violations of *Prof. Cond. R. 1.15(a)* or *(d)*, which set forth a lawyer's duties with respect to the handling of funds belonging to clients or other third parties.

[**P11] Witschger claimed that he had no knowledge of the payees to whom the checks were issued because Alsfelder concealed the payee line of the checks that he presented for signature. But the board believed that Alsfelder's testimony on the issue was more credible and noted that Witschger had access to all of the information because he received all of the mail and had access to his bank records. Therefore, the board also determined that there was insufficient evidence to establish

138 Ohio St. 3d 333, *, 2014-Ohio-870, **;
6 N.E.3d 1162, ***; 2014 Ohio LEXIS 464

that Alsfielder had engaged in dishonesty, fraud, deceit, or misrepresentation in violation of *Prof. Cond. R. 8.4(c)*.

[**P12] Relator objects to the board's findings of fact and recommendation that Count One be dismissed, arguing that it has presented clear and convincing evidence that it requested an accounting of Alsfielder's work for, charges to, and payments received from Eastern Hills Cleaners, and that Alsfielder failed to comply with its request. Therefore, relator contends that it has proven by clear and convincing evidence that Alsfielder violated *Prof. Cond. R. 1.15(d)*.

[**P13] Relator misapprehends the scope and application of *Prof. Cond. R. 1.15(d)*. The rule provides:

[*337] Upon receiving funds or other property in which a client or third person has a lawful interest, a lawyer shall promptly notify the client or third person. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property. Except as stated in this rule or otherwise permitted by law or by agreement with [***1166] the client or a third person, confirmed in writing, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. *Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.*

(Emphasis added.)

[**P14] The third person discussed throughout *Prof. Cond. R. 1.15(d)* is not any third person, but the third person who has a lawful interest in funds or other property in the lawyer's possession. To interpret the rule otherwise would permit any third person to request--and be entitled to receive--an account of funds or property held by a lawyer. Here, the facts that relator subpoenaed Alsfielder's account records and that Alsfielder failed to comply are simply not relevant in the context of an alleged violation of *Prof. Cond. R. 1.15(d)*. They are, however, relevant to the alleged violation of *Gov. Bar R. V(4)(G)* in Count Four of relator's complaint.

Count Three--Alleged Tax Improprieties

[**P15] Count Three of the amended complaint alleges that Alsfielder received and cashed checks from Witschger and/or Eastern Hills Dry Cleaners from 2004 through 2009 but failed to report those funds as gross income on his corresponding state and federal tax returns. Relator alleges that this conduct violates *Prof. Cond. R. 8.4(b)* (prohibiting a lawyer from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness) and *8.4(c)*. But the only evidence that relator adduced in support of these allegations was a set of requests for admission that the panel deemed admitted after Alsfielder failed to answer them.

[**P16] Those facts deemed admitted, as stated in the panel's order and the request for admissions, are as follows:

[*338] 1. Respondent filed Federal and State of Ohio Income Tax Returns in 2004.

2. Respondent filed Federal and State of Ohio Income Tax Returns in 2005.

3. Respondent filed Federal and State of Ohio Income Tax Returns in 2006.

4. Respondent filed Federal and State of Ohio Income Tax Returns in 2007.

5. Respondent filed Federal and State of Ohio Income Tax Returns in 2008.

6. Respondent received checks from Joseph Witschger and/or Eastern Hills Dry Cleaners made payable to Robert F. Alsfielder and/or Robert Alsfielder for legal and business services.

7. Checks were made payable to Robert Alsfielder from Eastern Hills Dry Cleaners and/or Joseph Witschger which were cashed but the money was not reported as gross income either on Respondent's Ohio and/or Federal Income Tax Returns from the years 2004 through 2009.

