

IN THE
SUPREME COURT OF OHIO

In re: :

Kristen L. Kelly :
Attorney Registration No. (00064964) :
2290 Murdock Road :
Cedarville, OH 45314 :

Respondent :

CASE NO. 2008-1198

Disciplinary Counsel : **RELATOR'S ANSWER**
250 Civic Center Drive, Suite 325 : **TO RESPONDENT'S OBJECTIONS**
Columbus, OH 43215-7411 : **TO THE BOARD OF**
: **COMMISSIONERS' REPORT AND**
Relator : **RECOMMENDATION**

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS
TO THE BOARD OF COMMISSIONERS'
REPORT AND RECOMMENDATION**

JONATHAN E. COUGHLAN (0026424)
Disciplinary Counsel
Relator
250 Civic Center Drive, Suite 325
Columbus, OH 43215
614-461-0256

GEOFFREY STERN (0013119)
Counsel for Respondent
Kegler Brown Hill & Ritter
Capitol Square, Suite 1800
65 East State Street
Columbus, OH 43215
614-462-5400

ROBERT R. BERGER (0064922)
Assistant Disciplinary Counsel
Counsel for Relator

RASHEEDA Z. KHAN (0075054)
Counsel for Respondent
Kegler Brown Hill & Ritter
Capitol Square, Suite 1800
65 East State Street
Columbus, OH 43215
614-462-5400

KRISTEN L. KELLY (00064964)
Respondent

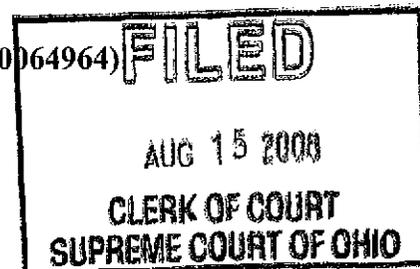


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Disciplinary Counsel, Relator	:	
	:	CASE NO. 2008-1198
Kristen Kelly Respondent	:	RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS
	:	
	:	

Now comes relator, Disciplinary Counsel, and hereby submits this answer to respondent's objections to the Report and Recommendations filed by the Board of Commissioners on Grievances and Discipline (Board).

INTRODUCTION

Respondent Kristen Kelly, while acting as treasurer for the Greene County Humane Society, stole \$42,000 over a 20-month period and concealed her theft by making false statements and submitting 11 false financial reports to the humane society. During this same time period, respondent acted as legal counsel for the humane society. Respondent committed all of this misconduct while she was both president of the local bar association and chief magistrate for the Greene County Domestic Relations Court. Finally, when respondent self-reported her misconduct to relator, her letter intentionally and falsely asserted that she had made

full restitution and otherwise misleadingly minimized her misconduct. After reviewing and considering this record, the Board recommended to this Court that respondent receive an indefinite suspension “based upon the positions of trust that she held and the seriousness of the repeated misconduct.”

STATEMENT OF FACTS

Respondent, Kristen Lynn Kelly, was appointed as a magistrate for the Greene County Domestic Relations Court in August 2000 and became chief magistrate in January 2003. [Tr. at 14:11; Stip. 4] As a result of the misconduct detailed below, respondent resigned as chief magistrate for the Greene County Domestic Relations Court effective October 13, 2006. [Report at 4; Stip. 13]

COUNT I

From November 2004 through August 2006, respondent served as treasurer for the Greene County Humane Society. [Report at 2; Tr. at 14:18; Stip. 5] This was a volunteer unpaid position. [Report at 2; Tr. at 14:23; Stip. 5] As treasurer, respondent was responsible for maintaining three bank accounts, paying bills, making bank deposits and preparing the annual IRS 990 tax form. [Report at 2; Tr. at 15:2; Stip. 6] As treasurer, respondent had control over the humane society general bank account, the spay/neuter bank account and the livestock bank account. [Tr. at 15:12] Respondent was also authorized to use the humane society Chase credit card. [Report at 2; Tr. at 15:19; Stip. 6]

