

ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, :

Relator, :

vs. :

Tom John Karris. :

Respondent. :

:

CASE NO. 2010-1898

**RELATOR'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND
RECOMMENDATION AND BRIEF IN SUPPORT**

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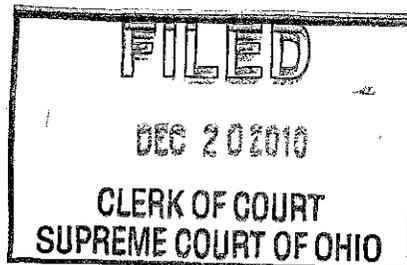


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| Tom John Karris, Esq. | : | RELATOR’S OBJECTIONS TO THE |
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| Respondent. | : | CONCLUSIONS OF LAW AND BRIEF |
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INTRODUCTION

Now comes relator, Disciplinary Counsel, and hereby submits objections to the Report of the Board of Commissioners on Grievances and Discipline (the “report”) filed with the court on November 3, 2010, and attached hereto as Appendix A. Relator’s sole objection is to the board’s recommended sanction of a public reprimand. An actual suspension from the practice of law is commensurate with the misconduct and consistent with this Court’s precedent.

STATEMENT OF FACTS

In 1995, David and Patricia Pidcock purchased a building located at 11300 Root Road, Columbia Station, Ohio, hereinafter referred to as the “Root Road property.” The Root Road property housed David Pidcock’s catering business. In or around 2000, the catering business was in financial distress, prompting David Pidcock to seek a series of loans from Elias Kafantaris. [Trial Transcript, “Tr.” p. 90] Respondent represented Kafantaris in his business dealings with David Pidcock. [Id. at 91, Report at 2]. As part of the representation, respondent drew up several legal documents, including a promissory note (“note”), quitclaim deed,

mortgage deed, and land contract. [Relator's Exhibits, "Ex." 1, 3, 4, 5; Tr. pp. 280-285] The quitclaim and mortgage deeds were collateral for the note. *Id.*

On or about January 26, 2000, David Pidcock met with respondent, Kafantaris, and Kafantaris' nephew, Marco Fortounis, at respondent's office in Strongsville, Ohio. *Id.* at 93. Patricia Pidcock did not attend the meeting. *Id.* at 94. At that meeting, David Pidcock signed his name to the note and forged his then-wife's (Patricia Pidcock) name as well. *Id.* At the disciplinary hearing, when asked why he signed his wife's signature, David Pidcock admitted, "It was a matter of convenience." *Id.* Despite the fact that Patricia Pidcock did not attend the meeting or sign the note, respondent fraudulently notarized the forged signature with the following jurat:

Before me, a Notary Public in and for said county and state, personally appeared **PATRICIA M. PIDCOCK** who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal, at Strongsville, Ohio, this 26 day of January 2000.

[Ex. 1]

At the disciplinary hearing, Patricia Pidcock testified unequivocally that she was not at the meeting and did not sign the promissory note—or any other documents in respondent's presence. *Id.* at 33. Further, David Pidcock admitted at the hearing to forging his wife's name on the note. *Id.* at 94. Finally, Rebecca Barrett, a forensic scientist and handwriting expert at the Ohio Bureau of Criminal Investigations (BCI), opined—unequivocally—that Patricia Pidcock did not sign the note. *Id.* at 150. Further, Barrett corroborated David Pidcock's testimony by opining that Patricia Pidcock's signature on the note was "probably" written by David Pidcock. *Id.* at 152. In defining the term "probably," Barrett explained:

In terms of document examination we have five conclusions that we use. Written by or an identification, probably written by, and no opinion, a probably not, or a did not write. A probably written by is only issued when the examiner feels that there is a high degree of certainty, there is a lot of evidence strongly indicating that the same person wrote it, however, it is not certain.

[Tr. p. 153, ln. 9]

At or around the time the note was fraudulently executed, respondent also prepared a “Witness Affidavit” in which the signatories of a legal document attest that their signatures were in fact witnessed by the witnesses. [Ex. 2] In the case at bar, respondent prepared the Witness Affidavit, dated January 26, 2000, which read:

“I/We, the undersigned, do hereby state that the following named individuals, Tom J. Karris and Elizabeth Feliciano, were present at my/our execution of the mortgage/deed/land contract/lease and/or other document necessary to complete the real estate transaction.”