[**P17] The board recommended that this count be dismissed because these admissions were insufficient to prove that Alsfielder had engaged in tax evasion as alleged in the complaint. They did not establish that the checks he received for legal and business services and subsequently cashed were the same checks that he failed to report as gross income. Indeed, the board found that at least one of the checks Alsfielder had received from [***1167] Eastern was a \$447.30 reimbursement for

138 Ohio St. 3d 333, *, 2014-Ohio-870, **;
6 N.E.3d 1162, ***; 2014 Ohio LEXIS 464

slacks that Eastern had damaged in the cleaning process--funds that would not be considered as income for tax purposes.

[**P18] Relator objects to the board's recommendation that Count Three of its complaint be dismissed, arguing that that the facts deemed admitted by the board clearly and convincingly prove that Alsfelder violated *Prof. Cond. R. 8.4(b)* and *(c)*. We disagree.

[**P19] The facts deemed admitted do not establish that the checks Alsfelder received as payment for services rendered are also the checks that he failed to report on his tax returns. Not only did Alsfelder testify about the check he received for clothing damaged during the cleaning process, relator also submitted copies of at least 40 other checks that Alsfelder identified as reimbursements for various expenses that he had advanced on behalf of Eastern Dry Cleaners. While Alsfelder testified that those amounts might qualify as business expenses to be deducted from Eastern's gross income, relator has offered no evidence that those reimbursements would constitute taxable income to Alsfelder. Therefore, [*339] we overrule relator's objection, adopt the board's findings of fact, and dismiss Count Three of relator's complaint.

Count Four--Failure to Cooperate

[**P20] The board's sole finding of misconduct against Alsfelder is that he failed to cooperate in relator's investigation and the resulting disciplinary proceeding in violation of *Gov. Bar R. V(4)(G)*.

[**P21] The board found that Alsfelder failed to comply with a November 2010 subpoena to appear for a deposition and produce certain documents, including a copy of his account-balance document showing a running account of charges for services rendered to and money received from Witschger and copies of his federal tax returns for the years 2004 through 2009.

[**P22] In response to relator's motion to compel discovery, on January 19, 2011, the panel chair ordered Alsfelder to produce the documents in accordance with the subpoena, but he failed to do so. We found Alsfelder in contempt on May 19, 2011, and ordered him to comply with board orders, including the November 2010 subpoena. *Cincinnati Bar Ass'n v. Alsfelder*, 128 Ohio St.3d 1495, 2011-Ohio-2384, 947 N.E.2d 177.

[**P23] On July 8, 2011, the panel recommended that we once again find Alsfelder in contempt--this time based on his failure to comply with an order to sign a standard Internal Revenue Service waiver that would allow relator to obtain copies of his tax returns.

[**P24] On September 22, 2011, we granted relator's motion to impose sanctions and suspended Alsfelder

from the practice of law in Ohio pending a filing of proof that he has obeyed this court's May 19, 2011 order and complied with the subpoena duces tecum previously served on him by the board. *Cincinnati Bar Ass'n v. Alsfelder*, 130 Ohio St.3d 1201, 2011-Ohio-5514, 955 N.E.2d 1011.

[**P25] We found Alsfelder in contempt a second time on March 30, 2012, and ordered him to pay a fine of \$500. 131 Ohio St.3d 1492, 2012-Ohio-1368, 964 N.E.2d 434. While our order does not state what conduct resulted in this finding of contempt, it grants relator's motion for contempt, which alleged that Alsfelder continued to disobey previous orders of the board and this court and that he filed a false affidavit of compliance following his suspension.

[**P26] In light of this conduct, the board concluded that Alsfelder violated *Gov. Bar R. V(4)(G)*. We adopt the board's findings [***1168] of fact and misconduct with respect to Count Four of the complaint.

Sanction

[**P27] When imposing sanctions for attorney misconduct, we consider relevant factors, including the ethical duties that the lawyer violated and the sanctions [*340] imposed in similar cases. *Stark County Bar Ass'n v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16. In making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in BCGD Proc.Reg. 10(B). *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21.

