

CASE NO. 2007-1581

IN THE SUPREME COURT OF OHIO

CLEVELAND BAR ASSOCIATION,

Relator,

v.

LUANN MITCHELL,

Respondent.

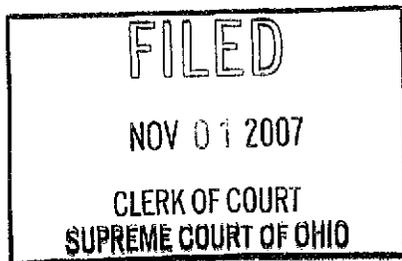
On Certified Report from the Board of Commissioners
on Grievances and Discipline
Case No. 06-007

ANSWER BRIEF OF RELATOR, CLEVELAND BAR ASSOCIATION

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Code of Professional Responsibility

| | |
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I. INTRODUCTION

The Hearing Panel in this case found by clear and convincing evidence that Respondent violated DR 1-102 (A)(4), DR 1-102(A) (5), DR 1-102 (A)(6), DR 7-102 (A)(4), DR 7102 (A)(5) and DR 7 102 (A)(6) as charged in Count I of the complaint; DR 7-102 (A) (1), DR 7-102 (A) (2) as charged in Count II of the complaint and DR 1-102(A) (5), DR 1-102 (A)(6) and Gov. Bar R. VI (1) (D) as charged in Count III of the complaint. The Panel recommended that Respondent be suspended from the practice of law for 18 months, with the last 12 months stayed on the condition that Respondent complete an additional three hour CLE course in ethics and professionalism and three hours in probate and guardianship law, that she serve a 12 month period of probation to commence after the initial six month suspension and that Relator appoint a monitor to assist her in complying with her obligations to practice law ethically and professionally.(See, Appendix (“APPX”) A, Final Report at 17).

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the “Board”) in this matter adopted in their entirety the Findings of Fact, Conclusions of Law and Recommendation of the Hearing Panel. In addition, the Board recommended that Respondent make restitution in the amount of \$28,000 and provide a valid residence address to this Court.

Respondent Luann Mitchell (“Respondent”) objects to the recommendation of the Board and states that she

“respectfully points out to this court several incorrect findings and disparities which may have been inadvertent on the Panel’s part,

and on which the Board relied”.

Respondent’s Brief at 1.

It is not clear, however, to which findings Respondent objects. It appears that Respondent does not take issue with any specific findings of the Panel but instead seeks to relitigate the imposition of sanctions against her in the underlying litigation as ordered by Judge Corrigan of the Cuyahoga County Probate Court. Respondent also objects to providing this Court with a residence address.

As explained more fully below, the Hearing Panel properly found that Respondent’s conduct in the probate court litigation violated DR 1-102 (A) (4), DR 1-102 (A) (5), DR 1-102 (A) (6), DR 7-102 (A) (1), DR 7-102 (A) (2), DR 7-102 (A) (4), DR 7-102 (A) (5), DR 7-102(A) (6) and Gov. Bar R. VI (1) (D).

II. COUNTER STATEMENT OF FACTS

The following facts are undisputed as they were admitted by Respondent in her answer to the complaint:

In 1999, Respondent was appointed Guardian of Bertha Washington by the Cuyahoga County Probate Court. At that time, Mrs. Washington was enrolled in Ohio’s PASSPORT Program. At the time, the PASSPORT program in Cuyahoga County was administered by the Western Reserve Area Agency on Aging (“WRAAA”).

On October 25, 1999, Mrs. Washington was hospitalized at Mount Sinai Medical Center and on November 3, 1999 she was transferred to a rehabilitation center. Her estimated discharge date was February 5, 2000. WRAAA proposed to disenroll Mrs. Washington from the PASSPORT program due to her confinement in the rehabilitation facility. According to

WRAAA, Mrs. Washington was no longer eligible to participate in the program pursuant to Ohio Administrative Code 5101:3-31-03.

Respondent administratively appealed the decision to disenroll Mrs. Washington by filing a timely request for a hearing with the Ohio Department of Human Services (Now the Ohio Department of Job and Family Services). WRAAA was represented by Gerald B. Chattman and Dale A. Nowak of Buckingham, Doolittle & Burroughs.

By decision dated March 28, 2000, a State Hearing Decision was issued. The decision overruled Respondent's appeal no. 9932754 and held that it was proper that Mrs. Washington be disenrolled from PASSPORT services due to her confinement in a rehabilitation facility. The opinion also stated that when a timely request for a hearing is filed, benefits may not be discontinued during the pendency of the appeal. That decision was affirmed on April 27, 2000.

Respondent requested another hearing on the issue of reimbursement of expenses during the pendency of the first appeal and also on the allegation that WRAAA refused an application by Mrs. Washington to re-enroll in the PASSPORT program.

In April 2001, Respondent filed an Ex-Parte Motion to Enforce Judgment against WRAAA in the Cuyahoga County Probate Court claiming reimbursable expenditures of \$31,527.00 during the pendency of the period from February 5, 2000 to March 28, 2000.

WRAAA wrote to Respondent and requested certain information about the expenditures claimed. In response to Respondent's Ex-Parte Motion to Enforce Judgment, WRAAA filed a motion to dismiss for lack of subject matter jurisdiction.

On November 9, 2001, Respondent produced a one page document listing expenditures in the amount of \$29, 577.00.

