

ORIGINAL

IN THE
SUPREME COURT OF OHIO

In re: :

Bradley M. Kraemer : **CASE NO. 2009-2336**
Attorney Registration No. (0070329) :
 723 Dayton Street :
 Hamilton, OH 45011 :

Respondent :

Disciplinary Counsel : **RELATOR'S OBJECTIONS TO THE**
 250 Civic Center Drive, Suite 325 : **BOARD OF COMMISSIONERS**
 Columbus, OH 43215-7411 : **FINDINGS OF FACTS AND**
 : **CONCLUSIONS OF LAW AND BRIEF**
 : **IN SUPPORT**

Relator :

**RELATOR'S OBJECTIONS TO THE BOARD OF COMMISSIONERS
FINDINGS OF FACTS AND CONCLUSIONS OF LAW
AND BRIEF IN SUPPORT**

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

MICHAEL THOMAS GMOSE (0002132)
Counsel for Respondent
Michael T. Gmoser Co., LPA
311 Key Bank
6 South 2nd Street
Hamilton, OH 45011

JOSEPH M. CALIGIURI (0074786)
Assistant Disciplinary Counsel
Co-Counsel of Record

BRADLEY M. KRAEMER (0070329)
Respondent

CAROL A. COSTA (0046556)
Assistant Disciplinary Counsel
Co-Counsel of Record

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Disciplinary Counsel
250 Civic Center Drive, Suite 325
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Relator

CASE NO. 2009-2336

**Relator's Objections to the Board of
Commissioners Findings of Fact and
Conclusions of Law and Brief in Support**

INTRODUCTION

Now comes relator, Disciplinary Counsel, and hereby submits its objections to the Report of the Board of Commissioners on Grievances and Discipline (the "board") filed with the court on December 28, 2009. Relator's sole objection is to the board's recommended sanction of a two- year stayed suspension. While relator takes no position as to whether respondent should be given credit for time-served under his interim felony suspension, relator asserts that this Court should adopt the parties' original joint recommendation of a two-year suspension with one-year stayed. A two-year suspension with one-year stayed is commensurate with the misconduct and consistent with this Court's precedent in cases involving theft by an attorney.

STATEMENT OF FACTS

The facts underlying the misconduct are cogently set forth in the board's report ("report"), which is attached hereto as Appendix A. Respondent, Bradley M. Kraemer, was admitted to the practice of law in the state of Ohio on December 20, 1998. On February 1, 2008, respondent was charged with Theft, a fifth-degree felony in the Butler County Court of Common Pleas. Respondent pled guilty to a felony theft offense and was sentenced to three years community control and ordered to pay \$7,157.10 in restitution to his former law firm and a \$1,000 fine. On July 10, 2008, this Court suspended respondent's license to practice law on an interim basis under Gov. Bar R(V)(A)(4). Thereafter, relator filed a formal complaint against respondent. On November 12, 2009, the parties submitted joint stipulations in which respondent admitted to violating the following disciplinary rules:

- ORPC 8.4(b) [A lawyer shall not commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness];
- ORPC 8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation];
- ORPC 8.4(d) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and,
- ORPC 8.4(h) [A lawyer shall not engage in any other conduct that adversely reflects upon the lawyer's fitness to practice law].

In addition to stipulating that his conduct violated the above-referenced disciplinary rules, respondent agreed that the appropriate sanction for such conduct was a two-year suspension with one-year stayed. The board adopted the parties' factual stipulations and disciplinary rule violations; however, the board recommended that respondent be suspended from the practice of law for two years, all stayed, subject to conditions. (Report at 9).

OBJECTIONS

THE BOARD ERRED IN RECOMMENDING A TWO-YEAR STAYED SUSPENSION.

