

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION, :  
Relator : Case No. 2007-2395  
v. :  
WILLIAM I. FARRELL, :  
Respondent. :

---

RELATOR'S BRIEF IN RESPONSE TO RESPONDENT'S OBJECTIONS TO REPORT AND  
RECOMMENDATION OF THE BOARD OF COMMISSIONERS

---

ERNEST F. McADAMS, JR.  
(#0024959)  
801 Plum Street, Room 226  
Cincinnati, OH 45202  
(513) 352-3332 Phone  
(513) 352-5217 Fax

*Counsel of Record for Relator  
The Cincinnati Bar Association*

KEVIN P. ROBERTS  
(#0040692)  
7373 Beechmont Ave., Ste. 3  
Cincinnati, OH 45230  
(513) 233-3666 Phone  
(513) 233-3206 Fax

*Co-Counsel for Relator  
The Cincinnati Bar Association*

JOHN J. MUELLER  
(#0012101)  
632 Vine Street, Ste. 800  
Cincinnati, OH 45202  
(513) 621-3636 Phone  
(513) 621-2550 Fax

*Counsel for Respondent  
William I. Farrell*

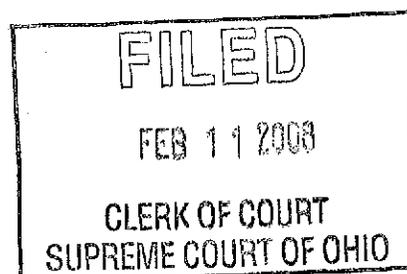


TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES.....	ii
STATEMENT OF FACTS.....	1
ARGUMENT.....	5
<b>PROPOSITION OF LAW.....</b>	<b>6</b>
<b>RESPONDENT USED HIS LEGAL SKILLS AND EXPERIENCE TO PERPETRATE A FRAUD OVER A PERIOD OF AT LEAST 18 MONTHS. THE HEARING PANEL AND BOARD FOUND THE RESPONDENT HAD NO GENUINE REMORSE FOR INVOLVING ANOTHER ATTORNEY IN HIS MISDEEDS, AND THAT RESPONDENT'S TESTIMONY CONCERNING THE MOTIVE FOR HIS MISCONDUCT WAS NOT CREDIBLE. FURTHER, THAT THE AGGRAVATING FACTORS HEREIN OUTWEIGH THE MITIGATING FACTORS. THE BOARD'S RECOMMENDATION OF A TWO-YEAR SUSPENSION WITH 12 MONTHS STAYED SHOULD BE AFFIRMED.</b>	
CONCLUSION.....	13
CERTIFICATE OF SERVICE.....	14
APPENIX.....	15

**TABLE OF AUTHORITIES**

<b><u>CASES:</u></b>	<b><u>PAGE:</u></b>
<i>Cincinnati Bar Association v. Gottesman</i> , 115 Ohio St. 3d 222, 2007-Ohio-4791 .....	2, App. 28
<i>Cleveland Bar Association v. McMahon</i> , 114 Ohio St. 3d 331, 2007-Ohio-3673 .....	10, App. 31
<i>Office of Disciplinary Counsel v. Bowman</i> , 110 Ohio St. 3d 480, 2006-Ohio-4333 .....	10, 11, 13, App. 38
<b><u>DISCIPLINARY RULES:</u></b>	<b><u>PAGE:</u></b>
DR 1-102(A)(3), Code of Professional Responsibility .....	3, 6
DR 1-102(A)(4), Code of Professional Responsibility .....	3, 6
<b><u>GOVERNANCE RULES:</u></b>	
Gov. Bar Rule V, Appendix II, Section 10 (B)(2)(g) .....	11, App. 50
<b><u>OHIO REVISED CODE:</u></b>	
R.C. §2921.13 (A)(8) .....	7, App. 51
R.C. §2913.31 (A). .....	7, App. 55
R.C. §2913.31 (C)(1)(b)(i) .....	7, App. 55
<b><u>UNITED STATES CODE:</u></b>	
18 USC §1344 .....	7, App. 57

## STATEMENT OF FACTS

William I. Farrell, Respondent herein, is charged by the Cincinnati Bar Association, Relator herein, with violating his oath of office as an attorney and the Code of Professional Responsibility, specifically Disciplinary Rules 1-102(A)(3) and 1-102(A)(4) with regard to his fabrication and forgery of documents.

Respondent was admitted to the practice of law in Ohio in 1989. Initially he was employed at a small law office, focusing his practice on worker's compensation and social security law. By 1997, Respondent formed a partnership with his employer, creating the firm of Finkelmeier and Farrell. During this time, Respondent's wife, Erika Beth Farrell, also an attorney, worked as a senior associate in an area law firm, earning a significant income. In 2003, Respondent and his wife adopted a daughter. After the adoption, Respondent's wife informed him that she wished to reduce her work hours so that she could spend more time with their daughter. Respondent felt pressured to increase his income to enable his wife to quit her job altogether.<sup>1</sup>

Thereafter, Respondent began to fabricate a series of letters with the intent of misleading his wife to believe that he had been offered and had accepted a new job with a higher salary that would allow her to reduce her work hours.<sup>2</sup>

In December 2004, Respondent fabricated a letter to himself from Sheakley Uniservice, Inc, indicating that he had been offered a position as Assistant General Counsel with that company.<sup>3</sup> In June, 2005, Respondent fabricated a second letter, this time allegedly from The Kroger Company, which purported to offer him a new job with

---

<sup>1</sup> Findings, p. 2

<sup>2</sup> Findings, p. 2

<sup>3</sup> Findings, p. 3; Resp. Ex. 1

an even higher salary. <sup>4</sup> In truth, Respondent had never ceased working at Finkelmeier and Farrell. In reliance on these misrepresentations, Respondent's wife quit her job in 2005. <sup>5</sup>

Between June of 2005 and March of 2006, Respondent testified, his practice was stagnant. In order to create the appearance that he was earning more money, Respondent forged his wife's signature on a power of attorney form to obtain an increase in an existing line of credit and borrow additional funds against their home. <sup>6</sup> He then lied to Zachary Gottesman, an attorney in his building, telling him that his wife had signed the document, but was unable to appear before a notary. <sup>7</sup> Mr. Gottesman relied on Respondent's representation and notarized the signature. <sup>8</sup> Respondent presented the forged power of attorney to Fifth Third Bank, which increased the line of credit, secured by the family's home, by an additional \$50,000. <sup>9</sup>

Subsequently, Respondent's wife saw a bank statement which reflected the increased line of credit. She confronted him and he responded by fabricating a series of three letters which purported to be from high-ranking officials at Fifth Third Bank. These letters explained, falsely, that the increased line of credit had been made in error, but had been corrected. <sup>10</sup>

The final portion of Respondent's scheme occurred in May, 2006. Fearful that his wife would again find evidence in the mail of his deceit, Respondent had mail delivery to their home stopped. When she asked Respondent if he had stopped mail delivery, he lied to her and again fabricated a letter to explain the situation. <sup>11</sup> This letter, purportedly

---

<sup>4</sup> Findings, p. 3; Resp. Ex. 2

<sup>5</sup> Findings, p. 3

<sup>6</sup> T., pp. 62-63; Findings, p. 3

<sup>7</sup> Findings, p. 3; Resp. Ex. 3

<sup>8</sup> Mr. Gottesman received a public reprimand as a result of this conduct. *Cincinnati Bar Association v. Gottesman*, 115 Ohio St. 3d 222, 2007-Ohio-4791.

<sup>9</sup> Findings, p. 3

<sup>10</sup> Findings, p. 3; Resp. Exs. 4,5,6

<sup>11</sup> T., pp. 71-72; Findings, p. 4

from the “Internal Investigations Division” of the United States Postal Service, offered a false explanation for the interruption of service.<sup>12</sup>

Respondent’s wife subsequently learned that he had fabricated letters, but he failed to tell her that he had forged her name on the power of attorney and used that to extend the line of credit against their home. In December, 2006, Respondent and his wife were divorced. The divorce attorney representing Respondent’s wife subsequently discovered the forged power of attorney and confronted him regarding his misconduct. She agreed to allow Respondent to self-report his misconduct to Relator, which he did.<sup>13</sup>

A hearing was conducted on November 15, 2007 before a panel of the Board of Commissioners.<sup>14</sup> The parties had previously filed a joint stipulation of facts and recommendation for discipline.<sup>15</sup> The hearing panel found by clear and convincing evidence that Respondent had violated DR 1-102 (A)(3) [A lawyer shall not engage in illegal conduct involving moral turpitude.] and DR 1-102 (A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.]

The panel found that no evidence that Respondent’s misconduct was related to his depression; the panel noted further that Respondent stipulated that his misconduct was not a result of his depression. In mitigation, the panel found that Respondent had an absence of a prior disciplinary record, had disclosed his misconduct, and had a cooperative attitude. In aggravation, the panel found that Respondent had acted with a dishonest or selfish motive, had exhibited a pattern of misconduct, had committed multiple offenses, and had failed to make restitution. The panel found that Respondent had expressed no genuine remorse for involving another attorney in his misconduct.

---

<sup>12</sup> Findings, p. 4; Resp. Ex. 7

<sup>13</sup> Findings, p. 4

<sup>14</sup> Findings, p. 1

<sup>15</sup> Appendix to Findings

Further, the panel doubted the credibility of Respondent's testimony regarding the motive behind his misconduct. <sup>16</sup>

The parties had jointly recommended a suspension of one year, conditionally stayed upon continued mental health treatment. The hearing panel rejected that recommendation and instead recommended to the Board that a two-year suspension from the practice of law be imposed with the final 12 months stayed for a term of probation through February, 2011, with the additional conditions that Respondent must successfully complete his OLAP contract and have no new disciplinary violations.<sup>17</sup>

The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the hearing panel. <sup>18</sup>

---

<sup>16</sup> Findings, pp. 5-6

<sup>17</sup> Findings, pp. 6-7

<sup>18</sup> Findings, p. 7

## ARGUMENT

### PROPOSITION OF LAW

**Respondent used his legal skills and experience to perpetrate a fraud over a period of at least 18 months. The hearing panel and Board found the Respondent had no genuine remorse for involving another attorney in his misdeeds, and that Respondent's testimony concerning the motive for his misconduct was not credible. Further, that the aggravating factors herein outweigh the mitigating factors. The Board's recommendation of a two-year suspension with 12 months stayed should be affirmed.**

Between December, 2004, and May, 2006, Respondent fabricated a series of letters ostensibly to convince his wife, also an attorney, that he had secured more lucrative employment. These letters might be characterized as complicated and substantive; they were not mere transmittal letters. Along the way, on March 14, 2006, Respondent forged his wife's signature on a power of attorney, then, through dishonesty, induced a fellow attorney to notarize the forged signature.<sup>19</sup> Respondent used the forged instrument to obtain an increase in an existing line of credit on the marital residence from \$25,000 to \$75,000. Respondent used the money "to make it appear that I was earning more and that I was doing better financially."<sup>20</sup> Respondent has not repaid that obligation.<sup>21</sup>

---

<sup>19</sup> Respondent's Brief, pp. 10-11

<sup>20</sup> T., p. 63

<sup>21</sup> Respondent's Brief, p. 5

## Dishonesty

The parties stipulated, and the hearing panel and the Board found, 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)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.]

Apparently, Respondent would have this Court create, or recognize, a distinction between “private” dishonesty as opposed to “professional” dishonesty. He says: “Though Farrell’s violations involve dishonesty, Farrell’s violations involved no dishonesty to any court.”<sup>22</sup> And: “Farrell’s violations involve no dishonesty to any client or in any client matter. Farrell never lied to any client.”<sup>23</sup> Further: “Farrell provided these fabricated letters only to his ex-wife.”<sup>24</sup> Even if this Court was to recognize a lower level of misconduct for “private” dishonesty, it should not apply here. Respondent used his legal skills and experience to fabricate letters to himself from Sheakley Uniservice, Inc.<sup>25</sup> and The Kroger Company<sup>26</sup> in order to convince his wife, a licensed attorney, that he had secured employment as in-house counsel with those companies. He used his legal skills and experience and “an old power of attorney form” from a prior closing<sup>27</sup> to create the Power of Attorney in his wife’s name.<sup>28</sup> He used his status as a lawyer to have her signature “notarized by a lawyer who has office space in my building that I know named Zachary Gottesman. . . .”<sup>29</sup>

Respondent characterizes his dishonesty as “merely misdemeanor conduct, falsification.”<sup>30</sup> The Board noted that “No evidence was presented that Farrell was

---

<sup>22</sup> Respondent’s Brief, p. 11

<sup>23</sup> Respondent’s Brief, p. 12

<sup>24</sup> Respondent’s Brief, p. 11

<sup>25</sup> Respondent’s Exhibit 1

<sup>26</sup> Respondent’s Exhibit 2

<sup>27</sup> T., p. 63

<sup>28</sup> Respondent’s Exhibit 3

<sup>29</sup> T., p. 64

<sup>30</sup> Respondent’s Brief, p. 11

actually prosecuted for this activity that may also be characterized as a felony.”<sup>31</sup>

Perhaps a criminal prosecutor would agree with Respondent’s assertion that his conduct was a mere misdemeanor, falsification.<sup>32</sup> Perhaps not: forgery is a felony<sup>33</sup> and where the value of the property is five thousand dollars or more and less than one hundred thousand dollars, it is a felony of the fourth degree.<sup>34</sup> A federal prosecutor might look at the bank fraud statute<sup>35</sup> which states: “Whoever knowingly executes, or attempts to execute, a scheme or artifice (1) to defraud a financial institution; or (2) to obtain any of the monies, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, presentations, or promises; shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.”