On January 4, 2002, Judge Corrigan granted WRAAA's motion to dismiss the Ex-Parte Motion to Enforce Judgment.

On February 15, 2002, Respondent commenced a second action against WRAAA in Probate Court. The Complaint for Declaratory Judgment sought an order finding WRAAA liable to Mrs. Washington in the amount of \$31,527.00.

WRAAA moved to dismiss the Complaint for Declaratory Judgment due to lack of subject matter jurisdiction.

On April 12, 2002, WRAAA moved to compel discovery from Respondent. A hearing was set for April 15, 2002 on the motion. Respondent did not appear for the hearing and told the Magistrate that she was not aware of either the deposition or hearing.

WRAAA filed and served another notice of deposition *duces tecum* on Respondent. Respondent again failed to appear for her deposition. Later that day, Respondent filed a motion to quash.

On April 22, 2002, WRAAA served and filed another deposition notice *duces tecum* scheduling Respondent's deposition for April 29, 2002. The deposition did not go forward pending a ruling on Respondent's Motion to Quash.

On May 9, 2002, Magistrate Charles Brown issued a report ordering Respondent to submit to a deposition on May 29, 2002 and overruled the Motion to Quash.

On May 30, 2002, WRAAA filed a Motion to Show Cause why Respondent should not be held in contempt due to her failure to comply with the court's orders regarding discovery.

At Magistrate Brown's direction, Respondent was to advise the court and counsel when she could appear for a deposition. It was agreed that Respondent would be deposed and that she

would bring the documents with her to substantiate the claim for expenditures sought from WRAAA.

On June 24, 2002, Respondent commenced an emergency proceeding on the special docket of Judge Richard McMonagle of the Cuyahoga County Court of Common Pleas, proceeding No. 075524, seeking to have the matter reduced to a judgment against WRAAA in order to collect over \$31,000 in expenses to Mrs. Washington.

Judge McMonagle scheduled a hearing on the motion for June 26, 2002. On that date, Respondent dismissed the declaratory judgment complaint pending in the Probate Court pursuant to Rule 41(A) of the Ohio Rules of Civil Procedure. Respondent submitted some evidence regarding the claimed expenditures at the hearing before Judge McMonagle. Judge McMonagle dismissed the proceeding without further evidence.

WRAAA served and filed another deposition notice scheduling Respondent's deposition. Once, again, Respondent did not appear for her deposition. On the date of her deposition, Respondent filed an action in the Cuyahoga County Court of common Pleas against WRAAA . Case No. 477235 was assigned to Judge Ann Mannen. On July 31, 2002, WRAAA filed another motion to compel discovery from Respondent in the Probate Court.

Magistrate Brown granted the motion to compel discovery on December 30, 2002 and ordered Respondent to appear for a deposition on January 30, 2003. The deposition did not go forward because Respondent filed objections to the Magistrate's ruling under Rule 35 of the Ohio Rules of Civil Procedure. The court overruled the objections and Judge corrigan ordered Respondent to appear for a deposition.

On March 10, 2003, Judge Mannen granted motions to dismiss the Common Pleas action

against all defendants. On March 17, 2003, WRAAA again filed and served a notice of deposition *Duces Tecum* rescheduling Respondent's deposition for March 25, 2003, the date ordered by Judge Corrigan. Respondent appeared for her deposition at the probate Court on March 25, 2003 with counsel. The deposition was suspended with the court's permission and Respondent was ordered to provide a date for the resumption of her deposition and to bring the requested documents.

The court *sua sponte* moved to remove Respondent as Guardian. Respondent arranged for her deposition to be taken on September 3, 2003.

On September 23, 2003, Respondent filed an action in mandamus in the Cuyahoga County Court of Appeals seeking to compel the Ohio Department of Aging to reimburse Mrs. Washington's Estate for more than \$31,000 in expenditures she claims she is entitled to under the March 28, 2000 order from the State Hearing Board. The action also requested a writ of mandamus compelling the Ohio Department of Aging to terminate all funding for WRAAA's PASSPORT program.

On October 27, 2003, Judge Corrigan removed Respondent as Guardian of the Estate of Bertha Washington but permitted her to remain as Guardian of the person of Mrs. Washington.

Sanctions were awarded against Respondent for her behavior in the probate court litigation in the form of attorney fee and costs incurred by WRAAA and its counsel. Magistrate Charles Brown found her behavior to be "that of the proverbial bull in a china shop; reckless, willful, deliberate and unhalting". (Relator's Exhibit 36, Magistrate's Decision, April 6, 2005). This order was appealed to the Eighth District Court of Appeals. The court upheld the entitlement of WRAAA to sanctions but reversed as to the amount and remanded the matter for

further proceedings in the probate court. (Relator's Exhibit 38). Sanctions awarded by the Probate Court against Respondent remain unpaid. (TR. Vol. II, p. 327).

III. LAW AND ARGUMENT

A. Standard of Review

This Court, “not the Board, ‘makes the ultimate conclusion, both as to the facts and as to the action, if any, that should be taken.’” *In re Complaint Against Judge Harper* (1996), 77 Ohio St.3d 211, 215, quoting *Cincinnati Bar Assn. v. Heitzler* (1972), 32 Ohio St.2d 214, 220. Indeed, this Court has repeatedly recognized that it “is not bound by the conclusion of either the panel or the board regarding the facts or law when determining the propriety of an attorney’s conduct and the appropriate sanction,” *Office of Disciplinary Counsel v. Furth* (2001), 93 Ohio St.3d 173, 181 citing *Ohio State Bar Assn. v. Reid* (1999), 85 Ohio St.3d 327, 330. But, “[u]nless the record weighs heavily against a hearing panel’s findings, [this Court] defer[s] to the panel’s credibility determinations, inasmuch as the panel members saw and heard the witnesses firsthand.”