“An attorney who turns to crime and is convicted of theft offenses should be disbarred.” *Cincinnati Bar Assn. v. Powers*, 119 Ohio St.3d 473, 2008-Ohio-4785, 895 N.E.2d 172. Although relator is not advocating for disbarment, the Court’s holding in *Powers* underscores this Court’s attitude toward lawyers who steal. Further, *Powers* illustrates the depth of the board’s error in recommending a stayed suspension after respondent was convicted of felony theft.

In recommending a stayed suspension, the board ignored respondent’s own recommendation of an actual suspension, minimized the magnitude of his criminal conduct, relied too heavily upon respondent’s mitigation testimony, and ignored this Court’s long line of decisions requiring an actual suspension in cases involving theft. “Disbarment is the presumptive disciplinary measure for acts of misappropriation and the starting point for determining the required sanction.” *Disciplinary Counsel v. Kelly*, 131 Ohio St.3d 39, 43, 2009-Ohio-317, 901 N.E.2d 798, citing *Cleveland Bar Assn. v. Dixon*, 95 Ohio St.3d 490, 2002-Ohio-2490, 769 N.E.2d 816, ¶ 15. After considering the mitigating factors, respondent’s misconduct warrants a two-year suspension with one-year stayed.

Respondent stole in excess of \$7,000 from his law firm and thereafter engaged in deceptive practices aimed at concealing the theft. Respondent’s criminal conduct resulted in a felony conviction. As explained in the stipulations, respondent’s compensation arrangement with his firm was that he was entitled to 40% of all fees collected, while the law firm was entitled to the remaining 60%. For months, respondent engaged in a pattern of misconduct by collecting and retaining 100% of the fees paid by the firm’s clients. Unaware that respondent

had already collected a \$2,500 fee from one client, the law firm prepared a bill for the client and sent it to respondent for review. (Stipulations “Stip.” ¶ 8). Upon receipt, respondent wrote “never retained” on the bill. *Id.* at ¶ 8a. In another matter, respondent collected a \$700 fee from the firm’s client and deposited it into his personal account. *Id.* at ¶ 8b. When the firm prepared a bill for the client, respondent wrote “write this off” on the face of the bill. *Id.* These were blatant, intentional efforts to conceal his criminal conduct. It was not until respondent was confronted by two police officers that he ultimately admitted stealing from his firm. (Transcript, Tr.” p. 120). Although the board correctly concluded that respondent engaged in a pattern of misconduct, acted with a dishonest or selfish motive, and committed multiple offenses, it simply lost its way in recommending a stayed suspension. (Report at 6).

None of the cases relied upon by the board support its erroneous recommendation of a two-year stayed suspension. In arriving at its recommendation, the board cited four disciplinary cases—all of which resulted in actual suspensions from the practice of law. (*Akron Bar Assn. v. Carter*, 115 Ohio St.3d 18, 2007-Ohio-4262, two-year suspension with one-year stayed, *Disciplinary Counsel v. Brenner*, 122 Ohio St.3d 523, 2009-Ohio-3602, two-year suspension with one-year stayed, *Disciplinary Counsel v. Margolis*, 114 Ohio St.3d 165, 2007-Ohio-3607, two-year suspension with no credit for time served under felony suspension, and *Disciplinary Counsel v. Cook*, 89 Ohio St.3d 80, 2000-Ohio-447, 728 N.E.2d 1054, six-month suspension with credit for time-served under the felony suspension). As illustrated below, these cases fully support relator and respondent’s original recommendation of a two-year suspension with one-year stayed.

The board relied upon *Carter*, *supra*, in recommending a two-year stayed suspension, despite the fact that the *Carter* court imposed a two-year suspension with one-year stayed.