### Causation

Meagan R. Robertson, a clinical associate with the Ohio Lawyers Assistance Program (OLAP), testified that she met with and evaluated Respondent.<sup>36</sup> Ms. Robertson said that prior to coming to OLAP, Respondent had been engaging in counseling with a psychiatrist and a clinical social worker, and had been diagnosed with “major depressive disorder.”<sup>37</sup> Ms. Robertson was asked whether Respondent’s conduct in fabricating letters was conduct of an ordinary type for someone with his psychological makeup or whether it was aberrant behavior. She stated: “Fabricating letters would indicate dishonesty, and you don’t – As, again, it’s an individual basis, so I don’t want to

---

<sup>31</sup> Findings, p. 3 at Footnote 3

<sup>32</sup> R.C. §2921.13 (A)(8).

<sup>33</sup> R.C. §2913.31 (A).

<sup>34</sup> R.C. §2913.31 (C) (1)(b)(i).

<sup>35</sup> 18 USC §1344

<sup>36</sup> T., p. 15

<sup>37</sup> T., p. 16

link causation of his dishonest behavior with his depressive disorder.”<sup>38</sup> Again, she was asked: “. . . [Y]ou cannot state for this Hearing Panel that the dishonesty displayed by Mr. Farrell was necessarily the result of his major depressive disorder, is that correct?” She answered: “I cannot.”<sup>39</sup>

No one has contradicted Ms. Robertson’s assessment of Respondent. The Board said: “No evidence was presented that Respondent’s misconduct was related to his major depressive disorder. In fact, when questioned by the panel, Respondent stipulated that his misconduct was not a result of his depression. Therefore, the panel did not consider this evidence for mitigation purposes.”<sup>40</sup>

Respondent admits that he is unable to provide this Court with a rational explanation for his conduct.<sup>41</sup> Respondent testified that at the time he fabricated the first letter to himself from Sheakley Uniservice, Inc. in December, 2004, he felt a great deal of pressure to make more money because his wife wanted to cut back on her work schedule and spend more time with their daughter.<sup>42</sup> Respondent said “I couldn’t face the possibility that I would have to choose between my career and my family.”<sup>43</sup>

However, the hearing panel said: “The panel doubts Respondent’s testimony that his motive behind the misconduct was a desire to keep his family together, especially in light of the fact that he has voluntarily had no contact with his daughter since May, 2007. The panel finds it more likely that Respondent desired to maintain the lifestyle to which he had become accustomed.”<sup>44</sup> In fact, when asked what he did with the \$50,000 from the expanded line of credit, Respondent said that approximately \$15,000 was paid to a

---

<sup>38</sup> T., pp. 19-20

<sup>39</sup> T., p. 39

<sup>40</sup> Findings, p. 5

<sup>41</sup> Respondent’s Brief p. 13

<sup>42</sup> T., p. 46

<sup>43</sup> T., p. 49

<sup>44</sup> Findings p. 6

contractor who was renovating two bathrooms at their home, “and then the remainder of the money was utilized to make it appear that I was earning more.”<sup>45</sup>

### Harm

Respondent asserts that his “violations involving the fabricated letters caused no harm or loss to any party.”<sup>46</sup> However, the Board found: “Due to these falsified letters, Respondent’s wife quit her job in 2005.”<sup>47</sup> Further, Respondent was asked on direct examination: “Has Mr. Gottesman suffered any adverse consequence?” He answered: “Yes. As a result of the grievance process commenced against me, he was also subjected to discipline. And he has received a public reprimand as a result of signing – notarizing a signature when the signer was not in his presence to witness the act.”<sup>48</sup> The Fifth Third Bank is a victim of crime: Respondent’s “violations have exposed Fifth Third Bank to a risk of loss. Farrell used the forged power of attorney to borrow money from Fifth Third Bank. Farrell has yet to repay Fifth Third Bank the money Farrell borrowed using the forged power of attorney.”<sup>49</sup>

Respondent lied to two other attorneys and the bank. All three were harmed.

### Penalty

The hearing panel and the Board found, by clear and convincing evidence, that the aggravating factors present in this case outweigh the mitigating factors.<sup>50</sup> The Board found that Respondent had demonstrated (1) a dishonest or selfish motive, (2) a pattern of misconduct, (3) multiple offenses, and (4) a failure to make restitution.<sup>51</sup> The Board

---

<sup>45</sup> T., pp. 90-91

<sup>46</sup> Respondent’s Brief, p. 12

<sup>47</sup> Findings, p. 3.

<sup>48</sup> T., p. 65

<sup>49</sup> Respondent’s Brief, p. 13

<sup>50</sup> Findings, p. 7

<sup>51</sup> Findings, pp. 5-6

found in mitigation that Respondent has no prior disciplinary record. It also credited him with full and free disclosure and a cooperative attitude, with the caveat that his wife's attorney had forced him to self-report the violation, and it noted further that his Answer was not filed in a timely manner.<sup>52</sup> Based upon the similarities in the misconduct between the case at hand and *Cleveland Bar Ass'n. v. McMahon*,<sup>53</sup> the Board found that an actual suspension from the practice of law is warranted in the case at hand.<sup>54</sup>

In *McMahon*, the Respondent intentionally invented evidence to deceive an adversary.<sup>55</sup> This Court imposed a six month actual suspension from the practice of law. The Court noted that *McMahon* had "violated his duty to the legal system by attempting to advance his client's interests with evidence that he knowingly fabricated," and that he "also breached his duty to the general public by failing to exhibit the highest standards of honesty and integrity."<sup>56</sup> In the case at hand, Respondent advanced his own interests by fabricating several documents over a period of 18 months.

The general duty of honesty which the Court recognized in *McMahon* was also addressed a year earlier in *Disciplinary Counsel v. Bowman*.<sup>57</sup> The Court said: "Respondent intentionally damaged his clients by lying, forging their signatures, neglecting their legal matters, dismissing their cases, and fostering the retraction of an offer to pay a client's attorney fees. In all three counts, Respondent treated clients, counsel, and his own colleagues with deceit and dishonesty. He violated his duty to the legal system, the profession, and the community."<sup>58</sup>

The respondent in *Bowman* had been diagnosed by a clinical psychologist with

---

<sup>52</sup> Findings, p. 5 at Footnote 7

<sup>53</sup> 114 Ohio St. 3d 331, 2007-Ohio-3673

<sup>54</sup> Findings, p. 6

<sup>55</sup> Id. at ¶ 2

<sup>56</sup> Id. at ¶ 25

<sup>57</sup> 110 Ohio St. 3d 480, 2006-Ohio-4333

<sup>58</sup> Id. at ¶ 21

“ ‘ major depression recurrent ‘ and general anxiety disorder.”<sup>59</sup> The aggravating and mitigating circumstances in *Bowman* are similar to those in the instant matter, except that Respondent Bowman had more mitigation. The aggravating factors were a dishonest or selfish motive, a pattern of misconduct, and multiple offenses. In mitigation, Bowman had no prior record of professional discipline, and had made a full and free disclosure to the Board and had a cooperative attitude. In addition, and unlike the present Respondent, Bowman had made a timely, good-faith effort to make restitution and rectify the consequences of his misconduct, and had shown genuine remorse and sorrow.<sup>60</sup> The Court also found that Bowman’s conduct was “tempered by his diagnosed depression.”<sup>61</sup> Stephanie Krznarich, Associate Director and Clinical Director of the Ohio Lawyers Assistance Program, testified that Bowman’s symptoms had contributed to his misconduct.<sup>62</sup>

Despite the finding that Bowman had a diagnosis of mental disability pursuant to Gov. Bar Rule V, Appendix II, The Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline of the Supreme Court, Section 10 (B)(2)(g)<sup>63</sup> this Court held that “a two-year suspension is warranted in order to protect the public and to ensure that respondent is able to successfully manage his illness.”<sup>64</sup>

The instant Respondent “expressed no genuine remorse from involving another attorney in his misdeeds, although he did seem to be embarrassed by his misconduct.”<sup>65</sup> The hearing panel found that the motive behind Respondent’s misconduct was to maintain the lifestyle to which he had become accustomed before his wife quit her job to

---

<sup>59</sup> Id. at ¶ 33

<sup>60</sup> Id. at ¶ 24

<sup>61</sup> Id. at ¶ 23

<sup>62</sup> Id. at ¶ 30

<sup>63</sup> Id. at ¶ 24

<sup>64</sup> Id. at ¶ 39

<sup>65</sup> Findings, p. 6

stay home with their daughter. The hearing panel doubted Respondent's testimony that his motive was a desire to keep the family together, "especially in light of the fact that he has voluntarily had no contact with his daughter since May, 2007."<sup>66</sup> The Board adopted those findings.<sup>67</sup>

The Board recommended, as did the hearing panel, that Respondent be suspended for a period of two years with 12 months stayed for a term of probation continuing until February, 2011, conditioned upon the successful completion of his OLAP contract, and, further, that there be no new disciplinary violations.

---

<sup>66</sup> Findings, p. 6

<sup>67</sup> Findings, p. 7

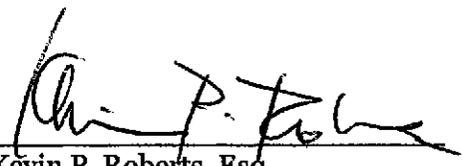
## CONCLUSION

The Respondent in *Disciplinary Counsel v. Bowman*<sup>68</sup> violated his duties to “the legal system, the profession, and the community.”<sup>69</sup> Respondent in the instant matter did likewise. Despite his diagnosed depression and testimony that his depression contributed to his misconduct, Respondent Bowman received an actual suspension. Relator therefore requests that Respondent in the instant matter be suspended for the term and upon the conditions as recommended by the hearing panel and the Board.

Respectfully submitted,

## CINCINNATI BAR ASSOCIATION

Ernest F. McAdams, Jr., Esq.  
Attorney #0024959  
City of Cincinnati Prosecutor's Office  
801 Plum St., Room 226  
Cincinnati, OH 45202-1301  
Phone: 352-3332; Fax: 352-5217  
e-mail: ernest.mcadams@cincinnati-oh.gov

By: 

Kevin P. Roberts, Esq.  
Attorney #0040692  
7373 Beechmont Avenue, Ste. 3  
Cincinnati, OH 45230  
Phone: 233-3666; Fax: 233-3206  
e-mail: kpresq@aol.com

---

<sup>68</sup> 110 Oh. St. 3d 480, 2006-Ohio-4333

<sup>69</sup> Id. at ¶ 21

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Relator's Brief In Response To Respondent's Objections To Report And Recommendation Of The Board Of Commissioners was mailed by first class U.S. mail, postage prepaid, to Counsel for Respondent, John J. Mueller, 632 Vine Street, Suite 800, Cincinnati, Ohio 45202 on this 8<sup>th</sup> day of February, 2008.

*Dimitry V. Orlet*

\_\_\_\_\_  
Dimitry V. Orlet (0068183)

Assistant Counsel

Cincinnati Bar Association

225 East Sixth St., 2<sup>nd</sup> Floor

Cincinnati, OH 45202

Phone (513) 699-1401

Fax (513) 381-0528

# **APPENDIX**

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

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 07-011</b>
<b>William I. Farrell Attorney Reg. No. 0043635</b>	:	<b>Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio</b>
<b>Respondent</b>	:	
<b>Cincinnati Bar Association</b>	:	
<b>Relator</b>	:	

This matter was heard November 15, 2007, in Columbus, Ohio before a panel consisting of Jean M. McQuillan of Rocky River, Myron A. Wolf of Hamilton, and Nancy D. Moore, Chair, of Columbus, Ohio. None of the panel members is a resident of the district from which the complaint originated or a member of the probable cause panel that certified this matter to the Board.

Ernest F. McAdams, Jr. represented Relator, Cincinnati Bar Association. Respondent, William I. Farrell, was present and represented by John J. Mueller.

**FINDINGS OF FACT**

The parties submitted extensive stipulations to the panel at the commission of the hearing. Those stipulations were adopted by the panel.

