

THE SUPREME COURT OF OHIO

Cincinnati Bar Association,	:	
	:	
Relator,	:	Case No. 2015-0286
	:	
v.	:	
	:	
Stephen John Ball,	:	
	:	
Respondent.	:	

**RESPONDENT'S OBJECTIONS TO THE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDATION OF THE
BOARD OF PROFESSIONAL CONDUCT**

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v.	:	RESPONDENT’S OBJECTIONS
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Stephen John Ball,	:	CONCLUSIONS OF LAW AND
	:	RECOMMENDATION OF THE
Respondent.	:	BOARD OF PROFESSIONAL
	:	CONDUCT

INTRODUCTION

Respondent Stephen John Ball submits objections to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct. Specifically, Ball objects to the Board’s decision to ignore evidence that Ball’s diagnosed alcohol dependency contributed to his 2012 misconduct, including: (1) knowingly driving a vehicle with stolen plates; (2) driving while intoxicated; and (3) running from a law enforcement officer during a December 2012 OVI stop.

Ball submitted sufficient evidence to demonstrate that the mitigating factor of alcohol addiction contributed to his 2012 misconduct pursuant to the Rules for the Government of the Bar, Rule V, Section 13 (C)(7). Ball and Relator Cincinnati Bar Association stipulated that at the time of Ball’s December 2012 arrest, Ball was struggling with an alcohol addiction. The parties also stipulated that he was too intoxicated to drive on the night of his arrest. At the hearing, Ball submitted evidence from a licensed independent chemical dependency counselor that Ball was diagnosed with alcohol dependence, had completed an approved treatment program and could return to the practice of law under specified conditions. Ball testified directly as to how his alcohol dependency contributed to cause the misconduct.

Conversely, the parties stipulated that Ball’s diagnosed alcohol dependence did not contribute to the 2014 misconduct, and Ball did not ask the Board to consider the mitigating factor of alcohol addiction with regards to misconduct involving his IOLTA account and his practicing while on inactive status.

In its recommendation, the Board states: “The panel does not accept the mitigating factor of alcohol addiction because neither party submitted evidence that alcohol dependency contributed to any misconduct.” (Recommendation, p. 2). It’s impossible to square that statement with the information in the Record including the stipulations, Hearing Exhibits and the Hearing Transcript.

Aside from simply overlooking the evidence that was submitted, which is unlikely, it appears that the panel made one of two errors: (1) it misread the stipulations regarding mitigation and failed to distinguish between the 2012 misconduct and the 2014 misconduct; or (2) it misapplied the standard for mitigation under Rule V and incorrectly assumed that the “determination that the disorder contributed to cause the misconduct” had to come from an expert. It does not.

Regardless of the reason for the error, Ball objects to the determination regarding the mitigating factor of alcohol dependency and objects to the recommended discipline of an indefinite suspension. Ball respectfully requests that this Court reject the recommendation of the Board and adopt a 24-month suspension with six months stayed.

STATEMENT OF FACTS

Stephen Ball’s history of alcohol dependency

Alcohol has had a profound negative impact on Ball’s personal and professional life. (Stipulations, ¶ 14). He has been diagnosed with alcohol dependency on two

occasions by a qualified chemical dependency professional. (Hearing Exhibit 1, Affidavit of Steve Lawson, Licensed Independent Chemical Dependency Counselor, ¶ 1-2, 4)

Ball's alcohol-related arrests prior to being admitted to the Ohio Bar

Although Ball testified that drinking “was the center of my life” as an undergraduate, he did not recognize at that time that he was an alcoholic. (Transcript, p. 14). He was arrested three times for operating a vehicle while intoxicated between 2002 and 2007. Id. at ¶ 15. Among his other alcohol-related contacts with law enforcement are arrests for underage consumption (2000), public intoxication (2003), and possessing an open container of alcohol (2007). Id.

Ball testified at his hearing that his alcoholism contributed to those arrests. “I don’t think I’ve had any infractions that weren’t alcohol related. ... Everything has been alcohol related, I believe. You know, any arrest or any run-ins that I’ve had with the law are based on my use of alcohol.” (Transcript, p. 17).

In 2007, Steve Lawson, a Licensed Independent Chemical Dependency Counselor, diagnosed Ball with alcohol dependence. (Hearing Exhibit 1, Affidavit of Steve Lawson, ¶ 1, 3; Hearing Exhibit 4, p. 2). Ball completed an alcohol intervention program at Talbert House in 2007. (Hearing Exhibit 1, ¶ 3).

Ball's alcohol use continues after being admitted to the Ohio Bar

Stephen Ball was admitted to the practice of law in the State of Ohio on May 9, 2011. (Stipulations, ¶ 1). Ball testified that he was regularly using alcohol between the time he was admitted to the Bar and the December 23, 2012 arrest. “Regularly as in – I mean, I was using that entire time. There was no period of sobriety during that time.” (Transcript, p. 24).

Ball obtained stolen license plates during the time he was abusing alcohol

On October 8, 2013, Ball informed the Cincinnati Bar Association that he had obtained stolen plates for his vehicle from a friend, and that he had previously obtained a different stolen plate from the same friend in 2011. (Stipulations, ¶ 13).