Carter, 115 Ohio St.3d 18, 2007-Ohio-4262. In *Carter*, the lawyer used his employer's American Express charge card for personal expenses totaling \$5,900.23. *Id.* at ¶ 6, 2007-Ohio-4262. When confronted by law enforcement, respondent presented a check that was returned for insufficient funds. *Id.* at ¶ 8, 2007-Ohio-4262. In arriving at its decision to impose a two-year suspension with one-year stayed, the Court stated:

One of the fundamental tenets of the professional responsibility of a lawyer is that [the lawyer] should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach. [The lawyer] should refrain from any illegal conduct. Anything short of this lessens public confidence in the legal profession—because obedience to the law exemplifies respect for the law. *Id.* at ¶ 15, 2007-Ohio-4262, citing *Cleveland Bar Assn. v. Stein* (1972), 29 Ohio St.2d 77, 81, 58 O.O.2d 151, 278 N.E.2d 670.

Like the lawyer in *Carter*, respondent not only abused the trust of his employer, but also took steps to conceal his misdeeds, thus exacerbating his misconduct. In imposing an actual suspension, the *Carter* Court held, “A violation of Disciplinary Rules barring conduct involving fraud, deceit, dishonesty, or misrepresentation ordinarily calls for the actual suspension of an attorney’s law license.” *Carter*, 115 Ohio St.3d 18, 2007-Ohio-4262, ¶ 16.

The board also relied upon *Disciplinary Counsel v. Brenner*, 122 Ohio St.3d 523, 2009-Ohio-3602. In *Brenner*, the lawyer stole approximately \$15,000 of law firm funds while representing two separate clients. Similar to respondent, the lawyer in *Brenner* attempted to conceal his misdeeds by classifying checks as expense-related expenditures when they were actually used to pay Brenner’s personal obligations. Despite the presence of many mitigating factors such as no previous discipline, full cooperation, and a good-faith attempt at restitution, the Court imposed a two-year suspension with one-year stayed.

We find that an actual suspension is warranted, based upon previous decisions that have deemed this sanction to be appropriate where an attorney has misappropriated law-firm funds. See *Toledo Bar Assn. v. Crossmock*, 111 Ohio St.3d 278, 2006-

Ohio-5706, 855 N.E.2d 1215 (indefinite suspension for attorney's misappropriation of over \$300,000 in law firm funds); *Disciplinary Counsel v. Yajko* (1997), 77 Ohio St.3d 385, 674 N.E.2d 1008 (indefinite suspension for misappropriation of approximately \$200,000 of law firm funds); *Columbus Bar Assn. v. Osipow* (1994), 68 Ohio St.3d 338, 626 N.E.2d 935 (indefinite suspension for repeated failure to report fees to firm, misrepresenting expenses, and misappropriation). *Id.* ¶ 21. (Emphasis Added).

In relying upon *Carter* and *Brenner*, *supra*, the board stated, "In both cases, the Court cited multiple mitigating factors as the reason for staying the second year of the suspension. The panel finds the same mitigating factors are present in this case." (Report at 7). Despite the factual similarities, the board recommended a sanction inconsistent with *Carter* and *Brenner* and contrary to this Court's precedent.

The board then relied upon *Disciplinary Counsel v. Margolis*, 114 Ohio St.3d 165, 2007-3607 for guidance in determining whether to grant respondent credit for time-served under his felony suspension. (Report at 7.). While relator takes no position on that particular issue, one must question the board's reliance on *Margolis* when it ultimately recommended a fully-stayed suspension, thus making any discussion of credit for time-served under a felony suspension irrelevant. Further, it bears noting that in *Margolis*, this Court imposed a two-year actual suspension with no credit for time served after Margolis was convicted of two counts of conspiracy to restrain trade in violation of the Sherman Antitrust Act. *Id.* ¶ 30. *Margolis* is also instructive in that it discusses a litany of cases in which lawyers convicted of felony offenses received an actual suspension from the practice of law.¹