Respondent graduated from law school and was admitted to the practice of law in the State of Ohio in 1989. Respondent was employed by a small law firm shortly after being admitted to the practice of law. The firm specialized in worker's compensation and social security disability law and Respondent developed an expertise in those subject areas. In 1997, Respondent's employer formed a partnership with Respondent and the firm became known as Finkelmeier and Farrell. Respondent remains an active partner in Finkelmeier and Farrell and has worked for no other employers since being admitted to the bar.

Respondent and his wife, also an attorney, lived in Mt. Lookout, a fairly well-to-do Cincinnati neighborhood. Respondent's wife worked as a Senior Associate in a Cincinnati law firm and earned a significant income there. Together they adopted a daughter from China in 2003. Following the adoption, Respondent's wife expressed an interest in cutting her work hours in order to spend more time with their daughter. She was willing to cut expenses by moving to a less expensive house to facilitate that move.

Respondent testified that he felt pressured to increase his income to allow his wife to quit her job. He indicated that he feared losing his family if he did not find a way to earn more money. Respondent was very happy in his law partnership and believed that eventually the partnership would become much more lucrative. As a result, Respondent was reluctant to seek and accept other employment -- a sentiment that he did not share with his wife. Respondent also did not move to a smaller home in order to cut expenses.<sup>1</sup>

Respondent began to fabricate letters to convince his wife that he had sought and accepted employment with a sizeable salary increase. He first fabricated a letter in December

---

<sup>1</sup> Respondent continues to reside in the home while attempting to sell it.

2004 to convince his wife that he worked for Sheakley Uniservice, Inc. (See Respondent's Ex. 1). Then in June 2005 he produced another forged letter to convince her that he was then employed by the Kroger Company (See Respondent's Ex. 2). Due to these falsified letters, Respondent's wife quit her job in 2005.

Soon the decrease in income was becoming noticeable. In March 2006, Respondent forged a Power of Attorney giving him his wife's authority to borrow additional funds against their home (See Respondent's Ex. 3). Respondent then lied to Zachary Gottesman, another attorney in his building, and told him his wife had signed the document, but was unable to appear before a notary. Gottesman relied on Respondent's representations and notarized the document.<sup>2</sup>

As a result of the forged Power of Attorney, Fifth Third Bank increased the line of credit secured by the family's home. Respondent borrowed an additional \$50,000 on the line of credit and used those funds in an attempt to convince his wife that he was earning more than he actually was. The parties stipulated that it is a misdemeanor of the first degree (sic) to provide false information in writing for the purpose of obtaining a loan.<sup>3</sup>

Soon after, Respondent's wife saw a Fifth Third Bank document that reflected their line of credit had increased to \$75,000. After his wife questioned him regarding the document, in May 2006, Respondent forged three letters from Fifth Third Bank, falsely indicating that the line of credit had not been extended and that the mistake had been corrected (See Respondent's Ex. 4, 5 and 6). Those letters temporarily convinced Respondent's wife that the "problem" with the bank had been corrected.

---

<sup>2</sup> In a companion case to this one, Zachary Gottesman has been disciplined by the Supreme Court of Ohio with a public reprimand. See *Chionmati Bar Association v. Gottesman*, 115 Ohio St. 3<sup>rd</sup> 222, 2007-Ohio-4791.

<sup>3</sup> R.C. 2921.13. No evidence was presented that Farrell was actually prosecuted for this activity that may also be categorized as a felony.

Soon after, in an effort to further conceal his deceit from his wife, Respondent stopped all mail delivery to the home. When his wife quickly became suspicious of the lack of mail delivery, Respondent forged a letter purporting to be from the U.S. Postal Service indicating that the mail service had not been stopped (See Respondent's Ex. 7).

Respondent's lies were eventually disclosed to his wife, which led to their divorce in December of 2006.<sup>4</sup> When the divorce attorney for Respondent's wife discovered the forged Power of Attorney, she told Respondent that she had an obligation to report his misconduct. However, she agreed to allow Respondent to self-report the violation to Relator, which Respondent did. Respondent was ordered to repay the \$75,000 Line of Credit in the divorce decree, but that debt, as of the time of the hearing, remains unpaid. Respondent's now ex-wife has custody of their daughter. Respondent has not seen or attempted to exercise his visitation rights to see his daughter since May 2007. Respondent's ex-wife has been able to re-secure employment with her former employer.

In July 2006, Respondent began treating with a psychiatrist and counselor for depression. He currently is prescribed Cymbalta which he indicates helps with his focus and mood. He intends to continue treating as long as his doctor and counselor believe it is appropriate.

Megan Robertson, a licensed social worker employed by the Ohio Lawyers Assistance Program (OLAP), testified that on February 26, 2007<sup>5</sup>, Respondent entered into an OLAP contract in reference to his major depressive disorder. Respondent has been compliant with the OLAP treatment plan, but has failed to pay anything toward the \$200 per month monitoring fee.<sup>6</sup>

---

<sup>4</sup> Although Respondent failed to tell his wife that he had forged the Power of Attorney used to obtain the Line of Credit.

<sup>5</sup> The Complaint in this case was filed on February 12, 2007.

<sup>6</sup> Respondent testified that he has been unable to pay anything toward the monitoring fee, but was told that he could pay when he had the funds available. However, Respondent admitted under cross-examination that he had dined at expensive Cincinnati restaurants, which he charged to a credit card, during the period of time that the monitoring fees have remained unpaid.

## CONCLUSIONS OF LAW

The Panel accepted the stipulations of the parties and considered the evidence presented at the hearing. Based upon the evidence, the Panel finds that Respondent's conduct, by clear and convincing evidence, violated the following disciplinary rules:

- DR 1-102(A)(3) Engaging in illegal conduct involving moral turpitude.  
DR 1-102(A)(4) Conduct involving dishonesty, fraud, deceit or misrepresentation.

## MITIGATION AND AGGRAVATION

No evidence was presented that Respondent's misconduct was related to his major depressive disorder. In fact, when questioned by the panel, Respondent stipulated that his misconduct was not a result of his depression. Therefore, the panel did not consider this evidence for mitigation purposes.

Respondent has no prior disciplinary history and was eventually cooperative with the disciplinary process.

The panel finds the following mitigating factors:

1. Absence of prior disciplinary record; and
2. Full and free disclosure and cooperative attitude.<sup>7</sup>

The panel further finds the following aggravating factors:

1. Dishonest or selfish motive;
2. Pattern of misconduct;
3. Multiple offenses; and

---

<sup>7</sup> The panel notes that Respondent was forced by his wife's attorney to self-report the violation and that Respondent's Answer was not filed in a timely manner.

4. Failure to make restitution.

No character evidence was presented for consideration by the panel. The respondent expressed no genuine remorse for involving another attorney in his misdeeds, although he did seem to be embarrassed by his misconduct. The panel doubts Respondent's testimony that his motive behind the misconduct was a desire to keep his family together, especially in light of the fact that he has voluntarily had no contact with his daughter since May 2007. The panel finds it more likely that Respondent desired to maintain the lifestyle to which he had become accustomed.

**PANEL RECOMMENDATION**

The parties jointly recommended a suspension of one year, conditionally stayed upon continued mental health treatment.

The panel finds that based upon the similarities in the misconduct between the case at hand and *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, an actual suspension from the practice of law is warranted in the case at hand. In *McMahon* the Court stated:

“We find respondent's fabrication a “deliberate effort to deceive” that distinguishes his case from those involving inadvertence or haphazard cornercutting. *Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368. Indeed, for the audacity of respondent's ethical violations, the general rule requiring an actual suspension from the practice of law must apply. See *Cincinnati Bar Assn. v. Florez*, 98 Ohio St.3d 448, 2003-Ohio-1730, 786 N.E.2d 875 (lawyer suspended from the practice of law for six months because he failed to file a tax form for his client and then fabricated evidence during the disciplinary investigation to cover up the misconduct).

Lawyers who choose to engage in fabrication of evidence, deceit, misrepresentation of facts, and distortion of truth do so at their peril. They are admonished that the practice of law is not a right, and our code of professional responsibility demands far more of those in our profession. Here, respondent has presented much evidence in mitigation, but an actual suspension is appropriate for this conduct.”

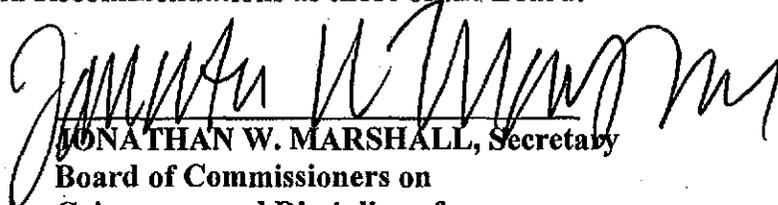
In *McMahon*, the Court found the mitigating evidence to be substantial. In this case, the panel finds, by clear and convincing evidence, that the aggravating factors outweigh the mitigating factors. Therefore, the panel rejects the joint recommendation and feels that a more harsh sanction is appropriate. The panel hereby recommends a two year suspension from the practice of law with the final twelve months stayed for a term of probation continuing until February 2011 when Respondent’s OLAP contract expires, upon the following conditions:

- Respondent must successfully complete his OLAP contract;
- Respondent shall have no new disciplinary violations.

#### **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 6, 2007. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, William I. Farrell, be suspended for a period of two years with twelve months stayed for a term of probation until February 2011 when Respondent’s OLAP contract expires and on the other 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

FILED

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

NOV 13 1997

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

*In re*

**Complaint against**

No. 07-011

**WILLIAM I. FARRELL  
(Ohio Bar Reg. No. 0043635),  
Respondent;**

**CINCINNATI BAR ASSOCIATION,  
Relator.**

**STIPULATION OF FACTS  
AND  
JOINT RECOMMENDATION OF DISCIPLINE**

**I. STIPULATION OF FACTS**

For purposes of this proceeding only, Relator, Cincinnati Bar Association, and Respondent, William I. Farrell, stipulate:

1. Farrell is an attorney at law who the Supreme Court of Ohio admitted to the practice of law in Ohio in November, 1989.
2. At all times relevant to this proceeding, Farrell engaged in the private practice of law in Cincinnati, Ohio, with an entity known as Finkelmeier & Farrell.
3. At all times relevant to this proceeding, Farrell was married to Erika Beth Farrell.

4. On or about December 10, 2004, Farrell presented Erika Beth Farrell with a letter that Farrell indicated to Erika Beth Farrell that Thomas L. Wurtz, the Chief Operating Officer of Sheakley Uniservice, Inc., had sent to Farrell.

5. This letter purported to extend an offer by Sheakley to employ Farrell as Assistant General Counsel for Sheakley.

6. Farrell fabricated that letter and Sheakley extended no such offer to Farrell.

7. The document the Bar attached to its complaint, as Exhibit A, represents a true copy of the letter that Farrell indicated to Erika Beth Farrell that Thomas L. Wurtz, the Chief Operating Officer of Sheakley Uniservice, Inc., had sent to Farrell.

8. On or about June 13, 2005, Farrell presented Erika Beth Farrell with a copy of a letter that Farrell indicated to Erika Beth Farrell that Anthony M. Chiodi, The Kroger Company, had sent to Farrell.

9. This letter purported to extend an offer by The Kroger Company to employ Farrell as Assistant Director of Risk Management.

10. Farrell fabricated that letter and The Kroger Company had not extended any such offer to Farrell.

11. The document the Bar attached to its complaint, as Exhibit B, represents a true copy of the letter that Farrell indicated to Erika Beth Farrell that Anthony M. Chiodi had purportedly directed to Farrell.

12. On or about March 14, 2006, Farrell presented Fifth Third Bank with a power-of-attorney in the name of Farrell's wife, Erika Beth Farrell.

13. Farrell had forged Erika Beth Farrell's signature on that power-of-attorney.

14. Before Farrell presented the power-of-attorney to Fifth Third Bank, Farrell induced Zachary Gottesman,<sup>1</sup> a lawyer having offices in the same building as the building in which Farrell maintains his law office, to notarize the signature of Erika Beth Farrell on that power-of-attorney even though Gottesman had not witnessed Erika Beth Farrell sign the power-of-attorney.

15. Farrell presented this power-of-attorney to Fifth Third Bank in connection with a transaction in which Fifth Third Bank was agreeing to extend a line-of-credit, in the amount of \$75,000.00.

16. In this transaction, Fifth Third Bank was to receive as security for repayment of the line-of-credit a mortgage interest in the marital residence Farrell and Erika Beth Farrell owned.

17. Farrell used the power-of-attorney with the forged signature of Erika Beth Farrell to obtain the line-of-credit in the amount of \$75,000.00 from Fifth Third Bank.

18. Fifth Third Bank established the \$75,000.00 line-of-credit as a home-equity account.

19. Farrell borrowed a total of \$75,000.00 on the home-equity line-of-credit. To date, the \$75,000.000 has not been repaid, and the house has not been sold. The parties are divorced and a condition of the divorce is that Mr. Farrell

---

<sup>1</sup> Gottesman is the subject of *Cincinnati Bar Association v. Gottesman* (2007), 115 Ohio St.3d 222, 2007 - Ohio - 4791.

repay the \$75,000.00, or that it be repaid from proceeds of the sale of the house.

