

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

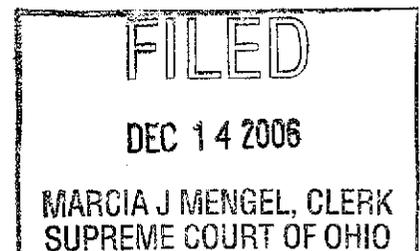
06-2306

In Re:	:	
Complaint against	:	Case No. 04-034
Robert C. Schwieterman Attorney Reg. No. 0061353	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent,	:	
Cincinnati Bar Association	:	
Relator.	:	

This matter came on for hearing on May 19, 2006 before Walter Reynolds, Panel Chair, Jean M. McQuillan and Judge Daniel Gaul, duly qualified members of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (Board). None of the panel resides in the judicial district from which the Complaint originated or served on the Probable Cause Panel that reviewed the Complaint. Judge Gaul was not in attendance at the May 19, 2006 Board hearing but the parties agreed and elected to have Judge Gaul review the transcript, and to participate in the deliberations to the same extent as if he were present at the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Prior to the hearing, the Relator and the Respondent entered into the following stipulations (including the Board's editorial corrections).



STIPULATIONS

Relator and Respondent, through undersigned counsel, hereby admit the following Stipulations:

1. All facts necessary to determine whether Respondent violated Disciplinary Rules as alleged in Relator's Second Amended Complaint are contained in this Stipulation and shall be taken to be true.
2. Respondent admits that the facts so admitted constitute Disciplinary Rules violations as alleged in Relator's Second Amended Complaint and as set forth in this Stipulation.
3. Respondent, Robert C. Schwieterman, is an attorney duly admitted to the practice of law in the State of Ohio in 1993.
4. Respondent was employed as an associate attorney at Phillips Law Firm, Inc. from March 24, 2003, until November 14, 2003.
5. Respondent registered as "inactive" with the Supreme Court of Ohio for the biennium which began on September 1, 2001. He subsequently changed his registration status to "active" on November 13, 2001, and retained that status until the registration period ended on August 31, 2003. Respondent failed to register with the Supreme Court of Ohio for the current biennium, which began on September 1, 2003.
6. On December 5, 2003, Respondent was sanctioned \$250 for failing to comply with the continuing legal education requirements of Gov. Bar R. X. Respondent failed to pay that sanction.

Brantford Butts Grievance

7. In June, 2003, while employed by Phillips Law Firm, Respondent undertook representation of Brantford Butts in a breach of contract action.

8. Respondent required Mr. Butts to pay a \$2,000 retainer in connection with his undertaking of representation of the matter.

9. Respondent accepted the retainer from Mr. Butts; however, Respondent failed to list Mr. Butts as a firm client and did not deposit the funds in the Phillips Law Firm IOLTA account but rather converted the funds for his own use.

10. When John Phillips, of Phillips Law Firm, learned of this discrepancy from Mr. Butts, Respondent lied to Phillips and said he never received the funds from Mr. Butts.

11. After Respondent's actions were discovered, Respondent returned the funds to Mr. Butts.

Becky A. Schaaf Grievance

12. Respondent acquired a \$450 flat fee from Ms. Schaaf for the creation of a "will package."

13. Respondent failed to deposit the funds in the Phillips Law Firm IOLTA account and converted the funds for his own use.

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14. In November, 2003, Respondent undertook representation of Mr. Lahni in a child custody matter and requested and received a \$300 retainer from Mr. Lahni.

15. Respondent failed to deposit the funds in the Phillips Law Firm IOLTA account and converted the funds for his own use.

Cindy Stepanic Grievance

16. Respondent undertook representation of Ms. Stepanic in a criminal matter.

17. Respondent received and failed to turn over the \$2,000 fee to Phillips Law Firm; rather he converted it for his own use.

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18. Respondent undertook representation of Ms. Moore in connection with a criminal matter and received a \$525 retainer from Ms. Moore.

19. Respondent failed to deposit the \$525 retainer in the Phillips Law Firm IOLTA account and converted the funds for his own use.

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20. Respondent undertook representation of Mei in connection with a family law matter and received \$875 for his services.

21. Respondent failed to turn over this income to the firm and converted the funds for his own use.

22. At a later time, Respondent received an additional \$175 from Mei and deposited those funds in the Phillips Law Firm IOLTA account.

