

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

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| In re: | SCO Case No. 2018-1435 |
| Complaint against | BPC Case No. 2018-021 |
| Terrence Kensley Scott Attorney Reg. No. 0082019 | Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct |
| Respondent | |
| Disciplinary Counsel | |
| Relator | |

OVERVIEW

{¶1} This matter was heard on May 9, 2019 before a panel consisting of Hon. Rocky Coss, Dr. John R. Carle, and Robert B. Fitzgerald, panel chair. None of the panel members resides in the district from which the complaint arose.

{¶2} Respondent appeared at the hearing *pro se*. Lia J. Meehan appeared on behalf of Relator.

{¶3} This matter involved a series of events that occurred in late December 2017. At that time, Respondent replaced original UPC codes with UPC codes that he had preprinted at home for less expensive items. He used “new” UPC labels to steal from a Walmart located in Whitehall, Ohio. Respondent was arrested, injured during his arrest, and charged with a misdemeanor theft offense. He ultimately pled guilty to criminal mischief, a misdemeanor of the third degree.

{¶4} Based upon the parties’ extensive stipulations, the exhibits, 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 mitigating factors and the case precedent, the panel recommends that Respondent be

suspended from the practice of law for six months, with the suspension fully stayed on the condition that the Respondent commits no further misconduct.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

{¶5} This case had previously been before the Board upon consideration of a consent to discipline agreement filed in August 2018. In January 2019, the Supreme Court rejected the agreement and remanded the case to the Board for full hearing. *Disciplinary Counsel v. Scott*, 2019-Ohio-118. On remand, the parties entered into extensive stipulations regarding this matter. The hearing went forward with testimony from Respondent and two witnesses called by Respondent, Magistrate Lorenzo Sanchez and Judge Kim A. Browne. This panel found the testimony of Judge Browne particularly impressive. This panel bases its recommendation upon her testimony regarding the character and the fitness of Respondent.

{¶6} Respondent was admitted to the practice of law in Ohio on November 5, 2007. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶7} On December 23, 2017, Respondent stole multiple items from the Walmart store located at 3657 East Main Street in Whitehall.

{¶8} Before entering the Walmart, Respondent printed his own UPC barcodes for low-cost items. Respondent obtained and duplicated the UPC barcodes from items in his home. On December 23, 2017, while in Walmart, Respondent affixed the UPC barcodes for the low-cost items onto more expensive items including, but not limited to, electronics.

{¶9} Respondent proceeded to scan the items at the Uscan self-checkout. He paid a total of \$27.35 in two separate transactions for items that had a total actual value of \$367.21.

{¶10} A Walmart asset protection associate noticed that Respondent was incorrectly

ringing up items at the Uscan. The employee notified a Whitehall Police Department officer who was working special duty at the store. The special duty officer and the Walmart associate observed Respondent scan multiple items including electronics and rugs. However, the items would ring up as cheaper food items.

{¶11} After completing the transaction, Respondent attempted to exit the store. Respondent was stopped by the Walmart associate in the vestibule of the store and the items were recovered. Respondent was then allowed to leave the store but was told there was a police officer waiting outside.

{¶12} The officer observed Respondent leave the store and identified himself as a police officer. Respondent turned away from the officer who then fired his Taser, striking Respondent. Respondent fell and hit his head on the concrete, causing lacerations and other damage to his face.

{¶13} Respondent was placed in handcuffs and searched by officers. He was found to be in possession of over 100 additional unused UPC labels that he had preprinted at home.

{¶14} Respondent was then transported to Grant Medical Center for medical treatment where he received several stitches to close the laceration on his left temple.

{¶15} On December 23, 2017, the same date as the theft, Respondent was released from the hospital and was transported to the Franklin County jail.

{¶16} On that same date, respondent was charged in Whitehall mayor's court with two first-degree misdemeanors—theft by deception and possession of criminal tools—and one second-degree misdemeanor—obstructing official business.