Ball testified at the hearing that his alcohol dependence contributed to the decision to accept stolen plates. “It seems like normal things that a person would be doing, I wasn’t capable of those things outside of work.” (Transcript, p. 26). “I had purchased this truck from my father, and all I had to do was take it down and transfer the title, pay tax and get new tags for the car. I couldn’t even do that when I was using.” Id. at p. 27.

Q. So did your decision to obtain stolen license plates come during a time when you were using alcohol?

A. Oh, yeah. Yes.

Id. at p. 29.

During the hearing, Panel Member Davis asked Ball to expand on why he chose to obtain stolen license plates rather than obtain proper plates. “... is because you just didn’t get around to it?” Davis asked. Id. at p. 112. Ball responded: “It’s much more than that. It’s a function of what I was capable of doing during times of use.” Id. “It would sound so ridiculous to the people sitting here. It was something that I just – my priority was using. My priority was drinking during that time.” Id.

Following that exchange, Panel Member Davis asked Ball to explain why it was easier to obtain stolen plates than to go to the BMV.

Ball then testified about the connection between his alcohol dependence and his misconduct.

I’m not sure, honestly, with all due respect – I think the situation, the mental aspect of it, and the disease aspect of it, I don’t think it’s possible, if you’re at that position, that I’m going to convince you.

It takes months, if not years, of family members going through courses and going through Al-Anon, and things like that, to understand how the alcoholic mind works.

And, as I say, with all due respect, I know – I don't think you understand how my mind was working at that time. To both of us now it that sounds ridiculous. To the alcoholic mind that was business as usual.

After two months, four months, eight months sobriety, you start to look back, and I worked with my sponsor through the steps and I worked through the things we did, the things that you wouldn't admit to anybody else in the world but your sponsor, and this is up there with things that I failed to do.

Id. at p. 117-118.

Ball testified that his decisions during the time that he was using alcohol were impacted by his alcohol dependence. "Yes.... All of my decisions I would say on one level or another, as far as my personal life and things like that, they are all impacted one way or another by my dependence on alcohol or my alcoholism." Id. at p. 139.

Ball operated a vehicle while intoxicated and ran from a law enforcement officer during the time when he was using alcohol

In the early morning hours on December 23, 2012, Ball was driving home to his residence following a Xavier University basketball game and a Christmas party. Id. at ¶ 3. He had consumed a beer at the game and roughly seven to eight beers at the party and was too inebriated to drive. Id. At approximately 1:00 a.m., Hamilton County Sheriff Deputy Brian Ritter observed a vehicle driven by Ball swerving near Ball's subdivision. Deputy Ritter ran the license plates through his in-car computer and the plate came back as being reported stolen. Id. at ¶ 4.

Deputy Ritter turned on his overhead lights to execute a traffic stop. Id. at ¶ 5. Ball did not slow down or immediately pull over when Deputy Ritter turned on his lights. Id. Ball continued into his subdivision, driving toward his residence as Deputy Ritter was in pursuit. Id. at ¶ 6. Ball came to a stop at the end of the cul-de-sac near the driveway to his home. Id. Ball exited his vehicle and began to run as Deputy Ritter

continually yelled for him to stop. Id. at ¶ 7. Ball did eventually stop, at which point Deputy Ritter caught up and physically restrained him. Id. Deputy Ritter reported that Ball admitted to him that he was aware that the plates on his vehicle were stolen. Id. at ¶ 8.

Respondent reported the circumstances of his arrest, including the charges of OVI and receiving stolen property, to the Cincinnati Bar Association by letter dated July 30, 2013. Id. at ¶ 11. On September 6, 2013, Ball pled guilty to the OVI and a reduced charge of Disorderly Conduct, while receiving stolen property and driving under suspension charges were dismissed pursuant to the plea agreement. Id. at ¶ 10.

The parties stipulated that: “At the time of the December 23, 2012 incident, respondent was struggling with an alcohol addiction.” (Stipulated Mitigation, ¶ 4). The parties also stipulated that at the time of the December 23, 2012 arrest, Ball was too intoxicated to drive. (Stipulated Facts, ¶ 3). Ball also testified that he was using alcohol on the night of the arrest. (Transcript, p. 29).

Ball’s alcohol dependence has been diagnosed by a qualified chemical dependency professional

Ball testified that he has not had an alcoholic drink since December 22, 2012 – the night of his arrest for OVI and receiving stolen property. (Transcript, p. 24).

In December 2013, Steve Lawson, a Licensed Independent Chemical Dependency Counselor, diagnosed Ball with alcohol dependence. (Hearing Exhibit 1, ¶ 1, 4; Hearing Exhibit 2, p. 2).

Ball completed alcohol intervention programs

Ball completed the Intensive Outpatient Program at Bethesda Alcohol and Drug Treatment Programs on April 11, 2013. (Hearing Exhibit 9, p. 6). On December 11, 2013, Ball completed the Turning Point 10-Day Intervention Program at Talbert House. (Hearing Exhibit 3).

A qualified chemical dependency professional testified that Ball will be able to return to competent, ethical professional practice under specified conditions

Steve Lawson, a Licensed Independent Chemical Dependency Counselor, testified that Ball's alcoholism will not preclude him from returning to competent, ethical professional practice if he continues to treat his alcoholism. (Hearing Exhibit 1, ¶ 6).

Ball's violation of his recovery contract with OLAP

On June 27, 2013, Ball entered into a recovery contract with the Ohio Lawyers Assistance Program (OLAP). (Hearing Exhibit A, ¶ 2). OLAP Executive Director Scott Mote testified in an affidavit that Ball was an admitted alcoholic who entered into a five-year contract with OLAP. Id. Mote also testified that Ball was required to call OLAP three times each week, and that Ball met the contract requirements satisfactorily for six months. Id. at ¶ 2-3. Mote testified that Ball reported to OLAP on December 2, 2013 that he was entering a 10-day treatment program. Id. at ¶ 4.

Ball stipulated that at the time of the July 2014 hearing before the Panel, he was in violation of his recovery contract with OLAP. (Stipulated Aggravation, ¶ 3). Mote confirmed by affidavit that Ball did not contact OLAP again after December 2, 2013. (Hearing Exhibit A, ¶ 5). Ball testified that at the time, he viewed OLAP as one of several treatment programs and decided to focus on the other programs because they were furthering his recovery more than OLAP. (Transcript, p. 31-32).

Asked whether he understood that his OLAP contract had a monitoring component, Ball testified: "I didn't look at it that way. But I understand exactly what you're saying. I do see that now. And just that I wasn't in compliance with that. And I realize there was a large monitoring piece to that. But I guess I hadn't been looking at it in that light." (Transcript, p. 120).

OBJECTIONS

I. Ball submitted evidence that the panel should have considered with regard to the mitigating factor of alcohol dependency.

When an attorney is found to have violated ethical obligations, Rule V, Section 13 of the Government of the Bar (formerly BCGD Proc. Reg. 10) affords mitigating effect to a chemical dependency upon proof of: (a) a diagnosis of chemical dependency by a qualified health-care professional or chemical dependency professional; (b) a determination that the chemical dependency contributed to cause the misconduct; (c) a certification of successful completion of an approved treatment program; and (d) a prognosis from a qualified health-care professional or chemical dependency professional that the attorney will be able to return to competent, ethical professional practice under specified conditions. (See Gov. Bar R. V, Section 13 (C)).

In other words, the Board may consider a less severe sanction based on evidence of chemical dependency if the following four criteria are met:

- a. Diagnosis by a qualified chemical dependency professional;
- b. determination that the disorder contributed to cause the misconduct;
- c. certification of successful completion of an approved treatment program;
- d. prognosis from a qualified chemical dependency professional that the attorney will be able to return to competent, ethical professional practice under specified conditions. *Columbus Bar Ass'n v. Allerding*, 123 Ohio St. 3d 382, 385 (2009), decided under BCGD Proc. Reg. 10.

Here, the Record is unmistakable. Ball submitted the required evidence pursuant to Gov. Bar R. V, and the panel should have accepted that evidence.

- a. **Ball submitted a diagnosis by a qualified chemical dependency professional.**

Hearing Exhibit 1 is the affidavit of Steve Lawson, a Licensed Independent Chemical Dependency Counselor. He testified regarding his qualifications and testified that he diagnosed Ball with alcohol dependence. (Hearing Exhibit 1, ¶ 1, 2 and 4). Therefore, Ball met the first prong of the test to have alcohol dependency considered as a mitigating factor.

b. The panel had sufficient evidence before it to determine whether the disorder contributed to the misconduct.

The second prong does not require an expert opinion. Notably, prong one requires a diagnosis from a “qualified chemical dependency professional,” prong three requires a certification of an “approved treatment program” and prong four requires a prognosis from a “qualified chemical dependency professional.”

There is no such expert requirement for the second prong. Nor should there be. The panel members, having considered the facts and the expert diagnosis, can make “a determination that the disorder contributed to cause the misconduct.”

In *Allerding*, the Supreme Court of Ohio noted that respondent failed to maintain contact with OLAP, yet considered, “Dr. Beech’s diagnosis and respondent’s testimony that he was intoxicated daily during the events at issue. The record also supports a finding that respondent is in an approved treatment program and is able to return to the competent, ethical, and professional practice of law.” 123 Ohio St. 3d at 385.

Here, Steve Lawson provided the diagnosis by a qualified chemical dependency professional. Both parties have stipulated that “At the time of the December 23, 2012 incident, respondent was struggling with an alcohol addiction.” (Stipulated Mitigation, ¶ 4). Both parties stipulated that Ball was too intoxicated to drive at the time that he was arrested for OVI and began to run from a law enforcement officer. (Stipulated Facts, ¶ 3). And Ball has testified that when he was using alcohol, he was incapable of making

the types of simple decisions such as driving to the BMV to properly register his vehicle. Ball also testified that he was using alcohol on the night of the arrest. (Transcript, p. 29).

Armed with Lawson's diagnosis, the stipulations of the parties and the direct testimony of Ball, the panel is then charged with making a determination of whether Ball's diagnosed alcohol dependence contributed to cause the misconduct. It is up to the panel to make this determination.

c. Ball submitted a certification of successful completion of an approved treatment program.

Steve Lawson testified that Ball completed an intervention program at Talbert House in 2013 (Hearing Exhibit 1, ¶ 5). Ball submitted a certification of completion of the December 2013 intervention program (Hearing Exhibit 3). In addition, Ball submitted a letter from Kelly Rogan of Bethesda Outpatient and Family Services stating that Ball successfully completed the Intensive Outpatient Program at Bethesda Alcohol and Drug Treatment. (Hearing Exhibit 9, p. 6). Therefore, Ball met the third prong of the test to have alcohol dependency considered as a mitigating factor.

d. Ball submitted a prognosis from a qualified chemical dependency professional that Ball will be able to return to competent, ethical professional practice under specified conditions.

Steve Lawson, a Licensed Independent Chemical Dependency Counselor, testified that Ball's alcoholism will not preclude him from returning to competent, ethical professional practice if he continues to treat his alcoholism. (Hearing Exhibit 1, ¶ 6). Therefore, Ball has met the fourth prong of the test to have alcohol dependency considered as a mitigating factor.

Based on the foregoing, Ball has submitted competent, undisputed evidence as to all of the criteria required to have the Board determine whether his diagnosed alcohol dependency contributed to cause the misconduct. Considering the evidence in the

record, the Board erred when it stated: “The panel does not accept the mitigating factor of alcohol addiction because neither party submitted evidence that alcohol dependency contributed to any misconduct.” (Recommendation, p. 2.)

II. The governing rules on mitigation do not require an expert to make the determination that the disorder contributed to the misconduct.

Ball submitted expert evidence which met the criteria set forth in subsections (a), (c) and (d). Subsection (b) does not require a determination by an expert. The panel had sufficient evidence to find that Ball’s misconduct was caused by his alcohol addiction.

III. Nor do the governing rules on mitigation require that the qualified chemical dependency professional be from OLAP.

The Hearing Transcript includes an exchange between Panel Member Davis and counsel for the Cincinnati Bar Association regarding the issue of mitigation. Attorney Laufman states: “Judge, we don’t think he’s there. ...” (Transcript, p. 170). In response, Panel Member Davis states, “Section 10 is there for a reason.” Id. And Laufman then states: “Doesn’t apply. He doesn’t meet the criteria. They needed more. They needed were he in OLAP, were he here with a doctor. They are clinging to a ten-day program he did back in 2013 saying well, this guy says the magic words.” Id.

Indeed, Ball submitted evidence of an expert diagnosis, completion of a program, and the prognosis from an expert that he could return to the practice of law with specified conditions. The exchange between Panel Member Davis and Attorney Laufman seeks to add additional conditions that are not in the rule. The use of OLAP, or a program longer than a 10-day program are not required.

Earlier in the hearing, Panel Member Davis applauded Ball for getting treatment, yet indicated that the treatment he received was not enough for mitigation.

“And look, I believe the treatment you’re getting in Cincinnati is second to none. I believe that if you follow that you’re going to be in good shape, I really do. I guess the

challenge that I do have is that you have all of this treatment, you're going through all of this, you're attending all these meetings, your parents are involved, everybody is involved. Why do you not have -- why can you not meet all the steps required for mitigation?" (Transcript, p. 120).

The panel seemed to indicate that while the treatment is "second to none," it is not enough to consider for mitigation. There is nothing in the rule to support his analysis, and the Board does not explain it in its recommendation.

IV. The Court can consider the mitigating factor of alcohol dependency for some of the misconduct without considering it for all of the misconduct.

During the hearing, Panel Member Davis asked counsel for Ball why there was a stipulation that stated: "At the time of the December 23, 2012 incident, respondent was struggling with an alcohol addiction. However, there has been no determination by a substance abuse counselor that such dependency contributed to his misconduct in 2014." (Stipulated Mitigation, ¶ 4). The question indicated that the panel could not consider mitigation of alcohol dependency because the parties stipulated that "there has been no determination by a substance abuse counselor that such dependency contributed to his misconduct in 2014." Counsel for Ball pointed out that the stipulation addressed the 2014 misconduct, which included Ball's decision to go on inactive status. The parties were not claiming that alcohol dependency was a mitigating factor as to the 2014 misconduct.

That part of the stipulation did not address the 2012 misconduct, including the decision to obtain stolen plates, to operate a vehicle while intoxicated and to run from a law enforcement officer. Ball asks this Court to consider the mitigating factor of alcohol dependency as to the 2012 misconduct, not the 2014 misconduct.

V. The Board has discretion when considering mitigation, but must acknowledge the evidence that was submitted.

Gov. Bar R. V, Section 13 (C) states: The following shall not control the discretion of the Board, but may be considered in favor of recommending a less severe sanction.”

Ball has submitted evidence to support consideration of alcohol dependency as a mitigating factor. The Board may consider that evidence and has discretion in doing so. However, the Board’s recommendation states: “The panel does not accept the mitigating factor of alcohol addiction because neither party submitted evidence that alcohol dependency contributed to **any** misconduct.” (Recommendation, p. 2, emphasis added).

This is simply a misstatement of the record. Either the panel overlooked the evidence, or the panel has misconstrued the criteria by assuming respondent needed an expert determination of causation, or that only OLAP could provide some of the criteria. The Board has taken the position that no evidence was submitted, and this is incorrect.

VI. The recommended penalty of an indefinite suspension is not supported by the record nor Ohio Supreme Court precedent.

“The primary purpose of the disciplinary process is to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship and to allow us to ascertain the lawyer’s fitness to practice law. *Columbus Bar Ass’n v. Chasser*, 124 Ohio St. 3d 578, 582 (Ohio 2010), citing *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006 Ohio 6510, 858 N.E.2d 368, P 10.

After failing to acknowledge that Ball submitted evidence that alcohol dependency contributed to some of the misconduct, the Board recommended an indefinite suspension – the second harshest sanction available.

Ball stipulated to multiple offenses, submitting false statements during the disciplinary process, and noncompliance with his OLAP recovery contract. For these reasons, he suggested a sanction of an 18 month to 24 month suspension from the practice of law. The parties also stipulated to several mitigating factors, including an

absence of a prior disciplinary record, self-reporting his conduct to the Cincinnati Bar Association, evidence of good character or reputation, and alcohol addiction. (Board Recommendation, ¶ 5). Considering the record and Supreme Court precedent, Ball requests a sanction less than the indefinite suspension recommended by the Board.

Ball's decision to obtain stolen license plates is shocking, and there is no case law that is directly on point with these facts. There are, however, several disciplinary cases involving comparable dishonest acts which did not result in an indefinite suspension.

In *Disciplinary Counsel v. Niles*, 126 Ohio St. 3d 23 (2010), the attorney was working as a municipal court clerk when she accepted and retained cash payments of pending court fines from defendants. This Court recognized that the attorney had served an interim felony suspension of almost two years and suspended her for two years, all stayed upon the conditions that she (1) comply with the terms and conditions of her OLAP contract, and (2) serve a term of monitored probation commencing upon her return to the practice of law until the expiration of her OLAP contract.

In *Akron Bar Ass'n v. Carter*, 115 Ohio St. 3d 18 (2007), the attorney used a company credit card, without permission, ran up a hotel bill (where he stayed for several months), and failed to reimburse the company for a significant period of time. This Court suspended him from the practice of law for two years, with the final year stayed upon the condition that he complete the diversion program he entered in January 2006.

In *Toledo Bar Ass'n v. Lockhart*, 84 Ohio St. 3d 7 (1998), the attorney was twice convicted for shoplifting. The panel further found that in order to discuss her Toledo shoplifting case with the assigned trial judge, respondent went to the office of the municipal court clerk and signed for and obtained the affidavit in her case. She was then found guilty of two counts of tampering with records. This Court suspended the attorney from the practice of law for two years, with one year stayed.

In *Akron Bar Ass'n v. Meyer*, 87 Ohio St. 3d 324 (1999), the attorney was indicted by a grand jury on one count of grand theft and one count of trafficking in food stamps after receiving over \$ 23,000 in public assistance, including food stamps, for which he was not eligible. This Court suspended the attorney from the practice of law for two years, with the second year stayed on the condition that he be monitored by OLAP for both years.

In *Disciplinary Counsel v. Wexler*, 2014-Ohio-2952 (2014), the attorney was charged with having a sexual relationship with a client, providing her with gifts and financial assistance, and making false and misleading statements during the course of relator's disciplinary investigation. When confronted by relator with a hotel receipt, the attorney initially denied the allegation and suggested that the hotel receipt was fraudulent. After relator subpoenaed documents, the attorney admitted that his name was on the hotel bill because he had paid for the room and that he had provided his brother's address to the hotel clerk in an effort to hide the transaction from his wife. Based on the affirmative misrepresentation to relator, this Court suspended the attorney for six months – all stayed. “And because he has no prior disciplinary record, has presented evidence of his good character and reputation apart from this misconduct, has made a full and free disclosure to the board, and has caused no harm to any client as a result of this conduct, we agree that a six-month suspension, all stayed on the condition that he engage in no further misconduct, is the appropriate sanction here.” *Id.* at 601.

Here, Ball has stipulated to multiple offenses and to submitting false statements during the disciplinary process. Yet his conduct is comparable to the dishonesty referenced above, in which the attorneys received term suspensions with some or all of the term stayed.

In support of an indefinite suspension, the Board relies on two cases suggested by Relator: *Stark Cty. Bar Assn. v. Zimmer*, 135 Ohio St.3d 462, 2013-Ohio-1962, and *Columbus Bar Assn. v. Larkin*, 128 Ohio St.3d 368, 2011-Ohio-762. Those cases are distinguishable from these facts for several reasons.

In *Zimmer*, the Court held that “the record contains no documentation of a formal diagnosis or evidence that respondent was participating in an approved treatment program.” *Id.* at 465. In addition, the respondent in *Zimmer* failed to appear in court on a criminal charge, prompting the trial court to issue a bench warrant.

In *Larkin*, the respondent had a prior disciplinary record and failed to comply with the judge’s order in his criminal case. Also, there was no evidence that substance abuse “contributed to their misconduct, that the condition had been successfully treated, and that they were capable of returning to the competent, ethical, and professional practice of law.” *Id.* at 370. The lack of evidence related to alcohol dependency make the *Zimmer* and *Larkin* matters distinguishable from the facts presently before this Court.

CONCLUSION

When an attorney is found to have violated his or her ethical obligations, Rule V, Section 13 of the Government of the Bar (formerly BCGD Proc. Reg. 10) affords mitigating effect to a chemical dependency upon proof of: (a) a diagnosis of chemical dependency by a qualified health-care professional or chemical dependency professional; (b) a determination that the chemical dependency contributed to cause the misconduct; (c) a certification of successful completion of an approved treatment program; and (d) a prognosis from a qualified health-care professional or chemical dependency professional that the attorney will be able to return to competent, ethical professional practice under specified conditions. (See Gov. Bar R. V, Section 13 (C)).

Ball has submitted evidence of the criteria referenced in Gov Bar Rule V, section 13(C)(7), and deserved to have the mitigating factor of a diagnosis of a disorder, specifically substance abuse, considered when imposing discipline. Because the Board failed to do so, Ball respectfully requests that this Court reject the recommendation of the Board and instead adopt a 24-month suspension with six months stayed on the conditions recommended by the Board.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Objections has been served upon the following Counsel for Relator via electronic mail, this 7th day of April 2015:

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APPENDIX A

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In Re:	:	Case No. 2014-001
Complaint against	:	
Stephen John Ball Attorney Reg. No. 0087242	:	Findings of Fact,
	:	Conclusions of Law, and
Respondent	:	Recommendation of the
	:	Board of Professional Conduct of
Cincinnati Bar Association	:	the Supreme Court of Ohio
	:	
Relator	:	

OVERVIEW

{¶1} This matter was heard on July 21, 2014, in Columbus before a panel consisting of Alvin Bell, McKenzie Davis, and Robert L. Gresham, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).¹

{¶2} Respondent was present at the hearing represented by Brian M. Spiess. Paul M. Laufman and Sarah Tankersley appeared on behalf of Relator.

{¶3} On February 3, 2014, Relator filed a complaint against Respondent alleging violation of the following disciplinary rules:

- Prof. Cond. R. 5.5(a) [practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction];
- Prof. Cond. R. 8.1(a) [knowingly making a false statement of material fact in connection with a disciplinary matter];
- Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness];
- Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and

¹ Effective January 1, 2015, the Supreme Court amended Gov. Bar R. V and the Board's Procedural Regulations. This report distinguishes between the former and current versions of Gov. Bar R. V and the Procedural Regulations, as appropriate.

- Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶4} On July 21, 2014, Relator and Respondent filed agreed stipulations. Evidence was presented by way of stipulations; Relator's Exhibits A and B; Respondent's Exhibits 1 through 11; testimony of Respondent; and character testimony from attorney Shelby McMillan. All the exhibits were admitted into evidence. Additionally, Respondent stipulated to all of the violations charged in the complaint.

{¶5} Relator and Respondent stipulated to aggravating and mitigating factors pursuant to former BCGD Proc. Rule 10(B)(1) and (B)(2). The aggravating factors include multiple offenses, submitting false statements during the disciplinary process, and noncompliance with his OLAP recovery contract. The mitigating factors include absence of a prior disciplinary record, self-reporting his conduct to Relator, evidence of good character or reputation, and alcohol addiction.

{¶6} The panel does not accept the mitigating factor of alcohol addiction because neither party submitted evidence that alcohol dependency contributed to any misconduct. The panel accepts all remaining stipulations of the parties.

FINDINGS OF FACT CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on May 9, 2011 and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

December 23, 2012 Incident

{¶8} On December 23, 2012, Respondent was driving home to his residence following a Xavier University basketball game and a Christmas party. He had consumed a beer at the game and roughly seven to eight beers at the party and was too inebriated to drive. As a result, a

Hamilton County sheriff's deputy observe Respondent's vehicle and attempted to execute a traffic stop. Respondent did not slow down or immediately pull over, but rather continued into his subdivision, driving toward his residence with the deputy in pursuit, Respondent came to a stop at the end of a cul-de-sac near the driveway to his home. Respondent exited his vehicle and began to run as the deputy yelled for him to stop. Respondent eventually stopped, at which point the deputy caught up and physically restrained him.

{¶9} Respondent was arrested and charged with OVI, Obstructing Official Business, Driving under Suspension, and a felony of the fifth degree for Receiving Stolen Property. A Hamilton County grand jury reduced the latter charge to a first degree misdemeanor.

{¶10} On September 6, 2013, Respondent pled guilty to OVI, disorderly conduct. Respondent was placed on probation, ordered to participate in a residential treatment program, and granted driving privileges only with the use of an ignition interlock device.

{¶11} Respondent reported this guilty plea to Relator by letter dated July 30, 2013, and Relator opened an investigation.

Misconduct during Relator's Investigation

{¶12} When questioned about the license plates by Relator, Respondent stated he purchased the car from his father in 2011 and insisted the plate on the vehicle was still his father's license plate. However, Respondent could not adequately explain why registration documents showed the number on the stolen plate was different than the number registered for his father's plate.

{¶13} On October 8, 2013, Respondent admitted he obtained the stolen plate from a friend and that he knew the plate was stolen when he received it. Respondent also admitted he previously obtained a different plate from the same friend back in 2011, which he also knew was

stolen when he received it. Respondent's use of stolen license plates was an effort to conceal from law enforcement the fact that he did not have a valid driver's license.

Respondent's Pattern of Conduct

{¶14} Respondent has a history with alcohol consumption. He is a self-admitted alcoholic. He originally applied to sit for the July 2008 Bar Examination but withdrew that application when the Board of Commissioners on Character and Fitness determined that additional investigation of his character and fitness was needed. Respondent was eventually approved to sit for the Bar Examination and subsequently passed the February 2011 Bar Examination.

{¶15} Prior to the December 23, 2012 incident, Respondent had previously had the following contacts with law enforcement:

- **August 18, 2000** - underage consumption of alcohol in Tippecanoe County, Indiana while attending Purdue University.
- **January 20, 2002** - OVI in Butler County, Ohio while visiting Miami University.
- **April 15, 2002** – OVI in Tippecanoe County, Indiana while attending Purdue University. Respondent was also admittedly driving in willful and intentional violation of the suspension of his license which had been ordered only 30 days prior.
- **December 13, 2003** —Public intoxication in Tippecanoe County, Indiana while attending Purdue University. This charge was dismissed.
- **April 22, 2007** —Possession of an open container of alcohol in Hardin County, Ohio while attending law school.
- **May 26, 2007** — OVI in Hamilton County, Ohio after leaving a Cincinnati Reds game. Respondent was also found to be in possession of drug paraphernalia (2 marijuana pipes) and an unloaded firearm. Respondent plead guilty to the OVI and a misdemeanor weapon charge and was ordered to serve 10 days in a residential treatment program followed by an intensive outpatient program while on a period of probation. A probation violation was later filed against Respondent alleging his failure to complete the outpatient program and report as required. His probation was successfully terminated when he showed compliance with those issues.

{¶16} Respondent has been involved with OLAP and other treatment programs following his OVI arrests, including the December 23, 2012 arrest. After his 2007 arrest, but

before 2009, he was initially very involved with OLAP, but he failed to fulfill his OLAP contracts. He returned to drinking about nine months after his 2007 arrest. Respondent again connected with OLAP following the December 23, 2012 arrest and signed a five-year recovery contract on June 27, 2013, but again failed to fulfill his OLAP contract. Respondent's last contact with OLAP was on December 2, 2013.

Respondent's Overdrawn IOLTA—The Uhlhorn Check

{¶17} Respondent maintains an IOLTA with First Financial Bank.

{¶18} Respondent took over representation of Paul Duncan after attorney Richard H. Johnson had obtained a settlement for Duncan with payments to be made over time.

{¶19} At the time Respondent took over the case, he was required only to accept payments from the debtor, Clem Uhlhorn, and forward them to Duncan. Respondent ran these payments through his IOLTA, but did not accept legal fees or expenses for this service.

{¶20} In the summer 2013, Uhlhorn defaulted on his payments. Respondent spoke to him about the necessity of remaining current on his payments.

{¶21} On July 11, 2013, Uhlhorn made a \$325.44 payment, which was deposited in the IOLTA account, but he needed to pay a total of \$1,100 to bring the debt up to date. Uhlhorn assured Respondent that he would send a second check to bring the debt up to date. Based on this assurance, but with certain knowledge that the IOLTA contained only the \$325.44, Respondent issued a check for \$1,100 from the account to Duncan. Subsequently, Uhlhorn advised Respondent that he was not going to be able to make the second payment.

{¶22} Respondent issued another check to Duncan in the amount of \$325.44 and attempted to stop payment on the previous \$1,100 check. Respondent was advised by the bank

in order to effectuate the stop payment he would need to come to the bank within in a set time frame and sign the order. Respondent failed to do so.

{¶23} In September 2013, the temporary stop payment order had expired. The check for \$1,100 was processed for payment, which created an overdraft on the IOLTA.

Respondent's Overdrawn IOLTA—The Closed Account

{¶24} In September 2013, Respondent and an accountant named James Kraft entered into an agreement together to open a nonprofit organization. Respondent agreed to do the legal work, and it was agreed that the corporation should be segregated from the law firm and billed as a separate client. They also agreed the legal fees and expenses for setting up the nonprofit would be approximately \$1,550.

{¶25} On September 9, 2013, Respondent wrote a check for \$1,650 and deposited it into the IOLTA. The check, however, was written on a closed Huntington Bank account owned by Stephen J. Ball, LLC.

{¶26} On September 11, 2013, the check was charged back and a fee of \$12 was incurred. Respondent and Kraft then agreed they would pay the filing fee to incorporate separately and that Respondent would deposit \$1,500 into the IOLTA for legal fees.

{¶27} On September 11, 2013, Respondent wrote a check for \$1,500 on a Chase bank account owned by Respondent, but this account was also closed; another \$12 fee was incurred.

{¶28} In June 2013, Respondent let his paralegal go and took over his own accounting.

{¶29} In September 2013, Respondent was unaware of which of his various accounts were open and which were not.

{¶30} On September 13, 2013, a deposit of \$1,524 was made that brought the account current and paid off the overdraft fees. The \$1,500 remains in the IOLTA account.

Practicing with an Inactive License

{¶31} On January 31, 2014, Respondent changed his Ohio attorney registration to “inactive.” He remained on inactive status until March 7, 2014.

{¶32} On February 13, 2014, Respondent spoke with an insurance adjuster in connection with a matter involving his clients, the Gessendorfs. They discussed the case, but Respondent did not inform the adjuster that he was inactive.

{¶33} On March 1, 2014, Respondent sent a letter to the Gessendorfs terminating his representation and returning their file. The letter contained opinions about their case and about the feasibility of certain actions going forward. It also stated he heard nothing from the insurance companies involving their case. The letter stated he would be willing to speak with them after March 7. Respondent failed to inform any of his clients that his license was inactive. Respondent advised his regular clients that he would be “on hiatus” for a month, but did not advise them that his license was inactive.

{¶34} During the period his license was inactive, Respondent’s voicemail remained active, his website remained up, with all of his advertising removed, and his letterhead did not indicate he was inactive.

{¶35} During the period Respondent’s license was inactive, he sporadically returned phone calls and spoke with potential clients without advising them that his license was inactive. Only one potential client had not yet found another attorney and Respondent referred that person to someone else for a divorce.

{¶36} The panel finds by clear and convincing evidence through exhibits, stipulations and testimony that Respondent violated the following: Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.1(a), Prof. Cond. R. 8.4(b), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

AGGRAVATION, MITIGATION, AND SANCTION

{¶37} Based upon the stipulations, exhibits, and testimony adduced at the hearing, the panel finds the following aggravating factors: Respondent engaged in multiple offenses; Respondent submitted false statements during the disciplinary process; and Respondent is currently in violation of his recovery contract with OLAP.

{¶38} Based upon the stipulations, exhibits, and testimony adduced at the hearing, the panel finds the following mitigating factors: absence of a prior disciplinary record; Respondent self-reported his conduct to relator as to the December 2012 incident; and Respondent submitted evidence of good character or reputation.

{¶39} Relator is requesting a sanction of indefinite suspension. Respondent argued for a range from 18 to 24 months with six months stayed. There is no question Respondent engaged in misconduct by overdrawing his IOLTA account on multiple occasions, failing to properly maintain required documentation and failing to provide documentation to Relator.

{¶40} In determining whether or not this sanction is appropriate for Respondent's misconduct, all relevant factors must be considered including duties of Respondent, the violations incurred, and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2012-Ohio-4743. We therefore direct our attention to a few relevant cases. Additionally, in making a final determination, evidence of aggravating and mitigating factors are considered. *Disciplinary Counsel v. Broeren*, 131 Ohio St.3d 272, 2007-Ohio-5251.

{¶41} In *Stark Cty. Bar Assn. v. Zimmer*, 135 Ohio St.3d 462, 2013-Ohio-1962, the respondent received in indefinite suspension with reinstatement conditioned upon proof that he had complied with an established substance-abuse program and that he was capable of returning

to the competent, ethical practice of law. Evidence revealed that Zinumer crashed his car into a parked vehicle and building and fled the scene without reporting the accident. He failed to comply with an order requiring him to appear in court and provide the court with proof of a valid driver's license. Zimmer was convicted of operating a vehicle while intoxicated. He subsequently failed to report to the home-arrest supervisor as ordered and failed to appear for a deposition conducted by the bar association during the investigation of this disciplinary matter. Although Zimmer had not been shown to have neglected or mishandled client matters entrusted to him, he had on multiple occasions, through his conduct in both the criminal and disciplinary proceedings against him, neglected his legal obligations to respect and honor the law; thus, an indefinite suspension, with reinstatement conditioned on proof that he had complied with an established substance-abuse program, was the appropriate sanction.

{¶42} In *Columbus Bar Assn. v. Larkin*, 128 Ohio St.3d 368, 2011-Ohio-762, the respondent received an indefinite suspension with conditions. Larkin was seriously injured in an automobile accident. While investigating the accident, police officers discovered a used crack-cocaine pipe and used heroin syringes in the attorney's automobile. At her deposition in a criminal proceeding, Larkin testified she had a long-standing problem with drugs and alcohol and that the treatment she had received for this problem had been unsuccessful. Larkin admitted at the time of her automobile accident, she possessed drug paraphernalia that contained residue of heroin and cocaine. Larkin further testified she had been on her way to see the person who had encouraged her to use illegal drugs. During the pendency of the disciplinary action, the attorney was sanctioned and suspended for failing to comply with the continuing-legal-education requirements. The Court found that an indefinite suspension of the attorney was appropriate.

{¶43} For the foregoing reasons and taking into account the aggravating and mitigating factors, this panel agrees with Relator’s recommendation of an indefinite suspension from the practice of law, with the conditions Respondent successfully complete OLAP-approved treatment for substance abuse and establishes he is capable of returning to the competent, ethical, and professional practice of law.

{¶44} Additionally, the panel recommends the additional condition that, upon reinstatement, Respondent must complete his professionally required legal education requirements, including six hours of CLE related to law-office management and accounting.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 13, 2015. The Board amended the findings of fact and conclusions of law proposed by the panel to find Respondent’s conduct, as outlined in this report, was egregious and thus merits a separate finding of the Prof. Cond. R. 8.4(h) violation. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998. The Board adopted the amended findings of fact and conclusions of law and adopted the sanction recommended by the panel. Accordingly, the Board recommends that Respondent, Stephen John Ball, be suspended indefinitely from the practice of law in Ohio, with reinstatement subject to the conditions set forth in ¶¶43-44 of this report and the further condition that Respondent pay the costs of these proceedings.

Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.



RICHARD A. DOVE, Director