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. [Report at 2; Tr. at 15:22; Stip. 7] When respondent transferred these three bank accounts, she obtained paperwork to authorize access to the accounts for herself and the humane society president. [Tr. at 16:5] However, respondent did not provide the bank with the completed paperwork for the humane society president, and as such, respondent was the only party authorized to have access to the accounts. [Tr. at 16:14]

Immediately upon becoming treasurer, respondent began to use funds belonging to the humane society to pay her personal and/or family bills. [Stip. 8; Tr. at 16:22, 88:21] Between January 2005 and August 2006 respondent misappropriated humane society funds when she:

- Transferred over \$24,000 in humane society's funds from the humane society bank accounts into respondent's personal bank account [Tr. at 17:5],
- Made over \$8,000 in cash withdrawals and check payments [Tr. at 17:10],
- Made over \$6,000 in personal charges on the humane society Chase credit card [Tr. at 17:13], and
- Accrued over \$1,000 in overdraft charges and credit card fees. [Tr. at 17:16]

Every month [except one] between January 2005 and August 2006 respondent misappropriated funds, as indicated in the chart below [Stip. Ex. 5; Tr. at 18:2]:

Date	Amount
January 2005	\$2,700
February 2005	\$663.31
March 2005	\$717.50
April 2005	\$3,560.26
May 2005	\$5,348.21
June 2005	\$11,831.61
July 2005	\$5,433.71
September 2005	\$4,106.37
October 2005	\$336.61
November 2005	\$1,101.21
December 2005	\$848.98
January 2006	\$771.21
February 2006	\$114.50
March 2006	\$120.30
April 2006	\$659.42
May 2006	\$970.24
June 2006	\$2,194.89
July 2006	\$395.35
August 2006	\$142

Respondent used these humane society funds to purchase goods from or pay bills owed to a variety of businesses including: Steak and Ale Restaurant, Walmart, Shell Oil, Grange Insurance and the Liz Claiborne Outlet. [Report at 3; Tr. at 18:11] In total, respondent misappropriated \$42,015.68 in humane society funds. [Report at 3; Tr. at 18:21; Stip. 15; Stip. Ex. 5]

During respondent's tenure as treasurer, she attended monthly humane society board meetings. [Tr. at 19:7] At these meetings, respondent made dishonest and/or misleading statements to humane society officers about the status of the humane society bank accounts. [Tr. at 19:17] During respondent's tenure as treasurer she provided 11 false financial reports to the humane society officers. [Stip. Ex. 1, 2; Tr. at 20:1] Respondent's monthly reports contained material misrepresentations and misleading statements about the financial condition of the humane society bank accounts. [Report at 3; Stip. 9; Tr. at 20:5] Respondent made these dishonest and misleading statements and created these false and misleading reports to conceal her misappropriation of humane society funds. [Stip. 9; Tr. at 21:18]

In May and/or June 2006, humane society officers received a telephone call from at least one veterinarian indicating that their bill had not been paid by the humane society. [Report at 3; Tr. at 21:22] A short time later, humane society officers began to investigate the status of the society's credit card and bank accounts and discovered numerous suspicious charges on the humane society credit card. [Tr. at 22:2]

In August 2006, humane society board president Cynthia McCulloch advised respondent by voice mail message of their discovery that respondent had misused the credit card. [Tr. at 22:7] Around this same time, respondent ceased acting as treasurer, deposited \$4,800 into the humane society bank accounts and provided the humane society with one box of financial records. [Report at 3; Tr. at 22:15; Stip. 10] Upon receipt of the bank and financial records, the humane society conducted an audit to determine the status of their finances and the amount of funds improperly taken by respondent. [Report at 4; Tr. at 22:19; Stip. 11]

In October 2006, the humane society and respondent entered into a settlement agreement. [Report at 4; Tr. 22:23; Stip. 14] Pursuant to this agreement, respondent paid an additional \$38,121.09 to the humane society. [Stip. 14; Tr. at 23:5] As a part of the settlement, the humane society agreed not to pursue criminal charges against respondent. [Report at 4; Tr. at 23:8]