¹ See *Cuyahoga Cty. Bar Assn. v. Garfield*, 109 Ohio St.3d 103, 2006-Ohio-1935, 846 N.E.2d 45 (18 months' suspension and credit for interim suspension ordered for lawyer convicted of federal bank fraud because he pledged an investment company's certificate of deposit as collateral for a \$250,000 personal loan); *Disciplinary Counsel v. Blaszak*, 104 Ohio St.3d 330, 2004-Ohio-6593, 819 N.E.2d 689 (two-year suspension and credit for interim suspension ordered for lawyer convicted of selling testimony); *Akron Bar Assn. v. Peters* (2002),

In further discussing whether to grant respondent credit for time-served under his interim felony suspension, the board also cited *Disciplinary Counsel v. Cook*, 89 Ohio St.3d 80, 2000-Ohio-447, 728 N.E.2d 1054 for the proposition “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.” (Report at 8). In *Cook*, the lawyer pled guilty to a felony for assisting his client in obtaining financing with a reckless disregard for the truth as to the source of the client’s monies. Despite finding that Cook had no intent to commit a crime, cooperated with the district attorney, completed six months of home confinement, and paid a fine, the court imposed a six-month actual suspension with credit for time served under Cook’s interim felony suspension. *Id.* at 81, 2000-Ohio-447, 728 N.E.2d 1055. Again, in light of the board’s recommendation of a fully-stayed suspension, the board’s reliance on *Cook* is puzzling. Further, the board’s attempt to treat respondent’s multiple instances of theft as a single incident contradicts its own unanimous finding that respondent “demonstrated a pattern of misconduct and committed multiple offenses.” (Report at 6).

94 Ohio St.3d 215, 761N.E.2d 1038 (two-year suspension and credit for interim suspension ordered for lawyer convicted of the felony of having an illegal interest in a public contract and related crimes); *Disciplinary Counsel v. Dubyak* (2001), 92 Ohio St.3d 18, 748 N.E.2d 26 (two-year suspension, with six-month stay and credit for interim suspension ordered for lawyer who obtained confidential information through a \$15,000 kickback and was then convicted of mail fraud for agreeing to pay a second kickback); *Disciplinary Counsel v. Petroff* (1999), 85 Ohio St.3d 396, 709 N.E.2d 111 (one-year suspension and credit for interim suspension ordered for lawyer convicted of attempting to evade federal income taxes); and *Disciplinary Counsel v. Lash* (1993), 68 Ohio St.3d 12, 623 N.E.2d 28 (one-year suspension and credit for interim suspension ordered for lawyer convicted of bank fraud based on \$10,000 misstatement of his income in mortgage loan application); *Dayton Bar Assn. v. Seall* (1998), 81 Ohio St.3d 280, 690 N.E.2d 1271 (one-year suspension with credit for interim suspension ordered for lawyer convicted of conspiracy to commit federal tax fraud); *Disciplinary Counsel v. Miller* (1997), 79 Ohio St.3d 115, 679 N.E.2d 1098 (one-year suspension with credit for interim suspension ordered for lawyer convicted of aiding and abetting the filing of false federal tax return); and *Disciplinary Counsel v. Smith* (1994), 69 Ohio St.3d 475, 633 N.E.2d 1117 (two-year suspension with credit for interim suspension ordered for lawyer convicted of theft of government property).

The board's reliance on *Carter* and *Brenner*, supra, (two-year suspensions with one-year stayed) coupled with its lengthy discussion regarding the factors that allow for credit for time-served under an interim suspension, strongly suggests that the board was inclined to recommend a two-year suspension with one-year stayed, and allow respondent credit for time-served under his felony suspension. Otherwise, the board's recommendation of a fully-stayed suspension is inherently inconsistent with its own analysis.

The panel reviewed the following two cases with regard to determining the proper sanction in this case: *Akron Bar Assn. v. Carter** * * and *Disciplinary Counsel v. Brenner** * *. In both cases, the Court cited multiple mitigating factors as the reason for staying the second year of the suspension. The panel finds the same mitigating factors are present in this case.”

(Report at 7).

