

IN THE SUPREME COURT OF OHIO

In re: :
Complaint against :
: :
KENNETH J. LEWIS, ESQ. : No.: 08-2068
: :
Respondent, :
by :
MEDINA COUNTY BAR ASSOCIATION, :
: :
Relator. :

**RESPONDENT KENNETH J. LEWIS' 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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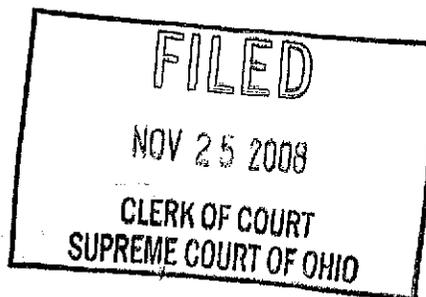


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I. INTRODUCTION

On May 27, 2007, Respondent Kenneth J. Lewis engaged in a single act of misconduct as a result of a serious error in judgment. Respondent has admitted his misconduct and fully understands that he will be disciplined for it. However, based upon the unique facts and circumstances of this case, the discipline recommended by the Board of Commissioners - a two-year suspension - is unduly harsh and punitive. As will be more fully set forth herein, this isolated act of misconduct was committed by an otherwise dedicated, promising and successful young lawyer. The existence of all of the following factors in this case should warrant a much less severe sanction than the maximum-allowable suspension suggested by the Board:

1. Respondent has no prior disciplinary offenses.
2. Respondent was not acting with a dishonest or selfish motive.
3. Respondent engaged in an isolated offense, and not a pattern of misconduct.
4. Respondent cooperated fully in the disciplinary process both before and after retaining counsel.
5. Respondent has admitted and acknowledged the wrongful nature of his conduct.
6. Respondent's client was not harmed.
7. Respondent has a good reputation in the community and has demonstrated good character.

It appears from reviewing the Report and Recommendations of the Board of Commissioners that the harsh penalty recommended is as a result of an opinion that the Respondent did not testify truthfully before the Hearing Panel. However, this belief is not borne out by the facts, circumstances and evidence in this case.

Respondent unqualifiedly acknowledges that the conduct which gives rise to this disciplinary matter is deserving of castigation. However, since it is not the intent of the attorney disciplinary system to punish misconduct, the sanction suggested by the Board is unduly severe. Because the suggested penalty in this case is based upon inaccurate assumptions and unfair conclusions that are contradicted by the evidence that was presented at the hearing and because the recommended sanction is based upon these assumptions, the recommended sanction must be modified.

II. STATEMENT OF THE CASE AND FACTS

Respondent, Kenneth J. Lewis, a 2000 graduate of the Case Western Reserve University School of Law, has practiced law in Ohio since 2000 and has no prior disciplinary violations. Tr. p. 13. After graduating from law school, Respondent worked at the Cleveland law firm of Stafford & Stafford Co., L.P.A. for six years when he decided to leave and open his own practice in October of 2006. Tr. p. 13. His private practice consists primarily of domestic relations, along with some municipal, criminal and civil law focus. Tr. p. 14. Approximately 5% of Respondent's practice involves the handling of OMVI cases. Tr. p. 14.

In May of 2007, Respondent was retained by Danielle Burkhard to represent her regarding charges brought by the Strongsville Police Department for OMVI and reckless operation of a motor vehicle. Stipulations ¶2. According to the Strongsville Police Department incident report in regard to the Burkhard matter, on May 2, 2007, Strongsville Police received a complaint from Brian Smith, Ms. Burkhard's boyfriend. Stipulations ¶3. Ms. Burkhard had been arguing with Mr. Smith for most of the day. *Id.* 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. *Id.* She left at that time. *Id.* She returned to the house approximately one hour later and "proceeded to do burnouts up and down the driveway and did donuts in the yard until the police arrived." *Id.* Ms.

Burkhard was sitting in her car in Mr. Smith's driveway with the keys in the ignition when the police arrived. *Id.* Ms. Burkhard admitted to the police that she had been doing donuts in the front lawn but stated that her boyfriend "was doing them too." *Id.* Ms. Burkhard was then put through field sobriety testing and arrested for OMVI and reckless operation. *Id.* The Strongsville Police took pictures of the lawn and also videotaped the damage. *Id.*

On or about May 7, 2007, Respondent Lewis entered a notice of appearance for Ms. Burkhard. Stipulations ¶4. Thereafter, on or 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 in the Court file. Stipulations ¶5.