20. The document the Bar attached to its complaint, as Exhibit C, represents a true copy of the power-of-attorney Farrell presented to Fifth Third Bank in connection with the \$75,000.00 line-of-credit transaction.

21. On or about May 5, 2006, Farrell presented Erika Beth Farrell with three separate letters Farrell indicated to Erika Beth Farrell were written on the letterhead and stationery of Fifth Third Bank.

22. Each of these letters was addressed to "Mr. and Mrs. William I. Farrell."

23. Each of the three letters purported to concern one or another of accounts Farrell and Erika Beth Farrell maintained with Fifth Third Bank.

24. Robert A. Sullivan, Executive Vice President and Corporate Secretary, Fifth Third Bank, allegedly signed and dispatched one of the letters.

25. Paul L. Reynolds, General Counsel and Executive Vice President and Corporate Secretary, Fifth Third Bank, purportedly signed and dispatched one of the letters.

26. George A. Schaefer, Jr., President and Chief Executive Officer, Fifth Third Bank, purportedly signed and dispatched one of the letters.

27. Farrell fabricated each of these letters.

28. The documents the Bar attached to its complaint, as Exhibits D1, D2, and D3, represent true copies of each of the letters Farrell purported to Erika Beth Farrell were written on the letterhead and stationery of Fifth Third Bank.

29. On or about May 19, 2006, Farrell presented Erika Beth Farrell with a

letter that Darrell D. Brown, Assistant Director, Internal Investigations Division, United States Postal Service, purportedly signed and directed to Erika Beth Farrell and Farrell.

30. In fact, Farrell fabricated the letter that Darrell D. Brown, Assistant Director, Internal Investigations Division, United States Postal Service, purportedly signed and directed to Erika Beth Farrell and Farrell.

31. The document the Bar attached to its complaint, as Exhibit E, represents a true copy of the letter Darrell D. Brown, Assistant Director, Internal Investigations Division, United States Postal Service, purportedly signed and directed to Farrell and Erika Beth Farrell.

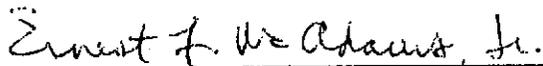
32. R.C. § 2921.13 makes it a misdemeanor of the first degree to provide false information in writing and for the purpose of obtaining a loan.

33. In committing the acts, and in engaging in the conduct, for which the Bar charges Farrell with misconduct within the meaning of Gov. Bar R. V, § 6(A)(1), Farrell violated (i) the oath of office Respondent took when the Supreme Court of Ohio admitted him to the practice of law in the State of Ohio, and (ii) the Code of Professional Responsibility, specifically DR 1-102(A)(3) ("A lawyer shall not...[e]ngage in illegal conduct involving moral turpitude"); and DR 1-102(A)(4) ("A lawyer shall not...[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation").

## **II. JOINT RECOMMENDATION OF DISCIPLINE**

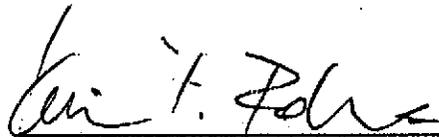
On the basis of (a) these stipulations, (b) any documentary or testimonial evidence the Cincinnati Bar Association presents at the hearing of this matter, and

(c) any documentary or testimonial evidence Farrell presents at the hearing of this matter, the Cincinnati Bar Association and Farrell jointly recommend that the Supreme Court of Ohio suspend Farrell from the practice of law for a term of one year, conditionally stayed if Farrell continues treatment with a licensed mental-health professional until the mental-health professional releases Farrell from further treatment.

  
Ernest F. McAdams, Jr. *EWF*  
City of Cincinnati, Prosecutor's Office  
801 Plum Street, Room 226 *(#001701)*  
Cincinnati, Ohio 45202 *per court records*

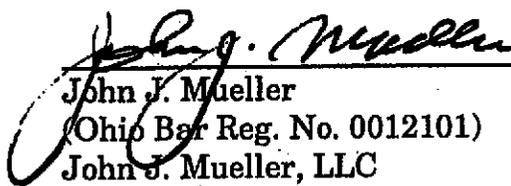
Telephone: (513) 352-3332  
Facsimile: (513) 352-5217

Trial co-counsel for Relator, Cincinnati  
Bar Association

  
Kevin P. Roberts  
Kevin P. Roberts, Attorney at Law  
7373 Beechmont Avenue, Suite Three  
Cincinnati, Ohio 45230

Telephone: (513) 233-3666  
Facsimile: (513) 233-3206

Trial co-counsel for Relator, Cincinnati  
Bar Association

  
John J. Mueller  
(Ohio Bar Reg. No. 0012101)  
John J. Mueller, LLC  
Attorney & Counselor at Law  
The Provident Building, Suite 800  
632 Vine Street  
Cincinnati, Ohio 45202-2441

Telephone: (513) 621-3636  
Telecopier: (513) 621-2550

E-mail: johnjmueller@legalmalpractice.net

Trial counsel for Respondent, William I.  
Farrell



**SHEAKLEY**  
UNISERVICE, INC.

PLAINTIFF'S  
EXHIBIT  
D

December 10, 2004

Mr. William Farrell  
BY ELECTRONIC MAIL  
\*ENCRYPTED\*

Dear Bill:

This letter will serve as an informal summary of your employment offer from The Sheakley Companies. The specific terms and conditions will be set forth in your written employment contract, which Bob is currently drafting.

Your title will be Assistant General Counsel. Your base salary will be \$150,000 per year, paid monthly, with potential performance bonus payments of 3% to 5% of your base salary calculated by the overall company performance, plus an additional 5% to 10% of your base salary based upon the unit performance of the Liability & Indemnity division.

You will also be eligible for a \$500 per month/\$6000 per year increase in your base salary pursuant to a merit increase, after six months have elapsed from the commencement of your employment.

You will be eligible for a \$600 per month pre-tax car allowance after one full year of service and you will be eligible for stock ownership after three full years of service, by way of direct grants of shares via any bonus plans or programs, and by way of option purchases.

You will be provided with full health insurance coverage, dental and vision benefits, and disability insurance immediately upon commencing employment. You will be eligible for life insurance benefits, payable to your designated beneficiary after one full year of service, equal to 2 times your base salary.

You will have an office furnishing allowance of up to \$2500, through our designated provider, along with a \$750 laptop computer allowance payable after one full year of service. We will cover all appropriate professional dues and continuing education requirements, although overnight travel and lodging expenses for seminars or related programs must be pre-authorized,

Cost Control Services • Workers' Compensation, Self-Insurance, Unemployment Compensation  
Corporate Office • P.O. Box 42212 • Cincinnati, OH 45242  
(513) 771-2277 • 1-800-877-2053 • Fax: (513) 326-4681  
<http://www.sheakley.com>

EXHIBIT

A



App. 15

Mr. William I. Farrell  
December 10, 2004  
Page 2

and the seminar or program must be approved in advance.

Please contact me at your earliest convenience if there are any errors or omissions regarding this summary. As I mentioned, the full terms and conditions of your employment will be set forth within your employment contract, which should be finalized in early January.

In the meantime, all of us are excited about the prospect of your joining The Sheakley Companies, and we are looking forward to working with you soon.

Very truly yours,

Thomas L. Wurtz, C.O.O.

TLW:jkw

PLAINTIFF'S  
EXHIBIT  
C

THE KROGER COMPANY  
1014 VINE STREET  
CINCINNATI, OHIO 45202-1100  
(513) 762-4000

ANTHONY M. CHIODI  
DIRECTOR OF RISK MANAGEMENT

June 13, 2005

Mr. William Farrell  
Attorney-at-Law  
3391 Ault View Avenue  
Cincinnati, Ohio 45208

Dear Bill:

This will summarize the offer we are extending to you for employment at The Kroger Company. The specific terms will be spelled out in a written employment document separate from this letter.

Your title will be Assistant Director of Risk Management, reporting to my office within the Human Resources Department, under the Corporate Division. Your salary will be \$168,000 per year, or \$14,000 per month, paid bi-monthly.

You will be eligible for the following bonus programs, paid annually at the discretion of the Company, which includes a salary bonus of up to 10% of your base salary, if performance goals for the Human Resources Department; up to 5% of your base salary if performance goals for the Corporate Division are met, and up to 3% of your base salary if overall Company performance goals are met.

You will also be eligible for stock options within three years of your anniversary date, or sooner if you are promoted, and you will be eligible for the Stock Purchase Plan as of January 1, 2006.

Your position carries with it full health insurance coverage for you and your dependents. There are four primary plans to choose from, and we will supply you with the plan summaries in our Medical Enrollment Packet. You will also be entitled to Dental and Vision Insurance. All of these plans are employer funded in their entirety.

You will be eligible for our 401(K) plan effective January 1, 2006, and you will be eligible for a 100% employer match at that time. Your position also makes you eligible for the Company Paid Retirement Plan, after one full year of service, in addition to the 401(K) plan.

EXHIBIT  
B

PLAINTIFF'S  
EXHIBIT

Mr. William Farrell  
June 13, 2005  
Page Two

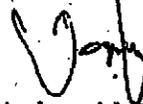
You will automatically be enrolled in all primary insurance plans: Term life (\$100,000 policy limits); Short-term disability; Long-term disability; and Long-term Care. A summary of additional employment benefits is attached for your convenience.

Finally, you will be eligible for four weeks of vacation as of January 1, 2006. If you have any vacation plans already set for this year, please let me know these dates at your earliest convenience.

We are targeting a starting date in mid-July, but we are obviously flexible as to the exact date, so that you can tie up any loose ends with Sheakley. Let me know if you anticipate any complications in this regard.

We are excited about your joining The Kroger Team, and I am personally looking forward to working with you. In the meantime, please let me know if you have any questions or concerns about any of the above.

Sincerely,



Anthony M. Chiodi

AMC:ldg  
Enclosure



POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, ERIKA B. FARRELL do hereby make, constitute and appoint my husband, WILLIAM I. FARRELL, my true and lawful attorney in fact for me and in my name, place and stead to borrow from FIFTH THIRD MORTGAGE COMPANY and FIFTH THIRD BANK, such sums to be secured by a mortgage or mortgages on the real property located at 3391 Aultview Avenue, Cincinnati, Ohio 45208, more particularly described in Exhibit A attached hereto and made a part hereof, upon such terms and conditions as my said attorney shall deem fit and to execute, acknowledge and deliver all necessary promissory notes, mortgages or instruments of conveyance and encumbrance, containing such provisions, clauses, covenants, agreements, warranties, terms and conditions as my said attorney may deem best to evidence the loan so procured and to secure the same; to endorse, collect and receipt for payment of any and all checks, drafts or other media representing the proceeds of any and all such loan; and, to execute and deliver all necessary or appropriate papers and documents necessary for the closing of said loan from FIFTH THIRD MORTGAGE COMPANY and FIFTH THIRD BANK, including, but not limited to, truth-in-lending disclosures and settlement statements.

GIVING AND GRANTING unto my said attorney in fact full power and authority to do and to perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully and to all intents and purpose as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

IN EXECUTION WHEREOF, I have hereunto set my hand this 14th day of March, 2006.

*Erika B. Farrell*  
Erika B. Farrell

STATE OF OHIO, COUNTY OF HAMILTON; SS:

The foregoing instrument was acknowledged before me this 14th day of March 2006 by ERIKA B. FARRELL.

*Zachary Gottesman*  
Notary Public

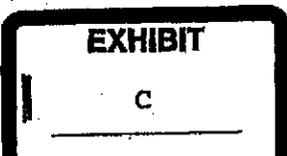
ZACHARY GOTTESMAN, Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration Date  
Section 147.08



Rebecca Frew Gross  
Hamilton County Recorder's Office  
Doc # 06-0058772 Issues PA  
Filed 04/18/06 09:05:53 AM 128.00  
Def. Rec. # 10220 101357 F 1 307

2006 MAR 18 10:13 AM  
10220031267

10220 1267





Fifth Third Bank

Private Banking Group  
High Net Worth Division  
Fountain Square Branch

PLAINTIFF'S  
EXHIBIT  
B-1

May 5, 2006

Mr. & Mrs. William I. Farrell  
3391 Ault View Avenue  
Cincinnati, Ohio 45208-2516

Re: Equity Flex Line Account  
Acct. No. [REDACTED]

Dear Mr. & Mrs. Farrell:

In follow up to my meeting with Mr. Farrell yesterday, this will confirm that we have now corrected the balance on the above referenced account to reflect \$19,342.25, based upon the advances and payments detailed in the attached summary.

You will receive a corrected formal statement with this balance along with a background letter from our legal department in the next few days. You will also be contacted by our executive offices to confirm these corrections and to detail the protective measures we are taking to ensure that similar events never transpire again.

