IN THE SUPREME COURT OF OHIO

Disciplinary Counsel	:	Case No. 07-1157 (Formerly Board Case No. 05-091)
Relator	:	
vs.	:	
Honorable George Matthew Parker	:	
Respondent	:	

RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' FINDINGS OF FACT AND CONCLUSIONS OF LAW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iv

INTRODUCTION ..... - 1 -

STATEMENT OF FACTS ..... - 1 -

It is Undisputed That Judge Parker's Preliminary Efforts to Improve the Administration of the Mason Municipal Court Created a Contentious Relationship With City Government. These Conflicts Contributed to the Initiation of this Case ..... - 2 -

Count One – The *Gadberry* Matter ..... - 3 -

Count Two – The *Ambrose* Matter ..... - 4 -

Count Three – The *Garcia* Matter ..... - 5 -

Count Three – The *Graham* Matter ..... - 6 -

Count Four – The *Jane Doe* Matter ..... - 7 -

Count Six – The *McConnell* Matter ..... - 9 -

Count Seven ..... - 9 -

Disciplinary Rule Violations ..... - 11 -

Respondent Suffers from Narcissistic Personality Disorder ..... - 12 -

Respondent's Objections to the Report ..... - 15 -

ARGUMENT ..... - 15 -

I. Respondent's NPD should have been considered as a mitigating factor. ..... - 15 -

II. The Panel should have accepted the stipulation of the parties that Respondent had cooperated in these proceedings. ..... - 21 -

III. The Panel incorrectly found that several aggravating factors were present in this case. ..... - 22 -

Recommended Sanction ..... - 25 -

Conclusion ..... - 32 -

CERTIFICATE OF SERVICE ..... - 33 -

Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, including attached Amended Stipulations ..... Appendix A

TABLE OF AUTHORITIES

Cases

Cleveland Bar Ass'n v. Cleary, 93 Ohio St. 3d 191, 191-195, 754 N.E.2d 235, 2001-Ohio-1326 ..... 30, 31

Columbus Bar Association v. Port, 102 Ohio St. 3d 395, 811 N.E.2d 535, 2004-Ohio-3204 15

Columbus Bar Ass'n v. Winkfield, 107 Ohio St. 3d 360, 839 N.E.2d 924, 2006-Ohio-6 ..... 15, 18

Cuyahoga County Bar Association v. Maybaum, 112 Ohio St. 3d 93, 858 N.E.2d 359, 2006-Ohio-6507 ..... 26, 27

Disciplinary Counsel v. Ault, 110 Ohio St. 3d 207, 852 N.E.2d 727, 2006-Ohio-4247..... 28, 31

Disciplinary Counsel v. Bowman, 110 Ohio St. 3d 480, 486-487, 854 N.E.2d 480, 2006-Ohio-4333..... 17, 31

Disciplinary Counsel v. Cox, 113 Ohio St. 3d 48, 862 N.E.2d 514, 2007-Ohio-979..... 27, 31

Disciplinary Counsel v. Evans, 89 Ohio St. 3d 497, 501, 733 N.E.2d 609, 2000-Ohio-227..... 29, 30, 31

Disciplinary Counsel v. Karto, 94 Ohio St. 3d 109, 760 N.E.2d 412, 2002-Ohio-61 ..... 28, 29, 31

Disciplinary Counsel v. Medley, 104 Ohio St. 3d 251, 819 N.E.2d 273, 2004-Ohio-6402.... 27, 31

Disciplinary Counsel v. Mosley, 69 Ohio St. 3d 401, 632 N.E.2d 1287, 1994-Ohio-195..... 27, 31

Disciplinary Counsel v. O'Neill, 103 Ohio St. 3d 204, 815 N.E.2d 286, 2004-Ohio-4704 ..... 25, 26

Disciplinary Counsel v. Runyan, 108 Ohio St. 3d 43, 2006-Ohio-80, 840 N.E.2d 623 29

Disciplinary Counsel v. Scacchetti, 114 Ohio St.3d, 867 N.E.2d 830, 2007-Ohio-2713 ..... 17, 18

Disciplinary Counsel v. Simonelli, 113 Ohio St. 3d 215, 863 N.E.2d 1039, 2007-Ohio-1535 ..... 29, 31

In re: Complaint against Judge Carole H. Squire, Case No. 07-0492..... 26, 31

Statutes

10(B)(2)(g) ..... *passim*

DR 1-102(A)(4) 27

INTRODUCTION

Now comes Respondent, the Honorable George Matthew Parker, and submits the following objections to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio (the "Board").

The facts of this matter are set forth in the Board's Findings of Fact, Conclusions of Law, and Recommendation (the "Report"), as well as the Amended Stipulations which the Report incorporated by reference. (*See* Appendix A.) The Panel determined that Respondent violated the Code of Judicial Conduct and/or the Code of Professional Responsibility in each of the seven counts asserted in the Complaint.

The Hearing Panel recommended that Respondent be suspended from the practice of law for 18 months, with 6 months stayed. At its June 2007 meeting, the Board affirmed the Panel's recommendation. The Board's Report was certified to this Court, and an Order to Show Cause was filed on July 2, 2007.

STATEMENT OF FACTS

Respondent was licensed to practice law in Ohio on November 5, 1990. From July 1995 through the end of 1998, he practiced law part-time and worked 20 hours per week as a magistrate and mediator in Domestic Relations Court in Butler County, Ohio. (Transcript of Formal Hearing ("Tr."), p. 440.) He practiced law full-time from December 1998 until he assumed the Mason Municipal Court bench in January 2002. (Tr., pp. 441-443.)

It is Undisputed That Judge Parker's Preliminary Efforts to Improve the Administration of the Mason Municipal Court Created a Contentious Relationship With City Government. These Conflicts Contributed to the Initiation of this Case.

When Respondent took the bench, he changed the way the Mason Municipal Court conducted business. This judicial office was, and is, a part-time position. Before Respondent took office, court was held one day a week. Respondent changed that, holding court two days each week and every third Friday. (Tr., pp. 451-452.)

Coincident with his assuming the bench, the court moved into a new physical facility. Respondent was very involved in shaping that facility. He made improvements in the way the court functioned, including modernizing file handling and computerization, improving the probation department, and adding security. (Tr., pp. 448-451) This was recognized by the Panel in acknowledging and accepting the character letters submitted by Respondent, which "attest to his administrative and management skills (particularly in the area of computerization) and applaud his commitment to family and community service." (Report, p. 23.)

Prosecuting Attorney Robert Peeler admitted there had been "bad blood" between himself and Respondent since the Fall of 2002, when the court moved from the old building into the new one. (Tr., pp. 330-331.) Respondent was at odds with other city officials, including the police chief, the City Law Director, and the City Council. The police chief's improper refusal to obey two of Respondent's lawful conveyance orders set in motion the events behind Count Five. (Tr., pp. 355-357.)

In May or early June 2004, Peeler met with Respondent and gave him a list of instances where Peeler thought Respondent had behaved improperly. (Tr., p. 335.) In mid-July 2004, Respondent self-reported to Disciplinary Counsel. (Tr., p. 335) On July 26, 2004, the City Council passed an ordinance that directed the City Law Director to gather facts to submit to the

Ohio Supreme Court Disciplinary Counsel. (Stipulated Exhibit ("Stip. Exh.") 85.) The Law Director sent correspondence to the Ohio State Highway Patrol, requesting such information. (Panel Exh. B). He also requested similar information from Prosecutor Peeler. (Tr, p. 340.) These are the events that caused the Panel to note:

> . . . this matter stems from alleged conduct by Respondent in a highly charged environment in a small municipality. The complaints filed against him were highly publicized at the time, and the publicity continued during the disciplinary process. The panel is aware of the claims of ill will between Respondent and city officials and the purported reasons behind such claims.

(Report p. 3.)

The following facts are pertinent to the specific counts of the Complaint against Respondent.

Count One – The *Gadberry* Matter

On November 5, 2003, Respondent presided over a probation violation hearing involving probationer Brandi Keesler. (Amended Stipulations ("Stip."), ¶ 2.) During the hearing, Keesler's mother, Naomi Gadberry, sat behind Keesler in the gallery. While Respondent was speaking to Keesler, Gadberry raised her hand. (Stip., ¶ 4.) Respondent instructed Gadberry to leave the courtroom. (Stip., ¶ 5.) Gadberry responded verbally, and Respondent again told her to leave the courtroom, stating, "No. Just leave. That's it. I've heard enough out of you. Don't say another word or you're going to jail in your daughter's place. Just get up and leave." (Stip., ¶ 6.) As Gadberry gathered her belongings to leave the courtroom, she uttered a comment under her breath. In response to Gadberry's comment, Respondent ordered her taken into custody. (Stip., ¶¶ 7-8.) Respondent sentenced Gadberry to 24 hours in the Warren County Jail.

Respondent stated, in response to a letter of inquiry, that he believed the comment Gadberry uttered under her breath was a profanity. (Tr., p. 39.) Gadberry's comment is not

audible on the audiotape of the proceeding. (Stip. Exh. 4.) Prior to the hearing, Gadberry indicated she would testify that what she actually uttered was "I can't believe this," and Respondent stipulated that was what Gadberry said.

Count Two – The *Ambrose* Matter

In the early morning hours of March 6, 2003, Deputies Faine and Staverman responded to a call regarding the theft of neon signs from a local bar. (Stip., ¶ 12.) They ended up at the apartment of the suspect, David Ambrose, who refused to answer the door. (Stip., ¶ 14.) At approximately 1:30 a.m., Deputy Faine called Respondent at home to see if Respondent would sign a search warrant. (Stip., ¶ 16.) Deputy Faine drove to Respondent's residence, picked him up, and the two of them proceeded to the courthouse. There, Faine prepared an affidavit. Respondent reviewed the affidavit and signed a search warrant. (Stip., ¶¶ 18-20.)

As Faine was returning Respondent to his house, Respondent asked if he could accompany Faine on the run. (Stip., ¶ 22.) At approximately 3:00 a.m., Faine and Respondent arrived back at the parking lot of Ambrose's apartment building. (Stip., ¶ 24.) Respondent stayed in the car while Faine and the other deputies executed the search warrant. (Stip., ¶¶ 25-26.) When the deputies left the apartment with Ambrose and the contraband, they returned to the parking lot and noticed Respondent was asleep in the front seat of the police cruiser. (Stip., ¶ 28.) Deputy Faine awakened Respondent, who saw Ambrose in handcuffs and the signs, and stated, "You got the signs." (Stip., ¶ 30.)

Deputy Faine transported Ambrose to the jail in his patrol car, while Respondent rode with one of the other deputies. (Stip., ¶¶ 31-32.) Respondent waited in the sally port while Faine booked Ambrose in the adjoining room, and then Respondent signed a commitment order. (Stip., ¶¶ 33-34.) Deputy Staverman took Respondent back to his house. (Stip., ¶ 35.)

Five weeks later, Respondent presided over Ambrose's plea to one count of theft, a first degree misdemeanor. (Stip., ¶ 38.) He sentenced Ambrose to 60 days in jail, with 59 days suspended; a $250.00 fine; and 2 years probation. (Stip., ¶ 38.) At the time of that hearing, Respondent did not recognize Ambrose. (Tr., pp. 84-85.)

Count Three – The *Garcia* Matter

On October 16, 2003, Respondent presided over a jury trial in a domestic violence matter. (Stip., ¶¶ 40-41.) During a break in the trial, and out of the presence of the jury, Respondent approached defense counsel and said the prosecutor "is about ready to offer you a minor misdemeanor to disorderly conduct and you are about ready to take it, I think." (Stip., ¶ 45.) The prosecutor had not made a plea offer to defense counsel up to that point. (Stip., ¶ 46.)

Respondent then left the courtroom, and the prosecutor told the defense lawyer that he was unwilling to offer a minor misdemeanor, but he would offer a fourth-degree misdemeanor. (Stip., ¶ 47.) When Respondent returned to the bench, the defense lawyer informed him that the defendant was willing to accept a minor misdemeanor, but the prosecutor was only willing to offer a fourth-degree misdemeanor. (Stip., ¶ 48.)

Respondent then resumed the trial; about 15 minutes later, he recessed the jury and called the arresting officer and both attorneys into his chambers. In chambers, he asked why the prosecution was not offering a minor misdemeanor. (Stip., ¶¶ 50-51.) Respondent asked, "Are you listening to the same trial that I am listening to?" and then stated, "Do you know that you are watching an acquittal?" (Stip., ¶ 52.) The arresting officer told Respondent that he was not willing to offer a minor misdemeanor. Respondent told everyone to leave his chambers. As they were leaving, Respondent told the arresting officer to remain behind. (Stip., ¶¶ 53-54.)

Respondent then asked the arresting officer why he would not agree to a minor misdemeanor, and the arresting officer gave his reasons. (Stip., ¶¶ 55-56.) Respondent asked the arresting officer if he knew what happened on May 15, 2003 – the date the officer arrested the defendant (Garcia) in the pending case. Respondent told the officer that May 15, 2003, was also the date Respondent had ordered the Mason police chief be arrested for failing to follow Respondent's conveyance orders. Respondent testified that he wanted to make sure the officer was not being influenced by a dispute between Respondent and the police chief. (Tr., p. 116.) While the arresting officer was uncomfortable with this conversation, it did not change his unwillingness to offer a plea bargain. The case was tried to conclusion, and the jury acquitted Garcia. (Stip., ¶¶ 58-62.)

Count Three – The *Graham* Matter

On May 7, 2003, Respondent presided over the preliminary hearing for Melanie Graham. Graham was charged with stealing a credit card, a fifth-degree felony, and misdemeanor possession of drug paraphernalia. (Stip., ¶¶ 63-64.) The prosecutor informed Respondent that Ms. Graham was going to waive her right to a preliminary hearing, and Respondent inquired as to whether the matter could be resolved in municipal court. (Stip., ¶ 66.) The prosecutor informed Respondent that the State did not wish to offer a misdemeanor plea; rather, the case was going to be prosecuted as a felony.

Ms. Graham executed the form required to waive the preliminary hearing, but Respondent refused to accept the waiver and ordered the prosecutor to conduct a preliminary hearing. (Stip., ¶¶ 69-71.) At the close of the preliminary hearing, Respondent concluded the prosecution had not shown sufficient probable cause to demonstrate Ms. Graham committed the felony alleged in the complaint. (Stip., ¶ 74.) Respondent stated that Ms. Graham was going to

stand trial on the first-degree misdemeanor of misuse of credit cards, and the fourth-degree misdemeanor of possession of drug paraphernalia. (Stip., ¶ 74.)