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

Following a pretrial conference with the Court, on or about May 27, 2007, Respondent Lewis forged Berea Municipal Court Judge Mark A. Comstock's signature on the Judgment Entry granting Ms. Burkhard driving privileges. Tr. p.18; Stipulations ¶7. Respondent signed Judge Comstock's name to the entry in front of his client, Ms. Burkhard. *Id.* Respondent gave Ms. Burkhard a copy of the entry with the Judge's forged signature, but neither Respondent nor his client filed the forged Driving Privileges Order with the Court. Stipulations ¶7.

Some time in late May or early June, 2007, Ms. Burkhard met with her probation officer and sought to have her driving privileges modified. Stipulations ¶8. 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. *Id.* Ms. Burkhard's probation officer brought the forged Driving Privileges Order to the attention of the Berea Municipal Court. *Id.*

Thereafter, the Clerk of the Berea Municipal Court, Raymond J. Wohl, instituted an investigation regarding the forged Driving Privileges Order. Stipulations ¶9. Mr. Wohl's office reviewed the Court's docket and noticed that there was a filing noting that the Motion and Proposed Order for Driving Privileges order had been filed in Ms. Burkhard's case in May 21, 2007. *Id.* However, it was discovered that a copy of the motion/proposed order was never journalized and kept in the Court file. *Id.* 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. *Id.*

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

During the course of Berea Municipal Court Clerk Raymond Wohl's investigation of this matter, he spoke to Respondent Lewis regarding the forged Judge's signature on the Driving Privileges Order. Stipulations ¶11. 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. *Id.* 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, as driving privileges are routinely granted in OMVI cases, such as Ms. Burkhard's, in the Berea Municipal Court. Stipulations ¶13; Affidavit of Ramond Wohl, ¶8.

The defining issue in this case, in the opinion of the panel and the Board, is Respondent's motivation (or lack thereof) for signing the Judge's name to the Driving Privileges Order. (Findings of Facts of Board of Commissioners, p. 5). Respondent testified at the Panel Hearing as follows:

A few days later at a pretrial, I believe it was May 27, her and I got together for this pretrial at the Berea Municipal Court, and she asked me specifically whether or not she had driving privileges. I instructed her that she did not. I pulled out the motion and the judgment entry that I had filed and showed that to her, then signed the Judge's signature and said, "this is what a Driving Privileges Entry would look like if you had that." I then gave that to her.

* * * *

But my intention at the time was that this was kind of a clear understanding that it didn't mean anything, between her and I. I thought she knew that that didn't mean anything.

* * * *

There really is no explanation. There is no fact, rhyme, or reason for why it was done. I completely lapsed my judgment with my client and allowed her to have possession of this document. And I am completely embarrassed.

(Tr. pp. 18, 49, 20)

Although this is a largely unsatisfying explanation from Respondent, it is, in fact, the truth. Respondent explained his motivation consistently from the time that the Berea Municipal Clerk discovered the forged entry up through the time of the hearing. Nonetheless, the Panel and the Board concluded that Respondent's explanation regarding his conduct was "not truthful." (Findings of Fact of Board of Commissioners, p. 5).

In fact, the truthfulness of this explanation is borne out by the evidence presented at the hearing. Specifically, neither Respondent nor his client filed this Entry with the Court, and Respondent's actions following the signing of the Judge's name to the Entry demonstrate that he did

not believe that his client intended to (or ever did) use the forged Entry to drive. Following the May 27, 2007 meeting with his client, Respondent continued to schedule Ms. Burkhard for a hearing in order to secure her driving privileges. Tr. p. 18. According to the Court docket in this case, admitted as Joint Exhibit 2 at the Panel Hearing, Respondent scheduled Ms. Burkhard for hearings to set driving privileges on the following dates:

- 1) June 4, 2007 at 1:30 p.m.;
- 2) June 11, 2007 at 1:30 p.m.;
- 3) June 18, 2007 at 1:30 p.m.

Joint Ex. 2, pp. 1 - 2.

