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

In Re:	:	
		SCO Case No: 06-2264
	:	**BOC Case No: 06-055**
Complaint against		
	:	**AMENDED**
David J. Scacchetti,	:	**Findings of Fact,**
Attorney Reg. 0014117		**Conclusions of Law and**
Respondent	:	**Recommendation of the**
		Board of Commissioners on
	:	**Grievances and Discipline of**
Disciplinary Counsel		**the Supreme Court of Ohio**
	:	
Relator		

FILED
DEC 28 2006
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

INTRODUCTION AND PROCEDURAL BACKGROUND

This matter came on for final hearing on November 16, 2006 in Columbus, Ohio before panel members Attorney Myron Wolf of Butler County, Martha Butler of Franklin County and Attorney Jean M. McQuillan of Cuyahoga County, Chair. None of the panel members was a member of the probable cause panel that heard this Complaint or resided in the district from which this Complaint arose.

This grievance relates to Respondent's arrest and conviction for possession of cocaine, a fourth degree felony, in 2005.

The Respondent was present at the final hearing, represented by Jack C. Rubenstein and Stacy Solochek Beckman represented the Relator.

The parties entered into agreed Stipulations as to the facts, rule violations and recommended sanction which were filed on September 5, 2006. At final hearing the panel heard

testimony from Respondent, Patrick Garry, Associate Director at the Ohio Lawyers Assistance Program (OLAP) and Marcia Scacchetti, Respondent's wife.

Findings of Fact

Respondent, David J. Scacchetti, was admitted to the practice of law in 1982. He described his practice in Cincinnati as a "litigation practice" approximately half civil and half criminal defense. He practiced with his wife until 2001 when Marcia retired from law practice to work with a non-profit organization in Cincinnati. The Scacchettis have two daughters ages 17 and 15.

Mr. Scacchetti testified that up until approximately two years before his arrest he had enjoyed a successful practice and good health. He was an avid athlete who enjoyed tennis and basketball and other sports which complemented the stress of his practice. He developed a chronic staph infection, which caused painful open sores all over his body. The infection was difficult to treat and cure. The condition lasted for an extended period. Respondent testified that his appearance caused comments and rumors that he had AIDS. During this time he also injured a disc in his neck, which added to his chronic pain and disability. Mrs. Scacchetti testified that over this period of time she observed her husband become sullen and despondent, isolating himself from his family and friends.

Respondent testified that as a result of his physical condition he began self-medicating with cocaine. He used daily in the evenings "after dinner" and by himself. He was arrested in a sting operation while trying to purchase cocaine for himself.

In October 2005, Respondent was charged with possession of cocaine, a fourth degree felony. He plead guilty to that offense and was granted intervention in lieu of conviction in the Hamilton County Drug Court by Judge Kim Wilson Burke on December 21, 2005. Within two weeks of his arrest Respondent voluntarily shut down his law practice and he has not practiced law since that time.

Judge Burke ordered that Respondent complete a three year period of rehabilitation, complete the ADAPT Inpatient program and all ordered aftercare. As a condition of his drug

court guilty plea Respondent also agreed in December 2005 to change his attorney status to "inactive" with the Supreme Court of Ohio for a period of two years. His registration was changed to inactive as of December 9, 2005.

Pursuant to Judge Burke's order Respondent completed a 112 day inpatient rehabilitation program at Bethesda Hospital in April 2006. Upon his inpatient discharge he also entered into an OLAP contract which remains in effect for four years through April 2010. Since April 2006 Respondent has been in the ADAPT transitional program having sessions four days a week and is subject to random drug screens.

He maintained daily contact with Patrick Garry from OLAP through mid-August 2006 and then Garry suggested somewhat less frequent contact. The last week in August 2006 he had a relapse testing positive for cocaine on a drug screen. Judge Burke ordered him to serve a week in jail and then return to an ADAPT transitional house where he is presently living, attending daily sessions, participating in their 12 step program and having drug screens three times a week. It will be up to his ADAPT counselor and Judge Burke when he is released from that program but Respondent hopes they will be convinced he is ready in a month or so.

Respondent testified that the relapse occurred when a friend he had not seen in a while gave him a ride home from a courthouse appointment and drugs were unexpectedly offered. Respondent testified that he has learned much from the relapse – that he needs to get help on a daily basis to maintain his sobriety, that this is a problem he needs to address every day, one day at a time and that he can never be around the drug or people who use it. Respondent assured the panel he understood it was critical to his recovery that he seek and obtain all the help he needs as he moves from the structure of the ADAPT transitional program back to his home over the next months.