Id.

At the hearing, David Pidcock testified that he signed his name to the Witness Affidavit and forged his wife’s name as well. Id. at 96. Patricia Pidcock confirmed that she did not sign the Witness Affidavit and that she has never met anyone named Elizabeth Feliciano. Id. at 39.

Barrett opined that Patricia Pidcock did not sign the Witness Affidavit and that her signature was “probably” written by David Pidcock. Id. at 149-150.¹ As mentioned previously, the Witness Affidavit was dated January 26, 2000—the same date the note was executed. Interestingly, the Witness Affidavit, which respondent prepared, directly contradicts his own assertion that the parties signed the note at the Root Road Property and that Elizabeth Feliciano was not present. Id. at 283, 308.

In addition to the note, respondent also prepared a quitclaim deed (Ex. 3) and mortgage

¹ Barrett’s opinion referred to documents 4, 5, & 7, which are contained in Relator’s Exhibit 11 and consist of the Quitclaim Deed, Promissory Note, and Witness Affidavit respectively.

deed (Ex. 4), both of which were executed on January 31, 2000 at respondent's Strongsville, Ohio office. [Tr. p. 283] Once again, respondent fraudulently notarized Patricia Pidcock's forged signatures on the mortgage and quitclaim deeds, as evidenced by the jurats, which contained the following language:

Before me, a Notary Public in and for said County and State, personally appeared the above named **DAVID A. PIDCOCK and PATRICIA M. PIDCOCK** who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed.

In Testimony Whereof, I have hereunto set my hand and official seal, at Strongsville, Ohio, this 31 day of January 2000.

[Ex. 3, 4]

In addition to the fraudulent notarizations, respondent allowed his secretary, Elizabeth Feliciano, to sign as a witness, along with respondent, to David and Patricia Pidcock's signatures, despite the fact that Patricia Pidcock never appeared or signed the documents. *Id.*

At the hearing, David Pidcock confirmed his signature and again admitted forging Patricia Pidcock's signature on both the mortgage and quitclaim deeds. [Tr. at 97, 100] In fact, David Pidcock recalled, "I was in there, I was given this paperwork and was told that my wife had to sign it as well. So I went outside and I signed it and brought the paperwork back in." *Id.* at 135-36. Again, Patricia Pidcock testified that she did not sign either the mortgage or quitclaim deed and reiterated that she did not sign any documents in the presence of respondent or Elizabeth Feliciano. *Id.* at 42. Barrett's expert opinion confirmed that Patricia Pidcock did not sign the quitclaim deed and that David Pidcock "probably" signed Patricia Pidcock's name to the quitclaim deed.² *Id.* at 150, 152.

Approximately one year later, respondent prepared a land contract. [Ex. 5] Once again, respondent fraudulently notarized the land contract by attesting to the following:

² Barrett only analyzed originals of the Promissory Note, Quitclaim Deed, and Witness Affidavit.

BEFORE ME, the subscriber, a Notary Public, in and for said County and State, personally appeared the above named, **David A. Pidcock and Patricia M. Pidcock** who acknowledged that they did sign the foregoing instrument, and that the same is their free acts and deeds.

In Testimony Whereof, I have hereunto set my hand and official seal, at Strongsville, Ohio, this 31 day of January 2001.

Id.

In addition to fraudulently notarizing the land contract, respondent induced his secretary, Elizabeth Feliciano, to sign as a witness, along with himself, to David and Patricia Pidcock's signatures, despite the fact that Patricia Pidcock never appeared or signed the land contract. Id.

At the disciplinary hearing, David Pidcock confirmed his signature and again admitted forging Patricia Pidcock's signature on the land contract. [Tr. p. 101] Patricia Pidcock testified that she did not sign the land contract and, once again, reiterated that she did not sign any documents in the presence of respondent or Elizabeth Feliciano. Id. at 44

In or around 2002, respondent had the quitclaim deed recorded, which effectively transferred ownership of the Root Road Property from the Pidcocks to Kafantaris. Id. at 293. In 2002, PNL Holdings bought the Root Road Property for \$650,000; however, the proceeds from the sale went to Kafantaris as owner/seller of the Root Road property. [Id. at 295, Resp. Ex. C] Shortly thereafter, David Pidcock and Patricia Pidcock divorced. In 2003, David Pidcock sued Kafantaris. In 2005, PNL sued David Pidcock, who then added Kafantaris, Pete Kamples, respondent, and others as third party defendants. [Tr. pp. 297-298]

