

**ORIGINAL**

**IN THE  
SUPREME COURT OF OHIO**

In re: :  
**Kenneth L. Lawson** :  
918 Noio St. :  
Honolulu, Hawaii 96816 :  
**Attorney Registration No. (0042468)** :  
: :  
**Respondent** :  
: **CASE NO. 2011-0131**  
**Disciplinary Counsel** : **RELATOR'S OBJECTIONS**  
250 Civic Center Drive, Suite 325 : **TO THE BOARD OF**  
Columbus, OH 43215-7411 : **COMMISSIONERS' REPORT AND**  
: **RECOMMENDATIONS**  
**Relator** :

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**RELATOR'S OBJECTIONS**

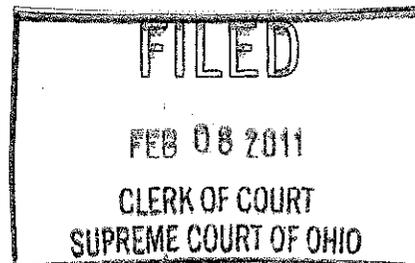
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**IN THE SUPREME COURT OF OHIO**

**Kenneth Levon Lawson**  
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Attorney Reg. No. 0042468

**CASE NO. 2011-0131**

**Respondent**

**RELATOR'S OBJECTIONS  
TO THE BOARD OF  
COMMISSIONERS  
REPORT AND RECOMMENDATIONS**

**Disciplinary Counsel**  
250 Civic Center Drive, Suite 325  
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**Relator**

Now comes relator, Disciplinary Counsel, and hereby submits objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (Board) filed with the court on January 24, 2011.

On July 9, 2008, this Court ordered Respondent, Kenneth L. Lawson, indefinitely suspended finding that he neglected and failed to properly represent 13 clients, stole settlement funds from six clients, misused of his IOLTA account to conceal his personal funds from creditors, failed to cooperate in numerous grievance investigations and made repeated dishonest statements to clients and relator during investigation of these matters. [Stip. Ex. B]

A second disciplinary complaint was filed against respondent on December 7, 2009. Respondent filed his answer to the complaint on January 12, 2010. At a panel hearing on

November 21, 2010, relator recommended that respondent be permanently disbarred.

Respondent recommended dismissal or a second indefinite suspension. The Board found that respondent had engaged in the conduct and violated the seven disciplinary rules as alleged in the disciplinary complaint and recommended an “indefinite suspension [to] run consecutively to the indefinite suspension that respondent is currently serving.” [Report at 8] For the reasons set forth herein, relator objects to the Board’s recommended sanction and requests that respondent be permanently disbarred.

### FACTS

Beginning in August 2003, respondent entered into a conspiracy with Dr. Walter Broadnax and George Beatty to illegally obtain the prescription drugs Percodan, OxyContin and Percocet by deception. [Stip. 4, 6; Stip. Ex. E; Report at 3; Tr. at 24] At the start of and throughout this conspiracy, respondent was also acting as Dr. Broadnax’s attorney. [Report at 3; Tr. at 25; Respondent’s Ex. KL 15-19]

Later in the conspiracy, in November 2004, respondent hatched a scheme to scam his client and co-conspirator Dr. Broadnax out of \$50,000. [Tr. at 26-28] During an attorney-client meeting with Broadnax, respondent advised Broadnax that he was under criminal investigation by the Bureau of Worker’s Compensation for irregular billing practices. [Tr. at 27-28] Respondent told Broadnax that an indictment was imminent and that Broadnax’s telephone had been tapped. [Tr. at 28-29] Respondent further advised Broadnax that for \$50,000, respondent could “bribe” state officials to make the investigation “go away.” [Tr. at 29] Respondent further advised Broadnax that he would provide him with the “evidence against Broadnax” which Broadnax could then destroy. [Tr. at 29-30] All of respondent’s claims to Broadnax regarding a BWC investigation were false. [Tr. at 27-30]

Respondent made these false claims to frighten Broadnax into providing \$50,000 which respondent and Beatty could then pocket. [Tr. at 30] After Broadnax was unable to come up with the \$50,000, respondent and Beatty falsely advised Broadnax that they would “loan” him the \$50,000 for the “bribe” that respondent would deliver to the state official. [Tr. at 30-31] When Broadnax was subsequently unable to repay the “loan” as previously agreed, respondent used this indebtedness to pressure Broadnax to write illegal prescriptions without any compensation from respondent. [Tr. at 31-32]

