

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

In re:

Complaint against

Case No. 2016-064

**Neal Ghaleb Atway
Attorney Reg. No. 0059252**

**Findings of Fact,
Conclusions of Law and
Recommendation of the
Board of Professional Conduct**

Respondent

Mahoning County Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on May 2, 2017 in Columbus before a panel consisting of Tim L. Collins, Teresa Sherald and Judge Rocky Coss, 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 11.

{¶2} David C. Comstock, Jr. and J. Michael Thompson appeared on behalf of Relator. Respondent was present at the hearing represented by John B. Juhasz and Lynn Maro.

{¶3} This case involves the action of Respondent that led to his pleading guilty to a felony in violation of 18 U.S.C. §241 in the United States District Court for the Northern District of Ohio for entering into a conspiracy to injure, oppress his client by violating his right to effective assistance of counsel in state and federal criminal proceedings in which Respondent and his law partner were representing the client. Based upon the parties' stipulations and the evidence presented at the hearing, the panel finds, by clear and convincing evidence that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent be

suspended for a period of two years, that he be granted credit for time served under the interim felony suspension, and that there be no order regarding restitution.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Respondent was admitted to the practice of law in the state of Ohio on November 9, 1992 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶5} On April 7, 2016, the Supreme Court entered an interim suspension pursuant to Gov. Bar R. V, Section 18(A)(4) due to Respondent's felony conviction. *In re Atway*, 146 Ohio St.3d 1216, 2016-Ohio-1452.

Stipulations

{¶6} On February 25, 2014, an indictment was filed by the United States of America, through the office of the U.S. Attorney, naming Respondent in five of the six counts of the Indictment (there were two other defendants named). Respondent was indicted for Hobbs Act Conspiracy, 18 U.S.C. §1951 and 2 in Count One; a violation of the Hobbs Act, 18 U.S.C. §1951 and 2 in Count Two; Conspiracy to Obstruct Justice, 18 U.S.C. §1512(k) in Count Three; Obstruction of Justice, 18 U.S.C. §1512(c)(2) in Count Four; and False Statement to Law Enforcement, 18 U.S.C. §01671001 in Count Five. Respondent pled not guilty to all counts, and a lengthy process of discovery and filing of pretrial motions ensued.

{¶7} Beginning on February 20, 2015, the case against Respondent was tried to a jury before Judge Solomon Oliver, Jr. in the United States District Court, for the Northern District of Ohio in Cleveland.

{¶8} The trial lasted until March 23, 2015, during which numerous witnesses testified both for the government and for the defense, including two Assistant U.S. Attorneys who testified

as character witnesses for Respondent. Joint Exhibit 1.

{¶9} During jury deliberations, Judge Oliver declared a mistrial on March 23, 2015 due to juror misconduct.

{¶10} On April 20, 2015, Respondent filed a motion for judgment of acquittal.

{¶11} On August 12, 2015, Judge Oliver granted in part, and denied in part, Respondent's motion for acquittal. Judge Oliver acquitted Respondent on Count Three for conspiracy to obstruct justice and Count Four for obstruction of justice. Counts One, Two, and Five remained against Respondent.

{¶12} On October 1, 2015, the United States indicated to Judge Oliver that it wished to retry the remaining counts in the indictment and the parties agreed that the trial would likely take three weeks. A jury trial was scheduled for November 16, 2015.

{¶13} On October 6, 2015, a supplemental information was filed by the United States as to Respondent. Joint Exhibit 2.

{¶14} A supplemental information is not an indictment because it was not returned by the grand jury. A supplemental information is the charging document used when a party has agreed to waive presentment of the case to the grand jury. It is often used, as it was here, when the parties achieve a plea agreement as to charges other than those brought in the original indictment.

{¶15} On October 15, 2015, an arraignment was held. Respondent entered a plea of guilty as to Count Two of the supplemental information, a violation of 18 U.S.C. §241 (conspiracy against rights), a Class C felony.

{¶16} At the arraignment, Respondent admitted that he entered into a conspiracy to injure, oppress his client by violating his right to effective assistance of counsel for his defense; that Respondent intended to deprive the victim of that right; and that the intended victim was present

in any state, territory, or district of the United States. All charges in the original indictment were dismissed.

{¶17} Sentencing was held on January 19, 2016. Judge Oliver fined Respondent \$2,000, placed him on probation for a period of three years, and ordered that four months be served through home confinement (house arrest). Joint Exhibit 3.

{¶18} Respondent promptly self-reported to Relator the guilty plea after making it and his felony conviction after sentencing.

