

IN THE SUPREME COURT OF OHIO

In re:	:	
Complaint against	:	
	:	
KRISTEN LYNN KELLY, ESQ.	:	No. 08-1198
Respondent,	:	
by	:	Before the Board of Commissioners
	:	On Grievances and Discipline
DISCIPLINARY COUNSEL	:	Case No. 07-059
Relator.	:	

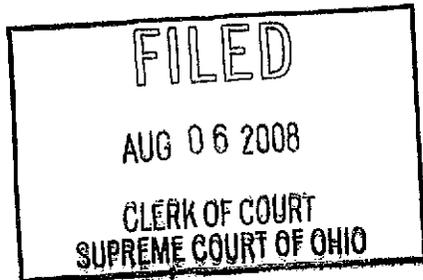
**RESPONDENT KRISTEN LYNN KELLY'S OBJECTIONS TO FINDINGS OF
FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE, AND
BRIEF IN SUPPORT THEREOF**

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I. INTRODUCTION

The matter was heard on April 18, 2008, before a hearing panel consisting of Ninth District Court of Appeals Judge Beth Whitmore, Chair, Chillicothe Municipal Court Judge John B. Street, and Lake County Prosecutor Charles E. Coulson. Prior to the hearing, the parties submitted substantial stipulations including stipulated admissions to all of the disciplinary violations set forth in Relator's Complaint (DR 1-102(A)(4), DR 1-102(A)(6), Judicial Conduct Canon 2, and Judicial Conduct Canon 4(F)). At the hearing, Relator's only witness was the Respondent. Other than a character witness who provided character testimony in support of Respondent, no one from the Greene County Humane Society ("Humane Society") testified at the hearing. Respondent's case, which focused entirely on mitigation, consisted of Respondent's own testimony, character witness testimony from three live character witnesses (including a former volunteer for the Greene County Humane Society) and numerous character letters.

Between January 2005 and August 2006, Respondent Kristen Lynn Kelly ("Respondent"), misappropriated funds from the Humane Society to pay her personal and/or family bills. (See Agreed Stipulations, hereinafter referred to as "Stipulations," ¶8, attached as Exhibit 1). In October 2006, before Relator knew about the facts in this case, Respondent self-reported her misconduct to Relator and made full restitution. (Stipulations ¶¶12, 14). Since October 2006, Ms. Kelly repeatedly admitted and acknowledged the wrongfulness of her conduct, fully cooperated throughout these proceedings, expressed sincere remorse and taken full responsibility for her conduct.

After weighing all of the evidence, Respondent's testimony, the testimony of three character witnesses, the Code violations, and an analysis of the aggravating and

mitigating factors, the Hearing Panel unanimously recommended that Respondent receive a twenty-four (24) month suspension from the practice of law, with the last six (6) months stayed. (See Panel's Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, hereinafter referred to as the "Report," p. 13, attached as Exhibit 2). The Board, however, recommended an indefinite suspension. *Id.*

As will be discussed below, and as set forth in the Panel's Report, the Panel's recommended sanction is supported by the record, first hand observation, and relevant case law; gives appropriate weight to the mitigating evidence; and meets the goals of the disciplinary system. By contrast, the Board's recommendation of an indefinite suspension is unduly harsh, fails to consider the significant mitigating evidence, and unnecessarily deprives the public of Respondent's competent, professional, and affordable legal services in the domestic relations/family law area.

II. STATEMENT OF THE CASE AND FACTS

In 1987, Respondent began working as a kennel assistant, cleaning kennels at Greene County Animal Control while she was going to community college. During the same time period, she began volunteering for the Greene County Humane Society. When she received her associate's degree, she worked full-time as a probation officer for the Greene County Common Pleas Court and attended Wright State University in the evenings. After receiving her undergraduate degree, Respondent attended Capital Law School in the evenings while maintaining her full-time position as a probation officer and working part-time for the mediation program at Franklin County Municipal Court. (Hearing Transcript, hereinafter referred to as "Tr.", pp. 29-30).

After graduating from law school, Respondent continued her relationship with the Green County Humane Society and coordinated the Humane Society's livestock cruelty program. She wrote policies and procedures relating to the investigation and prosecution of cruelty cases, prepared adoption contracts and foster home agreements, and coordinated donations and (Transcript, p. 42). When Ms. Kelly began working for Legal Aid of Western Ohio ("Legal Aid") in 1996, she continued to volunteer for the Humane Society on her lunch hour and on evenings and weekends.

It often involved me climbing fences in skirts and, you know, things like that. And because our policy was it needed to be done within a 24-hour period, which meant that I would run out on my lunch hour or right after work to do the investigations. So the animals were always looked at within 24 hours of the complaint coming in.

Then we would make a decision, I would go back and report back and we would make a decision on if we thought we needed to pull the animal, what the person needed to be cited with, if we should have them have a vet come out and check the animal. Whatever needed to be done.

(Tr. p. 40).

Between 1999 and 2000, Ms. Kelly served as the Humane Society's Humane Agent. This was a volunteer position where she would coordinate animal cruelty investigations and assist the Humane Society in prosecuting animal cruelty cases. Between 2000 and 2006, she continued to assist the Humane Society by coordinating animal cruelty investigations, seizing animals, locating foster homes for animals that had been seized, organizing animal adoptions, and assisting the Humane Society with obtaining grants for the new livestock program. Many of the seized animals were initially cared for by Ms. Kelly at her home. (Stipulations ¶13, Transcript pp. 39-43). As the Panel observed in its report to the Board, Respondent "worked obsessively without

regard for her own welfare in order to protect abused animals on a 24/7 basis. **She was the Society's resource of first and last resort.**" (Report, p.2). (emphasis added).

While working for Legal Aid, Ms. Kelly and her husband adopted two girls (ages 10 and 14) that had previously languished in foster care. Both of them had severe behavioral issues and required constant monitoring. While these children were in her care, Ms. Kelly also served as a foster parent for other abused children. One of Ms. Kelly's adopted daughters had a social detachment disorder that caused her to become aggressive and physically abusive to her new family members and classmates. These ongoing issues caused significant stress in the family and the deterioration of Ms. Kelly's seventeen-year marriage. (Transcript, pp. 46-47).

During the same time period that her marriage ended and Respondent was already struggling with adjusting to only one income, Respondent's chronic health issues became more severe and required surgery. Owing to medical insurance and other economic shortfalls, Respondent obtained a second mortgage on her only remaining asset, her home. Shortly thereafter, Respondent faced foreclosure. (Transcript, pp. 47-48).

