

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

In Re:	:	
Complaint against	:	Case No. 09-098
Kenneth Levon Lawson	:	Findings of Fact,
Attorney Reg. No. 0042468	:	Conclusions of Law and
	:	Recommendation of the
Respondent	:	Board of Commissioners on
	:	Grievances and Discipline of
Disciplinary Counsel	:	the Supreme Court of Ohio
	:	
Relator	:	
	:	

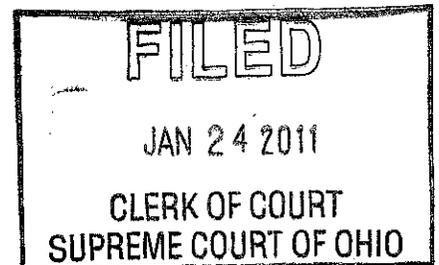
This matter was heard on November 15, 2010, in Columbus, Ohio, before panel members Judge Thomas F. Bryant, of Findlay, John H. Siegenthaler, of Mansfield, and Charles E. Coulson, of Painesville, chair of the panel. None of the panel members was a member of the probable cause panel that reviewed this complaint, or resides in the appellate district from which the complaint arose. The hearing was held on the allegations contained in the complaint filed on December 7, 2009. Representing the Relator, Disciplinary Counsel, was Robert R. Berger, and representing Respondent was David Greer.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The panel finds, by clear and convincing evidence, the following:

BACKGROUND

Respondent was admitted the practice of law in the State of Ohio on November 6, 1989.



Beginning in 1999, Respondent began to take medication to manage pain for a shoulder injury. By 2003, Respondent was chemically dependent on pain killers including Percodan, Percocet, and OxyContin. Respondent also used cocaine. Respondent's chemical dependency severely affected his ability to practice law. In February 2007, Respondent hospitalized himself at Talbot Hall, the Ohio State University's detoxification unit. Respondent has been sober since 2007, participated in an OLAP contract, worked with HLAP (Hawaii Lawyers' Assistance Program) and currently is actively and continuously involved in Alcoholics Anonymous.

On February 12, 2007, the Cincinnati Bar Association filed a complaint (BCDG Case No. 07-010) against Respondent alleging numerous violations of the Code of Professional Responsibility. On May 15, 2007, the Supreme Court of Ohio¹ ordered an interim remedial suspension of Respondent's license to practice law. The alleged misconduct stemmed from Respondent's handling of his clients' cases during the time period of early 2003 to February 2007.

On July 9, 2008, the Supreme Court of Ohio² indefinitely suspended Respondent from the practice of law for multiple violations of the Rules of Professional Conduct and Gov. Bar R. V(4)(G). The Supreme Court found that one of the mitigating factors applicable to the Respondent was his chemical dependence. The Supreme Court found that "Respondent has satisfied ... [the four] requirements..." of BCGD Proc. Reg. 10(B)(2)(g)(i) through (iv) and was chemically dependent from 2003 to February 2007.

¹*Disciplinary Counsel v. Lawson* (2007), 5/13/2007 Case Announcements #2, 2007-Ohio-2333.

²*Cincinnati Bar Assn., v. Lawson*, 119 Ohio St.3d 58, 2008-Ohio-3340.

On September 5, 2008, a criminal charge was filed against Respondent in the Federal District Court. The information alleged that Respondent, together with Dr. Walter Broadnax and another individual, between August 2003 and January 2007 knowingly conspired to unlawfully obtain controlled substances, namely OxyContin and Percocet, by misrepresentation or fraud. Respondent entered into a plea agreement with the United States government and was convicted of the felony of conspiracy to obtain controlled substances by deception. On April 8, 2009, Respondent was sentenced to prison for two years.

Based upon this felony conviction, on July 31, 2009, the Supreme Court of Ohio³ filed another interim suspension of Respondent's license to practice law. The Court further ordered that this matter be referred to Disciplinary Counsel for investigation and commencement of disciplinary proceedings. Based upon that Order, Disciplinary Counsel filed a one-count complaint against Respondent, at issue here.

THE COMPLAINT

Sometime prior to 2001, Respondent began representing Dr. Walter Broadnax for various matters including Bureau of Workers' Compensation investigations and potential DEA investigations. As Respondent was addicted to pain medication, Respondent began to obtain his drugs from Dr. Broadnax illegally. Between August 2003 and January 2007, while the attorney-client relationship existed between Respondent and Broadnax, Respondent conspired with Broadnax and another individual to obtain illegal prescriptions of pain medication. Dr. Broadnax wrote up to 2500 illegal prescriptions to Respondent and/or the other individual in the conspiracy. The pain medication was used by Respondent to feed his addiction. There was no

³In re *Lawson*, 7/31/2009 Case Announcements, 2009-Ohio-3752.

evidence or suggestion that he distributed any of the medication to other persons.

From the time Respondent was released from his drug treatment program at Talbot Hall in February 2007 to the present day, Respondent has been totally forthcoming, honest and cooperative with law enforcement personnel and Disciplinary Counsel about this addiction to prescription drugs and his misconduct. Relator and Respondent filed agreed stipulations with exhibits, a copy of which are attached hereto and incorporated herein.

Respondent admits that he is guilty of the misconduct. However, Respondent asserts that this charge of misconduct is barred by the doctrine of res judicata, double jeopardy, or is barred by application of the principals of collateral estoppel based upon his prior finding of misconduct, and indefinite suspension wherein his drug related misconduct and addiction were introduced as both aggravating and mitigating circumstances (BCGD Case No.07-010). The panel does not find that Respondent's charge of misconduct is barred by res judicata, double jeopardy or collateral estoppel.

Based upon the agreed stipulations, the testimony of the Respondent and the exhibits, the panel unanimously finds, by clear and convincing evidence, that Respondent violated the Code of Professional Responsibility as follows:

1. DR 1-102(A)(3), illegal conduct involving moral turpitude;
2. DR 1-102(A)(4), conduct involving dishonesty, fraud, deceit, or misrepresentation;
3. DR 1-102(A)(5), conduct that is prejudicial to the administration or justice;
4. DR 1-102(A)(6), conduct that adversely reflects on the lawyer's fitness to practice law;

5. 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 interests;
6. DR 7-102(A)(7), a lawyer shall not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent; and
7. DR 7-102(A)(8), a lawyer shall not knowingly engage in illegal conduct.

MITIGATION

The panel finds, pursuant to BCGD Proc. Reg. 10(B)(2), the following factors in mitigation are present:

(d) Full and free disclosure to Disciplinary Board or cooperative attitude toward the proceedings.

(e) Character and reputation. Respondent submitted the transcribed testimony from Respondent's prior case (BCGD No. 07-010) of the following witnesses: Susan Delott, United States District Court Judge; Michael R. Barrett, United States District Court Judge; and Timothy S. Black, United States Magistrate, United States District Court, Southern District of Ohio. These character witnesses described Respondent as a talented trial attorney committed to an underserved client segment of the Cincinnati area. They extolled his skills, dedication, and professional largesse.

(f) Imposition of other penalties or sanctions. As previously noted, Respondent was sentenced to two years in prison by the United States District Court for the same actions as described in the within complaint.

(g) Chemical Dependency. The Panel finds that at all times material to this complaint the

Respondent was chemically dependent. Chemical dependency is of mitigating effect when evidence of the four-prong test is submitted. The first three prongs of the test including: (1) diagnosis of chemical dependency by a qualified healthcare professional or a substance abuse counselor; (2) a determination that the chemical dependency contributed to cause the misconduct; and (3) certification of successful completion of an approved treatment program, were proven at the hearing. Evidence of the fourth prong, a prognosis from a qualified healthcare professional and/or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical professional practice was not submitted at the hearing. However, the Supreme Court of Ohio in *Cincinnati Bar Assn. v. Lawson*, 119 Ohio St.3d 58, 2008-Ohio-3340, found that for this time period of 2003 through February 2007, Respondent had satisfied the fourth-prong. In fact, the Court found that Respondent had satisfied all four requirements for chemical dependency during this time period.

(h) Other interim rehabilitation. Following his release from prison, Respondent has resided in the State of Hawaii with his wife and family. Respondent has been actively working with Alcoholics Anonymous, is providing seminars on drug and alcohol addiction to different segments of the Hawaii Bar Association, and is working with the University of Hawaii, School of Law in its Innocence Project. Supporting telephone testimony concerning Respondent's work and service was given by Professors Hench and Roth of the University of Hawaii.

AGGRAVATION

The panel finds, pursuant to BCGD Proc. Reg. 10(B)(1) the following factors in aggravation are present:

(a) Prior disciplinary offense;

- (b) Dishonest or selfish motive;
- (c) Pattern of misconduct; and
- (d) Multiple offenses.

