

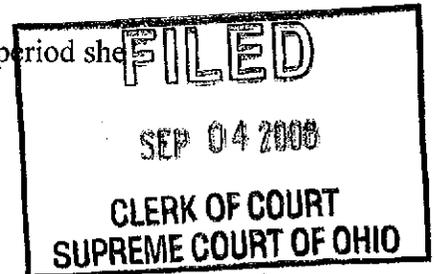
**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re:	:		
Complaint against	:	Case No. 07-069	08-1771
Kimberly Jo Kellogg-Martin	:	Findings of Fact,	
Attorney Reg. No. 0022083	:	Conclusions of Law and	
	:	Recommendation of the	
Respondent	:	Board of Commissioners on	
	:	Grievances and Discipline of	
Disciplinary Counsel	:	the Supreme Court of Ohio	
	:		
Relator	:		
	:		

This matter was set for hearing on March 21, 2008 in Columbus, Ohio, before a panel consisting of members Judge Beth Whitmore of Akron, Sandra J. Anderson of Columbus, and Joseph L. Wittenberg of Toledo, Ohio, Chair of the Panel. None of the panel members resides in the appellate district where this matter arose or served on the probable cause panel in this case. The Relator was represented by Lori J. Brown, First Assistant Disciplinary Counsel. The Respondent was represented by Christopher J. Weber. The Respondent was present at the hearing. The Ohio Prosecuting Attorney's Association filed a Amicus Curiae brief in support of the Respondent.

INTRODUCTION

Respondent, Kimberly Jo Kellogg-Martin, was admitted to practice law in the State of Ohio in 1984 and has no prior disciplinary record. Between 1989 and 2007 Martin served as Assistant Logan County Prosecutor, during which time period she



prosecuted felony cases, including sexual abuse crimes committed against children.

Martin currently serves as director of the Logan County Child Support Office and the Assistant Director of the Logan Department of Job and Family Services.

Disciplinary Counsel's complaint against the Respondent alleges the following violations:

DR1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation];

DR1-102(A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice];

DR7-102(A)(3) [in her representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which she is required by law to reveal];

DR7-103(B) [a public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment].

Findings of Fact

Many of the facts surrounding the allegations of misconduct in the complaint have been stipulated by the parties. A copy of those stipulations is attached to this report.

On June 10, 2002, Erica Long, then a 14 year old female, was undergoing counseling to address issues involving her unruliness at home. Erica disclosed to her therapist, Beth Ramsey, that Josh Giles pressured her into having sexual intercourse on two occasions. Ms. Ramsey, a mandated reporter, contacted Erica's mother (Sarah)

and the Logan County Children's Services (LCCS). On June 12, 2002, LCCS social worker Joanie Dorsey met with and interviewed Erica concerning the sexual abuse allegations. According to Dorsey's report, during the interview, Ms. Dorsey stated to Erica that the Children's Services Board was told that Erica had been forced to have sex with Josh Giles two times within the past year. Ms. Dorsey asked Erica if this statement was true and Erica said "yes," prompting Erica to report that the first rape occurred in August, 2001 when she was at her friend Mandy Taylor's parents' house, and the second rape occurred in September 2001 at a man named Haddy's house. Erica's date of birth is January 21, 1988. Thus, if the offenses occurred in August and September of 2001, Erica would have been 13 years old at the time. However, as part of her social work obligations, Ms. Dorsey also completed a Family Risk Assessment Matrix wherein she stated that Erica reported that she was raped by a 21 year old man when she was 12 years old.

On or about June 13, 2002, Ms. Dorsey faxed the notes from her initial interview with Erica to Detective Jeff Cooper of the Logan County Sheriff's Office. In relevant part, Dorsey's narrative that was provided to law enforcement states:

Erica Long, 14, (DOB 1/21/88) came into the agency with her mother, Sarah, to be interviewed about sexual abuse allegations. JD asked if she knew why she was there and Erica stated that she thought it was something to do with Josh Giles (5210 CR 63, Quincy). JD stated that CSB was told that Erica has been forced to have sex with Josh Giles two times within the past year. JD asked if this was true and she stated yes it was. Erica reports that first rape occurred in August 2001 when she was at her friend, Mandy Taylor's parents' house (205 Liberty St., Quincy). She stated that Amanda is dating Brian (20 yrs old). He is friends with Josh Giles (20 yrs old) who was at the house that evening. Erica

states that they had all been drinking beer and she had about three or four.