Cuyahoga County Bar Assn. v. Wise, 108 Ohio St.3d 164, 2006-Ohio-550, at ¶ 24.

B. Respondent’s Objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances Have No Merit

Respondent does not point to any particular finding of the Hearing Panel to which she objects. Respondent instead states that “the gravamen of this disciplinary proceeding is that at no time should this case have proceeded at the outset”, referring to the probate court proceedings. (Respondent’s Brief at p. 8). Respondent does not present any valid objections to the findings and recommendation of the Board.

1. Respondent’s Objection to the Recommendation that She Make Restitution

Respondent objects to the Board's recommendation that she make restitution in the amount of \$28,000 calling it a "criminal sanction" although she admits that the amount "is derived from a civil case originally filed in Cuyahoga County Probate Court" (Respondent's Brief at p. 1).¹ Respondent conflates the recommendation of restitution and the award of sanctions in the probate court and objects to the recommendation of restitution by attacking the validity of the order of sanctions against her. The validity of the sanctions ordered by Judge Corrigan is not at issue in this matter. Respondent had an opportunity to challenge that ruling in the underlying case and did so by appealing the order to the Eighth District Court of Appeals in *Luann Mitchell v. Western Reserve Agency, Eighth District Court of Appeals, App. No. 86708 (May 18, 2006)*(Relator's Exhibit 38). Respondent's arguments II, III, IV, V in support of her Proposition of Law No. II and arguments VI and VII in support of her Proposition of Law No. III, are, verbatim, the arguments she presented to the court of appeals. Respondent cannot use her ability to file objections to the Board's final report as a forum to relitigate the probate court matter.

Arguments II and IV under Respondent's Proposition of Law II, that a guardian cannot be held personally liable for the ward's debts and that she cannot be held liable for frivolous conduct under R.C. 2323.51, were considered and rejected by the Court of Appeals. The court of appeals stated in response to those specific arguments:

"Finally, we note that this court has already determined, in *Mitchell I*, that Mitchell was subject to sanctions under Civ. R. 11 and R.C. 2323.51 for her conduct in this matter. This decision remains the law of that case as to this issue for all subsequent proceedings in

¹ Respondent testified that she believes the unpaid amount of the attorney fees awarded as a sanction against her is \$28,000. (TR. Vol. II at 327).

the case at both the trial and reviewing levels”

(Relator’s Exhibit 38 at p. 9).

Respondent’s argument III, that it was her duty to file suit because it was in the best interest of the ward, was also specifically raised in the court of appeals and rejected by that court which stated that we cannot agree that Mitchell was acting within the best interest of Washington in this matter. (Relator’s Exhibit 38 at p. 10).

Respondent’s arguments V and VI were also considered and rejected by the court. In rejecting argument VI, the court of appeals stated:

“Mitchell asserts that she did not behave in a frivolous fashion with regard to discovery. Again, this issue was addressed in *Mitchell I*, wherein this court held that WRAAA’s motion for sanctions had merit. Accordingly, this determination is the law of the case and will not be reversed within this appeal”.

(Relator’s Exhibit 38 at p. 11).

The Court of Appeals ultimately reversed the amount of the sanctions awarded by the probate court and remanded the issue back to the probate court. As a result, the court again awarded sanctions which Respondent has not yet paid (TR. Vol. II at pp. 327-328).

2. Restitution is an Appropriate Sanction

The majority of Respondent’s objections relate to the imposition of sanctions against her in the probate court. Respondent argues that restitution should not be ordered by this Court because the amount of sanctions on which the recommendation of restitution is based was improper. Aside from the issue of whether it is procedurally proper for Respondent to raise those arguments here, the specific arguments she raised before this court were considered and rejected by the Eighth District Court of Appeals. Respondent does not set forth any reason why

restitution is not an appropriate sanction in this situation.

This Court has approved restitution as a sanction for disciplinary violations in a myriad of cases including, *Disciplinary Counsel v. Johnson*, 113 Ohio St.3d 344, 2007 Ohio 2074; *Disciplinary Counsel v. Novak*, 110 Ohio St.3d 134, 2006-Ohio-3823; *Cleveland Bar Association v. Gay*, 94 Ohio St.3d 404; 2002-Ohio-1051. In this case, Respondent has made no effort to pay any of the sanctions awarded against her. In fact, she testified before the Hearing Panel that she intended to go back to court and continue to fight the sanction order (TR. Vol. II, at pp. 327-328). Respondent has shown no remorse and has not taken any responsibility for her actions. Restitution for the economic harm done to WRAAA is entirely appropriate.

3. Respondent's Objection that She Provide a Residence Address to This Court

Respondent objects to the recommendation that she provide a residence address to this Court for the reason that she “has no permanent residence address currently and cannot afford one presently” (Respondent’s Brief at p. 1). At the hearing, Respondent initially testified that she provided a residence address to this Court. (TR. Vol. I, p. 142). She later told the Panel that she did not provide a residence address because she did not want anyone serving legal papers at her home (TR. Vol. II, pp. 328-329). At no time did Respondent testify that she did not have a residence address - she simply refused to provide it to the Court. The Panel found Respondent’s reasons for not providing a residence address to be “implausible and insufficient” (Final Report, Appx. 1 at p. 12).