Donald Lucas Grievance

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24. Respondent received a \$1,000 retainer from Mr. Lucas.

25. Respondent failed to deposit the \$1,000 retainer in the Phillips Law Firm IOLTA account or any other law firm bank account.

26. When Mr. Lucas received invoices from Phillips Law Firm that did not reflect the retainer was already paid, Respondent told Mr. Lucas not to pay the bill and not to worry about it.

27. In the summer of 2003, Respondent requested and received another \$500 from Mr. Lucas, which was in the form of a check made out to Phillips Law Firm. Respondent failed to deposit the funds in the Phillips Law Firm IOLTA account and never cashed the check.

28. Additionally, Respondent arranged for several continuances in Mr. Lucas's case without his client's knowledge and told Mr. Lucas the opposing party filed the continuances. Respondent later confessed the continuances were at his own request due to personal problems.

29. Upon Mr. Lucas's request for a refund, Respondent wrote a personal check to Mr. Lucas for \$1,500. Respondent's check was twice returned for insufficient funds, but Mr. Lucas eventually received the refund. In addition, Respondent returned Mr. Lucas's check for \$500, which he had never cashed.

30. The following matters were first brought to Relator's attention in August, 2004.

Tonya Duritsch Grievance

31. During the fall of 2003, Respondent represented Tonya Duritsch in a divorce in Warren County. The husband in the divorce was not represented by counsel.

32. The court set a date for the final decree to be entered on October 10, 2003.

33. Respondent failed to submit the decree by that date, and was notified by the court that the case would be dismissed if the final decree was not submitted by October 17, 2003.

34. Respondent again failed to submit the final decree to the court, which dismissed the divorce action for failure to prosecute.

Ewell and Laura Brock Grievance

35. In 2003, while employed by the Phillips Law Firm, Respondent was retained to defend Ewell Brock, Jr. and Laura Brock in a lawsuit involving a family-owned business.

36. Respondent failed to notify the Brocks of his departure from the Phillips Law Firm in late 2003, and also failed to inform them of his departure from the city for the month of January, 2004, as further described below.

37. In March, 2004, Respondent contacted the Brocks and asked for another chance to represent them. They agreed because Respondent was very familiar with the details of their case. However, by May, 2004, the Brocks were concerned about Respondent's handling of their case and eventually retained substitute counsel.

38. Substitute counsel determined that Respondent had failed to file a timely answer and that a default judgment had been taken against the Brocks. However, substitute counsel was able to obtain relief from the default judgment.

39. The following matter was first brought to Relator's attention on January 12, 2005:

Edward L. Flottman Grievance

40. In July, 2004, Mr. Flottman and his wife engaged Respondent to prepare a living trust and to assist in the transfer of assets to that trust.

41. Respondent received \$1,500 as payment in full.

42. Respondent prepared and the Flottmans executed the documents, including a deed to transfer the Flottmans' residence to the trust.

43. Respondent failed to record the deed transferring the residence to the trust.

44. Mr. Flottman attempted unsuccessfully to contact Respondent concerning the status of the deed on numerous occasions between July and late November. Respondent failed to respond to any of Mr. Flottman's inquiries.

45. In late November, Mr. Flottman finally reached Respondent by phone. Respondent informed him that he would file the deed promptly.

46. Respondent failed to inform Mr. Flottman that he was under suspension from the practice of law by order of the Supreme Court of Ohio. The November 8, 2004 order required Respondent to notify all clients of his suspension within 30 days.

47. Respondent did not record the deed until Relators sent a copy of the grievance to Respondent's counsel.

48. Relators learned of the following misconduct in August, 2005:

49. In September, 2003, while employed by the Phillips Law Firm, Respondent paid the filing fee for a client's case with a personal check.

50. That same day, the Phillips Law Firm reimbursed Respondent for the amount of the filing fee.

51. In October, 2003, the Clerk of Courts believed the case had concluded and issued a refund check in the amount of \$283 for the client's court costs. The check was made payable to Respondent.