As explained by Respondent, he continued to set hearings for Ms. Burkhard's driving privileges as it was never intended that she was to use the Entry with the Judge's forged signature for that purpose. However, Ms. Burkhard contacted Respondent the day before the first driving privileges hearing was set and canceled her appearance because, "she just obtained a new job and she didn't want to jeopardize that job." Tr. p. 51. Ms. Burkhard then canceled her appearance at the remainder of the driving privileges hearings set by Respondent for the same reason. *Id.*

Throughout the investigation of this matter and at the panel hearing, Respondent has expressed an appreciation of the misconduct that he committed, as well as his sincere regret. Respondent testified at the panel hearing as follows:

Question: What have you learned from this incident, Ken?

Answer: I have learned everything. This is an embarrassing mark on my character, and it really has caused me evaluate everything that - about my practice and about the way I conduct myself and the way that - that law is practiced in the State of Ohio

* * * *

I have learned a tremendous amount about this particular incident. I can assure this Panel and the Board here in Medina that you'll never see me again with regard to any of these types of things.

(Tr. pp. 21-22).

III. LAW AND ARGUMENT

A. The Board's Finding that Respondent was Untruthful Regarding His Motivation for Signing the Judge's Name to the Driving Privileges Order is Not Supported by the Evidence.

It is apparent that both the Panel and the Board were not satisfied with Respondent's explanation regarding his motivation for signing the Judge's name to the proposed Driving Privileges Order. The explanation for the unduly harsh sanction of a two-year suspension is summed up in a single paragraph in the Board's report as follows:

The Panel finds the following aggravating factors...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.

(Findings of Facts of Board of Commissioners, p. 5).

While, admittedly, this explanation is somewhat nonsensical, it is, nonetheless, the truth. The truthfulness of this explanation is demonstrated by the evidence adduced at the hearing. First, it is undisputed that driving privileges are routinely granted in OMVI cases such as Ms. Burkhard's in the Berea Municipal Court. Stipulations ¶13; Wohl Affidavit ¶9. As such, Respondent would have gained no technical, time or other advantage by signing the Judge's name to the Driving Privileges Order. As stated by Berea Municipal Court Clerk Raymond Wohl in his Affidavit, "I have no information to indicate that Mr. Lewis or his client profited from the forging of the Judge's name

on the Driving Privileges Order.” Wohl Affidavit ¶8. This is further evidenced by the fact that neither Respondent nor his client even attempted to file the forged Driving Privileges Order with the Court. Stipulations ¶7.

In addition, if Respondent had some motivation other than what he stated during the course of the hearing, there would have been no reason for him to continue to schedule hearings with the Berea Municipal Court for the purposes of gaining driving privileges for his client. The implication at the Panel hearing was that Respondent gave Ms. Burkhard the forged Driving Privileges Order for the purpose of misleading his client to believe that she had driving privileges and to, in fact, allow her to drive. This implication is specifically denied by Respondent. Tr. p. 49. Also, Respondent continued to schedule Ms. Burkhard for hearings with the Berea Municipal Court solely for the purpose of obtaining driving privileges. As is demonstrated by the Court docket, Joint Exhibit 2 in this case, Respondent scheduled Ms. Burkhard for driving privileges hearings on June 4, 2007, June 11, 2007 and June 18, 2007. However, Ms. Burkhard canceled each of these appearances, telling Respondent that “she just obtained a new job and she didn’t want to jeopardize that job.” Tr. p. 51. If Respondent had intended that his client utilize the forged Driving Privileges Order, there certainly would be no reason for him to continue to schedule hearings for the purpose of obtaining those driving privileges. Ultimately, no hearing on her driving privileges was held because Ms. Burkhard had been scheduled to enter a plea and the driving privileges issue was to be addressed at that plea hearing. Tr. p. 52.

Respondent understands that his explanation regarding why he signed the Judge’s name to the Order does not make sense. In fact, Respondent has admitted that there is no good explanation for his conduct. However, this is not a basis to conclude that the Respondent was untruthful during the course of the Panel hearing. Surely, had Respondent sought to “make up” an explanation

regarding his conduct, he could have come up with a better explanation than the one proffered at the hearing. To the contrary, Respondent did not seek to mislead the Panel or the Board regarding his motivation, instead, he told the complete truth, even though he knew that such an explanation was not an excuse and seemed nonsensical.

In conclusion, the sole aggravating factor cited by the Panel and the Board for the harsh discipline of a two-year suspension, while understandable, is not supported by the evidence adduced at the hearing.

