

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

11-0647

In Re:	:	
Complaint against	:	Case No. 10-065
Edward R. Bunstine	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Attorney Reg. No. 0030127	:	
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

This matter was heard on January 21, 2011, before a Panel consisting of Judge Joseph J. Vukovich, Alvin R. Bell and Lawrence R. Elleman, Chair. None of the Panel Members is from the appellate district from which the complaint arose or served on the probable cause panel in this matter. Relator was represented by Heather L. Hissom. Respondent represented himself.

OVERVIEW

1. This case involves Respondent's voluntarily injecting himself into a criminal investigation concerning an acquaintance of Respondent. Respondent drafted sworn witness statements (Voluntary Statements) for the signatures of the two complaining witnesses, which were intended to demonstrate that the crime under investigation had not been committed. Thereafter, one of the complaining witnesses had second thoughts about the Voluntary Statement that he had signed and reported to the Sheriff's investigator that his Voluntary Statement was inaccurate. As a result, Respondent became the focus of a criminal investigation for allegedly tampering with evidence and obstructing justice.

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2. Relator contends that Respondent's conduct violated Prof. Cond. R. 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), 8.4(d) (conduct that is prejudicial to the administration of justice), and 8.4(h) (conduct that adversely reflects on a lawyer's fitness to practice law). The Panel finds that there was insufficient evidence presented at the hearing to conclude that Respondent knowingly induced or caused the complaining witnesses to make false statements of material fact or that Respondent knew said Voluntary Statements to be untrue. However, the Panel finds that Respondent committed serious errors of judgment in his dealings with the subsequent investigation in which the Respondent became a target.

FINDINGS OF FACT

A. Background Facts.

3. At the time of the conduct leading to the allegations in the complaint, Respondent was subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

4. Respondent was admitted to the practice of law in Ohio in 1981. At the time of the conduct which is the subject matter of the complaint, he was (and is still) a sole practitioner in Chillicothe. He previously was the elected City Law Director of Chillicothe, and in that role prosecuted misdemeanor cases. He has no prior disciplinary record.

B. Drafting and Signing of the Voluntary Statements

5. On September 17, 2007, Respondent received a late night telephone call from Natalie Creed who was upset that the Sheriff's investigator had just completed an

interview with her husband, Russel Creed (Creed), in which he learned that Ed and Bonnie DeLong¹ (husband and wife) were accusing Creed of having stolen a quantity of Hydrocodine prescription pills from their home a few days earlier.

6. Respondent knew both the Creeds and the DeLongs from church and other activities. Respondent claims that he has never represented either of the Creeds and did not represent them in the instant matter. Respondent was at the time advising Bonnie DeLong about the dissolution proceedings of the DeLongs' marriage and had done other legal work for Mrs. DeLong in the past. Without telling Mrs. Creed that he had represented Mrs. DeLong, Respondent promised Mrs. Creed that he would contact the DeLongs the next day to see if he could determine what was going on. Neither Natalie nor Russel Creed testified at the hearing in this disciplinary proceeding.

7. On September 18, 2007, Respondent telephoned the DeLongs' residence and asked to come to their home to discuss the incident involving Creed and the pills. They agreed and he did go there that evening. (Tr. 38) Respondent testified about this visit which lasted about three hours. Mrs. DeLong testified and confirmed some of Respondent's version of what occurred. Mr. DeLong is now deceased so his version of what happened was not in evidence at the hearing.

8. According to Respondent's testimony and the recorded statements that Respondent gave to the law enforcement investigators and corroborated in part by Mrs. DeLong's testimony, the DeLongs told Respondent that they felt that they had been too hasty in reporting the incident as a theft of prescription drugs by Creed. They explained that they and Creed each had prescriptions for hydrocodine and they had traded the pills with each other when

¹ Bonnie DeLong is now known as Evonna DeLong Armstrong.

one or the other was out of the drug. They said that Mr. Creed had admitted to them that he had borrowed some of Mr. DeLong's pills at a time while Creed was in their home for legitimate reasons. They now felt that Creed did not intend to steal the drugs; only to borrow some as had been the previous practice. They did not want Creed to be in trouble with the law. (Rel. Ex. 1, 2)

9. Respondent testified that his only motivation for visiting the DeLongs was his friendship with the DeLongs and the Creeds. He was not asked to represent either Russel Creed or the DeLongs.

10. According to the unrebutted testimony at the hearing, Respondent agreed to draft Sworn Statements to be signed by each of the DeLongs reciting the facts that they had described to Respondent. Respondent drafted the Voluntary Statements and took them to the DeLongs' home for signatures. Each of the Sworn Statements contained a recitation that "I have asked Attorney Edward Bunstine to prepare this [document]" and to submit it to the Sheriff's Department. (Ex. 2 and 3) Respondent told both of them not to sign if the contents were untrue. They each signed on September 19, 2007.