Throughout the conspiracy, respondent provided Broadnax with the names of persons to record as the purported recipient of prescriptions for Percodan, OxyContin and Percocet. [Tr. at 35] Between August 2003 and January 2007, Broadnax wrote approximately 700-800 fraudulent prescriptions for respondent and Beatty. [Tr. at 34] These prescriptions were falsely attributed to various parties, including respondent’s clients and respondent’s daughter. [Tr. at 35, 36] Respondent obtained some of these illegal prescriptions in the names of his clients with the knowledge and/or assistance of the clients. [Tr. at 35] Other prescriptions were obtained using a client’s name without the knowledge and/or assistance of the client. [Tr. at 35]

Respondent would sometimes pay his clients to fill the illegal prescriptions and bring the drugs to him. [Tr. at 37] This included at least two criminal defense clients, who were facing drug-related felony charges. [Tr. at 37] Respondent would also sometimes fill the prescription himself, while falsely advising pharmacy staff that he was filling the prescription for a client. [Tr. at 38] Respondent paid Broadnax for providing these prescriptions with cash and free legal services. [Tr. at 25-26, 39]

On September 24, 2008, respondent pled guilty in federal court to conspiring with Dr. Walter Broadnax, George Beatty and others to unlawfully obtain possession of Schedule II Controlled Substances. [Stip. 6, 9, 10; Report at 3; Tr. at 43-44; Stip. Ex. F] Respondent admitted he obtained Percodan, OxyContin and Percocet with Dr. Broadnax and Beatty through misrepresentation, fraud, forgery, deception and subterfuge in violation of federal law. [Stip. 6, 9, 10; Report at 3; Tr. at 44; Stip. Ex. D, E] Respondent was sentenced to 24 months incarceration, one year of supervised release probation and 1,000 hours of community service. [Stip. 10; Report at 3; Tr. at 44; Stip Ex. F]

Finally, the Client Security Fund [CSF] has made awards to over 30 of respondent's former clients totaling over \$300,000. [Tr. at 67] Over 20 of those clients and \$250,000 of the CSF awards are to parties in addition to those already accounted for in respondent's current or prior disciplinary cases. [Tr. at 67-68] All of these clients received CSF awards due to respondent's dishonest conduct, such as Kyle Ciminello from whom respondent stole a \$10,000 settlement check and Arturo and Hector Lucero from whom respondent stole a check for \$50,200.65. [Tr. at 68-73; Gov. Bar R. VIII, Section 3]

After a one day hearing, the Board found that respondent's conduct violates the Code of Professional Responsibility: DR 1-102(A)(3) [a lawyer shall not engage in illegal conduct involving moral turpitude]; DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102 (A)(5) [a lawyer shall not engage in 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 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 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 DR 7-102(A)(8) [a lawyer shall not knowingly engage in illegal conduct].

## OBJECTIONS

### I.

#### **Respondent's Repeated, Extensive and All-Encompassing Misconduct Requires Permanent Disbarment**

### A.

#### **This Court's Prior Case Law Supports Permanent Disbarment**

This Court has previously drawn a clear distinction between misconduct by an attorney that requires permanent disbarment versus misconduct which requires an indefinite suspension with the possibility for reinstatement.<sup>1</sup> Respondent's repeated, extensive and all-encompassing misconduct requires permanent disbarment.

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<sup>1</sup> "The guiding principle in this case, as in all our disciplinary proceedings, is the public interest and an attorney's right to continue to practice a profession imbued with public trust. We have previously emphasized that respect for the law and our legal system is the sine qua non of that right to continuance on the rolls. *Disciplinary Counsel v. Greene* (1995), 74 Ohio St.3d 13, 16, 655 N.E.2d 1299, 1301. To that we add respect for our judicial officers and for fellow members of the bar. All our Disciplinary Rules and all our Ethical Considerations are founded on respect for the law, for the court system, for the judges, for counsel and, of course, for clients." *Disciplinary Counsel v. Trumbo* (1996), 76 Ohio St.3d 369, 372, 667 N.E.2d 1186, 1187.