Respondent should be made to provide an address to the Court in addition to a post office box number. If this Court adopts the recommendations of the Board, a better means of communicating with Respondent will be needed in order to implement those recommendations.

C. The Recommendation of the Board is Supported by the Findings of the Hearing Panel

Respondent offers no objection to the specific findings of fact or conclusions of law made by the Hearing Panel. She simply asks this Court to stay the imposition of a six month actual suspension. The only reason given is that the poor and elderly senior citizens that Respondent volunteers to help will suffer if she is suspended from the practice of law.

The Panel found by clear and convincing evidence that Respondent violated DR 1-102 (A)(4), DR 1-102(A) (5), DR 1-102 (A)(6), DR 7-102 (A)(4), DR 7102 (A)(5) and DR 7 102 (A)(6) as charged in Count I of the complaint; DR 7-102 (A) (1), DR 7-102 (A) (2) as charged in Count II of the complaint and DR 1-102(A) (5), DR 1-102 (A)(6) and Gov. Bar R. VI (1) (D) as charged in Count III of the complaint. The violation of DR 1-1-2(A) (4) requires an actual suspension from the practice of law. *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995 Ohio 261. The Hearing Panel found “a pattern of misconduct, multiple offenses, submission of false evidence, false statements during the disciplinary process, refusal to acknowledge the wrongful nature of her conduct”(Appx. 1 at 14). Respondent’s objections to the Board’s report show that she *still* does not appreciate the gravity of her actions. She again shows no remorse and blames everyone but herself for her predicament.

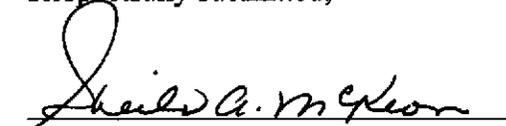
Respondent has not offered any reason for the Court to deviate from the recommended sanction. A six month actual suspension, at least, is clearly warranted by this behavior. While Respondent’s desire to help the poor and elderly is admirable, she can continue to volunteer her time without practicing law.

IV. CONCLUSION

The Hearing Panel properly found that Respondent violated DR 1-102 (A)(4), DR 1-102(A) (5), DR 1-102 (A)(6), DR 7-102 (A)(4), DR 7102 (A)(5) and DR 7 102 (A)(6) as charged in Count I of the complaint; DR 7-102 (A) (1), DR 7-102 (A) (2) as charged in Count II of the complaint and DR 1-102(A) (5), DR 1-102 (A)(6) and Gov. Bar R. VI (1) (D) as charged in Count III of the complaint.

Respondent has not raised objections to any particular findings of fact or conclusions of law made by the Hearing Panel. Instead, Respondent improperly attacks the rulings of the Cuyahoga County Probate Court in the underlying litigation in an attempt to discredit the findings of the Panel and the recommendation of the Board. Based upon the findings of fact and conclusions of law found in the Final Report of the Board, this Court should overrule Respondent's objections and adopt the Board's recommended sanction.

Respectfully submitted,

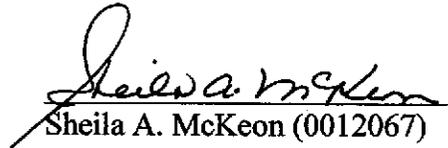

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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon Luann Mitchell, Respondent *pro se*, P. O. Box 08531, Cleveland, Ohio 44108 this 1 day of November 2007 by regular U.S. mail.


Sheila A. McKeon (0012067)
Attorney for Relator
Cleveland Bar Association

APPENDIX

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

| | | |
|--|---|--|
| In Re: | : | |
| Complaint against: | : | Case No. 06-007 |
| Luann Mitchell, Attorney Reg. No. 0007205 | : | Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio |
| Respondent | : | |
| Cleveland Bar Association | : | |
| Respondent | : | |
| | : | |

INTRODUCTION

{¶1} This matter was heard on April 23 and 24, 2007, in Columbus, Ohio, before a panel consisting of members Sandra Anderson, Lisa M. Lancione Fabbro 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. Attorneys Geoffrey Stern and Rasheeda Khan represented respondent. Attorneys Sheila A. McKeon, and Timothy Fitzgerald represented the relator, the Cleveland Bar Association.

PROCEDURAL BACKGROUND

{¶2} The complaint in this matter was filed on February 13, 2006, containing allegations of violations by respondent of the Code of Professional Responsibility, specifically:

Count. I. – Respondent is charged with dishonesty and falsification.

DR 1-102 (A) A lawyer shall not:

- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

DR 7-102 (A) in his representation of a client, a lawyer shall not

- (4) knowingly used 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.

Count. II. – Respondent is charged with filing of unwarranted court actions and failure to comply with various court orders.

DR 7-102 (A) in his representation of the client, a lawyer shall not

- (1) file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows, or when it is obvious that such action would serve merely to harass or maliciously injure another.
- (2) knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

Count III. – Respondent is charged with having a misdemeanor theft conviction and failure to properly register her address with the Supreme Court of Ohio.