Aggravating and Mitigating Factors

[**P28] The board found that four of the nine aggravating factors set forth in BCGD Proc.Reg. 10(B)(1) are present. Alsfelder has served a one-year stayed suspension and made restitution of \$30,000 for misconduct that occurred from 1998 to 2001. *See* BCGD Proc.Reg. 10(B)(1)(a); *Cincinnati Bar Ass'n v. Alsfelder*, 103 Ohio St.3d 375, 2004-Ohio-5216, 816 N.E.2d 218. The board also found that he engaged in a pattern of misconduct and failed to cooperate in the disciplinary process by failing to comply with orders of the board and this court and that he submitted false evidence, made false statements, or engaged in other deceptive practices during the disciplinary process by being "very guarded in his testimony." *See* BCGD Proc.Reg. 10(B)(1)(c), (e), and (f). However, the board found that none of the mitigating factors enumerated in BCGD Proc.Reg. 10(B)(2) are present.

[**P29] Alsfelder disputes the board's findings with respect to the applicable aggravating factors and

138 Ohio St.3d 333, *; 2014-Ohio-870, **;
6 N.E.3d 1162, ***; 2014 Ohio LEXIS 464

also contends that the board failed to recognize that a number of mitigating factors are present.

[**P30] Alsfielder challenges the board's finding that he engaged in a pattern of misconduct, arguing that his conduct consists of one act--failing to provide the requested tax records or a waiver so that relator could obtain them directly from the IRS. Even if Alsfielder's misconduct arose only from his failure to produce his tax returns as he suggests, it is his continued failure to provide those documents in defiance of no less than five board orders and three orders of this court over a period of more than three years that demonstrates the pattern of misconduct in this case.

[**P31] Alsfielder also challenges the board's finding that he submitted false evidence or false statements or engaged in other deceptive practices during the disciplinary proceeding and that, pursuant to BCGD Proc.Reg. 10(B)(1)(f), this factor weighs in favor of a more severe sanction. He notes that in support of its finding, the board states only, "At the hearing, Respondent was very guarded in his testimony. Respondent has not been forthcoming." But the very act of withholding the requested tax records under the guise of preserving the confidentiality of his wife's information and claims of their irrelevance--despite having been ordered numerous times to produce them or execute a waiver for their release--is, itself, a deceptive practice. Furthermore, we find that Alsfielder's continued recalcitrance in the face of multiple orders to turn over the requested [*341] documents demonstrates that he has refused to acknowledge the wrongful nature of his conduct--an aggravating factor pursuant to BCGD Proc.Reg. 10(B)(1)(g).

[**P32] In addition to challenging the aggravating factors found by the board, Alsfielder contends that it should have found a number of mitigating factors, including the absence of a dishonest or selfish motive, the absence of any violations of the disciplinary rules relative to the underlying grievance, the absence of harm to the [***1169] grievant, his pro bono work, and the imposition of other penalties or sanctions for his contempt of this court's orders. See BCGD Proc.Reg. 10(B)(2)(a), (b), (e), and (f). These claims are without merit.

[**P33] We find that relator's failure to prove the underlying misconduct has no mitigating effect on the misconduct that has been established by clear and convincing evidence--namely, Alsfielder's failure to cooperate in the disciplinary investigation and proceedings before this court. And on the record before us, we cannot find that there has been no harm to the grievant or that Alsfielder acted without a selfish or dishonest motive because the evidence plainly shows that Alsfielder re-

ceived more than \$141,000 over a period of four years for little more than the payment of routine bills and the negotiation of payment plans with creditors. Neither relator's failure to carry its burden of proof with regard to the underlying allegations of misconduct, nor the client's admitted failure to request an accounting is sufficient to establish that Alsfielder's motives were pure or that the grievant suffered no harm at his hand.