{¶17} On February 6, 2018, Respondent pled guilty to criminal mischief, a misdemeanor of the third degree. He was sentenced to a 10-day suspended jail sentence and ordered to pay a

fine of \$185. Respondent paid the fine and the case was closed.

{¶18} Shortly after the theft, Respondent voluntarily attended three individual psychotherapy sessions with Dr. Jerry Stern, who found “no evidence of alcohol or drug related difficulties.” Stipulated Ex. 10.

{¶19} On April 1, 2019, Respondent voluntarily attended an assessment with Megan Snyder at the Ohio Lawyers Assistance Program, who stated that there was “no finding of a diagnosis of a current substance use or mental health disorder.” Stipulated Ex. 11.

{¶20} The panel admitted into evidence 11 exhibits, which included letters written on behalf of the Respondent from Dr. Stern and Megan Snyder.

{¶21} Based on the parties stipulations and evidence presented at the hearing, the panel finds Respondent violated the following Rules of Professional Conduct:

- *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(c)* [conduct involving dishonesty, fraud, deceit, or misrepresentation].

AGGRAVATION, MITIGATION, AND SANCTION

{¶22} The parties stipulated, and the panel finds, that the following aggravating factor is present:

- Respondent acted with a *dishonest and selfish motive*.

{¶23} Relator and Respondent agreed, and the panel finds, that the following mitigating factors were present in this matter:

- Respondent has *no prior disciplinary offenses*.
- Respondent *fully and freely disclosed his misconduct* and has *fully cooperated* during the pendency of this matter.
- Respondent has a *good character and a good reputation* in the legal

community. This was substantiated, not just through the letters contained in Stipulated Ex. 9 but also through the testimony of Magistrate Sanchez and Judge Browne.

- Respondent has been subjected to *other penalties and sanctions* through his criminal conviction and sentencing. This panel finds that Respondent was briefly incarcerated, received injuries during his arrest, and has suffered substantial embarrassment as a result of his actions.

{¶24} The case law and Gov. Bar R. V emphasize the importance of the unique facts and circumstances of each disciplinary case when imposing sanction:

Each disciplinary case involves unique facts and circumstances. In striving for fair disciplinary standards, the Board shall give consideration to specific professional misconduct and to the existence of aggravating or mitigating factors. In determining the appropriate sanction, the Board shall consider all relevant factors precedent established by the Supreme Court of Ohio, and the aggravating and mitigating factors set forth in this section.

Gov. Bar R. V, Section 13(A).

{¶25} The reason for individualized treatment in disciplinary cases has found to be the very purpose of the disciplinary system. As has been stated many times, “the goal of disciplinary proceedings is not to punish the errant lawyer, but to protect the public.” *Toledo Bar Assn. v. Hales*, 120 Ohio St 3d 340, 2008-Ohio-6201. While consistency should be a goal, each case should still be examined individually and the appropriate sanction be imposed based upon the unique circumstances of each case. See *Columbus Bar Assn. v. Reed*, 145 Ohio St. 3d 464, 2016-Ohio-834. In the case at bar, this panel does not believe that Respondent poses a danger to the public. Though his actions, which resulted in theft, are not excusable, they have been explained by Respondent without any excuse extended.

{¶26} The panel found that Respondent not only self-reported, but took personal steps through evaluations and contact through OLAP to assure the confidence of the panel that the public would not be at risk.

{¶27} More persuasive was the testimony of Judge Browne. Through both her and Magistrate Sanchez's testimony, it became clear that Respondent had told them about all of the facts and circumstances. When Judge Browne first offered the Respondent a position, Respondent offered to Judge Browne the opportunity to withdraw her offer after she became aware of the circumstances resulting in Respondent's arrest. Hearing Tr. 48-49. Judge Browne testified that she found Respondent contrite and forthright. Hearing Tr. 50-52. The panel agrees with her assessment.

