

BEFORE THE BOARD OF COMMISSIONERS  
ON  
GRIEVANCES AND DISCIPLINE  
OF  
THE SUPREME COURT OF OHIO

**06-2260**

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 06-006</b>
<b>Carl G. McMahon</b>	:	<b>Findings of Fact,</b>
<b>Attorney Reg. No. 0001304</b>	:	<b>Conclusions of Law and</b>
	:	<b>Recommendation of the</b>
<b>Respondent</b>	:	<b>Board of Commissioners on</b>
	:	<b>Grievances and Discipline of</b>
<b>Cleveland Bar Association</b>	:	<b>the Supreme Court of Ohio</b>
	:	
<b>Relator</b>	:	

**FILED**  
DEC 07 2006  
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

**INTRODUCTION AND PROCEDURAL BACKGROUND**

This matter was heard on October 25, 2006 in Cleveland, Ohio, before a panel consisting of members Judge John B. Street, Shirley J. Christian and Judge Arlene Singer, Chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint. Attorney Thomas Repicky represented Respondent. Attorneys Samer M. Musallam and Jennifer Roach represented the Relator, the Cleveland Bar Association.

On March 13, 2006, the hearing panel was assigned on this matter. The matter was submitted to the hearing panel as a consent to discipline matter pursuant to Section 11 of the Board's Rules and Regulations. The agreement was timely filed with the Board. The hearing panel recommended acceptance of the agreement; however, after consideration, the Board at its June 2006 meeting rejected the agreement and sent it back to the panel for further proceedings.

Respondent was charged with violating the following:

DR 1-102(A)(4), Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; DR 7-102 (A)(4), Knowingly use perjured testimony or false evidence; (5), Knowingly make a false statement of law or fact; (6), Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false; (8), Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

In a separate order entered on November 27, 2006 after the hearing, the panel unanimously dismissed the DR 7-102 (A)(4) charge in Count II and the DR 7-102 (A) (6) charge in Count IV for failure of proof.

#### FINDINGS OF FACT

Carl G. McMahon was admitted to the practice of law in Ohio in 1975. He is married and the father of four children. His wife works as a paralegal in his office. Respondent was admitted to practice in 1973 in Georgia prior to admission to the Ohio bar. His legal practice has been primarily civil, having represented approximately 3,000 clients through the years, many of whom had personal injury cases.

The pending grievance against respondent arose out of his representation of Kendra English for minor injuries she sustained as a passenger in a two-car motor vehicle accident that occurred on July 1, 2004. McMahon's client was occupying a vehicle driven by her son Jeffrey English, Jr. The other vehicle involved in the accident was owned by Daniel R. Tenant Jr. and driven by Jerri Marrs. Mr. Tenant's automobile was insured by State Auto Mutual Insurance Company.

State Auto initially disputed liability. On August 20, 2004, respondent sent a letter to State Auto Insurance that is the basis of the subject grievance. In the August 20, 2004 letter, respondent included what appeared to be verbatim testimony, in transcript form, from a Shaker Heights Court proceeding. In this "transcript", created by the Respondent, Ms. Marrs pled no contest to a charge of improper lane change and admitted fault for the accident. Further, respondent stated in the letter that Ms. Marrs was found guilty. Based on this, Respondent presented a settlement demand based on Ms. Marr's sole liability.

In fact, Marrs had never appeared in court to answer to the charge of improper lane change. She never admitted fault, nor was she "officially found guilty" as stated in the letter by McMahon to State Auto. The letter clearly contained false information about Marrs appearing in traffic court, pleading no contest and admitting fault in the accident. On September 21, 2004, State Auto adjuster Kathy Hendricks wrote to McMahon informing him that Marrs had not appeared in the Shaker Heights Court. McMahon immediately sent another letter to State Auto on October 12, 2004 confirming that Marrs never appeared. Although the letter sent by Respondent on August 20, 2004 contained the false information, it accurately stated that Marrs had improperly changed lanes and hit the English vehicle and was legally responsible for his client's damages. State Auto Insurance apparently never relied on the first letter that McMahon sent to it.

State Auto ultimately agreed to settle the claims of Kendra English and her son, Jeffrey English, Jr., without litigation.

As an explanation for this false information, Respondent, in a later letter to bar counsel for Relator, stated that he assumed that Ms. Marrs appeared in court but did not verify it before sending the letter. Respondent testified at the hearing that he in fact, does not remember sending

the false information, and was surprised when he reviewed his letter. In his words, he was “stunned.” Sending the letter was also in his words “senseless.” He stated that his assertion to Relator that this false transcript was illustrative was because he tried to explain why he might have sent it.

### **CONCLUSIONS OF LAW**

Respondent admits, and the panel finds by clear and convincing evidence, that Respondent violated in Count 1, DR 1-102(A)(4) – Conduct Involving Dishonesty, Fraud Deceit or Misrepresentation; and in Count 3 – DR 7-102(A)(5) – Knowingly Make a False Statement of Fact, and in Count 5 – DR 7-102(A)(8) – Knowingly Engage in Conduct Contrary to Disciplinary Rule.