11. There was no evidence at the hearing as to precisely how the contents of the two Voluntary Statements differed from the information initially reported by the DeLongs to law enforcement authorities. There was no direct evidence at the hearing that Respondent knowingly induced or caused the DeLongs to make false statements of material fact in the Voluntary Statements. There was no direct evidence that Respondent knew that the Voluntary Statements were untrue in any respect.

C. Events Subsequent to Signing of the Voluntary Statements

12. Respondent engaged in a pattern of conduct subsequent to the signing of the Voluntary Statements designed to protect himself from criminal prosecution and to conceal certain facts regarding his earlier role.

13. On September 20, 2007, Respondent went to the Sheriff's office and asked to speak with the Sheriff. He was directed to Detective David Bower. Bower recorded the conversation with Respondent's permission. At the beginning of the interview, Bower told Respondent that "I've got a criminal investigation going on and it looks like you possibly might have done some wrong doing." (Rel. Ex. 3, p.1) He said that he had talked with Ed DeLong earlier that day and that DeLong felt that his Voluntary Statement drafted by Respondent was "entirely lies." Respondent denied that he was representing Creed and stated that his motivation had been as a friend of "both parties." He did not in this conversation state that he was representing the DeLongs.

14. At the end of the interview, Detective Bower asked Respondent to turnover the Voluntary Statements that Respondent had drafted for the DeLongs' signatures. Respondent refused. Bower threatened to arrest Respondent if he did not hand over the documents. Respondent then said that he would hand over the documents only if the DeLongs agreed. A telephone call was placed to the DeLongs, who agreed that the Voluntary Statements could be given to Bower. (Ex. 3.)

15. The reason given by Respondent for his initial refusal to turn over the documents to Bower was that "this is my work and unless you've got a subpoena, you're not taking my file." (Rel. Ex. 3, p. 7) In later interviews with investigators and in written statements and at the disciplinary hearing, Respondent attempted to justify this action on the grounds of attorney/client privilege and further that he had assured the DeLongs that he would not turn over the Voluntary

Statements to law enforcement without their permission. However, this testimony is flatly contradicted by the Voluntary Statements themselves, which Respondent had the DeLongs sign under oath, and stated that the DeLongs had asked Respondent to draft the documents and to take them to the Sheriff's Department.

16. Respondent testified at the hearing that in his opinion, he was representing the Delongs in drafting the Voluntary Statements, even though they never asked him to be their attorney and he did not discuss representation with either of them. His reasoning was that he applied his legal skills in an attempt to avoid putting the DeLongs at risk of criminal prosecution by admitting that they had traded prescription drugs which may have been illegal. He testified that he was concerned that the information could expose Bonnie DeLong to a criminal investigation, but later testified that this was not a concern because "the cat was out of the bag." (Tr. 63-64; 229-232) He further testified that he advised Mrs. DeLong about those matters and that if she was questioned about the exchange of pills, she should "[t]ake the Fifth and not to answer the question from law enforcement." (Tr. 105) Yet, Respondent included information about trading prescription pills in the Voluntary Statements and informed Detective Bower of that in his first meeting on September 20th, even before Bower had seen the Voluntary Statements. (Rel. Ex. 3, p. 7)

17. Bonnie DeLong's testimony did not support the testimony of Respondent that he was acting as her attorney. (Tr. 213-216) She testified that Respondent was not acting as her attorney. She does not recall whether he mentioned that the Voluntary Statements would expose her to a criminal investigation. (Tr. 209) She does not remember him telling her not to talk to law enforcement about giving pills to Creed. (Tr. 207) Respondent did not ever tell her that she should take the Fifth Amendment. (Id.)

18. Thereafter, Respondent asked Detective Bower to return to him the Respondent's Voluntary Statements so that Respondent could destroy them. (Tr. 168) Respondent admitted during his own cross-examination of Bower that Respondent recommended to Bower to let Respondent destroy the documents because, "Hey, if you want to prosecute Russell Creed, you don't want these statements." (Tr. 174)

19. Respondent tried to justify his proposed attempt to destroy evidence material to the investigation by arguing that he had been authorized to do so by the DeLongs. To support this argument, he had Bonnie DeLong come to his office on October 1, 2007, to sign a second affidavit which, among other things, stated that the DeLongs had authorized Respondent to destroy the Voluntary Statements if he felt that this would be "in the best interest of me and my husband." (Ex. 4, Tr. 92-99) He did not ask Ed DeLong for such an affidavit. Bonnie DeLong acknowledged at the hearing that she had signed Exhibit 4 and that its contents were true. However, she was not asked any questions at the hearing about this particular sentence of Exhibit 4. (Tr. 199)

20. Respondent claims that he was not representing Creed. However, Creed was the one who benefited from Respondent's conduct. After the DeLongs changed their story, Creed became less of a focus of the investigation than before. Shortly after Respondent drafted the Voluntary Statements for the DeLongs' signatures, Creed offered to pay Respondent for his services. Respondent initially refused to accept any money, but Creed nevertheless handed Respondent an envelope containing ten one hundred dollar bills (\$1,000). Respondent held onto that envelope for approximately eight months before turning it over to the prosecuting authorities. When asked at the hearing how it came about that he finally decided to turn this money over to the authorities, Respondent testified as follows:

Q. Okay. How did it come about that you ultimately decided or someone decided to turn that money over to the authorities, how did that come about?

