

ORIGINAL

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

09-2336

FILED
DEC 28 2008
CLERK OF COURT
SUPREME COURT OF OHIO

In Re:	:	
Complaint against:	:	Case No. 09-052
Bradley M. Kraemer Attorney Reg. No. 0070329	:	Findings of Fact,
	:	Conclusions of Law and
Respondent	:	Recommendation of the
	:	Board of Commissioners on
Disciplinary Counsel	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
Relator	:	
	:	

INTRODUCTION

1. This matter was heard on November 18, 2009, in Columbus, Ohio before a panel consisting of Judge John B. Street, Martha L. Butler, and attorney David E. Tschantz, Chair, all of whom are duly qualified members of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (Board). None of the panel members resides in the appellate district from which the complaint arose and none of the panel members served as a member of the probable cause panel that certified the matter to the Board. Attorney Michael T. Gmoser represented the respondent, Bradley M. Kraemer, and Attorney Carol A. Costa represented relator, Disciplinary Counsel.

PROCEDURAL HISTORY

2. On February 1, 2008, respondent was charged in the Butler County Common Pleas Court by way of an information with the offense of theft, a fifth degree felony. On February 2, 2008, the respondent pled guilty to this offense and was sentenced to community

control for a period of three years, fined the amount of \$1,000.00, and ordered to pay restitution to his former employer, the law firm of Lyons & Lyons Co. in West Chester, Ohio, in the amount of \$7,157.10.

3. As a result of his felony conviction, and pursuant to Gov.Bar R. V(5)(A)(4), the Supreme Court of Ohio, on July 10, 2008, ordered that the respondent's license to practice law be suspended for an interim period.

4. On June 29, 2009, a complaint was filed against the respondent by the relator. In the complaint, relator alleged violations of the following Rules of Professional Conduct: Prof. Cond. R. 8.4(b) (commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness); Prof. Cond. R. 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); Prof. Cond. Rule 8.4(d) (conduct that is prejudicial to the administration of justice); and Prof. Cond. R. 8.4(h) (conduct that adversely reflects upon the lawyer's fitness to practice law).

5. Respondent timely filed his answer, within an extension granted by the Board, on August 20, 2009. In his answer, respondent admitted all the allegations contained in the complaint and stated that he wished to present evidence, testimony and argument in mitigation before the assigned panel.

6. On August 27, 2009, a hearing panel was appointed and the case was set for hearing. Respondent and relator filed joint stipulations on November 12, 2009, and the hearing was held on November 18, 2009.

7. At the hearing, respondent provided the panel and relator with a copy of an order issued by the Butler County Common Pleas Court on November 9, 2009, terminating the respondent's community control.

FINDINGS OF FACT

8. The facts of this case were filed with the Board as joint stipulations and are attached hereto. The panel found that said facts had been proven by clear and convincing evidence and accepted the stipulations of fact at the hearing without modification.

CONCLUSIONS OF LAW

9. The rule violations alleged in the complaint were also filed with the Board as joint stipulations, and the panel found that said violations had also been proven by clear and convincing evidence and accepted said stipulations at the hearing, without modification. Respondent, therefore, was found to have violated the following Ohio Rules of Professional Conduct: Prof. Cond. R. 8.4(b) (commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness); Prof. Cond. R. 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); Prof. Cond. R. 8.4(d) (conduct that is prejudicial to the administration of justice); and Prof. Cond. R. 8.4(h) (conduct that adversely reflects upon the lawyer's fitness to practice law).

MITIGATION

10. With regard to the factors in mitigation that may be considered in favor of less severe sanctions for professional misconduct listed in BCGD Proc. Reg. 10(B)(2), the parties stipulated, and the panel unanimously finds by clear and convincing evidence, that (a) respondent has no prior disciplinary record and (b) has made restitution, (c) displayed a cooperative attitude toward these proceedings, and (d) has had other penalties and sanctions imposed upon him as a result of his misconduct.

11. The parties did not stipulate, but the panel unanimously finds, by clear and convincing evidence presented at the hearing, that the respondent's character and reputation is a mitigating factor in this case.

12. The parties also did not stipulate, but the panel unanimously finds by clear and convincing evidence presented at the hearing, that the respondent had, at the time of the violations, a mental disability that meets the criteria set forth in BCGD Proc.Reg. 10(B)(2)(g). At the hearing, respondent presented testimony by Elizabeth Leslie-Leshner, MSW, LISW, a clinical social worker in Fairfield, Ohio, who indicated that she had diagnosed the respondent with adjustment disorder with mixed disturbance of emotions and conduct. Ms. Leslie-Leshner further testified that, in her professional opinion due to the changes in respondent that she has observed, the respondent's disorder has resolved and he is capable of returning to the competent, professional, ethical practice of law.