Due to the divorce, Patricia Pidcock had no communication with David Pidcock; consequently, she was unaware of the pending litigation. Id. at 44. However, in July 2006, Pete Kamples, the real estate agent that handled the sale of the Root Road property to PNL, contacted Patricia Pidcock and asked her to review some documents relating to the sale of the Root Road property. Id. at 35. At the meeting, Kamples showed Patricia Pidcock copies of the note,

mortgage deed, and quitclaim deed—all of which bore her purported signature. *Id.* at 37-41. At the disciplinary hearing, Patricia Pidcock testified that the meeting with Kamples was the first time she became aware of the existence of the note, mortgage deed, and quitclaim deed, and that the signatures on each of the documents were forgeries. “‘That’s not my signature, Pete.’ And I pulled out my license and I said, ‘Here, this is my signature.’ And I scribbled on a napkin or a piece of paper at the restaurant and I said, ‘That’s my signature. This is nothing like it.’” *Id.* at 37.

Although Patricia Pidcock was never a party to the litigation, her deposition was taken on March 28, 2007. During her deposition, Patricia Pidcock testified that the signatures on the note, mortgage, and quitclaim deed were not her signatures and that she never signed any of the documents. *Id.* at 52. Despite the fact that the land contract had been fraudulently executed in 2001, Patricia Pidcock testified that the first time she saw it was probably during her deposition six years later in 2007. *Id.* at 43.

Respondent was present during Patricia Pidcock’s entire deposition. *Id.* at 326. Although it was the first time that respondent heard Patricia Pidcock state that she did not sign the documents, respondent was also present in November 2006 when David Pidcock testified during his deposition that the purported signatures of Patricia Pidcock were not genuine. *Id.* at 327.

On March 29, 2007, the day after Patricia Pidcock’s deposition, respondent was deposed. During respondent’s deposition, David Pidcock’s lawyer questioned respondent about his involvement in notarizing and witnessing Patricia Pidcock’s purported signatures on the documents in light of Patricia Pidcock’s testimony that she did not sign the documents. The following exchange occurred:

Q: Did you witness the signature contained on the bottom of the second page over the typed name, Patricia Pidcock?

A: Yes, I did.

Q: Were you present when whoever signed this document affixed their name to it?

A: Yes, I was.

Q: So you are representing that Mrs. Pidcock appeared in front of you in Cuyahoga County?

A: Uh-huh.

Q: And acknowledged that she did sign the instrument, correct?

Q: Yes.

Mr. Todd: Objection.

A: No, my testimony was someone purporting to be Mrs. Pidcock by Mr. Pidcock and by her signed this.

Q: Did there come a time when you had additional documents executed?

A: Yeah.

Mr. Todd: Objection.

A: I believe about three or four days later Mr. Pidcock, and the alleged Mrs. Pidcock and Mr. Kafantaris came to my office to execute a mortgage and a deed.

Q: Do you remember the date you drafted the land contract?

A: At the end of 2000, 2000, I believe. Oh, 2000, I'm not sure.

Q: And did Mrs. Pidcock sign this document or a lady purporting to be Mrs. Pidcock?

A: Yes.

Q: And again, I believe your testimony is that you didn't inquire of any identification of this woman?

A: No, I did not.

Q: And this individual, Patricia Pidcock, that purportedly was your in office [sic] and signed this document, you don't recall what she looks like?

A: No, I don't.

Q: And you don't recall whether the woman that you saw yesterday and identified herself as Patricia Pidcock was the same individual?

A: The woman I saw yesterday was only vaguely, was only vaguely familiar, was only vaguely familiar.

[Ex. 7, pp. 35, 46]

Respondent's deposition was continued to November 9, 2007, at which time the following exchange occurred:

Q: Did you know Patricia Pidcock prior to this date [on the promissory note]?

A: No, that was the first day I met her.

Q: Did you ask for identification from either David Pidcock or Patricia Pidcock?

A: No.

Q: You are acting as a notary on this document, correct?