The prosecutor attempted, through oral motion, to dismiss the charges for direct presentment to the grand jury. (Stip., ¶ 75.) Respondent denied the State's attempt to dismiss the charges. (Stip., ¶ 76.) Ms. Graham subsequently pled guilty to a first-degree misdemeanor. (Stip., ¶ 77.)

Count Four – The *Jane Doe* Matter

On March 23, 2004, the defendant in a domestic violence charge, John Doe, and his counsel appeared before Respondent. (Stip., ¶ 78.) The victim, Jane Doe, also appeared at the arraignment. She asked the prosecutor to drop the charges against her husband, but the prosecutor refused. (Stip., ¶ 79.) When Respondent called the case, the defense counsel asked that the charges be dismissed. After Jane Doe explained her reasons for requesting dismissal, Respondent denied the motion to dismiss and recessed court so the parties could attempt to reach resolution. (Stip., ¶ 81.)

While John Doe, his attorney, Jane Doe, and the victim's advocate were discussing the matter in a conference room, Respondent sent his probation officer into the room to photograph the marks on Jane Doe's face. (Stip., ¶ 83.) The probation officer went into the room and told Jane Doe that the judge wanted him to photograph her face. She was amenable to having her picture taken and pulled her hair back so the probation officer could get a clearer picture of the marks on her face. Then, either the defendant or his counsel said he did not know whether taking the picture was a good idea, and he told the probation officer that he preferred that he not take the picture. The victim then asked if she could refuse the picture, and the probation officer responded that he would have to ask the Respondent.

John Doe, his attorney, Jane Doe, and the probation officer reentered the courtroom, where Respondent ordered that the probation officer take the picture. (Stip. Exh. 52.) Defense counsel continued to object to the photograph, stating that it was not Respondent's role to participate in the gathering of evidence. (Stip., ¶ 87.) Jane Doe was humiliated by having to have her photograph taken in this manner. (Stip., ¶ 90.)

Count Five – The 9-1-1 Matter

On May 14, 2003, defense attorney Michael Davis appeared in Respondent's courtroom for a pretrial and trial involving his client, Jason Michel. (Stip., ¶ 92.) An acting judge was sitting for Respondent, although Respondent was performing administrative tasks elsewhere in the courthouse. (Stip., ¶ 93.) Jason Michel had not been transported from the Warren County Jail, despite the fact that Respondent had signed and entered a valid conveyance order. (Stip., ¶ 94.) Because his client was absent from the proceeding, Mr. Davis asked the Court do dismiss the charges. The prosecutor, Matt Graber, objected. The acting judge instructed the lawyers to consult with Respondent concerning the prisoner transport issue. (Stip., ¶ 64.)

Both lawyers ultimately appeared in Respondent's chambers, where Mr. Davis informed Respondent that the police department refused to transport his client to court for the proceeding. (Stip., ¶ 97.) Respondent picked up his phone and dialed 9-1-1. (Stip., ¶ 98.) Respondent immediately told the operator that this was not an emergency call, but that he wanted a police officer to report to his chambers. (Stip., ¶ 99.) Within several minutes, a police sergeant arrived in chambers, and Respondent ordered him to transport Mr. Michel from the Warren County Jail to the court. (Stip., ¶ 101.) The police officer refused to honor Respondent's order. (Stip., ¶ 102.)

The following Saturday, *The Cincinnati Enquirer* printed a story captioned, "Judge Called 9-1-1 to Get Officer Sent." That same morning, Respondent called Attorney Davis at home and discussed Davis's recollection of the events in chambers the previous Wednesday. Respondent asked Davis to write him a letter summarizing what had transpired in chambers. (Stip., ¶¶ 105-107.) Davis did not respond to Respondent's request, although he was contacted by Respondent's clerk on several occasions about the letter. (Stip., ¶¶ 108-109.)

Count Six – The *McConnell* Matter

On February 9, 2004, Katherine McConnell violated probation by testing positive for marijuana. (Stip., ¶ 112.) On April 14, 2004, McConnell and her lawyer appeared before Respondent on the probation violation. (Stip., ¶ 113.) After McConnell pled no contest to the probation violation, Respondent asked her for the name, address, and telephone number of her drug dealer. McConnell gave Respondent the requested information. (Stip., ¶¶ 114-115.)

Respondent then had his clerk activate the speaker phone and dial the number McConnell had provided. A man answered the telephone, and Respondent asked if he was Chad (the name McConnell had provided). The man said yes, and Respondent stated, "Chad, this is somebody who understands you are selling drugs to people. Uh, Chad, they're gonna getcha, buddy. Stop selling drugs if you are. If not, sorry about the call. Have a good day." Respondent then ended the telephone call. (Stip., ¶ 116.)

McConnell, who had just pled no contest to a probation violation, left the courtroom in a visibly upset state. (Stip., ¶ 117.)

Count Seven

This Count incorporates the *Gadberry* Matter (Count One), the *Jane Doe* Matter (Count Four), and the *McConnell* Matter (Count Six), and additional factual matters, including:

- The *Keene* Matter, in which Respondent asked the domestic violence victim and wife of the defendant if she "forgave" her husband. (Stip., ¶ 131.) Specifically, Respondent said, "I am asking you a direct question, and I really need a direct answer. Do you forgive him?" (Stip., ¶ 134.) Ms. Keene felt pressured by Respondent and stated that she was working on forgiving her husband. (Stip., ¶ 135.)

- The *Freeze* Matter, in which Mr. Freeze was charged with criminal damaging for allegedly breaking the headlights of a delivery van with his walking stick. Respondent referred to Freeze as a "frequent flyer," took his cane to examine it, and did not return it when Freeze left the witness stand. Respondent told Freeze he was "snake-bit mean." (Stip., ¶ 155.)

- The *Wilson* Matters, where Respondent told the acting prosecutor that the victim's advocate who was present with him in court could not directly address the court. (Stip., ¶ 159.) The victim's advocate felt humiliated by Respondent's comment. (Stip., ¶ 163.)

  On another occasion, Respondent made a comment during court that the court did not have to worry about making a mistake because Ms. Wilson was in court all the time; whenever Respondent made a mistake, she could run to tell the newspaper. (Stip., ¶ 164.) These comments were also embarrassing to Ms. Wilson. (Stip., ¶ 165.)

  On another occasion, Ms. Wilson directed a female defendant to go to the clerk's office to obtain a letter for her employer. (Stip., ¶ 167.) The defendant was brought back before Respondent for creating a disturbance in the lobby, and, when defendant informed Respondent that she had been told by Ms. Wilson to obtain a letter from the clerk, Respondent stated, "That's what you get for taking advice from a random person in the courthouse – Ms. Wilson has nothing to do with the court and has no business giving advice to anyone. (Stip., ¶ 168.) These comments were embarrassing to Ms. Wilson. (Stip., ¶ 169.)

- The OVI Offenses. Respondent made defendants in some OVI matters state, "I am an alcoholic" in open court. (Stip., ¶¶ 171, 175.) Respondent had also ordered OVI defendants who had entered guilty pleas to reach into their pockets, pull out their "imaginary car keys," and throw them away. (Stip., ¶ 180.)

- Underage Consumption of Alcohol Offenses.

  - Respondent asked a student at St. Xavier High School, "What is Jewish kid doing going to Xavier?" (Stip., ¶¶ 184-186.)

- Respondent suggested to an 18 year old female defendant that she should talk to her mother (who did not know of the arrest) before entering a plea. (Stip., ¶¶ 187-189.)

- Respondent asked a 20 year old female anthropology student if she had been "digging up old beer to drink."

- Theft Offenses.

  - Respondent told three defendants they were going to have to bring in some of their favorite material possessions as part of their community service. (Stip., ¶ 200.)

  - After accepting defendant Spruance's guilty plea, Respondent said, "You got some proverbial sticky fingers, don't you? So take that Kleenex there right now. Set your papers down. Wipe your hands off. Today is the first day – this is a little hypnotism here – today's the first day of the rest of your life you will no longer take what is not yours. Do you understand me?" (Stip., ¶ 202.) The Board concluded Respondent's behavior in *Spruance* did not violate the Code of Judicial Conduct.

- The *Stendahl* Matter, in which the defendant filed a motion to suppress the results of her breathalyzer test and an HGN test. After an oral hearing and written arguments, Respondent granted defendant's motion to suppress the results of both tests. When Respondent was announcing his decision, prosecuting attorney Wade questioned him. Respondent stated, "Well Ms. Wade, if I had to explain it to you, I doubt you'd understand it. The record speaks for itself on that matter." (Stip., ¶ 211.) The prosecutor, was embarrassed and humiliated by Respondent's comment. (Stip., ¶ 212.)

Disciplinary Rule Violations

Respondent stipulated that his comments and gestures set forth in Count Seven violated Canon 2 and Canon 3(B)(4). (Stip., p. 27.) During his testimony on the third day of the hearing, Respondent admitted:

- With regard to Count Three, his actions in attempting to force a plea deal were inappropriate.

- With regard to Count Four, his actions in contacting Attorney Davis at home and asking him to record his

recollections of what transpired chambers were inappropriate.

- With regard to Count Six, his actions in calling an alleged drug dealer from court were inappropriate.

The Panel found Respondent had committed violations in each of the seven counts of the Complaint. Respondent does not dispute the Panel's finding that he violated Canons 1, 2, 3, and 4, as well as DR 1-1-2 (A) (4), (5), and (6), as set forth on page 3 of the Report.

Respondent Suffers from Narcissistic Personality Disorder.

Respondent began receiving psychological counseling in March 2006. (Tr., p. 453.) He treated with Dr. Michael Hewitt for 7 or 8 months, and then began treatment with Dr. M. Douglas Reed, without any interruption in his treatment. (Tr., p. 454.) At the time of the last day of the hearing, he had treated with Dr. Reed once every two weeks (9 times over a period of 19 weeks.) (Tr., p. 512.)

Respondent began treatment for at least three reasons: first, people who knew him were concerned that he was not reacting well to the way he was being publicly portrayed; second, OLAP had made a psychological assessment available; and, finally, because he "didn't want to subject people to me if being subjected to me meant that they were going to get anything less than what there were entitled to receive." (Tr., p. 453.)

After the first two days of the hearing, the Panel requested that Respondent submit himself to an independent psychological examination. Respondent agreed. (Panel Exh. B.) The panel sent Respondent to Dr. Douglas Beech, who is certified in forensic psychiatry. (*See* Panel Exh. F.) His opinions (contained in the report that appears as Panel Exh. D) are key in understanding Respondent's misconduct. Dr. Beech stated:

> There are several counts in the complaint against Judge Parker, the first of which is dated to the fall of 2003. I have had the

> opportunity to read the transcripts of depositions taken in this case as well as to listen to audio recordings (and view one video recording) of several hours of court proceedings. The complaints may be summarized by the following excerpt, from the transcript of the complaint: *"Respondent consistently humiliates, degrades, and disrespects persons appearing in open court, including attorneys, law enforcement, witnesses, victims, defendants, and victim-witness advocates."*

(Panel Exh. D, p. 2.) Dr. Beech noted Respondent had gained a substantial amount of weight – approximately 50 pounds – that Respondent attributed to his tendency to overeat in response to increased stress. (Panel Exh. D, p. 2.)

Dr. Beech found that Respondent was suffering from Narcissistic Personality Disorder ("NPD") and that he had severe stressors, which included the stress of the Board Complaint, public exposure, and the resultant family discord. (Panel Exh. D, p. 4.) Dr. Beech excerpted the DSM-IV-TR in describing the features of NPD as a "pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy . . . as indicated by five or more of the following:

> 1. has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements)
> 2. is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love
> 3. believes that he or she is "special" and unique and can only be understood by, or should associate with, other special or high-status people (or institutions)
> 4. requires excessive admiration
> 5. has a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations
> 6. is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends
> 7. lacks empathy: is unwilling to recognize or identify with the feelings and needs of others
> 8. is often envious of others and believes that others are envious of him or her
> 9. shows arrogant, haughty behaviors or attitudes

(Panel Exh. D, p. 5.) Dr. Beech stated that, while the presence of narcissistic personality traits is not unusual in successful professionals, "It is the accompanying distress or functional impairment that distinguishes a disorder, not the mere presence of symptoms or features." (Panel Exh. D, p. 5.)

Dr. Beech excerpted a description of NPD from a section of a psychiatric text on the disorder "as an example of some ways that it applies to this case":

> Because persons with narcissistic personality disorder have grandiose self-esteem, they are vulnerable to intense reactions when their self-image is damaged. They respond with strong feelings of hurt or anger to even small slights, rejections, defeats, or criticisms. As a result, persons with narcissistic personality disorder usually go to great lengths to avoid exposure to such experiences and, when that fails, react by becoming devaluative or rageful.

(Panel Exh. D, p. 5.) In making the diagnosis of NPD, Dr. Beech concluded that Respondent consistently presents with functional impairment and consistently presents with distress. (Tr., p. 483.) "In several incidents, again in the materials, incidents that have been brought forth as part of the complaint I think are examples of some impairment in judgment in this conduct. So his conduct illustrates that, at times, there is some impairment of judgment." (Tr., p. 485.)

Dr. Beech testified that Judge Parker's personality disorder was a causative factor in many of the situations alleged in the Complaint:

> Q. And was his personality disorder a cause of the factual scenarios that are alleged in the disciplinary complaint that you reviewed?
>
> A. It was a factor in them.

(Tr., p. 505.) Therefore, Dr. Beech opined that the conduct complained of was caused, at least in part, by the NPD. Dr. Reed, Respondent's treating psychologist, concurred in the diagnosis of Dr. Beech. (Tr., p. 511-512.)

Respondent's Objections to the Report

Respondent objects to:

1. the finding that his psychological condition, independently diagnosed by a psychiatrist selected and retained by the Hearing Panel, is not a factor to be considered in mitigation;

2. the Panel's refusal to accept the stipulation of the parties that he had cooperated in the proceeding;

3. the aggravating factors listed by the Panel; and

4. the sanction recommended by the Panel.

ARGUMENT

I. Respondent's NPD should have been considered as a mitigating factor.

While much of the Board's Report revolves around Dr. Beech's report and testimony, the Panel refused to consider Respondent's NPD as a mitigating factor. The Panel found that Respondent's NPD fell within the definition of "mental disability," based on this Court's decisions in *Columbus Bar Association v. Winkfield*, 107 Ohio St.3d 360, 839 N.E.2d 924, 2006-Ohio-6, and *Columbus Bar Association v. Port*, 102 Ohio St. 3d 395, 811 N.E.2d 535, 2004-Ohio-3204.