The Board Report provides a fair and accurate summary of the events that lead up to Respondent's admitted misconduct and the misconduct itself. The report states:

Respondent's personal history demonstrates that she has a deeply felt concern for disadvantaged members of society. She and her former husband adopted two children with behavioral problems; they also served as foster parents for other children in need. These passions, though laudable, have strained Respondent's financial resources as well as her physical and mental wellbeing and have contributed in part to the misconduct at issue in this case.

(Report, p. 2).

With respect to the misconduct, the Report's summary of the events were based upon the stipulations and Respondent's testimony at the hearing:

Respondent served as a volunteer treasurer for the Society from December 2004 until August 2006. As a treasurer, she maintained three Society bank accounts, paid bills, made bank deposits, and prepared the annual IRS 990 tax form. She was authorized to use the Society's credit card.... Between January 2005 and August 2006, Respondent misused her authority as treasurer and took approximately \$42,000 of Society money. She used the stolen money to pay her personal and family bills. At monthly Society board meetings, Respondent represented treasurer's reports which she crafted to present false information and to conceal her theft.

(Report, pp. 2-3).

On October 3, 2006, even though the settlement agreement with the Humane Society was confidential, Respondent self-reported her misconduct to Relator. (Stipulations, ¶12). Respondent's story was also leaked to the local newspapers, resulting in a number of newspaper articles and television news stories. In addition to being personally humiliated and exposing her family members to embarrassment and hurtful comments, Respondent resigned her position as Magistrate of the Greene County Domestic Relations Court. She also stepped down as President of the Greene County Bar Association.

Between August 2000 and October 2006, while serving as a magistrate, Respondent continued her volunteer efforts for the Humane Society, which included the provision of uncompensated legal services. (Report, p. 4). Specifically, she provided legal advice to the Humane Society, filed various pleadings in animal cruelty cases and drafted animal adoption contracts. (Stipulations ¶16).

Although Respondent did make occasional court appearances on behalf of the Humane Society, they were all criminal cases before the Greene County Municipal Court.

Relator learned about Respondent's violation of Canon 4(F) of the Code of Judicial Conduct during its investigation into the self-reported misappropriation when Respondent told Relator about her volunteer efforts for the Humane Society. (Transcript, pp. 60-61). There is no evidence of any complaints that arose from Respondent's serving as a magistrate while continuing to provide free legal services to the Greene County Humane Society.

After weighing all of the stipulated evidence, Respondent's testimony, the testimony of three character witnesses (including a former volunteer for the Greene County Humane Society), and numerous character letters, the Code violations, and the aggravating and mitigating factors, the Hearing Panel unanimously recommended that Respondent receive a twenty-four (24) month suspension from the practice of law, with the last six (6) months stayed. The unanimously recommended sanction included the condition that Respondent "receive appropriate treatment for her obsessive compulsive disorder and obtain certification from a qualified health care professional that she is able to return to the competent, ethical professional practice of law under specified conditions, or, if not conditions or limitations on the practice of law are required, without restriction." (Report, p. 13). The Board, however, recommended an indefinite suspension "based on the positions of trust that she held and the seriousness of the repeated misconduct." *Id.*

II. LAW AND ARGUMENT

OBECTION I: The vantage point of the hearing panel, which observed the witnesses firsthand, should be given greatest deference in assessing the sanction.

Prior to the hearing, Commissioners Whitmore, Coulson, and Street reviewed all of the documents, including the stipulations and pre-hearing briefs submitted by Relator and Respondent. At the hearing and for more than three hours, the panel had the opportunity to observe Respondent on cross-examination and direct examination and directly interview Respondent themselves. Indeed, all three of the panel members asked Respondent detailed questions about how she actually carried out the misappropriation, explored her motivations behind the misconduct, and challenged her assurances that she would never again put herself in a similar position. (Transcript pp.72-111). The Hearing Panel also considered the testimony of three character witnesses and numerous character letters.

The importance of a hearing panel's firsthand observations is frequently articulated by this Court. As noted in *Cincinnati Bar Assn. v. Statzer* (2003), 101 Ohio St.3d 14, 2003-Ohio-6649 at ¶8 (citing *Cleveland Bar Assn. v. Cleary* (2001), 93 Ohio St.3d 191, 198, 2001-Ohio-1326):

The panel observed the witnesses word firsthand and thus possessed an enviable vantage point in assessing the credibility and weight of their testimony. For this reason, we ordinarily defer to a panel's credibility determinations in our independent review of professional discipline cases unless the record weighs heavily against those findings.

Other decisions of this Court explicitly giving deference to panel decisions and recommendations "in light of the reality that the Panel observed the witnesses firsthand" include *Columbus Bar Assn. v. Willette* (2008), 117 Ohio St.3d 433, 2008-Ohio-1198 at

¶29; *Cleveland Bar Assn. v. Zingarelli* (2000), 89 Ohio St.3d 210, 2000-Ohio-140; *Dayton Bar Assn. v. Suarez* (2002), 97 Ohio St.3d 235, 2002-Ohio-5935; *Cuyahoga County Bar Assn. v. McClain* (2003), 99 Ohio St.3d 248, 2003-Ohio-3394, and *Office of Disciplinary Counsel v. Moore* (2004), 101 Ohio St.3d 261, 2004-Ohio-734.

As noted above, the Hearing Panel recommended a suspension of twenty-four (24) months with six (6) months stayed with conditions, after an exhaustive consideration of factors bearing on the sanction and aggravation/mitigation of same. By contrast, the Board substantially increased the recommended sanction to an indefinite suspension, and the Board's only explanation was to generally cite "the positions of trust that she held and the seriousness of the repeated misconduct." (Report, p. 13). In assessing the appropriate sanction for Respondent, we respectfully submit that the Panel's detailed review and its structural responsibility for hearing all of the evidence firsthand should be given greater weight.

When assessing the appropriate sanction in a disciplinary matter, this Court has previously departed from the Board's recommendation when it is unduly harsh and/or unsupported by the record. Under such circumstances this Court has chosen to instead adopt the recommendation of the three individuals who had the enviable vantage point and made firsthand observations that were supported by the evidence presented. See, e.g. *Akron Bar Assn. v. Amourgis* (2007), 113 Ohio St.3d 32, 2007-Ohio-974 at ¶8 (Agreeing with the Respondent that the Board recommended sanction was too harsh and instead adopted the sanction recommended by the panel); and *Cleveland Bar Assn. v. Cleary* (2001), 93 Ohio St.3d 191 at 207, 2001-Ohio-1326. ("We consider the board's recommendation unduly harsh and instead adopt the sanction recommended by the

panel.”). Respondent submits that just as in *Amourgis* and *Cleary*, a departure from the unsupported and unduly harsh recommendation of the Board is warranted, and this Court should adopt the sanction recommended by the Panel.