[**P34] Alsfielder's unsubstantiated claim that he has provided pro bono services that warrant mitigating effect is likewise without merit. *See, e.g., Cleveland Metro. Bar Ass'n v. Berk*, 132 Ohio St.3d 82, 2012-Ohio-2167, 969 N.E.2d 256, ¶ 25-28 (evidence that attorney had accepted well over 200 referrals from the Cleveland Legal Aid Society and provided additional pro bono assistance to numerous other clients referred by the Consumer Protection Association since the early 1970s recognized as a mitigating factor); *Cleveland Metro. Bar Ass'n v. Kealy*, 125 Ohio St.3d 238, 2010-Ohio-1554, 927 N.E.2d 591, ¶ 13, 19 (finding that 25 years of involvement with the legal aid society, a "staggering amount" of pro bono work, and a long history of volunteerism qualify as a mitigating factor); *Cincinnati Bar Ass'n v. Lawson*, 119 Ohio St.3d 58, 2008-Ohio-3340, 891 N.E.2d 749, ¶ 67 (evidence that attorney routinely took criminal cases pro bono to defend basic rights of the accused considered as a mitigating factor).

[**P35] We also reject Alsfielder's claim that the suspension he is currently serving for his failure to purge his contempt of our previous orders is another penalty or sanction for the same conduct that should be considered as a mitigating factor pursuant to BCGD Proc.Reg. 10(B)(2)(f). That suspension was not intended to punish Alsfielder for violating the Rules of Professional Conduct; it was intended as a remedial or coercive sanction to compel his compliance with [*342] the lawful orders of the board and this court. *See, e.g., Liming v. Damos*, 133 Ohio St.3d 509, 2012-Ohio-4783, 979 N.E.2d 297, ¶ 12. Alsfielder could have avoided the sanction entirely and has held the keys to his reinstatement during the duration of that suspension--all he had to do was comply with our previous order. *Id. at ¶ 17*. Therefore, we accord no mitigating effect to this sanction.

Proposed Sanction

[**P36] Relator recommended that Alsfielder be permanently disbarred for his misconduct, but that recommendation is based in part on alleged misconduct that has not been proven by clear and convincing evidence. Alsfielder urged the board to dismiss the entire complaint, arguing that his failure to cooperate had already been dealt with by this court in the contempt proceeding. The board concluded, however, that Alsfielder's ongoing fail-

138 Ohio St. 3d 333, *, 2014-Ohio-870, **,
6 N.E.3d 1162, ***, 2014 Ohio LEXIS 464

ure to cooperate in this disciplinary proceeding warrants an indefinite suspension from the practice of law.

[**P37] "One of the fundamental tenets of the professional responsibility of [***1170] a lawyer is that he should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach. He should refrain from any illegal conduct. Anything short of this lessens public confidence in the legal profession--because obedience to the law exemplifies respect for the law." *Cincinnati Bar Ass'n v. Hennekes*, 110 Ohio St.3d 108, 2006-Ohio-3669, 850 N.E.2d 1201, ¶ 13, quoting *Cleveland Bar Ass'n v. Stein*, 29 Ohio St.2d 77, 81, 278 N.E.2d 670 (1972).

[**P38] Here, Alsfielder's misconduct goes far beyond the typical failure to cooperate in a disciplinary investigation. It encompasses a complete and contumacious disregard of this court's orders over a period of years. Alsfielder's recalcitrance flies in the face of his oath of office, his duties to this court, and his duties to

the legal profession as a whole. If he is unable or unwilling to conduct himself with dignity, civility, and respect in the conduct of his own legal affairs, we cannot expect him to competently, ethically, or professionally represent the clients who entrust him with their most important affairs. Therefore, we adopt the board's recommendation that he be indefinitely suspended from the practice of law. However, that suspension shall not commence until Alsfielder has purged his contempt of the prior orders of this court.

[**P39] Accordingly, Robert F. Alsfielder Jr. is indefinitely suspended from the practice of law in Ohio; however, that indefinite suspension will not go into effect until Alsfielder purges his contempt of this court's prior orders in case No. 2011-0625. Costs are taxed to Alsfielder.

Judgment accordingly.

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