Section 10(B)(2)(g) of the Board's Rules and Regulations Governing Procedure states that a mental disability may be considered as mitigation when all of the following factors are present:

(i) a diagnosis of mental disability by a qualified health care professional;

(ii) the determination that the mental disability contributed to cause the misconduct;

(iii) a sustained period of successful treatment of the mental disability; and

(iv) a prognosis from a qualified health care professional that the attorney will be able to return to competent, ethical, professional practice under specified conditions.

While the Panel found the first and second elements of 10(B)(2)(g) had been met, they concluded the third and fourth elements had not. (Report, p. 26.) The Panel stated, "It is clear to the Panel that Respondent has not yet completed a sustained period of successful treatment. Nor is there a prognosis for a time certain within which Respondent will be able to consistently return to the competent, ethical, and professional practice of law under specified conditions." (Report, p. 27.)

Respondent respectfully submits that the third and fourth elements of 10(B)(2)(g) have been met. With regard to 10(B)(2)(g)(iii), Respondent has undergone a "sustained period of successful treatment," as recognized by the Panel itself:

> However, we note that Respondent's testimony on the final day of hearing shows elements of improvement as well as elements of obvious relapse into non-functional and self-serving distortions of thought.
>
> Beginning on the third day of the hearing, **the Panel recognized a noticeable change in Respondent's demeanor and attitude. Respondent appeared less animated, more contrite, and made a concerted effort to answer the questions posed in a timely and direct fashion. Respondent testified that he had been in psychological counseling since March of 2006 and that he intended to continue with treatment. . . . It is clear that Respondent has benefited from this therapy undertaken after the grievance was filed.**

(Report, pp. 27-28.)

Dr. Beech testified that, at the time of his interview, Respondent scored an 80 on a Global Assessment of Functioning ("GAF"), which spans a scale from 1 to 100, where a person with a score of 1 would be completely non-functionable, but a person with a score of 100 would be completely symptom-free, with no distress and no impairment at all. (Tr., p. 480.) Dr. Beech testified that Respondent "functioned very well during [their] meeting:"

Q: And this was again in reference to his insight and his judgment were intact during that meeting?

A: Yes. Absolutely.

(Tr., p. 484.)

The criteria to obtain mitigation under Rule 10(B)(2)(g) is merely "a sustained period of successful treatment of the mental disability." **It does *not* require completed treatment or a clean bill of health.** In *Disciplinary Counsel v. Bowman*, 110 Ohio St. 3d 480, 486-487, 854 N.E.2d 480, 2006-Ohio-4333, at ¶ 36, this Court recognized a respondent's willingness to commence treatment and his present ability to practice law as a mitigating factor, despite the fact he was still obtaining treatment and taking medication; using this as a mitigating factor, it did not accept the Board's recommended sanction of indefinite suspension—instead, it suspended him for two years. This was notwithstanding the fact that, unlike Respondent, Bowman's misconduct involved "active lying and deceit [(*e.g.*, forging signatures, lying to clients, lying to his employer)], rather than the neglect of client matters that is more common in cases involving depression." *Id.* Even more significantly, Bowman's treatment was incomplete and disrupted during the course of his disciplinary action; this Court permitted mitigation even though Bowman "allowed a nine-month period to pass [during his disciplinary action] without his contacting the OLAP office daily, contrary to his agreement with OLAP." *Id.*

Similarly, in *Disciplinary Counsel v. Scacchetti,* 114 Ohio St.3d, 867 N.E.2d 830, 2007-Ohio-2713, at ¶ 9, the Court permitted the respondent's efforts to obtain treatment as a mitigating measure, despite the fact he relapsed approximately 11 weeks before his disciplinary hearing, testing positive for cocaine. At the time of the hearing, the respondent was required to live in a residential treatment facility—he was not even permitted to live at home. *Id.* at ¶ 11. As evidenced by *Scacchetti,* treatment need not be complete for the Court to use it as a mitigating

factor; moreover, the respondent may still require further treatment and the Court may accept his or her progress thus far as mitigation. *Id.* at ¶ 11 ("Respondent said that he had learned valuable lessons from the relapse—*that he needs to get help on a daily basis* to maintain his sobriety, *that he must address his problem every day*, one day at a time. . . Respondent assured the panel that . . . *he must follow his recovery regimen if he is to* [sufficiently recover to leave a structured residential program and return home] over the next months.")(emphasis added).

Moreover, in *Columbus Bar Ass'n v. Winkfield*, 107 Ohio St.3d 360, 839 N.E.2d 924, 2006-Ohio-6, at ¶ 46, the Relator and Board advocated an indefinite suspension, instead of disbarment, "influenced by" the respondent's mental illness, which was still so severely debilitating that the Court was not persuaded he would ever be mentally fit to practice law: Nevertheless, this Court held that because his physician "reported significant improvement in the last year or so and is optimistic that respondent will continue to improve," the Court permitted him to have the chance to prove himself by offering him the lesser sanction of indefinite suspension. *Id.* at 56.

By contrast, Respondent has completed a sustained period of successful treatment. He has been treating continuously since March of 2006 – a period of 16 months – and, as the Panel itself noted, the treatment has been successful.

With regard to 10(B)(2)(g)(iv), the Panel found there was "no definitive professional prognosis that Respondent **is presently able to return** to the competent, ethical, and professional practice of law under specified circumstances." (Report, p. 29) While that statement is true, it misstates the requirement of Section 10(B)(2)(g)(iv), which is that there be a prognosis that the Respondent "**<u>will be able to return</u>** to competent, ethical, professional practice under

specified conditions." (Emphasis added.) On page 6 of Dr. Beech's report (Panel Exh. D), he sets forth his "Opinion Regarding Fitness to Practice," stating:

> My opinion is that Judge Parker's condition does present him with ongoing vulnerabilities in his ability to consistently practice in a safe and responsible manner. These vulnerabilities are subject to improvement with treatment and with additional awareness of the impact of his conduct on others and on himself, and with development of alternative modes of reacting and problem solving.

With regard to "alternative modes of reacting and problem solving" referred to in his report, Dr. Beech said:

> Common sense kinds of things. You can think before you speak, take a few minutes, buy some time before acting. I think when a person has an enhanced awareness, that they can get a variety of ways, one of which is through therapy, through treatment of their tendencies. They can – through that expanded awareness, they can see their natural reaction to things and pause and modify that reaction so that they are more effective, more constructive.

(Tr., p. 490).

While there was no testimony that Respondent is presently able to return, Dr. Beech opined that, with treatment, Respondent <u>could</u> return to the competent, ethical, and professional practice of law:

> Q. And you believe with appropriate treatment that he will be able to return to competent, ethical and professional practice?
>
> A. I believe he can.

(Tr., p. 507.) Dr. Beech further stated that the treatment should be administered by a mental health professional (Tr., p. 507) and that medication is not indicated for treatment of this condition. (Tr., p. 503.)

The Panel placed too much emphasis on the fact that Dr. Beech could not give a specific date when treatment would be concluded. Dr. Beech was very clear that it was not possible to

give a definitive date when Respondent's treatment would be finished – reaction to treatment is too individual to make such a prediction:

> Q. Dr. Beech, do you have an opinion to a reasonable degree of medical and/or psychiatric certainty based on your medical training and experience, your review of the records in this case and your interview with Judge Parker how long it would take for Judge Parker to successfully develop a constructive and adaptive behavioral modification of which we have been speaking?
>
> A. I think that's too variable and unique to make a judgment. I mean, **it may have already happened even**. So I don't.

(Tr., pp. 494-495.)

In response to the question ". . . how long it would take before Judge Parker could consistently practice law in a safe and responsible manner," Dr. Beech said:

> A. . . . Well, I will just reiterate my partial response to two questions ago which is that this can go a number of different ways. And there really – it isn't the kind of thing one can put a time frame on, and I think the proverbial proof is in the pudding. Just going through this whole experience, or going through an experience like this, this stressful to a person, can change their behavior. It can enhance their awareness. And like I said before, a person can go to intensive therapy three or four times a week or go to a hospital treatment center for three months and do that for months and months and not have it change their behavior. **So I don't think it's the kind of condition that lends itself to putting a time frame on it for the change of behavior. I think one has to see and observe whether it's changed or not.**

(Tr., pp. 496-497.) Dr. Beech further said that the fact Respondent sought out help was, in and of itself, a "favorable prognostic sign." (Tr., p. 497.) If a person is willing to undergo treatment, as was Respondent, Dr. Beech testified that means they are at the end of the spectrum of the disorder, and that means the disorder is probably capable of being modified: ". . . It says there's

an opening there of looking at one's self." (Tr., p. 498.) Dr. Beech stated that minor modifications in behavior can make big differences. (Tr., p. 501.)

Respondent respectfully submits that Dr. Beech testified that Respondent will be able to return to competent, ethical, professional practice under the specified condition of continued treatment by a mental health professional.

For these reasons, Respondent's NPD should be considered as a mitigating factor.

II. The Panel should have accepted the stipulation of the parties that Respondent had cooperated in these proceedings.

Respondent willingly submitted to the psychiatric examination of Dr. Beech and pledged to "...voluntarily and freely provide any and all information the psychiatrist may request." (Panel Hearing Exhibit B.) Dr. Beech stated that, throughout their 3.5 hour interview, Respondent displayed a cordial and cooperative demeanor, was forthright in his responses, and did not appear to hold back information. (Panel Exh. D, p. 3.) During that same interview, Respondent admitted to Dr. Beech that some of his actions have been retaliatory in nature and were attributable, in part, to his frustration and anger at feeling mistreated and misunderstood. Dr. Beech noted that "[o]n multiple occasions he said he knew that he had done things that he should not have done and that he believes he should be punished accordingly." (Panel Exh. D, p. 4.) "He indicated that some of his 'crossing the line' has been in reaction to circumstances, and he acknowledges (and regrets) that some of his behaviors have hurt others." (Panel Exh. D, p. 5.)

Disciplinary Counsel stipulated that Respondent had cooperated in the process. If Disciplinary Counsel and Dr. Beech believed, as they did, that Respondent was cooperative in the process, the Panel was incorrect in refusing to accept that conclusion.

III. The Panel incorrectly found that several aggravating factors were present in this case.

The Panel found the following aggravating factors:

1. dishonest or selfish motive;
2. a pattern of misconduct;
3. multiple offenses;
4. lack of cooperation in the disciplinary process;
5. submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and
6. refusal to acknowledge wrongful nature of conduct.

(Report, pp. 29-30.) Respondent does not object to the finding of a pattern of misconduct and the existence of multiple offenses as aggravating factors. Further, Respondent has already addressed the finding that he failed to cooperate in the disciplinary process in Section II, above.

The remaining aggravating factors are unsupported by the record below: Respondent has not refused to acknowledge the wrongful nature of his conduct. As pointed out above, he did so in the Stipulations, in his testimony on the third day of the Hearing, and in his interview with Dr. Beech.

Regarding the findings of dishonest motive, submission of false evidence, false statements, or other deceptive practices during the disciplinary process, the Panel, under the heading "Respondent's Misrepresentations and Inconsistencies,"[1] points out numerous instances where Respondent's hearing testimony and Stipulations differed from his Answer to the Letters of Inquiry that preceded the filing of the formal Complaint. While some of these "inconsistencies" are not actually inconsistent, there are several instances where Respondent's

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[1] *See* Report, beginning on page 30.

testimony and Stipulations varied from his responses to the Letters of Inquiry. These differences – characterized by the Board as "lies" and "contradictions" – may be more properly explained by the evidence of Respondent's NPD and Dr. Beech's testimony of causation in the record below.

It is significant that Respondent started undergoing psychological counseling in March 2006 – after responding to the Letters of Inquiry – and later entered into the Stipulations on June 27, 2006. He was certainly less protective of his ego and more willing to accept responsibility for his acts than he was in some of his responses to the Letters of Inquiry:[2]

> Because persons with Narcissistic Personality Disorder have grandiose self-esteem, they are vulnerable to intense reactions when their self-image is damaged. They respond with strong feelings of hurt or anger to even small slights, rejections, defeats or criticisms. As a result, persons with Narcissistic Personality Disorder usually go to great lengths to avoid exposure to such experiences, and when that fails, react by becoming devaluative or rageful.

(Panel Exh. D, p. 5.) Comparing Respondent's actions during the underlying events and his responses to the Letters of Inquiry – which occurred before he was diagnosed and began treatment for NPD – to the Stipulations and testimony he provided after seeking treatment demonstrates NPD was a causative factor in Respondent's behavior. This conclusion was supported in the record by Dr. Beech's testimony. Dr. Beech testified that being a judge exacerbated Respondent's NPD:

> Q. One of the things you mentioned regarding examples of constructive modification was just a simple exercise of thinking before you speak . . . because we are dealing with a Judge that often asked to make determinations in split seconds, so to speak, being in that environment on a daily basis, can that actually work against constructive modification?

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[2] This, in and of itself, shows that the psychological counseling Respondent received helped him with the NPD that caused him to be very guarded and protective of himself.

A. You mean the nature of the occupation –

Q. Right.

A. – and context in which it is practiced? Well I think that's why it's a problem. I mean, it is, yeah, the situation is part of the dysfunction, because this does – it is a pressure situation. It does require that kind of reflexive judgment. Well, that's why we call it judge, I guess, because judgment, yes, judgments have to be made. But not all of the incidents alleged in the complaint were in that context. I mean, there were others, you know, there were situations where time probably could have been taken.

(Tr., pp. 498-499.)