52. Respondent took possession of the check and converted the funds for his own use.

53. The client never received a refund of the filing fee.

54. Respondent was notified in early December, 2003, that a grievance had been filed. Pursuant to an intervention by the Ohio Lawyer's Assistance Program (OLAP) on December 13, 2003, he entered a 30-day inpatient program at Menninger Clinic in Houston,

Texas, for treatment. Upon his return to Cincinnati and by letter to Relators dated January 21, 2004, he disclosed that at the Menninger Clinic, he was diagnosed and medically treated for Attention Deficit Hyperactive Disorder. Additionally, he was diagnosed with and counseled for depression. See Exhibit B

Criminal Charges

55. On March 15, 2004, a Hamilton County Grand Jury returned an eight-count indictment against Respondent for theft from the Phillips Law Firm in regard to the foregoing client matters.

56. On September 20, 2004, Respondent pled guilty to one count of theft, a felony of the fifth degree. The other counts were dismissed. Respondent was sentenced to five years of community control, and ordered to make restitution in the amount of \$9,400.00 to Phillips Law Firm, among other conditions. He subsequently made restitution.

57. By order of November 8, 2004, the Supreme Court of Ohio suspended Respondent from the practice of law for an interim period on the basis of his felony conviction. See Exhibit A.

STIPULATED MISCONDUCT

58. By reason of the foregoing, and in regard to his representation of all clients previously named in paragraphs 7, 12, 14, 16, 18, 20, 23 and as an employee of Phillips Law Firm, Respondent has violated Disciplinary Rules 9-102(A), in that he failed to deposit client funds in an identifiable bank account; 1-102(A)(3), in that he engaged in illegal conduct involving moral turpitude; 1-102(A)(4), in that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and 9-102(B)(3), in that he failed to maintain complete records and account for client funds. In regard to his representation of all clients previously

named in paragraphs 31, 35 and 40, Respondent has violated Disciplinary Rules 6-101(A)(3) [a lawyer shall not neglect a legal matter entrusted to him] and 7-101(A)(1) [a lawyer shall not intentionally fail to seek the lawful objectives of his client], (2) [fail to carry out a contract of employment] and (3) [prejudice or damage his client during the course of the professional relationship]. Further, in connection with his representation of Mr. Flottman, Respondent's failure to notify Mr. Flottman that Respondent was suspended from the practice of law constitutes misconduct under Gov. Bar Rule V Section 8, (E)(1)(a), which defines misconduct to include disobedience of a court order imposing suspension from practice.

59. The Panel finds that Respondent Schwieterman has misappropriated funds from seven (7) different clients in the sum of about \$10,000. This misappropriation occurred over a one and one-half year period. Respondent also agreed and the Panel finds that he converted these monies for his own use.

60. Based on the foregoing, the Panel unanimously makes the following conclusions of law:

- a. Respondent violated DR 1-102(A)(3) -- Engaging in conduct involving moral turpitude;
- b. Respondent violated DR 1-102(A)(4) -- Engaging in conduct involving fraud, dishonesty, or deceit;
- c. Respondent violated DR 9-102(A) -- Not depositing client funds into separate and identifiable accounts;
- d. Respondent violated DR 9-102(B)(3) -- Not maintaining complete and accurate records of client funds;

- e. Respondent violated DR 6-101(A)(3) – Neglecting a legal matter entrusted to him;
- f. Respondent violated DR 7-101(A)(1) – Intentionally fail to seek the lawful objectives of the client;
- g. Respondent violated DR 7-101(A)(2) – Intentionally fail to carry out his contract of employment;
- h. Respondent violated DR 7-101(A)(3) – Intentionally prejudice or damage his client during the course of the professional relationship; and
- i. Respondent violated Gov. Bar Rule V (8)(E)(1)(a) – Disobeying a court order suspending one from the practice.

AGGRAVATION AND MITIGATION

61. In mitigation, the Panel notes that Respondent admitted at the hearing his misconduct, apologized and was genuinely remorseful for his actions. The Panel also notes that Respondent fully cooperated at every level of the disciplinary investigations. Respondent has made full restitution.

62. Respondent offered evidence that he suffered from a mental illness which allegedly contributed to his misconduct. Respondent submitted reports from the Menninger Clinic, specifically Dr. Efrain Bleiberg, the chief of psychiatric medicine at the Menninger Clinic, John G. Allen, PhD., a psychologist and Donna Yi, M.D.

63. These reports diagnosed Respondent as having a depressive disorder and an attention deficit hyperactivity disorder. His alleged depression was characterized by impulsive behavior which allegedly resulted in the self-destructive behavior which allegedly resulted in the disciplinary violations.