It is no coincidence that *Carter* and *Brenner*, both of which involved theft of law firm funds, resulted in suspensions of two-years with one-year stayed. At the time of the hearing, respondent had already served in excess of one-year under his felony suspension, which began in July 2008. The board's subsequent analysis of the criteria for determining whether to award respondent credit for time-served under *Margolis* and *Cook* is consistent with the application of a partially-stayed suspension. Without some actual time-off, there is simply no reason to discuss credit for time-served under an interim suspension. The more plausible explanation is that the board relied upon *Carter*, *Brenner*, *Margolis*, and *Cook* to justify respondent's immediate return to the practice of law through the imposition of a two-year suspension with one-year stayed with credit for time he had served under his felony suspension. As evidenced by the board's report, there is no authority for a fully-stayed suspension.

A further review of this Court's recent decisions in disciplinary cases involving theft-related convictions illustrates the complete lack of authority supporting a stayed suspension. In

Cincinnati Bar Assn. v. Schwieterman, 115 Ohio St.3d 1, 2007-Ohio-4266, 873 N.E.2d 810, a case directly on point with the case at bar, this Court indefinitely suspended an attorney with no credit for time served under his interim felony suspension for, among other things, misappropriating \$9,400 from his law firm. *Id.* Like respondent, the lawyer in *Schwieterman* “committed multiple violations showing a pattern of misconduct involving fraud and dishonesty.” The *Schwieterman* Court held, “We find that respondent’s pattern of misconduct, and the fact that he used his position as an attorney to steal the funds, ‘makes respondent’s wrongdoings particularly egregious.’” *Id.* at 5, 2007-Ohio-4266, 873 N.E.2d 810, 814 citing *Disciplinary Counsel v. Yajko*, 77 Ohio St.3d at 387-388, 674 N.E.2d 684. Like respondent, the lawyer in *Schwieterman* pled guilty to one count of felony theft, admitted his misconduct, apologized, was genuinely remorseful, cooperated at every level of the disciplinary investigation, fully complied with OLAP, and made full restitution. The only differentiating factor between *Schwieterman* and the case at bar is that the *Schwieterman* Court declined to treat Schwieterman’s diagnosed depression and attention deficit hyperactive disorder as a mitigating factor. *Schwieterman*, 115 Ohio St.3d 1, 2007-Ohio-4266, 873 N.E.2d 810, ¶ 32.

In the case at bar, the board treated respondent’s alleged mental disability as a mitigating factor under BCGD Proc.Reg.10(B)(2)(g), despite testimony from respondent’s social worker that the diagnosis was a “very minimal diagnosis.” (Tr. p. 37). It is inconceivable that the presence of one additional mitigating factor could justify a stayed suspension in a case involving theft by an attorney. While relator takes no position on respondent receiving credit for time-served under his interim felony suspension, any sanction must include an actual suspension from the practice of law. To impose a stayed suspension lessens the seriousness of the offense, undermines the public’s confidence in the bar, and fails to protect the public from like-minded

lawyers who steal. “The continuing public confidence in the judicial system and the bar requires that the strictest discipline be imposed in misappropriation cases.” *Disciplinary Counsel v. Kelly*, 131 Ohio St.3d 39, 2009-Ohio-317, 901 N.E.2d 798, citing *Cleveland Bar Assn. v. Belock* (1998), 82 Ohio St.3d 98, 100, 694 N.E.2d 897. A two-year suspension with one-year stayed strikes the appropriate balance between allowing respondent the opportunity to return to the practice of law and sending a stern message to lawyers and the public that such conduct will not be tolerated.

