

ORIGINAL

IN THE SUPREME COURT OF OHIO

OFFICE OF DISCIPLINARY COUNSEL, :

Relator :

CASE NO. 2010-0316

vs. :

KENNETH NORMAN SHAW, ESQ. :

Respondent :

RESPONDENT'S OBJECTIONS, AND BRIEF IN SUPPORT THEREOF, TO
 THE FINDINGS OF FACT, AND CONCLUSIONS OF LAW AND RECOMMENDED
 SANCTION OF THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
 OF THE SUPREME COURT OF OHIO

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Now comes Kenneth N. Shaw, by and through counsel, and pursuant to this Honorable Court's Order to Show Cause (Attached as Appendix "A") filed on February 24, 2010 and the Agreed Stipulation for Extension of Time filed on March 8, 2010, herein posits his objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (Attached as Appendix "B") which were forwarded to this Honorable Court on or about February 18, 2010.

I. Introduction

While not formally stipulated or admitted, Mr. Shaw, proceeding *pro se*, has admitted most, if not all, of the pertinent underlying facts giving rise to the violations found against him by the Hearing Panel and Board of Commissioners on Grievances and Discipline. Specifically, in drafting a trust for an elderly client with whom he shared a "kindred spirit" and therein named his children as beneficiaries at the client's request, Mr. Shaw was found to have violated in Count I of Relator's Amended Complaint: DR 5-102(A) (A lawyer shall not prepare or draft, or supervise the preparation or execution of a will, codicil or inter vivos trust for a client in which the natural children are named as beneficiaries), DR 5-101(A)(1) (except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interests), DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice), and DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law).

In Count II of Relator's Amended Complaint, by receiving a loan from the same client identified in Count I, Mr. Shaw was found to have violated DR 5-104(A) (A lawyer shall not enter into a business transaction with a client if they have differing interests therein), DR 5-

101(A)(1) (except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interests), DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice), and DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law).

In Count IV, Mr. Shaw was found to have violated Professional Conduct Rule ("Prof. Cond. R.") 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal), 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) for failing to timely return legal fees to a guardianship estate that were paid without the probate court's prior approval.¹

While forthrightly, personally relating the underlying facts which give rise to the aforementioned violations, Mr. Shaw objects to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline in its promulgation of the recommended sanction of the Board, a suspension from the practice of law for two (2) years. In making the foregoing recommendation, the Board of Commissioners on Grievances and Discipline rejected the recommendation of Relator and the Hearing Panel that Mr. Shaw be suspended from the practice of law for twenty-four (24) months with the last twelve (12) months conditionally stayed. Mr. Shaw had previously recommended to the Hearing Panel a suspension of no more than six (6) months.

¹ The Hearing Panel and Board found that Mr. Shaw had sufficiently cooperated with the disciplinary process and thereby, did not find that Mr. Shaw commit violations of Prof. Cond. R. 8.4(h) (conduct that adversely reflects upon the lawyer's fitness to practice law) and Gov. Bar R. V(4)(G) (failure to cooperate with the disciplinary investigation) as stated in Count III of Relator's Amended Complaint.

Specifically, Mr. Shaw objects to the recommendation of the Board of a two (2) year suspension on the grounds that the recommended sanction is contrary to this Honorable Court's precedent in sanctioning lawyers in similar matters involving the same violations of misconduct that have been found in this matter including, but not limited to, those cases cited by the Relator. In addition, the Board makes its harsher recommendation on the basis that Mr. Shaw's misconduct involved "serious acts of fraud." However, the Relator made no allegations of misconduct involving fraud either in its initial Complaint or Amended Complaint, the Hearing Panel made no findings of facts or conclusions of law of fraudulent misconduct, and the record of the instant matter is completely void of any evidence of fraud committed by Mr. Shaw. On this erroneous finding alone, the Board's recommendation of the harsher sanction of a full two (2) year suspension is unwarranted.

Mr. Shaw, a veteran lawyer with limited litigation experience let alone familiarity in the area of professional responsibility, now recognizes that he was ill-advised in acting *pro se* throughout the course of the proceedings which led to the erroneous, in counsel's view, finding and recommendation. Mr. Shaw's long-standing inability to manage the many significant stressors in his life have resulted in issues impacting his emotional health for which he is now receiving long needed help. Mr. Shaw has only recently retained counsel following the issuance of this Honorable Court's Order to Show Cause.

Due to health issues which rose unexpectedly, Mr. Shaw was unable to attend the first date of his hearing on September 29, 2009 which hearing, then proceeded without him and during which no testimony was provided. Relator simply self-authenticated exhibits and presented Relator's case in narrative form to the Hearing Panel regarding each allegation

contained in its Amended Complaint. Mr. Shaw was later afforded a second hearing date on December 3, 2009, to testify and present evidence.

As a result of Mr. Shaw's proceeding *pro se*, the only mitigation evidence presented at the Hearing was his lack of a prior disciplinary record. Had Mr. Shaw had the benefit of counsel in the proceedings below, additional mitigation evidence would have been introduced including, but not limited to, his character and reputation, his community involvement, his value to his clients and the public and the fact that he has now made restitution of the legal fees subject to Count IV of Relator's Amended Complaint. Mr. Shaw, accepting the advice of counsel, has also made a renewed commitment to fulfill the terms of his Ohio Lawyer's Assistance Program ("OLAP") contract and has also, began weekly, separate sessions with Valley Counseling & Therapists of Warren, Ohio.

In order to allow this Honorable Court to examine a complete evidentiary record, Mr. Shaw requests that this Honorable Court remand the matter for another hearing before the Board so that he may be represented by counsel who will present the appropriate, relevant evidence.

In the alternative, in the event this Honorable Court determines not to remand the matter, Mr. Shaw, after consulting with counsel, would respectfully recommend a sanction of a one (1) year suspension with six (6) months being stayed based upon this Honorable Court's long-standing precedent.