Respondent had no disciplinary problems of any sort when he was practicing law or when he was in the position of a mediator/magistrate. His narcissistic personality **traits**, which had not previously caused problems, apparently became a **disorder** (caused by "accompanying distress or functional impairment") when he took the bench and came into conflict with the sheriff, the prosecutor, and others who challenged his authority and criticized him in the press. Literally, as stated in the textbook Dr. Beech quoted, Respondent was "vulnerable to intense reactions when [his] self-image [was] damaged." (Beech Report, p. 5.) Further, Beech noted that Respondent "does display the features of [NPD] that **in my opinion are the most accurate clinical way to account for the conduct alleged in the complaint.**" *Id.*

Dr. Beech testified that Respondent's personality disorder was a causative factor in many of the factual allegations contained in the disciplinary Complaint. (Tr., pp. 505-506.) This is apparent in each Count. Respondent's NPD clearly affected his ability to address each of these situations with a clear focus when he was responding to the Letters of Inquiry. Once Respondent was diagnosed and began treatment, he was able to more readily appreciate his actions and accepted responsibility for them. This was apparent in his third day of testimony and in the

Stipulations. The Panel recommended penalizing Respondent's progress by labeling the clarity that accompanied his psychological improvement as a deception, merely because it is inconsistent with his earlier characterizations (which were impacted by his NPD). However, it only makes sense that an individual's characterization of events and acceptance of blame would differ if they were recorded before and after he obtained treatment for a disorder that alters one's ability to accept criticism. To label Respondent's shift in testimony as an aggravating factor is unfairly prejudicial; it effectively ignores the undisputed evidence that Respondent's mental condition impacted his ability to acknowledge his own shortcomings. Further, it would provide a disincentive for future disciplinary respondents to provide a more accurate version of events after seeking treatment; finding an aggravating factor here would impose a chilling effect on the forthcoming responses of future disciplinary respondents. Respondent respectfully requests this Court reject the Board's findings of Respondent's deceptive motive or false testimony as aggravating factors.

Recommended Sanction

The Panel relied upon several cases in recommending its sanction; however, each of these cases is distinguishable, and other cases are more analogous:

The Panel relied repeatedly on *Disciplinary Counsel v. O'Neill*, 103 Ohio St. 3d 204, 815 N.E.2d 286, 2004-Ohio-4704. Judge O'Neill received a two year suspension, with one year stayed, on the condition that she submit to a mental health assessment, fully comply with a recommended course of treatment, and submit to monitoring if reinstated. It cannot be disputed that the conduct at issue in *O'Neill* was much broader, much more frequent, and much worse than the conduct at issue in the instant case. The O'Neill Panel stated, "At the outset, the Panel majority must acknowledge that there is no Ohio case similar in size and scope to the charges

against Respondent." (¶ 335.) In *O'Neill*, this Court stated, "In determining the appropriate length of the suspension and any attendant conditions, we must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." (¶ 53.)(citations omitted). The term of the unstayed suspension in *O'Neill* – one year – is the same as the unstayed portion of the recommended sanction of the Panel in the instant matter. This is not appropriate.

The Panel relied upon *In re: Complaint against Judge Carole H. Squire*,[3] in which it recommended a two-year suspension, with one year stayed. In *Squire*, which this Court has not yet decided, there was no evidence of an existing mental disability, and that single fact differentiates *Squire* from the instant case. In fact, the majority of the Panel members in the instant case found "Respondent's misconduct less egregious than the conduct found in *O'Neill* and *Squire*, and that his NPD, in part, caused Respondent's misconduct." (Report, p. 38.)

The Panel relied upon the factually distinguishable case of *Cuyahoga County Bar Association v. Maybaum*, 112 Ohio St. 3d 93, 858 N.E.2d 359, 2006-Ohio-6507. In *Maybaum*, the respondent's personality disorder was much more significant, and Maybaum had demonstrated an intractable attitude toward treatment. In this case, Respondent has already begun treatment and has shown improvement. Additionally, in *Maybaum*, there were expert predictions of danger to clients, which are completely absent in this case. As noted earlier, Respondent has a flawless ethical record in the practice of law. Respondent's position will be filled by election in November 2007, and Respondent is not on the ballot. There has been no disciplinary action filed against Respondent since the institution of the present case. Respondent respectfully submits that he never encountered disciplinary problems when a practicing attorney

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[3] *Squire*, Case No. 07-0492, is currently pending before this Court.

and, unlike the respondent in *Maybaum*, there is no evidence that his personality disorder will put the public at risk if he is engaged in the private practice of law.

The Panel cited *Disciplinary Counsel v. Mosley*, 69 Ohio St. 3d 401, 632 N.E.2d 1287, 1994-Ohio-195, which involved an attorney who engaged in extortion through conspiracy, kick-backs, and grand theft. That case is clearly factually distinguishable from the instance case, as none of Respondent's challenged conduct was related to personal gain or criminal activity.

The Panel relied upon *Disciplinary Counsel v. Cox*, 113 Ohio St. 3d 48, 862 N.E.2d 514, 2007-Ohio-979, in which Judge Cox held a contempt proceeding based on a statement made outside the courtroom. Judge Cox claimed to overhear these statements outside the courtroom, but he did not actually hear them at all. Judge Cox was intemperate and hostile against the contemnor during a proceeding. Additionally, Judge Cox was indicted for felony possession of drugs and eventually pled to attempted possession of drugs, a first degree misdemeanor. He was also intemperate in the courtroom on two separate occasions with defense counsel, calling one a pathological liar and pelting another with profanity and racial slurs. Judge Cox was indefinitely suspended for this conduct, which clearly differs from the conduct at issue in the instant case in that there is no drug use or conviction involved in this matter.

The Panel relied upon *Disciplinary Counsel v. Medley*, 104 Ohio St. 3d 251, 819 N.E.2d 273, 2004-Ohio-6402, in which the Court found that respondent's conduct involved dishonesty, fraud, deceit, or misrepresentation in violation of DR 1-102(A)(4), yet Judge Medley cooperated fully in the disciplinary proceedings. (*Id.* at ¶ 38, p. 259). Judge Medley had previously been disciplined for judicial misconduct, had engaged in a pattern of misconduct, and had refused to acknowledge the wrongfulness of his actions. In the instant case, Respondent has not been previously disciplined, and he has acknowledged the wrongfulness of his action in the

Stipulations, in his hearing testimony, and in his interview with Dr. Beech. Further, unlike Respondent, there was no mitigating evidence suggesting Judge Medley's actions were caused in whole or in part by a mental illness. Yet Judge Medley received the same sanction as that recommended for Respondent in the instant case.

The Panel noted that, in *Disciplinary Counsel v. Karto*, 94 Ohio St. 3d 109, 760 N.E.2d 412, 2002-Ohio-61, the respondent received a six month suspension from the practice of law. *Karto* involved a nine count complaint, and the Court found there was clear and convincing evidence of violations in five of those nine counts. There was no evidence of any mitigating chemical dependency or mental disability in *Karto,* and yet Judge Karto was sanctioned with a six month suspension from judicial office without pay for:

- failing to uphold the integrity and independence of the judiciary;
- failing to comply with the law and act in a manner that promotes public confidence in the integrity of the judiciary;
- failing to disqualify himself when he knew he was likely to be a material witness;
- use of an outdated rule book at sentencing;
- failing to be faithful to the law and maintain professional competence;
- failing to dispose of all judicial matters promptly, efficiently, and fairly;
- engaging in conduct prejudicial to the administration of justice;
- failing to perform the duties of the office impartially and diligently;
- engaging in *ex parte* communications; and
- failing to disqualify himself when his impartiality might reasonably be questioned.

Karto, 94 Ohio St. 3d at 109. The factual allegations of the instant case are on a par with the facts established in *Karto* when Respondent's NPD is properly viewed as a mitigating factor.

The Panel noted that, in *Disciplinary Counsel v. Ault,* 110 Ohio St. 3d 207, 852 N.E.2d 727, 2006-Ohio-4247, Judge Ault was found to have a diagnosed chemical dependency. He

received a two year suspension, *completely stayed* with the condition of a two year probation and compliance with a new two year OLAP recovery contract.

Finally, the Panel cites *Disciplinary Counsel v. Simonelli*, 113 Ohio St. 3d 215, 863 N.E.2d 1039, 2007-Ohio-1535, for the proposition that a respondent's refusal to acknowledge the wrongfulness of his conduct is an appropriate basis for the imposition of a harsher sanction than would otherwise be appropriate. As the Respondent in the instant case has acknowledged the wrongful nature of much of his conduct, *Simonelli* is inapplicable.

With the exception of *Karto,* these cases are all distinguishable from this matter, as Respondent's behavior was undisputedly impacted by a mental illness, and, unlike many of these other respondents, he did not engage in criminal activity. When deciding the appropriate sanction to impose in a case of professional misconduct, this Court considers "the duties violated, respondent's mental state, the injury caused, the existence of aggravating or mitigating circumstances, and applicable precedent." *Disciplinary Counsel v. Runyan*, 108 Ohio St. 3d 43, 2006-Ohio-80, 840 N.E.2d 623; *Disciplinary Counsel v. Evans*, 89 Ohio St. 3d 497, 501, 733 N.E.2d 609, 2000-Ohio-227. The Panel erred in recommending, and the Board erred in accepting, a sanction of an eighteen month suspension, with six months stayed.

In *Evans,* 89 Ohio St. 3d at 501, the Board found respondent violated Code of Judicial Conduct Canon 7(B)(1), 7(C)(9), and 7(E)(1) for improperly using inmates to construct signs for his judicial campaign. This Court's sanction was six months with all six months stayed, and this was despite the fact respondent failed to investigate the source of the free labor used to construct campaign signs; he failed to disclose free campaign contributions; he knowingly ran inaccurate and misleading campaign ads about his opponents; and he displayed no remorse for his behavior, filing a civil defamation suit against the judges who had initiated the grievance against him—

even though he admitted at the hearing that the grievance had merit. By contrast, Respondent's challenged activities primarily consist of intemperate judicial behavior and questionable judicial decision making, none of which involved improper use of public resources, deliberate deception, or activity as morally questionable as that in *Evans*. Judge Evans was able to remain on the bench for the entirety of his six-year term, which he had just secured with the aid of the deceptive and improper election practices for which he was facing discipline. For Respondent – who will no longer be on the bench by the time this case has resolved – to face a longer suspension, which will only keep him from practicing law, is unwarranted.

In *Cleveland Bar Ass'n v. Cleary*, 93 Ohio St. 3d 191, 191-195, 754 N.E.2d 235, 2001-Ohio-1326, this Court rejected the Board's recommended sanction of a two year suspension, and instead suspended the respondent for six months. This Court found Cleary, who was no longer a judge at the time of her hearing, offered an improper sentencing *quid pro quo* based upon her moral opposition to abortion. *Id.* Specifically, she expressly stated on the record that probation was a possibility if the criminal defendant – who had asked to be released from jail to obtain an abortion – chose to instead place the baby for adoption. *Id.* When a visiting judge granted the defendant's release, Judge Cleary took extraordinary measures to vacate that order and require the defendant's continued incarceration. *Id.* By the time the Court of Appeals reversed Judge Cleary's order, thereby releasing the defendant on bond, it was too late for her to obtain an abortion in Ohio. and she instead carried the child to term, placing her up for adoption. *Id.* This Court rejected the Board's proposed sanction of a two year suspension, finding that:

> Cleary's conduct [is] comparable to that of the respondent in *Disciplinary Counsel v. Hoague* (2000), 88 Ohio St. 3d 321, 725 N.E.2d 1108. In *Hoague*, we imposed a six-month suspension, with the entire six months stayed, against a municipal court judge who "misused the authority of his judicial office in an attempt to achieve his personal goal of reprimanding persons he believed

> were guilty of reckless driving." Similarly, in this case, it is apparent from the record that Cleary misused her judicial office in an attempt to achieve her personal goal of ensuring that Kawaguchi did not obtain an abortion. Accordingly, as in *Hoague*, we find a six-month suspension from the practice of law to be the appropriate sanction. Unlike in *Hoague*, however, we decline to stay any part of Cleary's suspension in light of the board's finding that Cleary made false and deceptive statements to the panel in an attempt to exculpate herself.

Id. at 207.

This Court must look to previous cases to determine the proper sanction. Here:

- Respondent has not been accused of unlawful activity, as in *Mosley* (disbarment), *Cox* (indefinite suspension), or *Ault* (2 year suspension, completely stayed).

- He is not before this Court for a repeat offense, as in *Medley* (18 month suspension, 6 months stayed).

- While the Panel found Respondent was not always forthcoming in his testimony – a finding that Dr. Beech later noted was attributable to his NPD – the underlying allegations against Respondent did not relate to dishonest behavior that directly harmed others, as in *Bowman* (2 year suspension), *Simonelli* (12 month suspension, 6 stayed), *Cleary* (6 month suspension, unstayed), or *Evans* (6 month suspension, stayed).

- Rather, Respondent is before this Court facing allegations of intemperate judicial conduct and using poor judicial judgment, as in *Squire* (Board-recommended sanction of 2 year suspension, 12 months stayed) and *Karto* (6 month suspension). However, unlike in *Squire* and *Karto*, there is evidence that Respondent's behavior was influenced by a mental condition that should mitigate his sanction (*see* part III.).

- Like in *Cleary* and *Squire,* Respondent faces sanction for his judicial conduct, despite the fact there is no evidence suggesting he poses any risk to potential clients as an attorney. That is, a respondent's inability to effectively serve as a judge does not always mean he or she should be kept from practicing law.

For these reasons, this Court should not accept the Board's recommended sanction.

Conclusion

Respondent respectfully submits that he cooperated with these proceedings, and his cooperation should properly be considered as a mitigating factor. Further, Respondent's NPD should have been considered a mitigating factor under Section 10(B)(2)(g). The NPD was a causative factor in these violations, and Respondent is receiving treatment for that condition, which has been successful already and which will, more likely that not, allow his to return to the competent, ethical, and professional practice of law on the condition that he continues with treatment.

Respondent respectfully submits that an appropriate sanction is an 18 month suspension– with the stayed portion ranging from 12 to 18 months– with the same conditions recommended by the Board. If Respondent can produce a medical opinion at the conclusion of this proceeding that establishes he is capable of returning to the competent, ethical, and professional practice of law, then the entire suspension should be stayed, pending Respondent's compliance with continuing treatment and the other conditions recommended by the Board. If Respondent cannot produce such an opinion at the conclusion of this proceeding, then a 12 month stay with the same conditions would be appropriate. As this Court has stated, the object of a sanction is to protect the public, not punish the lawyer.

Respectfully submitted,

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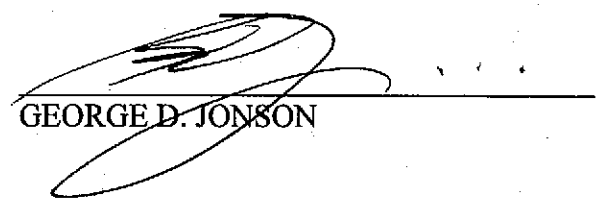
CERTIFICATE OF SERVICE

I served a copy of the foregoing by First-Class U.S. Mail, postage prepaid, upon Joseph M. Caligiuri, Office of Disciplinary Counsel, The Supreme Court of Ohio, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-5454, on this 10th day of August, 2007.