* * *

Erica reports that the second rape occurred in September, 2001 at a man named "Haddy's" house (214 Jefferson St., Quincy). He is a friend of Josh and Brian. Erica's stated that they stopped at Haddy's to get more beer after leaving the racetrack. * * * *

The same day Detective Cooper received the report from LCCS, Cooper and Detective Larry Garwood interviewed Joshua Giles. The June 13, 2002 interview of Giles was tape recorded. During the interview, Giles confessed to engaging in consensual sexual intercourse with Erica at Mandy Taylor's house a long time ago in 2000. If the offenses occurred in August and/or September 2000, Erica would have been 12 yrs old. Cooper generated a report following his interview with Giles.

On July 3, 2002, Cooper and Detective Weaver interviewed Erica. During that interview she told the officers that she had intercourse with Josh Giles on two occasions and that the incidents occurred when she was 12 years old. Cooper's report reflects that Erica also advised him that she told Josh that she was 12 years old.

In or about early July, 2002, Cooper's report, a tape of his interview with Giles, and Giles' signed waiver of rights form were provided to the office of the Logan County Prosecuting Attorney. Shortly thereafter, responsibility for the Giles matter was assigned to Respondent as Chief Assistant Prosecuting Attorney for Logan County. A three page narrative report prepared by LCCS was provided to Respondent after July 19, 2002 and sometime prior to August, 2002.

After reviewing that information and realizing the need to confirm the dates when the rapes occurred (2000 or 2001) in order to determine what criminal charges to pursue, the

Respondent personally met with and separately interviewed Erica and her mother. During Respondent's interview with her, Erica stated that the sexual intercourse occurred before Erica was injured in a snowmobile accident for which Erica sought medical treatment at Wilson Memorial Hospital. Erica reported that the injuries prevented her from finishing her seventh grade basketball season. Erica reported to Respondent that the first rape occurred in August, 2000 at her then friend Mandy Taylor's house, and the second rape occurred in September, 2000 at Haddy's house. Erica also reported to Respondent that Giles was aware that she was 12 years old because during a discussion the two had when Giles offered Erica alcohol, she had informed Giles that she was only 12.

In order to confirm the accuracy of Erica's statements concerning the dates of the rape, Respondent interviewed Erica's mother, Sarah Long. The information Respondent received from Sarah confirmed that the rape took place in 2000. In order to further confirm the accuracy of Erica's statements concerning the dates, Respondent obtained Erica's medical records relating to the treatment following the snowmobile accident, which confirmed that Erica received treatment for her injuries in December of 2000. Finally, Logan County Prosecutor Gerald Heaton interviewed Mandy Taylor, who lived at the home where the first rape occurred. Mandy confirmed to Prosecutor Heaton that Erica would not have been at her house in August or September 2001 because the two had broken off their friendship in April of 2001. Mandy told Mr. Heaton that the two had been good friends until Erica's snowmobile accident in December 2000.

Based upon Respondent's investigation of the allegation of the sexual abuse in the Giles case, a complaint was filed in the Bellefontaine Municipal Court charging

Giles with two counts of violating R.C. 2907.02(A)(1)(b) [rape of a person under the age of 13], a first degree felony. On August 20, 2002, the State moved to dismiss the Giles complaint because it planned to take the case to the grand jury.

On or about September 11, 2002, an indictment was filed charging Giles with four counts of violating R.C. 2907.02(A)(1)(b) [rape of a person under the age of 13] (Counts 1, 2, 3 and 4); two counts of violating R.C. 2907.02(A)(1)(b) and R.C. 2907.02(A)(2) [rape of another under the age of 13, when the offender compels the person to submit by force or threat] (Counts 5 and 6). All six of the charged offenses are first degree felonies. State v. Giles was assigned to the docket of the Honorable Mark S. O'Conner as Case No. C.R. 02 09-0184.