This Court has previously disbarred other attorneys for illegal conduct comparable to that of respondent in the present matter. Further, these other disbarred attorneys had chemical dependency or mental disability mitigation and no prior disciplinary history. In *Disciplinary Counsel v. Gallagher*, 82 Ohio St.3d 51, 1998-Ohio-592, 693 N.E.2d 1078, Gallagher, while a judge, was convicted of distributing cocaine and received a 12 month prison sentence. The hearing panel and the Board recommended an indefinite suspension. This Court reached a different result. Gallagher successfully established chemical dependency mitigation. However, this Court held that evidence of drug addiction was not sufficient to overcome illegal conduct involving moral turpitude. This Court held that “disbarment is not uncommon where DR 1-102(A)(3) and DR 1-102(A)(6) violations stem from felony convictions.” *Id.* at 52. The Court further observed that “permanent disbarment is an appropriate sanction for conduct that violates DR 1-102 and results in a felony conviction.” *Id.* As a result, Gallagher was permanently disbarred.

In *Disciplinary Counsel v. Phillips*, 108 Ohio St.3d 331, 2006-Ohio-1064, 843 N.E.2d 775, Phillips, while acting as an assistant county prosecutor, accepted a \$2,000 bribe and offered to fix a criminal case to an undercover informant. Phillips was convicted of bribery, attempted obstruction of justice, attempted bribery, theft in office, possession of drugs and criminal tools. Like respondent, Phillips suffered from chemical dependency. In mitigation, Phillips had no prior discipline, cooperation, remorse, other penalties and good character. Further, Phillips received mitigation credit for his chemical dependency.

Nonetheless, this Court held “any mitigating factor in a disciplinary case like this must be weighed against the seriousness of the rule violations that the lawyer has committed” and “we have disbarred attorneys who like Phillips have committed violations of DR 1-102(A)

and have been convicted of felony offenses.” Id. at ¶ 12 and 13.

In *Disciplinary Counsel v. Hunter*, 106 Ohio St.3d 418, 2005-Ohio-5411, 835 N.E.2d 707, Hunter stole nearly \$300,000 from a guardianship and a trust. Hunter established mental disability mitigation based upon her depression. However, this Court held that “for theft and dishonesty of the magnitude committed in this case the appropriate sanction is disbarment even considering [Hunter’s] mental condition.” Id. at ¶39.

In comparison to the present matter, relator acknowledges that respondent was not a judge or assistant prosecutor who was subject to heightened ethical scrutiny of those positions, and that respondent’s felony convictions are for different illegal acts. However, the present matter has the additional serious factors of prior discipline; multiple client harm, theft and dishonesty; and the involvement of clients and law office staff in his criminal conspiracy. Further, respondent’s conduct violated additional ethical prohibitions against personal conflicts of interest and assisting a client engage in illegal acts. Respondent also solicited a client to participate in a phony scheme to bribe a state official.<sup>2</sup> Finally, like Gallagher, Phillips and Hunter, respondent was found to have engaged in illegal conduct involving moral turpitude, violated DR 1-102(A) and was convicted of a felony for this conduct.

This Court has disbarred an attorney, who had no prior disciplinary history, for assisting a client in a criminal conspiracy and the resulting felony convictions. In *Toledo Bar Assn. v. Neller*, 98 Ohio St.3d 314, 2003-Ohio-774, 784 N.E.2d 689, Neller was convicted of five felonies for conspiracy to distribute cocaine, marijuana and heroin. The evidence established

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<sup>2</sup> This Court has previously found that an indefinite suspension or permanent disbarment was appropriate when an attorney “offer[s] to influence a government official.” See *Dayton Bar Association v. O’Brien*, 103 Ohio St.3d 1, 2004-Ohio-3939, 812 N.E.2d 1263 at ¶9.

that Neller facilitated and promoted a criminal conspiracy by advising his client how to avoid detection by law enforcement. Neller sought mitigation due to his “significant contributions to the Toledo area as an outspoken advocate for Hispanic and other minorities” and that Neller was competent and valued member of legal community. *Id.* at ¶6.