OBJECTION II: The Board recommendation of an indefinite suspension does not reference the substantial mitigation evidence, and is unduly harsh.

BCGD Proc. Reg. 10(B) states that in addition to considering all relevant factors and precedent established by the Supreme Court of Ohio, the Board may consider mitigating factors when recommending a sanction. In this case, the parties stipulated to the presence of the following mitigating factors under BCGD Proc. Reg. 10(B)(1):

- a) Absence of a prior disciplinary record;
- c) Timely good faith effort to make restitution and to rectify consequences of misconduct, including payment by Respondent from her own personal funds;
- d) Full and free disclosure and cooperative attitude toward these proceedings;
- e) Good character and reputation;

The parties also stipulated to the presence of the following aggravating factors under BCGD Proc. Reg. 10(B)(2):

- (b) dishonest or selfish motive; and
- (c) pattern of misconduct.

(Stipulations, ¶¶ 19-20).

In addition to the above, Respondent self-reported her misconduct to Relator and promptly reimbursed the Humane Society for the total amount of misappropriated funds,

costs associated with conducting the audit, interest, and credit card/bank fees.¹ (Stipulations, ¶¶12, 15). This Court recently recognized self-reporting as a mitigating feature in *Disciplinary Counsel v. Niermeyer* (2008), Slip Op. 2008-Ohio-3824 at ¶13.

Furthermore, even though her settlement agreement was confidential, Respondent's story was leaked to the local newspapers and television stations, resulting in a number of articles and television news stories about the misappropriation. In addition to being personal humiliation and exposing her family members to hurtful comments, Ms. Kelly resigned from her position as Magistrate and stepped down as President of the Greene County Bar Association. (Stipulations, ¶13).

The Hearing Panel also noted that in addition to the fact that Respondent had no prior disciplinary record, “[t]he pattern of misconduct at issue represents the only blemish on an otherwise commendable legal career.” (emphasis added). (Report, p. 6). Respondent's “commendable legal career” was highlighted by her work with Legal Aid of Western Ohio, teaching a paralegal training program at Capital University, serving as president of her local bar association, and being credited with reviving the Greene County Bar Association's membership and uniting a fragmented association. *Id.*

The record is also replete with evidence and statements relating to Respondent's sincere remorse, personal growth, and significant steps she took to ensure that the misconduct would never happen again.

I have gone through pure hell over this, beating myself up over it. Not from the time that I got caught on. It's not because I got caught. It started when I first started taking money. It is hell. It is horrible. It's made me a

¹ In Ohio, a lawyer's duty to self-report under Rule 8.3 of the Ohio Rules of Professional Misconduct was not adopted until February 1, 2007. Respondent's self-reported misconduct took place between January 2005 and August 2006. (Stipulations, ¶¶18,12).

totally different person. Financially, I have been able, by living with my parents, I got all my bills paid off. I now live on a single income. If something were to happen, short of me being totally disabled, I don't rely on anybody else now. I relied on my husband's income before. I don't rely on that now. It's my income and my income only.

* * *

At the office – I don't handle money much anyway. If I do, I write a receipt for a client. There's somebody in the office that always double-checks everything that I do. I ask for it to be that way. Some of the other attorneys don't do that. I ask for it to be that way. I know I will never do this again, but I understand other people's concerns about it.

* * *

I'm so sorry for what I did to the humane society. I never meant to hurt an animal. I never meant to hurt the organization. I'm sorry for what I did to the legal profession with all this coming out in the media. Attorneys have a bad enough name as it is and I had to make it worse on top of that. I just hope I still have the chance to practice law so I can continue to try to help people as I wanted to do. I just never meant to hurt anybody.

(Transcript, pp. 64-65).

At the hearing, Respondent reported that in 2005, she had been diagnosed with obsessive compulsive disorder, and is still treated with the medication Zoloft. (Tr. p. 103). When asked by the Panel Chair how Respondent's disorder affects her, Respondent stated as follows:

I think it affects my judgment in my decision making. I tend to make decisions too quick without thinking them through, which I think part of the problem with the agreement on my divorce is if I had thought it through and sat down and looked and looked at this is what it cost per month, this is what I have to have coming in, this is what I have, I think I would have made judgments differently. I think with medication it has helped me somehow slow down my mind and my thinking.

* * *

I'll stay on my medication. I know that.

(Tr. pp. 105-106). Although her reported diagnosis was not accompanied with the requisite elements set forth in BCGD Proc. Reg. 10(B)(2)(g), the Panel decided “not to completely ignore such factors,” and took it into account in its recommended sanction. (Report, p. 8).

Charles Rowland, the current president of the Greene County Bar Association, appeared as a character witness for Respondent and provided testimony regarding Respondent’s notable contributions to the Greene County Bar:

She came in [as president of the Greene County Bar Association] when it was a tough time. Some of the older people were leaving. She put on some really excellent leadership, held some CLE. She demonstrated leadership. We thought she was coming into her own because she was then chief magistrate and she was kind of seen as a person who was the next generation, if you will.

* * *

Kristen is well respected. Kristen, what we talked about the other day was something before, redemption. There is no better candidate for redemption in my mind than Kristen Kelly. I know the community she was in, I know what she’s done before, and I know how horrible a mistake that she made was. But to answer that question, that’s what I have in mind. You have an excellent person here who could be redeemed and make this a positive experience and learn from this and go forward as a good representative of the bar, and I hope that’s the outcome here today.

(Transcript, pp. 134, 135-136).

In its Report, the Hearing Panel summarized the testimony of the character witnesses and the character letters submitted in support of Respondent:

The witnesses and letters describe Respondent as having a strong reputation in her personal and professional communities and as a competent, knowledgeable, professional and compassionate attorney. They note her fairness and proficiency as a magistrate, her considerable service to the community, and her effectiveness as president of the Greene County Bar Association. They also commended her pro bono work and willingness to provide legal services to those less fortunate at substantially reduced fees.

(Report, p. 7).

An additional critical mitigating factor that should not be overlooked is Respondent's commitment to providing affordable legal services for individuals who do not qualify for legal aid but still cannot afford a lawyer:

As far as with my practice, I do some pro bono work because it's those people that are the in-between you know. They come to me and say, I don't qualify for legal aid but they don't have money either. And it's sad because usually they're real simple divorces. Why other attorneys won't do it, I don't understand. It's just a matter of a few hours of your time, you know to get these people divorced so they can move on with their lives. And I do civil protection orders. I have done some of those pro bono, and I do some though the Crime Victims Assistance Program.