13. The respondent also presented testimony by Stephanie Krznarich, MSW, LISW-S, LCDC-III, a clinical social worker with the Ohio Lawyers Assistance Program (OLAP), who indicated that she had also diagnosed the respondent with adjustment disorder with mixed disturbance of emotions and conduct. Ms. Krznarich also testified that, in her professional opinion due to the changes in respondent that she has observed, the respondent's disorder has resolved and he is capable of returning to the competent, professional, ethical practice of law.

14. The panel also wishes to note for the Board the respondent's testimony, which is supported by the exhibits introduced at the hearing, that he stopped taking money from his employer before he was caught. What was not discussed at the hearing, by either party or the panel, was what he intended to do to right the wrongs he had committed. Even so, the fact that

he had stopped his criminal activity prior to being caught is, in the opinion of the panel, of mitigating value.

15. The panel finds additional mitigating value in the fact that the respondent, when confronted by the West Chester Police Department, immediately admitted that he had committed the acts alleged against him.

16. Finally, respondent, at the hearing, expressed what the panel believes is sincere remorse. This is best illustrated by the following response the respondent gave when asked by a member of the panel what he had told his oldest son about the allegations against him:

I took him to a park by himself because he was - five or five and a half at the time. I sat him down and basically explained to him that his daddy had screwed up; that I had made some mistakes; that sometimes people do that; that sometimes people make bad judgments, but the character of a person is determined by what they do once they make that mistake. And that if he ever made a mistake, that the best way to handle it was to take responsibility for what he did and to stand up and be a man. . .

But to say that talking to him was probably the most humbling thing I've ever been through would be an understatement. You know, everything else that has happened to me doesn't---there's no comparison to having that conversation with that little boy. You know, I hope that, you know, he understood what I was saying. I really don't want to have that conversation with him again. [Tr. 151-153]

17. Respondent, jointly with relator, also submitted numerous letters from fellow lawyers, letters from two judges, a letter from an assistant prosecutor in the office that

prosecuted him, and a letter from his county sheriff, all attesting to his good character and reputation. In addition, several persons appeared personally at the hearing and testified on his behalf, including Attorney Scott R. Mote, the executive director of OLAP, and Attorney Myron Wolf, a former member of the Board, both of whom urged the panel to recommend that respondent be given the opportunity to again practice law.

AGGRAVATION

18. With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in BCGD Proc. Reg. 10(B)(1), the parties did not stipulate, but the panel unanimously finds, by clear and convincing evidence, that respondent clearly acted with a dishonest or selfish motive in stealing his employer's funds, demonstrated a pattern of misconduct, and committed multiple offenses.

RECOMMENDED SANCTION

19. At the conclusion of the hearing and in their joint stipulations, relator and respondent recommended the sanction of a two year suspension, with the second year stayed, under the following conditions:

- (1) Respondent shall continue to make regular visits to his treating mental health professional at a frequency to be determined by the treating professional;
- (2) Upon his return to practice, respondent shall submit to a law practice monitor appointed by relator;
- (3) Respondent shall refrain from any further misconduct.

20. The respondent indicated at the hearing and in the joint stipulations that he would like to receive credit for his time served under the interim suspension. Relator took no position on this request but, significantly, did not object.

21. In considering the appropriate sanction to recommend to the Board, the panel has considered all relevant factors, including those in mitigation and aggravation, and precedent established by the Supreme Court of Ohio. The panel reviewed the following two cases with regard to determining the proper sanction to recommend in this case: *Akron Bar Association v. Carter*, 115 Ohio St.3d 18, 2007-Ohio-4262 (the Court imposed a two year suspension, with one year stayed, for felony theft and misuse of a credit card arising out of the respondent's use of his employer's credit card to obtain services in excess of \$6,000.00); and *Disciplinary Counsel v. Brenner* (2009), 122 Ohio St.3d 523, 2009-Ohio-3602 (The Court also imposed a two year suspension, with one year stayed, for diverting approximately \$15,000.00 in fees from his law firm to his own use). In both cases, the Court cited multiple mitigating factors as the reason for staying the second year of the suspension. The panel finds that the same mitigating factors are present in this case.

22. In determining what to recommend concerning the issue of whether or not to grant the respondent credit for time served under his interim suspension, the panel relies upon the case of *Disciplinary Counsel v. Margolis*, 114 Ohio St.3d 165, 2007-Ohio-3607. In *Margolis*, the Court did not order that credit be given for time served under the respondent's interim suspension. However, it set forth criteria for determining when such credit should be given.

23. The major factor cited by the Court in that case that should determine when a lawyer should be given credit for time served under an interim suspension is when the

disciplined lawyer presents credible evidence of remorse and acceptance of responsibility. *Id.* at 169.