{¶19} The fine has been paid. The home confinement was served. Respondent was of good behavior and, on March 9, 2017, Judge Oliver terminated Respondent's probation. Joint Exhibit 4.

Additional Facts Based on Hearing Testimony

{¶20} Respondent's actions that led to his federal conviction resulted from his representation of Charles Muth in a felony drug prosecution in federal court. Muth was also being prosecuted in the state court for his involvement in the discharge of a firearm into the home of the ex-wife and daughter of Mo Rawhneh, Muth's former friend and business competitor. After Muth pled guilty to a felony drug offense in the federal case pursuant to a plea agreement negotiated by Respondent, he asked Respondent to try to cause the Assistant U.S. Attorney prosecuting him to recommend a deviation from the prison term that was applicable under the federal sentencing guidelines.

{¶21} Respondent talked with the Assistant U.S. Attorney who stated that the only way that could occur was if Muth was in fear of his life from threats due to his cooperation in the prosecution either of a public corruption case, or of a lawyer. Respondent informed Muth of this. After that, Muth requested that Respondent reopen negotiations with Mo Rawhneh over a possible

civil claim for the shooting incident. Rawhneh had attended all of the state court proceedings and Muth said he was afraid he would attend the federal sentencing hearing. Respondent then started having conversations with Rawhneh about the civil claim.

{¶22} Apparently, Muth approached the FBI after Respondent told him what it would take to obtain a recommendation for a lesser sentence in the federal case, and the FBI opened an investigation of Respondent and his partner, Scott Cochran,¹ for conspiring with Rawhneh to extort money from Muth. The conversations contained in the stipulations occurred after the Muth guilty plea.

{¶23} After Respondent's indictment, Muth obtained new counsel for his sentencing hearing. Muth received a sentence reduction of one month from the prison term that would have likely been imposed in the plea negotiated by Respondent, in exchange for providing evidence against Respondent to the FBI.

{¶24} Due to the indictment and ensuing five-week criminal trial, Respondent and his partner closed their law practice and laid off all of their employees. Hearing Tr. 117-118.

{¶25} Respondent expended approximately \$250,000 in attorney fees in his criminal case and borrowed funds from his father to help pay for his legal defense costs. Hearing Tr. 117, 121.

{¶26} After the mistrial, Respondent did not want to undergo another long and expensive trial, and did not want to put his family and friends who had supported him in the trial through another lengthy proceeding. He refused to plead to any of the original charges because he was resolute that he was not guilty. At some point, an offer was made to plead guilty to the charge in the supplemental information. Respondent acknowledged that he had committed acts constituting that crime due to his concealing from his client much of the conversations that he had with Mo

¹ Cochran is the respondent in *Mahoning Cty. Bar Assn. v. Scott Robert Cochran*, Board Case No. 16-052.

Rawhneh and subsequently entered his guilty plea to that charge. Hearing Tr. 124-128.

{¶27} Judge Oliver did not order Respondent to make restitution to Muth of any legal fees that Muth had paid him. Hearing Tr. 122-130.

{¶28} Respondent now works for attorney Joseph W. Gardner as a legal assistant which was approved by the Ohio Supreme Court. Hearing Tr. 146-147.

Rule Violations

{¶29} The panel finds by clear and convincing evidence that the conduct of Respondent set forth above violates the following Rules of Professional Conduct:

- Prof. Cond. R. 4.4 [respect for rights of third persons];
- Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness]; and
- Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice].

{¶30} Relator dismissed the allegation that the conduct of Respondent violates Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit or misrepresentation]. The panel accepts this dismissal and unanimously dismissed this alleged violation.

AGGRAVATION MITIGATION, AND SANCTION

Aggravating Factors

{¶31} The parties stipulated and the panel finds that there are no aggravating factors in this case.

Mitigating Factors

{¶32} The parties stipulated and the panel finds, by clear and convincing evidence, that the following mitigating factors are present in this case: (1) the absence of a prior disciplinary record; (2) the absence of a dishonest or selfish motive; (3) full and free disclosure to the Board or cooperative attitude toward these proceedings, including Respondent's self-report of the felony conviction upon sentencing; (4) character or reputation as evidenced in testimony or submitted

letters; and (5) imposition of other penalties or other sanctions by the United States District Court.

{¶33} Respondent's conduct did not harm his client who ultimately received a prison sentence of one month less than he would likely have received under the original sentencing guidelines applicable in the plea agreement negotiated by Respondent. Respondent did not profit or benefit in any way from his misconduct.