B. The Board Failed to Take into Account the Unique Facts and Circumstances Regarding this Matter, Failed to Take into the Account the Mitigating Factors Present and Sought only to Punish Respondent.

This Court has consistently stated that:

...in determining the appropriate length of the suspension and attendant conditions, we must recognize that the primary purpose of any disciplinary sanction is not to punish the offender, but to protect the public. (Citations omitted) (Emphasis supplied).

Disciplinary Counsel v. Agopain, 2006-Ohio-6150 at ¶10.

In addition, “when imposing sanctions for attorney misconduct, we consider the duties violated, the actual or potential injury caused, and the attorney’s mental state, and sanctions imposed in similar cases.” *Cleveland Bar Association v. Norton* 2007-Ohio-6038 at ¶18. Before making a final determination, this Court must also weigh evidence of the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedures on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline. *Cleveland Bar Association v. Glatki*, (2000) 88 Ohio St. 3d 381, 384. Because each disciplinary case involves “unique facts and circumstances,” this Court is not limited to the factors specified in the rule, but may take into account “all relevant factors” in determining a sanction. *Id.* Lastly, although misconduct in falsifying court

documents “ordinarily” requires that a lawyer receive a term of actual suspension, each case of misconduct must be decided on the unique facts and circumstances presented. *Toledo Bar Association v. Lowden*, 2005-Ohio-2162 at ¶19.

Although Respondent has been unable to locate any cases directly on point in Ohio, Respondent has been able to locate some cases from other jurisdictions involving the forging of a Judge’s name on a court order. In the case of *Iowa Supreme Court Attorney Disciplinary Board v. Newman*, the Court issued a public reprimand for an attorney who had forged a Judge’s signature on a Court Order. *Iowa S. Ct. Disc. Bd. v. Newman*, (2008) 748 N.W. 2d 786. In that case, Attorney Newman presented two Court orders to a Judge for signature. *Id.* at 787. The Judge approved both of the orders, but only signed one of the orders. *Id.* After the attorney drove back to his office, he realized the Judge had signed only one of the approved orders. *Id.* The attorney then forged the Judge’s signature to the second order and filed it with the Court. The Court discovered the forged Entry two days later and alerted the disciplinary system. *Id.*

In entering a public reprimand for Attorney Newman, the Iowa Supreme Court stated:

Based on the record, Newman appears to be a person of good moral character who committed a serious lapse in judgment. He has never been subjected to attorney discipline before this occasion. Several people either testified or provided Affidavits attesting to his good character. He accepted responsibility for his actions and is very remorseful. (Emphasis supplied).

Id. at 788.

Similarly, in the case of *Office of Disciplinary Counsel v. Budzak*, Attorney Budzak was under pressure from a client to file a Motion to Compel Discovery against the opposing party in litigation. *Office of Disciplinary Counsel v. Budzak*, (2008) No. 92 DB 2006 (St. Ct. of Pa, March 10, 2008). Attorney Budzak lied to his client and stated he had filed a Motion to Compel Discovery,

which he had not. When the client pressured him further, Attorney Budzak falsified a Motion to Compel, along with a file stamp indicating that the motion had been filed, and also forged the Judge's name on the Order compelling discovery which he then gave to his client.

The Supreme Court of Pennsylvania adopted the recommendation of the Disciplinary Board, suspending Attorney Budzak for three years, with all three years of the suspension stayed. In its decision, the Board stated as follows:

This matter is before the Disciplinary Board for consideration of the serious charges against Respondent that he committed professional misconduct by fabricating a document and forging a Judge's signature. Respondent admits that he forged a Judge's signature on a Motion to Compel, which was fabricated in order to convince his client that he had taken action on the client's case. Respondent never submitted the document to the Court and shortly after fabricating the document, he admitted it was fraudulent...the case law establishes that where an attorney forged a document and sought the Court's reliance on same, significant sanctions, including disbarment, were deemed appropriate. (Citations omitted).

* * * *

On the other hand, ...a private reprimand was imposed upon an attorney who delivered a fake document to his client but who, thereafter, acknowledged his wrongdoing and presented strong evidence for mitigation.

Id. at *9-10, *11-12.