GEORGE D. JONSON

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Appendix A

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

07-1157

FILED
JUN 27 2007
CLERK OF COURT
SUPREME COURT OF OHIO

In Re:	:	
Complaint against	:	**Case No. 05-091**
Honorable George Matthew Parker **Attorney Reg. No. 0046664**	:	**Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

This matter was heard on June 27 and 28, 2006, upon the Complaint of the Disciplinary Counsel, Relator, against Judge George Matthew Parker, Attorney Registration No. 0046664. The members of the hearing panel were Judge Beth Whitmore, Attorney Francis E. Sweeney, Jr., and Theresa B. Proenza. None of the panel members resides in the appelate district from which the complaint arose or served on the probable cause panel that certified the matter to the Board of Commissioners on Grievances and Discipline of the Supreme Court. Joseph M. Caligiuri appeared as counsel for Relator. Respondent appeared and was represented by George D. Jonson. Prior to the hearing, the parties entered into stipulations which are attached hereto. The hearing was continued on June 28, 2006 pending a psychiatric assessment of Respondent. The parties agreed before the assessment that its results were admissible in the grievance proceedings.

The Panel and parties reconvened on February 19, 2007 at which time the Panel took the testimony of Dr. Douglas Beech and Respondent. Dr. Beech had submitted a written report that was admitted into evidence and testified to his diagnosis that Respondent has a narcissistic personality disorder. Respondent stipulated that his treating psychologist, Dr. Reed, had reviewed

Dr. Beech's written report and agreed with the diagnosis of narcissistic personality disorder. The Panel will further discuss Dr. Beech's report, its findings, and the implications of the diagnosis in the section on Aggravation and Mitigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Panel notes that this matter stems from alleged conduct by Respondent in a highly charged environment in a small municipality. The complaints filed against him were highly publicized at the time, and the publicity continued during the disciplinary process. The panel is aware of the claims of ill will between Respondent and city officials and the purported reasons behind such claims. We must, nonetheless, review Respondent's conduct against the standards set forth in the Judicial Canons and the Code of Professional Responsibility.

Relevant stipulated facts, rule violations, and one dismissal are set forth in the attached stipulations. The Panel adopts in full the stipulated facts and rule violations, as well as the stipulated dismissal of the alleged violation of Canon 1 as contained in Count Seven. The stipulations also include two mitigating factors: (1) that Respondent has no prior disciplinary record; and (2) that Respondent cooperated in the disciplinary proceedings. We adopt the first, but reject the second stipulated mitigating factor.

Respondent was admitted to practice in Ohio in 1990. Prior to his current position as Municipal Court Judge for the city of Mason, he practiced at both a small law firm and as a sole practitioner. He has served as the coordinator for mediation services for Butler County and as a magistrate in Butler County. In 1998, Respondent was defeated for a state appellate court seat. Respondent won his current seat in 2001 and took the bench in January of 2002. Respondent is married, has three children and has no known physical health problems.

Based on the stipulations, depositions, Respondent's answers to letters of inquiry, other evidentiary materials, and testimony adduced at the hearing, the Panel finds by clear and convincing evidence that Respondent violated:

Canon / Rule	Violation Found (By Count)
Canon 1: A judge shall uphold the integrity and independence of the judiciary	2, 3, 5
Canon 2: A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary	1, 2, 3, 4, 5, 6, 7
Canon 3(B)(3): A judge shall require order and decorum in proceedings before the judge	3
Canon 3(B)(4): A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control	1, 3, 6, 7
Canon 3(B)(7): A judge shall not initiate, receive, permit, or consider communications made to the judge outside the presence of the parties or their representatives concerning a pending or impending proceeding	2, 3
Canon 3(B)(8): A judge shall dispose of all judicial matters promptly, efficiently, and fairly and comply with guidelines set forth in the Rules of Superintendence for the Courts of Ohio	1
Canon 3(E)(1)(a): A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including where the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding	2
Canon 4: A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities	1, 3, 5, 6
DR 1-102(A)(4): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation	5
DR 1-102(A)(5): A lawyer shall not engage in conduct that is prejudicial to the administration of justice	1, 2, 3, 4, 5, 6
DR 1-102(A)(6): A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law	5

Because of the breadth of the complaints against Respondent, the Panel will address each count separately.

<u>Count One: The Gadberry Matter</u>

In summary, as to Count One, Respondent stipulated that on November 5, 2003, he ordered Naomi Gadberry out of the courtroom for raising her hand and held her in contempt for muttering under her breath as she left. Mrs. Gadberry was handcuffed, transported to the Warren County Jail and sentenced to 24 hours in jail. The video record shows Respondent's demeanor as aggressive and erratic. The video further demonstrates that Respondent's outburst was precipitated by Mrs. Gadberry raising her hand. The video also shows that prior to Mrs. Gadberry raising her hand, another person in the courtroom stood, walked through the area in front of the bench into the gallery, and then crossed behind Mrs. Gadberry to approach another person seated in the gallery. A close examination of the video reveals that Mrs. Gadberry subsequently reached into her purse, took out a piece of paper, and turned towards another person seated behind her in the gallery. That person then rose and came forward to sit next to Mrs. Gadberry. Mrs. Gadberry subsequently raised her hand without waving it around as originally asserted by Respondent, and her actions were no more distracting than the normal ebb and flow of a typical courtroom. Further, as discussed in the Aggravation and Mitigation section, Mrs. Gadberry did not utter a profanity, as initially asserted by Respondent, but simply muttered under her breath, "I can't believe this." – a fact to which Respondent later stipulated.

In a previous judicial discipline case, *Disciplinary Counsel v O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, the Supreme Court of Ohio held that "unbecoming, unprofessional, and discourteous" conduct towards those with whom a judge interacts violates Canons 1, 2, 3, 3(B)(4), and 4 as well as DR 1-102(A)(5). Id. at ¶40. In support of this principle, the Supreme Court cited an instance in which Judge O'Neill ejected the victim of an attempted murder from the courtroom for whispering to a companion. Respondent's behavior in the face of a raised hand was equally unbecoming, unprofessional, and discourteous. Moreover, his abuse of the contempt power and the outburst which accompanied it surely undermined the public perception of the fairness and integrity

of the judiciary, and thus prejudiced the administration of justice. Accordingly, based upon the evidence before us and applying the *O'Neill* standard, the Panel finds by clear and convincing evidence that Respondent violated Canons 2, 3(B)(4), 3(B)(8), 4 and DR 1-102(A)(5).[1]

Count Two: The Ambrose Matter

In summary, as to Count Two, Respondent stipulated as follows: that in the early morning hours of March 7, 2003, he was picked up at his residence by Deputy Faine and transported to the courthouse where Respondent signed a search warrant; that while en route back to Respondent's residence, Respondent asked Deputy Faine if he could accompany him to the suspect's residence; that Respondent stayed in the police car while the warrant was executed; that Respondent returned to the Warren County Jail with the deputies; that he waited in the sally port while the suspect was booked in the adjoining room; and that he signed the commitment order. Approximately five weeks later, Respondent presided over the defendant's guilty plea / sentencing despite his involvement in the events of March 7.

It is undisputed that Respondent presided over a proceeding in which he had been at the scene of the defendant's arrest. It is clear to the Panel that by requesting to accompany the deputies while they executed the warrant, and then accompanying them to the jail and signing the commitment order, Respondent blurred the lines between law enforcement and the judiciary. To an objective observer, a judge signing a warrant and then riding along to enforce the warrant would impugn the independence of the judiciary and would reflect poorly on the court's integrity and impartiality. Such events would suggest that Respondent was "in league" with the police. The

[1] As briefly discussed *supra*, with regard to Count Seven, the Relator stipulated to a dismissal of its allegation that Respondent's conduct violated Canon 1. Count Seven consists of several incidents, including the events comprising Counts One (*Gadberry*), Four (*Jane Doe*) and Six (*McConnell*). Therefore, as to Count Seven, Relator has dismissed the allegation that Respondent's conduct in the *Gadberry*, *Jane Doe* and *McConnell* matters violated Canon 1. Accordingly, the Panel will also apply the stipulated dismissal to Counts One, Four and Six as well.

Ambrose record also demonstrates that Respondent failed to disqualify himself from a matter in which his independence and impartiality could be reasonably be questioned.

In an effort to explain his failure to disqualify himself, Respondent went to great lengths at his deposition and in the hearing to refute any knowledge as to the identity of the defendant. For instance, Respondent testified that the attorneys in the matter had given him "nothing" with which he could have recalled his involvement in the case. However, the Panel does not agree. The audio transcript reveals that one of the attorneys in the matter advised Respondent that Respondent had signed the search warrant. While this revelation alone may not have been sufficient to jar Respondent's memory, this statement, coupled with other pertinent facts, leads the Panel to conclude by clear and convincing evidence that Respondent was aware that the defendant was the same Mr. Ambrose who was arrested during his "ride-along." First, Respondent, by his own admission had only signed three search warrants in his career as a judge. Second, the facts of the case were unique - Mr. Ambrose was arrested for stealing large, neon signs from a local bar. Third, the ride along took place at about 3:00 a.m. Fourth, Respondent stipulated that he saw Ambrose in cuffs at the scene, along with the contraband, and stated to the deputies "You got the signs." Fifth, only five weeks had elapsed between the arrest and the guilty plea / sentencing.

Respondent acted unprofessionally in this situation. The nature of his conduct and the injury to public confidence in the impartiality, independence, and integrity of the judiciary justify violations of Canons 1 and 2 and DR 1-102(A)(5). Respondent's failure to disqualify himself from the *Ambrose* matter when his impartiality could reasonably be questioned is a violation of Canon 3(E)(1)(a). Further, by the sheer nature of his improper "ride-along," it is clear that Respondent engaged in ex parte communication regarding an impending case. For example, when Respondent asked or stated to the deputies "you got the signs," it was more than a mere passing comment. It was a communication with police regarding evidence in a case that was destined for Respondent's

courtroom. Therefore, based on the record before us, the Panel finds by clear and convincing evidence that Respondent violated Canons 1, 2, 3(B)(7); and 3(E)(1)(a) as well as DR 1-102(A)(5).

Count Three: The Garcia and Graham Matters

In summary, as to Count Three, Respondent has stipulated that in the *Garcia* matter, he presided over a jury trial for domestic violence. During that trial, Respondent allowed the jurors to eat lunch in the jury box while the prosecution was presenting its case and witnesses were testifying. Though the parties raised no objection, Respondent should have preserved the proper decorum in the courtroom and should not have placed jurors in a situation where they were distracted by eating and would likely be perceived as not giving full attention to the evidence offered and the demeanor of witnesses. This incident, standing alone, does not rise to the level of a violation.

Respondent has also stipulated that at one point in the trial, he recessed the jury, stepped down from the bench, and told defense counsel that the prosecutor was about to offer a plea to a minor misdemeanor and that the defendant was "about ready" to take the plea. Respondent then stipulated that the prosecutor never offered a plea before or during the trial. In fact, Respondent stipulated that after he had approached defense counsel about the prosecution's "impending" plea offer, he left the courtroom and the prosecutor plainly told defense counsel that he was not willing to offer a minor misdemeanor, but that he would agree to a fourth degree misdemeanor.

Upon returning to the bench and learning that the prosecutor had not offered a minor misdemeanor, Respondent ordered counsel and the arresting officer into his chambers where he demanded to know why the plea was not going forward. Respondent stipulated to asking the prosecutor and the arresting officer if they were "listening to the same trial that [he was] listening to" and whether they knew they were "watching an acquittal." The arresting officer informed Respondent that he was unwilling to offer a minor misdemeanor. Respondent stipulated that he

[Respondent] then "became unsettled and ordered everyone out of his chambers." Respondent further stipulated that as the parties were leaving, Respondent told the arresting office to remain behind. Respondent then spoke privately with the officer about the case.

At the hearing, Respondent testified that he had no concerns about speaking to the arresting officer ex parte.[2] Further, he admitted that he attempted to influence the arresting officer to change his position and agree to a plea more amenable to Respondent. The arresting officer testified that Respondent was "short" and "agitated" while speaking in chambers and that he slammed his hands down on the table in frustration. The prosecutor testified that Respondent was "serious" and clearly "wanted an answer" as to why the plea was not going forward. Defense counsel testified that Respondent appeared "frustrated" and that he, as counsel, felt powerless to change the court's mind about how the case would be resolved.

Such behavior is biased and per se objectionable. Moreover, the record indicates that Respondent believed the prosecution would not be able to establish all of the essential elements of the crime. In Respondent's own words, they were "watching an acquittal." By aggressively trying to force a plea to a lesser charge, Respondent interfered with the defendant's right to a jury trial and an acquittal if the state failed to meet its burden of proof. While Respondent may have felt, as he testified, that the physical skirmish only merited a conviction on a minor misdemeanor, the decision was not his to make. Garcia was ultimately found not guilty as charged. Respondent's conduct was fundamentally unfair to the defendant and ignored the independence and impartiality of the judiciary.

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[2] However, the record indicates that Respondent was well aware that ex parte communication involving a case constitutes an ethical violation. Attorney Michael Davis, whose testimony the Panel finds to be credible, testified that in another matter, Respondent had refused to speak with a police officer alone because it would be "inappropriate for him to talk in chambers in private to someone on [the] case when two attorneys were present" and available.

In summary, also as to Count Three, Respondent stipulated that in the *Graham* matter he presided over a preliminary hearing in which the defendant was charged with felony theft of a credit card and misdemeanor drug possession. At that time, Graham signed a written waiver of her right to a preliminary hearing. Instead of binding Graham over to the common pleas court, Respondent rejected the signed waiver and ordered the prosecution to put on its case to show probable cause regarding the felony charged. After hearing the evidence, Respondent concluded that the state had failed to meet its burden and suggested that Graham plead to a misdemeanor theft offense. At that point, the prosecution moved to dismiss the charges for direct presentment to the grand jury, but Respondent denied the motion and ordered the prosecutor to re-file the charge as a misdemeanor. The prosecutor complied and Graham pled guilty to misdemeanor theft.

In *Graham*, Respondent once again pre-determined the outcome of a case and actively worked to achieve that result. Respondent stated on the record that he could not "in good conscience" allow the case to be bound over. Off the record Respondent expressed a desire to "help" a pregnant Graham by keeping the case in Municipal Court. Respondent was required to follow Crim.R. 5 which states "[i]f the defendant waives preliminary hearing, the judge or magistrate shall forthwith order the defendant bound over to the court of common pleas." Respondent violated the impartiality of the judiciary by advocating a position and using his authority as a judge to impose it.