However, this Court found that Neller “crossed the line from advisor and counselor to participant in a criminal enterprise.” *Id.* at ¶7. The hearing panel in *Neller* recommended indefinite suspension with no credit for time served. After a review, this Court ordered disbarment and held that “no mitigating circumstances can undo the harm of [Neller’s] integral role in this drug ring.” *Id.* at ¶10.

Finally, this Court has disbarred an attorney, without a prior disciplinary history, for a single felony conviction premised on a drug-related crime. In *Disciplinary Counsel v. Longo*, 94 Ohio St.3d 219, 2002-Ohio-641, 761 N.E.2d 1042, Longo gave a business partner \$70,000 in cash knowing that the partner was going to use funds to purchase marijuana. Longo was convicted of misprision of a felony, because Longo had knowledge of a felony, concealed this fact and did not report it to the authorities. The hearing panel recommended permanent disbarment and the Board recommended an indefinite suspension. After a review of the record, this Court ordered permanent disbarment. See also *Disciplinary Counsel v. Bein*, 105 Ohio St.3d 62, 2004-Ohio-7012, 822 N.E.2d 358.

The Board relied upon *Disciplinary Counsel v. Young*, 113 Ohio St.3d 36, 2007-Ohio-975, 862 N.E.2d 504, in recommending that respondent be subjected to a consecutive indefinite suspension. However, *Young* is not controlling in this matter. The misconduct committed by

Young pales in comparison to that of respondent, and involved neglect and failure to account for funds while acting as a guardian. The essence of Young's misconduct is that "he delegated to [his secretary] all of the daily responsibilities of the guardianship" resulting in \$44,101.06 in unaccounted for funds. *Id.* at ¶7-8, 12. Clearly, respondent's felony conviction and repeated and extended criminal and dishonest conduct involving clients and office staff is far more serious than that of Young, and requires a far more serious sanction.<sup>3</sup>

Finally, relator acknowledges that this Court has ordered an indefinite suspension in lieu of permanent disbarment when the possibility of rehabilitation exists, along with other substantial mitigating factors. *Ohio State Bar Assn. v. Johnson*, 96 Ohio St.3d 192, 2002-Ohio-3998, 772 N.E.2d 1184. However, the reasoning applied in *Johnson* is inapplicable in the present matter. After Johnson was convicted of extortion while serving as a state senator, he received an indefinite suspension because this Court held that "the severity of our disciplinary measures is often tempered in consideration of an attorney's previously unblemished professional record." *Id.* at ¶7. Because respondent has an extensive prior disciplinary record and his dishonest, illegal and unethical actions spanned several years and involved theft from and dishonesty toward multiple clients, the severity of respondent's misconduct far exceeds that of Johnson. As such, respondent does not qualify for the same consideration when determining the appropriate sanction.

In *Gallagher*, *Phillips*, *Hunter*, *Neller* and *Longo*, all cases involving an attorney's first disciplinary sanction, the court ordered disbarment due to the seriousness of the misconduct. In

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<sup>3</sup> Relator notes this Court's rejection of Young's "argument that when relatively contemporaneous ethical infractions are prosecuted separately and suspensions are ordered in both cases, the sanction in the second case should necessarily run concurrently with the first," as respondent has made a similar argument in the present matter. *Id.* ¶30.

respondent's prior disciplinary case, three justices dissented from this Court's decision to indefinitely suspend the respondent and found permanent disbarment was appropriate. Further, the majority in respondent's prior disciplinary case called respondent's prior conduct "pervasive and devastating" and conduct that "typically" merits disbarment. [Stip. Ex. B at ¶64] Because the breadth and seriousness of respondent's additional misconduct in this second disciplinary case far outweighs the mitigating factors, relator requests permanent disbarment.