Finally, the Board in the *Budzak* case stated that the recommended sanction of a three-year suspension with three years stayed "...will serve the underlying purpose of the disciplinary system yet not destroy Respondent's young career." *Id.* at 12.

The analysis set forth above in both the *Newman* and *Budzak* cases is applicable to the present case. First, Respondent Lewis did not act with a selfish or deceitful motive and did not take steps to journalize the forged Entry in order to defraud the Court. Instead, as in the *Newman* case,

Respondent Lewis “committed a serious lapse in judgment.” Neither Respondent Lewis nor his client profited from the forged Driving Privileges Order and Respondent Lewis has accepted responsibility for his actions, is very remorseful and has never been subjected to attorney discipline before this occasion. A two-year suspension will be devastating to Respondent and his family. Instead, a stayed suspension for Respondent Lewis would serve to uphold the underlying purpose of the disciplinary system without destroying his career.

Other Ohio cases provide guidance on the appropriate sanction in a case such as the case at bar, although they do not directly involve an attorney forging a Judge’s signature to a document.

In the case of *Akron Bar Association v. Finan*, 2008-Ohio-1807, Attorney Christine Finan was representing a client in a domestic relations matter. She was responding to a post decree motion for contempt alleging that her client had failed to comply with a parenting plan. Attorney Finan presented an Affidavit to the court as an Affidavit of Fact containing factual inaccuracies (of which she was aware) and containing her client’s signature and her notarization of her client’s signature. However, Attorney Finan later acknowledged that she included factual inaccuracies in the Affidavit, admitted that she had forged her client’s signature, and then notarized the forged signature of her client’s name. Attorney Finan and the Bar Association entered in a Consent to Discipline Agreement whereby Attorney Finan would receive only a public reprimand. The Supreme Court, in upholding the Consent to Discipline Agreement, found that there was “no evidence of a dishonest or selfish motive and that the attorney made a timely, good faith effort to rectify the consequences of her misconduct.” 2008-Ohio-1807 at ¶7.

In the case of *Disciplinary Counsel v. Roberts*, 2008-Ohio-505, Attorney Scott Roberts represented several different clients in personal injury matters. In those several matters, Attorney Roberts forged his client’s name on settlement documents and then notarized his own forgery. He

then supplied the forged settlement agreements to his opponent in the cases. The court found that mitigating factors were present including no prior disciplinary record, that Attorney Roberts did not act out of self interest, he cooperated in the disciplinary process, established good character and reputation apart from the events underlying the disciplinary proceedings and, despite commission of more than one infraction, was willing to accept responsibility for his mistakes. The court found that an actual suspension was warranted, but stayed the entire suspension on conditions including that he commit no further misconduct. 2008-Ohio-505 at ¶¶ 18 and 20.

In the case of *Disciplinary Counsel v. Freedman*, 2006-Ohio-4480, Attorney Howard Freedman was an attorney practicing in the area of commercial real estate and business law. In 2002, the attorney obtained a \$70,000.00 loan that was secured by a second mortgage on a property jointly owned by him and his wife. Attorney Freedman then forged his wife's signature on the mortgage documents and asked an associate in his office to notarize both his and his wife's forged signature. The board and the attorney agreed on a public reprimand. However, the Supreme Court imposed a six month suspension, stayed on the condition that the attorney commit no further misconduct. In so finding, the court stated, "Respondent did not simply circumvent for convenience the notarization requirements. He took advantage of [his associate's] carelessness and consciously signed [his wife's] name to the documents after they had been notarized. Though respondent had his wife's authority to act on her behalf, his misconduct nevertheless required [the lender] to defend against allegations in his divorce action." 2006-Ohio-4480 at ¶16.

In the case of *Disciplinary Counsel v. Niermeyer*, 2008-Ohio-3824, Attorney Kurt Niermeyer was representing a client in filing a Workers' Compensation claim against Ohio University. After filing the claim, Attorney Niermeyer determined that the claim lacked sufficient medical documentation. The claim was then withdrawn, but Respondent failed to timely refile the claim.

In an effort to remedy his failure to refile the claim in a timely fashion, Attorney Niermeyer photocopied a document from an unrelated case that had a date stamp of August 17, 2006. He then superimposed that date stamp onto a document from his client's Workers' Compensation case, thereby fabricating a new and timely filed document. Attorney Niermeyer then filed that document with the Bureau of Workers' Compensation. Attorney Niermeyer ultimately withdrew the Workers' Compensation claim approximately six months later and attempted to inform his client of the missed deadline. He also disclosed the incident to the Disciplinary Counsel.