It is clear to the Panel that with regard to both the *Garcia* and *Graham* matters, Respondent failed to uphold the integrity, impartiality, and independence of the judiciary and acted unprofessionally. As such, he violated Canons 1, 2, 3(B)(4), and 4. Further, he failed to require decorum in the *Garcia* proceeding and therefore violated Canon 3(B)(3). Respondent conducted ex parte communications concerning the *Garcia* matter and thus violated Canon 3(B)(7). Finally, Respondent engaged in conduct "'that would appear to an objective observer to be unjudicial and

prejudicial to the public esteem for the judicial office,'" and therefore "acted in a manner prejudicial to the administration of justice, as prohibited by DR 1-102(A)(5)." *O'Neill* at ¶27, quoting *Cleveland Bar Assn. v. Cleary*, 93 Ohio St.3d 191, 2001-Ohio-1326. Accordingly, based on the record before us, the Panel finds by clear and convincing evidence that Respondent violated Canons 1, 2, 3(B)(3), 3(B)(4), 3(B)(7) and 4 as well as DR 1-102(A)(5).

Count Four: The Jane Doe Matter

In summary, as to Count Four, Respondent stipulated that he presided over an arraignment for domestic violence and that his treatment of the alleged victim humiliated her. However, this stipulated recognition by Respondent came only after repeated attempts to justify his conduct. Moreover, as will be discussed in more detail in the section on Aggravation and Mitigation, Respondent tried to validate his behavior with bizarre and fundamentally illogical explanations at the hearing.

The alleged victim appeared and requested the charges be dismissed. Respondent denied the motion to dismiss and attempted to photograph the victim. The prosecutor then offered a plea to misdemeanor disorderly conduct. Respondent again attempted to photograph the victim, claiming he wanted to remember what he saw. When defense counsel and the victim objected, Respondent told defense counsel to make his record and ordered the victim to pull her hair back, stand in front of his bench facing the gallery, and allow his probation officer to photograph her with his cell phone.

Respondent clearly violated the judicial canons mandating courtesy, integrity, and impartiality of the court. First, Respondent displayed a bias against the defendant in open court by stating in response to defense counsel's argument: "so that means he's entitled to beat his wife? Or pushing or shoving, and leaving numerous scratches on his wife. I mean, she had a reason for calling 911[.]" Second, when the victim stated that it had never happened before, Respondent

stated "Oh yeah? Which is all the more reason for me not to let this be dismissed, because if it's never happened before, we'll make sure it never happens again." Respondent denied that he had the photo taken as evidence. He asserted it was only to memorialize "the way she looked when she presented herself in court." The Panel fails to see the distinction.

The audio transcript of this proceeding is compelling evidence of Respondent's insensitive and arrogant conduct in court. It provides the following:

> **Respondent** (to victim): Stand over here, move over here (inaudible). Now I can remember what I saw. I remember what I saw here today. Turn around, and we're gonna get some pictures of the side of your head.
> **Victim**: Do I have to? I mean –
> **Respondent**: Yes, you have to. This is not your lawyer, he's the lawyer for your husband. Turn your head.
> **Counsel**: Your honor, we're objecting to this –
> **Respondent**: I hear ya.
> **Counsel**: I don't think – I don't think the court should take an active part in selecting any evidence.
> **Respondent**: Make your record. Are you finished?

Respondent's conduct was abrasive and rude. He questioned the victim and then interrupted her response. His demeanor towards the victim bordered on interrogation.

By way of defense, Respondent introduced a written statement by Christopher Carrelli, the probation officer who took the photograph, in which Mr. Carrelli claims that Jane Doe initially agreed to the photo in an antechamber, but that a man the Panel presumes to be her husband's attorney, objected to the photo. According to Mr. Carrelli, Jane Doe then asked if she could refuse the picture and he told her it was Respondent's decision. At that point, the parties entered the courtroom where the exchange quoted above occurred. However, Mr. Carrelli's statement creates more questions concerning Respondent's motive than it does answers.

For instance, Respondent testified on numerous occasions that it was the conflict of interest inherent in defense counsel's objection to the photo and Mr. Carrelli's statement to him of the victim's assent that prompted his insistence on taking the photo in the courtroom. However, Mr.

Carrelli stated that Respondent "decided he wanted a picture of victim's face because there were marks on it" prior to Mr. Carrelli going into the antechamber and first learning of defense counsel's objections. Therefore, what transpired in the antechamber could not have been the foundation for Respondent's decision to photograph the victim. The record, including Mr. Carrelli's statement, indicates that Respondent first decided to photograph the victim and then sent Mr. Carrelli to do it. After Mr. Carrelli and the parties returned from the antechamber, Respondent heard defense counsel and the victim's objections in open court, and despite those objections, pressed ahead. The Panel also notes that the *Jane Doe* matter is the only instance where Respondent has taken an alleged victim's photograph (whether of domestic violence or other crime) and that Respondent's asserted justification – that he wanted to remember what he saw – rings hollow. Regardless of alleged consent given in an antechamber out of Respondent's earshot, the victim clearly questioned and objected to being photographed on the record and Respondent still ordered her to comply.

"[D]iscourtesy *** on the part of a judge is particularly egregious because it undermines respect for the law in a most insidious manner. *** [A] litigant who is subjected to rude and insensitive treatment is left without recourse. Whether the litigant wins or loses, the end result is an irreparable loss of respect for the system that tolerates such behavior." (Internal citations omitted). *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 213, 2004-Ohio-4704. Accordingly, the Panel finds by clear and convincing evidence that, with regard to Count Four, Respondent violated Canon 2 and DR 1-102(A)(5).[3]

Count Five: The 911 Matter

In summary, as to Count Five, Respondent has stipulated that on May 14, 2003, a visiting judge presided over a pretrial in the matter of *State v. Jason Michel*. However, Respondent was present in the building. Despite the fact that a conveyance order had been entered, the defendant

[3] See FN 2, *supra*.

was not transported and the visiting judge instructed counsel to consult with Respondent as to how to proceed. Respondent has stipulated that while in chambers and in the presence of counsel, Respondent dialed 911 and requested that a police officer report to his chambers. When the officer arrived, Respondent ordered him to transport the defendant and the officer declined to do so. In response, Respondent took the bench, ordered the defendant released on his own recognizance, and continued the case. These stipulations make it clear that Respondent wanted the officer to report to his chambers for the sole purpose of obtaining the transport of a prisoner.

On the following Saturday, a newspaper article appeared concerning Respondent's allegedly improper use of 911. That same morning Respondent contacted defense counsel at home and asked him to write a letter summarizing what happened. Because the incident happened in Respondent's chambers, there is no official record of the events.

In his Answer to Relator's First Letter of Inquiry (the "First Answer"), Respondent claimed that the attorneys entered his chambers arguing and exchanging profanities, and that the situation appeared to be escalating. Specifically, Respondent alleged that Attorney Davis was screaming "that he always gets treated like 'fucking shit' when it comes to 'this fucking court' and that he had had 'a fucking 'nough of it.'" Respondent also alleged that Attorney Graber responded in kind to Attorney Davis by stating "Fuck me? Fuck you." In Respondent's Answer to Relator's Second Letter of Inquiry (the "Second Answer") Respondent alleged that Attorney Davis confronted him near his chambers and stated "every fucking time I come to this fucking court I get fucked."

Contrary to his later stipulation that he called for an officer and asked him to transport the missing prisoner, Respondent further alleged in the First and Second Answers that he felt the only way to "end the fray" between counsel was to have a police officer come to chambers to "*explain*" why the defendant was not transported.

During the investigation Respondent proffered numerous additional explanations for his calling 911. Respondent claimed in the First and Second Answers that he asked Attorney Graber how to contact a Mason police officer, and that Graber responded with "words to the effect" of "dial 911." Respondent claimed that Attorney Graber's directive prompted him to call 911. Respondent reiterated these explanations during his hearing testimony but also added that he dialed 911 to make a record of what was transpiring in chambers.

Both Attorney Graber and Attorney Davis have refuted these contentions. Both attorneys claim that while their debate was animated, profanities involving the "f" word were not used and that a physical altercation was in no way imminent. Both attorneys testified that Respondent called 911 of his own accord and for the apparent sole purpose of getting an officer to report to his chambers. Attorney Graber testified that Respondent inquired as to the best way to contact the police after hours and that neither attorney responded. Attorney Graber testified that Respondent was concerned that nobody would answer the phone if he called the station, and then stated that he knew how to contact an officer. Attorney Graber testified that Respondent then dialed 911 on his speaker phone.

Due to the lack of a record and given Respondent's inconsistent explanations of what actually occurred in Respondent's chambers, the issue becomes one of credibility between Respondent's version of events and the testimony of both attorneys present at the time of the call. Under the totality of the circumstances, and for the reasons discussed in detail in the Aggravation and Mitigation Section, the Panel finds that Respondent is not credible. Respondent's testimony as to virtually all allegations has shifted constantly throughout these proceedings with Respondent retracting his own testimony and stipulations on multiple occasions. Where he has not retracted or contradicted, he has engaged in revisionist explanations that have no foundation in fact for the purpose of protecting his own self image to the detriment of others. Though we acknowledge that

attorney Graber and Davis were less than calm professionals at the time of the meeting in chambers, we credit their version of events regarding the 911 call.

We further credit Attorney Davis' recollection of events concerning the second issue in this matter: Respondent's attempts to coerce Attorney Davis into substantiating Respondent's story that Respondent called 911 at Attorney Graber's suggestion. Here the evidence on the record is more subtle, but nonetheless compelling.

According to Attorney Davis, Respondent phoned him and wanted Davis to tell him what happened regarding the 911 call. Attorney Davis testified that he told Respondent what he believed occurred. Attorney Davis testified that at some point he told Respondent that he [Respondent] had called 911, to which Respondent stated he was only doing what Attorney Graber had told him to do. At his deposition, attorney Davis characterized Respondent's statement as "not accurate."

During the phone call Respondent asked Attorney Davis to write down what had happened in chambers. Attorney Davis testified that Respondent told him that Attorney Graber had suggested Respondent call 911 and that Attorney Graber had said "fuck you" to Attorney Davis. Attorney Davis testified that Attorney Graber had not used any variation of the word "fuck." Attorney Davis also testified that his [Davis'] recollection as to the events differed from Respondent's.

In his deposition, Respondent conceded that he asked Attorney Davis to write a statement of "what happened" including an acknowledgment that Attorney Graber told Respondent to call 911, because "that's what happened."

> **Q:** And when – when Attorney Davis agreed to write the response, what did you tell him to include in the response?
> **A:** Whatever happened, write everything down, soup to nuts.
> **Q:** Did you ever indicate what he should put in that response?
> **A:** No. I wanted him to write down everything that happened.
> Deposition Tr., 81
> ***
> **Q:** Did you ever suggest to him what he should write in the letter?
> **A:** Yeah. I told him, write down what happened.

> **Q:** Did you ever suggest anything else other than simply saying, write down what happened?
> **A:** Probably.
> Deposition Tr., 83
> ***
> **A:** I wanted his story to be able to confirm this is what was happening, his client was refused to be brought down, that Matt Graber said what he said [about dialing 911] *** I wanted him to write it down *** so that what happened would be memorialized."
> ***
> ***Q:*** Did you ever tell Mike Davis to write down that it was Matt Graber's idea to call 911?
> ***A:*** Yeah, because it was. It was Mike – it was Matt Graber's idea to dial 911.
> **Q:** So why did you tell Mike Davis to write that down?
> **A:** Because I wanted him to write down what happened. And I think I asked him the question *** wasn't it Graber's idea to [call] 911."
> Deposition Tr., 89-91

The Panel notes that there is a distinct difference between a judge telling an attorney who practices before him to simply write down what happened, without insinuations or promptings, and telling an attorney to write down "what happened" - including the judge's version of events - because "that's what happened." Moreover, even had the phone call been limited to a simple request that Davis document the incident (without any discussion of events) it would have smelled of impropriety and implied coercion. The Panel finds that the above quoted testimony establishes that Respondent attempted to coerce Attorney Davis into supporting Respondent's false contention that Attorney Graber directed him to dial 911.

Further, Respondent's testimony that he told Attorney Davis to write down that it was Attorney Graber's idea to call 911 because that is what happened, is followed immediately by Respondent's statement that he "thought" he asked Attorney Davis whether it was Attorney Graber's idea to call 911. Such testimony illustrates Respondent's evasive and revisionist testimony throughout the proceedings. Respondent repeatedly used "I believe" or "I think" as mechanisms to avoid a direct answer or to deny reality.

Further, the Panel notes that Respondent did not also ask Attorney Graber for a written statement of what happened in chambers. We consider that omission significant as it indicates that Respondent's motive was self-serving, that is, he wanted to lock in Davis' testimony in a way that favored himself to the detriment of Graber. Moreover, even if the Panel was to accept Respondent's incredible contention that Attorney Graber "told him" to call 911, it does not excuse the fact that Respondent dialed 911 for a non-emergency. Simply put, Respondent is not absolved from responsibility for abusing 911 simply because a third party suggested that he do so.

The Panel finds that Respondent's use of 911 for a non-emergency was unprofessional, unjudicial and wholly improper. Moreover, we find by clear and convincing evidence that Respondent's efforts to rewrite history magnified what was initially a lapse in judgment (the improper use of 911) into a concealment involving dishonesty and deceit (Respondent's initial answers and attempt to coerce Attorney Davis). Respondent attempted to deflect blame from himself to a fellow practitioner. Respondent used his position as a judge to pressure Attorney Davis to corroborate his story. And, as previously noted, Respondent misrepresented the facts and conjured new theories and justifications for his behavior, all in an attempt to avoid responsibility. Respondent's conduct has been unprofessional, unjudicial, lacking in integrity, improper and dishonest. Accordingly, based on the record before us, the Panel finds by clear and convincing evidence that Respondent violated Canons 1, 2, and 4 and DR 1-102(A)(4); (A)(5); and (A)(6). The Panel found no violation of Canon 3(B)(2) in this Count.