{¶34} There was full and free disclosure to Relator and the Office of Disciplinary Counsel as soon as the conviction occurred, during the investigation, and throughout these proceedings.

{¶35} Other than the acts resulting in his felony conviction, Respondent has exhibited great character and has had an excellent reputation in the legal community. During his federal trial, two Assistant U.S. Attorneys testified on his behalf as character witnesses even though their associates were prosecuting the case against Respondent. Joint Ex. 1. Two attorneys testified as to his character during the hearing including Joseph Gardner, who practices criminal defense in both state and federal courts as well as acting as an arbitrator. Hearing Tr. 140-148. The other was Robert Clyde who is now retired but during his legal career co-founded the Northeast Ohio Legal Services, worked for the Ohio Public Defender, and was the founding director of the Ohio Legal Assistance Foundation. Hearing Tr. 150-156.

{¶36} Respondent has received other sanctions for his misconduct including the penalties in his criminal case. While not a penalty or sanction, Respondent has lost his law practice and is in substantial debt for his legal fees and expenses in the five-week trial in federal court.

Sanction

{¶37} When recommending sanctions for misconduct of attorneys, the panel is required to consider the aggravating and mitigating factors as well as the recommendations of the parties. The panel and Board also must consider the case law applicable in each case. The purpose of

sanctions is not to punish the respondent, but to protect the public.

{¶38} Relator recommends an indefinite suspension while Respondent recommends a definite suspension of eighteen months. Both parties agree that Respondent should receive credit for time served since April 7, 2016, the date of his interim suspension. After weighing the mitigating factors and consideration of the case law, the panel recommends a two-year suspension with credit for time served since the April 7, 2016 interim suspension.

Case Law Regarding Sanction

{¶39} During the closing arguments, Relator presented two cases in support of its recommendation. The first is *Mahoning Cty. Bar Assn. v. Wagner*, 137 Ohio St.3d 545, 2013-Ohio-5087. Wagner pled guilty in federal court to conspiracy to commit wire fraud related to his preparing closing statements for real estate transactions in a fraudulent scheme involving one Romero Minor. Minor purchased property from sellers, then conveyed it to a straw man to purchase it at a higher price and retained the excess funds generated by the inflated price. The payouts to Minor were ostensibly for preexisting debts owed by the straw men to Minor, which was untrue.

{¶40} After discovering information regarding the closings appeared to be suspect, Wagner continued to prepare settlement statements for closings for Minor's deals without questioning the information or reporting his suspicions. He pled guilty to wire fraud, was sentenced to three years of probation and ordered to pay \$147,620 in restitution to the victims. There was one aggravating factor of multiple offenses and six mitigating factors. The Supreme Court imposed an indefinite suspension with credit for time served under his prior interim suspension for the felony conviction.

{¶41} The other case presented during closing argument was *Mahoning Cty. Bar Assn. v.*

Helbley, 141 Ohio St.3d 156, 2014-Ohio-5064. Helbley was convicted of wire fraud in federal court for conspiracy to induce lenders to approve the purchase of 14 properties at inflated prices. This was a companion case to *Wagner* and also involved Romero Minor. Like Wagner, Helbley prepared closing statements after he became suspicious of the scheme. There were two aggravating factors, multiple offenses and failure to make full restitution. Helbley received an indefinite suspension as well with credit for time served under his interim felony suspension.

{¶42} Relator cited several other cases in its post-hearing brief and included a chart of several cases involving attorneys convicted of felonies. In *Disciplinary Counsel v. Schuler*, 138 Ohio St.3d 346, 2014-Ohio-1127, the respondent plead guilty to one count of filing a false tax return, a felony. He received a sentence of one year of probation in home confinement and a \$50,000 fine payable in monthly installments of \$1,000. He had completed his probation at the time of his hearing and was current on his fine payments. There was present an aggravating factor of a dishonest motive. He received an indefinite suspension with credit for time served under his interim suspension.

{¶43} In *Disciplinary Counsel v. Land*, 138 Ohio St.3d 357, 2014-Ohio-1162, the respondent plead guilty to obstructing the IRS, a felony. She received a five-year term of probation, including three years of home detention, other probation conditions, and monetary penalties of \$75,000. Her conduct involved fraud in relation to estate planning for three clients. She had also entered into an OLAP contract for mental health treatment. There were three aggravating circumstances. The parties stipulated to an indefinite suspension which was the sanction imposed by the Supreme Court. She was still under probation at the time of her hearing but was granted credit for time served under her interim felony suspension.