(Tr. pp. 61-62).

As recognized in *Ohio State Bar Assn. v. Johnson* (2002), 96 Ohio St.3d 192, 2002-Ohio-3998 at ¶ 7, this Court "must be careful not to deprive the public of those who, through sufficient rehabilitation, may be able to recover their ethical orientation and serve competently in a professional capacity." In *Dayton Bar Assn. v. Andrews* (2005), 105 Ohio St.3d 453, 2005-Ohio-2696 at ¶14, this Court noted that it was "impressed with the witnesses' appeal for respondent's continued service to indigent criminal defendants and f[ound] this particularly mitigating." This critical mitigating element was also recognized in *Cleveland Bar Assn. v. Smith* (2004), 102 Ohio St.3d 10, 2004-Ohio-1582, involving a lawyer who "had devoted her practice to principally low-and moderate income clients who might not have been able to find representation elsewhere." Also see *Disciplinary Counsel v. Young* (2004), 102 Ohio St.3d 113, 2004-Ohio-1809 at ¶ 15; and *Columbus Bar Assn. v. Elsass* (1999), 86 Ohio St.3d 195, 1999 Ohio 93.

Smith involved a lawyer who was found to have violated eight disciplinary rules: DR 1-102(A)(3), DR 1-102(A)(5), DR 1-102(A)(6), DR 2-110(A)3, DR 6-101(A)(3), DR 7-101(A)(3), DR 6-102, and DR 9-102(B)(4). *Id.* at ¶ 12. In its 2004 Opinion, the *Smith* Court agreed that the Relator’s recommendation of a six (6) month suspension was appropriate, but ultimately decided in light of the mitigating factors, to stay the suspension in its entirety. *Id.* Those mitigating factors included the lawyer’s devotion of her practice to principally low and moderate income clients. Also notable was the lawyer’s appearance of being genuine to the panel at the hearing, accepting responsibility for her mistakes and showing remorse. The lawyer from *Smith* was also an active member in her church and community. *Id.* at ¶10. These same compelling mitigating factors apply in the case at bar.

In support of its recommended sanction of a twenty-four (24) month suspension with six (6) months stayed with conditions, the Hearing Panel provided a detailed summary of the relevant case law. In addition, the Hearing Panel analyzed all of the cases submitted by Relator in support of an indefinite suspension: *Geauga County Bar Assn. v. Bruner* (2003), 98 Ohio St.3d 312, 2003-Ohio-736; *Disciplinary Counsel v. Nagorny* (2004), 105 Ohio St.3d 97, 2004-Ohio-6899 and *Akron Bar Assn. v. Dietz* (2006), 108 Ohio St.3d 343, 2006-Ohio-1067. The Hearing Panel correctly concluded that although Respondent’s misconduct was similar to the violations in the above cases cited by Relator, “the panel finds her misconduct mitigated by her selfless service to numerous community causes, her restitution, self-reporting, and cooperation with the disciplinary process. The panel [was] also persuaded to recommend a lesser sanction because of Respondent’s present efforts to avoid further temptation by not handling

money in connection with her present employment and by her expressions of regret.” (Report, p. 11).

In its analysis of the cases submitted by Relator in support of a two (2) year suspension (*Cincinnati Bar Assn. v. Zins* (2007), 116 Ohio St.3d 1, 2007-Ohio-5263; *Disciplinary Counsel v. Furtado* (1994), 71 Ohio St.3d 20, 1994-Ohio-236; *Disciplinary Counsel v. Badalian* (1990), 51 Ohio St.3d 177; and *Disciplinary Counsel v. Hock* (1988), 36 Ohio St.3d 177, 522 N.E.2d 543), the Hearing Panel again correctly concluded that even though *Zins*, *Furtado*, *Badalian* and *Hock* involved attorneys who misappropriated funds, the mitigating evidence in the present case was sufficiently significant to warrant a sanction less severe than a two (2) year suspension. Notably, the Panel found that Respondent's “misappropriation was unrelated to the practice of law and Respondent has otherwise been recognized as an asset to her profession.” In addition, “Respondent faced personal problems, fully cooperated with Relator’s investigation, expressed remorse, and had many letters describing her good character. Finally, as in *Hock*, Respondent made restitution for all misappropriated funds and her career has otherwise earned her the respect and trust of both colleagues and clients.” (Report, p. 13).

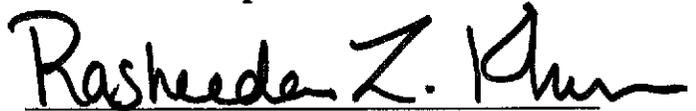
III. CONCLUSION

It is well established that when “determining the appropriate length of any suspension and any attendant conditions, we must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public.” *Disciplinary Counsel v. Johnson* (2007), 113 Ohio St.3d 344, 2007-Ohio-2074 at ¶84 (quoting *Disciplinary Counsel v. O’Neil* (2004), 103 Ohio St.3d 204, 2004-Ohio-4704). Furthermore, this

Court “must be careful not to deprive the public of those who, through sufficient rehabilitation, may be able to recover their ethical orientation and serve competently in a professional capacity.” *Ohio State Bar Assn. v. Johnson* (2002), 96 Ohio St.3d 192, 2002-Ohio-3998 at ¶7. The Panel's recommended sanction is supported by the foregoing authorities, the Panel Report, witness testimony, and character letters along with the overwhelming and uncontradicted mitigation evidence including prompt restitution, self-reporting, sincere remorse, and the fact that the misconduct at issue “is the only blemish on an otherwise commendable career.” The Panel's recommended sanction provides adequate protection to the public without unnecessarily depriving it from the benefits of Respondent's professional and affordable legal services. Therefore, as set forth above, careful consideration of these factors, evidence and authorities support the adoption of the Panel’s recommended sanction of a twenty-four (24) month suspension from the practice of law with the last six (6) months stayed, with conditions.

Respectfully submitted,

Counsel for Respondent:



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Objections By Respondent Kristen Lynn Kelly to Report of Board of Commissioners on Grievances and Discipline was served upon the following via regular U.S. Mail, on this 6th day of August, 2008:

Jonathan E. Coughlan, Esq.
Robert R. Berger, Jr. Esq.
Office of Disciplinary Counsel of
The Supreme Court of Ohio
250 Civic Center Drive; Suite 325
Columbus, OH 43215-7411

Jonathan W. Marshall, Esq.
The Supreme Court of Ohio
Board of Commissioners on Grievances and Discipline
65 S. Front Street; 5th Floor
Columbus, OH 43215-3431


Rasheeda Z. Khan

APPENDIX

<u>Exhibit</u>	<u>Description</u>
1.	Agreed Stipulations
2.	Panel's Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

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

Kristen Lynn Kelly, Esq.
Attorney Registration (0064964)
2290 Murdock Road
Cedarville, OH 45314

Respondent,

Disciplinary Counsel
250 Civic Center Drive; Suite 325
Columbus, OH 43215-7411

Relator.