A: That's correct.

Q: And you are affirming that the person who appeared before you is Patricia Pidcock, isn't that correct?

A: Yes.

Q: But the person who allegedly appeared before you, you didn't ask for any identification, is that your testimony?

A: I was informed by Mr. Pidcock, by Mr. Kafantaris and Mr. Fortounis and by Patricia Pidcock herself that she was Patricia Pidcock.

[Ex. 8, pp. 20-21]

Eventually, respondent settled the lawsuit by agreeing to pay David Pidcock \$5,000. [Tr. p. 340]. Although respondent made one \$400 payment, he has refused to make any additional payments to David Pidcock. *Id.* After the litigation settled, Patricia Pidcock hired counsel to determine her rights with respect to the Root Road property. *Id.* at 55. Patricia Pidcock testified that her lawyer filed a lien against the Root Road property. *Id.*

OBJECTIONS

I. THE BOARD ERRED IN RECOMMENDING A PUBLIC REPRIMAND

Citing the uncontroverted forensic evidence, the board correctly concluded that respondent fraudulently notarized four separate documents on three separate dates, thereby violating DR 1-102(A)(4) and DR 1-102(A)(6). The board also found the presence of several aggravating factors—including a pattern of misconduct, respondent’s refusal to acknowledge the wrongful nature of his misconduct, and the failure to make restitution. [Report at 6] Despite its findings, the board recommended a public reprimand, rather than an actual suspension from the practice of law. Neither of the cases relied upon by the board, *Columbus Bar Assn. v. Dougherty*, 105 Ohio St.3d 307, 2005-Ohio-1825, 825 N.E.2d 1094 and *Cleveland Bar Assn. v. Russell*, 114 Ohio St.3d 171, 2007-Ohio-3603, 870 N.E.2d 1164 support its erroneous recommendation of a public reprimand.

In a 4-3 decision, the *Dougherty* Court imposed a public reprimand upon Gina Dougherty after it found that she notarized a single signature on an F-2 Liquor permit application, despite the fact that the application was signed outside Dougherty’s presence. In imposing a public reprimand, the majority relied on the fact that this was an isolated incident, that Dougherty

immediately acknowledged her misconduct, and that she expressed remorse for her actions.

Further, the Dougherty Court held,

For that reason, we admonished that notaries “ ‘must not take a cavalier attitude toward their notary responsibilities and acknowledge the signatures of persons who have not appeared before them.’ ” *Id.*, quoting *Papcke*, 81 Ohio St.3d at 93, 689 N.E.2d 549. In this regard, respondent and the lawyer in *Simon* [*Disciplinary Counsel v. Simon*, 71 Ohio St.3d 437, 1994-Ohio-11, 644 N.E.2d 309] failed completely. Neither lawyer, however, forged a signature, knew of a forgery, or engaged in deceit or other misconduct beyond failing to witness signatures as required.

Dougherty, supra, 105 Ohio St.3d 307, 2005-Ohio-1825, 825 N.E.2d 1094, at ¶15.

Respondent’s misconduct is much more egregious than the misconduct in *Dougherty*. In the case at bar, the board found that respondent engaged in a pattern of misconduct by fraudulently notarizing four documents on three separate occasions. [Report at 6] Equally important, respondent has never acknowledged the wrongful nature of his misconduct, nor has he expressed any remorse for his actions. *Id.* To the contrary, throughout the disciplinary process, respondent has steadfastly denied any culpability and has continuously cast aspersions upon Patricia Pidcock by insisting that she made false allegations against him. [Ex. 9] Even after respondent was presented with the forensic evidence, which clearly established his guilt, respondent persisted in his denial of any wrongdoing. During respondent’s direct examination at the disciplinary hearing, the following exchange regarding the documents in question occurred:

Q: Did you--did you ever notarize any documents where the witness Patricia Pidcock was not in your presence?

Respondent: When Patricia Pidcock was not in my presence?

Q: Yes.

Respondent: No.

Q: Are you sure about that?

Respondent: Absolutely positively.