In the meantime, I am extending the promotional 5.99% interest rate on this account an additional six months, through April 30, 2006. It is my understanding that additional incentives will be extended to you in order to maintain your business.

This letter will also confirm that no negative credit reporting events have transpired as a result of the creation of the counterfeit Line of Credit account, and none of your other accounts have been impacted in any fashion whatsoever.

In addition, we have confirmed that the counterfeit Line of Credit account has not been recorded with the Hamilton County Recorder's office. This will be addressed in more detail by the correspondence from the Legal Department.

Finally, per Mr. Farrell's instructions, we have placed a hold order on this account, and no

EXHIBIT  
D1



Mr. & Mrs. William I. Farrell  
May 5, 2006  
Page Two

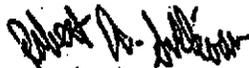
advances of any sort will be applied absent independent verification from the account holders. This can be accomplished by telephone to the Private Banking Group, or in person with a Manager at any of our Banking Centers.

Obviously, Fifth Third Bank as an institution takes the matters leading up to these recent difficulties with the gravest of seriousness, and we have instituted wide ranging reforms to ensure that nothing like this happens in the future.

In the meantime, I am at your disposal should you have any questions or concerns regarding any of your accounts, or any of your banking needs.

Thank you once again for your patience and cooperation throughout this difficult matter. Please let me know if you have any questions or if you require any additional information.

Very truly yours,



Robert A. Sullivan,  
Executive Vice-President,  
Retail Banking Operations

RAS:tmj  
cc: Private Banking Group  
Paul L. Reynolds, Esq.  
George A. Schafer, Jr.

PLAINTIFF'S  
EXHIBIT  
B-2

The Fifth Third Bank  
Legal Department  
511 Walnut Street  
Cincinnati, Ohio 45202-1076  
Phone: (513) 579-4370  
Fax: (513) 534-6757

PAUL L. REYNOLDS, GENERAL COUNSEL  
EXECUTIVE VICE-PRESIDENT & CORPORATE SECRETARY

May 5, 2006

Mr. & Mrs. William J. Farrell  
3391 Ault View Avenue  
Cincinnati, Ohio 45208-2516

Dear Mr. & Mrs. Farrell:

This letter will summarize the recent actions Fifth Third Bank has taken upon the discovery of the Home Equity Flex Line account, number [REDACTED], which was opened utilizing your name and real property information, but without your knowledge and consent.

Fifth Third has been asked by law enforcement agencies to be as discrete as possible in detailing the underlying events giving rise to the discovery of these counterfeit home equity lines of credit. However, our fiduciary obligations to our account holders requires us to divulge certain information. In return, we would respectfully request that you not disclose any of the information contained in this letter, such that future criminal and civil legal proceedings are not prejudiced.

First, below is a summary of the current accounts you hold at Fifth Third Bank, and their balances as of the close of business on Thursday, May 4, 2006:

- |                                |               |
|--------------------------------|---------------|
| 1. Checking acct. [REDACTED]   | \$ 9631.58    |
| 2. Banksafe Savings [REDACTED] | \$ 10,004.89  |
| 3. Emma Savings [REDACTED]     | \$ 2,443.69   |
| 4. Mortgage Loan [REDACTED]    | \$ 207,437.97 |
| 5. Equity Line [REDACTED]      | \$ 19,438.64  |

This letter will confirm that the account codified as [REDACTED] was never opened by you, jointly or individually, or with your authorization or consent. This letter will also confirm that this

EXHIBIT  
D2

RESPONDENT'S  
EXHIBIT

Mr. & Mrs. William J. Farrell  
May 5, 2006  
Page Two

account was never filed with the Hamilton County Recorder's office, or any other government office, nor was it reported to any Federal credit reporting agency.

It appears that your existing Home Equity Flex Line Account, [REDACTED], may have been targeted due to multiple factors, including the fact that you paid the balance in full in June of 2005, and the low mortgage principal and the high market value of your residence at 3391 Ault View Avenue.

It also appears that the purchase of your 2002 Jeep from the Fifth Third Auto Leasing Trust may have triggered interest in your account, in that attempts may have been made to divert that payment in Fall of 2005, although those efforts were thwarted due to inquiries initiated by Mr. Farrell with the Private Banking Group in December of 2005.

The subsequent activity on your account in February and March likewise appears to have generated an attempt to improperly reset the credit limit on account no. [REDACTED] from the standard \$25,000 to \$15,000, in order to later divert funds from this account. Revolving home equity lines of credit at Fifth Third as a policy are issued in multiples of \$25,000, and Mr. Farrell's inquiries with the Private Banking Group in early March of this year.

The subsequent details are not clear, but we believe that an attempt was made to vacate the prior advance for \$10,860 for the purchase of the 2002 Jeep in April, due to the fact that the title was not produced and the lease lien discharged back in Fall of 2005. However, this action generated a payment invoice being issued from Fifth Third Auto Leasing Trust, a separate entity, which once again was brought to our attention by Mr. Farrell via the Private Banking Group.

This in turn generated the creation of the counterfeit Equity Line account, [REDACTED], with the \$75,000 credit limit. The statements you received as to both accounts were generated when an internal audit uncovered the fact that false payments were being logged into these counterfeit accounts, due to the fact that payments could not be reconciled with payment intakes from corresponding dates, and due to miscalculations about the manner in which certain computer systems would read this data.

Account number [REDACTED] has been terminated effective immediately. The advances and payments on account number [REDACTED] from October 11, 2005 through April 25, 2006 have been re-credited to this account, resulting in the balance of \$19,438.64.

This letter will also confirm that a hold has been placed on account number [REDACTED] at your request, such that no future advances on this account will be permitted without secondary confirmation from either account holder, via telephone or in-person communication with Fifth Third management.

Mr. & Mrs. William I. Farrell

May 5, 2006

Page Three

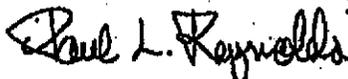
This letter will also confirm that no funds from any of your Fifth Third accounts have in any way been impacted by the foregoing situation (other than the aforementioned Equity Line account), and no negative impact upon your credit rating has resulted. The funds that were improperly removed were from Fifth Third's general revenue accounts, and any improper deductions were not applied to customer accounts upon our discovery of this scheme.

We have tentatively been advised that no customers will be expected to testify in any potential criminal proceedings that may ensue, due to a lack of knowledge regarding these events. We do not anticipate any similar need for any future civil actions that may be pursued, for the same reason.

Please let me convey our regret for any concern or consternation that has resulted from these events. We recognize that the trust and loyalty of our customers is critical to Fifth Third's success, and we have taken aggressive steps to discover those responsible for these matters and to make certain they do not occur in the future.

It is my understanding that you will be contacted separately by the Private Banking Group and by our Executive Offices relative to the foregoing. In the meantime, please do not hesitate to contact should you have any questions as to the above.

Very truly yours,



Paul L. Reynolds, General Counsel  
Executive Vice-President & Corporate Secretary

PLR:jat

cc: Robert A Sullivan

George A. Schaefer, Jr.

Private Banking Group



**Fifth Third Bank**

Chief Executive Office  
38 Fountain Square  
Cincinnati, Ohio



George A. Schaefer, Jr.  
President & Chief Executive Officer

May 5, 2006

Mr. & Mrs. William I. Farrell  
3391 Ault View Avenue  
Cincinnati, Ohio 45208-2516

Re: Account No: [REDACTED]

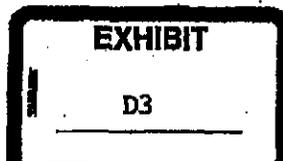
Dear Mr. & Mrs. Farrell:

I am personally contacting you to express our apologies for the reason difficulties you have encountered arising out of your Home Equity Flex Line account. At the request of our legal department, I will not address specific details of the events leading to the discovery of the sham accounts on several of our account holders in this letter, which will be summarized for you by our legal department.

I do want to emphasize, however, that Fifth Third Bank views these events with the utmost seriousness and gravity, and we have implemented aggressive changes in dealing with all of our accounts, including requiring multiple party verification for new accounts, implementing state of the art software programs to detect activity patterns that can alert us to inappropriate internal actions in customer accounts, more aggressive employee screening and procedures to require hard copy filings relative to higher dollar value transactions.

Fifth Third's most valuable commodities are its people and its integrity as an institution, and we recognize that the latter has suffered recently. We are committed to regaining your trust in us, and we have taken every step to ensure that nothing like these events happens in the future.

In the meantime, as an incentive to keeping your business at Fifth Third, I have authorized a \$500 bonus to be paid to the account of your choosing, in recognition of and appreciation for your patience and cooperation throughout this matter.

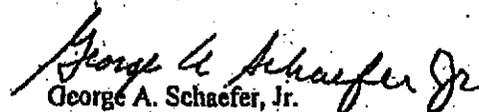


Mr. & Mrs. William I. Farrell  
May 5, 2006  
Page Two

Once again, we regret the concern that these recent events have caused you, and we will expend every reasonable effort to address any issues you may raise regarding your business with Fifth Third Bank. Our motto "Working Hard to be the Only Bank You'll Ever Need" is more than an advertising slogan, it's our mission, and we intend to carry through on those promises with you and all other customers recently impacted.

We sincerely appreciate your business over the years, and we hope to continue that relationship for many years to come.

Very truly yours,

  
George A. Schaefer, Jr.  
President & Chief Executive Officer

GAS:ejd  
cc: Private Banking Group  
Robert A. Sullivan  
Paul L. Reynolds, Esq.

PLAINTIFF'S  
EXHIBIT  
C

Murray Avenue Station  
5545 Murray Avenue  
Cincinnati, Ohio 45227

May 19, 2006

William I. Farrell  
Erika B. Farrell  
3391 Ault View Avenue  
Cincinnati, Ohio 45208-2516

Dear Postal Customer(s):

In response to your recent inquiry, please note that no party has held or diverted to your address in the last twelve months.

The USPS periodically audits carrier routes, and in the course of those audits there are occasions when substitute letter carriers are used, and letter mail can also be delivered by our Next Day and Parcel carriers. These deviations in the pattern of delivery occur periodically and they are dictated by the area station directors.

These audits are intended to maximize the quality of our services, and to review our policies and procedures to ensure the safety and security of our customers' mail.

Thank you for your inquiry, and please feel free to contact this office in the future with any questions or concerns regarding your mail service.

Sincerely,



Darrell D. Brown, Assistant Director  
Internal Investigations Division  
Great Lakes Region 4

EXHIBIT  
E

RESPONDENT'S  
EXHIBIT

CINCINNATI BAR ASSOCIATION v. GOTTESMAN.

[Cite as *Cincinnati Bar Assn. v. Gottesman*,  
115 Ohio St.3d 222, 2007-Ohio-4791.]

*Attorneys at law — Misconduct — Consent to discipline — Notarizing a signature  
without witnessing it — Public reprimand.*

(No. 2007-1057 — Submitted July 10, 2007 — Decided September 20, 2007.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and  
Discipline of the Supreme Court, No. 07-012.

---

**Per Curiam.**

{¶ 1} Respondent, Zachary Gottesman of Cincinnati, Ohio, Attorney Registration No. 0058675, was admitted to the practice of law in Ohio in 1992. The Board of Commissioners on Grievances and Discipline has recommended that we publicly reprimand respondent, based on findings that he violated DR 1-102(A)(4) (prohibiting a lawyer from engaging in conduct involving fraud, deceit, dishonesty, or misrepresentation) by notarizing the signature on a power of attorney without actually witnessing the signature. On review, we find that respondent committed this violation of the Code of Professional Responsibility and agree that a public reprimand is appropriate.

{¶ 2} Relator, Cincinnati Bar Association, charged respondent with the cited misconduct. Thereafter, the parties submitted a consent-to-discipline agreement, and they jointly recommended a public reprimand. See Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline (“BCGD Proc.Reg.”). A panel of three board members accepted the agreement, found the stipulated DR 1-102(A)(4) violation, and recommended the proposed public

reprimand. The board adopted the findings of misconduct and recommended sanction.

Misconduct

{¶ 3} On March 14, 2006, attorney William I. Farrell went to respondent's law office without his wife and asked respondent to notarize a power of attorney that Farrell's wife had purportedly signed. Trusting that the signature was genuine, respondent notarized the power of attorney, swearing in the jurat that he had witnessed the wife's signature. In fact, Farrell's wife had not signed the power of attorney. Farrell subsequently used the power of attorney to obtain a line of credit, secured by the Farrells' residence, for \$75,000.

{¶ 4} By compromising his duties as a notary public, respondent violated DR 1-102(A)(4).

