

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

07 - 0757

In Re:	:	
Complaint against	:	Case No. 06-060
Cornell P. Carter Attorney Reg. No. 0062986	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Akron Bar Association	:	
Relator	:	

FILED APR 26 2007 MARCIA J. MENGEL, CLERK SUPREME COURT OF OHIO

{¶1} This matter came on for hearing March 26, 2007 before Shirley J. Christian, Judge Joseph J. Vukovich and Judge H.J. Bressler, Panel Chair, all of whom are duly qualified members of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, and none of whom resides in the district from which the complaint originated or served on the Probable Cause Panel that reviewed the complaint.

PROCEDURAL HISTORY

{¶2} The original complaint was filed with the Board on June 9, 2006. On June 19, 2006, the Respondent, pro se, wrote to the Board and requested an extension of time to file an answer. The Respondent requested an extension until July 26, 2006 and that extension was granted. On July 26, 2006, the Respondent filed an answer pro se and has continued to be pro se in this matter up through and including the final hearing.

{¶3} On July 31, 2006, the hearing panel was appointed and a scheduling conference by the Panel Chair was conducted shortly thereafter. At the scheduling conference, this matter was set for hearing on December 8, 2006 and the Panel Chair issued orders setting deadlines for

identification for exhibits, witnesses, prehearing briefs and the submission of any stipulations.

{¶4} Shortly before the scheduled December 8, 2006 hearing, the Panel Chair received an agreed motion to reschedule the hearing based upon the fact that Respondent's deposition had taken place on November 29, 2006 and the Relator became aware of additional information as a result of the deposition. Relator requested a continuance of the hearing in order to subpoena additional records and Respondent did not object. A conference call was set by the Panel Chair with the parties for January 2007 and at that time the matter was reset for final hearing on March 23, 2007 at 9:30 a.m. in Akron, Ohio. New scheduling orders were issued requiring all witness lists, exhibits, and prehearing briefs be filed by March 9, 2007.

{¶5} On January 23, 2007, a subsequent conference call took place at the request of the Relator at which time Relator requested the March 23, 2007 hearing be rescheduled due to unavailability of one of Relator's witnesses. Respondent took part in this conference call and did not object to resetting the hearing for March 26, 2007 at 9:30 a.m. Notice and confirmation of the new hearing date was sent to all parties on January 26, 2007.

{¶6} At the scheduled time and date of the hearing on March 26, at 9:30 a.m., Relator appeared represented by attorneys James Campbell and Joseph C. McLeland.

{¶7} Respondent was not present. At approximately 9:45 a.m., the Panel Chair directed counsel for the Relator to attempt to contact the Respondent through the cell phone number provided by the Respondent. At approximately 9:50 a.m., the Respondent returned Relator's telephone call indicating that he did not have the hearing on his calendar. The Panel Chair conducted a conversation with Respondent and reminded him that the Respondent had taken part in the conference rescheduling this matter for March 26 at 9:30 a.m. and that notice had been provided. Respondent indicated that he was in Medina, Ohio and the Panel Chair asked him how long it would take to get to the hearing. Respondent indicated that it would take approximately an hour and he was directed to appear for the hearing. At approximately 11:30

a.m., the Respondent did appear and acknowledged that while he knew about the hearing, he had neglected to put it on his calendar. However, Respondent acknowledged that he was prepared to go forward with the hearing and that he was proceeding pro se. At approximately 11:30 a.m., on March 26, the hearing commenced. Prior to the hearing, the Panel Chair confirmed that Relator had filed the deposition of Respondent and had also filed a prehearing brief, exhibits and a witness list. Respondent acknowledged that he had not filed any documents including exhibits, witnesses, references or a prehearing brief.

{¶8} There were no stipulations in this matter and the hearing proceeded on that basis.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶9} Respondent was born on July 15, 1967 and admitted to the practice of law of Ohio in May 1994. He graduated from Case Western Reserve University in 1993 and took the bar exam in February 1994. He was first employed in 1994 as an assistant city prosecutor and director of mediation for the city of Cleveland. In 1997, he became Director of the Department of Community Relations for the city of Cleveland.

{¶10} On September 18, 1998, he became Director of the Department of Law in the city of Cleveland covering both civil and criminal matters.