The board found respondent’s decision to stop stealing a month before he was caught to be of “mitigating value.” (Report at 5). The board’s finding is absurd in that it rewards respondent for not continuing to engage in criminal conduct. It is exactly this type of logic that tarnishes the public’s perception of lawyers. While it is true that respondent stopped stealing one month before he was caught, it was not until after respondent was caught that he admitted his misdeeds. Had it not been for police intervention, respondent would never have disclosed his crimes and his fraud would have gone undetected. Rather than a mitigating factor, respondent’s silence should be considered an aggravating factor especially in light of respondent’s duty under the Ohio Rules of Professional Conduct to self-report misconduct. In *Kelly*, supra, 131 Ohio St.3d 39, 2009-Ohio-317, 901 N.E.2d 798, this Court indefinitely suspended a magistrate after it was discovered she embezzled \$40,000 from the humane society and practiced law while a magistrate. In objecting to the board’s recommendation of an indefinite suspension, Kelly argued in mitigation that she had “voluntarily reported her misappropriation” to the humane society. *Kelly*, 131 Ohio St.3d 39, 2009-Ohio-317, 901 N.E.2d 798, ¶ 43. The Court rejected the magistrate’s argument, finding that while true, of greater importance was that fact that the magistrate “did not disclose her theft” until the humane society’s investigation made discovery

imminent. *Id.* Similarly, respondent should not be given credit for refraining from additional criminal conduct, but should be held accountable for concealing his misdeeds until after he was caught.

While working for a bank, Attorney Robert Zins, stole a customer's identity and siphoned \$1,236 from the unsuspecting customer's account for his personal use. *Cincinnati Bar Assn. v. Zins*, 116 OhioSt.3d 1, 2007-Ohio-5263. Zins attempted to do the same to two other customers but was caught before he could complete the crimes. *Id.* Like respondent, Zins pled guilty to a felony, had no prior disciplinary record, made full restitution, cooperated fully in the disciplinary process, and expressed genuine remorse. *Id.* In a 4-3 decision, the Court found that Zins acted with a dishonest motive and imposed a two-year actual suspension with no credit for time served under Zins' interim felony suspension. *Id.* ¶ 15. The three dissenting justices would have imposed an indefinite suspension. In the case at bar, the board found two aggravating factors not present in *Zins*—a pattern of misconduct and multiple offenses, yet recommended a fully-stayed suspension. Again, the board's recommendation is wholly inconsistent with this Court's precedent.

Recently, this Court rejected the board's recommendation of a one-year actual suspension with credit for time-served under a felony suspension and opted to impose an indefinite suspension upon a lawyer who was convicted of the victimless crime of unlawfully structuring financial transactions. *Disciplinary Counsel v. Bennett*, Slip Opinion No. 2010-Ohio-313. In *Bennett*, the Court held, "Respondent apparently thought it was worth the risk of prosecution for evading the reporting requirements for domestic financial transactions. His criminal conduct thus manifests dishonest and selfish motives, aggravating factors under BCGD Proc.Reg. 10(B)(1)(B). Respondent also engaged in his illegal activity over a five-month period, making

23 separate deposits at various banks, which constitutes a pattern of misconduct* * *. An indefinite suspension is therefore appropriate.” Id. at ¶ 25.

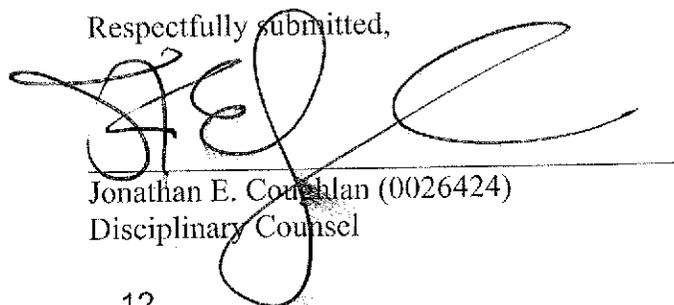
Respondent’s conduct is more egregious than the victimless crime committed in *Bennett*. In the case at bar, respondent risked criminal prosecution and engaged in a five-month criminal scheme, but he also victimized his employer to the tune of \$7,157.10. Accordingly, respondent’s misconduct warrants more than a stayed suspension.

The foregoing decisions illustrate the impropriety of the board’s recommendation of a two-year stayed suspension.

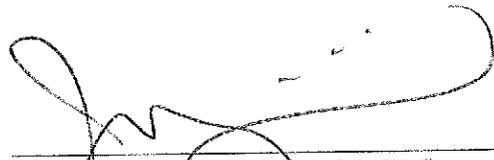
CONCLUSION

For a five-month period, respondent engaged in a pattern of misconduct resulting in the theft of over \$7,000 from his employer. Rather than promptly admit his misdeeds, respondent attempted to conceal his theft by misleading members of his law firm. Only when respondent was caught, did he confess his crimes. Because respondent’s misconduct strikes at the core principles of the legal profession—honesty and integrity—this Court must impose an actual suspension from the practice of law. At the hearing, respondent stipulated that “the appropriate sanction in this matter is a two-year suspension with the second year stayed subject to the following conditions...” (Stip. p. 5). The authority cited by the board fully supports the imposition of a two-year suspension with one-year stayed. Relator takes no position as to whether respondent should receive credit for time-served under his felony suspension.

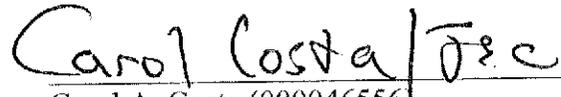
Respectfully submitted,



Jonathan E. Coughlan (0026424)
Disciplinary Counsel



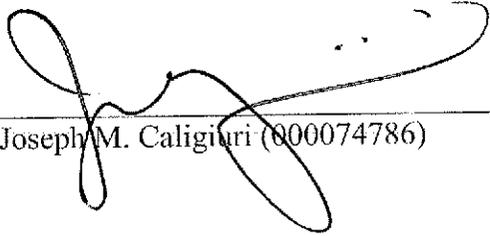
Joseph M. Caligiuri (000074786)
Senior Assistant Disciplinary Counsel
Co-Counsel of Record
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256



Carol A. Costa (000046556)
Assistant Disciplinary Counsel
Co-Counsel of Record
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Objections has been served upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, and upon respondent's counsel Michael Thomas Gmoser, Esq., President, Michael T. Gmoser Co., L.P.A., 311 Key Bank, 6 South 2nd Street, Hamilton, OH 45011, via regular U.S. mail, postage prepaid, this 17th day of February, 2010.



Joseph M. Caligiuri (000074786)

RECEIVED

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

DEC 28 2009

DISCIPLINARY COUNSEL
SUPREME COURT OF OHIO

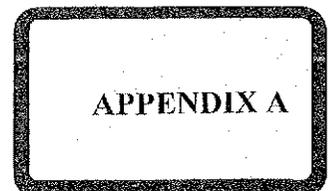
In Re:	:	
Complaint against:	:	Case No. 09-052
Bradley M. Kraemer	:	Findings of Fact,
Attorney Reg. No. 0070329	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Disciplinary Counsel	:	the Supreme Court of Ohio
	:	
Relator	:	
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INTRODUCTION

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.

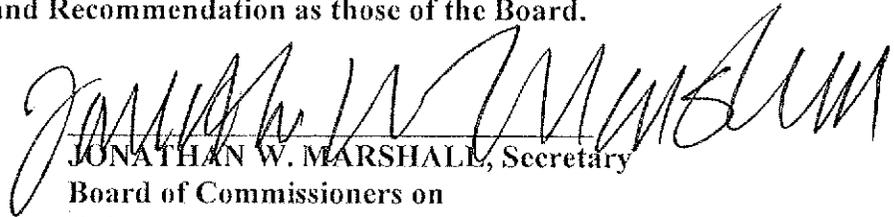
27. Therefore, the panel recommends to the Board the sanction of a two year suspension with two years stayed, provided that during the period of the stay respondent:

- (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)(L), 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. Kracmer, ^{ESQ.}

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

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

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

Respondent.

Counsel of record.

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

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