## **B.**

### **Respondent's Pervasive and Extensive Unethical and Illegal Actions and Harm to Multiple Clients and the Public Requires Permanent Disbarment**

The undisputed facts show that respondent:

- Was convicted of a felony for his three and one-half year long criminal conspiracy involving an estimated 700 illegal prescriptions, resulting in a two year prison sentence;
- Lied to his client/co-conspirator, Dr. Broadnax to "blackmail" Broadnax out of \$50,000, creating an impermissible conflict of interest [Tr. at 27-30];
- Falsely advised his client, Dr. Broadnax, that respondent could bribe a state official to protect Broadnax from criminal charges [Tr. at 29];
- Repeatedly purchased illegal prescriptions, cocaine and marijuana from Broadnax, co-conspirator Beatty and others [Tr. at 39-40];
- Paid Dr. Broadnax with cash and free legal services for the illegal prescriptions;

- Used his criminal defense clients, including at least two who were facing drug-related felony charges, to fill illegal prescriptions and advance his illegal drug conspiracy [Tr. at 37];
- Used an associate attorney and his law office staff to fill the illegal prescriptions and advance his illegal drug conspiracy [Tr. at 37-38];
- Used the names of additional clients, without their knowledge, to obtain illegal prescriptions, because respondent knew that he could not obtain the amount of drugs he sought in his own name without arousing the suspicions of law enforcement [Tr. at 36];
- Made false statements to pharmacy employees claiming he was picking up a prescription for a client [Tr. at 38];
- Fully realized his deceit and dishonesty related to the prescription drug conspiracy was improper and unethical at the time that he was doing it [Tr. at 41];
- Lied to judges and attorneys, claiming that he had multiple sclerosis and/or Lou Gerig's disease to conceal his drug abuse [Tr. at 41-42];
- Solicited false and/or misleading letters from Dr. Broadnax about his client's medical status for use in court proceedings [Tr. at 42];
- Continued to accept unearned fees and/or retainers from clients up until the day before he entered treatment for chemical dependency, despite the fact that he knew he had a serious drug problem [Tr. at 56-57]; and
- Was found by the Board to have the aggravating factors of prior discipline, a dishonest or selfish motive, a pattern of misconduct and multiple offenses.

Respondent's misconduct impacted numerous clients beyond the 13 in his prior indefinite suspension disciplinary case and those in the current disciplinary case. The Client Security Fund [CSF] has made awards to over 30 of respondent's former clients totaling over \$300,000. [Tr. at 67] Over 20 of those clients and \$250,000 of the CSF awards are to parties not included in respondent's current or prior disciplinary cases. [Tr. at 67-68] All of these clients received CSF awards due to respondent's dishonest conduct. [Gov. Bar R. VIII, Section 3] At the hearing, respondent initially attempted to minimize these CSF awards as merely fee disputes. [Tr. at 68] However, respondent eventually acknowledged that he stole a \$10,000 settlement from client Kyle Ciminello and a check for \$50,200.65 received on behalf his clients Arturo and Hector Lucero. [Tr. at 68-73] The CSF awarded Ciminello \$6,666 and the Lucero's and their family \$50,200.65. [Tr. at 69, 73]

At the time of the hearing, respondent also admitted that he had not paid one cent to reimburse the CSF or this Court for the costs associated with his prior disciplinary case despite this Court's prior order that he do so. [Tr. at 73-74] Respondent has made no effort to make any payments, despite the fact that he has held employment since April 2010 and has held a job earning around \$40,000 per year since August 2010. [Tr. at 49, 74, 76, 109]

The very nature of such substantial and serious misconduct requires a serious sanction, both to protect the public and to demonstrate to the public that such extreme and extensive attorney misconduct will be met with serious consequences. Further, this Court has permanently disbarred attorneys in the past for less pervasive conduct in their first disciplinary case.

**C.**

**Respondent Has Failed To Comply with His Ohio Lawyers Assistance Program  
Contract as Previously Ordered by This Court**

Respondent entered into a five year Ohio Lawyers Assistance Program [OLAP] contract in April 2007. [Tr. at 82; Stip. Ex. B] This contract required that respondent to, among other things, have at least one weekly contact with his OLAP monitor and to submit monthly logs of his attendance at Alcoholics Anonymous meetings. [Tr. at 82-83] In this Court's prior indefinite suspension order, respondent was ordered to comply with his OLAP contract. [Stip. Ex. B]

Respondent was released from prison in March 9, 2010 and entered a halfway house in Hawaii to be close to his family, who now live there. [Tr. at 46] Respondent was released from the halfway house on September 3, 2010. [Tr. at 46-47] Despite the requirements of respondent's OLAP contract, since his release from prison on March 9, 2010, respondent has failed to have weekly contacts with his OLAP monitor and has failed to submit any AA meeting logs to OLAP. [Tr. at 83, 85]