{¶11} On August 21, 2001, he became Executive Assistant of Health and Human Services in the city of Cleveland and on September 14, 2001 became Chief of Staff for the mayor of Cleveland.

{¶12} When the mayor chose not to seek a fourth term, Respondent's position with the city of Cleveland ended and his next employment was with a company known as State and Federal Communications located in Akron, Ohio. Respondent worked for State and Federal Communications from May 2003 until June 2004. He was the Director of Operations at that company.

{¶13} Part of his responsibilities required some travel for the company and entertaining

new employees. Initially, Respondent was issued an American Express credit card for use on company business.

{¶14} If Respondent used the credit card for personal business, he was required to submit documentation and reimburse the company on a prompt basis.

{¶15} Initially, Respondent had an automobile and an apartment in Strongsville, Ohio. Because of issues with Respondent's use of the American Express credit card to make personal charges, the credit card was taken from him. He was instructed that when the card was needed, he should request it from the Controller, Jeffrey Roberts.

{¶16} The credit card was taken on August 20, 2004. During the fall of 2004, Respondent began staying at the Comfort Inn in Akron, Ohio and initially used the company credit card to guarantee payment. His reasons for staying at the Comfort Inn rather than his apartment included working late at night and not wanting to drive 45 minutes to his apartment and 45 minutes back in order to be at work early the next day.

{¶17} Respondent stayed for extended periods of time at the Comfort Inn and by December 2004 had accumulated a hotel bill of over \$3,000. Respondent paid the bill in cash. He had maintained a cordial and comfortable relationship with the owner and staff at the Comfort Inn and they knew him on sight and tried to give him the same room each time he stayed at the hotel.

{¶18} On December 31, 2004, Respondent again checked into the Comfort Inn and stayed there until April 2005.

{¶19} By the time, Respondent had checked into the Comfort Inn at the end of December 2004, he no longer had an automobile and was taking the bus from the hotel to his place of employment.

{¶20} Respondent admitted and is undisputed that he was told he did not have authority to use the company American Express card for personal purposes including paying his

bill at the Comfort Inn. Respondent testified that when he checked into the Comfort Inn on December 31, 2004, it was his intention to pay his hotel bill in cash and not with a credit card.

{¶21} Relator's Exhibit 2 is a check-in form from the Comfort Inn wherein Respondent signed his name and initialed a rate acceptance guaranteeing payment with the company American Express card. At that time, Respondent was assigned to Room 124.

{¶22} Relator's Exhibit 3 is another check-in form signed by the Respondent changing his room number to 235 and again guaranteeing payment by the company American Express card.

{¶23} Relator's Exhibit 4 is dated April 11, 2005 and is another check-in form accepting the room rate guaranteeing it with the company American Express card and signed by Respondent.

{¶24} Due to the length of Respondent's stay and nonpayment of the bill, the owner of the hotel contacted Respondent and asked for payment. Respondent indicated that he would pay the bill and when he didn't, the hotel charged State and Federal Communications' American Express card for the balance due in March 2005.

{¶25} After a conversation with Respondent, the charge was reversed when Respondent promised that he would pay the bill in cash.

{¶26} Harry Thakkar, one of the owners of the hotel, testified that when Thakkar became concerned about the bill, Respondent asked him why he was worried since he had the American Express card to guarantee payment. Thakkar further testified that Respondent threatened to take company business away from the hotel and told him that he was a partner with State and Federal Communications.

{¶27} Deseree Fissella, the office manager for the Comfort Inn, testified that Respondent told the hotel and her directly the bill would be paid by the American Express card. She further testified that they no longer needed the card for an imprint since Respondent had

used it on numerous occasions and it was on file.

{¶28} By April 2005, the hotel bill had reached a sum of over \$5,800 and the hotel was demanding payment. When Respondent could not pay the bill, the hotel charged the American Express card and Respondent's employer, State and Federal Communications, became involved. During a period of approximately one month, Respondent made numerous promises to pay the bill and told Jeffrey Roberts and Elizabeth Bartz that he had resolved the matter with the hotel and had paid them by money order.