[Tr. pp. 304-305]

In light of the uncontroverted evidence, respondent's testimony was blatantly false. Further, unlike the lawyer in *Dougherty*, respondent's misconduct went beyond dispensing with his duties as a notary, as evidenced by the fact that respondent allowed his secretary to sign as a witness to the forged signatures on the mortgage deed, the quitclaim deed, and the land contract. [Ex. 3, 4, 5]. Finally, in addition to the fraudulent notarizations, respondent also signed as a witness on three of the four documents, despite the fact that Patricia Pidcock was not present when any of the documents were forged; thus, respondent was acutely aware that Patricia Pidcock's purported signatures were forgeries. *Id.* Respondent's misconduct, coupled with the presence of several aggravating factors, clearly distinguishes the case at bar from *Dougherty*, thus warranting an actual suspension from the practice of law.

Despite the abundance of mitigation evidence and the absence of any aggravating factors in *Dougherty*, the three dissenting justices would have imposed a harsher sanction. "In my view, pursuant to the precedent established in *Fowerbaugh* and *Papcke*, respondent should not receive such a lenient sanction. In light of her casual attitude toward her notary responsibilities and the adverse consequences of her misconduct, respondent should be suspended from the practice of law for six months, with no stay of the suspension." *Id.* at ¶25, (Moyer, C.J., dissenting).

The board's reliance on *Cleveland Bar Assn. v. Russell*, 114 Ohio St.3d 171, 2007-Ohio-3603, 870 N.E.2d 1164, is equally misplaced. In *Russell*, this Court imposed a public reprimand upon James Russell, a 44-year practitioner, after it was discovered that Russell improperly notarized the signatures on two real estate deeds. Russell had provided the deeds to his client with instructions to have the client's in-laws (grantors) sign the deeds before a notary. *Id.* at ¶6.

The client returned the deeds purportedly signed by the grantors; however, the grantors' signatures had not been notarized. *Id.* at ¶7. The client explained to Russell that her in-laws were ill and physically unable to appear before a notary. *Id.* Trusting his client, Russell notarized the grantors' signatures, which transferred the properties from the in-laws to the client and her husband. *Id.* The mother-in-law challenged the validity of the signatures and eventually retrieved title to the property. *Id.* at ¶8. In arriving at its decision to issue a public reprimand, the *Russell* court cited *Dougherty*, *supra*.

In *Columbus Bar Assn. v. Dougherty*, 105 Ohio St.3d 307, 2005-Ohio-1825, 825 N.E.2d 1094, we publicly reprimanded a lawyer for notarizing a liquor license application without witnessing the applicant's signing the document, and the signature turned out to be a forgery. We chastised the lawyer for ignoring the duties of a notary public to ensure the authenticity of official documents and found the lawyer in violation of DR 1-102(A)(4). The lawyer did not, however, forge the signature or know of the forgery, nor had the lawyer engaged in a deceitful course of conduct beyond failing to witness signatures as required. For that reason and because the lawyer had no prior disciplinary record, had showed contrition, had cooperated in the disciplinary process, and had established good character and reputation apart from the wrongdoing, we did not order the actual suspension usually warranted for a lawyer's dishonesty under *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 658 N.E.2d 237, syllabus. *Id.* at ¶ 15 (Emphasis added.).

Respondent committed the same infraction as did the lawyer in *Dougherty*. Moreover, as established at the panel hearing, respondent's case presents the same, as well as additional, mitigating factors that the *Dougherty* case presented. Respondent has no prior disciplinary record in his forty-plus year career, BCGD Proc.Reg. 10(B)(2)(a), and he assured the panel that he will not engage in misconduct again. In addition to charging Balnozan nothing for his services, respondent voluntarily paid the legal expenses incurred by her in-laws to regain title to the two pertinent properties, and he has been cooperative and contrite throughout the disciplinary process. BCGD Proc.Reg. 10(B)(2)(c) and (d). Respondent has further established his good character and reputation apart from this single lapse of judgment. BCGD Proc.Reg. 10(B)(2)(e).

Russell, *supra*, 114 Ohio St.3d 171, 2007-Ohio-3603, 870 N.E.2d 1164, at ¶10.

Like *Dougherty*, *Russell* involved an isolated incident, complete acceptance of responsibility, and a high degree of remorse. On the contrary, respondent engaged in a pattern of misconduct, has never accepted responsibility for his actions, nor has he expressed any level of

remorse. Finally, unlike the lawyer in *Russell*, respondent reneged on a settlement agreement to pay David Pidcock \$5,000. [Report at 6]. At the disciplinary hearing, respondent was indignant in his refusal to pay David Pidcock, as evidenced by the following exchange:

Relator: Well, let me ask you this question. Why aren't you paying David Pidcock?