{¶44} In the case of *Disciplinary Counsel v. Cohen*, 142 Ohio St.3d 471, 2015-Ohio-2020,

Cohen had a discussion with a witness for the state in a murder prosecution against Cohen's client. Cohen discussed his purchase of bus fare so that the witness could travel out of state and then paid the witness cash. He was indicted for bribery, obstruction of justice, and attempted tampering with evidence. He pled guilty to attempted tampering and a reduced charge of attempted obstruction of justice, both fourth degree felonies. He was sentenced to three years of community control, monitored house arrest for 60 days, 500 hours of community service, and a fine of \$5,000. There were no aggravating factors and several mitigating factors. The Court imposed an indefinite suspension with credit for time served.

{¶45} Relator also cited *Disciplinary Counsel v. Doumbas*, 149 Ohio St.3d 628, 2017-Ohio-550. Doumbas was convicted by a jury of two felony bribery offenses arising from his representation of a criminal defendant. He was sentenced to one-year prison terms on each count to be served concurrently, three years of post-release control, and fined \$10,000. At the time of his panel hearing, he had completed his prison term but had not paid his fine and costs. He continued to maintain his innocence although his convictions were affirmed by the court of appeals. The Board and Supreme Court found three aggravating factors and several mitigating factors. Doumbas received an indefinite suspension with credit for time served and was required, as a condition of reinstatement, to provide proof of payment of his fine and costs in addition to the costs of the disciplinary proceeding.

{¶46} Respondent cited numerous cases in his post-hearing brief in support of his argument that the sanction should be an eighteen-month suspension. While an indefinite suspension was the sanction in the *Wagner* and *Helbley* cases cited by Relator and decided in 2013, a review of cases decided after those decisions finds that the Court has often imposed term

suspensions in cases in which attorneys were convicted of felonies.

{¶47} In *Cleveland Metro. Bar Assn. v. Haynes*, 143 Ohio St.3d 528, 2015-Ohio-3706, the Court imposed a suspension of two years with six months stayed with no credit for time served for her interim felony suspension. There were two aggravating factors including multiple offense and several mitigating factors. Haynes' offense was receiving stolen property arising from her involvement with ten other co-defendants in a scheme of stealing merchandise from retailers and returning it for refunds.

{¶48} In a case in which an attorney pled guilty to a felony theft of funds from his brother's estate, the Court accepted a consent to discipline agreement and imposed a suspension of two years, with six months stayed, and granted credit for time served under the interim felony suspension. *Disciplinary Counsel v. Ames*, 147 Ohio St.3d 363, 2016-Ohio-7830. There were two aggravating factors including multiple offenses as well as mitigating factors.

{¶49} A two-year suspension with one year stayed upon conditions was imposed in the case of *Disciplinary Counsel v. Mahin*, 146 Ohio St.3d 312, 2016-Ohio-3336. In that case, the Mahin was convicted of a fifth degree felony for theft of funds from his law firm. There were three aggravating factors and mitigating factors including an underlying mental disorder. The Court accepted a consent to discipline agreement and granted Mahin credit for time served under the interim felony suspension.

{¶50} In *Disciplinary Counsel v. Pappas*, 141 Ohio St.3d 1, 2014-Ohio-3676, which was not cited by the parties, the Court imposed a two-year suspension with no credit for time served for an interim felony conviction. In that case, Pappas was convicted of making a false statement to federal authorities in an attempt to help his law school classmate and best friend who was involved in a divorce and a federal investigation. Pappas executed a false affidavit that was filed

in the divorce proceeding, lied to federal authorities in an interview, lied under oath before a federal grand jury, and then sent a letter to federal authorities reaffirming his perjured testimony. He ultimately recanted and cooperated with the federal authorities in the prosecution of the former classmate. The Court and Board found there were three aggravating factors and several mitigating factors including an underlying mental disorder.

{¶51} The panel believes that the conduct of Respondent in this case was far less egregious than that of the respondents in the above-cited cases. His prosecution by federal authorities was somewhat concerning to the panel. He had repeatedly warned his client not to try to settle with Mo Rawhneh but was urged to do so by the client, particularly after the client had apparently approached the federal authorities. The Assistant U.S. Attorney prosecuting Respondent's client informed Respondent that the plea agreement would only improve if his client's cooperation resulted in prosecution either of a public corruption case or an attorney. After Respondent advised his client of this, the client then went to the FBI to offer to cooperate against his own lawyer, for obvious selfish reasons.