{¶29} However, at no time had Respondent paid the bill and when asked for copies of check or money orders, he was unable to produce them. He continued to tell his employer that he had money available and on the way which would take care of this matter and he had insisted that this bill would be paid in cash.

{¶30} Respondent further testified that he had an agreement with Harry Thakkar that he could pay the bill in quarterly installments.

{¶31} Ultimately, the bill was not paid and Comfort Inn charged the American Express card. State and Federal Communications initially contested the charge but finally paid it. In May 2005, Respondent gave notice of his intention to resign as of June 1 and by the time of his departure from the company he had still not reimbursed his employer. The employer withheld his last paycheck leaving a balance of approximately \$4,800 on the unpaid bill.

{¶32} By late summer, Elizabeth Bartz, President of State and Federal Communications, had lost patience with Respondent's promises and excuses and contacted the Copley Police Department. The matter was assigned to Detective David Moore for investigation. Detective Moore contacted Respondent and indicated that payment of the bill would probably resolve the matter. Respondent promised Detective Moore that he would obtain the funds to make restitution and gave Detective Moore a check for \$4,000 with no funds in the account to cover the check.

{¶33} Exhibit 18, which is attached, is a copy of Detective Moore's report of his investigation. When Respondent was unable to make restitution, a warrant was signed by Detective Moore and on September 22, Respondent was charged with misuse of a credit card, a fourth-degree felony and grand theft, a fourth-degree felony.

{¶34} On September 30, 2005, Respondent presented a cashier's check to State and Federal Communications for \$4,464.84 completing restitution for the charges made on the American Express card.

{¶35} On January 3, 2006, Respondent, represented by counsel, appeared in front of the Honorable James Murphy and at that time entered guilty pleas to Count 1 of the indictment, theft, a fourth-degree felony under R.C. 2913.02(A)(2) and misuse of a credit card under Count 2, a fourth-degree felony under R.C. 2913.21(B)(2).

{¶36} As part of the plea agreement, Respondent was placed in the Prosecutor's Diversion Program and was still in the program on the day of the hearing. While Respondent had completed most of the requirements for the diversion program, which ultimately can result in a dismissal of the charges, he has not paid the court costs and costs associated with the program. In addition, Ann Gatty, who is the program manager for the pretrial diversion program, testified that these proceedings do have some bearing on Respondent's completion of the program since employment is a condition of participation in the pretrial diversion program.

{¶37} Respondent testified that he only entered guilty pleas to two fourth-degree felonies in order to get into the diversion program and ultimately have the charges dismissed. He further testified that it was his understanding that he could withdraw from the program any time and withdraw his guilty pleas and proceed to trial. Finally, he testified that he understood if he had been terminated from the program on the basis of inability to successfully complete the program, he also had the option of withdrawing his guilty pleas and proceeding to trial.

{¶38} Ann Gatty testified that that is incorrect. If the Respondent withdraws from the

diversion program or is dismissed from the program, he will be taken back in front of the sentencing judge and will be sentenced for the two felonies, theft and misuse of a credit card.

{¶39} Throughout the hearing in front of the Panel, Respondent insisted that he was taking responsibility for his acts but denied that he had done anything to warrant disciplinary proceedings. He felt that there was no basis for these proceedings and this was simply a civil matter between him and the hotel and his employer.

{¶40} He readily acknowledged that his financial situation caused his problems and his inability to pay the hotel bill.

{¶41} He testified that it was his intention to pay the bill in cash but as a result of a number of monetary problems he was unable to make payment on the bill and the problem was compounded by his efforts to find a source of funds and inability to make restitution.

{¶42} Harry Thakkar, Detective Moore, Jeffrey Roberts, and Elizabeth Bartz all testified about promises, statements made by Respondent regarding when payment would be made, how it would be made, and the fact that payment had been made.

{¶43} When the initial complaint was filed, Respondent failed to provide a written response to the Relator and as of the date of the hearing had not done so. However, Respondent did submit to a deposition and cooperated with Relator in the investigation stage of these proceedings.

{¶44} As of March 26, 2007, Respondent's guilty plea remains and Respondent is still a participant in the diversion program.