The Supreme Court suspended Attorney Niermeyer from the practice of law for a period of twelve months, with the entire suspension stayed on the condition that he commit no further misconduct. The Supreme Court noted that mitigating evidence included a lack of disciplinary record, full cooperation with the disciplinary process, and good character and reputation apart from the single incident. 2008-Ohio-3824 at ¶¶13-14.

In the case of *Disciplinary Counsel v. Agopian*, 2006-Ohio-6510, Attorney Richard Agopian was charged with improperly billing the Cuyahoga Court of Common Pleas for court appointed legal services. Attorney Agopian had been retained to represent indigent defendants and submitted fee bills for his work to the Court from the months of October 2002 through April of 2003. It was determined that the bills submitted for his services were false and that he had submitted fee bills for work performed in excess of twenty four hours on three separate days. The Ohio Supreme Court, in issuing a public reprimand stated :

This Court has consistently recognized that 'in determining the appropriate length of the 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.' (Citations omitted).

2006-Ohio-6510 at ¶10

The court went on to state that Attorney Agopian had no prior disciplinary record, fully cooperated with the disciplinary process and fully accepted responsibility for his misconduct. Further, the Court found that the misconduct was a result of “sloppiness” as opposed to deceitful conduct. *Id.* at ¶6.

In the case of *Cincinnati Bar Association v. Farrell*, 2008-Ohio-4540, Attorney William Farrell and his wife were both practicing lawyers. His wife, some time during 2004, mentioned her desire to “cut back her work schedule to spend more time with their young daughter.” *Id.* at ¶5. Farrell’s wife suggested that the family move to a smaller home, but Attorney Farrell decided, instead, to obtain more lucrative employment. *Id.* However, Farrell only pretended to have found another job and lied to his wife regarding more lucrative employment. In furtherance of his scheme, Farrell fabricated a letter offering himself a job at a corporation as “Assistant General Counsel.” *Id.* at ¶6. He also forged another purported job offer from The Kroger Company and presented these forged offers to his wife. Unable to increase the income from his practice enough to sustain the new needs of his family, Farrell’s forged his wife’s signature to a power of attorney and used the document to obtain a \$50,000.00 increase in a line of credit. *Id.* at ¶8. He then lied about his wife’s signature in order to secure a notarization of the forged signature. *Id.* When his wife found out regarding the additional line of credit, Farrell fabricated several letters from his bank explaining that “discrepancies” in the bank account were being remedied. *Id.* at ¶10.

This Court, finding that Attorney Farrell’s conduct “caused much harm” imposed a sanction of a two year suspension, with one year stayed. This Court specifically found that all of the actions taken by Attorney Farrell were for the specific purpose of deceiving others (*Id.* at ¶18) and that an actual suspension was appropriate as a result of the “continuing course of deceit and misrepresentation designed to cover up wrongdoing.” *Id.* at ¶21. (Citations omitted).

In this case, an actual suspension from the practice of law is not appropriate, as this case presents an instance of “sloppiness” or “haphazard corner-cutting” as opposed to “deliberate effort to deceive.” See *Cleveland Bar Association v. McMahon*, 2007-Ohio-3673 at ¶28. This Court has specifically recognized that where there does not appear to be an intention to deceive the Court or Tribunal, no motive for personal gain or other self-serving interest, an actual suspension from the practice of law may not be appropriate. In the present case, it must be noted that the Parties have stipulated that driving privileges are routinely granted in the Berea Municipal Court, so there would be no motive for Attorney Lewis to forge Judge Comstock’s signature on the Driving Privileges Order. Neither Attorney Lewis nor his client ever filed the Driving Privileges Order with Judge Comstock’s forged signature with the Court. Further, there is no evidence of any motive to deceive or that Respondent Lewis or his client benefitted or profited from this conduct. Further, it is stipulated that Respondent Lewis has no prior disciplinary record, has cooperated in the disciplinary proceedings, and has otherwise demonstrated good character and reputation in the community and a general character trait for dependability and trustworthiness.

C. The Mitigating Factors in this Case Significantly Outweigh the Sole Aggravating Factor Found by the Board so that the Harsh Discipline Recommended is Not Appropriate.