{¶52} Respondent's crime was essentially lying to his client, Charles Muth, about his conversations with Mo Rawhneh after Muth's guilty plea in federal court. Respondent testified that this was shameful conduct, but he was trying to cause Rawhneh to settle the potential civil claim for the shooting at the insistence of Muth, who was then cooperating with the FBI unbeknownst to Respondent.

{¶53} The panel finds that the facts and circumstances of this case are very different from those cases cited by Relator, and even those cited by Respondent. The parties stipulated that there were no aggravating factors in this case which is unusual in a case involving a felony conviction. He has quickly paid the fine, fees, and court costs ordered as part of his sentence. He was released

from probation after serving slightly more than one year of the three years initially ordered. While there is a civil case filed by Charles Muth against Respondent, the panel concludes that restitution is not an issue in these proceedings.

{¶54} The panel finds the conduct of Respondent was less egregious than that of respondents convicted of felonies who received term suspensions rather than an indefinite suspension including the respondents in the *Ames, Mahin, Haynes, and Pappas* cited herein.

Credit for Time Served

{¶55} The parties stipulated that Respondent should receive credit for time served under the interim suspension for his felony conviction. Again, the panel concludes that the conduct of Respondent in this case was less serious than that of other attorneys convicted of felonies who have received credit for time served under their interim felony suspensions. Respondent already has served a license suspension of more one year.

{¶56} The Court has set forth three factors to be considered in determining whether credit for time served on an interim felony suspension should be allowed: (1) remorse and acceptance of responsibility; (2) the length of time that the conduct occurred; and (3) the conduct was a one-time, out of character mistake. See *Disciplinary Counsel v. Kraemer*, 126 Ohio St.3d 163, 2010-Ohio-3300. The parties did not stipulate to remorse as a mitigating factor in this case, but they did stipulate that credit for time served on the interim suspension should be granted, which would suggest that Relator agrees that those three factors are present.

{¶57} The panel finds that Respondent has clearly accepted responsibility for his conduct by pleading guilty to the federal felony offense, self-reporting his conviction, cooperating with the Relator and in these proceedings, paying all fines and costs of prosecution promptly, and acknowledging that his conduct was embarrassing and inappropriate in that he lied to his client

about conversations with Mo Rawndeh.

{¶58} The panel also finds that the conduct was limited to one case over a period of five months, June 20 to November 16, 2012. While the supplemental information alleged that the conduct occurred from a period of April of 2011, the un rebutted testimony of Respondent was that he did not inform Muth of the requirements given to him by the Assistant U.S. Attorney to obtain a reduction in the mandatory minimum sentence under the sentencing guidelines until after Muth had entered his guilty plea on June 20, 2012. Further, there is no evidence that Respondent's client suffered any loss as a result of the actions of Respondent in the federal case, inasmuch as his sentence imposed after Respondent withdrew as counsel was one month less than that negotiated by Respondent for him as part of his plea agreement. There was no evidence offered regarding restitution. While there is a civil action pending against Respondent filed by Muth, the panel does not find that restitution is an issue in this case.

{¶59} The testimony and the stipulations support the finding that the conduct was a one-time, out of character mistake by Respondent who, prior to this offense, was a well-respected member of the Youngstown community and the Mahoning County, state, and federal bar. He was regularly reappointed to the Criminal Justice Act panel of the Federal District Court in Youngstown and was appointed on a regular basis to represent indigent clients in federal criminal cases. Hearing Tr. 34-36. He and his partner had a successful law practice. The panel also finds that this conduct was a result of highly unusual facts in that Respondent was acting on the urging of his client to settle the possible civil claim with Rawndeh which led to his indictment.

Sanction Recommendation

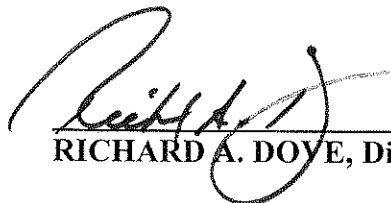
{¶60} Based upon the foregoing, it is the recommendation of the panel that Respondent be suspended from the practice of law for a period of two years, that he be granted credit for time

served under his felony interim suspension, and that there be no order regarding restitution.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on August 4, 2017. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Neal Ghaleb Atway, be suspended from the practice of law in Ohio for a period of two years, that he receive credit for time served under the interim felony suspension entered on April 7, 2016, and that no restitution is required. The Board further recommends that Respondent be ordered to pay the costs of these proceedings.

Pursuant to the order of the Ohio Board of Professional Conduct, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. DOYE, Director