Count Six: The McConnell Matter

In summary, as to Count Six, Respondent has stipulated that he presided over the probation violation of Katherine McConnell. McConnell pled no contest and Respondent asked for, and received, the name, address and telephone number of McConnell's drug dealer. Respondent then, from the bench, dialed the drug dealer's number on speaker phone. Respondent spoke with

McConnell's drug dealer, warned him that he would get caught and told him to stop selling drugs. Respondent then apologized to the drug dealer if he had made a mistake and hung up. Respondent then warned McConnell that she had best stay away from the drug dealer because he was going to get caught and advised her to not sell or give drugs to anybody else. Respondent told McConnell to go home and continue her probation. Respondent stipulated that McConnell left the courtroom visibly upset.

Respondent has claimed that he called the drug dealer in an effort to impress upon the defendant the gravity of the situation. Respondent, in open court, spoke in relevant part:

> **Respondent:** Bill would you put that on speaker phone and dial *** Hi, is this Chad?"
> * * *
> **Respondent:** Chad, this is somebody who understands you're selling drugs to people. Chad, they're going to get you buddy. Stop selling drugs if you are. If not, sorry about the call. Have a good day.
> * * *
> **Respondent:** If somebody like me can think of that, imagine what the other people in the government will do. They'll find him. You don't need to be around him. He'd better not be selling drugs or giving drugs to anybody else. Continue your probation. Go home. Have a good day.

The Panel is unsure how Respondent's theatrics could reasonably achieve the result of impressing upon McConnell the gravity of her situation. No relevant purpose was served by Respondent's conduct. Respondent's bizarre behavior caused whispering and commotion in the courtroom – conduct far more distracting than the conduct for which Respondent held Mrs. Gadberry in contempt and imprisoned her for 24 hours. As did his conduct in the *Jane Doe* matter, Respondent's courtroom theatrics humiliated the defendant and she left the courtroom visibly upset.

Respondent's conduct in this matter undermined the integrity of the bench and was clearly "unbecoming, unprofessional, and discourteous" as detailed in *O'Neill*, supra. Accordingly, based

on the record before us, the Panel finds by clear and convincing evidence that Respondent violated Canons 2, 3(B)(4), and 4, as well as DR 1-102(A)(5).[4]

Count Seven: Various Matters

Count Seven alleges ten separate instances of Respondent treating participants in his court discourteously. Count Seven incorporates the *Gadberry*, *Jane Doe*, and *McConnell* matters detailed above. Respondent has stipulated that his conduct as alleged in Count Seven violated Canons 2 and 3(B)(4) and Relator has dismissed its allegation that said conduct violated Canon 1. Based on the record, the Panel accepts the stipulations. Accordingly, we find by clear and convincing evidence that Respondent violated Canons 2 and 3(B)(4) as alleged in the various matters set forth in Count Seven. We will briefly address some of the Count Seven incidents to illustrate Respondent's bizarre behavior and often incomprehensible lectures during court proceedings. We also discuss Respondent's behavior in greater detail in our treatment of applicable mitigating and aggravating factors.

In *Keene* Respondent was sentencing the spouse of a domestic violence victim. Respondent asked the victim whether she wished to come forward to make a statement saying that such a statement was optional, that he only wanted to let her know she had the right to speak at the sentencing. The victim declined to make a statement. However, Respondent ignored her decision not to make a statement, stated that he needed her help, and that he had the ability to incarcerate her husband for six months and fine him $1500.00. The victim came forward reluctantly. Respondent then told her he had to punish her husband and that he would rely heavily on a victim's position [regarding the sentence]. Before the victim could say anything, Respondent asked her if she forgave her husband. Respondent has stipulated that the victim was appalled at the question and afraid to answer for fear of upsetting her husband. The victim then stated her husband was "doing

[4] See FN 2, *supra*.

all the right things." Respondent continued and demanded a direct answer to his question: "Do you forgive him?" Feeling pressured by Respondent she told him that "she was working on forgiving" him. Respondent then sentenced the defendant to one year community control and a $100 "token" fine. Respondent stipulated that the victim left the courtroom visibly distraught.

In *Freeze* the defendant was charged with using his cane to break a vehicle headlight. Respondent found defendant to be an alcoholic and stated on the record that the defendant was "snake bit mean." He also referred to the defendant as a "frequent flier." Further, Respondent referred to the police work in the matter as "crack law enforcement." Finally, while defendant was on the witness stand, Respondent asked to see defendant's cane and then ordered him to return to his seat. The audio transcript provides the following:

> **Respondent:** Let me see your cane. You can have a seat with your lawyer. You can have a seat with your lawyer. Just have a seat. Go ahead.
> **Defense Counsel:** Is the court introducing that into evidence.
> **Respondent:** I might.
> **Defense Attorney:** May the client have his cane to get to the table?
> **Respondent:** We'll see.

Ultimately, Respondent did not return Mr. Freeze's cane and defense counsel assisted Mr. Freeze back to his seat. The Panel discussed Respondent's numerous reasons for taking Mr. Freeze's cane and ordering him to step down from the witness stand in the section of Aggravation and Mitigation. Briefly, however, while Respondent has proffered that he was attempting to gauge Mr. Freeze's credibility regarding the necessity of the cane, the Panel does not see how Mr. Freeze's need for a cane to walk is relevant to whether he used that cane to break a bar patron's headlight. Respondent's conduct is illustrative of his proclivity to be discourteous and disrespectful to those who appear before him.

In the *Spruance* matter, Respondent ordered a defendant charged with shoplifting to take a Kleenex and wipe off her "sticky fingers." Respondent said the following: "you got some

proverbial sticky fingers, don't you? So take that Kleenex there right now. Set your papers down. Wipe your hands off. Today is the first day – this is a little hypnotism here – today is the first day of the rest of your life you will no longer take what is not yours. Do you understand me?" (The Board concluded the *Spruance* matter did not violate the Code of Judicial Conduct).

In reference to three other theft offenders, Respondent called them "spoiled brats" and told them to get their heads out of the sand. As a condition to imposing community control, Respondent appeared to require each offender to place his favorite item of personal property (a guitar, some compact discs) with the Court as security for good behavior.

As part of Count Seven, Respondent stipulated to a violation involving his treatment of an assistant prosecutor during a discussion of substantial compliance issues in regard to field testing for substance abuse in a DUI matter. The assistant prosecutor sought clarification of the Respondent's ruling that the officer had not substantially complied with the requirements for the horizontal gaze nystagmus test. Respondent answered: "[I]f I had to explain it to you, I doubt you'd understand it. The record speaks for itself on that matter." The assistant prosecutor was embarrassed and humiliated. Respondent's finding was reversed on appeal.

On numerous separate occasions, Respondent ordered OVI defendants to admit in open court that they were alcoholics. Respondent stipulated that he ordered OVI offenders to take "imaginary" car keys out of their pockets and throw them into the jury box. One OVI offender was told in open court to look into Respondent's computer screen and to acknowledge she was an alcoholic. Further, on multiple occasions, Respondent ordered OVI defendants who entered guilty pleas to pretend that they were putting another person in a headlock, and when they did so, informed them that they were wrestling the alcohol demon.

In one case, Respondent asked a Xavier University student charged with underage consumption whether underage drinking was something that the "Jesuits teach good Catholic

boys?" When the defendant stated he was not Catholic, Respondent stated "what is a Jewish kid doing going to Xavier?"

Respondent's behavior in the above incidents can only be described as bizarre, incomprehensible, and bordering on the mean-spirited. The above incidents are just a sampling of Respondent's questionable procedure and in-court statements. Based on the foregoing and a complete review of the record, the Panel finds by clear and convincing evidence that Respondent violated Canons 2 and 3(B)(4) with regard to the instances alleged in Count Seven.

AGGRAVATION AND MITIGATION

Mitigating Factors

The parties have stipulated to the following mitigating factors: 1) Respondent has no prior disciplinary record; and 2) Respondent has cooperated in the disciplinary proceedings. As previously noted, the Panel rejects the stipulation that Respondent cooperated in the disciplinary process.

Respondent testified that he first sought psychololological counsel in March of 2006, the primary reason being that "people who knew me well were concerned that I wasn't reacting well to the way that I was being portrayed publically." Respondent links his effort to seek counseling to two additional factors. First he was aware of a program provided by OLAP for mental health issues. Second he became aware of a disciplinary proceeding about a Columbus judge that resulted in a forty page decision. The Panel notes further that, while the record contains information about Respondent entering into a contract with OLAP, we are confident that the record as a whole does not contain evidence that Respondent has any past or present alcohol or substance abuse problems.

Respondent also submitted thirteen letters of character. The Panel notes that Respondent was prepared to offer the testimony of several character witnesses, but given time constraints and

for the convenience of the Panel he did not do so. We have reviewed each letter and find that the authors speak favorably about their appearances in Respondent's court, attest to his administrative and management skills (particularly in the area of computerization), and applaud his commitment to family and community service. It is apparent that Respondent has been a positive role model to others, both professionally and personally. We accept these testimonials in mitigation and note that this evidence has influenced our decision and supports our conclusion that Respondent is capable of moderating his conduct.

That said, of prime import to any discussion of mitigation is Dr. Beech's psychiatric assessment of Respondent as contained in his written report and testimony and his diagnosis that Respondent is afflicted with narcissistic personality disorder ("NPD"). Dr. Beech's medical opinion is that that Respondent's NPD *in part* caused the Respondent's misconduct, that NPD is a chronic personality disorder, that persons afflicted with NPD rarely have insight into their condition or an understanding of the need to change, that Respondent's condition does not meet the statutory criteria for "mental illness," that Respondent's condition presents "vulnerabilities" to the consistent practice of law in a safe and responsible manner, that NPD is not readily amenable to treatment, and that he [Dr. Beech] cannot predict to a reasonable degree of medical certainty *when* Respondent will be able to consistently return to the competent, ethical, and professional practice of law under specified conditions.[5] Dr. Beech also opined that Respondent's condition *could* improve with treatment and that he is capable of making constructive behavioral modifications (emphasis added).

Dr. Beech summarizes the general features of NPD on page four of his written report. He writes:

[5] Dr. Beech used the phrase "safe and responsible" in his written report. However, on cross examination, Dr. Beech affirmatively responded to the question: "And you believe with appropriate treatment that he *will be able to return* [emphasis added] to the competent, ethical and professional practice." We view the two phrases as synonymous for the purpose of our analysis in this matter.

> "In order to understand the diagnosis of personality disorder, it is helpful to define personality. Personality may be thought of as a set of personality traits: characteristic patterns of inner experience and outward behaviour that are established by late adolescence and early adulthood, and that are relatively stable over time. A group of personality traits that consistently presents functional impairment or distress may be referred to as a personality disorder."

Dr. Beech further describes the features of NPD on page five as follows:

> "A pervasive pattern of grandiosity (in fantasy or behavior), need for admiration, and lack of empathy, beginning by early adulthood and present in a variety of contexts, as indicated by five (or more) of the following: [1] has a grandiose sense of self-importance (e.g., exaggerates achievements and talents, expects to be recognized as superior without commensurate achievements); [2] is preoccupied with fantasies of unlimited success, power, brilliance, beauty, or ideal love; [3] believes that he or she is 'special' and unique and can only be understood by, or should associate with, other special or high-status people (or institutions); [4] requires excessive admiration; [5] has a sense of entitlement, i.e., unreasonable expectations of especially favorable treatment or automatic compliance with his or her expectations; [6] is interpersonally exploitative, i.e., takes advantage of others to achieve his or her own ends; [7] lacks empathy: is unwilling to recognize or identify with the feelings and needs of others; [8] is often envious of others or believes that others are envious of him or her; [9] shows arrogant, haughty behaviors or attitudes."

Dr. Beech quotes as follows from a psychiatric text:

> "Because persons with narcissistic personality disorder have grandiose self-esteem, they are vulnerable to intense reactions when their self-image is damaged. They respond with strong feelings of hurt or anger to even small slights, rejections, defeats, or criticisms. As a result, persons with narcissistic personality disorder usually go to great lengths to avoid exposure to such experience and, when that fails, react by becoming devaluative or rageful."

Dr. Beech testified that he is unable to give any any statistics on the success rate for treatment of NPD because "the vast majority of people who have this condition don't go into treatment and don't think they have any need for treatment." He further states: "if a person is willing, that says that they are at the end that's probably modifiable, because it says there's an opening there of looking at one's self."

Before progressing with our analysis of Respondent's NPD as a mitigating factor, the Panel must first address the issue of what diagnoses actually constitute a "mental disability" under Section 10(B)(2)(g) of the Board's Rules and Regulations Governing Procedure. The rule does not provide a definition of "mental disability."

However, the Ohio Supreme Court clarified this issue in *Columbus Bar Ass'n. v. Winkfield*, 107 Ohio St.3d 360, 2006-Ohio-6. In *Winkfield*, the respondent submitted to a psychiatric evaluation and was diagnosed with a "long-standing personality disorder" that was "very debilitating." *Winkfield* at ¶48. The respondent had reported a 15 year history of depression, apparently untouched by various antidepressants, and had at least one hospitalization, due, in part, to his personality disorder. Respondent was also diagnosed with attention-deficit disorder. Experts also agreed that respondent's difficulties stemmed from his traumatic experiences beginning when he was two years old. Respondent had lived in the homes of numerous relatives before being shuttled through eleven different foster homes. Experts described his childhood and adolescence as marked by "chaos, insecurity, helplessness, feelings of abandonment, mistrust, betrayal and the absence of a practical blueprint for decision making." Id. at ¶ 51. The Supreme Court indefinitely suspended Winkfield, and held that he had presented proof of a diagnosed mental disability, to wit, his debilitating personality disorder and its causal connection to the misconduct. Therefore, the Panel concludes that the Supreme Court envisioned a definition of "mental disability" with regard to Section 10(B)(2)(g) which encompassed personality disorders that are severe and debilitating.

We note, however, that *Winkfield* made reference to *Columbus Bar Assn. v. Port*, 102 Ohio St.3d 395, 2004-Ohio-3204, a case in which the Supreme Court accepted the Board's recommendation for indefinite suspension, rather than disbarment, in the absence of any expert medical testimony. The Supreme Court inferred from lay testimony that the respondent might be able to establish qualifications for reinstatement at some time in the future. We do not view *Port* as

generally dispensing with the requirements set out in Section 10(B)(2)(g)(i) through (iv). Accordingly, we conclude that a personality disorder may be a "mental disability" under Section 10(B)(2)(g) if the evidence and the diagnosis indicate it to be sufficiently debilitating. And further, a personality disorder may then be considered a mitigating factor if the elements of Section 10(B)(2)(g) are shown.