At the time of Giles' indictment, R.C. 2907.02(B) required a trial court to impose a life sentence when an offender is convicted of raping a person under the age of 13 by force or threat of force.¹

Attorney Bridget Hawkins originally represented Giles. She was replaced by Attorney John H. Fisher who represented Giles from approximately mid August 2002 through October 31, 2003. Mr. Fisher is a lawyer with 22 years of criminal defense experience.

On or about August 29, 2002, Fisher was provided with the State's discovery response that had initially been provided to Giles' former attorney, Bridget Hawkins. The discovery response included the Wilson Memorial Hospital records and specifically identified Ms. Dorsey and Detective Cooper, among others, as witnesses that the State intended to have testify at trial. The State's disclosure specifically informed defense

¹ R.C.2907.02(B)

counsel that the Wilson Memorial Hospital records were being provided to substantiate dates of major events in the victim's life in relationship to the timing of the crimes. Respondent did not disclose the LCCS report or the report generated by the Logan County Sheriff's office. As the Chief Assistant Prosecutor Attorney of Logan County and the prosecutor representing the State of Ohio in the Giles case, Respondent had the authority to determine what evidence would be disclosed to Giles.

On or about September 19, 2002, through Fisher, Giles made a request for discovery under Crim. R. 16 (A) and (B). Shortly thereafter and on or about September 19, 2002, Giles filed a motion seeking a Bill of Particulars. Respondent signed and filed a Bill of Particulars on September 23, 2002. The Bill of Particulars states, in part:

The victim disclosed the facts of this case to her therapist, Beth Ramsey of Consolidated Care, Inc., at her initial assessment. The therapist honored her obligation as a mandated reporter and contacted the authorities about the abuse disclosure. The victim was interviewed by Joanie Dorsey of Logan County Children's services on June 12, 2002. She reported that the defendant raped her on two occasions over the Summer of 2000. The victim's date of birth is 01/21/88, making her twelve (12) years of age at the time of the crimes.

On September 23, 2002, in a supplemental response, Respondent provided Giles with what she described as "evidence favorable to defendant." This evidence was a statement Erica made to a friend that the sexual abuse never happened.

On October 2, 2002, Giles filed a motion to suppress the statement he made to law enforcement officers and a motion to compel the State of Ohio to specify the precise date and location of the offense as to each count of the indictment; or in the

alternative, to dismiss each count of the indictment due to the State's failure to specify the precise date and location of each offense. In that motion, Giles requested an evidentiary hearing on the motion.

Finally, on November 12, 2002, Giles filed a motion pursuant to Crim.R.16(B)(1)(g) and 16(B)(1)(f) requiring the State of Ohio to obtain transcripts of any and all statements made by the victim to her counselors, probation officers, law enforcement officers, grand jury testimony and any statements, which she has made and can be ascertained by the State of Ohio. In the memorandum in support of the motion, Giles further stated as follows:

If the victim in this case has given differing statements, they are exculpatory to the defendant; and as such they should be discoverable. Defendant submits that any and all statements made by the victim should be transcribed and submitted to the court for in camera inspection, and that any exculpatory evidence should be supplied to defendant pursuant to discovery.

On December 18, 2002, Giles pled guilty to one count of a violation of R.C. 2907.04. As amended, the charge to which Giles pled guilty reflected that Giles engaged in sexual conduct with a person who was between the ages of 13 and 16 at the time of the offense and that Giles was more than 10 years older than the victim of the offense. The charge to which Giles pled guilty was a felony of the third degree. At the plea hearing, Respondent made the following statement regarding the evidence against Giles:

The State's evidence in this case would show that the victim in this case, Erica Long, disclosed the fact concerning the abuse to her therapist, Beth Ramsey, of Consolidated Care, Inc. at her initial assessment. The therapist then in turn on an obligation as a mandated reporter contacted the prosecutor about the abuse. The victim was interviewed by Joanie Dorsey of the Logan County Children's Services on

June 12, 2002. She reported what had taken place over the year of 2000.