II. Facts

Kenneth N. Shaw was admitted to the practice of law in Ohio in 1980, and he primarily concentrates his practice in estate planning and probate matters in the area of Warren, Ohio. In addition to his practice of law, Mr. Shaw is very active in the practice of his faith and attending his church. Although currently separated, in part due to the issues surrounding this disciplinary

proceeding, Mr. Shaw has been married for thirty-three (33) years, and he and his wife, Dorris, have five adult children.

A. Eleanor Blackburn, Counts I and II of Relator's Amended Complaint.

In the 1990's, Mr. Shaw came to know and formed a friendship with Eleanor Blackburn through their church and through her charitable work and donations. Although a very lovely and generous person, Ms. Blackburn was elderly and did not have any close family nearby. In his spirit of fellowship, Mr. Shaw, would on occasion, invite Ms. Blackburn to have dinner with his family and, in time, Ms. Blackburn became close friends with his entire family.

After becoming friends, Ms. Blackburn requested that Mr. Shaw perform various legal services on her behalf. The first service performed was in 1998 when Mr. Shaw drafted a quit claim deed for a property which Ms. Blackburn desired to donate to the Warren City Mission and Chris Gilger, the gentleman who ran the mission. In the Spring of 1999, Mr. Shaw drafted a purchase agreement for Ms. Blackburn to acquire a duplex property.

1. Ms. Blackburn's Trust – Count I

Later that year, in September, Ms. Blackburn, who unquestionably was mentally adept and certainly quite competent, turned her attention towards planning her estate, with the goal of placing her assets into a trust so as to avoid her assets being subject to the administration of probate. Ms. Blackburn had a sizeable estate and wished to retain the ability to continue providing for her favorite charities after she passed away, just as she had done during her lifetime. Through the trust vehicle, she believed she would be able to continue her generous activities.

In addition to providing to the charities to the trust, Ms. Blackburn also desired to do something for Mr. Shaw. Initially, she suggested providing for Mr. Shaw in the trust he was to

create on her behalf; however, he declined. She then inquired if she could do something for his five children (the majority of whom were minors at the time) and to provide some monies to apply towards their college education. While he now recognizes his ignorance of the rules governing our profession and does not posit that ignorance as an excuse, Mr. Shaw did not know at the time that naming his children as beneficiaries of Ms. Blackburn's trust would be a violation of the then, Ohio Code of Professional Responsibility. Eventually, Mr. Shaw incorporated Ms. Blackburn's wishes and agreed to name his children as beneficiaries of her trust with each to receive \$5,000.00 upon her demise. As a brief aside, none of Mr. Shaw's children ever came to realize any funds from the trust.

Mr. Shaw also agreed, with Ms. Blackburn not having any close family or friends who she felt she could trust to manage her affairs, to serve as an initial co-trustee along Ms. Blackburn on the trust and as successor trustee. When and if Ms. Blackburn was incapable of discharging her duties as trustee, Mr. Shaw also agreed to be named as Ms. Blackburn's attorney-in-fact in a power of attorney he drafted in the event she was physically unable to attend to her affairs.

Such an event occurred in late 2000 when Ms. Blackburn had a stroke. Mr. Shaw attended to her need by ensuring that she received the medical care she required, collecting her mail almost on a daily basis and managing her finances.

After her stroke, Ms. Blackburn grew apart from Mr. Shaw, and she began relying on a neighbor, Mrs. Lagos, to oversee her affairs. In May of 2001, Ms. Blackburn revoked the power of attorney which had named Mr. Shaw as her attorney-of-fact, removed Mr. Shaw as co-trustee and successor trustee of her trust, and removed Mr. Shaw's children as beneficiaries of her trust.

Ms. Blackburn died later, on May 11, 2004, at the age of ninety-two (92).

2. Mr. Shaw's loan from Ms. Blackburn – Count II

In August 2000, prior to Ms. Blackburn's stroke, Mr. Shaw obtained a \$13,000.00 loan from Ms. Blackburn to be utilized as a down payment for an office building for Mr. Shaw's law practice. Mr. Shaw provided a demand note evidencing the debt to Ms. Blackburn for the loan to be paid back over six (6) months.

After receiving the loan and purchasing the office building, Mr. Shaw experienced a decline in business, resulting in financial hardship, and found that he was unable to make the payments on the loan.

Later in 2001, after Mr. Shaw had been removed as trustee of her trust, Ms. Blackburn, by and through another attorney, filed a complaint on the note and was granted judgment for the amount of the loan. In an effort to demonstrate his good faith desire to fulfill his obligation to Ms. Blackburn despite his extreme financial distress, Mr. Shaw agreed to pay her \$250.00 per month until the balance owed was satisfied. He also offered to assign the building to Ms. Blackburn or attempt to sell the office building and repay her from the proceeds, but this offer was declined due to Ms. Blackburn's desire to refrain from any further real estate investment.

Despite these good intentions, and due to his continued, extreme financial hardship, Mr. Shaw made only three payments and, upon the advice of counsel practicing in the area of debtor representation, Mr. Shaw filed bankruptcy and Ms. Blackburn's judgment was discharged by the United States District Court.

B. The Marks Guardianship Estate

In December, 2006, Mr. Shaw was retained by Carol Thornton and Monica Johnson to represent them in the filing of a guardianship over their grandmother, Jessie Marks. On January 5, 2007, Mr. Shaw filed an application for appointment of guardian. Subsequently, on May 11,

2007, Ms. Thornton and Ms. Johnson were appointed co-guardians. Shortly thereafter, on May 22, 2007, Ms. Marks passed away.

Following Ms. Marks' passing, Ms. Thornton and Ms. Johnson personally hired Mr. Shaw to challenge the application of Ms. Marks' niece to be named the fiduciary of the estate, to prepare a complaint for a will contest, and to further defend them personally in an eviction proceeding commenced by Ms. Marks' Estate.

As such, Mr. Shaw received two checks as retainers for legal representation of Ms. Thornton and Ms. Johnson written from Ms. Johnson's personal account in the amounts of eight hundred dollars (\$800.00) and one thousand two hundred dollars (\$1,200.00). Mr. Shaw believed the funds were personal funds of Ms. Johnson, but later came to learn the funds which he received were from the guardianship assets, converted without his knowledge, by Ms. Johnson.

Mr. Shaw spent a considerable amount of time relative to the guardianship matter, as well as the personal matters of his clients, related to the Mark's Estate, and made an application for fees to the probate court in the amount of four thousand six hundred sixty-eight and 75/100 (\$4,668.75), in addition to the eight hundred dollars (\$800.00) and one thousand two hundred dollars (\$1,200.00) he had already received. Following a hearing before the Trumbull County Probate Court, Mr. Shaw was ordered on December 8, 2008 to repay the Marks Estate one thousand two hundred dollars (\$1,200.00) and permitted to retain eight hundred dollars (\$800.00) as his court approved legal fees.

As of the date of the filing of the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline, and despite his desire to comply with the order of the Trumbull County Probate Court, Mr. Shaw was unable to

repay the \$1,200.00 to the Marks' Estate due to extreme financial problems which continued during the year of 2009. Mr. Shaw's circumstances were so dire he was having difficulty maintaining his utility bills for his home and needed to seek assistance during that time period.

However, and while not formally part of the record of the instant matter, Mr. Shaw has since repaid the Marks' Estate the full \$1,200.00.

III. Law and Argument

As stated above, Mr. Shaw has testified and admitted many of the factual allegations contained in Relator's Amended Complaint which are the basis and give rise to the violations of misconduct found against him in Counts I, II and IV. However, Mr. Shaw objects to the sanction recommended by the Board of Commissioners on Grievances and Discipline of a two (2) year suspension.

A. The Board's recommended sanction should be rejected and remanded for further hearing.

Gov. Bar. R. V(8)(D) provides in pertinent part:

"Supreme Court Proceedings. After a hearing on objections, or if objections are not filed within the prescribed time, the Supreme Court shall enter an order as it finds proper. If the Court rejects the sanction contained in a certified report submitted pursuant to Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline, *the Court shall remand* the matter to the board for a hearing." OHIO REV CODE ANN Gov Bar R V(8)(D) (Baldwin 2009) (emphasis added).

Presumably, the recommendation of the Board is in part due to an utter lack of mitigation evidence present in the record on account of Mr. Shaw proceeding *pro se* throughout the course of the underlying proceedings including, but not limited to, at the hearing. While Mr. Shaw understands and realizes that he had the opportunity to retain counsel to represent him at the

hearing, he now fully appreciates the fool-heartiness of his decision not to have counsel represent him at the hearing.

His decision to proceed *pro se* was, at the time, largely guided by his aforementioned emotional distress as well as his extreme financial difficulty and inability to retain counsel. He has since made efforts to retain the undersigned counsel and now recognizes his need to have counsel with experience in the area of legal ethics and professional responsibility represent him. Due to his own inexperience in these types of proceedings, Mr. Shaw did not position himself and avail himself of the opportunity to present evidence of mitigation, much less have counsel as to how to make meaningful personal decisions relative to various difficulties he was facing at the time.

The lack of presentation of relevant evidence has left the Board of Commissioners and this Honorable Court unable to appropriately address the seminal issue presented herein, which action appropriately protects the public. There exists important factual evidence as well as evidence of mitigation, some of which existed prior to the hearing held and some which did not. In order to allow the addressing of the seminal issue which is the protection of the public, Mr. Shaw would request that he be mercifully afforded an opportunity to have his counsel present evidence of his character and reputation in the community and his community involvement including, but not limited to, his participation and activities at his church.

Additionally, further evidence of the recent remedial actions since Mr. Shaw commenced recovery, including the making of full restitution to the Marks' Estate and his activities in furtherance of his commitment to fulfill his obligations under his contract with OLAP, would be presented and placed into the record. Originally, Mr. Shaw attempted to participate in OLAP through its Columbus location. However, due to a combination of the geographical restraints,

his financial inability to obtain health insurance, and lack of the appropriate perspective to recognize his need to consult with professionals, Mr. Shaw got off to a poor start in fulfilling his requirements to OLAP.

Whether this proceeding may be deemed, in using common vernacular, as “hitting bottom” or as an “eye-opener” relative to the various professional and personal issues that he was facing, Mr. Shaw has come to the realization that he needs to seek and accept help from professionals including, but not limited to, his legal counsel, family counselor and the good people at OLAP. Mr. Shaw has recently reunited with OLAP through Paul Caimi and its Cleveland Division (more geographically accommodating for him), is carrying out their requirements and has started attending weekly Emotions Anonymous meetings held by OLAP. Mr. Shaw has, in the past recent months, drawn that proverbial “line in the sand” with himself and is determined, with a strong sense of conviction, to face the many issues which were causing great stress in his life and to find better methods to manage, and potentially resolve those issues.

The Hearing Panel did hear some evidence that Mr. Shaw had commenced participation in OLAP, but did not consider his participation either in mitigation of a sanction or as a conditional requirement of his reinstatement following his suspension as the evidence submitted was unclear as to the reasons for his participation in OLAP. Further, no other mitigation evidence was presented to the Hearing Panel other than his lack of prior disciplinary proceeding. If afforded another hearing through remand, Mr. Shaw with the aid of counsel would be able to more fully explain his participation in OLAP and more fully develop mitigation evidence.

Therefore, this time with assistance of counsel, Mr. Shaw respectfully requests that the Board’s recommended sanction of a two (2) year suspension be rejected and that the instant

matter be remanded for further hearing on the issue of potential mitigating factors against disciplinary sanction as permitted by Gov Bar R., Appendix II, Section 10.

B. In the event his plea for remand is not well taken, Mr. Shaw recommends a sanction of a twelve month suspension with the final six months conditioned upon his continued fulfillment of his OLAP requirements.

“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.*” Disciplinary Counsel v. O’Neill, 103 Ohio St.3d 204 (2004) (emphasis added). When imposing sanctions for attorney misconduct, all relevant factors should be considered, including the duties violated, the mental state of the attorney, and sanctions imposed in similar cases. Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St.3d 424 (2002). In making a final determination, evidence of the aggravating and mitigating factors should be weighed. Disciplinary Counsel v. Broeren, 115 Ohio St.3d 473 (2007). “Because each disciplinary case is unique, we are not limited to the factors specified in the rule but may take into account “all relevant factors” in determining what sanction to impose.” Disciplinary Counsel v. Taylor, 120 Ohio St. 3d 366 (2008) *citing* BCGD Proc.Reg. 10(B).

In making its recommended sanction of a full two (2) year suspension, the Board rejected the recommendation of both the Relator and the Hearing Panel who had recommended that Mr. Shaw be suspended from the practice of law for twenty-four (24) months with the last twelve (12) months conditionally stayed. Conversely, Mr. Shaw had initially recommended to the Hearing Panel a suspension of no more than six (6) months.

The Board’s recommendation of a two year suspension is contrary to precedent of other similar matters involving the same violations of misconduct. Moreover, the Board makes its

harsher recommendation on the basis that Mr. Shaw's misconduct involved "serious acts of fraud." However, and as set forth by the recitation of facts, *supra*, the Relator made no allegations of misconduct involving fraud either in its initial Complaint or Amended Complaint, the Hearing Panel made no findings of facts or conclusions of law of fraudulent misconduct, and the record of the instant matter is completely void of any evidence of fraud committed by Mr. Shaw.

Therefore, the Board's recommendation of the harsher sanction of a full two (2) year suspension is both unwarranted and inappropriate. In consideration of the violations of the former Ohio Code of Professional Responsibility and the present Ohio Rules of Professional Conduct and the facts giving rise thereto, counsel recommends a sanction of a twelve (12) month suspension with the final six (6) months stayed conditionally.

1. Count I – The appropriate sanction for naming his children as beneficiaries of the Blackburn Trust;

Based upon his admissions (his testimony was the only testimonial evidence received by the Hearing Panel), Mr. Shaw was found to have violated in Count I of Relator's Amended Complaint: DR 5-102(A) (A lawyer shall not prepare or draft, or supervise the preparation or execution of a will, codicil or inter vivos trust for a client in which the natural children of the lawyer are named as beneficiaries), DR 5-101(A)(1) (except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably be affected by the lawyer's financial and personal interests), DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice), and DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law).

In making its recommendation, and as cited in the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline, Relator cited the following two cases setting forth the standard of issuing an appropriate sanction for an attorney who drafts a will or trust for a non-related client and therein names the attorney or attorney's children as beneficiaries: Toledo Bar Association v. Cook, 97 Ohio St. 3d 225 (2002) and Disciplinary Counsel v. Kelleher, 102 Ohio St.3d 105 (2004). While the undersigned counsel disagrees with the Relator as to its recommended sanction of a two (2) year suspension with one year conditionally stayed, counsel agrees that the two aforementioned cases set forth the appropriate standard.

In Toledo Bar Association v. Cook, 97 Ohio St. 3d 225 (2002), the sanction was similar to that recommended by counsel herein. In that matter an attorney was suspended for (1) one year with six (6) months conditionally stayed where the attorney drafted a will for a non-related client that named the attorney's siblings' corporation as a beneficiary thereby violating DR 5-101(A)(2). Id.

This Honorable Court, once again following Cook and consistent with counsel's recommendation, suspended an attorney for one (1) year with (6) months stayed for drafting a trust for an unrelated client therein naming the attorney, the attorney's spouse, children and grandchildren as beneficiaries in Disciplinary Counsel v. Kelleher, 102 Ohio St.3d 105 (2004). Also, similar to the facts of the instant matter, the attorney in Kelleher was a close friend of the unrelated client and had never been subject to any prior discipline. Id. However, unlike the present case, the attorney's relatives actually received distributions and the money had not been returned to the trust. Id.

In addition to the two above cited cases, counsel for Mr. Shaw cites the following in support of its recommendation. In Disciplinary Counsel v. Bandy, 81 Ohio St. 3d. 291 (1998), an attorney was suspended from practice for two years with eighteen (18) months stayed for drafting a will for an unrelated client which named the attorney as a beneficiary and further, soliciting his secretary to make a false statement by acting a witness years after the will was executed in effort to purport a fraud upon the court. The Respondent in Bandy was found to have violated DR 5-102(A)(6) as well as DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and DR 1-105(A)(5) (conduct that is prejudicial to the administration of justice). Id. While counsel recognizes that the foregoing case predates the standard set forth by Cook, but by way of contrast, Mr. Shaw did not engage in any fraudulent conduct and was not found to have violated DR 1-102(A)(4) as in Bandy.

Rather, Ms. Blackburn was a close friend of Mr. Shaw's. While she was elderly, she had a sharp mind. Moreover, Mr. Shaw did not request or solicit the gift on behalf of his children and no gift was actually ever realized. Therefore, counsel's recommendation that Mr. Shaw be suspended from the practice of law for one (1) year with the final six (6) months conditionally stayed is believed to be just and appropriate.

2. Count II - the appropriate sanction for receiving the loan from Ms. Blackburn.

In support of its recommendation and as cited in the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline, Relator cites Disciplinary Counsel v. Dettinger, 121 Ohio St.3d 105 (2009). While disagreeing with Relator's ultimate recommendation, counsel concurs that the aforementioned case is appropriate precedent.

In Dettinger, the attorney was suspended for six (6) months with entire suspension stayed for violating DR-104(A) and DR 5-101(A)(1) for taking a \$25,000.00 loan from a client and friend secured by a promissory note without advising the client of the potential conflicts of interest or his personal financial distress. Disciplinary Counsel v. Dettinger, 121 Ohio St.3d 105.

Counsel also submits the following in support of the recommendation of a one (1) year suspension with six (6) months stayed: Cincinnati Bar Ass'n v. Hovey, 78 Ohio St.3d 495 (1997) and Disciplinary Counsel v. Baldwin, 74 Ohio St.3d 592 (1996). In Hovey, an attorney was suspended for six (6) months, completely stayed, for mortgaging her home to a client in exchange for a \$10,000.00 note without disclosing all of the details of the transaction to the client, and later failing to list the mortgage on a subsequent residential loan. Cincinnati Bar Ass'n v. Hovey, 78 Ohio St.3d 495. In Baldwin, an attorney was publicly reprimanded for purchasing a financially distressed property from a client at auction. Baldwin, 74 Ohio St.3d 592 (1996).

In addition, in consideration of the multiple offenses found against Mr. Shaw, the decision in Akron Bar Association v. Markovich, 117 Ohio St.3d 313 (2008), is relevant and appropriate. In Markovich, the attorney was found to have violated DR 5-104(A) for obtaining a \$15,000.00 loan from a client/sister-in-law. Akron Bar Association v. Markovich, 117 Ohio St.3d 313.

However, in Markovich and unlike the facts in the instant matter, the attorney was also found to have committed ethical violations in seven different cases including, but not limited to, multiple violations of DR 6-103 (a lawyer shall not neglect an entrusted legal matter), 6-102 (a lawyer shall not attempt to exonerate himself or limit his liability to a client for personal malpractice), DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation),

DR 1-105(A)(5) (conduct that is prejudicial to the administration of justice), DR 1-102(A)(6) (a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law), DR 7-106(C)(2) (a lawyer shall not ask any question that is intended to degrade a witness), DR 7-106(C)(4) (a lawyer shall not assert his personal opinion as to the credibility of a witness) and DR 9-102(A) (a lawyer shall deposit client funds, in a separate identifiable bank account). Id.

On account of all the above violations, Mr. Markovich was suspended from the practice of law for one (1) year with six (6) months conditionally stayed. Id. The sanction imposed in Markovich is consistent with counsel's recommended sanction, here, and the violations are not as numerous, do not include violations involving misrepresentation, and an IOLTA account violation as in Markovich.

Therefore, it is respectfully submitted that counsel's recommendation that Mr. Shaw be suspended from the practice of law for one (1) year with the final six (6) months conditionally stayed is just and appropriate.

3. Count IV – the appropriate sanction for not timely complying with the probate's court to return funds to the Marks' Estate.

In Ohio State Bar Association v. McCray, 109 Ohio St.3d 43 (2006), an attorney was publicly reprimanded for violating a court's order by releasing funds from her trust account in a divorce matter. *See also* Disciplinary Counsel v. Ewing, 83 Ohio St.3d 314 (1998) (finding a violation of DR 7-106(A) when a lawyer had disbursed legal fees from a trust fund to himself despite orders from two courts barring him from doing so); Disciplinary Counsel v. Pagac, 72 Ohio St.3d 341 (1995) (finding a violation of DR 7-106(A) when a lawyer had intentionally failed to respond to a subpoena).

Here, Mr. Shaw did not “knowingly” disregard the order of the Trumbull County Probate Court’s Order. Due to his aforementioned financial condition, Mr. Shaw was unable to return the \$1,200.00 during the 2009 year that the Trumbull County Probate Court ordered to be reimbursed to the Marks Estate. Since the Board issued its Findings of Fact, Conclusions of Law, and Recommendation, Mr. Shaw has made full restitution.

IV. Conclusion

In light of all the above, Respondent Kenneth N. Shaw prays that this Honorable Court finds his objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline to be well-taken, and thereupon, issue an order rejecting the recommended sanction of the Board that the instant matter be remanded for further hearing as to issues of mitigation. Should remand not to be the appropriate course of action, Mr. Shaw prays that this Honorable Court adopt his recommended sanction that he be suspended from the practice of law for one (1) year with the final six (6) months conditionally stayed.

Respectfully submitted,



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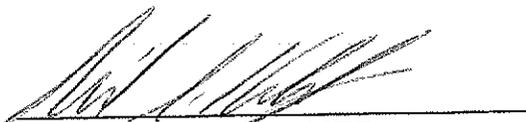
telephone; (216) 621-3012

facsimile: (216) 621-6567

ATTORNEYS FOR RESPONDENT
KENNETH N. SHAW, ESQ.

CERTIFICATE OF SERVICE

A copy of the foregoing has been sent via regular U.S. mail to Robert R. Berger, Senior Disciplinary Counsel and Jonathan A. Coughlan, Disciplinary Counsel, Office of Disciplinary Counsel of the Supreme Court of Ohio, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-5454 on this 5th day of April, 2010.



RICHARD S. KOBLENTZ
BRYAN L. PENVOSE
KOBLENTZ & PENVOSE, LLC

APPENDIX A

The Supreme Court of Ohio

FILED

FEB 24 2010

Disciplinary Counsel,
Relator,

Case No. 2010-0316

CLERK OF COURT
SUPREME COURT OF OHIO

v.

Kenneth Norman Shaw,
Respondent.

ORDER TO SHOW CAUSE

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio has filed a final report in the office of the clerk of this court. This final report recommended that pursuant to Rule V(6)(B)(3) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Kenneth Norman Shaw, Attorney Registration Number 0005525, be suspended from the practice of law for a period of two years with the condition that he pay restitution to the Marks estate before being reinstated. The board further recommends that the costs of these proceedings be taxed to the respondent in any disciplinary order entered, so that execution may issue. Upon consideration thereof,

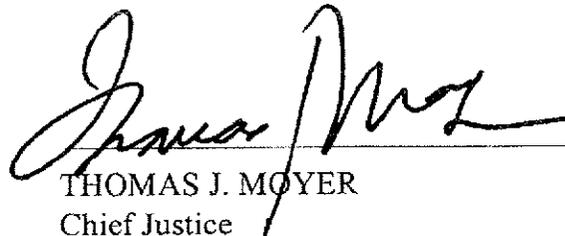
It is ordered by the court that the respondent show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered.

It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

After a hearing on the objections or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be more severe or less severe than said recommendation.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.



THOMAS J. MOYER
Chief Justice

APPENDIX B

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

In Re:	:	
Complaint against	:	Case No. 08-091
Kenneth Norman Shaw Attorney Reg. No. 0005525	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

INTRODUCTION

This matter was heard on September 29, 2009, and December 3, 2009, at the Ohio Judicial Center. The Board hearing panel consisted of Lawrence Elleman of Hamilton County, Lynn Jacobs of Lucas County and McKenzie Davis of Franklin County, the panel Chair. None of the panel members resides in the district from which the Complaint originated or served on the probable cause panel that certified the grievance.

Respondent appeared pro se. Relator was represented by Robert Berger, Disciplinary Counsel.

BACKGROUND

Respondent's alleged misconduct occurred both before and after February 1, 2007, the date the Ohio Rules of Professional Conduct went into effect. The misconduct that occurred prior to February 1, 2007 is governed by the Code of Professional Responsibility, while conduct

that occurred after February 1, 2007, or that is ongoing in nature, is subject to the Ohio Rules of Professional Conduct.

Counts One, Two and Three arose from Respondent's relationship and representation of Eleanor Blackburn. Count Four arose from Respondent's representation of Carol Thornton and Monica Johnson in a guardianship matter.

On December 8, 2008, a Complaint was filed against the Respondent alleging violations of two counts of DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice); DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law); DR 5-101(A)(1) (a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interest); one count of DR 5-101(A)(2) (a lawyer shall not prepare or draft, or supervise the preparation or execution of a will, codicil or inter vivos trust for a client in which the natural children of the lawyer are named as a beneficiary); DR 5-104(A) (a lawyer shall not enter into a business transaction with a client if they have differing interests therein) Prof. Cond. R. 8.4(h) (conduct that adversely reflects upon the lawyer's fitness to practice law); and Gov. Bar R. V(4)(G) (failure to cooperate with Relator's investigation).

On January 8, 2009, Respondent requested additional time to file an answer.

On January 16, 2009, Respondent filed an Answer to the Complaint.

On August 14, 2009, Relator filed an Amended Complaint to include Count Four. In addition to the alleged violations set forth in the original Complaint, Relator alleged violations of Prof. Cond. R. 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); 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 on the lawyer's fitness to practice law).

Respondent did not file an answer to the Amended Complaint.

On September 29, 2009, a panel hearing was scheduled. However, just prior to the hearing, Respondent indicated he would not be able to attend due to illness. The panel chose to move forward with the Relator's case and provide Respondent an opportunity to be heard at a later date.

On December 3, 2009, the panel conducted a second hearing. Respondent was given the opportunity to present his case.

FINDINGS OF FACT

Respondent is a solo general practitioner with a significant percentage of work in estate planning.

As indicated earlier, Counts One, Two and Three arose out of Respondent's representation of Eleanor Blackburn. Ms. Blackburn was an elderly woman whom Respondent befriended at church and other religious activities. Over the years, Ms. Blackburn had grown close with Respondent and his family, often times spending holidays with them. Respondent handled some personal affairs for Ms. Blackburn while she was in a nursing home and at other various time periods. From that relationship, Ms. Blackburn requested legal services from Respondent.

In August of 1998, Respondent prepared a quit claim deed that deeded property belonging to Blackburn to Chris Gilger and the Warren City Rescue Mission. In February of 1999, Respondent assisted Blackburn in transferring her ownership of a duplex in Warren, Ohio to Angelo Lagos. Respondent stopped providing legal services for Ms. Blackburn at the end of 2000.

In May of 2004, Ms. Blackburn passed away.

COUNT 1

In September of 1999, Ms. Blackburn requested Respondent draft a power of attorney and create a revocable living trust for her. Respondent prepared a power of attorney for Ms. Blackburn that named Respondent as attorney-in-fact for Ms. Blackburn. Respondent prepared a revocable living trust for Ms. Blackburn that named Respondent as both co-trustee for the trust and first successor trustee. In addition, the trust named Respondent's five children as beneficiaries. Under the terms of the trust, each child of Respondent would receive \$5,000, for a total of \$25,000. Ms. Blackburn executed the power of attorney and signed the trust documents on September 27, 1999. (Tr. 40)

Prior to preparing the documents and obtaining Ms. Blackburn's execution, Respondent admitted he did not:

- advise Blackburn to obtain disinterested advice from another independent, competent and knowledgeable person;
- advise Blackburn to seek advice from another attorney or to have the trust drafted by another attorney; and
- discuss the conflict of interest presented by this situation with Blackburn. (Tr. 40-41)

Relator alleges violations of DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice); DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law); DR 5-101(A)(1) (except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interests) and DR 5-101(A)(2) (a lawyer shall not prepare or draft, or supervise the preparation or execution of a will, codicil or inter vivos trust for a client in which the natural children of the lawyer are named as beneficiaries).

COUNT 2

In August of 2000, Respondent obtained a \$13,000 loan from Ms. Blackburn. (Tr. 41) Respondent requested the loan in order to purchase a building to house his law practice. At the time of the loan, Respondent was Ms. Blackburn's attorney. The funds from the loan came from assets Respondent had placed in her revocable living trust. Respondent conceded that loan was to be paid back in six months at six percent interest. However, Respondent failed to repay Ms. Blackburn as agreed. (Tr. 42)

After a couple of years, Ms. Blackburn sued Respondent for the money loaned and subsequently defaulted. Warren Municipal Court granted a judgment against Respondent in the matter. As part of the settlement of the matter, Respondent agreed to pay off the judgment at the rate of \$250 per month. However, Respondent later filed for bankruptcy and was granted a discharge of this debt. To date, Respondent has repaid only \$750 of the loan to her estate. (Tr. 42)

In September of 2007, the executor of the Blackburn estate filed a complaint for concealment of assets against several parties, including Respondent. The Trumbull County Probate Court later found Respondent had "unduly influenced" Ms. Blackburn to make the loan and that the loan constituted "self-dealing" and was "detrimental" to the trust. As a result, the court ordered Respondent repay the Blackburn estate \$12,250. Respondent appealed the probate court's decision.

Prior to requesting and obtaining the loan from Ms. Blackburn, Respondent admitted he did not:

- advise Blackburn to obtain disinterested advice from another independent, competent and knowledgeable person;

- advise Blackburn of the risks of making a loan, including the risks associated with making a loan not secured by collateral; and
- discuss the conflict of interest presented by this situation with Blackburn. (Tr. 41-42)

Relator alleges violations of DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice); DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law); DR 5-101(A)(1) (except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interests) and DR 5-104(A) (a lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein).

COUNT 3

On February 27, 2008, Relator sent a letter of inquiry to Respondent regarding the allegation in Counts 1 and 2 via certified mail. Respondent's law office received the letter of inquiry and Respondent signed the certified mail return receipt. However, Respondent failed to respond.

On March 31, 2008, Relator sent a second letter of inquiry to Respondent regarding the allegations in Counts 1 and 2 via certified mail. Respondent's law office received the letter of inquiry and Respondent signed the certified mail return receipt. Again, Respondent failed to respond.

Respondent was subpoenaed to appear for a deposition. Respondent, prior to the scheduled deposition, provided information previously requested. Respondent later appeared for the deposition and fully cooperated with Disciplinary Counsel.

Relator alleges a violation of Rule 8.4(h) (conduct that adversely reflects upon the lawyer's fitness to practice law) and Gov. Bar R. V(4)(G) (failure to cooperate with Relator's investigation).

COUNT 4

Respondent's alleged violations in Count 4 arose out of representation of Carol Thornton and Monica Johnson. They hired Respondent in order to pursue a guardianship for their grandmother, Jessie Marks.

Respondents filed an application for appointment of guardian on January 5, 2007. Both Thornton and Johnson were subsequently appointed co-guardians by the probate court on May 11, 2007.

On May 22, 2007, Marks passed away. That same day, Respondent accepted two checks for a total of \$2,000. Respondent cashed the \$800 check (memo line listed "attorney fees") and deposited the \$1,200 check (memo line listed "legal fees: expenses").

However, Trumbull County Probate Court rules require court approval prior to the payment of any attorney fees. Respondent accepted payment by Thornton and Johnson without the approval of the Trumbull County Probate Court. (Tr. 45-46)

On October 29, 2007, Respondent filed his first application for payment of attorney fees with the Trumbull County Probate Court. Respondent requested \$4,668.75 for 51.75 hours of legal work. This amount requested was in addition to the \$2,000 already paid to Respondent on May 22, 2007.

In October of 2008, a complaint for concealment of assets was filed in the probate court. Two months later, the probate court found Respondent "guilty of concealment of assets." The probate court also approved the payment of \$800 to Respondent on May 22, 2007. However, the probate court ordered Respondent repay the estate the \$1,200 paid to Respondent on May 22,

2007. Respondent filed a motion for reconsideration, which was subsequently denied.

Respondent has yet to pay the probate court ordered \$1,200.

Relator alleges violations of Prof. Cond. R. 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal); 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).

CONCLUSIONS OF LAW

The panel finds that the evidence presented by Disciplinary Counsel, stipulations of the parties prior to and during the disciplinary process and admissions made by Respondent are clear and convincing evidence that Respondent's conduct violated the following disciplinary rules:

Count 1

- DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice);
- DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law);
- DR 5-101(A)(1) (except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interests); and
- DR 5-101(A)(2) (a lawyer shall not prepare or draft, or supervise the preparation or execution of a will, codicil or inter vivos trust for a client in which the natural children of the lawyer are named as beneficiaries).

Count 2

- DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice);
- DR 1-102(A)(6) (conduct that adversely reflects upon the lawyer's fitness to practice law);

- DR 5-101 (A)(1) (except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of the client will be or reasonably may be affected by the lawyer's financial and personal interests); and
- DR 5-104 (A) (a lawyer shall not enter into a business transaction with a client if they have differing interests therein).

Count 4

- Prof. Cond. R. 3.4(c) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal);
- 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).

With regards to Count 3, the panel concluded Respondent's failure to respond to the first two letters of inquiry does not rise to the level of a violation of Prof. Cond. R. 8.4(h) and Gov. Bar. R. V(4)(G). The panel therefore requests the Board dismiss Count 3.

The panel acknowledges the wrongful conduct in not immediately responding to the inquiries of Disciplinary Counsel. However, the panel is able to distinguish Respondent's lack of cooperation from the Supreme Court's findings in *Cleveland Bar Assn. v. James*, 109 Ohio St.3d 310, 2006-Ohio-2424, in that the Respondent in *James* never filed an answer or cooperated in any manner. Here, Respondent neglected two letters, but cooperated after that point. Thus, the panel could not find that neglecting two initial letters from Disciplinary Counsel constituted a violation of Prof. Cond. R. 8.4(h) and Gov. Bar. R. V(4)(G).

AGGRAVATION AND MITIGATION

The guidelines governing Aggravation and Mitigation in attorney disciplinary cases are found in BCGD Proc. Reg. 10(B)(1) and (2), which list factors that may be considered in recommending either a more or less severe sanction than is recommended by either party.

AGGRAVATION

Relator suggested aggravating factors that would justify a more severe sanction at the hearing. Respondent disputed some of the factors articulated by Relator, however, the panel finds the following aggravating factors as set forth in BCGD Proc. Reg. (10(B)(1):

- (c) A pattern of misconduct. Respondent drafted a trust that had improper beneficiaries, his five children, took an improper loan, initially failed to cooperate, and took fees without court approval. In addition, Respondent failed to make proper restitution.
- (d) Multiple offenses. Respondent admitted to violations in three separate counts.
- (h) Vulnerability of and resulting harm to victims of the misconduct. Respondent took advantage of an elderly woman in obtaining an improper loan and has yet to repay the Blackburn estate \$12,250 and the Marks estate \$1,200.
- (i) Failure to make restitution. Respondent has yet to repay the Blackburn estate \$12,250 and the Marks estate \$1,200.

MITIGATION

Neither party submitted factors in mitigation that would justify a less severe sanction. However, the panel finds the following factor present as set forth in BCGD Proc. Reg.

(10)(B)(2):

- (j) Absence of a prior disciplinary record. Respondent has no prior disciplinary record.

RECOMMENDED SANCTION

Respondent admits all the misconduct alleged by the Relator. However, Respondent attempts to minimize the misconduct due to his previous close personal relationship and “kindred spirit” with Eleanor Blackburn. Respondent indicated that although Ms. Blackburn was an elderly lady, she was still sharp and she knew he was not trying to take advantage of her. In fact, Respondent stated that he was protecting her from others that were attempting to take advantage

of her. Respondent took care of her affairs for a significant period, while she was in a nursing home.

Ohio law provides for circumstances when there is a close relationship between the attorney and the client. It will permit the attorney to assist the clients in meeting their objectives. However, in order to protect the public, the lawyer must meet specific criteria to accomplish the client's objectives. Unfortunately, Respondent did not meet those additional requirements designed to protect the public and ensure the integrity of our profession.

Relator recommended the panel suspend Respondent from the practice of law for 24 months, with 12 months stayed upon the condition of restitution to the Blackburn and Marks estate and completion of his OLAP contract. In support of his position, Relator cited the following case law: *Toledo Bar Assn. v. Cook*, 97 Ohio St.3d 225, 2002-Ohio-5787; *Disciplinary Counsel v. Kelleher*, 102 Ohio St.3d 105, 2004-Ohio-1802; and *Disciplinary Counsel v. Dettinger*, 121 Ohio St.3d 400, 2009-Ohio-1429.

In *Cook*, the Court found misconduct when Cook named her siblings' corporation as a beneficiary in a will she prepared. Cook's license was suspended for one-year, with six months stayed. The Court ruled "even with the best intentions, an attorney risks the possibility of exploiting his client when their interests become so intertwined." The Court, balancing the panel's recommendation (six months, all stayed) and the Board's recommendation (two year, one year stayed) relied on mitigating character references and the selfless nature of Cook.

In *Kelleher*, Respondent drafted a trust for a client, and the trust drafted by Respondent named Respondent's wife, children and grandchildren as beneficiaries. The Court, following the ruling in *Cook*, ordered a one year suspension with six months stayed.

In *Dettinger*, Respondent received a \$25,000 loan from a client without disclosing the conflict of interest, or advising the client to consult with independent counsel and without disclosing to the client his financial distress. The Court ordered a six month suspension with six months stayed.

Relator did not provide case law regarding the misconduct alleged in Count 3 and Count 4.

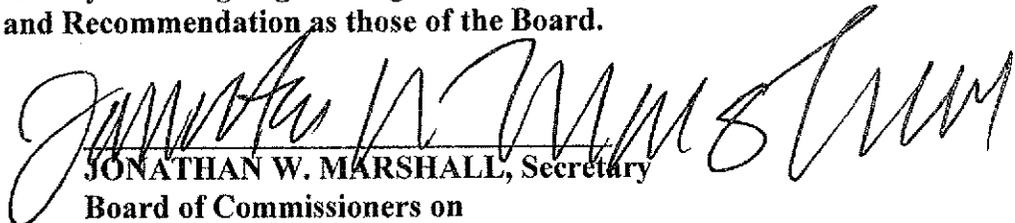
Respondent recommended the panel order no more than a six month suspension. Respondent did not provide any case law or justification for the recommendation. Additionally, Respondent did not provide any mitigating evidence. Recognizing the pro se nature of his representation, the panel probed Respondent about possible mitigating factors. Respondent replied with excuses of third party interference with his relationship with his clients and judicial biases against him. The panel is not convinced that these excuses should be considered as mitigation.

The panel finds the Respondent's behavior similar to the misconduct in all three cases cited by Relator. Furthermore, Respondent did not provide any evidence to the contrary or any justifiable mitigating factors. Therefore, the panel recommends a two-year suspension from the practice of law with one year stayed including the condition of restitution to the Marks estate. Respondent filed for bankruptcy after the misconduct in the Blackburn matter and therefore the panel cannot, as a condition of re-instatement, order restitution of an amount discharged in bankruptcy. *Cleveland Bar Assn. v. Gay*, 94 Ohio St.3d 404, 2002-Ohio-1051. The panel did not include the fulfillment of the OLAP contract because it was never made clear the problem OLAP was addressing for him.

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 February 5, 2010. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. The Board, however, recommends, based on his serious acts of fraud and misconduct, that Respondent, Kenneth Norman Shaw, be suspended for two years with the condition that he pay restitution to the Marks estate before being reinstated. The Board further recommends that the cost of these proceedings be taxed to 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