SANCTION

Relator recommended Respondent be disbarred from the practice of law. In support of Disciplinary Counsel's position, it cites the following cases: *Disciplinary Counsel v. Gallagher* (1998), 82 Ohio St.3d 51, where a former judge was disbarred after a plea of guilty to federal charges of distribution of cocaine; *Disciplinary Counsel v. Phillips*, 108 Ohio St.3d 331, 2006-Ohio-1064, where a county assistant prosecuting attorney was disbarred for accepting a bribe to fix a criminal case; *Toledo Bar Assn. v. Neller*, 98 Ohio St.3d 314, 2003-Ohio-774, where the Supreme Court disbarred an attorney for multiple convictions for conspiracy to distribute illegal drugs and advising his client in ways to avoid detection of the client's illegal activities; and *Disciplinary Counsel v. Longo* (2002), 94 Ohio St.3d 219, where the attorney was disbarred after his conviction for misprision of a felony.

Respondent freely and completely admits all of his misconduct in connection with the allegations in the complaint. However, Respondent's position is that the violation of the Rules of Professional Conduct alleged in the complaint is barred by the doctrine of res judicata or, in the alternative, the complaint violates state and federal constitutional double jeopardy prohibitions and requests that the complaint be dismissed on those legal grounds. Respondent's position is that if the complaint cannot be legally dismissed, the better course would be for Respondent to receive a consecutive, indefinite suspension as opposed to disbarment.

The panel unanimously recommends that Respondent be indefinitely suspended from the

practice of law in Ohio, and this indefinite suspension run consecutively to the indefinite suspension that Respondent is currently serving. The panel finds that precedent for imposing consecutive indefinite suspensions is found in *Disciplinary Counsel v. Young*, 113 Ohio St.3d 36, 2007-Ohio-975. In *Young* the respondent had two prior suspensions, one stayed in 1993 for neglect of client matters and the other an indefinite suspension in 2004 based on a felony conviction for obstruction of justice. The subsequent 2007 consecutive indefinite suspension arose from misconduct in a guardianship that occurred contemporaneously with the violations involved in the 2004 and 2007 case. The Court noted that “[c]onsecutive suspensions serve to ensure a lawyer’s rehabilitation and thereby protect the public from additional misconduct.” *Id.* at ¶37.

The panel also recommends that in addition to the requirements of Gov.Bar Rule V(10), Respondent must, in any petition he files for reinstatement:

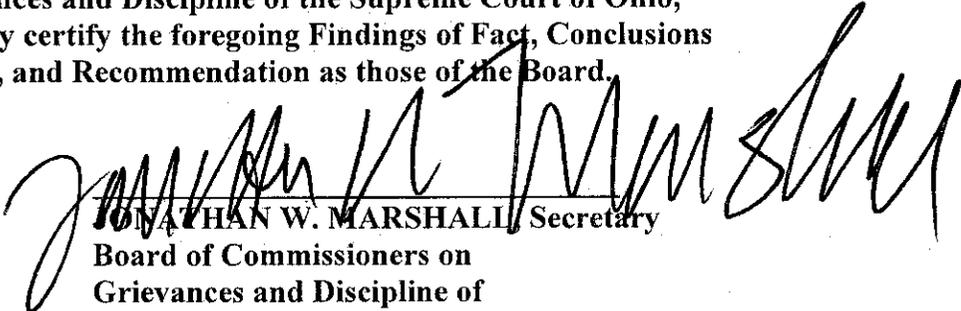
- (1) show that he has successfully completed an approved alcohol and drug abuse treatment program such as OLAP or HLAP; and
- (2) be placed on probation for a period of not less than three years and be required to
 - (1) continue treatment for a substance abuse problem under the supervision of an OLAP or HLAP monitor, and
 - (2) submit to testing to monitor and ensure sobriety, if he is reinstated.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 2, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and

recommends that Respondent, Kenneth Levon Lawson, be indefinitely suspended from the practice of law upon the conditions contained in the panel's report. This suspension is to run consecutively to the first indefinite suspension. 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

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

IN RE: : CASE NO. 09-098
Complaint against
Kenneth Levon Lawson :
Attorney Registration No. 0042468

Respondent,

STIPULATION

and

Disciplinary Counsel

Relator.