On October 3, 2006, respondent sent relator a letter reporting her misconduct that was misleading and contained a material misrepresentation. When describing her theft, respondent characterized her actions as merely spending “unauthorized expenditures.” [Stip Ex. 6] At the disciplinary hearing on this matter, respondent admitted that she attempted to minimize her misconduct in her letter because she did not want relator to know the full details of her actions. [Tr. at 25:17, 100:16] Respondent also testified that she did not include the amount of funds she had stolen in her letter because “she didn’t even know what the amount was.” [Tr. at 25:26] Based upon this admission, respondent was then forced to acknowledge that her statement in the letter that she had paid back all of the funds [at the time the letter was written] was false. [Tr. at 100:19]

COUNT II

Respondent began acting as an attorney for and providing legal advice and services to the Greene County Humane Society in 1998 or 1999. [Tr. at 23:20] Between August 2000 and October 2006, while respondent was serving as a fulltime magistrate, respondent continued to act as volunteer part-time legal counsel for the humane society. [Report at 4; Tr. at 23:24, 108:9; Stip. 16]

Respondent provided various legal services including:

- Filing pleadings in court cases on behalf of the humane society in 2000, 2001, 2002 and 2003 [Report at 4; Stip. 16, Tr. at 24:7; Stip. Ex. 4];
- Representing the humane society's interests at various animal cruelty court case hearings by conferring with the prosecutor on behalf of the humane society and negotiating with counsel for the defendants [Report at 4, Stip. 16, Tr. at 24:17];
- Providing legal advice to the humane society for animal cruelty investigations and court cases [Report at 4, Stip. 16, Tr. at , Stip. Ex.]; and
- Drafting animal adoption contracts and foster home agreements [Report at 4, Stip. 16, Tr. at 25:5].

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

I.

WHEN THERE ARE NO FACTUAL DISPUTES

THE OBSERVATION OF WITNESSES IS NOT A KEY FACTOR

IN SANCTION DETERMINATION

After reviewing and considering the record, the 28-member Board increased the sanction recommended by the three-person hearing panel to an indefinite suspension “based upon the positions of trust that [respondent] held and the seriousness of the repeated misconduct.” In her objections, respondent suggests that the lesser sanction recommended by the hearing panel should be given deference by this Court solely because the panel “observed the witnesses.” However, respondent’s argument is illusory and does not have merit for several reasons.

First, respondent cites a handful of cases in which this court has reviewed the record upon objection and chosen to rely on the determinations and conclusions of the hearing panel based upon the panel’s firsthand observation of the witnesses. However, a close reading of these cases shows that these cases are inapposite.

In the cases cited by respondent, each of the attorneys facing discipline was disputing the testimony between competing witnesses and suggesting that this disputed testimony was not credible. There is no such factual dispute present here. Respondent admitted her extensive

thefts and continuing dishonesty during her testimony. Additionally, the only other witnesses at the hearing were three parties called by respondent solely to provide character testimony. Nothing is in dispute about their testimony and none of these three supplemental witnesses were questioned, cross examined or challenged by relator or the panel. As such, there is no actual evidentiary dispute between competing witnesses regarding the underlying facts in the current matter.

Despite respondent's suggestion otherwise, the facts in the present matter are undisputed: Respondent while a judicial officer and president of the local bar association, stole more than \$42,000 over 20 months from the humane society for which she was treasurer and legal counsel. Respondent further submitted 11 false financial reports to the society, and later, a deceptive letter to relator falsely and misleadingly reporting her misconduct. Not one witness contested these facts.

Next, and in further support of this argument, respondent erroneously cites an excerpt from *Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649, 800 N.E. 2d 1117. In the case citation, this Court opines that it "ordinarily defer[s] to a panel's credibility determinations." *Statzer* at ¶8. But, as the agreed stipulations, transcript, Board report and respondent's objection brief make clear, there is no dispute regarding the credibility of any witnesses. Therefore, respondent's reliance on this case law is misplaced.

Because respondent's request that the recommendation of the full 28-member Board be disregarded and the lesser sanction of the hearing panel be adopted, is neither supported by the

facts present in this matter or the case law cited by respondent, relator requests that this objection be overruled.