{¶45} A complaint was filed against Respondent on October 13, 2005, charging Respondent with theft, a fourth-degree felony under Count 1, and misuse of a credit card, a fourth-degree felony under Count 2.

{¶46} Under Count 1 of the complaint, Respondent is charged with misconduct under DR1-102(A)(3). Relator charges that Respondent pled guilty to the crime of theft, a fourth-

degree felony, on January 3, 2006. Relator further charges that Respondent violated DR1-102(A)(3) by engaging in illegal conduct involving moral turpitude.

{¶47} Under Count 2, Relator charges Respondent with misconduct under DR1-102(A)(4) and specifically charges that Respondent pled guilty to the crime of theft, a fourth-degree felony, on January 3, 2006 and violated DR1-102(A)(4) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

{¶48} Under Count 3, Relator charges misconduct under DR1-102(A)(3). Relator charges that Respondent pled guilty to the crime of misusing a credit card, a fourth-degree felony and violated DR1-102(A)(3) by engaging in illegal conduct involving moral turpitude.

{¶49} Under Count 4, Relator charges misconduct under DR1-102(A)(4). Relator charges that Respondent pled guilty to the crime of misusing a credit card, a fourth-degree felony, on January 3, 2006 and violated DR1-102(A)(4) by engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

{¶50} Under Count 5, Relator charges misconduct under DR1-102(A)(6) and as a basis charges that Respondent engaged in conduct that adversely reflects upon his fitness to practice law.

{¶51} At the conclusion of the evidentiary hearing, Relator dismissed Counts 6 and 7. Respondent testified on his own behalf and presented no exhibits or any character references.

CONCLUSIONS OF LAW

{¶52} In reviewing the charges in this matter, it was clear to the Panel that all five counts involve the same set of circumstances. While Respondent pled guilty to the crimes of theft and misuse of a credit card, the Panel finds by clear and convincing evidence that the acts of Respondent were the misuse of the American Express credit card to guarantee payment of his hotel bill which allowed him to stay at the Comfort Inn when he did not have funds sufficient to pay his hotel bill. State and Federal Communications was harmed as a result of the misuse of

the credit card even though Respondent testified that it was not his intention to use the credit card to pay the bill. The Panel finds by clear and convincing evidence that Respondent did use the credit card to guarantee payment of his bill and facilitate his ability to stay for an extended period of time at the Comfort Inn.

{¶53} Respondent used the credit card without the authority of his employer and in direct contravention of his employer's instructions. His justification is that he did not intend to have the credit card charged and instead felt that he would have sufficient funds to pay the bill. Therefore, the Panel finds by clear and convincing evidence that under Count 1, Respondent did violate DR1-102(A)(3). Under Count 2, Respondent's conduct violated DR1-102(A)(4). Under Count 3, Respondent's conduct violated DR1-102(A)(3). Under Count 4, Respondent's conduct violated DR1-102(A)(4). Under Count 5, Respondent's conduct violated DR1-102(A)(6).

MITIGATION

{¶54} The Panel finds by clear and convincing evidence the following mitigating factors: (1) absence of a prior disciplinary record; (2) full restitution to State and Federal Communications; (3) full and free disclosure to the Disciplinary Board and a cooperative attitude toward the proceedings; (4) imposition of other penalties or sanctions.

AGGRAVATION

{¶55} The Panel finds by clear and convincing evidence the following aggravating factors: (1) dishonest or selfish motive; (2) refusal to acknowledge wrongful nature of conduct; (3) plea of guilty to two fourth-degree felonies, theft and misuse of a credit card; (4) a pattern of misconduct and multiple offenses.

RECOMMENDED SANCTION

{¶56} Relator asks that Respondent receive an indefinite suspension as opposed to permanent disbarment. Respondent asks that this matter be dismissed with no findings against the Respondent as to violations of any disciplinary rules.