DR 1-102 (A) A lawyer shall not:

- (3) engage in illegal conduct involving moral turpitude;
- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

Gov.Bar R. VI (1)(D):

Each attorney who was admitted to the practice of law in Ohio, shall keep the Attorney Registration Section apprised of the attorney's current residence address and office address and shall notify the Attorney Registration Section of any change on any information on the Certificate of Registration.

FINDINGS OF FACT

{¶3} Respondent has been licensed to practice law in the state of Ohio since 1983. She graduated from the University of Virginia School of Law. Respondent worked as a warden at the Ohio Department of Insurance, and practiced for 11 years at

the UAW/Ford-G.M. legal office, focusing on collection litigation cases. Respondent claimed she is now retired and does not currently have an active practice. However, she did admit to handling guardianship estates for senior citizens and related legal work.

"I keep a stable of 23 seniors that I'm able to assist, and that's based on the number of adult day care workers and home health aides that I have available to me. I would never take more than the 23, because I could not provide them with quality. So I kept them then, and I still have them now. And when they die off, I replace them; and I normally keep a stable of about 23 of them." Tr., 224.

{¶4} In 1999, respondent was appointed by the Cuyahoga County Probate Court as the guardian of the person and estate of Bertha L. Washington., who was approximately 90 years old. Ms. Washington had been enrolled in Ohio's PASSPORT program since 1994. The PASSPORT program provides services for homebound Medicaid recipients, and a person confined to a nursing home or rehabilitation facility may not participate in the program. The PASSPORT program was administered in Cuyahoga County by the Western Reserve Area Agency on Aging (WRAAA).

{¶5} On October 25, 1999, Mrs. Washington was hospitalized and then transferred on November 3, 1999 to a rehabilitation center with an estimated discharge date of February 5, 2000. WRAAA proposed to disenroll her from the PASSPORT program because, as she was confined in a rehabilitation facility, she was no longer eligible to participate in the program. The respondent then began filing a series of actions in various courts and agencies.

{¶6} Respondent filed a timely appeal of the PASSPORT removal to the Ohio Department of Human Services (now, the Ohio Department of Job and Family Services.) The appeal was overruled on March 28, 2000. However, the opinion of the hearing

officer stated that Washington's benefits may not be discontinued during the pendency of the appeal. The decision was affirmed on April 27, 2000.

{¶7} Respondent requested another hearing on the issue of reimbursement of expenses during the pendency of the first appeal and also on an allegation that the WRAAA refused Mrs. Washington's application to reenroll in the PASSPORT program. On June 21, 2000, the state hearing officer determined that WRAAA owed benefits "at the previous level" for the period of February 5, 2000 to March 28, 2000 (the date from Mrs. Washington's discharge from the rehabilitation facility to the date her first administrative appeal was overruled) and found that WRAAA had not refused the application. The state hearing officer also ordered reimbursement by WRAAA for "the care she paid for during this period."

{¶8} In response to the State's decision, WRAAA sent a letter to respondent on July 3, 2000 requesting that she provide documentation and specific information about the persons or entities that provided reimbursable PASSPORT services during that period, in order that reimbursable benefits be paid according to the order of the state hearing board. Respondent did not respond. This was the beginning of a pattern of requests by WRAAA and non-response by respondent, including at least four appearances before a magistrate and several judges, in an effort to obtain the documentation.

{¶9} In April 2001 respondent filed an "Ex Parte" motion to enforce judgment against WRAAA in the Cuyahoga County Probate Court. She did not serve WRAAA or its counsel, claiming it was not a party.

{¶10} WRAAA, through counsel, on May 18, 2001 wrote to respondent requesting additional information as requested previously, including the names of the service providers so that it could be determined if the service providers were certified PASSPORT service providers, without which information WRAAA could not determine the reimbursable expenditures.

{¶11} Respondent never responded.

{¶12} On August 1, 2001 WRAAA served a notice of deposition duces tecum on respondent in an attempt to obtain the needed information. Prior to the date of the deposition, the magistrate in the Cuyahoga Probate Court held a hearing to resolve matters. He was told that WRAAA was still waiting for the information. Respondent told the magistrate that she had provided the information to another attorney at the law firm representing WRAAA, which that counsel denied. Respondent was again told by the magistrate to provide the information.

{¶13} On November 9, 2001, respondent produced a one-page document listing expenditures of \$29, 577, with no receipts or other supporting documentation.

{¶14} The Probate Court (Judge Corrigan) dismissed the ex parte motion on January 4, 2002 for lack of jurisdiction.

{¶15} On February 15, 2002 respondent filed in the same Probate Court a Complaint for Declaratory Judgment to find that WRAAA owed Mrs. Washington \$31,527.

{¶16} WRAAA continued to attempt to obtain complete information

(substantiating the claimed reimbursements) from respondent, including filing additional notices of deposition, and a motion to compel discovery. Respondent did not appear or respond.

{¶17} Respondent filed a motion to quash the subpoena after again failing to appear at one of the depositions. The next deposition scheduled could not proceed because of the pending motion to quash.

{¶18} On May 9, 2002, the magistrate issued a report ordering respondent to submit her documentation for her claims at a deposition on May 29, 2002 and overruled the motion to quash. Respondent failed again to appear for this deposition.

{¶19} On June 18, 2002 (pursuant to the magistrate's direction to respondent to advise the court and counsel when she could appear for a deposition) everyone agreed that respondent would appear for her deposition, bringing the appropriate documents with her on July 15, 2002. This agreement followed numerous notices of deposition which respondent ignored, motions to compel and to show cause filed by counsel for WRAAA, and orders from the probate court magistrate to appear.

