

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

**08-2068**

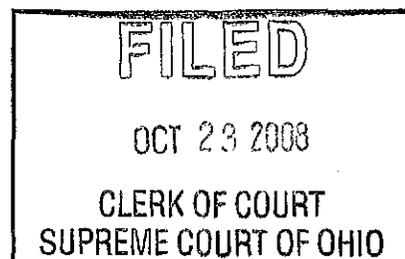
<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 08-015</b>
<b>Kenneth J. Lewis Attorney Reg. No. 0073002</b>	:	<b>Findings of Fact, Conclusions of Law and Recommendation of the</b>
<b>Respondent</b>	:	<b>Board of Commissioners on</b>
<b>Medina County Bar Association</b>	:	<b>Grievances and Discipline of</b>
<b>Relator</b>	:	<b>the Supreme Court of Ohio</b>
	:	
	:	

This matter was heard on August 27, 2008, at the Medina County Court of Common Pleas, 93 Public Square, Medina, Ohio, before a panel consisting of the Honorable John B. Street of Ross County, Jana Emerick of Allen County, and Charles E. Coulson, Chair, of Lake County, Ohio.

None of the panel members resides in the district from which the complaint originated or served on the Probable Cause Panel that had previously considered this matter. Representing Relator, the Medina County Bar Association, was John Oberholtzer and Kelley O’Kell; representing the Respondent, Kenneth J. Lewis, was Larry H. James and Christina L. Corl.

**BACKGROUND**

On April 14, 2008, a complaint was filed against the Respondent alleging that the Respondent forged the signature of Berea Municipal Court Judge Mark L. Comstock, on a



Judgment Entry granting Respondent's client occupational driving privileges on a suspended license.

On May 12, 2008, the Secretary for the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio appointed the hearing panel in this matter. On July 18, 2008, the Respondent and Relator filed a joint motion to extend the time to enter into a consent to discipline agreement pursuant to Gov. Bar R. V(11)(A)(3)(c). The motion was granted. The parties were unable to enter into an agreement for consent to discipline within the time requirements of BCGD Proc. Reg. 11(B).

Prior to the hearing on August 14, 2008, the parties entered into stipulations as to the facts and violations of the Ohio Rules of Professional Conduct. A hearing on the complaint was held on August 27, 2008. At the hearing, the parties submitted the attached stipulations, which included mitigating factors and exhibits. A copy of the stipulations are attached hereto and incorporated herein.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

At the hearing, the parties submitted the agreed upon stipulations, which included a stipulation of all facts, and exhibits. The Panel unanimously accepted the stipulated facts and exhibits as filed. The only additional evidence presented to the Panel was the testimony of the Respondent.

Respondent stipulated to the following misconduct: committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness, ORPC 8.4 (b); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, ORPC 8.4 (c); engaging in conduct that is prejudicial to the administration of justice, ORPC 8.4 (d); and engaging in any other conduct that adversely reflects on the lawyer's fitness to practice law, ORPC 8.4 (h).

The Panel finds by clear and convincing evidence the following facts:

All of the above acts of misconduct occurred as a result of one event. Respondent was retained by Danielle Burkhard in May, 2007 to represent her in the Berea Municipal Court on charges of operating a vehicle while under the influence and reckless operation. As Ms. Burkhard's driving privileges had been suspended, the Respondent, on May 21, 2007, prepared and attempted to file a Motion and Judgment Entry for occupational driving privileges.

To obtain occupational driving privileges during an OVI suspension, the Berea Municipal Court has established times for the hearings and requires that attorneys use the Court's standard forms. Although there are typically forms that are filed with the Berea Municipal Court to request driving privileges in an OVI case and a form order that is issued by the Court, the Court does accept motions and orders that are drafted by attorneys.