64. The Relator offered the testimony of Dr. John C. Kennedy. Dr. Kennedy concluded that Respondent, at the time of his misconduct, was not suffering from any mental disorder or mental illness that so impaired him as to contribute or cause the misconduct or to impair him so that he did not know his misconduct was wrong.

65. The Panel finds that the testimony of Dr. Kennedy is more persuasive and therefore accepts that Respondent may have suffered from mild depression and a condition of anxiety but such conditions were not sufficient to constitute a mental disorder or mental illness that contributed to or caused the misconduct.

66. The Panel also notes as evidence of mitigation that Respondent entered into a contract with OLAP and his participation in the OLAP program has been in full compliance with the program's requirements.

67. The Panel further notes that Respondent is currently being punished for his misconduct. Respondent entered a guilty plea and was convicted of a felony and sentenced to five (5) years probation. As a result, the Supreme Court in November 2004 suspended Respondent's license to practice law on an interim basis.

68. The testimony of Respondent and his wife described that the cause of Respondent's misconduct arose from family issues and financial pressure. Respondent comes from a family of physicians who have maintained a practice for over 100 years in Maria Stein, Ohio. He testified that his family was both controlling and dismissive of his personal potential. He has 4 brothers – 3 are physicians, one is a tenured college professor. He testified his family made it clear he was not expected to become a physician. He worked at Electronic Data Systems after college and then entered the night program at Thomas Cooley Law School while working full time. He graduated and entered law practice in 1993. Prior to joining Phillips law firm in

2003 he had held positions assisting a tax attorney in Cincinnati, working with a firm in West Chester, then he spent some time analyzing whether the practice of law was for him while selling legal software and working for LexisNexis selling research materials. He was hired at the Phillips firm to handle primarily domestic relations cases which otherwise would have been referred out. He was paid 60% of the fees received on the firm cases he was assigned.

Respondent's thefts occurred when he planned to leave the Phillips firm and start his own practice, because he was not making enough money. Both he and his wife felt considerable pressure to compete with the financial success of Respondent's family and were living beyond their means.

69. Asked by the panel about what has changed with Respondent that financial pressure would not cause him to make bad decisions again, Respondent testified:

"At the time I was making these bad decisions, I was living a fairy-tale life...I was trying to fit into my own swinging doctor dynamic that I'm doing just as well as the rest of you kind of thing. Those things are no longer there. We are living-we are living within so much of our means. And the little money that we've made in the last two years, all those pretenses are gone. I don't feel - so that there's a huge - my dependency on money is much, much less now than before."

Q: But even where you are today, what if the situation comes up that...no matter what you do, you're still facing the situation where the choice is do I make a bad choice or do I do something else?

A: I've learned that I don't think the Bar is going to be very appreciative of anything I do; I'm going to lose that again. I don't think I had that appreciation last time. Currently I'm on probation. That's certainly - not that that is stopping me from doing bad behavior, but this has been - I would prefer anything to this right now...I'm not going to put my reputation on the line again...I'm going to protect my law license...I did not do that last time. I did not put that into perspective that I am putting all this at jeopardy. I didn't have the realization that this was all going to be exposed....If anybody is going to make sure they stay in the lines it's going to be me because I've been hit over the head pretty hard." (T.P. 108-110)

70. Respondent and his wife testified that they have made changes in their relationship with Respondent's family, maintaining a little more distance. "I'm not quite listening quite so much to what they think my role should be." (T.P. 111) Respondent's wife at the time of the final hearing had planned to return to work and obtain a teaching position. The

couple have four children between the ages of 11 and 17. Respondent wants to resume the practice of law but does not know what kind of practice he would enter.

71. In his testimony Respondent described his actions as dumb, depressed and desperate. "Dumb in the sense that I know better. I knew better, what I was doing. I was really cutting corners and that was dumb. All for the little bit of money that I got. Desperate though, because I have four kids." "But I am very apologetic to the Bar. Our profession has so many problems. It has so many problems with perception with the public. I only know too well from my own family that I – it's in the paper, it's another person who did something that's not right. The impression is that I stole from clients." (T.P. 93-94, 96)

72. With the panel's conclusion that neither mental illness nor substance abuse contributed to cause Respondent's misconduct, Respondent's recognition of the wrongful nature of his conduct and a clear understanding of his ethical obligations is crucial. While Respondent now clearly understands the severe sanctions that attend a felony theft conviction, he describes his conduct as 'dumb', 'cutting corners' and 'giving the impression' he stole from clients. These descriptions suggest Respondent has not yet fully appreciated the wrongful nature of his own misconduct.