24. The Court also used the phrase “a one-time, out-of-character mistake” in the same discussion in that case. The Court in that discussion cites *Disciplinary Counsel v. Cook* (2000), 89 Ohio St.3d 80, wherein an attorney was given a six month suspension with credit for time served in his interim suspension after he was convicted of a felony for writing purchase contracts with reckless disregard for the fact that the buyer intended to pay for them with profits from illegal drug sales.

25. The Court in *Margolis* also cites the length of time the criminal conduct occurred and the amount of money involved as additional factors. Thus, in light of *Cook*, the panel interprets its guidance from the Court to be that a series of violations within a short period of time may be considered a one-time mistake even though there may have been multiple occurrences of the violation.

26. In this case, the respondent’s thefts began in June, 2007, ended in October, 2007, and totaled \$7,157.10.

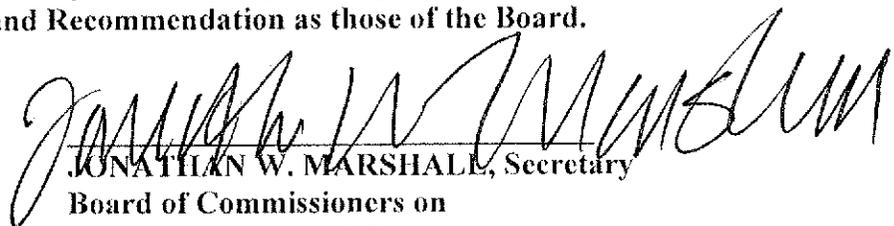
27. Therefore, the panel recommends to the Board the sanction of a two year suspension with two years stayed, provided that during the period of the stay respondent:

- (1) Continues to make regular visits to his treating mental health professional at a frequency to be determined by the treating professional;
- (2) Upon his return to practice, submits to a law practice monitor appointed by relator; and
- (3) Refrains from any further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(I), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 4, 2009. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Bradley M. Kraemer, be suspended from the practice of law for a period of two years with both years stayed upon conditions contained in the panel report. 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

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

Bradley M. Kraemer
Attorney Registration No. 0070329
5384 Canyon Ridge
Hamilton, OH 45011

BOARD NO. 09-052

FILED

Respondent,

NOV 12 2009

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

DISCIPLINARY COUNSEL
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

AGREED STIPULATIONS

Relator.

AGREED STIPULATIONS

Relator, Disciplinary Counsel, and respondent, Bradley M. Kraemer, do hereby stipulate to the admission of the following facts and exhibits.

STIPULATED FACTS

1. Respondent, Bradley M. Kraemer, was admitted to the practice of law in the state of Ohio on December 20, 1998, and is thus subject to the Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Supreme Court Rules for the Government of the Bar of Ohio.
2. Respondent was employed by the law firm of Lyons & Lyons Co., L.P.A. in West Chester, Ohio from September 2003 to December 2007.
3. Respondent's practice at Lyons & Lyons consisted primarily of criminal defense work.

4. Pursuant to an oral agreement, respondent was to receive as compensation 40% of the fees collected from cases in which he performed work.
5. Respondent was terminated from Lyons & Lyons in December 2007 due to financial misconduct.
6. On February 1 2008, respondent was charged by way of an information for the offense of theft, a fifth-degree felony, in the Butler County Court of Common Pleas, Case No 2008-01-0065.
7. On or about February 2, 2008 respondent pled guilty to the offense of theft, a fifth-degree felony, and was sentenced to community control for a period of three years and fined the amount of \$1,000. He was also ordered to pay restitution in the amount of \$7,157.10 to the law firm of Lyons & Lyons Co.
8. The theft conviction was based on respondent's receipt of \$11,928.10 in fees from clients without providing any funds to Lyons & Lyons, specifically:
 - A. Respondent represented Matthew Oliver on a DUI and/or OMVI charge. A fee agreement was signed on October 11, 2007. Oliver gave respondent a check made payable to respondent on October 16, 2007 in the amount of \$2,500 for the representation. Respondent deposited the funds into his personal account and provided no amount of money to Lyons & Lyons. When the firm prepared a bill for Oliver, respondent wrote "never retained" on the bill so that the charge would be written off.
 - B. Respondent represented Mark Cropper on a domestic violence/CPO matter. A fee agreement was signed on July 9, 2007. Cropper paid respondent \$700 by check and \$800 in cash for the representation. Respondent deposited the funds into his

personal account, and provided no amount of money to Lyons & Lyons. When the firm prepared a bill for Cropper, respondent wrote "write this off" on the bill.