Respondent prepared a Motion requesting, and a Judgment Entry granting, occupational driving privileges without using the Court's standard forms, and did not appear at the Court's established hearing times for the granting of occupational driving privileges. On May 21, 2007, the Respondent presented his Motion and Judgment Entry to a Clerk of the Berea Municipal Court. The Respondent had prepared multiple copies of the Judgment Entry. At first, the Clerk began to process the Motion and Judgment Entries by beginning to stamp them. Before time stamping all of the copies, the Clerk noticed that the Respondent had not used the Court's standard forms. The Clerk returned the forms, some of them being time stamped and some of them not time stamped, to the Respondent.

Four days later, the Respondent attended a pre-trial with his client on the client's case. The Respondent testified that immediately after the pre-trial, his client told the Respondent that she wanted to see what a judgment entry granting occupational driving privileges would look

like. The Respondent then testified, in order to merely show his client what such a judgment entry would look like, he took one of the Judgment Entries that had the Court's time stamp of May 21, 2007, and above the signature line of Judge Mark A. Comstock the Respondent forged Judge Mark Comstock's signature. A copy of this Judgment Entry is attached as Joint Exhibit 1. The Respondent stated that he forged the Judge's signature in front of his client. The Respondent then gave this forged Judgment Entry to his client, and they left the courthouse.

Sometime in late May or early June 2007 Ms. Burkhard met with her probation officer and sought to have her occupational driving privileges modified. The Court had no record of her having been granted occupational driving privileges. When Ms. Burkhard gave her probation officer a copy of the Judgment Entry marked as Joint Exhibit 1, the probation officer brought the forged order to the attention of the Berea Municipal Court.

The Berea Municipal Court instituted an investigation involving the forged Judgment Entry. During the Court's investigation, the Respondent admitted that he had forged the judge's signature on the occupational driving privileges Judgment Entry.

The Panel unanimously finds by clear and convincing evidence that the Respondent committed the following acts of misconduct: committing an illegal act that effects adversely on the lawyer's honesty or trustworthiness, ORPC 8.4 (b); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, ORPC 8.4 (c) ; engaging in conduct that is prejudicial to the administration of justice, ORPC 8.4 (d); and engaging in any other conduct that adversely reflects on the lawyer's fitness to practice law, ORPC 8.4 (h).

#### **MITIGATION**

The Panel finds the following factors in mitigation (BCGD Proc. Reg. 10 (B)(2)): the Respondent has no prior disciplinary record; the Respondent cooperated with the Medina County

Bar Association's investigation of this matter; and the Respondent has otherwise demonstrated good character and reputation in the community.

### **AGGRAVATION**

The Panel finds the following aggravating factors (BCGD Proc. Reg. 10 (B)(1)): the Panel was troubled by what it determined to be false evidence, false statements, or other deceptive practices during the disciplinary process by the Respondent. The Panel was unanimously of the opinion that the Respondent was not truthful on the witness stand in the disciplinary hearing when he testified that the only reason he forged the judge's signature was because his client wanted to see what a Judgment Entry granting occupational driving privileges would look like. This explanation is simply not believable.

### **SANCTION**

The Respondent recommended a six month stayed suspension and cited *Akron Bar Assn. v. Finan*, 118 Ohio St.3d 106, 2008-Ohio-1807; *Disciplinary Counsel v. Roberts*, 117 Ohio St.3d 99, 2008-Ohio-505; *Disciplinary Counsel v. Freedman*, 110 Ohio St. 3d 284, 2006-Ohio-4480; *Disciplinary Counsel v. Niermeyer*, 119 Ohio St.3d 99, 2008-Ohio-3824; and *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510. The cases cited by Respondent either stem from an attorney forging his client's signature and notarizing it, or from the filing of a complaint with a fraudulent date stamp. The Relator argued that Respondent's action of forging a judge's signature on a time stamped judgment entry was a significant distinction from the cases cited by the Respondent and requires a more severe sanction. Relator recommended that Respondent be suspended from the practice of law for a period of two (2) years.