{¶28} Respondent and Relator stipulated to the presence of only one aggravating factor, that being Respondent acted with a dishonest and selfish motive. In contrast, Respondent and Relator stipulated to the presence of four mitigating factors. Respondent should be given significant credit for these mitigating factors. He does not have prior disciplinary offenses. Respondent self-reported his misconduct to Relator. Respondent was honest and forthcoming during his testimony at the hearing. At no time throughout the disciplinary process did Respondent attempt to minimize or rationalize his behavior.

{¶29} Respondent and Relator stipulated to the admission of five letters written in support of Respondent's character. Stipulated Ex. 9. Respondent has been subjected to other penalties through his criminal conviction. He paid the ordered fine. In light of the above, the mitigating factors far outweigh the sole aggravating factor.

{¶30} There are several cases that provide support for Relator's recommendation of a one-year stayed suspension. *Cincinnati Bar Assn. v. Moore*, 143 Ohio St.3d 252, 2015-Ohio-2488 involved a very similar scheme of replacing UPC labels in a grocery store. However, Moore's conduct was more severe and the aggravating factors outweighed the mitigating factors. On one occasion, Moore attempted to leave a store with 12 bottles of wine without paying for them. *Id.*

at ¶3. In another instance, Moore brought his own UPC codes into the store and used them to scan at the self-scan checkout instead of scanning the actual UPC codes for three bottles of wine and a bottle of olive oil. *Id.* at ¶4. By doing so, he reduced the purchase price by \$359.10. Moore used the same method to steal expensive bottles of wine on five prior occasions. *Id.*

{¶31} Additionally, Moore was not initially honest with the relator in the case when disclosing his misconduct. *Id.* at ¶5. In imposing a two-year suspension, with one year stayed, the Supreme Court considered only one mitigating factor, the absence of a prior disciplinary record, and found multiple aggravating factors, including a pattern of misconduct, multiple offenses, and a failure to accept responsibility for the misconduct. *Id.* at ¶¶8-10.

{¶32} Although Moore's misconduct is factually similar to this case, it was significantly more egregious than Respondent's. Respondent only committed one offense. He was honest and forthcoming with relator about his misconduct and he self-reported the incident to Relator. Moore committed seven theft offenses and was not honest with the relator in the case. Respondent has presented evidence of his good character, while the Board did not accept Moore's character evidence as a mitigating factor because he was not honest about his misconduct with the people who had written letters on his behalf. Moore failed to make restitution until shortly before the disciplinary hearing. In contrast, Respondent does not owe any restitution.

{¶33} In *Disciplinary Counsel v. Grigsby*, 128 Ohio St.3d 413, 2011-Ohio-1446, Grigsby was convicted of a misdemeanor for using her employer's credit card for personal expenses. The board found that Grigsby's conduct violated Prof. Cond. R. 8.4(b), 8.4(c), and 8.4(h). *Id.* at ¶5. As aggravating factors, the Board found that Grigsby acted with a dishonest or selfish motive and engaged in a pattern of misconduct spanning more than two and one-half years. *Id.* at ¶7. The Board gave mitigating weight to Grigsby's lack of prior discipline, prompt payment of \$2,960 in

restitution, her self-report of the incident, and full cooperation in the disciplinary process. *Id.*

{¶34} In imposing an fully stayed, 18-month suspension, the Court considered that the “primary purpose of the disciplinary process is not to punish the offender but to protect the public from lawyers who are unworthy of trust and confidence essential to the attorney-client relationship.” *Id.* at ¶10 (citing *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, ¶10). The Court reasoned that a longer stayed suspension coupled with monitored probation would provide greater protection to the public than a shorter actual suspension. *Grigsby* at ¶10. Therefore, *Grigsby* provides support that a stayed suspension is justified in this matter. However, a shorter period of stayed suspension should be imposed because Respondent’s conduct occurred on only one occasion, rather than over a span of two years as was the case in *Grigsby*. Respondent has also presented evidence of his good character and reputation in the community, which is an additional mitigating factor that was not found by the Board in *Grigsby*.

