

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

FILED  
OCT 06 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

<b>In Re:</b>	:	
<b>Complaint against</b>	:	<b>Case No. 2013-015</b>
<b>Rodger William Moore</b> <b>Attorney Reg. No. 0074144</b>	:	<b>Findings of Fact,</b>
<b>Respondent</b>	:	<b>Conclusions of Law, and</b>
<b>Cincinnati Bar Association</b>	:	<b>Recommendation to the</b>
<b>Relator</b>	:	<b>Board of Commissioners on</b>
	:	<b>Grievances and Discipline of</b>
	:	<b>the Supreme Court of Ohio</b>

OVERVIEW

{¶1} This matter was heard on August 1, 2014, in Cincinnati before a panel consisting of Janica A. Pierce Tucker, Alvin R. Bell, and David E. Tschantz, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Respondent appeared by and through his counsel Alvin E. Mathews. Laura A. Abrams and Edwin W. Patterson appeared on behalf of Relator.

{¶3} The parties filed joint stipulations of the facts and violations in this matter prior to the hearing, which allowed the hearing to proceed solely for the purpose of the presentation by Respondent of evidence in mitigation, and by Relator of evidence in aggravation.

{¶4} Respondent was charged in the complaint with the following violations:

- DR 1-102(A)(3) and Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on his honesty and trustworthiness];
- DR 1-102(A)(4) and Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation];
- Prof. Cond. R. 8.1(a) [knowingly making a false statement of material fact in connection with a disciplinary matter]; and

- Gov. Bar R. V, Section 4(G) [failure to cooperate].

{¶5} The parties have stipulated and the panel finds by clear and convincing evidence that Respondent committed each of the violations as charged in the complaint.

{¶6} The parties have stipulated that five aggravating factors and two mitigating factors are present. The panel finds by clear and convincing evidence that all five stipulated aggravating factors and both stipulated mitigating factors are present and, in addition, finds one additional mitigating factor and one additional aggravating factor that were not stipulated.

{¶7} The parties have agreed that a sanction of a two-year suspension, with one year stayed is appropriate. The panel unanimously agrees and recommends that the Board recommend imposition of this sanction to the Supreme Court of Ohio.

{¶8} In his pre-trial brief, and at the hearing, Respondent requested that the panel schedule an additional hearing date to present further mitigation evidence based on Respondent's stated intention to enter into a mental health contract with the Ohio Lawyers Assistance Program (OLAP). As any evidence developed in this regard in the future will be more relevant at the time Respondent requests reinstatement, in accordance with the recommended sanction, the request was denied.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶9} Respondent was admitted to the practice of law in the state of Ohio on November 13, 2001 and subject to the Code of Professional Responsibility, Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶10} The findings of fact are contained in the stipulations filed with the Board and are incorporated herein by reference.

{¶11} The stipulated violations of DR 1-102(A)(3), Prof. Cond. R. 8.4(b), DR 1-102(A)(4), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.1(a), and Gov. Bar R. V, Section 4(G) are contained in the stipulations filed with the Board and are also incorporated herein by reference.

{¶12} The panel finds by clear and convincing evidence based on the findings of fact that Respondent violated DR 1-102(A)(3), Prof. Cond. R. 8.4(b), DR 1-102(A)(4), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.1(a), and Gov. Bar R. V, Section 4(G).

### **MITIGATION, AGGRAVATION, AND SANCTION**

{¶13} With regard to the factors in mitigation that may be considered in favor of less severe sanctions for professional misconduct listed in BCGD Proc. Reg. 10(B)(2), the panel finds by clear and convincing evidence based on the stipulations that the mitigating factor of no prior disciplinary record is present in this matter.

{¶14} Respondent also presented the testimony of three witnesses at the hearing, along with several letters, intended to show evidence of his good character. While the letters presented and one of the witnesses provided evidence of his good character, the other two witnesses, unintentionally, did not.

{¶15} The second witness called by Respondent, Aubrey T. Johnson, Jr., initially testified of Respondent's good character, based on a long association between the two men both in a working environment and socially. Hearing Tr. 67-70. The testimony given was that Respondent and the witness had such a close relationship that, among other indications of its closeness, Respondent had been the witness's best man twice. However, cross-examination revealed that Respondent had not been truthful with this witness about the full extent of his conduct or about Respondent's prior theft in 2001. Hearing Tr. 71-76. This news visibly

distressed the witness and led to his admission that he would have to rethink his evaluation of Respondent's character and the nature and extent of their friendship. Hearing Tr. 75-76.

{¶16} The third witness called by Respondent, Derek Harm, also testified initially of Respondent's good character. Hearing Tr. 78-80. However, as with Johnson, Harm was presented with information during his cross-examination concerning Respondent's thefts of which the witness admitted that he had not been made aware. Hearing Tr. 84-85.

{¶17} This testimony, dramatic and somewhat painful for the panel to observe, nevertheless told the panel more about Respondent's character than the other witness and letters combined. There was no reason not to reveal this information to close friends, except to avoid shame, which Respondent admitted later in the hearing as he was subjected to direct examination. Hearing Tr. 121-122. Respondent also admitted during cross-examination that he had deliberately withheld this information from his treating psychologist, Dr. Ries. Hearing Tr. 135-136. To the panel, this is evidence of an unwillingness to accept responsibility and is an indication of more serious character and fitness issues. As a result, the panel accords very limited mitigating weight to the character evidence presented.

{¶18} The parties did not stipulate, but the panel finds by clear and convincing evidence based on the facts contained in the stipulations that Respondent has had other penalties and sanctions imposed upon him as the result of his actions.