Respondent: I'm not paying David Pidcock because—because he fraudulent—he defrauded—he's defrauded me, he defrauded the Court, he defrauded the other defendants...As soon as this case is done, I'm going to get that settlement overturned. And I—I would encourage my—my other attorneys to do the same.

Tr. p. 341.

Rather than accept responsibility for his own fraudulent conduct in notarizing several forged signatures and inducing his secretary to witness the forgeries, respondent attacked David Pidcock's credibility in an attempt to deflect attention away from his own transgressions.

In the instances in which this court has issued a public reprimand in cases involving improper notarizations, there generally exists an abundance of mitigation evidence, lack of any aggravating factors, and/or complete acceptance of responsibility, similar to *Dougherty* and *Russell*. See e.g., *Cincinnati Bar Assn. v. Gottesman*, 115 Ohio St.3d 222, 2007-Ohio-4791, 874 N.E.2d 778, (attorney publically reprimanded via a consent-to-discipline agreement involving single incident in which attorney notarized client's wife's signature under belief that the signature was genuine); *Cincinnati Bar Assn. v. Thomas*, 93 Ohio St.3d 402, 2001-Ohio-1344, 754 N.E.2d 1263, (attorney publically reprimanded for notarizing client's signature after obtaining telephone authorization to sign client's name, and taking immediate steps to rectify misconduct); *Mahoning County Bar Assn. v. Melnick*, 107 Ohio St.3d 240, 2005-Ohio-6265, 837 N.E.2d 1203 (attorney publically reprimanded for improperly notarizing signatures on three affidavits, but within days, attorney tried to rectify his wrongdoing by obtaining confirmation

that the affiants' signatures were genuine); and, *Disciplinary Counsel v. Simon*, 71 Ohio St.3d 437, 1994-Ohio-11, 644 N.E.2d 309, (citing respondent's forthrightness and candor, Court issued a public reprimand after attorney notarized the signatures of two grantors on a deed, both of which the client had represented to be genuine).

Taking into consideration the existence of several aggravating factors—none of which were present in *Dougherty, Russell*, or any of the aforementioned cases, respondent's misconduct warrants a six-month suspension from the practice of law. "When an attorney engages in a course of conduct resulting in a finding that the attorney has violated DR 1-102(A)(4), the attorney will be actually suspended from the practice of law for an appropriate period of time." *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 658 N.E.2d 237.

In the case at bar, the aggravating factors far outweigh the mitigating factors of no previous discipline and good character. In addition to engaging in a pattern of misconduct and failing to make restitution, the board found "...a refusal by Respondent to acknowledge the wrongful nature of his misconduct, because he denied that the questioned documents were improperly notarized." [Report at 6] One cannot overstate the significance of the board's finding. At the time of the disciplinary hearing, respondent was in possession of the forensic evidence that clearly established—beyond any doubt—that Patricia Pidcock did not sign the documents in question. Based upon the strength of the evidence presented at the disciplinary hearing, anything short of a complete admission by respondent amounted to a lie. At the disciplinary hearing, Patricia Pidcock testified that she did not sign the documents. [Tr. p. 52] David Pidcock admitted to forging Patricia Pidcock's name to each document. *Id.* at 94, 97, 100, 101. And Rebecca Barrett, a forensic scientist and handwriting expert, corroborated Patricia and David Pidcock's testimony. *Id.* at 150, 152. Even a lay person could easily conclude that David

Pidcock forged his ex-wife's signature on the legal documents by comparing David Pidcock's rendition of his ex-wife's signature on Ex. 11, page 17, to the forged signatures on Exhibits 1-6.

Despite the overwhelming evidence of respondent's misconduct, respondent testified falsely at the disciplinary hearing by continuing to deny any culpability, thus exposing a lack of integrity and disrespect for the disciplinary process. Respondent's refusal to accept responsibility for his misconduct, coupled with his willingness to fabricate, necessitates an actual suspension from the practice of law. The board's recommendation of a public reprimand minimizes the magnitude of respondent's misconduct.

In *Cleveland Bar Assn. v. Cleary*, 93 Ohio St. 3d 191, 2001-Ohio-1326, 754 N.E.2d 235, the Supreme Court of Ohio refused to grant a fully stayed suspension after finding that Judge Cleary testified falsely during her disciplinary hearing.

Accordingly, as in *Hoague [Disciplinary Counsel v. Hoague]*, 88 Ohio St.3d 321, 2000-Ohio-340, 725 N.E.2d 1108], we find a six-month suspension from the practice of law to be the appropriate sanction. Unlike in *Hoague*, however, we decline to stay any part of Cleary's suspension in light of the board's finding that Cleary made false and deceptive statements to the panel in an attempt to exculpate herself. (Emphasis added).

Id. at 207, 2001-Ohio-1326, 754 N.E.2d 235, 251.

Like Judge Cleary, respondent refused to acknowledge the wrongful nature of his misconduct, and then compounded the situation by lying about what had occurred in an effort to conceal his misdeeds. Although the board did not specifically find that respondent submitted false statements during the disciplinary process, its finding that respondent engaged in a pattern of fraudulent conduct, coupled with its finding that respondent denied any involvement in the conduct, leads to the same conclusion—respondent testified falsely during the disciplinary hearing.

In *Disciplinary Counsel v. Shaffer*, 98 Ohio St.3d 342, 2003-Ohio-1008, 785 N.E.2d 429, this Court imposed a one-year suspension with six months stayed after finding that Attorney John Shaffer instructed his client to sign his grandmother's name on a backdated power of attorney in order to facilitate the transfer of real estate. After fraudulently notarizing the forged signature, Shaffer also instructed his secretary to sign as a witness to the forged signature. In reaching its decision, this Court held:

Respondent's misconduct manifests a course of conduct because he planned and administered a multistep process to defraud. Respondent may have genuinely hoped to serve his client by helping him avoid the expense of establishing a guardianship; however, he nevertheless perpetrated fraud on the court system and public by sidestepping safeguards in place to protect sellers and buyers of real estate.

Id. at ¶13.

Like the lawyer in *Shaffer*, respondent fraudulently notarized forged signatures and also induced his secretary to sign as a witness to the forged signatures on the quitclaim deed, mortgage deed, and the land contract. [Ex. 3, 4, 5] Interestingly, despite signing as a witness on the documents—and therefore being in the best position to corroborate respondent's version of events—respondent's secretary did not testify at the disciplinary hearing. [Report at 4] Respondent also filed the mortgage and quitclaim deeds with the Lorain County Recorder, which effectively transferred ownership of the property from the Pidcocks to Kafantaris. [Report at 3]

The lawyer in *Shaffer* received an actual suspension from the practice of law despite the presence of several mitigating factors.

Respondent apologized for his misconduct, accepted complete responsibility for it, cooperated in the disciplinary proceedings, had no prior disciplinary record, and did not profit from his actions, which he claims to have engaged in solely to advance the combined interests of his client and the client's grandmother. Respondent has also agreed to be financially responsible to buyers for expenses incurred to clear title to property transferred pursuant to the forged power of attorney.

Id. at ¶7.

In the case at bar, respondent engaged in similar misconduct, but never apologized, never accepted responsibility for his actions, and reneged on his promise to make restitution. Throughout the disciplinary process, respondent remained defiant and attacked the credibility of relator's witnesses, despite the overwhelming evidence of respondent's guilt. The board's recommendation of a public reprimand is simply inconsistent with this Court's precedent, especially considering the lack of mitigation evidence.

In *Disciplinary Counsel v. Heffter*, 98 Ohio St.3d 320, 2003-Ohio-775, 784 N.E.2d 693, this Court imposed a six-month, stayed suspension upon Attorney Sarah Heffter after it was discovered that she notarized two limited powers of attorney pertaining to her client's minor children without witnessing their signatures. *Id.* at ¶3. In opting to impose a stayed—rather than an actual—suspension, the Court relied upon the mitigating factors, which included, among others, respondent's admission of the misconduct and the fact that no one, including the two minor children, suffered any loss as a result of the respondent's misconduct. *Id.* at ¶4. “We have held in the past that an attorney who violates DR 1-102(A)(4) will be actually suspended from the practice of law for an appropriate period of time. *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 190, 658 N.E.2d 237. However, mitigating factors may warrant a lesser sanction in appropriate cases. *Dayton Bar Assn. v. Kinney* (2000), 89 Ohio St.3d 77, 78, 728 N.E.2d 1052.” *Id.* at ¶6.

In the case at bar, there are no mitigating factors that would justify this Court's departure from an actual suspension from the practice of law. In *Disciplinary Counsel v. Roberts*, 117 Ohio St.3d 99, 2008-Ohio-505, 881 N.E.2d 1236, Attorney John Roberts represented an out-of-state truck driver in a personal injury action. *Id.* at ¶4. Roberts sent his client a release, which required a notarization. The client signed the release but failed to have it notarized before

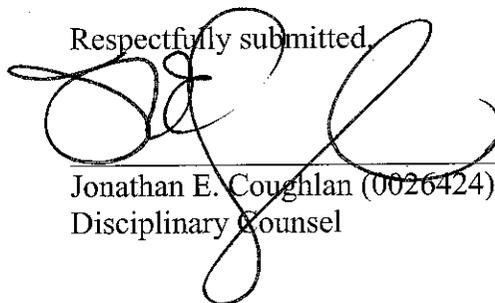
returning it to Roberts. Id. Upon receipt, Roberts changed the date on the release and the date of the client's signature, then notarized the signature, despite the fact that the client did not sign in respondent's presence. Roberts also signed his client and his client's wife's names to a release, notarized the signatures, and asked his assistant to sign as a witness to the forged signatures. Id. at ¶10. In rejecting the board's recommendation of a public reprimand in favor of a six-month, stayed suspension, the Court noted, "Respondent signed twice on behalf of others without authority, induced an administrative assistant to falsely witness the signatures, and dishonored his notary jurat three times, but because of his contrition, heretofore unblemished record, and good, albeit, misguided intentions, we do not require an actual suspension." Id. at ¶19. (Emphasis added.).

Respondent's misconduct, coupled with his refusal to acknowledge the wrongful nature of his actions, warrants this Court's imposition of a six-month suspension from the practice of law.

CONCLUSION

Respondent engaged in a pattern of misconduct involving the fraudulent notarization of four legal instruments on three separate dates. Despite numerous opportunities to admit his misdeeds, respondent continuously denied any wrongdoing and testified falsely in an attempt to conceal his transgressions. Consistent with this Court's precedent, respondent should be suspended from the practice of law for six months.

Respectfully submitted,



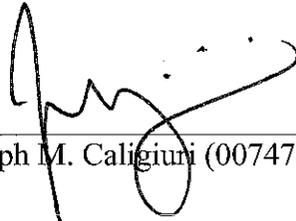
Jonathan E. Coughlan (0026424)
Disciplinary Counsel



Joseph M. Caligiuri (0074786)
Senior Assistant Disciplinary Counsel
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250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Answer 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 respondent's counsel, Gary Thomas Mantkowski, Esq. Secretary/Treasurer, Ellis B. Brannon Co LPA, 6294 Ridge Rd, PO Box 189 Sharon Center, OH 44274, via regular U.S. mail, postage prepaid, this 20th day of December, 2010.



Joseph M. Caligiuri (0074786)

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

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

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)

Appendix A

(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.

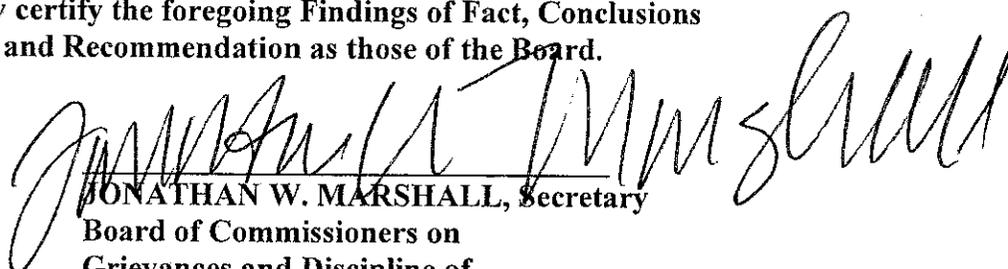
Though not expressly saying so, it appears that Respondent seeks a dismissal of both counts against him.

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