### **PANEL RECOMMENDATION**

The Supreme Court of Ohio has stated that a violation of DR 1-102(A)(4) usually requires an actual suspension from the practice of law for an appropriate period of time, unless mitigating factors warrant a lesser sanction. *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261; *Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649; *Dayton Bar Association v. Kinney*, 89 Ohio St.3d 77, 2000-Ohio-445. Professional Conduct Rule 8.4 (c) is the corollary to DR 1-102(A)(4).

The Panel finds that forging a judge's signature on a judgment entry is distinguishable from the cases cited by the Respondent. The Panel is also troubled by the lack of truthfulness of the Respondent on the witness stand. The Panel unanimously recommends that the Respondent's license to practice law should be suspended for a period of one (1) year.

### **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 October 3, 2008. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. However, the Board recommends, based on the fraud on the trial court and his lack of candor before the hearing panel, that the Respondent, Kenneth J. Lewis, be suspended from the practice of law for a period of two years. 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.**

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**

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

FILED

AUG 14 2008

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

*In re:* :  
*Complaint against* :  
 :  
KENNETH J. LEWIS, :  
 :  
Respondent, :  
 :  
THE MEDINA COUNTY BAR ASSOCIATION, :  
 :  
Relator. :

Case No. 08-015

**STIPULATIONS**

Now come the Parties hereto and enter into the following stipulations for the purposes of the hearing on the above matter.

1. Respondent Kenneth Lewis was admitted as an attorney in the State of Ohio on November 20, 2000, and continues to practice law at P.O. Box 250 Hinckley, Ohio 44233.
2. In May of 2007, Respondent was retained by Danielle Burkhard to represent her regarding charges brought by the Strongsville Police Department for OVI and reckless operation of a motor vehicle. (Strongsville Police Incident Report, exhibit A).
3. According to the Strongsville Police Incident Report in regard to the Burkhard matter, on May 2, 2007, Strongsville Police received a complaint from Brian Smith, Ms. Burkhard's boyfriend. Ms. Burkhard had been arguing with Mr. Smith for most of the day. Mr. Smith informed the Strongsville Police that some time after 11:30 p.m., Ms. Burkhard came to his house and broke the back screen door in order to retrieve her dogs. She left at that time. She returned to the house approximately one (1) hour later and "proceeded to do burnouts up and down the driveway and did doughnuts in the yard until the police arrived." Ms. Burkhard was sitting in her car in Mr. Smith's driveway with the keys in the ignition when the police arrived. Ms. Burkhard admitted to the police

that she had been doing doughnuts on the front lawn but stated that her boyfriend "was doing them too." Ms. Burkhard was then put through Field Sobriety Testing and arrested for OVI and reckless operation. The Strongsville Police took pictures of the lawn and also videotaped the damage. (Exhibit A).

4. On or about May 7, 2007, Respondent Lewis entered a Notice of Appearance for Ms. Burkhard. (Exhibit B, Affidavit of Berea Deputy Court Clerk Denise Bernath, with entire Berea Court Record attached).

5. On our about May 21, 2007, Respondent Lewis filed on Ms. Burkhard's behalf a Motion and Order for Driving Privileges. However, a copy of the Motion and Order for Driving Privileges was not retained for the court file. (Exhibit B).

6. Although there are typically forms that are filed with the Berea Municipal Court to request driving privileges in an OVI case and a form order that is issued by the Court, the Court does accept motions and orders that are drafted by attorneys. Respondent Lewis drafted his own motion and proposed order in the Burkhard case, he did not use the Court's forms. (Exhibit B).

7. In front of Ms. Burkhard, Respondent Lewis forged Berea Municipal Court Judge Mark A. Comstock's signature on the Judgment Entry granting Ms. Burkhard driving privileges. This entry, with the judge's forged signature, was not filed with the Clerk of Courts. Respondent Lewis did not file the forged Driving Privileges Order with the Court. (Exhibit C, Affidavit of Raymond J. Wohl, Clerk of Courts for Berea Municipal Court).