Sanction

{¶ 5} In *Columbus Bar Assn. v. Dougherty*, 105 Ohio St.3d 307, 2005-Ohio-1825, 825 N.E.2d 1094, we publicly reprimanded a lawyer for notarizing a liquor-license application without witnessing the applicant's signing of the document, and the signature turned out to be a forgery. We criticized the lawyer for ignoring the duties of a notary public to ensure the authenticity of official documents and found the lawyer in violation of DR 1-102(A)(4). The lawyer did not, however, forge the signature or know of the forgery, nor had the lawyer engaged in a deceitful course of conduct beyond failing to witness signatures as required. For that reason and because the lawyer had no prior disciplinary record and had cooperated in the disciplinary process, among other mitigating factors, we did not order the actual suspension usually warranted for a lawyer's dishonesty under *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 658 N.E.2d 237, syllabus. *Dougherty* at ¶ 15. Accord *Cleveland Bar Assn. v. Russell*, 114 Ohio St.3d 171, 2007-Ohio-3603, 870 N.E.2d 1164, ¶ 10.

{¶ 6} Respondent committed the same infraction as did the lawyer in *Dougherty*. Moreover, he has no prior disciplinary record, he did not commit this misconduct for his own benefit, and he cooperated in the disciplinary process. BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). A public reprimand is therefore appropriate.

{¶ 7} Respondent is therefore publicly reprimanded for having violated DR 1-102(A)(4). Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR,  
O'DONNELL, LANZINGER, and CUPP, JJ., concur.

---

Ernest F. McAdams Jr. and Kevin P. Roberts, for relator.

George D. Jonson, for respondent.

---

**CLEVELAND BAR ASSOCIATION v. McMAHON.**

[Cite as *Cleveland Bar Assn. v. McMahon*,  
114 Ohio St.3d 331, 2007-Ohio-3673.]

*Attorneys — Misconduct — Violations of DR 1-102(A)(4) and 7-102(A)(5) — Six-month suspension.*

(No. 2006-2260 — Submitted March 14, 2007 — Decided July 25, 2007.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and  
Discipline of the Supreme Court, No. 06-006.

---

**Per Curiam.**

{¶ 1} This court admitted respondent, Carl G. McMahon of Bay Village, Ohio, Attorney Registration No. 0001304, to the practice of law in Ohio in 1975.

{¶ 2} The Board of Commissioners on Grievances and Discipline recommends that we now suspend respondent's license to practice for six months and conditionally stay the suspension based on findings that he fabricated information in correspondence to an insurance company while representing a client in a personal-injury claim. Respondent objects to the recommended sanction, arguing that a public reprimand is appropriate based on mitigating factors and precedent. On review, we agree that respondent violated the Code of Professional Responsibility as found by the board, and we overrule his objections as to the recommended sanction. Moreover, because respondent intentionally invented evidence to deceive an adversary, we hold that the recommended six-month stayed suspension is too lenient and order respondent to serve a six-month actual suspension from the practice of law.

{¶ 3} Relator, Cleveland Bar Association, charged respondent with, among other misconduct not found by the board, violations of DR 1-102(A)(4)

(prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 7-102(A)(5) (prohibiting a lawyer from knowingly making a false statement of fact), and 7-102(A)(8) (prohibiting a lawyer from engaging in other illegal conduct or conduct contrary to a Disciplinary Rule). Respondent admitted these violations. A three-member panel of the board heard the cause, found the cited misconduct, and recommended a public reprimand. The board found only the violations of DR 1-102(A)(4) and 7-102(A)(5), dismissing the DR 7-102(A)(8) violation as redundant, and recommended the six-month suspension and that the suspension be stayed on the condition that respondent commit no further misconduct.

#### Misconduct

{¶ 4} Respondent has practiced law for over 30 years, primarily in civil cases, and has represented over 3,000 clients, many in personal-injury claims. The charges of misconduct arose out of a personal-injury case in which respondent represented a passenger who had sustained minor injuries in a two-car accident. The accident took place on July 1, 2004, in Shaker Heights, Ohio, when Jerri Marrs, the driver of the second car, collided with the car in which respondent's client was riding. Police cited Marrs for improperly changing lanes.

{¶ 5} Respondent insisted that the accident was Marrs's fault, but State Auto Mutual Insurance Company ("State Auto"), Marrs's insurer, initially disputed liability. To persuade State Auto to enter into settlement negotiations, respondent sent a letter to the insurance carrier on August 20, 2004. That letter is at the heart of the charges against respondent.

{¶ 6} In the August 20 letter, respondent fabricated testimony that he identified as being verbatim from a nonexistent transcript ostensibly from a "Shaker Heights Court – July, 2004" proceeding. Respondent represented that this colloquy had occurred:

{¶ 7} “Judge: Ms. Jerri Lynn Marrs – How do you plead on the charge of improper lane change at Fairmont Circle in Shaker Heights, Ohio?”

{¶ 8} “Ms. Marrs: No contest, your Honor.

{¶ 9} “Judge: Do you have any thing to say in your defense?”

{¶ 10} “Ms. Marrs: I was unfortunately in the wrong lane for proceeding straight in the intersection and by mistake, hit the other car in its lane.

{¶ 11} “Judge: I assume that since you are not contesting the traffic charge that you were at fault for this accident?”

{¶ 12} “Ms. Marrs: Yes, your Honor. The accident was my fault.

{¶ 13} “Judge: Then I find you guilty on the charge of improper lane change, causing an accident, and you are fined \$100.00, plus court costs.

{¶ 14} “Ms. Marrs: I’m sorry for causing this accident, your Honor, but I have auto insurance to pay for the other car’s damages and their injuries.

{¶ 15} “Judge: Please drive more carefully in the future, Ms. Marrs.

{¶ 16} “Ms. Marrs: Yes, your Honor.”

{¶ 17} Respondent’s letter to State Auto concluded:

{¶ 18} “Based upon Ms. Marrs court appearance where the Court officially found her guilty of the traffic charge, Ms. Marrs is solely liable for causing this accident. Once I obtain all of [respondent’s client’s] medical records and expenses, these documents will be forwarded to you for the purpose of your settling this liability case.”

{¶ 19} In fact, Marrs had failed to appear in court to answer to the charge of improperly changing lanes, she had never admitted fault on the record, and she had never been “officially found \* \* \* guilty” of this traffic offense. Respondent’s August 20 letter thus contained demonstrably false information about Marrs and, by implication, about whether State Auto had any responsibility to indemnify those injured in the July 2004 auto accident.

{¶ 20} In a September 21, 2004 letter, a State Auto claims representative informed respondent that Marrs had not appeared in court and that State Auto still denied liability. On October 12, 2004, respondent replied, acknowledging that court records confirmed Marrs's failure to appear, adding that "the court has issued a warrant for her arrest for failing to appear in court." He also continued to aggressively assert Marrs's responsibility for the collision, promising State Auto that he would conduct depositions of its insured, even "in her cell."

{¶ 21} State Auto ultimately settled with respondent's client in June 2005 for \$8,500. In the course of settlement negotiations, respondent wrote to the claims representative on June 20, 2005, and vaguely apologized for remarks made in his August 20 and October 12 letters. State Auto apparently never relied on the false information that respondent had provided initially.

{¶ 22} Respondent has no reliable explanation for why he fabricated facts in his August 20 letter. During relator's investigation, he stated that he may have simply assumed that Marrs had appeared in court, as usually occurs after a traffic citation, and that she had been found guilty. And at the panel hearing, respondent claimed that he actually did not recall composing and sending the August 20 letter and that he had been "stunned" when confronted with his misstatements. He also suggested that he might have been trying to figuratively depict the likely outcome of Marrs's traffic citation. In the end, however, he described the correspondence as "senseless" and basically inexplicable.

{¶ 23} Respondent admits that he knowingly made a false statement of fact and acted dishonestly in fabricating information for the August 20 letter to State Auto. We therefore adopt the board's findings that he violated DR 1-102(A)(4) and 7-102(A)(5).

#### Sanction

{¶ 24} When imposing sanctions for attorney misconduct, we consider the duties violated, the actual or potential injury caused, the attorney's mental state,

and sanctions imposed in similar cases. *Disciplinary Counsel v. Brown* (1999), 87 Ohio St.3d 316, 318, 720 N.E.2d 525. See, also, *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16. Before making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline (“BCGD Proc.Reg.”). *Cleveland Bar Assn. v. Glatki* (2000), 88 Ohio St.3d 381, 384, 726 N.E.2d 993.

{¶ 25} Respondent flagrantly violated his duty to the legal system by attempting to advance his client’s interests with evidence that he knowingly fabricated. And though State Auto employees discovered the fabrication before relying on it to the insurance carrier’s detriment, respondent also breached his duty to the general public by failing to exhibit the highest standards of honesty and integrity. Respondent claims that a public reprimand is enough to deter and protect the public from such ethical lapses. We disagree.

{¶ 26} Respondent has enjoyed a long legal career with no previous disciplinary measures, his misconduct did not cause financial loss, he cooperated in the disciplinary process, he has apologized and accepted responsibility for his misdeeds, which occurred during a particularly stressful period, and he has established his excellent character and reputation apart from this one isolated incident of wrongdoing. See BCGD Proc.Reg. 10(B)(2)(a), (c), (d), (e). We relied on these same mitigating factors, to varying degrees, in *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368, ¶ 15; *Disciplinary Counsel v. Cuckler*, 101 Ohio St.3d 318, 2004-Ohio-784, 804 N.E.2d 966, ¶ 7; and *Disciplinary Counsel v. Eisenberg* (1998), 81 Ohio St.3d 295, 296, 690 N.E.2d 1282, all cited by respondent, in deciding to publicly reprimand lawyers for their violations of DR 1-102(A)(4), rather than impose the actual suspensions that dishonest conduct generally requires. *Disciplinary Counsel v.*

*Fowerbaugh* (1995), 74 Ohio St.3d 187, 658 N.E.2d 237, syllabus. In none of these cases, however, did the lawyers as deliberately exceed the bounds of our standard for truthfulness as has respondent.

{¶ 27} Here, respondent unabashedly invented text of a purported transcript, complete with an adverse party's admission of fault, and forwarded the text as a quotation to the claims representative at State Auto. The claims representative contradicted respondent's misstatements, but in his return correspondence three weeks later, we see none of the "stunned" sheepishness with which respondent supposedly reacted. To the contrary, respondent essentially ignored the gaffe and continued to press his client's case.

{¶ 28} We find respondent's fabrication a "deliberate effort to deceive" that distinguishes his case from those involving inadvertence or haphazard corner-cutting. *Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368, ¶ 13. Indeed, for the audacity of respondent's ethical violations, the general rule requiring an actual suspension from the practice of law must apply. See *Cincinnati Bar Assn. v. Florez*, 98 Ohio St.3d 448, 2003-Ohio-1730, 786 N.E.2d 875 (lawyer suspended from the practice of law for six months because he failed to file a tax form for his client and then fabricated evidence during the disciplinary investigation to cover up the misconduct).

{¶ 29} Lawyers who choose to engage in fabrication of evidence, deceit, misrepresentation of facts, and distortion of truth do so at their peril. They are admonished that the practice of law is not a right, and our code of professional responsibility demands far more of those in our profession. Here, respondent has presented much evidence in mitigation, but an actual suspension is appropriate for this conduct.

{¶ 30} Respondent is therefore suspended from the practice of law in Ohio for six months. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., LUNDBERG STRATTON, O'CONNOR and CUPP, JJ., concur.

LANZINGER, J., concurs in judgment only.

PFEIFER and O'DONNELL, JJ., dissent and would impose a six-month stayed suspension.

---

Thompson Hine L.L.P., Jennifer S. Roach, and Samer M. Musallam, for relator.

Thomas Repicky, for respondent.

---

**DISCIPLINARY COUNSEL v. BOWMAN.**

[Cite as *Disciplinary Counsel v. Bowman*, 110 Ohio St.3d 480, 2006-Ohio-4333.]

*Attorneys — Misconduct — Mental-health disability — Two-year suspension.*

(No. 2006-0444 – Submitted May 23, 2006 – Decided August 23, 2006.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 05-063.

---

**LUNDBERG STRATTON, J.**

{¶ 1} We must decide in this case how to appropriately sanction respondent, Kevin Arthur Bowman of Dayton, Ohio, Attorney Registration No. 0068223, admitted to the Ohio bar in 1997, who stipulated that he had violated several Disciplinary Rules while representing clients in three cases. The Board of Commissioners on Grievances and Discipline recommended a sanction of suspension from the practice of law for two years, with one year stayed on conditions, and a term of probation. We hold this sanction to be inadequate.

{¶ 2} In June 2005, relator, Disciplinary Counsel, filed a complaint charging respondent with professional misconduct in three counts. The complaint alleges that respondent committed misconduct when he was employed as a senior associate with the Dayton, Ohio, law firm of Sebaly, Shillito & Dyer (“SS&D”).

{¶ 3} A panel of the Board of Commissioners on Grievances and Discipline heard the cause and made findings of fact, conclusions of law, and a recommendation, which the board adopted.