{¶19} The panel notes the evidence presented at the hearing that restitution has been paid in full to the Hyde Park Kroger. However, since the restitution was paid just days before the date of the hearing, the panel accords this fact no mitigating effect. Hearing Tr. 52, 178-179. On the contrary, since Respondent failed to timely pay restitution to Kroger, the panel finds by clear and convincing evidence that this failure is an aggravating factor.

{¶20} With regard to the other factors in aggravation that may be considered in favor of more severe sanctions for professional misconduct listed in BCGD Proc. Reg. 10(B)(1), the panel finds by clear and convincing evidence based on the language contained in the stipulations and the evidenced adduced at the hearing that Respondent engaged in a pattern of misconduct, engaged in multiple offenses, had a dishonest or selfish motive, made false statements to Relator, and failed to cooperate in the disciplinary process.

{¶21} The panel reviewed the parties' jointly recommended sanction in light of the findings of fact, conclusions of law, factors in mitigation and aggravation, and precedent established by the Supreme Court of Ohio.

{¶22} In regard to precedent, the panel reviewed the following cases presented by the parties as persuasive authority for the sanction that should be recommended by the panel in the instant case: *Toledo Bar Assn. v. Lockhart*, 84 Ohio St.3d 7, 1998-Ohio-687 (two-year suspension with one year stayed for attorney's theft conviction for shoplifting and an additional conviction for tampering with court records); *Disciplinary Counsel v. Kraemer*, 126 Ohio St.3d 163, 2010-Ohio 3300 (lawyer's failure to remit over \$7,000 in legal fees to his employer, which resulted in a conviction for theft, warranted a two-year suspension, all stayed); *Cincinnati Bar Assn. v. Fidler*, 83 Ohio St.3d 396, 1998-Ohio-39 (lawyer's convictions for shoplifting and failure to report one of those convictions resulted in an 18-month suspension, with 12 months conditionally stayed); *Cleveland Metro. Bar Assn. v. Wrentmore*, 138 Ohio St.3d 16, 2013-Ohio-5041 (attorney indefinitely suspended for multiple thefts from clients and the theft of services through nonpayment for attended CLE courses, and for providing false information to the relator); *Stark Cty. Bar Assn. v. Zimmer*, 135 Ohio St.3d 462, 2013-Ohio-1962 (lawyer indefinitely suspended for leaving the scene of an accident, use of fictitious license plates,

commission of multiple driving infractions, making false statements in a disciplinary investigation, and failure to cooperate); *Columbus Bar Assn. v. McGowan*, 135 Ohio St.3d 368, 2013-Ohio-1470 (attorney indefinitely suspended for money laundering, failure to report income on a tax return, failure to cooperate, neglect of a legal matter, failure to advise a client of a lack of malpractice insurance, and failure to keep a client informed); *Disciplinary Counsel v. Meyer*, 134 Ohio St.3d 180, 2012-Ohio-5487 (lawyer suspended for 18 months, with six months stayed for practicing law while under suspension, failure to update registration information, and providing false information to the relator, with the mitigating factors of no prior disciplinary record and late cooperation); and *Mahoning Cty. Bar Assn. v. Wagner*, 137 Ohio St.3d 545, 2013-Ohio-5087 (attorney indefinitely suspended with credit for time served for his preparation of settlement statements in furtherance of four fraudulent real estate transactions, aggravated by a failure to pay restitution but with the mitigating factors of no prior discipline, self-report of wrongdoing, full cooperation given to the relator, and good reputation and character).

{¶23} Inasmuch as no clients were harmed by the actions of Respondent in this case, the panel finds the *Lockhart* and *Fidler* cases most instructive, but believes that the existence of the above-stated aggravating factors weighs in favor of a heavier sanction than was imposed in the *Fidler* case.

{¶24} In addition, the panel found the testimony of Respondent that he does not really know why he stole bottles of wine that he could have easily paid for at the time he took them, to be troubling. Hearing Tr. 148. Also troubling are the stipulated facts, coupled with Respondent's testimony adduced at the hearing, that he lied several times to Relator even though he knew that Relator had proof he was lying. Stipulation 8-10; Hearing Tr. 139-145. The panel agrees with both parties that conditions should be imposed on Respondent as part of the sanction

imposed in this matter that will force him, if he desires to practice law, to examine and deal with the underlying causes of his self-destructive behavior.

{¶25} Based on the foregoing, the panel unanimously recommends acceptance by the Board of the agreed sanction of a suspension of Respondent for two years from the practice of law, with one year of the suspension stayed on all of the following conditions:

- That Respondent be in compliance with his contract with the OLAP;
- That Respondent provides Relator and OLAP with evidence of regular counseling visits with his psychologist, along with the reports of said psychologist; and
- That Respondent commit no further misconduct.

{¶26} The panel further recommends that Respondent, in order to be reinstated, be required to submit a petition for reinstatement to the Court in accordance with Gov. Bar R. V, Section 10(B)-(G) and that the petition be required to include documentation from a qualified health care professional, who shall be a medical professional other than his treating psychologist selected by Relator, opining that Respondent is capable of returning to the competent, ethical and professional practice of law.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 3, 2014. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Rodger William Moore, be suspended from the practice of law for two years, with one year stayed on the following conditions contained in ¶25. The Board further recommends that Respondent be required to file a petition for reinstatement pursuant to Gov. Bar R. V, Section 10(B)-(G) and establish that he satisfies the requisites for reinstatement set forth in that rule and recommended in ¶26 of this report. The Board recommends the costs 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.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Secretary**