73. As evidence of aggravation, the Panel notes that Respondent admitted that the conversions and thefts showed a dishonest or selfish motive. Also, the Panel finds that the number of violations show a pattern of misconduct involving multiple offenses and multiple clients.

RECOMMENDED SANCTION

74. The Supreme Court of Ohio has stated on numerous occasions that the appropriate sanction for misappropriation of funds from a client is presumptively disbarment with the possibility that mitigating circumstances could lead to a lesser sanction. *Cleveland Bar Assn. v. Belock*, 82 Ohio St. 3d 98, 1998-Ohio-261 (ordering disbarment of an attorney who was convicted of a felony, served sixteen months in prison and paid \$30,000 in restitution).

75. In this case, the mitigating factors suggest that disbarment is too severe. The Panel believes that Respondent's case is most analogous to those cases where an indefinite suspension was imposed. See, e.g. *Disciplinary Counsel v. Nagorny*, 105 Ohio St. 3d 97, 2004-Ohio-6899 (noting several mitigating factors, including the attorney's payment of full restitution); *Columbus Bar Assn. v. Hamilton*, 88 Ohio St. 3d 330, 2000-Ohio-349 (stating that mitigation included absence of any continuing pattern of misconduct and restitution); *Akron Bar Assn. v. Dietz*, 108 Ohio St. 3d 343, 2006-Ohio-1067 (mitigating factor was lack of prior disciplinary record and full restitution).

76. Given the evidence in this case, the Panel unanimously recommends that Respondent be indefinitely suspended from the practice of law, with no credit for the suspension imposed by the Supreme Court on November 8, 2004. The Respondent shall pay all costs of these proceedings.

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, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Robert C. Schwieterman, be indefinitely suspended from the

practice of law, with no credit for the interim suspension imposed by the Supreme Court of Ohio on November 8, 2004. 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", written over a horizontal line.

**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
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Attorney Reg. No. 0061353	:	
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<u>RESPONDENT,</u>	:	STIPULATIONS
	:	
vs.	:	
	:	
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	:	
<u>RELATORS.</u>	:	

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Stipulations:

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47. Respondent did not record the deed until Relators sent a copy of the grievance to Respondent's counsel.

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2003, he entered a 30-day inpatient program at Menninger Clinic in Houston, Texas, for treatment. Upon his return to Cincinnati and by letter to Relators dated January 21, 2004, he disclosed that at the Menninger Clinic, he was diagnosed and medically treated for Attention Deficit Hyperactive Disorder. Additionally, he was diagnosed with and counseled for depression. See Exhibit B.

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57. By order of November 8, 2004, the Supreme Court of Ohio suspended Respondent from the practice of law for an interim period on the basis of his felony conviction. See Exhibit A.

MISCONDUCT

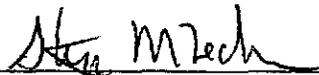
By reason of the foregoing, and in regard to his representation of all clients previously named in paragraphs 5, 10, 12, 14, 16, 18, 21 and as an employee of Phillips Law Firm, Respondent has violated Disciplinary Rules 9-102(A), in that he failed to deposit client funds in an identifiable bank account; 1-102(A)(3), in that he engaged in illegal conduct involving moral turpitude; 1-102(A)(4), in that he engaged in conduct involving dishonesty, fraud, deceit or misrepresentation; and 9-102(B)(3), in that he failed to maintain complete records and account for client funds. In regard to his representation of all clients previously named in paragraphs 32,

37 and 43, Respondent has violated Disciplinary rules 6-101(A)(3) and 7-101(A)(1), (2) and (3). Further, in connection with his representation of Mr. Flottman, Respondent's failure to notify Mr. Flottman that Respondent was suspended from the practice of law constitutes misconduct under Gov. Bar Rule V Section 8, (E)(1)(a), which defines misconduct to include disobedience of a court order imposing suspension from practice.