Misconduct

*Count I (Jones Representation)*

{¶ 4} Daniel and Leslie Jones retained respondent to defend them in a lawsuit filed by Peoples Community Bank. The bank had filed a \$2.8 million cognovit judgment against the Joneses, and the Joneses paid respondent a \$5,000 retainer to represent them. After investigating the underlying facts of the case, respondent concluded that the case was not winnable. Nevertheless, respondent filed an action against the bank to set aside the cognovit judgment, and the bank offered a settlement that respondent concluded was reasonable.

{¶ 5} The Joneses rejected the offer, but respondent forged the signature of the Joneses and their former attorney, Timothy R. Evans, on the settlement agreement. Respondent then filed a motion to dismiss the case with prejudice and provided a copy of the motion and the forged settlement agreement to the Joneses.

{¶ 6} The Joneses contacted SS&D through their new attorney and requested the return of their retainer. When SS&D confronted respondent about the incident, he claimed that the Joneses were lying. SS&D suspended respondent, at which time he admitted to SS&D that he had signed the settlement agreement without the authorization of Evans, but asserted that he had the Joneses' permission to sign their names. When questioned by police, however, respondent admitted that he had forged all the signatures.

{¶ 7} The board found that respondent had violated DR 1-102(A)(4) (barring an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); 1-102(A)(5) (barring conduct that is prejudicial to the administration of justice); 1-102(A)(6) (barring conduct that adversely reflects upon an attorney's fitness to practice law); 7-101(A)(1) (barring an attorney from intentionally failing to seek the lawful objectives of a client); 7-101(A)(2) (barring an attorney from failing to fulfill a contract of employment); 7-102(A)(3) (barring an attorney from concealing or knowingly failing to disclose that which

he is required by law to reveal); 7-102(A)(5) (barring an attorney from knowingly making a false statement of law or fact); and 7-102(A)(8) (barring an attorney from knowingly engaging in illegal conduct or conduct that violates a Disciplinary Rule).

*Count II*

*Miami University Representation*

{¶ 8} In June 2002, respondent filed a complaint in federal court against DuBois Book Store, Inc., on behalf of Miami University, alleging a violation of Miami's intellectual-property rights. In October 2002, DuBois Book Store offered to agree to an injunction and offered to pay a portion of Miami University's legal fees. Respondent failed to timely respond to DuBois Book Store's offer, and the bookstore withdrew its offer to pay attorney fees. Although respondent informed Miami University of the initial settlement offer at the time, he never advised SS&D or Miami University that the bookstore had withdrawn its offer to pay the attorney fees.

{¶ 9} Respondent faxed the bookstore's counsel a draft settlement agreement that had been agreed to by Miami University and the Attorney General. The agreement provided that the bookstore pay Miami University \$5,000 in damages and reimburse Miami University's legal fees up to \$7,500. The bookstore presented a counteroffer, but respondent failed to convey it to Miami University.

{¶ 10} Later, respondent faxed the bookstore's counsel a letter accepting its counteroffer, which did not include any payment of damages or attorney fees to Miami University. He also lied in telling opposing counsel that Miami University had agreed to the bookstore's settlement offer. DuBois Book Store submitted an executed settlement agreement to respondent, but he never informed Miami University of the settlement terms.

SUPREME COURT OF OHIO

{¶ 11} The case was dismissed with prejudice. Respondent later lied to Miami University's General Counsel, Robin Parker, and also to his co-counsel about the terms of the settlement. He falsely informed Parker that DuBois Book Store had accepted the agreement proposed by Miami University. Respondent faxed a document to Parker that appeared to have been signed by a DuBois Book Store representative, as well as a document purporting to be a dismissal order. Respondent had cut the signature from the agreement actually signed by the bookstore representative but never provided to Miami University, pasted it to a separate document, and made a clean copy of the signature page that he then sent to Miami University.

{¶ 12} Respondent forwarded Parker a copy of the agreement, along with a cover letter asking Parker to have the agreement executed by Miami University and returned. Along with the agreement, respondent provided a \$5,000 cashier's check, which he identified as the first payment to Miami University from the bookstore, but which was actually the retainer from the Joneses. An authorized Miami University representative executed the document, and Parker returned it to respondent, who never filed the purported agreement with the federal court.

{¶ 13} When questioned about the \$7,500 balance owed, respondent drafted a letter dated September 21, 2003, to Parker purporting to send a \$7,500 cashier's check. Respondent placed the letter and photocopy of a fictitious \$7,500 cashier's check in the case file, but he never sent the letter to Parker. In doing so, he stalled for time to obtain the \$7,500 that Miami University was expecting. Later, respondent paid Miami University \$7,500 out of his own personal funds. When Miami University later discovered what had occurred, it filed a motion for relief from judgment, and the federal court vacated its previous dismissal order and issued a permanent injunction against DuBois Book Store.

{¶ 14} The board found that respondent had violated DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 7-101(A)(1), 7-102(A)(3), 7-102(A)(5), and 7-102(A)(8).

*Count III*

*Doyle Representation*

{¶ 15} In state court, respondent represented Robert Doyle in a lawsuit against Mutual of Omaha Insurance Company involving an alleged breach of an insurance contract. Respondent voluntarily dismissed the lawsuit and later refiled it in federal court. Respondent never supplied the initial disclosures required under Fed.R.Civ.P. 26(a) requested by counsel for Mutual of Omaha.

{¶ 16} Counsel for Mutual of Omaha filed a motion to compel discovery and to disqualify Doyle's expert witnesses because respondent had disclosed the expert's names over a month late. Counsel also filed a motion for sanctions. Respondent failed to respond, and later, without the approval of Doyle, he moved to dismiss the lawsuit, and the case was dismissed with prejudice. Respondent lied to his firm about the status of the case, and he was later fired as a result of the three incidents alleged in Counts I, II, and III.

{¶ 17} The board found that respondent had violated DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 6-101(A)(3), 7-101(A)(1), and 7-101(A)(2).

*Sanction*

{¶ 18} The panel recommended that respondent be suspended from the practice of law for two years, with one year stayed on the condition that respondent complete his current contract with the Ohio Lawyers Assistance Program ("OLAP") and remain on probation for an additional two years, during which time he would remain in mental-health treatment and under a contract with OLAP similar to his current one. Moreover, the panel recommended that respondent provide to Disciplinary Counsel a letter from his qualified treating psychologist at the conclusion of the second year of his suspension. The letter was to verify respondent's adherence to the treatment plan and to indicate whether respondent is able to return to the competent, ethical, and professional practice of law under specified conditions. On March 2, 2006, the board certified its findings

of fact, conclusions of law, and recommendations, adopting the panel’s findings and recommending that respondent be suspended from the practice of law for two years with one year stayed upon conditions, followed by two years of probation.

{¶ 19} Relator objects to the recommended sanction, contending that given the severity of respondent’s misconduct, the case warrants, at a minimum, an indefinite suspension from the practice of law.

{¶ 20} Because the parties stipulated to the disciplinary violations, the sole issue before the court today is the sanction. The appropriate sanction in a case of professional misconduct depends on “the duties violated, the actual injury caused, the attorney’s mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in similar cases.” *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16; *Disciplinary Counsel v. King*, 103 Ohio St.3d 438, 2004-Ohio-5470, 816 N.E.2d 1040, ¶ 21; *Disciplinary Counsel v. Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411, 835 N.E.2d 707, ¶ 34.

*Injury to Clients*

{¶ 21} The panel declined to find that respondent “intentionally \* \* \* [p]rejudice[d] or damage[d] his client during the course of the professional relationship” and thus declined to find any violation of DR 7-101(A)(3). The panel concluded that relator did not provide clear and convincing evidence that any of the clients suffered actual prejudice or damage. We disagree. Respondent intentionally damaged his clients by lying, forging their signatures, neglecting their legal matters, dismissing their cases, and fostering the retraction of an offer to pay a client’s attorney fees. In all three counts, respondent treated clients, counsel, and his own colleagues with deceit and dishonesty. He also violated his duty to the legal system, the profession, and the community.

*Aggravating and Mitigating Circumstances*

{¶ 22} In determining the sanction for respondent's misconduct, we must review the aggravating and mitigating features of respondent's case. See Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg.").

{¶ 23} We adopt the board's findings in aggravation that respondent committed his misconduct with a dishonest or selfish motive, BCGD Proc.Reg. 10(B)(1)(b), although his conduct was tempered by his diagnosed depression. Further, we adopt the board's findings that respondent engaged in a pattern of misconduct, BCGD Proc.Reg. 10(B)(1)(c), and committed multiple offenses, BCGD Proc.Reg. 10(B)(1)(d).

{¶ 24} Regarding mitigation, we adopt the board's findings that respondent has no prior record of professional discipline, BCGD Proc.Reg. 10(B)(2)(a), made a timely, good-faith effort to make restitution and rectify the consequences of his misconduct, BCGD Proc.Reg. 10(B)(2)(c), made a full and free disclosure to the board and had a cooperative attitude, BCGD Proc.Reg. 10(B)(2)(d), had a diagnosis of a mental disability pursuant to BCGD Proc.Reg. 10(B)(2)(g), and showed genuine remorse and sorrow.

*Respondent's Mental State*

{¶ 25} To have significant mitigating effect under BCGD Proc.Reg. 10(B)(2)(g), a mental disability must be supported by all of the following: (1) a diagnosis of a mental disability by a qualified health-care professional, (2) a determination that the mental disability contributed to the misconduct, (3) a sustained period of successful treatment, and (4) a prognosis from a qualified health-care professional that the attorney will be able to return, under specified conditions if necessary, to the competent, ethical, and professional practice of law. BCGD Proc.Reg. 10(B)(2)(g)(i), (ii), (iii), and (iv).

{¶ 26} Stephanie Krznarich, a licensed independent social worker and certified chemical dependency counselor, testified at respondent's hearing. Krznarich is the Associate Director and Clinical Director of OLAP. She first met respondent in November 2004, when she conducted a chemical-dependency and mental-health assessment. She diagnosed respondent with dysthymia, a low-level depression that lasts two or more years. Respondent was experiencing anhedonia, a loss of pleasure in things once enjoyed, difficulty concentrating and focusing, and memory lapses. In addition, respondent had a sense of hopelessness, difficulty falling asleep, difficulty staying asleep, and suicidal ideation. Respondent told her that the stressors in his life resulted from unresolved grief regarding the loss of a dear friend and colleague and the loss of his mother after a prolonged illness.

{¶ 27} According to Krznarich, respondent suffered a skull fracture when he was hit by a car at age 17. Krznarich testified that traumatic brain injury can lead to poor impulse control, depression, anxiety, paranoia, sexual preoccupation, and poor anger management.

{¶ 28} Krznarich testified that respondent had signed a three-year OLAP mental-health contract. His obligation was to call OLAP daily, seek psychological counseling, investigate occupational counseling, exercise three times per week, play a musical instrument for at least ten minutes a day, and not harm himself.

{¶ 29} Krznarich testified that initially, respondent did well in contacting the OLAP office as required by his contract, but from January 1, 2005, until September 28, 2005, respondent did not make contact with OLAP. However, he did continue his therapy during that time. After September 2005, respondent's contact improved, and Krznarich testified that at the time of the hearing, he was compliant with his contract.

{¶ 30} Krznarich saw respondent again in October 2005 and testified at the December 2005 hearing that respondent was taking care of himself and was taking his medications and that his symptoms had improved. Krznarich also testified that as long as respondent takes his medication and participates in counseling, he will have the tools to deal with daily life stressors. Krznarich testified that she believed respondent's symptoms contributed to his misconduct. Krznarich also testified that respondent had demonstrated guilt and shame regarding his misconduct and as recently as 48 hours before the hearing offered to resign his license to practice law.

{¶ 31} Respondent also testified. He said that in April 2002, a former associate at his firm who had been a mentor to him died at the age of 33. Respondent began to think about his own mortality, and this event triggered a period when respondent was "overworked and overstressed" and began to neglect cases.

{¶ 32} In early 2003, respondent's mother was diagnosed with cancer. Respondent was living in Dayton, and his mother was in Cincinnati, so respondent's wife went to Cincinnati to take care of his mother five days a week. The situation created stress for his immediate family and finances. Moreover, respondent felt guilty because he was too busy to visit his mother while she was ill. Respondent testified that he began to lose his ability to concentrate. In addition, respondent's involvement in a trademark case that required frequent travel caused stress on his marriage.

{¶ 33} Respondent submitted a letter written in December 2005 by Dr. Kimberly Tate, a clinical psychologist, who had diagnosed respondent with "major depression recurrent" and general anxiety disorder. The letter stated her opinion, with a reasonable degree of certainty, that if respondent "continues to take his medications and work on the issues referenced in [her] previous letter,

Mr. Bowman is currently able to practice competent, ethical professional practice [sic] of law.”

*Sanctions in Similar Cases*

{¶ 34} We have held that when an attorney has engaged in a course of conduct that violates DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), the attorney will be actually suspended from the practice of law for an appropriate period of time. *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 191, 658 N.E.2d 237.