{¶35} Imposing a lesser sanction is in line with how the Court has interpreted *Grigsby* in subsequent cases. In *Disciplinary Counsel v. Grubb*, 142 Ohio St.3d 521, 2015-Ohio-1349, the Court distinguished the Grubb’s conduct from Grigsby’s and found that the differences warranted a lesser sanction. Grubb was convicted of complicity to commit workers’ compensation fraud, a first-degree misdemeanor, after she provided funds to a client while the client collected temporary-total disability benefits. *Id.* at ¶1. The Board found that Grubb’s conduct violated Prof. Cond. R. 8.4(b) and 8.4(d). The Board further found the presence of several mitigating factors—the absence of prior discipline, the payment of restitution, and evidence of good character and reputation. *Id.* at ¶7. The Board found no aggravating factors were present. *Id.* The Court found that, because Grubb did not violate Prof. Cond. R. 8.4(c) and no aggravating factors were present, a lesser sanction than the one imposed in *Grigsby* was warranted and imposed a six-month fully stayed

suspension. *Grubb* at ¶9.

{¶36} The instant case falls squarely between *Grigsby* and *Grubb*. It contrasts with *Grigsby* in that there is additional mitigation and only involves an isolated incident of misconduct rather than a pattern spanning multiple years; therefore *Grigsby* supports a shorter, stayed suspension. Respondent has also presented evidence of his good character and reputation in the community, which is an additional mitigating factor that was not found by the Board in *Grigsby*. Further, the instant case is more severe than *Grubb*. In this case, Respondent violated Prof. Cond. R. 8.4(c), and there is one aggravating factor in his case—a dishonest or selfish motive.

{¶37} In *Disciplinary Counsel v. Nass* (1992), 65 Ohio St.3d 160, the Court imposed a one-year fully stayed suspension on an assistant prosecuting attorney who stole \$400 of merchandise from a department store and was subsequently convicted of petty theft. While this is an older case, it is still persuasive. The Board found that Nass violated the former Code equivalents of Prof. Cond. R. 8.4(b) and (c) and, because Nass was employed as an assistant prosecuting attorney when she committed the theft, she was found to have violated the former Code equivalent of Prof. Cond. R. 8.4(d). The Court found that a one-year fully stayed suspension was appropriate. Nass paid her fine and completed her community service. She had been an excellent law school student, had been a valued employee of the prosecutor's office before she was terminated for this misconduct, had no prior criminal record other than traffic citations, and had independently sought psychological evaluation and treatment for her behavior.

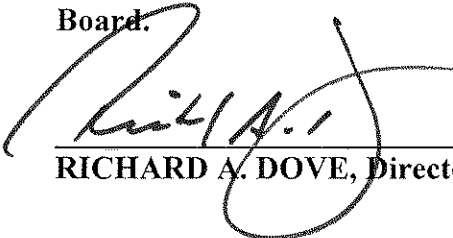
{¶38} Given the deceptive and illegal nature of Respondent's misconduct, a suspension is necessary in this case. However, after considering the facts of this case, the testimony, and weighing the aggravating and mitigating factors, the above case law provides support for the imposition of a fully stayed suspension.

{¶39} Therefore, this panel recommends the imposition of six-month suspension from the practice of law, which should be fully stayed on the condition that Respondent commits no further misconduct. This panel is confident that this sanction will be sufficient to protect the public and help ensure that the Respondent commits no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on August 2, 2019. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Terrence Kensley Scott, be suspended from the practice of law in Ohio for six months, with the suspension stayed in its entirety on the condition that Respondent refrains from further misconduct. The Board further recommends that Respondent be ordered to pay the costs of these proceedings.

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



RICHARD A. DOVE, Director