REPORTS AND WITNESSES

1. May 9, 2006 letter from H. Fred Hoefle, attached.
2. June 9, 2004 report from Bill Malone, MSW, LISW , attached
3. April 28, 2006 report from Mr. Malone, attached
4. Reports from the Menninger Clinic, Houston, TX:
 - (A) Psychiatric Assessment, 12/6/2003; Efrain Bleberg, MD, attached
 - (B) Treatment record and discharge summary, 1/15/2004; Jon G. Allen PhD, attached
 - (C) Discharge summary, 1/15/2004, Donna Yi, M.D., attached.
5. Report by John Kennedy, M.D. and Michael Borack, Psy.D., filed on October 25, 2005, attached.
6. Relator Witness: John Kennedy, M.D.

CINCINNATI BAR ASSOCIATION



Stephen M. Nechemias (#0000755)
425 Walnut Street, Suite 1800
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By: _____
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Robert C. Schwieterman (0061353)
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Malone Counseling & Consulting Services, LLC

April 28, 2006

H. Fred Hoefle
810 Sycamore St.
Cincinnati, Ohio 45202

Re: Bob Schwieterman

Dear Mr. Hoefle,

This is to provide you with an update on the mental status of Mr. Schwieterman.

My last contact with Mr. Schwieterman last year was September 22, 2005 and my most recent contact was on April 28, 2006.

Currently, Mr. Schwieterman presents himself with remorse and regret for his actions and recognizes the consequences of his actions. He presents no thought disorder. His major life problem that is causing him stress involves his lack of financial resources. His money problems leads to feeling like a failure, loss of enjoyment in life, feeling anxious and irritable and feelings of regret.

For the past six months Mr. Schwieterman has worked to change his money problems. Being allowed to practice law again, would increase the likelihood of him increasing his earning power, thus correcting the situational stress he is encountering.

I do not see any reason that would prevent Mr. Schwieterman from carrying out his duties as a lawyer. In fact, the events Mr. Schwieterman has encountered appears to have taught him a valuable lesson which may enhance his ethical standards.

I have no further sessions planned for Mr. Schwieterman.

Sincerely,



William Malone, MSW, LISW

FITNESS FOR DUTY EVALUATION REPORT

...Summary Report

Patient Name: Robert C. Schwieterman

Age: 40

Instruments & Procedures Utilized:

Clinical Interviews:

06/15/05 Michael Borack, Psy.D.
09/15/05 John Kennedy, M.D.

Empirical Assessment, (Michael Borack, Psy.D.):

- Paulhus Deception Scale, (PDS)
- Minnesota Multiphasic Personality Inventory-2nd Ed., (MMPI-2)
- Personality Assessment Inventory, (PAI)
- State-Trait Anger Expression Inventory-2, (STAXI-2)
- Anger Disorder Scale, (ADS)
- Occupational Stress Inventory, Revised, (OSI-R)
- Rorschach
- Substance Abuse Subtle Screening Inventory, 3rd Ed. (SASSI-3)
- Sentence Completion – Work Form, (SC-W)
- Structured Inventory of Malingered Symptomatology, (SIMS)

Review of Records:

- 12/16/03, Psychiatric Assessment, Menninger Clinic.
- 1/15/04, Treatment Record & Discharge Summary, Menninger Clinic.
- 1/15/04, Discharge Summary, Menninger Clinic.

- 1/21/04, Letter from Mr. Schwieterman to Mr. Nechemias.
- Undated PowerPoint presentation created by Mr. Schwieterman.
- 1/20/04, "Matter Report" completed by Mr. Schweiterman.
- 3/9/05, Mr. Schwieterman's application for liability insurance.
- 3/17/05, Letter from Mr. Schwieterman to Mr. Nechemias
- Banking Records.
- 3/22/04, Letter from Mr. Schwieterman to liability insurance company.
- Undated, "Summary of Investigation" by Cincinnati Bar Association.
- 5/25/04, "Complaint and Certificate," Supreme Court of Ohio.
- 6/9/04, Letter from Bill Malone, MSW, LISW.
- 6/22/04, "Initial Diagnostic Evaluation & Treatment Plan," Dr. Vivian.
- 7/8/04, "Decision/Entry," Clermont County Probate Court.
- 7/13/04 & 7/14/04, Session Notes, Dr. Vivian.
- 9/21/04, Letter from Mr. Hoefle to Mr. Nechemias.
- 6/10/05, "Entry," The Supreme Court of Ohio.