{¶ 35} Relator notes that we have called the “fabrication of a judicial officer’s signature ‘abhorrent to our legal system.’ ” *Disciplinary Counsel v. Insley*, 104 Ohio St.3d 424, 2004-Ohio-6564, 819 N.E.2d 1109, ¶ 12, quoting *Disciplinary Counsel v. Hutchins*, 102 Ohio St.3d 97, 2004-Ohio-1805, 807 N.E.2d 303, ¶ 31. In *Insley*, we issued an indefinite suspension. Respondent in this case fabricated both a client’s signature and the signature of another attorney. We find the deception equally abhorrent to our legal system. But we are permitted to “temper the sanction we impose for a lawyer’s dishonesty to a client and court upon proof that mental disability caused the misconduct, under some circumstances.” *Toledo Bar Assn. v. Lowden*, 105 Ohio St.3d 377, 2005-Ohio-2162, 826 N.E.2d 836, ¶19, citing BCGD Proc.Reg. 10(B)(2)(g).

{¶ 36} We find that respondent’s psychological mitigation justifies a lesser sanction than the indefinite suspension sought by relator. Although not as significant as in *Lowden*, Krznarich testified that respondent’s depression contributed to his misconduct. Moreover, respondent’s willingness to commence treatment and his present ability to practice law, as noted by both Krznarich and the psychologist, are persuasive. However, we note that much of respondent’s conduct involves active lying and deceit, rather than the neglect of client matters that is more common in cases involving depression. Moreover, we note that

respondent allowed a nine-month period to pass in 2005 without contacting the OLAP office daily, contrary to his agreement with OLAP.

{¶ 37} In *Cincinnati Bar Assn. v. Stidham* (2000), 87 Ohio St.3d 455, 721 N.E.2d 977, Stidham failed to deposit client funds in an identifiable bank account, failed to maintain records of funds and render an appropriate accounting, failed to promptly pay funds that the client was entitled to receive, and otherwise neglected entrusted legal matters. Due to Stidham's depression, we imposed a two-year suspension with one year stayed on conditions. We find Bowman's misconduct more extreme than that demonstrated in *Stidham*.

{¶ 38} *Disciplinary Counsel v. Golden*, 97 Ohio St.3d 230, 2002-Ohio-5934, 778 N.E.2d 564, involved an attorney whose pattern of neglect of client matters and failure to cooperate in the disciplinary investigation resulted from her debilitating clinical depression. Although we issued an indefinite suspension, we did so to protect the public because the attorney's misconduct involved eight cases that spanned several years. *Id.* at ¶ 23. Respondent's depression and depression-related issues contributed to his misconduct. Respondent fully cooperated with the relator and the board and has been found by his treating psychologist to be *currently* able to practice law ethically and competently.

{¶ 39} Respondent's acknowledgement of his need for mental-health services and his seeking professional advice and using the services offered by OLAP are commendable. While an indefinite suspension is not merited due to defendant's mental-health disability, we hold that a two-year suspension is warranted in order to protect the public and to ensure that respondent is able to successfully manage his illness.

#### Conclusion

{¶ 40} Thus, respondent is hereby suspended from the practice of law for two years. To ensure that respondent successfully manages his condition, he is ordered to complete his current OLAP contract and to provide quarterly reports to

SUPREME COURT OF OHIO

relator about his progress throughout his suspension period. Prior to reinstatement, respondent shall supply to relator a letter from his qualified treating psychologist, indicating his adherence to the treatment plan and the recommendations of the psychologist and including a statement that respondent will be able to return to the competent, ethical, and professional practice of law under specified conditions. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, PFEIFER, O'CONNOR, O'DONNELL and LANZINGER, JJ., concur.

---

Jonathan E. Coughlan, Disciplinary Counsel, and Stacy Solochek Beckman, Assistant Disciplinary Counsel, for relator.

Lane Alton & Horst, L.L.C., and Alvin E. Mathews Jr., for respondent.

---

## APPENDIX II

### THE RULES AND REGULATIONS GOVERNING PROCEDURE ON COMPLAINTS AND HEARINGS BEFORE THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT

#### Section 10. Guidelines for Imposing Lawyer Sanctions

(B) In determining the appropriate sanction, the Board shall consider all relevant factors; precedent established by the Supreme Court of Ohio; and the following:

(2) Mitigation. The following shall not control the Board's discretion, but may be considered in favor of recommending a less severe sanction:

(g) chemical dependency or mental disability when there has been all of the following:

(i) A diagnosis of a chemical dependency or mental disability by a qualified health care professional or alcohol/substance abuse counselor;

(ii) A determination that the chemical dependency or mental disability contributed to cause the misconduct;

(iii) In the event of chemical dependency, a certification of successful completion of an approved treatment program or in the event of mental disability, a sustained period of successful treatment;

(iv) A prognosis from a qualified health care professional or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical professional practice under specified conditions.

# **2921.13 Falsification - in theft offense - to purchase firearm.**

(A) No person shall knowingly make a false statement, or knowingly swear or affirm the truth of a false statement previously made, when any of the following applies:

- (1) The statement is made in any official proceeding.
- (2) The statement is made with purpose to incriminate another.
- (3) The statement is made with purpose to mislead a public official in performing the public official's official function.
- (4) The statement is made with purpose to secure the payment of unemployment compensation; Ohio works first; prevention, retention, and contingency benefits and services; disability financial assistance; retirement benefits; economic development assistance, as defined in section 9.66 of the Revised Code; or other benefits administered by a governmental agency or paid out of a public treasury.
- (5) The statement is made with purpose to secure the issuance by a governmental agency of a license, permit, authorization, certificate, registration, release, or provider agreement.
- (6) The statement is sworn or affirmed before a notary public or another person empowered to administer oaths.
- (7) The statement is in writing on or in connection with a report or return that is required or authorized by law.
- (8) The statement is in writing and is made with purpose to induce another to extend credit to or employ the offender, to confer any degree, diploma, certificate of attainment, award of excellence, or honor on the offender, or to extend to or bestow upon the offender any other valuable benefit or distinction, when the person to whom the statement is directed relies upon it to that person's detriment.

(9) The statement is made with purpose to commit or facilitate the commission of a theft offense.

(10) The statement is knowingly made to a probate court in connection with any action, proceeding, or other matter within its jurisdiction, either orally or in a written document, including, but not limited to, an application, petition, complaint, or other pleading, or an inventory, account, or report.

(11) The statement is made on an account, form, record, stamp, label, or other writing that is required by law.

(12) The statement is made in connection with the purchase of a firearm, as defined in section 2923.11 of the Revised Code, and in conjunction with the furnishing to the seller of the firearm of a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(13) The statement is made in a document or instrument of writing that purports to be a judgment, lien, or claim of indebtedness and is filed or recorded with the secretary of state, a county recorder, or the clerk of a court of record.

(14) The statement is made with purpose to obtain an Ohio's best Rx program enrollment card under section 173.773 of the Revised Code or a payment under section 173.801 of the Revised Code.

(15) The statement is made in an application filed with a county sheriff pursuant to section 2923.125 of the Revised Code in order to obtain or renew a license to carry a concealed handgun or is made in an affidavit submitted to a county sheriff to obtain a temporary emergency license to carry a concealed handgun under section 2923.1213 of the Revised Code.

(16) The statement is required under section 5743.72 of the Revised Code in connection with the person's purchase of cigarettes or tobacco products in a delivery sale.

(B) No person, in connection with the purchase of a firearm, as defined in section 2923.11 of the Revised Code, shall knowingly furnish to the seller of the firearm a fictitious or altered driver's or commercial driver's license or permit, a fictitious or altered identification card, or any other document that contains false information about the purchaser's identity.

(C) No person, in an attempt to obtain a license to carry a concealed handgun under section 2923.125 of the Revised Code, shall knowingly present to a sheriff a fictitious or altered document that purports to be certification of the person's competence in handling a handgun as described in division (B)(3) of section 2923.125 of the Revised Code.

(D) It is no defense to a charge under division (A)(6) of this section that the oath or affirmation was administered or taken in an irregular manner.

(E) If contradictory statements relating to the same fact are made by the offender within the period of the statute of limitations for falsification, it is not necessary for the prosecution to prove which statement was false but only that one or the other was false.

(F) (1) Whoever violates division (A)(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (13), (14), or (16) of this section is guilty of falsification, a misdemeanor of the first degree.

(2) Whoever violates division (A)(9) of this section is guilty of falsification in a theft offense. Except as otherwise provided in this division, falsification in a theft offense is a misdemeanor of the first degree. If the value of the property or services stolen is five hundred dollars or more and is less than five thousand dollars, falsification in a theft offense is a felony of the fifth degree. If the value of the property or services stolen is five thousand dollars or more and is less than one hundred thousand dollars, falsification in a theft offense is a felony of the fourth degree. If the value of the property or services stolen is one hundred thousand dollars or more, falsification in a theft offense is a felony of the third degree.

(3) Whoever violates division (A)(12) or (B) of this section is guilty of falsification to purchase a firearm, a felony of the fifth degree.

(4) Whoever violates division (A)(15) or (C) of this section is guilty of falsification to obtain a concealed handgun license, a felony of the fourth degree.

(G) A person who violates this section is liable in a civil action to any person harmed by the violation for injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other expenses incurred as a result of prosecuting the civil action commenced under this division. A civil action under this division is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of this section.

Effective Date: 04-08-2004; 06-30-2005; 04-06-2007; 07-01-2007

# **2913.31 Forging identification cards or selling or distributing forged identification cards.**

(A) No person, with purpose to defraud, or knowing that the person is facilitating a fraud, shall do any of the following:

- (1) Forge any writing of another without the other person's authority;
- (2) Forge any writing so that it purports to be genuine when it actually is spurious, or to be the act of another who did not authorize that act, or to have been executed at a time or place or with terms different from what in fact was the case, or to be a copy of an original when no such original existed;
- (3) Utter, or possess with purpose to utter, any writing that the person knows to have been forged.

(B) No person shall knowingly do either of the following:

- (1) Forge an identification card;
- (2) Sell or otherwise distribute a card that purports to be an identification card, knowing it to have been forged.

As used in this division, "identification card" means a card that includes personal information or characteristics of an individual, a purpose of which is to establish the identity of the bearer described on the card, whether the words "identity," "identification," "identification card," or other similar words appear on the card.

(C)(1)(a) Whoever violates division (A) of this section is guilty of forgery.

(b) Except as otherwise provided in this division or division (C)(1)(c) of this section, forgery is a felony of the fifth degree. If property or services are involved in the offense or the victim suffers a loss, forgery is one of the following:

- (i) If the value of the property or services or the loss to the victim is five thousand dollars or more and is less than one hundred thousand dollars, a felony of the fourth degree;

(ii) If the value of the property or services or the loss to the victim is one hundred thousand dollars or more, a felony of the third degree.

(c) If the victim of the offense is an elderly person or disabled adult, division (C)(1)(c) of this section applies to the forgery. Except as otherwise provided in division (C)(1)(c) of this section, forgery is a felony of the fifth degree. If property or services are involved in the offense or if the victim suffers a loss, forgery is one of the following:

(i) If the value of the property or services or the loss to the victim is five hundred dollars or more and is less than five thousand dollars, a felony of the fourth degree;

(ii) If the value of the property or services or the loss to the victim is five thousand dollars or more and is less than twenty-five thousand dollars, a felony of the third degree;

(iii) If the value of the property or services or the loss to the victim is twenty-five thousand dollars or more, a felony of the second degree.

(2) Whoever violates division (B) of this section is guilty of forging identification cards or selling or distributing forged identification cards. Except as otherwise provided in this division, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of division (B) of this section, forging identification cards or selling or distributing forged identification cards is a misdemeanor of the first degree and, in addition, the court shall impose upon the offender a fine of not less than two hundred fifty dollars.

Effective Date: 11-10-1999

**18 USC § 1344**

**United States Code (USC)**

**Title 18 - CRIMES AND CRIMINAL PROCEDURE**

**Chapter 63 - MAIL FRAUD**

**18 USC § 1344 Bank fraud**

---

**18 USC § 1344. Bank fraud**

PART I - CRIMES

Whoever knowingly executes, or attempts to execute, a scheme or artifice -

(1) to defraud a financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution, by means of false or fraudulent pretenses, representations, or promises;

shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

(Added Pub. L. 98-473, title II, Sec. 1108(a), Oct. 12, 1984, 98 Stat. 2147; amended Pub. L. 101-73, title IX, Sec. 961(k), Aug. 9, 1989, 103 Stat. 500; Pub. L. 101-647, title XXV, Sec. 2504(j), Nov. 29, 1990, 104 Stat. 4861.)

---

Lawriter Corporation. All rights reserved.

The Casemaker Online database is a compilation exclusively owned by Lawriter Corporation. The database is provided for use under the terms, notices and conditions as expressly stated under the online end user license agreement to which all users assent in order to access the database.