{¶20} On June 24, 2002 respondent commenced an emergency proceeding before Judge Richard McMonagle in the General Division of the Cuyahoga County Common Pleas Court, seeking an order to collect over \$31,000 in expenses for Mrs. Washington from WRAAA.

{¶21} Judge McMonagle scheduled a hearing on the motion for June 26, 2002. Respondent dismissed the declaratory judgment action (pending in Probate Court) that day and submitted some evidence regarding the claimed expenditures before Judge McMonagle. Respondent later testified before this disciplinary panel that she dismissed

the declaratory judgment action because she felt she did not have time and she had already won two administrative decisions, then she contradicted herself and said that the declaratory judgment action was dismissed because of an explanation by the magistrate that she should dismiss and do something else.

{¶22} Counsel for WRAAA explained to Judge McMonagle at the June 26th hearing that his client had been trying to obtain information for almost 2 years. Judge McMonagle dismissed the proceeding. Respondent later testified to this disciplinary panel that this action was dismissed because Judge McMonagle advised her it would be better to file it on a regular docket.

{¶23} WRAAA served a notice for deposition on respondent for July 26, 2002, for which respondent did not appear. Instead on that date, respondent filed an action against WRAAA in the Cuyahoga County Common Pleas Court, assigned to Judge Ann Mannen.

{¶24} On July 31, 2002 WRAAA filed another motion to compel discovery in Probate Court which the magistrate granted on December 30, 2002, ordering respondent to appear for a deposition in January 30, 2003. Respondent filed objections to the court, causing the January 30th date to be vacated. Judge Corrigan overruled respondent's objections and ordered her to appear for a deposition.

{¶25} On August 21, 2002, responding to a letter from respondent, an Ohio Department of Job & Family Services official wrote: "I understand that to date, you have not submitted the requisite verifications to [WRAAA], and therefore they have been unable to provide you with the reimbursement. I consider the actions taken by [WRAAA] to meet the order of the decision, because as they wrote, upon receipt of the necessary information, they will reimburse Ms. Washington, as ordered. If you disagree

with this decision, you have the right to another appeal.” Respondent did not appeal. (Nor did she ever assemble or produce the “necessary information.”)

{¶26} Judge Mannen dismissed the Common Pleas Court action on March 10, 2003.

{¶27} Respondent finally appeared, with counsel, for a deposition on March 25, 2003. However, she did not bring all the documents to support the claimed expenditures, causing the deposition to be suspended. In another effort to obtain the complete documentation, the court ordered respondent to provide a date for the resumption of her deposition and for her to bring the requested documents. She did not comply.

{¶28} WRAAA filed a motion to show cause. Respondent failed to appear at that hearing.

{¶29} In September, 2003 respondent filed a Writ of Mandamus in the Court of Appeals to compel the Ohio Department of Aging to reimburse Washington's estate more than \$31,000 in expenditures, pursuant to the state hearing board's order of March 28, 2000, and compelling the Ohio Department of Aging to terminate all funding for WRAAA's Passport Program. Respondent testified that she did not remember why this action was dismissed.

{¶30} On October 27, 2003 Judge Corrigan removed respondent as guardian of the estate of Washington. Respondent remained as guardian of the person.

{¶31} WRAAA filed for sanctions pursuant to Civ. R. 11 and R.C. 2323.51. In October, the probate court denied this motion as well as respondent's application for her fee.

{¶32} The parties separately appealed these judgments to the Eighth District Court of Appeals, which reversed and remanded the cases to the Probate Court to determine the appropriate amount of damages.

{¶33} The Probate Court then calculated the amount of attorney fees and awarded as sanctions to WRAAA \$42,815.79 and fees for respondent in the amount of \$1,525. Respondent appealed that judgment. The appellate court affirmed the probate court as to the guardianship fees owed to respondent, but reversed the amount of sanctions awarded to WRAAA and remanded the matter for recalculation. A judgment was ultimately issued against respondent for sanctions in the amount of \$28,000. Respondent appealed; however, this appeal was dismissed because she did not timely file the notice. She then filed a motion in the appellate court to reinstate the appeal and for extension of time to file the record. This was denied. The sanctions still have not been paid.

{¶34} Respondent has continuously testified that she gave receipts to WRAAA, but has no documentation. She also testified that she gave the attorney for WRAAA the receipts, but he refused to accept them.

{¶35} Respondent provided some documentation during the discovery phase of this disciplinary matter and which was presented to this panel. The documentation is incomplete. It is impossible to determine if the services for which she has claimed reimbursement are PASSPORT covered services, or from PASSPORT approved providers. Some names and addresses of the claimed providers were not provided. Some bills were provided, but few receipts. The cancelled checks and receipts that were presented did not total the amounts claimed. There was no substantiation for some of the services and most of the payments claimed.

{¶36} Respondent presented some receipts for cash that totaled far less than the claimed expenses. For example, documentation for payment of \$3007 for home care, errands, food preparation etc. by cancelled checks totalling \$985, and cash receipts totaling \$2022, were shown. The checks were included in several years worth of bank statements that were entered as a relator's exhibit. Respondent's witnesses testified about the cash receipts. However, the total claimed for reimbursements for these types of services was just over \$8000. In addition, the panel has substantial doubts as to the persuasiveness of the cash receipts as evidence and the credibility of the respondent's witnesses who testified about these receipts. One of respondent's witnesses attempted to explain why a receipt for cash she received from respondent in 2000, was dated 2002. This testimony was simply not only *not credible* but *incredible*.