The victim's date of birth is January 21 of 1988, which makes her twelve (12) years of age at the time she reported, although for the record there has been a stipulation that we will treat her as if she was 13.

At the time of her statements to the court, Respondent was in possession of the report from LCCS. At no time prior to the entry of the guilty plea did Respondent provide the LCCS report or the report generated by the Logan County Sheriff's Office. Giles' sentencing hearing was held on February 3, 2003. On February 12, 2003, Giles was sentenced to three (3) years in prison and classified as a sexually oriented offender. However, the Court granted Giles judicial release on October 31, 2003. He therefore only served a total of approximately eight (8) months in prison as a result of his criminal sexual abuse of Erica.

In January of 2003, Sarah Long filed an application for reimbursement with the Ohio Attorney General's Victims of Crime Compensation Program. On May 20, 2003, the Ohio Attorney General issued a letter to Sarah Long indicating that her application for benefits from the Crime Victims Compensation fund had been approved in the amount of \$435.49.

In and about November, 2004 and January, 2005 and after the Attorney General sought reimbursement from Giles for the compensation paid to Sarah Long, Giles requested information from the Attorney General's office regarding the claim for compensation. Among other documents, the LCCS narrative report and Detective Cooper's report were provided to Giles by the Attorney General.

On or about December 16, 2005, Giles filed a motion seeking to withdraw his

guilty plea pursuant to Crim R.32.1. Giles' motion to withdraw his plea asserted that exculpatory evidence was not timely supplied and that its suppression had rendered the guilty plea involuntary as having been based upon a false statement of the evidence as presented by the prosecution.

The hearing was held May 18, 2006 on Giles' motion to withdraw his guilty plea. By entry filed July 11, 2006 the court denied Giles' motion to withdraw his plea finding that Giles had not established manifest injustice. Giles did not file a direct appeal of the court's denial of his motion to withdraw his guilty plea.

Attorney Fisher filed a grievance against Respondent on/or about September 26, 2006. A formal complaint was filed and this matter was certified with probable cause on August 13, 2007.

Conclusions of Law as to DR 7-103(B)

DR 7-103(B) provides as follows:

A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if he has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

Crim. R. 16(B)(1)(f) of the Ohio Rules of Criminal Procedure provides that a prosecutor disclose evidence favorable to the Defendant. Upon motion of the defendant before trial the court shall order the prosecuting attorney to disclose to counsel for the

defendant all evidence, known or which may become known to the prosecuting attorney, favorable to the Defendant and material either to guilt or punishment. The certification and the perpetuation provisions of Crim. R. 16 subsection (B)(1)(e) apply to this subsection (emphasis added).

The primary difference in DR 7-103(B) and Crim. R. 16(B)(1)(f) is that the word “material” is used in Crim. R. 16 and not in DR 7-103(B).²

This appears to be a case of first impression in the State of Ohio. The issue is does “materiality” apply to DR 7-103(B)? For the reasons set forth herein, the panel finds that materiality does not apply to DR 7-103(B).

A criminal defendant is deprived of a fair trial when the State withholds exculpatory evidence that is relevant to guilt or punishment. The State’s failure to disclose evidence favorable to a criminal defendant implicates more than the defendant’s discovery rights; the prosecutor has an affirmative duty to disclose such evidence under the Fourteenth Amendment’s Due Process Clause. Failure to reveal this evidence implicates the defendant’s right to a fair trial.

The prosecutor’s duty to disclose exculpatory evidence to a defendant cuts to the very core of her duty as both an advocate and as a minister of justice. A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.³ When a prosecutor’s role as an advocate conflicts with her role as a minister of justice, the minister of justice role should take precedence. While a prosecutor is an advocate,

² Rule of Prof. Cond. 3.8(d) also does not use the word “material.”

³ Comment from Rule 3.8 of the Ohio Rules of Professional Conduct.

she cannot permit her advocacy duty to supplant her duty to do justice.