Case No. 07-059

FILED

MAR 7 - 2008

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

AGREED STIPULATIONS

Relator Disciplinary Counsel, and Respondent Kristen Kelly, do hereby stipulate to the admission of the following facts, violations, aggravation, mitigation, and exhibits.

STIPULATED FACTS

1. Respondent Kristen Lynn Kelly ("Respondent"), was admitted to the practice of law in the State of Ohio on November 13, 1995. Respondent is subject to the Code of Judicial Conduct, the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the government of the Bar of Ohio.
2. Since at least 1997, Respondent was a volunteer for the Humane Society. Her volunteer services included assisting in animal cruelty investigations, assisting in animal adoptions, and searching for foster homes for abused live stock animals and pets.



3. Between 1999 and 2000, Respondent served as the Humane Society's Humane Agent. This was a volunteer position where Respondent would coordinate animal cruelty investigations and assist the Humane Society in prosecuting animal cruelty cases. Between 2000 and 2006, Respondent continued to assist the Humane Society by coordinating animal cruelty investigations, seizing animals, locating foster homes for animals that had been seized and organizing animal adoptions. Many of the seized animals were initially cared for by Respondent at her home.
4. In August 2000, Respondent was appointed as a magistrate for the Greene County Domestic Relations Court. In January 2003, she became chief magistrate.

COUNT 1

5. From November or December 2004 through August 2006, Respondent served as treasurer for the Greene County Humane Society. This was a volunteer unpaid position.
6. As treasurer, Respondent was responsible for maintaining three bank accounts, paying bills, making bank deposits, and preparing the annual IRS 990 tax form. Respondent was also authorized to use the Humane Society Chase credit card.

7. A short time after assuming the role of treasurer, Respondent transferred the Humane Society bank accounts from Bank One to Countywide Federal Credit Union, where Respondent's personal bank accounts were maintained.
8. Between January 2005 and August 2006, Respondent misappropriated Humane Society funds to pay her personal and/or family bills.
9. During monthly Humane Society board meetings, Respondent presented monthly treasurer's reports that contained false information so as to conceal the misappropriated funds.
10. In August 2006, Respondent resigned as treasurer, deposited \$4,800 into the Humane Society bank accounts and provided the Humane Society with her financial records.
11. The Humane Society's accounting firm conducted an informal audit to confirm the amount of funds Respondent owed to the Humane Society.
12. On October 3, 2006, Respondent self-reported her misconduct to Relator.
13. On October 6, 2006, Respondent submitted her resignation letter to Green County Domestic Relations Judge Steven L. Hurley and resigned as chief magistrate for the Greene County Domestic Relations Court effective October 13, 2006.

14. On or about October 10, 2006, the Humane Society and Respondent entered into a Compromise and Settlement Agreement where Respondent paid \$38,121.09 in addition to her previous payment of \$4,800 to the Humane Society.
15. Respondent's total payment of \$42,921.09 to the Humane Society reimbursed the Humane Society for the total amount of misappropriated funds, costs associated with conducting the audit, interest, and credit card / bank fees.

COUNT II

16. Between August 2000 and October 2006, while Respondent was serving as a fulltime magistrate, Respondent continued to act as volunteer for the Humane Society and continued to provide volunteer legal services. These volunteer legal services included providing legal advice to the Humane Society, filing various pleadings in animal cruelty cases and drafting animal adoption contracts.

STIPULATED VIOLATIONS

17. Relator and Respondent stipulate that Respondent's conduct in Count I violates the Code of Professional Responsibility: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102 (A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness

to practice law]; and the Code of Judicial Conduct Canon 2 [a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity of the judiciary].

18. Relator and Respondent stipulate that Respondent's conduct in Court II violates the Code of Judicial Conduct Canon 4 (F) [a judge shall not practice law].

STIPULATED AGGRAVATION

19. Relator and Respondent stipulate that Respondent's conduct involved the following aggravating factors as listed in BCGD Proc. Reg. § 10(B)(1):
- (b) dishonest or selfish motive; and
 - (c) pattern of misconduct.

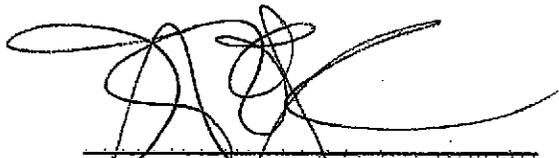
STIPULATED MITIGATION

20. Relator and Respondent stipulate that the Respondent's conduct involved the following mitigating factors as listed in BCGD Proc. Reg. § 10(B)(2):
- (a) absence of a prior disciplinary record;
 - (c) timely good faith effort to make restitution or to rectify consequences of misconduct;
 - (d) full and free disclosure to the disciplinary Board or cooperative attitude toward proceedings; and
 - (e) character and reputation.

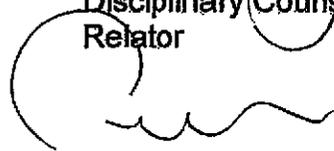
STIPULATED EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>
Exhibit 1	Treasurer's reports created by respondent for The Humane Society of Green County for January 2005, February 2005, May 2005, August 2005, October 2005, October/November 2005, December 2005, January/February 2006, March 2006, May 2006, June 2006.
Exhibit 2	Humane Society for Greene County income statement for 2005.
Exhibit 3	October 2006 settlement agreement.
Exhibit 4	Seven pleadings filed by Respondent on behalf of The Humane Society of Green County in 2000, 2001, 2002 and 2003.
Exhibit 5	Chart showing funds misappropriated from The Humane Society of Greene County.
Exhibit 6	Respondent's October 3, 2006 letter self-reporting her misconduct to Relator.

The above are stipulated to and entered into by agreement by the undersigned parties on this 7th day of March, 2008.



Jonathan E. Coughlan (0026424)
Disciplinary Counsel
Relator



Robert R. Berger (0064922)
Assistant Disciplinary Counsel



Geoffrey Stern (0013119)
Counsel for Respondent
Kegler, Brown, Hill & Ritter Co., L.P.A.



Rasheeda Khan (0075054)
Counsel for Respondent
Kegler, Brown, Hill & Ritter Co., L.P.A.

Kristen Kelly per telephone
Kristen Kelly (0064964)
Respondent
authing 3/7/08
WYZK

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

In Re:	:	
Kristen Lynn Kelly	:	Case No. 07-059
Attorney Registration No. 0064964	:	
	:	Findings of Fact,
Respondent	:	Conclusions of Law and
	:	Recommendation of the
Disciplinary Counsel	:	Board of Commissioners on
	:	Grievances and Discipline of
Relator	:	the Supreme Court of Ohio
	:	

INTRODUCTION

This matter was heard on April 18, 2008, upon the Complaint of the Disciplinary Counsel, Relator, against Kristen Lynn Kelly, Attorney Registration No. 0064964. Ms. Kelly was admitted to practice in Ohio on November 13, 1995.

The members of the hearing panel were Judge Beth Whitmore, Chair, Judge John B. Street, and Attorney Charles E. Coulson. None of the panel members is from the district from which the complaint arose or served as a member of the probable cause panel that certified the matter to the Board of Commissioners on Grievances and Discipline.

Robert Berger appeared as counsel for Relator. Respondent was present and represented by Rasheeda Z. Khan and Geoffrey Stern. The parties submitted the agreed Stipulations attached hereto as Exhibit A and incorporated herein. Respondent testified and presented live testimony from three character witnesses.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Panel adopts the facts as set forth in the stipulations, finding that they are supported by clear and convincing evidence. The stipulations, and the testimony at the hearing, demonstrate that Respondent has a passion for animal welfare and has volunteered at the Greene County Humane Society ("Society") since at least 1997. In addition, Respondent's personal history demonstrates that she has a deeply felt concern for disadvantaged members of society. She and her former husband adopted two children with behavioral problems; they also served as foster parents for other children in need. These passions, though laudable, have strained Respondent's financial resources as well as her physical and mental wellbeing and have contributed in part to the misconduct at issue in this case.

As a Society volunteer, Respondent assisted in animal cruelty investigations, in seizing animals, in prosecuting cruelty cases, in animal adoptions, and in locating foster homes for abused livestock and pets. She worked obsessively without regard for her own welfare in order to protect abused animals on a 24/7 basis. She was the Society's resource of first and last resort.

Respondent was admitted to practice law in 1995 and practices now mainly in domestic relations. In August 2000, Respondent was appointed as a magistrate for the Greene County Domestic Relations Court. She became chief magistrate in January 2003 but resigned that position in October 2006 after the exposure of the misconduct at issue.

In summary, as to Count I, Respondent served as a volunteer treasurer for the Society from December 2004 through August 2006. As treasurer, she maintained three Society bank accounts, paid bills, made bank deposits, and prepared the annual IRS 990 tax form. She was authorized to use the Society's credit card. A short time after becoming treasurer, Respondent transferred the Society bank accounts from Bank One to Countywide Federal Credit Union,

where she had her personal bank accounts. Between January 2005 and August 2006, Respondent misused her authority as treasurer and took approximately \$42,000.00 of Society money. She used the stolen money to pay her personal and family bills. At monthly Society board meetings, Respondent presented treasurer's reports which she crafted to present false information and to conceal her theft.

In addition to the cost of raising her adopted and fostered children, Respondent also undertook responsibility for three horses and other pets. These animals were not Society animals and Respondent received no reimbursement for their care. Respondent perceived one horse in particular as essential to one daughter's therapeutic behavioral modification. In addition, Respondent was not fully reimbursed for the cost of raising the foster children. However, believing that they should be clothed and fed on a par with her own adopted children, Respondent felt compelled to spend more money than that provided by the agency responsible for placement of these children. In short, for whatever reasons, Respondent lived well beyond her means.

Respondent would have this Panel believe that because she expected to be the Society Treasurer for "the next 20 years" she always intended to repay the stolen money. However, no such repayment was made until events made discovery inevitable. Moreover, Respondent's intended method of repayment - the deposit of personal funds disguised as donations to the Society - would itself have been conduct evidencing additional fraud and deceit.

The charade began to unravel in August 2006 when a veterinarian complained to the Society President about an unpaid bill. Knowing that discovery was imminent, respondent resigned as treasurer, deposited \$4,800 into the Society bank accounts, and provided the Society her financial records. Respondent testified that she felt immediate relief that it was over.

The Society hired an accountant to determine how much money was missing. On October 3, 2006, Respondent signed a settlement agreement with the Society as to the amount due and received a promise that the Society would keep the matter confidential and forego criminal and civil prosecution. On the same day, Respondent self-reported her misconduct to Relator as follows:

“I am currently resigning as Chief Magistrate of the Greene County Domestic Relations Court. I feel it necessary to let you know my situation. I volunteered as Treasurer of the Greene County Humane Society from January 2005 until August 2006. During that time, I spent unauthorized expenditures. I resigned in August of 2006, voluntarily, and informed the organization that I had done this but believed I had paid back all the funds. It was agreed an audit would be done and if any additional amounts were found I would pay those. Additional amounts were found and I promptly paid these amounts. An agreement was signed that no criminal or civil actions would be filed and the incident would be kept confidential. Judge Hurley was informed of the incident and promptly took action on my employment. I resigned my position as Magistrate. Please inform me as to the affect this will have on my license to practice. I do not wish to lose my license if at all possible.”

On October 6, 2006, Respondent submitted her resignation letter to the Greene County Domestic Relations Court, resigning as chief magistrate effective October 13, 2006. The confidential Compromise and Settlement Agreement required that Respondent pay an additional \$38,121.09 to the Society. Respondent’s total payment of \$42,921.09 compensated the Society for the stolen money and costs associated with conducting the audit, interest, bank fees, and credit card fees.

In summary, as to Count II, between August 2000 and October 2006, while volunteering for the Society and serving as a magistrate, Respondent also provided uncompensated legal services to the Society. She provided legal advice, drafted animal adoption contracts, filed various pleadings in animal cruelty cases, and made various court appearances. Respondent testified that no one questioned her filing of pleadings and making court appearances during her

tenure as a full time magistrate. Respondent testified that she was unaware of the requirements set forth in Canon 4(F) of the Code of Judicial Conduct.

Based on the Stipulations and the testimony of Respondent, the panel finds by clear and convincing evidence that Respondent committed the misconduct alleged in the Complaint.

As to Count I, Respondent violated Code of Professional Responsibility DR 1-102(A)(4) - a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; DR 1-102(A)(6) – a lawyer shall not engage in conduct that adversely reflects on the lawyer’s fitness to practice law; and the Code of Judicial Conduct, Canon 2 – a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity of the judiciary.

As to Count II, Respondent violated the Code of Judicial Conduct, Canon 4(F) – a judge shall not practice law.

AGGRAVATION AND MITIGATION

Pursuant to BCGD Procedural Regulations, the Board considers the following mitigating factors when determining the proper sanction: “(a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) timely good faith effort to make restitution or to rectify consequences of misconduct; (d) full and free disclosure to disciplinary board or cooperative attitude toward proceedings; (e) character or reputation; (f) imposition of other penalties or sanctions; (g) chemical dependency or mental disability ***; (h) other interim rehabilitation.” BCGD Proc. Reg. 10(B)(2)(a-h). The parties stipulated to the following mitigating factors and the panel finds the following by clear and convincing evidence:

- Absence of a prior disciplinary record.

- Timely good faith effort to make restitution and to rectify the consequences of misconduct.
- Full and free disclosure to the disciplinary board and cooperative attitude toward proceedings.
- Character and reputation.

The Respondent has no prior disciplinary record. The pattern of misconduct at issue represents the only blemish on an otherwise commendable legal career. After completing law school and being admitted to the bar in 1995, Respondent worked with Legal Aid of Western Ohio. She went on to serve for several years as a magistrate. While working as a magistrate, Respondent taught a paralegal training program at Capital University for three years. In 2006, Respondent served as president of her local bar association. She is credited with reviving the association's membership and for uniting a fragmented association. After leaving her magistrate position, Respondent went into private practice focusing primarily on domestic relations work.

The panel recognizes that Respondent made full restitution to the Humane Society. After resigning as Society treasurer in August, 2006, Respondent paid the Society \$4,800. However, it is tragic that Respondent had been saving that money in order to repay the Society but had not yet returned it because she had not figured out how to restore the funds without revealing her theft. She paid the balance of \$38,121.09 pursuant to the October settlement agreement. While the terms of the settlement were confidential, several articles appeared in the local newspaper causing embarrassment to Respondent and her family. Respondent testified that this unwanted publicity has been very painful and that she occasionally experiences negative comments by opposing counsel, sometimes in the presence of a client. While Respondent generally expressed remorse for her conduct, at times it seemed that she views herself as the victim of circumstance.

Her reaction to the adverse publicity was bitter and her attitude suggested that she felt unfairly deprived of the benefits of confidentiality bargained for in the settlement agreement.

The panel acknowledges that Respondent cooperated fully in the disciplinary process. She self-reported her misconduct by way of a letter sent to Relator the same day she signed the settlement agreement. During the disciplinary hearing, Respondent apologized for the harm she caused to the Society and the legal profession. She admitted that there was no excuse for what she has done. The panel notes, however, that the letter Respondent sent to Disciplinary Counsel was not entirely candid and was silent as to the substantial amount of money taken. Respondent conceded that her letter intentionally minimized her misconduct because she did not want to lose her license to practice law.

Respondent presented numerous written character references and three witnesses who testified favorably about her character and reputation. The witnesses and letters describe Respondent as having a strong reputation in her personal and professional communities and as a competent, knowledgeable, professional and compassionate attorney. They note her fairness and proficiency as a magistrate, her considerable service to the community, and her effectiveness as president of the Greene County Bar Association. They also commend her pro bono work and willingness to provide legal services to those less fortunate at substantially reduced fees.

As previously noted above, Respondent and her former husband adopted two daughters and also served as foster parents. Respondent does not receive any financial support from her former husband. Respondent testified to marital problems and ongoing medical problems. She acknowledged seeking professional help as a result of anxiety and stress precipitated by the difficulties in her personal life and the publicity surrounding her misconduct. Respondent takes prescription medication and reports being diagnosed with an obsessive compulsive disorder. She

testified that she did not seek an expert report to document any physical and/or mental conditions as contributory factors in her misconduct. We cannot therefore consider such testimony in formal mitigation pursuant to Rule 10(B)(2)(g). We are not, however, compelled to completely ignore such factors and we take them into account in our recommended sanction below.

Pursuant to the BCGD procedural regulations, we consider the following aggravating factors when determining sanctions: “(a) prior disciplinary offense; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) lack of cooperation in the disciplinary process; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of and resulting harm to victims of the misconduct; and (i) failure to make restitution.” BCGD Proc. Reg. 10(B)(1)(a-i). The panel finds the following factors aggravating factors, to which the parties stipulated, by clear and convincing evidence:

- Dishonest or selfish motive.
- Pattern of misconduct.

Respondent admits that her conduct was dishonest but in her testimony she did not describe her motivation as selfish. Her focus was on the need to provide and care for abandoned and abused animals as well as a safe home for needy children. We are not sure if Respondent fully appreciates how her unrealistic expectations contributed to her misconduct. Even so, Respondent testified that she has mechanisms in place to prevent her from handling client funds and expressed conviction that she would never let this happen again, primarily because of the public humiliation and anxiety of the disciplinary proceedings.

Likewise, the eleven false financial reports prepared in order to conceal Respondent's theft were dishonest and done for selfish reasons. Respondent abused her position of trust as the Society's treasurer and dishonored her oath as an attorney.

Respondent claimed ignorance of the requirements of Canon 4(F) of the Code of Judicial Conduct. We do not credit that excuse. It may be that Respondent did not consider her infrequent and unpaid representation of the Society as the practice of law within the meaning of Canon 4(F), or perhaps she considered her violations insignificant when compared to the benefit to the Society. Whatever her reasons, we are troubled by her claim of ignorance as it suggests she remains in denial as to some aspects of her misconduct.

Respondent's actions constituted a pattern of misconduct. The thefts occurred over a period of twenty months from January, 2005, through August, 2006. Respondent stole Society funds during every month of this period with the exception of August, 2005. The total damage to the Society was \$42,015.68. In addition, respondent provided eleven false financial reports each designed to conceal her misconduct.

While Respondent eventually self-reported her actions to Relator, she waited until she had negotiated the Settlement Agreement that provided confidentiality and freedom from criminal prosecution. Moreover, as noted in our discussion on mitigation, that letter intentionally minimized her wrongdoing.

RELATOR'S RECOMMENDED SANCTION

Relator has recommended a sanction between a two year suspension and an indefinite suspension.

RESPONDENT'S RECOMMENDED SANCTION

Respondent has recommended that any suspension be stayed.

SANCTION OF PANEL

Respondent has committed multiple violations and taken a substantial amount of money from a vulnerable not-for-profit entity while serving in a position of trust. However, we find that an indefinite suspension would be too severe and recommend imposing a two year suspension with six months stayed on the conditions noted below.