II.

BASED UPON THE POSITIONS OF TRUST HELD BY RESPONDENT AND THE SERIOUSNESS OF HER REPEATED MISCONDUCT

AN INDEFINITE SUSPENSION IS APPROPRIATE IN THIS MATTER.

Respondent suggests the Board recommended sanction fails to properly consider her mitigation. However, based upon the respondent's misconduct, the aggravating factors present, the hearing panel's multiple concerns regarding the respondent's testimony and this Court's prior case law, an indefinite suspension is appropriate in this matter.

A. Respondent's Misconduct

At the hearing, respondent admitted that she:

- Misappropriated over \$42,000 from the Greene County Humane Society over a 20 month period, while serving as treasurer and legal counsel for this organization;
- Began stealing funds immediately upon becoming treasurer. [Tr. at 88:21];
- Made repeated false statements and submitted 11 false financial reports to the officers of the Greene County Humane Society to conceal her theft;
- Was employed as the chief magistrate for the Greene County Domestic Relations Court and served as the president of the Greene County Bar Association during the time period of this misconduct;

- Provided legal advice, filed pleadings and appeared in court on behalf of the Greene County Humane Society, despite the fact that the ethical rules prohibit this type of representation by a member of the judiciary; and
- Submitted a letter to relator self-reporting her misconduct that was misleading and that contained a material misrepresentation. In her letter respondent described her thefts as “spen[ding] unauthorized expenditures.” [Stip. Ex. 6] Respondent further asserted that she had “paid back all of the funds” to the humane society when respondent knew this to be false at the time the statement was made. [Tr. at 100:19, 115:10; Stip. Ex. 6]

Respondent’s continued and extensive dishonest misconduct beginning with her thefts while serving as a judicial officer and continuing with her false self-report letter support an indefinite suspension.

B. Aggravating Factors

The multiple aggravating factors present, as well as the conclusions of the hearing panel that respondent is in denial and lacks a full appreciation of her misconduct, support an indefinite suspension.

Dishonest and Selfish Motive

Respondent stipulated and the Board found that respondent’s conduct had a dishonest and selfish motive. In support of this finding, the panel concluded that respondent took “a substantial amount of money from a vulnerable not-for-profit entity while serving in a position of trust” and

“the eleven false financial reports prepared in order to conceal respondent's theft were . . . done for selfish reasons.” [Report at 9, 10]

Pattern of Misconduct and Multiple Offenses

The Board found that respondent engaged in a pattern of misconduct, and for the same reasons, it is clear that respondent committed multiple offenses. The report states that:

“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 11 false financial reports each designed to conceal her misconduct.” [Report at 9]

In addition to the theft, respondent provided legal services to the humane society in 2000 through 2003 while serving as a judicial officer. As such, respondent engaged in both a pattern of misconduct and multiple offenses.

Respondent's Dishonest Self-Reporting

While the panel acknowledged respondent's self-reporting her misconduct, it pointed out that respondent “waited until she had negotiated the settlement agreement that provided confidentiality and freedom from criminal prosecution” and then submitted a letter that “intentionally minimized her wrongdoing.” [Report at 9] The panel further noted “that the letter respondent sent to [relator] was not entirely candid and was silent as to the substantial amount of money taken” and that “respondent conceded that her letter intentionally minimized her misconduct because she did not want to lose her license to practice law.” [Report at 7; Tr. at 25:17, 100:14, 116:11]

Respondent's Experience and Positions of Trust

During the time period of respondent's thefts, respondent was employed as the chief domestic relations magistrate and served as the bar association president and humane society treasurer. These are all positions of honor and trust and respondent's serving in these multiple positions at the same time demonstrate that she was an experienced legal practitioner, not simply a novice who was in over her head.

Additionally, respondent had extensive familiarity with the legal system having served as a probation officer while she was in law school and having served in numerous other positions of authority and responsibility with the Greene County Bar Association including secretary, treasurer and vice president. [Tr. at 29:9, 35:20, 36:4] Based upon this evidence, respondent had ample life experience to alert her to the impropriety of her actions and any claim of ignorance or mistake rings hollow. Instead, it appears that respondent relied upon the trust of others, earned by her judicial and legal leadership positions, to facilitate her misconduct.