Respondent testified that he presently sees his counselor and has sessions at ADAPT four days a week and he is also seeing his own psychiatrist, Dr. Sachs, whom he plans to continue seeing indefinitely. He has also been diagnosed with adult attention deficit disorder (ADD) and is now prescribed medications to treat that condition. He testified that he took cocaine because it

had a calming effect, relieving his anxiety and stress and taking his mind off the pain of his physical ailments. His psychiatrist has told him that cocaine's paradoxical effect for him was a result of his untreated ADD.

Conclusions of Law

The parties stipulated and the panel finds by clear and convincing evidence that Respondent violated DR 1-102(A)(3) (a lawyer shall not engage in illegal conduct involving moral turpitude) and DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law) .

Mitigation, Aggravation and Sanction

The parties stipulated and the panel finds pursuant to BCGD Proc. Reg. 10(B)(2) the following matters in mitigation are present: absence of a prior disciplinary record; absence of a dishonest or selfish motive; cooperation in the disciplinary process; character or reputation and imposition of other penalties and sanctions.

The panel finds that pursuant to BCGD Proc. Reg. 10(B)(1) there are no matters in aggravation present.

The parties have recommended a sanction of a two year suspension from the practice of law with the entire suspension stayed, and that Respondent be placed on probation on condition that 1) Respondent remain drug-free and alcohol free; 2) Respondent continues to participate in OLAP for no less than two years; 3) Respondent be subject to random drug and alcohol testing; and, 4) Respondent attend an AA or NA meeting at least once a week.

The panel found Respondent to be honest and forthright about his drug addiction. Both Respondent and his wife testified about the devastating impact this arrest and conviction has had on their whole family. Respondent said it was the hardest thing he had ever done to tell his teenage daughters about his relapse. Mrs. Scacchetti testified that their older daughter's college entrance essay had been about her success and failure with her father's drug addiction. The panel believes that Respondent understands now that his actions have had and will have a profound affect on both him and his family.

Respondent also testified about his love for the practice of law and that he took steps while he was using to prevent causing harm to any client. He freely volunteered that while he did avoid harm to his clients he understands now that regardless of his efforts he was practicing while he was impaired.

Patrick Garry testified that Respondent's recent relapse in August 2006 after 10 months of sobriety was troublesome but he believes that the relapse has had the effect of increasing Respondent's understanding of and commitment to lifelong recovery and willingness to accept help. He believed that Respondent can return to the competent practice of law. Garry testified that Respondent's relapse has partially sent him back to the beginning of the process of recovery. Garry would like to see the Respondent with a greater period of recovery (than the present three months) before he takes on the burden of the responsibility of resuming the practice of law. Garry testified in similar cases he has been involved that attorneys resuming practice have had a 10-11 month period of sustained sobriety.

In two recent cases lawyers with criminal felony convictions related to their personal drug addictions and periods of sustained sobriety have received two year suspensions completely stayed on conditions. See *Disciplinary Counsel v. Wolf*, 110 Ohio St. 3d 411, 2006-Ohio-4709 and *Disciplinary Counsel v. May*, 106 Ohio St. 3d 385, 2005-Ohio-5320.

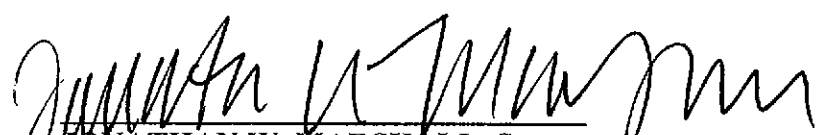
In this case the panel believes that Respondent is committed to and capable of returning to the practice of law. However, because of his recent relapse and concurring with the opinions expressed by Patrick Garry of OLAP, the panel does not believe the Respondent is ready to resume practice now. The panel recommends that Respondent receive a two-year suspension with eighteen months stayed on conditions. The six-month actual suspension allows Respondent an additional period of recovery prior to the resumption of practice. This period of actual suspension will also be approximately consistent with his plea agreement with the drug court to remain on inactive status through December 2007. The panel further recommends that the conditions of the stayed suspension include: a) Respondent provides a report from his treating psychiatrist certifying that he is competent to resume the practice of law; b) Respondent

maintains his current OLAP contract through April 2010; c) Respondent be subject to random drug and/or alcohol testing either through the Hamilton County Drug Court or OLAP; d) Respondent remains drug-free and alcohol-free; and, e) Respondent attends a meeting of Alcoholics Anonymous or Narcotics Anonymous at least once a week during the period of the stay.

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, David J. Scacchetti, be suspended from the practice of law in the State of Ohio for a period of two years, with eighteen months stayed on the conditions contained in the Panel's report. 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.



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