As previously discussed, the sole aggravating factor found by the Board, that Respondent was not truthful at the Panel hearing, is not supported by the evidence presented. In addition, the significant mitigating factors in this case warrant a lesser sanction than recommended.

This matter involves a single act of misconduct by Respondent. It is undisputed that Respondent has no prior disciplinary record. It is also undisputed that Respondent did not seek to gain any advantage during the course of his representation of Ms. Burkhard by signing the Judge’s name to the Driving Privileges Entry. Respondent did not act with a selfish motive and did not act

for the purposes of personal gain, financial or otherwise. Respondent has freely admitted his wrongdoing and has expressed his sincere regret. Respondent's client was not harmed. In fact, Respondent was able to negotiate a plea agreement for his client in the OMVI proceeding better than the standard penalty imposed for such an offense. It is undisputed that Respondent cooperated fully in the disciplinary process, both before and after he retained counsel. Lastly, Respondent has provided evidence of his good character and reputation in the community.

Section 10 of the Rules and Regulation Governing Procedure on the Complaints and Hearings before the Board of Commissioners on Grievance and Discipline of the Supreme Court specifically directs the Board to consider the aforementioned mitigating factors "...in favor of recommending a less severe sanction." If this Court examines the evidence presented at the hearing regarding Respondent's explanation for his conduct, it will find that Respondent did not make any untruthful statements in the Panel hearing. Since Respondent was truthful at the Panel hearing, the sole "aggravating factor" cited by the Board to recommend a two-year suspension is eliminated. As the evidence demonstrates that the sole aggravating factor cited by the Board does not exist, the only remaining factors to be considered regarding imposition of a sanction in this case are mitigating. As such, the overwhelming evidence of mitigation, as well as the fact that this matter relates to a single instance of misconduct and Respondent has no prior disciplinary record, warrants a sanction much less severe than that suggested by the Panel and the Board.

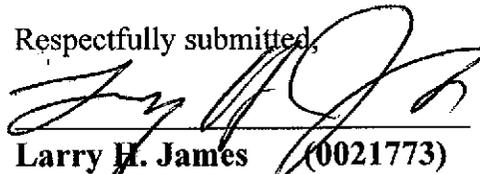
III. CONCLUSION

Respondent understands that he has engaged in misconduct that warrants discipline. Respondent has admitted his wrongdoing, has demonstrated his regret and fully cooperated in the disciplinary process. Respondent did not act with a selfish motive, and his client was not harmed

in any fashion. Respondent has demonstrated his good character and reputation in the community and has not engaged in any pattern of misconduct.

This Court has repeatedly stated that the purpose of the disciplinary system is not to punish, but, instead to protect the public. There has been no evidence presented in this case that Respondent poses any danger to the public or that Respondent is inclined to commit any further disciplinary offenses. While the sole issue in this matter, upon first blush, shocks the conscious (forging a Judge's name to a Court Entry), an examination of the specific facts and circumstances of this case demonstrate that the misconduct is not as serious as may be noted upon a cursory review. Respondent Lewis is a talented, conscientious and responsible attorney. An actual suspension from the practice of law will not only devastate his young career, but will not serve the purpose of the Ohio disciplinary system, as that purpose has been articulated by this Court. Instead, a suspension from the practice of law, with the entire term of the suspension stayed upon conditions, is a much more appropriate discipline to be imposed in this case. A suspension with the entire term of the suspension stayed will serve the purpose of upholding the disciplinary system without destroying Respondent Lewis' career.

Respectfully submitted,



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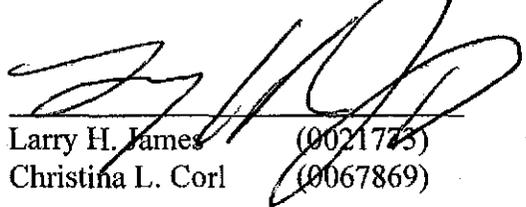
Counsel for Kenneth J. Lewis, Respondent

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served, via regular U.S. Mail, this **25th day of November, 2008**, to the following:

Kelly O’Kell, Esq.
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Counsel for Relator, Medina Bar Association

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APPENDIX

1. FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE OF THE SUPREME COURT OF OHIO. *Medina County Bar Association v. Kenneth J. Lewis.*

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

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

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**