8. Some time in late May or early June, Ms. Burkhard met with her probation officer and sought to have her driving privileges modified. In conjunction with this request, Ms. Burkhard gave to her probation officer a copy of the Driving Privileges Order with Judge Comstock's forged signature. Ms. Burkhard's probation officer brought the forged Driving Privileges Order to the attention of the Berea Municipal Court. (Exhibit C).

9. Thereafter, Berea Municipal Court Raymond J. Wohl instituted an investigation regarding the forged Driving Privileges Order. Mr. Wohl's office reviewed the Court's docket and noticed that there was a filing noting that the Motion and Driving Privileges Order had been filed in Ms. Burkhard's case on May 21, 2007. However, it was discovered that a copy of Motion or Order was never journalized and kept in the Court file. A copy of the Motion and Order was subsequently obtained and date stamped on June 1, 2007, with a copy actually placed in the Court's file. That is the reason for two separate date stamps (May 21, 2007 and June 1, 2007) on the same document. (Exhibit C.)

10. In the course of his representation of Ms. Burkhard, Respondent Lewis negotiated a plea agreement to resolve the charges against her. As a result of the plea, Ms. Burkhard received a penalty better than a "standard" first offense OVI as is required by the Ohio Revised Code. Specifically, Ms. Burkhard received a six (6) month license suspension, as opposed to a one (1) year license suspension, which is standard in this type of case. (Exhibit C.)

11. During the course of Municipal Clerk Court Raymond Wohl's investigation of this matter, he spoke to Respondent Lewis regarding the forged judge's signature on the Driving Privileges Order. At that time, Respondent Lewis admitted that he had "made a major mistake," and admitted that he had, in fact, forged the judge's signature on the Driving Privileges Order. (Exhibit B, Court file).

12. Respondent Kenneth Lewis has admitted that he did engage in the misconduct, specifically, forging Judge Comstock's signature to the Driving Privileges Order. (Affidavit of Kenneth Lewis, Exhibit D).

13. In the opinion of Court Clerk Raymond Wohl, there is no evidence to indicate that Respondent Lewis or his client profited from the forging of the judge's name on the Driving

Privileges Order. Driving privileges are routinely granted in OVI cases, such as Ms. Burkhard's, in the Berea Municipal Court. (Exhibit C).

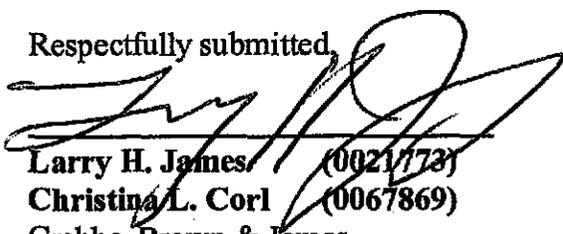
14. Respondent Kenneth Lewis admits to the following misconduct: Committing an act that reflects adversely on the lawyers' honest or trustworthiness (ORPC 8.4(B)); engaging in conduct involving deceit or misrepresentation (ORPC 8.4(C)); engaging in conduct that is prejudicial to the administration of justice (ORPC 8.4(D)); and engaging in conduct that adversely reflects on the lawyers' fitness to practice law (ORPC 8.4(H)).

15. Respondent Kenneth Lewis has never been subject to any previous discipline. In addition, Respondent Lewis cooperated with the Medina Bar Association's investigation of this matter.

16. Prior to the subject of this disciplinary complaint, Berea Municipal Court Clerk Raymond Wohl is not aware of any complaints, problems, or any other issues regarding Respondent Lewis' representation of clients in the Berea Municipal Court.

17. Respondent Lewis has otherwise demonstrated good character and reputation in the community and a general character trait for dependability and trustworthiness. (Character reference letters, Exhibit E). Respondent Lewis has cooperated in the disciplinary proceedings and has a lack of a prior disciplinary record.

Respectfully submitted,



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