{¶37} Respondent claimed she often paid by "counter check" rather than by fiduciary check. However, no cancelled "counter-checks" were produced. (Counter checks for the a different time period were included with the cancelled checks in her bank records, so it is obvious that these cancelled counter checks are kept by the bank in the account). No bank statements for that relevant period of time were produced, even though requested.

{¶38} Respondent finally explained her procedure for her claimed payments. She would give a check to the so-called provider, but ask the provider to hold the check, because there was not enough money in the account. If the provider really needed the money, the check was to be returned and respondent would pay cash. Or the checks would be returned because they were stale. Because she gave a check, even under these circumstances, she considered the provider paid. Respondent's witnesses testified that

this was the procedure. However, there was ample witness testimony that many of the providers have not been paid yet. In fact, some of them felt they were tricked or cajoled into what amounted to a donation of goods and services.

{¶39} Respondent submitted a claim for certain computer services to Judge McMonagle. After WRAAA's attorney pointed out that the documentation appeared to be not related to this claim, she substituted another one, claiming a mistake.

{¶40} Respondent claimed she didn't know whether one of the claimed providers, Dr. Lonergan, was paid. There is no payment documentation.

{¶41} Respondent was charged with theft of electrical equipment in September 2002. Respondent had an altercation with employees of the Cleveland Illuminating Co. over a meter. The Illuminating Co. had been changing old meters, which apparently caused her monitoring computers to crash. Respondent claims that during the altercation she was injured, so she took the meter to use as an exhibit, refusing to return the meter to the police department. She was convicted after a jury trial, sentenced to 30 days in jail, suspended with conditions for one year and fined \$1258, which is now paid.

{¶42} In her Answer to relator's Complaint, respondent admitted that the Eighth District Court of Appeals affirmed the theft conviction in Lyndhurst Municipal Court. She then appealed to the Ohio Supreme Court. This appeal was not accepted. Respondent notified the Lyndhurst court of her intentions to file an appeal in the United States Supreme Court. Respondent did not appear for sentencing, a capias was issued, and she was incarcerated for 3-4 days.

{¶43} Further, respondent admitted in her Answer that she was charged with disorderly conduct at Builder's Square in December, 2001.

{¶44} Respondent claimed that she notified the Ohio Supreme Court of Ohio of her residence address, which she refused to disclose at the hearing. Moments later, respondent testified that she preferred that opposing counsel write to her at her P.O. Box, "that's where I'm registered." The Supreme Court records list only her post office box address under the confidential information section of her registration records. Respondent's explanation for disclosing only a P.O.Box address is implausible and insufficient. "I don't want you serving legal papers at my home address. I want them to go to my P.O. Box and then the secretary can pick them up directly from the P.O. Box." However, she then testified that she did not have a full-time secretary, and could not, or would not, identify any secretary or assistant she has employed.

{¶45} Respondent has also been sanctioned by the Probate Court for not attending one of depositions referred to previously, and ordered to pay \$185 attorney fees to WRAAA.

CONCLUSIONS OF LAW

{¶46} The panel unanimously finds by clear and convincing evidence that respondent committed the following violations as charged in:

Count I

DR 1-102 (A) A lawyer shall not:

- (4) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

DR 7-102 (A) in his representation of a client, a lawyer shall not:

- (4) knowingly used 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 obvious that the evidence is false.

Count II

DR 7-102 (A) in his representation of the client, a lawyer shall not:

- (1) file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of his client when he knows, or when it is obvious that such action would serve merely to harass or maliciously injure another;
- (2) knowingly advance a claim or defense that is unwarranted under existing law, except that he may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

Count III

DR 1-102 (A) A lawyer shall not:

- (5) engage in conduct that is prejudicial to the administration of justice;
- (6) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

Gov.Bar R. VI (1) (D):

Each attorney who was admitted to the practice of law in Ohio, shall keep the Attorney Registration Section apprised of the attorney's current residence address and office address and shall notify the Attorney Registration Section of any change on any information on the Certificate of Registration.

{¶47} The panel finds that relator has not presented clear and convincing evidence that respondent's misdemeanor theft conviction contained in Count III rises to illegal conduct involving moral turpitude, as required under DR1-102 (A) (3). See *Disciplinary Counsel v. Burkhardt*, 75 Ohio St. 3d 188, 1996-Ohio-121; *Disciplinary Counsel v. Klaas*, 91 Ohio St. 3d 86, 2001-Ohio-276 and *Disciplinary Counsel v. Cirincione*, 102 Ohio St. 3d 117, 2004-Ohio-1810, or that respondent's conduct amounted to dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102 (A)(4).

{¶48} While the respondent's refusal to disclose her required addresses has aided her in claiming lack of notice as an excuse for her non appearances at various courts and depositions, the panel declines to find deceit as required under DR1- 102(A)(4).

{¶49} Therefore, the panel recommends dismissal of violations of DR1-102 (A) (3) and (4) contained in Count III.

AGGRAVATION AND MITIGATION

{¶50} The panel finds pursuant to BCGD Proc. Reg. 10 (B) (2) in mitigation the following. The respondent has no prior disciplinary record and has submitted letters and testimony attesting to her good works and dedication to the elderly persons in her care, especially Mrs. Washington. She has been fined and sanctioned substantially for her conduct by the Cuyahoga County Probate Court and the Lyndhurst Municipal Court. The panel is satisfied that Ms. Washington was well cared for and well served by respondent, whose efforts improved Mrs. Washington's quality of life significantly, allowing her to enjoy her last days with relative comfort and dignity.