At the hearing, respondent attempted to suggest that his activities with the Hawaii lawyers assistance program were a comparable substitute for his failure to comply with his OLAP contract. [Tr. at 83-85] However, the evidence established that respondent's AA sponsor lives in Ohio and has only limited telephone and e-mail contact with respondent in Hawaii. [Tr. at 79-80] Further, respondent has not entered into a formal, written monitoring contract with the Hawaii lawyers assistance program. [Tr. at 84-85] Instead, respondent is relying on persons with whom he has only had regular interaction with since March 2010 to be his oversight without any formalized monitoring or reporting requirements. [Tr. at 86, 108, 115, 139, 145]

This is not the first time that respondent has failed to meet the requirements of his OLAP contract. During respondent's October 2007 disciplinary hearing, respondent's OLAP monitor testified that respondent had failed to comply with the conditions he was given in April 2007. [Tr. at 86-87] Specifically, respondent failed to have weekly contact with his OLAP monitor from May until September 2007 and failed to submit monthly meeting logs. [Tr. at 86-87] As such, respondent has continued in a pattern of failing to comply with his OLAP contract and instead fashioned his own personal and inadequate version of monitoring and oversight.

This Court's 2008 decision indefinitely suspending respondent, recounted that respondent's extreme and extraordinary chemical dependency for seven years "overshadowed and then destroyed his ability to practice law in accordance with the ethical standards." [Stip. Ex. B at ¶69] It is this type of acute addiction that requires regular and contractually regulated monitoring and oversight to ensure continuing sobriety.

#### **D.**

#### **The Board's Decision Improperly Relies Upon Hearsay Testimony**

At the disciplinary hearing, respondent sought to admit uncertified copies of transcripts of the testimony of three witnesses. [Respondent's Ex. KL-1] These three witnesses testified during his prior disciplinary case in October 2007. Relator objected to the admission of this testimony. [Tr. at 118-121] In the alternative, relator suggested that the record be left open for respondent to submit up-to-date and current character letters from these three witnesses. [Tr. at 20]

Initially, the hearing panel ruled on relator's objections by stating that relator "has the better idea" and giving respondent "time after today to submit letters of character evidence." [Tr. at 121] The panel chair further observed that these transcripts of prior witness testimony were "hearsay and I don't really know how we get around that" and "I would suggest that you do get some character letters." [Tr. at 122] At the conclusion of the hearing, the panel chair stated that Respondent's Exhibit KL-1 would be admitted, but advised respondent that "the panel would like to see those updated letters and character references that you have indicated that you would get." [Tr. at 213]

Respondent failed to submit any updated character evidence from these three witnesses showing that these witnesses wished to renew their character testimony, despite respondent's subsequent felony conviction for conspiracy to unlawfully obtain possession of Schedule II Controlled Substances. Nonetheless, the Board's report indicates that over relator's objections, the Board relied upon the October 2007 testimony of Federal Judge Susan Dlott, Federal Judge Michael Barrett and Federal Magistrate Judge Timothy Black and found this three year old testimony to have value as "character and reputation" mitigation, in determining the appropriate sanction in this matter.<sup>4</sup> [Report at 5]

Relator objects to the 2007 testimony of these three witnesses being admitted into evidence in this matter for three reasons. First, these witnesses testified over three years ago on October 15 and 16, 2007, prior to respondent's felony conviction and incarceration. As such, use of this stale testimony prevents this Court from knowing whether the opinions of these witnesses

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<sup>4</sup> Use of this testimony from 2007 in respondent's 2010 disciplinary proceeding may also be a violation of the spirit of Rule 3.3 of the Code of Judicial Conduct, as these three judicial officers testimony in the current proceeding was not proffered with the full knowledge of these witnesses, after service of the required subpoena.

have changed, if these witnesses wish to have their testimony used in this second disciplinary proceeding, and if these witnesses wished to testify as character witnesses on behalf of the respondent in this proceeding.