Collateral Contact(s):

- James Carroll, Psy.D., (Prior Psychotherapist)
- Bill Malone, LISW, (Current Counselor)

Referral Information:

Robert Schwieterman is a 40-year-old Caucasian male attorney referred for evaluation by Pamela Popp, Esq. The evaluation was upon order of the Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline, which also stipulates that the final evaluation report be forwarded directly to the Board upon completion. The order, (Case NO. 04-034, filed on June 10th, 2005), dictates that Mr. Schwieterman, "submit to a psychiatric examination...to determine if [he] suffers from mental illness."

The Ohio Revised Code, 5122.01(A), defines mental illness as, "a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life." It was requested that we determine if Mr. Schwieterman, at the time of the commission of the offenses, was so impaired by a severe mental illness, disease, or defect, that he did not know the wrongfulness of his acts.

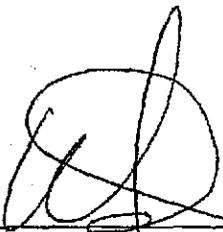
Conclusions:

Based upon a review of Ms. Schwieterman's clinical records from the time period when he committed his offenses, and an analysis of his statements, it appears that he was suffering moderate depression and anxiety, which also might have created some attentional problems. However, he was never viewed by involved professionals as psychotic, severely depressed, cognitively impaired, or disturbed in some manner or fashion that his judgment, memory, or perceptual accuracy would have been meaningfully impaired.

Therefore, we conclude that - at the time of his offense - Mr. Schwieterman was suffering a moderate degree of mental illness, but not of the sort or degree that would have impaired his capacity to appreciate the wrongfulness of his actions. Regardless of his mental illness, available evidence from documents and interview confirm that Mr. Schwieterman fully knew the wrongfulness of his act at the time of their commission.

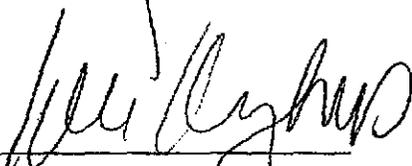
Based upon clinical interviews and psychological testing, as well as a conversation with his current treating clinician, it appears that Mr. Schwieterman currently continues to struggle with some moderate degree of anxiety and depression. However, there continue to be no indications of psychosis, severe depression, cognitive impairment, or any other sort of disturbance that would cause his judgment, memory, or perceptual accuracy to be meaningfully impaired.

Therefore, we conclude that - at the present time - Mr. Schwieterman suffers mild to moderate levels of depression and anxiety, but not of the type or severity that would render him unable to perform his professional duties in a responsible fashion.



Michael G. Borack, Psy.D.

October 7th, 2005



John Kennedy, M.D.

October 7th, 2005

H. FRED HOEFLE
ATTORNEY AT LAW

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Mr. Stephen Nechemias, Esq.
VIA FAX: 381-0205

May 9, 2006

Ms. Pamela Popp, Esq.
VIA FAX: 455-8500

Dear Counsel:

A. Stipulations

Mr. Schwieterman and I have gone over the proposed stipulations, and find them generally agreeable, although there are some minor factual differences which are irrelevant to the issues. The stipulations as written are acceptable. We need a signature line for Mr. Schwieterman.

I think we should also stipulate the authenticity, admissibility, and the admission into evidence of the medical and psychological reports obtained by the parties, including the Menninger Clinic reports (I believe there are three in number, each by a different mental health professional, the two reports from Mr. Malone, Mr. Schwieterman's local therapist and from Dr. Kennedy and the associated psychologist's report (his name escapes me at the moment, and my file is not here). Barring any surprises, there should be no other items introduced in evidence. Mr. Schwieterman has decided not to put forth any written or testimonial character witnesses.

B. Witness list

Mr. Schwieterman will testify in his own behalf. Also testifying will be his wife, Mrs. Brenda Schwieterman. OLAP will be represented at the hearing by either Mr. Scott Mote, the Director, or Ms. Stephanie Kzmaric, and I expect to ask the OLAP representative to confirm the early date when Mr. Schwieterman first consulted OLAP, and for their opinion as to his progress from then to now.

Very truly yours,

H. Fred Hoefle

C: Mr. Schwieterman