Nowhere in DR 7-103(B) is a prosecutor required to make a “reliability” determination before the prosecutor is obligated to disclose evidence. Nowhere in DR 7-103(B) is there an exception for evidence the prosecutor deems to have been outweighed by other evidence. Nowhere in 7-103(B) does it state that the prosecutor need only turn over evidence which she has determined to be credible. Nowhere in DR 7-103(B) does it state that the prosecutor need only turn over evidence that she has determined is material. However, it is clear to the panel that the evidence withheld in the instant matter was material to the defense so that defendant and his counsel would have all relevant information disclosed to them prior to disposition of the case.

In contrast, DR 7-103(B) expressly requires a prosecutor to disclose evidence that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment. The Dorsey and Cooper reports were evidence that clearly tended to mitigate the degree of the offenses and accordingly could have operated to reduce the punishment. The reports offered independent and direct proof that Erica was not a person under age 13 at the time of the offenses. The Cooper report offered proof that Giles did not use force against Erica Long. Age was an element of every offense in the indictment and force was an element of the offense that carried a mandatory life sentence.

Respondent claims that she told John Fisher, the defense attorney for Joshua Giles, that the victim initially provided an unreliable or bad date but admits that she did not turn over the Dorsey or Cooper reports. Fisher testified that he was not provided with any such information and that had he been, he would have considered the

information very significant. The panel finds Respondent's approach not consistent. If Respondent was willing to tell Fisher that the victim initially gave unreliable information, why was Respondent unwilling to disclose the Dorsey and Cooper reports?

Respondent's testimony at the hearing establishes that Respondent believes she did not have duty to disclose the Cooper and Dorsey reports because, according to Respondent, the evidence became immaterial during the course of her own investigation. Respondent also repeatedly testified that she considered the Dorsey report unreliable for various reasons including her own perception of Erica Long's ability to recite dates versus ages. Respondent also claimed that she believed that Dorsey was leading Erica during the interview.

Respondent's explanation does not satisfy a prosecutor's duty to seek justice, "not merely to convict."⁴

Respondent was ethically and legally required to disclose evidence that tended to negate guilt, mitigate the degree of the offense or reduce the punishment as required under DR 7-103(B). In compliance with Respondent's responsibility to observe Giles' right to due process of law, Respondent was required to disclose the reports. Therefore, we find by clear and convincing evidence Respondent violated DR 7-103(B) of the Code of Professional Responsibility.

Conclusions of Law as to DR 7-102(A)(3) and DR 1-102(A)(5)

DR 7-102(A)(3) provides as follows:

⁴ EC 7-13. Respondent's decision not to disclose the evidence and her reasons for so deciding are legally and ethically wrong. The defense was entitled to know that Erica Long provided direct evidence of the date making her 13 years old at the time of offenses.

In his representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal.

DR 1-102(A)(5) provides as follows:

A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

As stated above in the discussion concerning DR 7-103(B), Respondent was ethically and legally required to disclose evidence that tends to negate guilt, mitigate the degree of the offense or reduce the punishment. Respondent, by not disclosing the Cooper and Dorsey reports, violated DR 7-103(B) as discussed above and therefore, in her representation of a client, she knowingly failed to disclose that which she is required by law to reveal. Therefore, we find by clear and convincing evidence that Respondent violated DR 7-102(A)(3) [in a representation of a client, a lawyer shall not conceal or knowingly fail to disclose that which she is required by law to reveal]. For the same reasons, we find that the evidence is clear and convincing Respondent violated DR 1-102(A)(5) [engage in conduct that is prejudicial to the administration of justice].

Conclusions of Law as to DR 1-102(A)(4)

DR 1-102(A)(4) provides as follows:

A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

The Bill of Particulars signed by Respondent and filed September 23, 2002, states in part:

The victim disclosed the facts of this case to her

therapist, Beth Ramsey of Consolidated Care, Inc. at her initial assessment. The therapist honored her obligation as a mandated reporter and contacted the authorities about the abuse disclosure. The victim was interviewed by Joanie Dorsey of the Logan County Children's Services on June 12, 2002. She reported that the defendant raped her on two occasions over the summer of 2000. The victim's date of birth is 01/21/88, making her twelve (12) years of age at the time of the crimes.