{¶51} The panel finds pursuant to BCGD Proc. Reg. 10 (B) (1) in aggravation the following. Relator has not proven financial misconduct for personal financial gain by clear and convincing evidence; however, respondent has acknowledged keeping three laptop computers that were part of the home monitoring system. When Mrs. Washington died, respondent kept one, one went to respondent's mother, and one was given to Mrs. Washington's church. (There has never been a payment to anyone for them.) The panel finds a pattern of misconduct, multiple offenses, submission of false evidence, false statements during the disciplinary process, refusal to acknowledge the wrongful nature of her conduct. Her actions may have harmed any PASSPORT approved or legitimate contractors who might have been paid if the respondent would have timely presented appropriate verification. Her actions also have caused actual expense and burden to WRAAA, which repeatedly faced baseless litigation filed by respondent over the course

of several years. Respondent has not yet paid the \$28,000 sanction to WRAAA, as ordered by the Probate Court for attorney fees incurred by WRAAA. Respondent stated she did not believe that the sanctions are due until "I have run the course of every action entitled to me." When asked about her style of litigation, she replied. "... I don't cut corners, very direct. I have a firm commitment to the right is right and wrong is wrong, and I don't cut deals. If you owe my clients money, then you need to pay my clients their money. If you have wronged my client, then my client is entitled to damages." "Well, in the collection area, if one thing gets dismissed, you have to revamp your strategy and refile it some other kind of way. If the underlying debt is valid, and it's a basis in which you still have to collect for your client, you just have to rework it so that ultimately your client still gets moneys that were due to them. So if one avenue didn't work, as lead collection attorney, you devise another avenue."

{¶52} It is an understatement to say that respondent's testimony was troubling. Her statements are self laudatory and self serving. She has a convenient lapse of memory. She was evasive, argumentative, illogical, and inconsistent and the panel found that she had little credibility.

{¶53} Respondent apparently makes up her own rules with no apology.

Respondent's attitude can best be shown by her testimony.

{¶54} Respondent testified that she has to go back to the Probate Court to continue her quest. She apparently intends to continue, even though Mrs. Washington died over three years ago.

{¶55} She unabashedly refuses to give her residence address. The evidence and testimony was replete with instances of her argumentativeness with WRAAA, the

Department of Human Services, other lawyers, Cleveland Illuminating Co., judicial officers and judges, as well as her testimony before the panel. Her tenacity and stubbornness are not traits to be admired, as in her zeal and for whatever her motivation is, she has demonstrated unprofessional conduct, dishonesty and disrespect for the judicial system.

PANEL RECOMMENDATION

{¶56} The relator requests an indefinite suspension. Respondent requests dismissal of the charges.

{¶57} We are mindful of the directives from the Ohio Supreme in *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St. 3d 187, 1995-Ohio 261 “When an attorney engages in a course of conduct resulting in a finding that the attorney has violated DR 1-102(A) (4), the attorney will be actually suspended from the practice of law for an appropriate period of time.” We are accordingly compelled to recommend an actual suspension based on the dishonesty found by the panel.

{¶58} Respondent reminds us that mitigating evidence can justify a lesser sanction. See also *Dayton Bar Assn. v. Kinney*, 89 Ohio St.3d 77, 2000-Ohio-445. We recognize that Mrs. Washington, respondent’s client and ward, seems not to have been harmed; in fact, she seemingly thrived under respondent’s care.

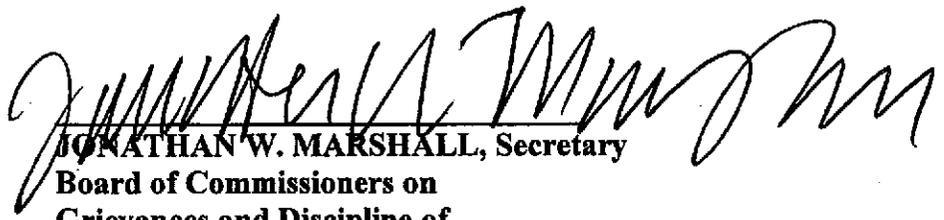
{¶59} However, we have found that respondent’s actions otherwise were pervasive, and that respondent has no remorse. She has multiple violations in addition to the DR 1-102 (A)(4) violation. Respondent has deviated from truth, logic, and perhaps reality, but certainly from the standards required of an attorney.

{¶60} The panel recommends that respondent be suspended from the practice of law for 18 months, with the last 12 months stayed on the following conditions: that respondent commit no further misconduct; that respondent complete, in addition to the required hours, an additional 3 hour CLE course in ethics and professionalism and 3 hours in probate and guardianship law; that respondent serve a 12 month period of probation to commence after the initial 6 month suspension; and that the relator appoint a monitor to assist her in complying with her obligations to practice law ethically and professionally.

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 August 10, 2007. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. The Board recommends that the Respondent, Luann Mitchell, be suspended for a period of eighteen months with twelve months stayed upon the conditions contained in the panel report. The Board also determined that the Respondent should make restitution in the amount of \$28,000 and provide a valid residence address to the Supreme Court of Ohio. 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**