The presumptive disciplinary measure for acts of misappropriation from a client is disbarment. *Disciplinary Counsel v. France*, 97 Ohio St.3d 240, 2002-Ohio-5945, ¶11, citing to *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, ¶15, in which the Court held that overcharges bordered on misappropriation, an offense for which the sanction is presumptively disbarment. However, disbarment may be tempered with sufficient evidence of mitigating or extenuating circumstances, including an isolated-incident exception. *Disciplinary Counsel v. Smith*, 101 Ohio St.3d 27, 2003-Ohio-6623, ¶ 9. See also, *Dayton Bar Assn. v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110, ¶ 11.

Relator cites three cases advocating indefinite suspension: *Geauga Cty. Bar Assn. v. Bruner*, 98 Ohio St.3d 312, 2003-Ohio-736 (attorney withheld taxes and other government payments from his secretary's paycheck and kept the funds for himself); *Akron Bar Assn. v. Dietz*, 108 Ohio St.3d 343, 2006-Ohio-1067 (attorney took funds from a client's estate for his own personal use and transferred a similar amount from another estate to conceal his theft); and *Disciplinary Counsel v. Nagorny*, 105 Ohio St.3d 97, 2004-Ohio-6899 (attorney misappropriated funds from an incompetent client's estate and used the funds to make personal investments). In *Bruner*, the Court noted that the respondent failed to appreciate the gravity of his misconduct and that the misconduct extended over a period of ten years. In *Dietz*, the Court noted the respondent's lack of candor in lying repeatedly to the Relator during the disciplinary process. In

Nagorny, the Court considered the vulnerability of the client in the sanction determination. However, while Respondent's misconduct in this case is very serious, and in many ways similar to the violations in the cases cited by Relator, the panel finds her misconduct mitigated by her selfless service to numerous community causes, her restitution, self-reporting, and cooperation with the disciplinary process. The panel is also persuaded to recommend a lesser sanction because of Respondent's present efforts to avoid further temptation by not handling money in connection with her present employment and by her expressions of regret.

Likewise, the panel finds the Respondent's recommended sanction too lenient. In support of her recommendation, Respondent points to the following misappropriation cases: *Dayton Bar Assn. v. Gerren*, 103 Ohio St.3d 21, 2004-Ohio-4110 (attorney suspended for six months for making disbursements from his trust account to pay personal expenses); *Disciplinary Counsel v. Conese*, 96 Ohio St.3d 458, 2002-Ohio-4797 (attorney suspended for one year, with six months stayed, for failing to deposit into a trust account funds earmarked to pay his client's child support arrearages and failing to account honestly for the funds, with Justice Cook dissenting in favor of an indefinite suspension); *Columbus Bar Assn. v. Ashton*, 108 Ohio St.3d 37, 2006-Ohio-78 (attorney suspended for two years, stayed in its entirety, for taking unauthorized expense account advances from his law firm, failing to properly withdraw from a client's case, and failing to disclose to clients that he lacked malpractice insurance. Respondent presented a qualifying mitigating factor of drug dependency to which the parties stipulated); and *Disciplinary Counsel v. Markijohn*, 99 Ohio St.3d 489, 2003-Ohio-4129 (attorney suspended for six months, stayed in its entirety, for failing to make required payments to his firm's retirement plan while reporting that he had and filing false income tax returns taking deductions for the plan contributions he had not paid).

However, each of these cases may be distinguished from the instant case. In *Gerren*, charges involving dishonesty, fraud, deceit or misrepresentation in violation of DR 1-102(A)(4) were dismissed. In *Conese*, the amount in dispute was \$1,000 and a dissenting opinion recommended indefinite suspension. In *Ashton*, the Court adopted a sanction agreed upon by the parties. In *Markijohn*, the Court noted that the attorney's misconduct did not compromise any client's interest. In the instant case, Respondent's misconduct included a violation of DR 1-102(A)(4), the amount of money taken was substantial, the parties did not agree upon an appropriate sanction, and the Society's interests were compromised. Moreover, Respondent's lack of integrity and willingness to continue to take money month after month, while serving as a judicial officer, is very disturbing.

Relator points to several cases in which an attorney misappropriated funds and received a two year suspension: *Cincinnati Bar Assn. v. Zins*, 116 Ohio St.3d 1, 2007-Ohio-5263 (attorney convicted of felony identity theft associated with theft of \$1,236 from bank customer accounts); *Disciplinary Counsel v. Furtado*, 71 Ohio St.3d 20, 1994-Ohio-236 (attorney convicted of embezzling \$17,527.38 in railroad pension funds paid in error to her father after his death); *Disciplinary Counsel v. Badalian* (1990), 51 Ohio St.3d 42 (attorney converted \$19,900 in social security payments made to client after her death and falsified reports as the payee); and *Disciplinary Counsel v. Hock* (1988), 36 Ohio St.3d 177 (attorney convicted of grand theft converted over \$28,500 from four clients). Similar to *Zins*, Respondent was able to misappropriate funds from the Society because she occupied a position of trust in the organization; both as its treasurer and occasionally as its attorney While the money taken by Respondent was considerably more than in *Zins*, *Zins* was convicted of felony theft. As in *Furtado*, Respondent's misappropriation was unrelated to the practice of law and Respondent

has otherwise been recognized as an asset to her profession. Similar to *Badalian*, Respondent converted funds and falsified reports. Also similar to *Badalian*, Respondent faced personal problems, fully cooperated with Relator's investigation, expressed remorse, and had many letters describing her good character. Finally, as in *Hock*, Respondent made restitution for all misappropriated funds and her career has otherwise earned her the respect and trust of both colleagues and clients.

The panel has reviewed the ethical duties violated by Respondent, the injuries caused by the violations, the Respondent's mental state, and sanctions imposed in similar cases. Based on the evidence before us, the panel recommends that Respondent receive a 24 month suspension from the practice of law, with the last six months stayed on the following conditions:

1. That Respondent receive appropriate treatment for her asserted diagnosis of obsessive compulsive disorder;
2. That Respondent obtain a certification from a qualified health care professional that she is able to return to the competent, ethical professional practice of law under specified conditions or, if no conditions or limitations on the practice of law are required, without restriction.

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 June 6, 2008. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. However, it recommends based on the positions of trust that she held and the seriousness of the repeated misconduct, that the Respondent, Kristen Lynn Kelly, be indefinitely suspended in the State of Ohio upon the conditions recommended by the panel. The Board further

recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", is written over a horizontal line.

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