At the time the Bill of Particulars was signed and filed, Respondent was in possession of the Dorsey report. The Dorsey report expressly states that when Erica Long was interviewed on June 12, 2002, she reported that the sex acts occurred in 2001. Accordingly, Respondent's declaration that on June 12, 2002, Erica Long "*reported that the Defendant raped her on two occasions over the Summer of 2000*" was false.

At the plea hearing on December 18, 2002, Respondent made the following statement regarding the State's evidence against Giles. Respondent stated:

The State's evidence in this case will show that the victim in this case, Erica Long, disclosed the fact concerning the abuse to her therapist, Beth Ramsey, of Consolidated Care, Inc. at her initial assessment. The therapist then in turn on an obligation as a mandated reporter contacted the prosecutor about the abuse. The victim was interviewed by Joanie Dorsey of the Logan County Children's Services on June 12, 2002. She reported what had taken place over the year 2000.

At the time of Respondent's statements to the court at the December 18, 2002 plea hearing, Respondent was in possession of the Dorsey report expressly stating that when she was interviewed on June 12, 2002, Erica Long reported that the sex acts occurred in 2001. Accordingly, Respondent's declaration at the December 18, 2002 hearing that Erica reported to LCCS concerned "*what had taken place over the year*

2000" was false.

Respondent argued at the hearing she never intended to mislead anyone by making the statements in the Bill of Particulars and at the plea hearing. Rather, Respondent claims she was attempting to provide notice in the Bill of Particulars of what the State would establish at trial, in that the victim was raped on two occasions over the Summer of 2000. Respondent acknowledges that the statement in the Bill of Particulars is not artfully worded but it was not her intention to conceal anything from anyone. Respondent further argues that her statements at the plea hearing do not violate DR 1-102(A)(4) because, according to the Respondent, they more accurately describe her intentions.

If Respondent's statement in the Bill of Particulars was somehow not what she intended to convey, she had plenty of time before the December 18, 2002 plea hearing to rectify or clear up this matter. Respondent could have filed an amended Bill of Particulars with a truthful reference to the content of the Dorsey report. Respondent could have made a truthful statement regarding the Dorsey report at the plea hearing. Respondent did neither.

It is clear from the evidence presented that the statement made in the Bill of Particulars by Respondent ("she [Erica] reported that the defendant raped her on two occasions over the "Summer of 2000") was clearly false. In addition, the statement made by Respondent at the plea hearing where she stated ("she [Erica] reported what had taken place over the year 2000") was clearly false. Erica had actually reported what had taken place over the year 2001.

In light of the facts and circumstances of the Giles case, Respondent's violations

of DR 1-102(A)(4) are more than troublesome. Respondent's misrepresentations in the Bill of Particulars and at sentencing, combined with the failure to disclose the Dorsey and Cooper reports, strike at the very heart and soul of a fair trial. At the time when the statements were made the reports were solely in Respondent's possession. In addition, at the hearing to suppress the confession, time was of the essence because the offered plea would not remain on the table. Accordingly, it would have been virtually impossible for Giles' defense counsel to timely discover the significance of Respondent's misrepresentations. Only Respondent understood the significance of the reports. Moreover, Respondent's actual disclosure of the hospital records and of the victim's retraction to her friends, cast an aura of fairness over the proceedings that is not warranted.

Based upon the above, the panel finds by clear and convincing evidence that Respondent violated DR 1-102(A)(4).

MITIGATION AND AGGRAVATION

The Respondent was admitted to practice law in the State of Ohio in 1984 and has no prior disciplinary record. She had cooperated throughout these proceedings.

Four character witnesses testified on behalf of the Respondent. Pastor Jonathan Bull testified that Respondent was an advocate for children and her character and integrity were above reproach. Pastor Bull considered Respondent to be very straight forward and very professional in everything she does.

Mr. Richard J. Vicario testified as a character witness for the Respondent. He is owner of Vicario Communications and is President of City Council in Bellefontaine,

Ohio. He has known Respondent since she was a little girl. He testified that she had the highest integrity and honesty of any person he has ever known.