C. Panel's Multiple Concerns with Respondent's Testimony

The Board report expresses multiple concerns that while respondent admitted the thefts and dishonesty, her testimony did not establish a full understanding of the impropriety of her conduct. For example:

- The panel observed that while "respondent admits that her conduct was dishonest . . . in her testimony she did not describe her motivation as selfish."
- The panel concluded they were "not sure if respondent fully appreciates how her unrealistic expectations contributed to her misconduct." [Report at 8]

- The panel found that respondent “remains in denial as to some aspects of her misconduct.” [Report at 9]
- The report further indicates that respondent’s “reaction to the adverse publicity [regarding her thefts] was bitter and her attitude suggested that she felt unfairly deprived of the benefits of confidentiality bargained for in the settlement agreement.” [Report at 7]
- The panel was “troubled by [respondent’s] claim of ignorance” regarding the requirements of Canon 4(F) of the Code of Judicial Conduct.” [Report at 9]
- The panel observed that “while respondent generally expressed remorse for her conduct, at times it seemed that she views herself as the victim of circumstance.” [Report at 6]

The Board report also critically examined respondent’s attempts at explanation for her thefts in that took place in 2005 and 2006. Respondent pointed to her divorce as the sole cause of her financial problems and testified that she had “built our life around two incomes” and “went to one income from two.” [Tr. at 46:6, 48:6] However, respondent failed to provide any credible reason for why her financial difficulty in 2005 and 2006 was fully caused by her 2002 divorce. Additionally, in 2005 and 2006 respondent admitted she had a substantial income and was “grossing \$55,000” from her job as chief magistrate. [Tr. at 47:20] Finally, respondent admitted under cross examination that she would have advised a client in a similar financial situation to file for bankruptcy. [Tr. at 70:18] After considering respondent’s testimony, the Board concluded that respondent simply “lived well beyond her means.” [Report at 3]

The actual reasons for respondent's budget problems are obvious. Respondent testified that while she was stressed out every day about her continuing thefts -- she was completely unable to reduce her expenditures. [Tr. at 69:18] However, during this same time respondent kept three horses and two dogs, "just couldn't" purchase her foster daughter a prom dress that only cost \$25 and promised her children that they "never have to wear Walmart clothes again." [Tr. at 67:9, 67:18, 49:4, 49:10] All of this leads to the inescapable conclusion that respondent chose to steal, instead of adjusting her budget to live on her \$55,000 per year magistrate's salary. [Tr. at 47:20]

This Court has previously declined to accept similar claims of bleak financial condition as mitigation for theft. In *Disciplinary Counsel v. Yajko*, 77 Ohio St.3d 385, 388, 1997-Ohio-263, 674 N.E. 2d 684, Yajko claimed to be "barely getting by" and having a budget with "almost no room to cut." However, the Court found Yajko's claims of a dire financial condition to be contradicted by the evidence of his annual income and discretionary expenditures, and observed that Yajko's situation was likely just "financial irresponsibility." The Court concluded that "either way, neither excuse provides any justification for respondent's thefts." *Id.*

Finally, it is clear from the record that respondent had no intention of revealing her theft to the humane society or this office until she realized "that discovery was imminent." [Report at 3] According to the Board report, respondent "expected to be the Society Treasurer for 'the next 20 years'" and "always intended to repay the stolen money." [Report at 3] However, the Board report noted that "no such repayment was made until events made discovery inevitable" and "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.” [Report at 3; Tr. at 82:16]

Respondent’s claims of an intention to repay are further eroded by several admissions. Respondent testified that she did not keep any record of the amount of funds she took and that she was “in total denial” about the amount of funds she had stolen. [Tr. at 26:17, 80:12, 50:14, 26:22, 82:12] In fact, respondent testified that she had no idea of the amount of funds she had taken and thought it totaled only \$10,000. [Tr. at 26:17, 80:12, 50:14, 26:22, 82:12]

D. Case Law

The Supreme Court of Ohio has adopted a zero-tolerance policy toward misappropriation. As such, the Court has held that the starting point for determining the appropriate sanction for misappropriation is disbarment. *Cuyahoga County Bar Assn. v. Churilla*, 78 Ohio St.3d 348, 1997-Ohio-580, 678 N.E.2d 515. “The continuing public confidence in the judicial system and the bar requires that the strictest discipline be imposed in misappropriation cases.” *Cleveland Bar Assn. v. Belock*, 82 Ohio St.3d 98, 100, 1998-Ohio-261, 694 N.E.2d 897, 899. Disbarment is the presumptive sanction for misappropriation. *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, 769 N.E.2d 816.

In some instances, due to the presence of substantial and compelling mitigating circumstances the Court has ordered an indefinite suspension for misappropriation. *Cincinnati Bar Assn. v. Rothermel*, 104 Ohio St.3d 413, 2004-Ohio-6559, 819 N.E.2d 1099, ¶ 18. This lesser sanction is normally ordered after a finding of substantial justification based upon the

duties violated, the actual injury caused, respondent's mental state, and the totality of mitigating circumstances.

Respondent suggests that an indefinite suspension, as recommended by the 28-member Board, is too severe a sanction. But respondent's request for a lesser sanction is not supported by this Court's prior case law; the duties violated and injury caused; and, the aggravating factors involved in this matter. Additionally, by recommending an indefinite suspension instead of disbarment, the Board already allowed respondent *substantial* credit for her mitigation evidence.

Respondent's misconduct, when measured against her mitigation, merits an indefinite suspension. In support of this argument, relator offers four disciplinary cases. In *Geauga County Bar Assn. v. Bruner*, 98 Ohio St.3d 312, 2003-Ohio-736, 784 N.E.2d 687, Bruner withheld taxes and other government payments from his secretary's paycheck. However, Bruner kept these amounts himself instead of forwarding the funds to the appropriate government agencies. Bruner also provided the secretary with fraudulent W-2 forms to conceal his theft of more than \$42,000. Bruner explained that he misappropriated these funds because "his practice was not making enough money." *Id.* at ¶ 6. For this misconduct and in consideration of the fact that Bruner had no prior discipline, had made partial restitution, was cooperative and had a good reputation, Bruner received an indefinite suspension.

Similarly, respondent misappropriated \$42,000 from the humane society, provided false financial reports to cover her theft and asserts the same basic mitigation as Bruner. The hearing panel attempted to distinguish *Bruner*, due to the fact that Bruner "failed to appreciate the gravity

of his misconduct and that the misconduct extended over a period of ten years.” However, based upon the panel’s conclusions that respondent “remains in denial as to some aspects of her misconduct” and “views herself as the victim of circumstance” it is clear that respondent also fails to appreciate the gravity of her misconduct. [Report at 9, 6]

In *Akron Bar Assn. v. Dietz*, 108 Ohio St.3d 343, 2006-Ohio-1067, 843 N.E.2d 786, Dietz misappropriated \$13,500 from the Boyd estate for his own personal use and then transferred a similar amount from another estate into the Boyd estate bank account to cover up his theft. During this same period, Dietz filed two accountings with the probate court that misrepresented the status of both estate bank accounts. In reviewing this matter, the Court noted that Dietz had no prior discipline, waived fees for the two estates, provided evidence of good character and paid restitution. For this misconduct, inter alia, Dietz received an indefinite suspension.

Similarly, respondent misappropriated humane society-client funds, provided false reports to cover her theft and asserts the similar mitigation as Dietz. In an effort to distinguish *Dietz*, the hearing panel noted Dietz's lack of candor in lying during the disciplinary process. The panel must have overlooked respondent’s misrepresentations. The Board report clearly identifies respondent’s material misrepresentations and efforts to mislead relator in her letter reporting her misconduct.

In *Disciplinary Counsel v. Nagorny*, 105 Ohio St.3d 97, 2004-Ohio-6899, 822 N.E.2d 1233, Nagorny misappropriated \$141,000 from an incompetent client’s estate and used the funds

to make various personal investments. In mitigation, the Court found that Nagorny had no prior discipline, made restitution, was fully cooperative, showed remorse and was of good character.

In the present matter, respondent also misappropriated client funds and asserts the similar mitigation as Nagorny. The panel attempts to differentiate *Nagorny* by pointing out the vulnerability of the victim. However, the panel's own report notes that respondent took "a substantial amount of money from a *vulnerable* not-for-profit entity while serving in a position of trust." [Report at 10] [Emphasis added]

Additionally, there is another important and controlling aggravating factor present in the current matter that fully supports the enhanced sanction of an indefinite suspension. Respondent committed her misconduct while serving as a judicial officer. This Court recently spoke about the standard to which judicial officers shall be held in disciplinary matters. In *Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194 this Court held that:

" 'Because they are so important to our society, judges must be competent and ethical, and their actions must foster respect for their decisions as well as for the judiciary as a whole. Given that they hold positions of considerable authority and are entrusted with a great deal of power and discretion, judges are expected to conduct themselves according to high standards of professional conduct. Indeed, it is often said that judges are subject to the highest standards of professional behavior.' " *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 57-58, quoting Shaman, Lubet & Alfini, *Judicial Conduct and Ethics* (3 Ed.2000) 1.

Relator further notes that this Court has previously disciplined a full-time magistrate for performing legal services for others. *Cincinnati Bar Assn. v. Worth*, 82 Ohio St.3d 305, 1998-Ohio-384, 695 N.E.2d 749. In its decision, the Court held that Worth "should not have

performed legal services for others after his appointment as referee/magistrate” and ordered a public reprimand. Id at 308.

Finally, relator notes that while respondent advocates for a 24-month suspension with six months stayed, respondent has failed to offer even one disciplinary case in which a judicial officer has stolen substantial funds from a client and engaged in continuing dishonesty with that client and disciplinary authorities and received anything close to the sanction she seeks.

The Board report finds that respondent's “violation of DR 1-102(A)(4)”, the “substantial” amount of money stolen, the fact that the humane society's “interests were compromised, ” “respondent's lack of integrity” and “willingness to continue to take money month after month, while serving as a judicial officer” is “very disturbing.” [Report at 12] The report further observes that “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.” [Report at 12] Relator agrees and asserts that this conduct is grounds for an indefinite suspension.

CONCLUSION

The evidence shows that respondent, while employed as chief magistrate by the Greene County Domestic Relations Court misappropriated over \$42,000 from the Greene County Humane Society over a 20-month period while serving as treasurer and legal counsel for this organization, made false statements, and submitted 11 false financial reports to the officers of the Greene County Humane Society. Further, respondent provided legal advice, filed pleadings and appeared in court on behalf of for the Greene County Humane Society, despite the fact that the Code of Judicial Conduct prohibits this type of representation by a member of the judiciary. Finally, respondent admitted that she submitted a letter to relator self-reporting her misconduct that contained a material misrepresentation.

Based upon this evidence, in consideration of the aggravating factors present, and in light of the fact that respondent's misconduct most closely resembles the misconduct in disciplinary cases in which an indefinite suspension was ordered, relator requests that this Court overrule respondent's objections and order that respondent be indefinitely suspended.

Respectfully submitted,


Jonathan E. Coughlan (0026424) (0040142)

Robert R. Berger (0064922)
Assistant Disciplinary Counsel
Counsel of Record
Office of Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Answer Brief was served via U.S. Mail, postage prepaid, upon Respondent's Counsel, Rasheeda Z. Khan, Kegler Brown Hill & Ritter Capitol Square, Suite 1800, 65 East State Street, Columbus, OH 43215-4294, Geoffrey Stern, Kegler Brown Hill & Ritter, Capitol Square, Suite 1800, 65 East State Street, Columbus, OH 43215-4294 and upon Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, 65 S. Front Street, 5th Floor, Columbus, Ohio 43215 this 15th day of August, 2008.



Robert R. Berger
Counsel for Relator