The Respondent and Relator hereby stipulate the authenticity and admissibility of the following facts, aggravating factors, mitigating factors and exhibits for all purposes in these disciplinary proceedings.

1. The Respondent Kenneth Levon Lawson was admitted to the practice of law in the State of Ohio on November 6, 1989, and is subject to the Code of Professional Responsibility, the Rules of Professional Conduct and the Rules for the Government of the Bar

of Ohio.

2. On May 15, 2007, the Supreme Court of Ohio ordered that Mr. Lawson be subject to an interim suspension of his law license. A copy of this Order is attached to and incorporated in these Stipulations as Exhibit A.

3. On July 9, 2008, by order of the Supreme Court of Ohio, Mr. Lawson was indefinitely suspended from the practice of law. A copy of this Order is attached to and incorporated in these Stipulations as Exhibit B.

4. For a period of years ending in January of 2007, Mr. Lawson was engaged in a conspiracy with Dr. Walter Broadnax and/or George Beatty to obtain Schedule II prescription drugs Oxycontin, Percodan and Percocet by deception.

5. Prescription drugs are classified into numerical categories according to standards prescribed by the Controlled Substances Act of 1970. The classification is based upon the risk of abuse and the need for strict regulation. Schedule II drugs such as Oxycontin and Percodan are classified as having a high potential for abuse and no automatic prescription

refill renewals are permitted.

6. On September 5, 2008, a One Count Information was filed against Mr. Lawson in the United States District Court in Cincinnati alleging that between August 2003 and January 2007 he conspired to unlawfully obtain Schedule II prescription drugs through fraud. A copy of the Information is attached to and incorporated in these stipulations as Exhibit C.

7. Conspiracy to obtain controlled substances by deception is a felony punishable by up to four years of imprisonment and a \$250,000.00 fine.

8. On September 24, 2008, a Plea Agreement was filed in the United States District Court for the Southern District of Ohio.

9. Under the terms of this Agreement, Mr. Lawson agreed to plead guilty to conspiring with Dr. Walter Broadnax, George Beatty and others to unlawfully obtain possession of Schedule II controlled substances. A copy of the Plea Agreement is attached to and incorporated in these stipulations as Exhibit D. A copy of the Statement of Facts filed in connection with the Plea Agreement is attached to and incorporated in these stipulations as

Exhibit E.

10. On September 24, 2008, Mr. Lawson entered a plea of guilty to the information, and on April 8, 2009, Mr. Lawson was sentenced to twenty-four months incarceration, one year of supervised release probation and one thousand hours of community service. A copy of the Court's Amended Judgment on Sentencing is attached to and incorporated in these stipulations as Exhibit F.

11. On July 31, 2009, the Supreme Court of Ohio suspended Mr. Lawson for an interim period pursuant to Gov. Bar R V(5) due to his felony conviction. A copy of the Court's Entry is attached to and incorporated in these Stipulations as Exhibit G.

12. Respondent has displayed a cooperative attitude during the disciplinary proceedings.

13. Respondent has been previously disciplined and was indefinitely suspended in July 2008.

14. Respondent's conduct reflects a pattern of misconduct and multiple offenses.

STIPULATED EXHIBITS

§ Exhibit A. Disciplinary Counsel v. Lawson, 113 Ohio St. 3d 1508, 2007-Ohio-

2333, 866 N.E. 2d 508.

§ Exhibit B. Cincinnati Bar Assn. v. Lawson, 119 Ohio St. 3d 58, 2008-Ohio-3340, 891 N.E. 2d 749.

§ Exhibit C. information filed in USA v. Lawson, Case No. 1:08-CR-097.

§ Exhibit D. Plea Agreement in USA v. Lawson, Case No. 1:08-CR-097.

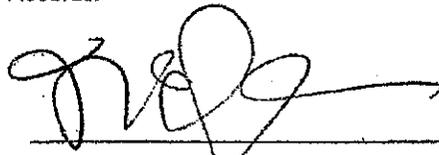
§ Exhibit E. Statement of Facts in USA v. Lawson, Case No. 1:08-CR-097.

§ Exhibit F. Sentencing Entry in USA v. Lawson, Case No. 1:08-CR-097.

§ Exhibit G. Interim Suspension Order for 2009-1163, In Re Lawson 07312009
Case Announcements 2009-Ohio-3752.

§ Exhibit H. Ohio State University Hospital Records.

§ Exhibit I. Christ Hospital Records.



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