- C. Respondent was appointed to represent Gordon Silvers on a murder charge. Respondent received a \$2,550 check from the county for the representation. Respondent deposited the funds into his personal account, and provided no amount of money to Lyons & Lyons. The firm also advanced costs of \$383.61. Said funds were not included in the invoice respondent provided to the county, nor were these funds reimbursed to Lyons & Lyons.
- D. Respondent was co-counsel for Joshua Grippa in a delinquency matter. Respondent was paid by a check in the amount of \$1,237.50. Respondent deposited the funds into his personal account and provided no amount of money to Lyons & Lyons.
- E. Respondent was appointed to represent Marshall Smith in a criminal matter and deposited the \$756 into his personal account and provided no amount of money to Lyons & Lyons.
- F. Respondent represented Renee Marion in a criminal matter. Respondent deposited the \$635 paid into his personal account, and provided no amount of money to Lyons & Lyons.
- G. Respondent represented Sorin Barber in a traffic matter. Respondent deposited the \$250 paid into his personal account, and provided no amount of money to Lyons & Lyons.
- H. Respondent represented an individual named Allmer in a criminal matter. Respondent received \$2,500 from Allmer for the representation. (While included

in respondent's prosecution, he later determined that Allmer was in fact Matthew Oliver).

9. The restitution ordered to be paid to Lyons & Lyons represented 60% of the fees collected in the aforementioned cases.
10. Respondent admits that there may have been a "couple" of other criminal appointment matters in which he retained all fees but he is unaware of the names of the clients.
11. Respondent was placed on a felony suspension by the Ohio Supreme Court on July 10, 2008 pursuant to Gov. Bar R. V(5)(A)(4).

STIPULATED VIOLATIONS

12. Relator and respondent stipulate that respondent's conduct violates the following provisions of the Ohio Rules of Professional Conduct: Prof. Cond. R. 8.4(b) (It is professional misconduct for a lawyer to commit an illegal act that reflects adversely on his honesty or trustworthiness); Prof. Cond. 8.4(c) (It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); 8.4(d) (It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice); 8.4(h) (It is professional misconduct for a lawyer to engage in conduct that adversely reflects on his fitness to practice law).
13. Relator and respondent stipulate to the following mitigating factors pursuant to B.C.G.D. Proc. Reg. Section 10(B)(2):
 - a. Respondent has no disciplinary history
 - b. Respondent has made restitution
 - c. Respondent displayed a cooperative attitude toward the proceedings
 - d. Other penalties and sanctions have been imposed

STIPULATED EXHIBITS

1. Information filed in the Butler County Court of Common Pleas
2. Entry of Plea of Guilty to Information filed in the Butler County Court of Common Pleas
3. Judgment of Conviction Entry filed in the Butler County Court of Common Pleas
4. Transcript of Disposition hearing, March 11, 2008
5. Interim felony suspension order, July 10, 2008
6. Respondent's deposition with exhibits
7. Report of Elizabeth Leslie-Leshner, Licensed Clinical Social Worker, dated September 12, 2009
8. Additional Letter from Elizabeth Leslie-Leshner dated September 27, 2009
9. Respondent's character letters

SANCTION

Relator and respondent stipulate that the appropriate sanction in this matter is a two-year suspension with the second year stayed subject to the following conditions:

- a. Respondent shall continue to make regular visits to his treating mental health professional at a frequency to be determined by the treating professional.
- b. Upon his return to practice, respondent shall submit to a law practice monitor appointed by relator.
- c. Respondent shall refrain from any further misconduct.

Relator takes no position as to whether respondent should be afforded credit for time served under the interim felony suspension, leaving that to the discretion of the panel, the board, and ultimately, the Court. Respondent would like to be afforded credit for his interim felony suspension.

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this

_____ day of _____, 2009.

5th November

By Michael T. Gmoser ^{ESQ.} AND
Bradley M. Kraemer, Esq.

Jonathan E. Coughlan
Jonathan E. Coughlan (0026424)
Disciplinary Counsel

CAC

Michael T. Gmoser
Michael T. Gmoser, Esq.
311 Key Bank
6 South 2nd Street
Hamilton, OH 45011
(513)892-8251

Counsel for respondent.

Carol A. Costa
Carol A. Costa (0046556)
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215
(614)461-0256

Counsel of record.

Bradley M. Kraemer
Bradley M. Kraemer, Esq. (0070329)
5384 Canyon Ridge
Hamilton, OH 45011
(513)887-3640

Respondent.

CONCLUSION

The above are stipulated to and entered into by agreement by the undersigned parties on this

18th day of November, 2009.

Jonathan E. Coughlan by CAC
Jonathan E. Coughlan (0026424)
Disciplinary Counsel

Michael T. Gmoser, Esq.
Michael T. Gmoser, Esq.
311 Key Bank
6 South 2nd Street
Hamilton, OH 45011
(513)892-8251

Counsel for respondent.

Carol A. Costa
Carol A. Costa (0046556)
Assistant Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, OH 43215
(614)461-0256

Bradley M. Kraemer, Esq. (0070329)
Bradley M. Kraemer, Esq. (0070329)
5384 Canyon Ridge
Hamilton, OH 45011
(513)887-3640

Respondent.

Counsel of record.