Second, Gov. Bar Rule V, Section 11(A)(1) states that “hearing panels shall follow the Ohio Rules of Civil Procedure and the Ohio Rules of Evidence wherever practicable unless a specific provision of this rule or Board hearing procedures and guidelines provides otherwise.” As such, the testimony of these three witnesses at the 2007 hearing is inadmissible hearsay in the current proceeding. This prior testimony is not an exception to Evid. Rules 803 and 804, which delineate hearsay exceptions when the witness is otherwise available or unavailable to testify. Further, there was no evidence introduced at the hearing that the testimony of these witnesses qualified as an exception to the prohibition of hearsay evidence in the Ohio Rules of Evidence. Finally, the portions of the transcript admitted by the hearing panel were not a certified or otherwise properly authenticated.

Third, the hearing panel’s admission of the transcripts of this three year old testimony deprived relator the opportunity to cross examine these witnesses and determine if their testimony and opinions regarding the respondent’s character in 2007, remains accurate in 2010. At the hearing, relator suggested that the record be left open for respondent to obtain updated character letters from these three witnesses in which the witnesses could avow that their prior testimony was still accurate. Respondent failed to do so. For these three reasons, the October 2007 character testimony by these three witnesses is unauthenticated, inadmissible hearsay by which relator was deprived of its opportunity to conduct cross examination.

E.

**Respondent Failed To Establish the Evidence Necessary to Qualify For Chemical Dependency Mitigation as Required by BCGD Proc. Reg. 10(B)(2)(g)**

In order for respondent to qualify for chemical dependency mitigation, respondent must establish the four criteria set out in BCGD Proc. Reg. 10(B)(2)(g). Respondent must establish a diagnosis of chemical dependency, a causal link between the misconduct and the chemical dependency and successful completion of a chemical dependency treatment program. [Stip Ex. B, H, I] Respondent must also provide “a prognosis from a qualified health care professional or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical professional practice under specified conditions.”

Three witnesses testified in respondent’s case-in-chief: respondent, law professor Virginia Hench and law professor Randall Roth. None of these three witnesses are a “qualified health care professional or alcohol/substance abuse counselor” as testimony at the hearing established that none of these witnesses are a psychiatrist, psychologist, licensed social worker, licensed counselor/therapist and/or licensed chemical dependency counselor. [Tr. at 114, 143] Additionally, no contemporaneous documentation was entered into evidence from a “qualified health care professional or alcohol/substance abuse counselor.”

Further, the Board found that “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.” [Report at 6] [Emphasis added] However, the Board found that because respondent established the fourth criteria during his October 2007 disciplinary hearing, respondent met his evidentiary burden to

obtain mitigation for chemical dependency in November 2010. The Board's reliance on this three year old testimony is in error.

This evidentiary shortcoming is further exacerbated by respondent's admission at the hearing that he was not in compliance with his OLAP contract; that his Alcoholics Anonymous sponsor lives in Ohio; and that respondent resides in Hawaii, where he is not formally being monitored under a lawyer's assistance contract.<sup>5</sup> Because respondent's evidentiary burden to establish mitigation for chemical dependency was not met with any current and reliable evidence, he has failed to qualify for chemical dependency mitigation.

The requirement that a respondent provide "a prognosis from a qualified health care professional or alcohol/substance abuse counselor that [he] will be able to return to competent, ethical professional practice under specified conditions" is a bulwark in this Court's primary goal to protect the public from attorneys suffering from chemical dependency and mental disability. This Court would not accept three year old testimony in a reinstatement proceeding to establish that an attorney possesses the requisite mental, education and moral qualifications and is a proper person to be readmitted to the practice of law. Nor would this Court accept three year old testimony to establish an attorney's fitness to practice law in a proceeding for an attorney seeking admission to the practice of law. In both of these proceedings, such stale and dated testimony would be inadequate to protect the public. It is likewise insufficient in the present proceeding.

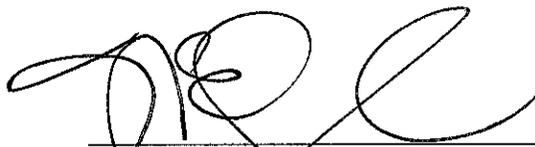
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<sup>5</sup> Relator possesses no evidence that respondent has abused drugs or alcohol since February 2007. However, it is undisputed that respondent has a very serious drug addiction involving daily use from 2000 until February 2007 and the best guardian against a relapse is in-person formal and regular monitoring by a lawyers assistance program representative and a sponsor. [Tr. at 55-56]