{¶57} In support of Relator's recommended sanction of indefinite suspension, Relator cites the following cases: *Disciplinary Counsel v. Stern*, 106 Ohio St.3d 266, 2005-Ohio-4804; *Disciplinary Counsel v. Ulinski*, 106 Ohio St.3d 53, 2005-Ohio-3673; *Disciplinary Counsel v. Bein*, 105 Ohio St.3d 62, 2004-Ohio-7012; *Disciplinary Counsel v. White*, 109 St.3d 402, 2006-Ohio-2709; *Cincinnati Bar Assn. v. Blake*, 100 Ohio St.3d 298, 2003-Ohio-5755; *Cincinnati Bar Assn. v. Banks*, 94 Ohio St.3d 428, 2002-Ohio 1236; *Cincinnati Bar Assn. v. Blankemeyer*, 109 Ohio St.3d 156, 2006-Ohio-2038; *Toledo Bar Assn. v. Crossmock*, 111 Ohio St.3d 278, 2006-Ohio-5706. Most of the cases cited by Relator deal with multiple offenses, prior disciplinary proceedings, and thefts of significant amounts. This Panel never judges the recommended sanctions on the basis of the dollar amount involved in the criminal misconduct.

{¶58} However, the Panel did review this matter on the basis of the conduct involved which led to the criminal charges. The Panel did find by clear and convincing evidence that Respondent originally intended to pay his hotel bill with cash assets but also knew that the only way to be at the hotel was by using the credit card as a guarantee. The criminal conduct involved the use of the credit card as a guarantee which ultimately resulted in a charge against his employer's American Express account. Respondent's inability to manage his financial matters led to his problems and he compounded them with his excuses and misleading statements to all of the parties involved. The Supreme Court in *Disciplinary Counsel v. White*, 109 Ohio St.3d 402, at 404 said: "Although we have imposed lesser sanctions on some attorneys convicted of felonies, we have done so where more evidence was offered in mitigation than has been offered in this case."

{¶59} At the time of the hearing, Respondent had not been convicted of any felonies although he had pled guilty to two. There is an opportunity for the Respondent to complete a diversion program and to have the charges dismissed in accordance with the terms of the program.

{¶60} In *Cincinnati Bar Assn. v. Diehl*, 105 Ohio St.3d 469, 2005-Ohio-2817, the Respondent misappropriated approximately \$5,000 from an estate. He self reported and made restitution. The sanction imposed for a violation of DR1-102(A)(4) was a two-year suspension with 18 months stayed and conditions.

{¶61} In *Cleveland Bar Assn. v. Glassman*, 104 Ohio St.3d 484, 2004-Ohio-6771, Respondent pled guilty to two felonies in 1994 involving thefts from clients. Respondent was sentenced to a year in prison for each of his offenses with the sentence suspended and probation imposed. Respondent had an interim suspension beginning on November 21, 2003 and in December 2004 as a result of additional charges of misconduct received an additional one-year suspension with no credit for time served for the interim suspension. Respondent was found to have violated DR1-102(A)(4) and DR1-102(A)(6) along with other disciplinary rule violations.

{¶62} As set out above, Respondent has cited no authority to the Panel for any sanction arguing only that he has not violated any disciplinary rules and that the complaint should be dismissed.

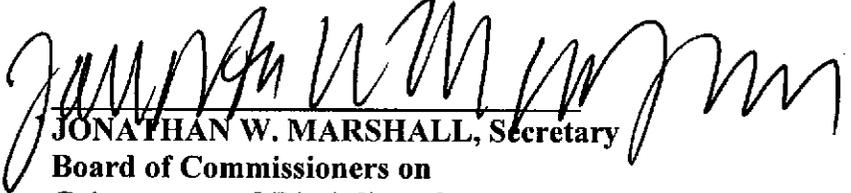
{¶63} The Panel has considered the fact that Respondent's violations caused financial harm to his employer and that he has made full restitution. The Panel has also considered that Respondent has no prior disciplinary record. However, his failure to accept responsibility other than to claim that this was a misunderstanding and an unintentional act has caused the Panel concern.

{¶64} The Panel having considered all of the evidence and the arguments of the Relator and Respondent, recommends that Respondent be suspended from the practice of law for a period of two years with the last 12 months stayed. A condition of reinstatement will be successful completion of the diversion program in connection with the criminal charges including payment of any or all costs. If Respondent fails to complete the diversion program for the two felonies, the entire two-year suspension shall be served by Respondent.

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 April 13, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Cornell P. Carter, be suspended from the practice of law for a period of two years with one year stayed upon the conditions contained in the panel 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