A. The special prosecutor seen where this case was going. He made a deal with Russell Creed, gave him immunity if he would answer questions honestly. So Russell had an attorney, paperwork was executed.

Russell was granted immunity, and then the special prosecutor asked Russell if I represented him. Russell said, "No, Ed never represented me."

Well, did you ever give Ed any money? Yes, I did. I gave him a thousand dollars, but he wouldn't accept it. He made me take it back, and there's a transcript of it. I told him, "Well, you keep it. I don't want it." So I put it in the desk.

* * *

Q. . . . But you turned it into the authorities after Mr. Creed had cut his deal with the prosecutors to turn State's evidence?

A. Well, what happened, this is my opinion, what happened on it was that, you know, they figured that that was the last shot they had, because they would have never known that I would have kept it. They would have thought maybe that I had deposited it

into my account or put it into my trust account as client funds, but I didn't do that. So they took it, credited it, and it was in the same envelope from Huntington Bank.

Q. But am I correct that you did not return that money to the State -
- to the authorities until after Mr. Creed had already told them that he had given you the money?

A. No. Before?

Q. Before.

A. Yeah. I think before.

Q. Well, a minute ago I thought you said that you thought what happened was that Mr. Creed had turned State's evidence, so to speak.

A. Maybe it was. Maybe it was.

Q. It was about the same time, would that be fair to say?

A. It was close. (Tr. 235-237)

21. Respondent's decision not to inform the investigating authorities that Creed had offered to pay him for his services and that Respondent had accepted an envelope containing cash was arguably inconsistent with his prior representations to law enforcement that he had not been acting for or representing Creed in connection with the Voluntary Statements. In any event,

this information was material to the investigation. Respondent withheld this information until it became known by the investigating authorities through Creed.

22. Criminal proceedings involving a misdemeanor charge were lodged against Respondent and were completed in February 2009.²

CONCLUSIONS OF LAW

23. The Panel concludes that Relator proved by clear and convincing evidence that Respondent's conduct violated Prof. Cond. R. 8.4(d) (conduct prejudicial to the administration of justice) and 8.4(h) (conduct that adversely reflects on a lawyer's fitness to practice law).

24. The Panel concludes that Relator failed to prove by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The Panel recommends dismissal of this allegation.

AGGRAVATING AND MITIGATING FACTORS

25. The Panel finds as aggravating factors under BCGD Proc. Reg. 10(B)(1): (a) Respondent acted with a selfish motive; and (b) Respondent refused to acknowledge the wrongful nature of his conduct. The Panel finds as mitigating factors under BCGD Proc. Reg. 10(B)(2): (a) the absence of a prior disciplinary record; and (b) Respondent has already been sanctioned by virtue of his negotiated misdemeanor "no contest" plea.

RECOMMENDED SANCTION

26. Relator recommends that Respondent be suspended from the practice of law for six months, citing as authority *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187 and *Disciplinary Counsel v. Ricketts*, 128 Ohio St.3d 271, 2010-Ohio-6240. Respondent urges that the complaint against him be dismissed.

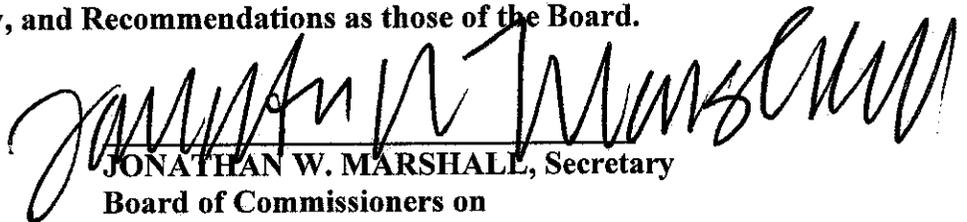
² The testimony at the hearing was that Respondent entered a negotiated no contest plea to disorderly conduct. The Panel excluded the judgment entry from evidence at the hearing and did not consider the no contest plea as evidence of a violation.

27. The Panel finds that the facts of this case are less egregious than those in *Fowerbaugh* and *Ricketts* because in each of those cases, the respondent was found to have engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, which the Panel in this case does not find here. The Panel therefore recommends that Respondent receive a public reprimand.

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 April 8, 2011. The Board adopted the Findings of Fact of the Panel. The Board voted to amend the Conclusions of Law to include a violation of Prof. Cond. R. 8.4(c) based on Respondent's dishonest actions, including the offer to destroy evidence. The Board recommends, based on its findings, that Respondent, Edward R. Bunstine, be suspended from the practice of law for six months. 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 Recommendations as those of the Board.



JONATHAN W. MARSHALL, Secretary

**Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**