### **MITIGATION AND AGGRAVATION**

The panel finds no additional aggravating factors.

This was an isolated incident for which Respondent was genuinely remorseful. After many years of practice and representation of about 3,000 clients he has no prior disciplinary record. There is an absence of a dishonest or selfish motive; there was clear liability on the part of the State Auto’s insured. Respondent tried to rectify the consequences of misconduct by sending a letter of apology to the State Auto adjuster to whom his August 20, 2004 letter was sent. Respondent has cooperated in these proceedings and has made full and free disclosure. Respondent readily acknowledges the wrongfulness of his actions

Respondent has an excellent character and reputation. Respondent submitted letters from attorneys and judges of the Cuyahoga Common Pleas Court providing testimony of his good character. Further, a Cuyahoga County County Common Pleas Court judge and attorney appeared to testify on his behalf.

The Respondent reports that in 2004, having recently lost his father the year before, his mother died and his son had protracted medical problems. Respondent was depressed. Respondent offered no additional evidence as required by BCGD Proc. Reg. 10 (2) (g) to support this claim, therefore, his depression cannot be used as a mitigating factor. We note, however, the testimony of respondent's character witnesses regarding how his personal difficulties seem to affect him at that time, and recognize this explanation as a possible answer to the panel's question: What were you thinking? Respondent was very emotional and as stated before, the panel finds that his remorse was genuine.

### **RECOMMENDED SANCTION**

Relator recommends a 6 month suspension; all stayed on the condition that Respondent not commit any other violation of a disciplinary rule during that period. Respondent requests and recommends a public reprimand.

Both Respondent and Relator have cited support for their recommendations for a sanction. The panel finds the following cases to be relevant: In *Disciplinary Counsel v. Cuckler*, 101 Ohio St. 3d 318, 2004-Ohio-784, [violations of DR 1-102(A)(6) and DR 1-102(A)(4)] Respondent, unlicensed, represented himself on business cards and correspondence as an attorney and received a public reprimand. In *Disciplinary Counsel v. Eisenberg*, 81 Ohio St. 3d 295, 1998-Ohio-472 [violations of DR 1-102 (A)(4), (5) and (6)] Respondent had traced

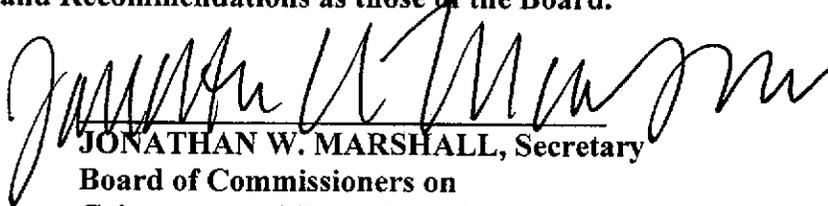
signatures on documents submitted to the probate court and consequently received a public reprimand. In *Dayton Bar Association v. Kenny*, 89 Ohio St 3d 77, 2000-Ohio-445 [violations of DR 7-102(A)(3), DR7-102(A)(5), DR 7-102(A)(7), DR1-102(A)(3), and DR 1-102(A)(4)] Respondent had misrepresented the purchase price of a bar on documents filed with the state and consequently received a 6 month suspension, with the entire suspension stayed. In *Disciplinary Counsel v. Carroll*, 106 Ohio St. 3d 84, 2005-Ohio-3805 [violations of DR1-102(A)(4) and (6)] Respondent, a state employee, received a stayed 6 month suspension for billing time to a state agency during which he had been working for private clients. He made restitution and was convicted of a misdemeanor. The panel is mindful of the admonitions contained in *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St. 3d 187, 1995-Ohio-261.

For the reasons stated, reiterating that this is an isolated incident in a long unblemished career and respondent was deeply remorseful, the panel recommends a public reprimand.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 1, 2006. The Board adopted the Findings of Fact and Conclusions of Law of the panel except that it found that DR 7-102(A)(8) was superfluous and not a violation. It recommends, based on his fraudulent act for which there was no explanation, that the Respondent, Carl G. McMahon, be suspended from the practice of law in the State of Ohio for a period of six months, with the suspension stayed upon the condition that the Respondent commit no further misconduct during the stayed period. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

**Pursuant to the order of the Board of Commissioners on  
Grievances and Discipline of The Supreme Court of Ohio,  
I hereby certify the foregoing Findings of Fact, Conclusions  
of Law, and Recommendations as those of the Board.**

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", is written over a horizontal line.

**JONATHAN W. MARSHALL, Secretary  
Board of Commissioners on  
Grievances and Discipline of  
The Supreme Court of Ohio**