## CONCLUSION

It is undisputed that respondent was convicted of a felony for participating in a three and one-half year conspiracy to illegally obtain an estimated 700-800 prescriptions for Percodan, OxyContin and Percocet. While facilitating this conspiracy, respondent attempted to swindle one of his co-conspirators, who was also his client, out of \$50,000 by falsely asserting that he could bribe state officials. Respondent also solicited and obtained the participation of his criminal defense clients and law office staff in obtaining these prescriptions and harmed at least two additional clients by the theft of over \$60,000 in funds belonging to those parties. For all of these reasons, relator objects to the Board's recommended sanction of an indefinite suspension and requests that respondent be permanently disbarred.

Respectfully submitted,



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



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Robert R. Berger (000064922)  
Senior Assistant Disciplinary Counsel  
Counsel of Record  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
614.461.0256

## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Relator's Objections to the Board of Commissioners Report and Recommendation has been served upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215-3431, and Respondent's Counsel David C. Greer, Esq., Bieser, Greer & Landis, 400 National City Center, 6 North Main Street, Dayton, OH 45402-1908, via regular U.S. mail, postage prepaid, this 8<sup>th</sup> day of February, 2011.



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Robert R. Berger (0064922)

## APPENDIX A

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	:	
	:	

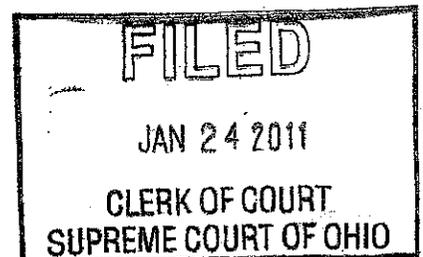
This matter was heard on November 15, 2010, in Columbus, Ohio, before panel members Judge Thomas F. Bryant, of Findlay, John H. Siegenthaler, of Mansfield, and Charles E. Coulson, of Painesville, chair of the panel. None of the panel members was a member of the probable cause panel that reviewed this 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 Ohio<sup>1</sup> 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 Ohio<sup>2</sup> 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.

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

<sup>2</sup>*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 Ohio<sup>3</sup> 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

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<sup>3</sup>In 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 his 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:

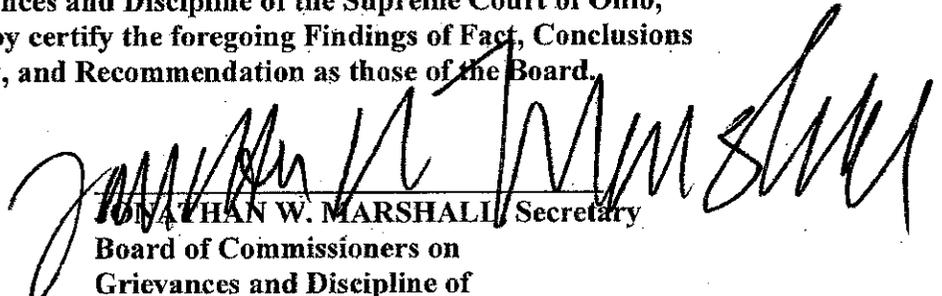
- (1) show that he has successfully completed an approved alcohol and drug abuse treatment program such as OLAP or HLAP; and
- (2) be placed on probation for a period of not less than three years and be required to
  - (1) continue treatment for a substance abuse problem under the supervision of an OLAP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

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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 Court 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.

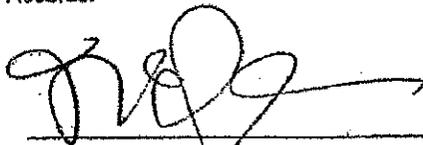
§ Exhibit E. Statement of Facts in USA v. Lawson, Case No. 1:08-CR-097.

§ 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.



Jonathan E. Coughlan (0026424)

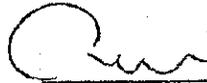
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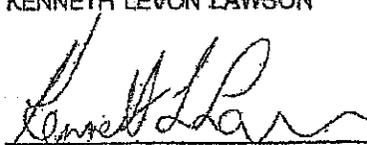
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ATTORNEY FOR RESPONDENT,  
KENNETH LEVON LAWSON



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KENNETH LEVON LAWSON, Respondent