Respondent's next character witness was Mr. Brian Snyder. Mr. Snyder is a retired high school guidance counselor for Bellefontaine City Schools. He served in that capacity for 30 years. He testified that he knew the Respondent as a staff member of Bellefontaine High School, was a friend of her family and has known her professionally. He has known the Respondent since approximately 1981. His opinion of Respondent is that she is a person who has constantly strived to do what is right.

Respondent's final character witness was the Honorable John Ross. Judge Ross is currently the Judge of the Bellefontaine Municipal Court. He has known the Respondent for approximately 20 years, not only professionally but on a social basis with her family. He testified that Respondent's character and integrity are above reproach.

Respondent testified that she believed she had done nothing wrong and had not violated any disciplinary rule.

SANCTION

In determining the appropriate sanction, this panel gave consideration to the guidelines for mitigation and aggravation elements.

The Relator recommends that Respondent be suspended from the practice of law for 12 months with 6 months of this suspension stayed. The Respondent urges the panel to dismiss the complaint and that no violations be found.

As seen in numerous other disciplinary cases, mitigating factors play an essential role in determining an appropriate sanction and in fact are determinative of whether a lesser sanction is justified. Indeed, the Supreme Court of Ohio has imposed a

public reprimand or a completely stayed suspension notwithstanding, among other violations, a violation of DR 1-102(A)(4) based upon the weight of the mitigation evidence. *See e.g., Columbus Bar Assn. v. Shea*, 117 Ohio St.3d 55, 2008-Ohio-263, par. 16; *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510; *Cleveland Bar Assn. v. Smith*, 102 Ohio St.3d 10, 2004-Ohio-1582, 806 N.E.2d 495; *Disciplinary Counsel v. Markijohn*, 99 Ohio St.3d 489, 2003-Ohio-4129; *Disciplinary Counsel v. Heffter*, 98 Ohio St.3d 320, 2003-Ohio-775; and *Dayton Bar Assn. v. Kinney*, 89 Ohio St.3d 77, 200-Ohio-445.

Virtually all of the factors set forth in Section (B)(2) of the Rules and Regulations Governing Procedure on Complaint and Hearings before the Board exist here, including

- (a) absence of a prior disciplinary record.
- (b) full and free disclosure and cooperative attitude toward these proceedings.
- (c) absence of a selfish or dishonest motive.
- (d) outstanding character and reputation in the legal and general communities.

The violation of DR 1-102(A)(4) usually requires an actual suspension from the practice of law for an appropriate period of time. *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261. The Supreme Court has held, however, that an abundance of mitigating evidence can justify a lesser sanction. *Dayton Bar Assn. v. Kinney*, 89 Ohio St.3d 77, 2000-Ohio-445.

In this case, the mitigating evidence as stated above demonstrates that Respondent does not deserve a suspension. The facts of this case do not warrant such

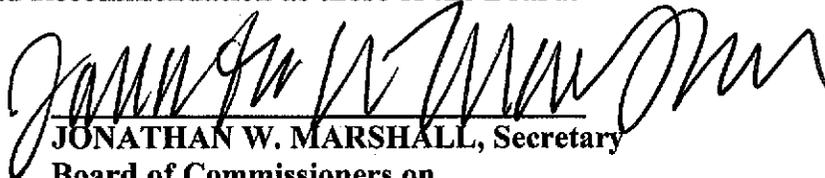
a heavy sanction, the effect of which would deprive Logan County of the legal services Respondent currently provides as director of the Logan County Child Support Office and Assistant Director of the Logan County Department of Job and Family Services.

For all the foregoing reasons, the panel finds that a six month suspension with the entire six months stayed is appropriate and the same is recommended.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on August 15, 2008. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. However, the Board, given Respondent's important role in the public justice system and her conscious conduct that violated DR 1-102 (A)(4) in making two false statements including one in open court at the sentencing of the defendant, recommends that the Respondent, Kimberly Jo Kellogg-Martin, be suspended from the practice of law in the State of Ohio for a period of one year with six months of that suspension stayed. 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 Recommendation as those of the Board.



JONATHAN W. MARSHALL, Secretary

**Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio**