

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

In Re:	:	10-1898
Complaint against	:	Case No. 09-102
Tom John Karris	:	Findings of Fact,
Attorney Reg. No. 0033659	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Disciplinary Counsel	:	the Supreme Court of Ohio
	:	
Relator	:	
	:	

This matter was heard on July 15, 2010 in Columbus, Ohio before a panel consisting of members Janica Pierce Tucker and Bernard K. Bauer, Chair. Panel member Judge Arlene Singer was unable to attend the hearing, but read the transcript, reviewed the exhibits and participated in the deliberations, as agreed to by the parties. None of the panel members resides in the appellate district from which the complaint arose or served as a member of the probable cause panel in this matter.

Relator was represented by Joseph M. Caligiuri, Esq. Respondent was represented by Gary T. Mantkowski, Esq., and was present at the hearing.

Relator proceeded upon its two count complaint, with Count One alleging that Respondent improperly notarized signatures on a number of documents and Count Two alleging that Respondent falsely testified about his involvement in notarizing the documents.

For the reasons which follow, the panel finds that Respondent violated DR 1-102(A)(4) (conduct that involves dishonesty, fraud, deceit or misrepresentation) and DR 1-102(A)(6)

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(conduct that adversely reflects on the lawyer's fitness to practice law), and recommends a public reprimand for the violations as to Count One; the panel recommends that the Board dismiss Count Two.

FINDINGS OF FACT

Based upon the stipulations of the parties, the testimony, and the exhibits, the panel makes the following findings based upon clear and convincing evidence:

1. Respondent was admitted to practice law in the State of Ohio on November 15, 1982, and is subject to the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

Count One

2. In 1999, Elias Kafantaris agreed to loan David Pidcock about \$40,000 to continue operating his catering business.

3. In January 2000, Kafantaris agreed to make another loan to Pidcock.

4. As a result of these loans, Kafantaris engaged Respondent to prepare documents to protect his investment.

5. Respondent prepared a promissory note, secured by a mortgage on property located at 11300 Root Road in Columbia Station, Ohio, which was owned by David Pidcock and his then wife, Patricia Pidcock, and a quit claim deed on the same property which was to be held in escrow. He was paid a flat fee for preparing these documents.

6. On January 26, 2000, a promissory note in the principal amount of \$35,000 was purportedly executed by David and Patricia Pidcock and witnessed and notarized by Respondent.

7. On January 31, 2000, the mortgage deed and quit claim deed that had been prepared by Respondent were purportedly executed by the Pidcocks and notarized by Respondent.

8. The mortgage deed was filed in the office of the Lorain County Recorder on February 10, 2000.

9. The Pidcocks did not make payments to Kafantaris, but Kafantaris continued to provide funds to keep Mr. Pidcock's catering business going. Kafantaris again contacted Respondent to determine how to best secure his investment.

10. On January 30, 2001, a land contract prepared by Respondent regarding the Root Road property was purportedly executed by the Pidcocks as the purchasers, and witnessed and notarized by Respondent. Kafantaris was the vendor. Respondent was paid a flat fee of \$200 for preparation of this document.

11. After execution of the land contract, the quit claim deed, which had been executed the previous year and the land contract were forwarded to the Lorain County Recorder for filing by Respondent. These instruments were returned to Respondent unfiled because litigation was pending against the Root Road property by other creditors of the Pidcocks.

12. On August 28, 2002, the quit claim deed was filed in the office of the Lorain County Recorder.

13. Mr. and Mrs. Pidcock, who were divorced in 2003, both testified that Mrs. Pidcock did not execute the promissory note, the mortgage deed, the quit claim deed, or the land contract. Mr. Pidcock testified that he signed his wife's name to these instruments, though he previously testified under oath in another proceeding that his then wife had signed the instruments.

14. Respondent testified that Mrs. Pidcock signed the instruments. Mark Fourtounis, a client of Respondent's and the husband of Kafantaris's niece, testified that he was present when Mr. and Mrs. Pidcock executed the instruments. Elizabeth Feliciano, Respondent's

secretary at the time the instruments were executed who witnessed the Pidcocks' signatures according to Respondent, did not testify at the disciplinary hearing.

15. Rebecca Barrett, employed by the Ohio Bureau of Criminal Identification and Investigation (BCI) as a questioned document and forensic document examiner, testified that the signatures purporting to be those of Mrs. Pidcock on the instruments in question were not Mrs. Pidcock's and that Mr. Pidcock probably signed the questioned signatures.

Count Two

16. In 2005, PNL Holdings, LLC, a company owned by Kafantaris, sued Mr. Pidcock in the Lorain County Common Pleas Court.

17. Respondent was named as a third-party defendant in such litigation and was deposed on March 29, 2007.

18. During his deposition on March 29, 2007, Respondent testified that he was present when the promissory note was signed by someone purporting to be Mrs. Pidcock. He also testified that someone purporting to be Mrs. Pidcock signed the mortgage deed and the quit claim deed in his presence, but that he had not requested identification from her and also indicated that Mrs. Pidcock, who had testified in a deposition on the previous day, only looked vaguely familiar. As a result Respondent was not certain that Mrs. Pidcock who testified on March 28, 2007 was the same person he purportedly met on three occasions involved in the signing of the instruments in 2000 and 2001.

19. Respondent's deposition was continued to November 9, 2007, at which time he indicated that the first time he met Mrs. Pidcock was when the promissory note was executed and he did not request identification because Mr. Pidcock, Kafantaris and Fourtounis indicated that the woman present was Patricia Pidcock.

CONCLUSIONS OF LAW

As to Count One, Relator alleges that the Respondent violated DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and DR 1-102(A)(6) (conduct that adversely reflects on the lawyer's fitness to practice law).

Based upon clear and convincing evidence, the panel concludes that the Respondent, by his actions, violated DR 1-102(A)(4) and DR 1-102(A)(6).

As to Count Two, Relator alleges that the Respondent violated Prof. Cond. R. 3.3(a) (a lawyer shall not make a false statement of law or fact to a tribunal or fail to correct a false statement of law or fact previously made to the tribunal by the lawyer); 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 on the lawyer's fitness to practice law).

Based upon the evidence submitted, the panel cannot conclude by clear and convincing evidence that Respondent violated Prof. Cond. R. 3.3(a), 8.4(c), 8.4(d), or 8.4(h) and recommends that this count be dismissed. While the statements made by Respondent may not have been shown to be true based upon the forensic evidence, the versions of the 2000 and 2001 events that transpired surrounding the execution of the questioned documents by all four of the fact witnesses varied considerably. After over seven years had passed from the time of the execution of the first set of documents and over six years had passed from the time of execution of the land contract, Respondent may well have believed that the events transpired as he related them when he gave his deposition testimony in 2007.

AGGRAVATION AND MITIGATION

Section 10. Guidelines for Imposing Lawyer Sanctions

(A) Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary standards, consideration will be given to specific professional misconduct and to the existence of aggravating or mitigating factors.

[Adopted by the Supreme Court of Ohio, effective June 1, 2000, amended effective February 1, 2003.]

Matters to be considered in aggravation of discipline are (a) prior disciplinary offenses; (b) dishonest or selfish motive; (c) a pattern of misconduct; (d) multiple offenses; (e) lack of cooperation in the disciplinary process; (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process; (g) refusal to acknowledge wrongful nature of conduct; (h) vulnerability of and resulting harm to victims of the misconduct; and (i) failure to make restitution.

Based upon the forensic evidence presented, there was a pattern of misconduct because Mrs. Pidcock's purported signature was notarized on three separate dates.

Respondent agreed to settle Mr. Pidcock's third-party claims for \$5,000, of which he paid \$400 before refusing to pay anything more.

There was a refusal by Respondent to acknowledge the wrongful nature of the conduct, because he denied that the questioned documents were improperly notarized.

Though not exhaustive, matters which may be considered in mitigation include (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) timely good faith effort to make restitution or to rectify consequences of misconduct; (d) full and free disclosure to the Board or cooperative attitude toward proceedings; (e) character or reputation; (f) imposition of other penalties or sanctions; (g) chemical dependency or mental disability; and (h) other interim rehabilitation.

There was an absence of a prior disciplinary record.

When he first started practice Respondent had a shared office arrangement. From 1987 to 1990, Respondent practiced in North Olmsted, dealing principally with transactions. From 1989 to 1993 he was a part-time prosecutor in Medina. In 1990, Respondent moved his practice to Brunswick and shared office space with Dean Holman, among others. In 1997, he moved his practice to Strongsville and took control of a small title company. He continued to practice in Strongsville until 2008 when he took a position in the Medina County Prosecutor's office.

Respondent, in addition to offering many letters attesting to his excellent character and reputation, offered the testimony of Dean Holman and Judge James L. Kimbler.

Dean Holman is the Medina County Prosecutor, has known Respondent since 1986, and is currently his boss. Holman, upon learning of the allegations against Respondent, did not sanction him, but continued to be supportive of him.

While not appropriate testimony to be considered in conjunction with the merits of this complaint and the proof offered in Count One, Holman testified as follows:

Q. Has Mr. Karris shared the Disciplinary Complaint that's been filed against him with you?

A. I believe he did at one point. I asked him what it was about.

Q. Did you physically review the document?

A. I don't think I did.

CHAIRMAN BAUER: Let the record show I am going to hand the witness a copy of the Complaint in this matter.

Take a moment and review it, please.

BY CHAIRMAN BAUER:

Q. Would you agree with me that the allegations in that Complaint are very serious allegations regarding the honesty of Mr. Karris?

A. Yes.

Q. Do you, as a county prosecutor in Medina, from time to time forward questioned documents to BCI for review and testimony?

A. I use Lake County Forensic Lab or Crime Lab.

Q. Are you at all acquainted with Rebecca Barrett of BCI?

A. No.

Q. Are you generally aware of the reputation of the individuals associated with BCI for, number one, thoroughness, and, number two, honesty?

A. Yes.

Q. What is that reputation?

A. They are competent people. I have not heard them -- I have not heard their honesty and thoroughness discussed. They are competent witnesses.

Q. If I were to tell you earlier this morning Rebecca Barrett of Ohio BCI testified that the signatures of Patricia Pidcock on the documents involved in that Complaint were not hers, would that change your opinion in this matter?

A. No.

CHAIRMAN BAUER: Any further questions?

BY MR. MANTKOWSKI:

Q. I would like to ask him one question, why he feels it wouldn't change his opinion.

CHAIRMAN BAUER: Please do.

A. Because I shared office space with Tom Karris and I know how thorough he was in his routine when he executed documents. I know that he was careful to have witnesses there to sign them, and he would ask me to come to his office to serve as a witness, and I would use him as a witness on wills and deeds and stuff. And I just know what a honest person he is, so. (Tr. 257-259)

RECOMMENDED SANCTION

Relator has recommended a one-year suspension as the appropriate sanction for Respondent.

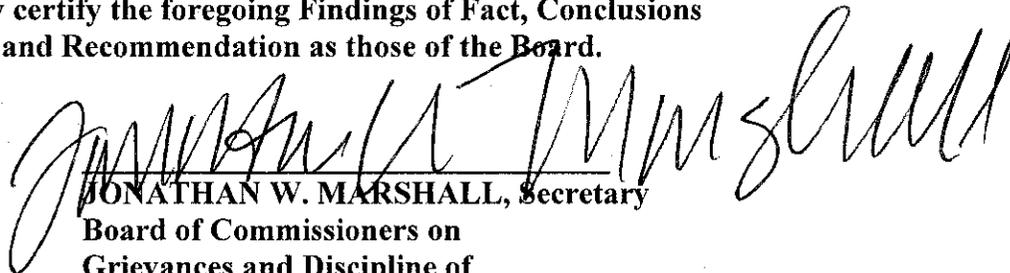
Though not expressly saying so, it appears that Respondent seeks a dismissal of both counts against him.

The panel recommends that Respondent receive a public reprimand. The panel recommends a public reprimand, despite the finding of a DR1-102(A)(4) violation, based on two Supreme Court disciplinary decisions. See *Columbus Bar Assn. v. Dougherty*, 105 Ohio St.3d 307, 2005-Ohio-1825 and *Cleveland Bar Assn. v. Russell*, 114 Ohio St.3d 171, 2007-Ohio-3603.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 8, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that Respondent, Tom John Karris, be publically reprimanded in the State of Ohio. 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