We find, upon the facts and evidence in the record before us, that Respondent's NPD qualifies as a mental disability as described in *Winkfield*. Respondent's condition is intractable, and chronic. The magnitude and frequency of Respondent's misconduct illustrate that the condition is very debilitating. Dr. Beech's written report and expert testimony demonstrate that Respondent's disorder will continue to present Respondent with ongoing vulnerabilities in his practice. Further, Dr. Beech was unable to testify that Respondent could currently return to the competent, ethical and professional practice. Moreover, Dr. Beech was unable to opine to the requisite degree of medical certainty when Respondent could return to the competent, ethical and professional practice of law. Respondent's treating psychotherapist, Dr. Reed, reviewed Dr. Beech's written report and concurred in the diagnosis.

While the Panel appreciates that Respondent's behavior is in part controlled by his NPD, Section 10(B)(2)(g) states that a mental disability may only be considered in favor of recommending a less severe sanction where there has been: (1) a diagnosis of a mental disability by a qualified health care professional; (2) a determination that the mental disability contributed to the misconduct; (3) a sustained period of successful treatment; and (4) a prognosis from a qualified health care professional that the attorney can return to the competent, ethical, professional practice under specified conditions.

While the Panel finds that that there has been a diagnosis of a mental disability which in part contributed to Respondent's misconduct, we cannot conclude that the third and fourth elements

have been established. With regard to these elements, it is clear to the Panel that Respondent has not yet completed a sustained period of successful treatment. Nor is there a prognosis for a time certain within which Respondent will be able to consistently return to the competent, ethical, and professional practice of law under specified conditions.

However, the Panel did consider Respondent's testimony concerning his ongoing treatment and its evident initial effect on his conduct as proof of Respondent's willingness to seek out and maintain on-going treatment for a chronic condition which substantially impairs his judgment and behavior.

To this end, we are mindful of the Supreme Court's willingness in *Port* to infer from lay testimony that the respondent might in the future be able to establish his qualifications to practice law. We are willing to infer, based upon Dr. Beech's testimony and our own observations of Respondent, that it is not impossible for Respondent to establish in the future that he has sustained a period of successful treatment in a way that will enable him to return to the competent, ethical and professional practice of law under specified conditions. As discussed infra, we are willing to give him that chance.

In making our decision regarding mitigation and an appropriate sanction we accept Dr. Beech's testimony that NPD is treatable and that relatively minor behavioral modifications (such as taking time to think before acting and questioning one's subjective perception of what is happening) can in some instances have a dramatic effect on conduct. However, we note that Respondent's testimony on the final day of hearing showed elements of improvement as well as evidence of obvious relapse into non functional and self-serving distortions of thought.

Beginning on the third day of the hearing, the Panel recognized a noticeable change in Respondent's demeanor and attitude. Respondent appeared less animated, more contrite, and made a concerted effort to answer the questions posed in a timely and direct fashion. Respondent testified

that he had been in psychological counseling since March of 2006 and that he intended to continue with treatment. Dr. Beech testified that Respondent had originally treated with his therapist weekly and then reduced his sessions to every other week. It is clear that Respondent has benefited from this therapy undertaken after the grievance was filed.

However, throughout the hearing he reverted to dysfunctional behavior when faced with difficult or stressful questions. Since the professional life of a lawyer, on and off the bench, inherently involves stressful circumstances, we cannot ignore Respondent's demonstrated reaction to stress. For instance, when questioned regarding the propriety of photographing a domestic violence victim with a camera phone, Respondent, in spite of his therapy, stubbornly refused to admit any wrongdoing. Instead, he reverted to his past behavior of hedging, excuses and evasiveness.

Initially, Respondent admitted that it was not his routine practice to photograph domestic violence victims who appeared in his courtroom. Respondent then explained that he ordered the victim's photo taken because the husband's attorney seemed to be attempting to represent the wife as well. When asked if the attorney's conflict of interest prompted the photo, Respondent backpedaled, stating that the victim presented with a scratch on her face. When pressed for an explanation why the case was significantly different from other domestic cases in which photos were not taken, Respondent stated that it was the first time somebody had presented with a noticeable injury. However, Respondent then testified that he had not taken photos of other domestic violence victims with noticeable injuries who appeared before him subsequent to the *Jane Doe* matter. Ultimately, Respondent never actually answered the question posed to him: why, in this particular domestic violence case, did he require the victim to be photographed?

Indicative of Respondent's inability to let go of the matter, Respondent continued to testify even after Relator and the Panel had stopped questioning him. Respondent seemingly attempted to

justify his failure to photograph all domestic violence victims who presented with visible injury by asserting that the courtroom had security cameras that essentially take pictures of everybody who appears before him. However, this answer poses the question that if security cameras photographed all people in the courtroom, then why was the security camera's footage insufficient in Jane Doe's case? Why did Respondent take the extra step of insisting upon taking the victim's picture with a camera phone and why was the *Jane Doe* matter the sole domestic violence case in which Respondent has so ordered? The preceding are questions to which the Panel never received an honest or adequate answer.

Based on the foregoing, the Panel concludes that while Respondent has benefited from psychological counseling, he has not yet demonstrated a sustained period of successful treatment. Therefore, the third element of Section 10(B)(2)(g) has not been established.

With regard to the fourth element, the Panel finds that there has been no definitive professional prognosis that Respondent is presently able to return to the competent, ethical, and professional practice of law under specified conditions. On this point, Dr. Beech can only say that Respondent could modify his behavior. Respondent's NPD is a chronic condition and Dr. Beech testified that NPD is not readily amenable to treatment. Accordingly, the Panel concludes that the fourth element of Section 10(B)(2)(g) has not yet been satisfied.

In conclusion, because two of the four Section 10(B)(2)(g) elements were not met in the present matter, the Panel concludes that Respondent's NPD is not a mitigating factor.

Aggravating Factors

The parties did not stipulate to any aggravating factors. However, based upon the evidence before us, the Panel finds the following aggravating factors exist: 1) dishonest or selfish motive; 2) a pattern of misconduct; 3) multiple offenses; 4) lack of cooperation in the disciplinary process; 5)

submission of false evidence, false statements, or other deceptive practices during the disciplinary process; and 6) refusal to acknowledge wrongful nature of conduct.

Respondent's conduct clearly demonstrates multiple offenses and a pattern of misconduct. Discussion in two specific areas will demonstrate the other enumerated aggravating factors.

Respondent's Misrepresentations and Inconsistencies

After a close and careful inspection of the record, the Panel can only conclude that Respondent intentionally misrepresented facts and was untruthful in his testimony. Regarding the *Gadberry* matter, Respondent's testimony and stipulations differed significantly from his Answer to Relator's First Letter of Inquiry (the "First Answer"). According to Respondent's First Answer, Mrs. Gadberry persisted in waving her hand *after* being instructed not to do so by Respondent, and at that point, Respondent told her to leave the courtroom. The courtroom video, which was available at the time Respondent submitted the First Answer, indicates otherwise. Respondent never cautioned Mrs. Gadberry not to waive her hand. The video shows that Mrs. Gadberry turned around and held out a piece of paper to a person behind her. Respondent said nothing at that time.

Later while facing forward, Mrs. Gadberry raised her hand, Respondent's outburst occurred, and he ordered her to leave the court. Respondent has also stated in his First Answer that Mrs. Gadberry uttered a profanity ("This is fucking bullshit") as she left the court room escorted by the bailiff. This contention is also untrue. The video shows that Mrs. Gadberry was complying with Respondent's directive to leave and was actually pushing open the door to the courtroom when Respondent held her in contempt. The sound track in the video does not provide any evidence of the asserted profanity. Further, Respondent has stipulated that Mrs. Gadberry did not use profanity, but in fact simply muttered "I can't believe this." At the hearing, Respondent refused to acknowledge the inconsistency and insisted that he remembered Mrs. Gadberry saying something other than "I can't believe this," even though he had already stipulated that she did not.

With regard to the *Ambrose* matter, Respondent's deposition testimony and stipulations once again conflicted with the First Answer. In the First Answer, Respondent stated that Officer Faine told him that the warrant was pressing, would not take long to serve, and then requested that they serve it prior to taking Respondent back to his home. According to the First Answer, Respondent assented to Officer Faine's request. Directly contradicting himself, Respondent then stipulated that he, in fact, asked Officer Faine if he could accompany law enforcement to the scene. Further, in his deposition, Respondent contradicted the First Answer by testifying that Officer Faine actually asked him if he wished to be dropped off at home, and that Respondent declined. At the hearing, Respondent acknowledged that he had stipulated that he requested to ride along, but then he insisted that he did not "believe that's the way the communication occurred."

Additionally, in the First Answer, Respondent stated that while the defendant was booked at the Warren County Jail, he stayed in the car. However, Respondent stipulated that he volunteered to ride to the jail and set bail. He further stipulated that he was in the sally port while the defendant was booked and that he signed the commitment order which appears in the record. Finally, Respondent stipulated, and confirmed at the hearing, that he saw the defendant, Ambrose, when he was being placed in the police cruiser. Yet in his deposition, Respondent stated that he did not see the person in the backseat. Respondent then testified that he did not remember seeing Ambrose when he signed the commitment order, which contradicted his deposition testimony wherein he stated that he saw Ambrose when they arrived at the jail.

With regard to the *Garcia* matter, Respondent stated the following in the First Answer: (1) that a Crim.R. 29 motion was made; (2) that he took counsel into chambers to discuss it; and (3) counsel then agreed that a plea to a lesser charge was an appropriate resolution to the case. This assertion is completely false. The audio record confirms that a Crim.R. 29 motion was never made.

Instead, as Respondent later stipulated, he recessed the jury, stepped down from the bench, approached defense counsel, and stated that the prosecutor "is about ready to offer you a minor misdemeanor to disorderly conduct and you are about ready to take it, I think." Contrary to the First Answer, there was no initial meeting in chambers where counsel agreed to a plea. Respondent attempted to explain the inconsistency between the audio record and the First Answer by testifying at his deposition and the hearing that he stepped down from the bench during a "natural break" and that he acted on a "non-verbal cue" from the prosecutor to initiate the plea discussion. However, the testimony of the arresting officer, Officer Herlinger, prosecutor Graber and defense counsel Garvin all refute this notion.

All three testified that Respondent recessed, directed Graber to offer the plea, and resumed the trial when Graber refused. The audio transcript corroborates that testimony. According to the audio transcript, Respondent took a ten minute recess and one minute later told Garvin that Graber was going to offer a plea. Graber immediately stated that he would not agree to a plea. Although not clear from the audio transcript, Respondent apparently resumed the trial, because one hour later he then took another recess, at which time he directed counsel and Officer Herlinger into chambers. The stipulations, Respondent's testimony, the testimony of others involved in the matter, and the audio record clearly demonstrate that Respondent lied in the First Answer and misrepresented events in his testimony.

In the *Jane Doe* matter, Respondent's Answer to Relator's second letter of inquiry (the "Second Answer") originally stated that the domestic violence victim agreed to have her picture taken. This claim is patently untrue. Nowhere in the record does the victim ever assent to having her picture taken. In fact, she openly objected and was told by Respondent that she "had to" allow the photograph. In his deposition, Respondent attempted to back away from his statement by claiming that he did not remember whether she assented to the photograph or not. However, later in

his deposition, Respondent reiterated that she agreed to have her photo taken. In a similar vein as the non-verbal cue which he claimed he acted upon in *Garcia*, Respondent stated, effectively, that he knew the victim was assenting just by looking at her, despite her previous objections and lack of actual permission. At the hearing he stated "In my mind she had agreed because *** how do you agree when a judge is saying your picture is going to be taken[?] Your picture is going to be taken, isn't it?" Respondent's assertion that the victim agreed to have her picture taken conflicts with the audio record. Respondent's wavering testimony and his asserted belief that being ordered by a judge is the same as being in agreement only solidifies the Panel's conclusion that Respondent was deceptive and misrepresented events.

In one of the Count Seven allegations, the *Freeze* matter, the defendant was charged with criminal damaging. The prosecution alleged that Freeze broke the headlight of a truck with his cane. Mr. Freeze maintained that he did not strike the headlight. Respondent stated in the First Answer that he took Freeze's cane and ordered him to walk without it in order to gauge Freeze's credibility about the necessity of the cane, an issue the Panel finds to be of questionable relevance. However, in his deposition, Respondent claimed he took away the cane because he was concerned that Freeze might start swinging it at somebody on his way back from the witness stand. Respondent testified that he had safety concerns for the gallery. Immediately thereafter, Respondent testified that he took the cane because it appeared to have a bow in it. Then, Respondent reiterated that safety was his main concern. Additionally, in the First Answer, Respondent used the term "frequent flyer" to describe Freeze "because he had been in the courtroom during the explanation and demonstration of the protocol to be followed when a witness' testimony was interrupted by the objections of counsel." However, in his deposition, Respondent stated that "frequent flyer" meant "somebody [who has] been through the process."

Regarding the *911* matter, we reiterate our previous discussion of Respondent's numerous conflicting accounts and our finding that Respondent was deceptive. We note that he changed his story and added new, and from his perspective, increasingly more plausible justifications for making the call at each progressive stage of the proceedings.

Additionally, with regard to the *911* matter, Respondent stated in the First Answer that it was his understanding that Attorney Davis refused Respondent's request to write down his [Davis'] recollection of events. This statement concerning Davis' refusal directly conflicts with Respondent's deposition testimony that Davis agreed to write a letter. Respondent's deposition statement is also internally inconsistent with the very next paragraph of the First Answer in which Respondent acknowledged that he asked his clerk of court to contact Attorney Davis regarding the requested letter. The Panel finds it odd that Respondent would inquire about a letter that he requested if he in fact understood that the letter was not going to be written. Further, Attorney Davis corroborated that not only did he not refuse, he actually told Respondent he would write the letter, despite his having no intention of doing so – a not so surprising concession from a lawyer who must continue to practice in Respondent's court.

Respondent's Lack of Cooperation with the Disciplinary Process

While Respondent answered the Complaint and appeared at his deposition and at the hearing, we do not view that compliance as mitigating in the face of substantially false and misleading statements and testimony.

Respondent's lack of cooperation is reflected in his lies and in the contradictions in his testimony, deposition and answers to the Letters of Inquiry as well as in his efforts to refute his own stipulations. Despite Respondent's improved behavior on the third day of the hearing, the Panel cannot ignore that Respondent was evasive in all previous phases of his testimony, both at his deposition and the hearing. Respondent went to great lengths to avoid answering questions directly. After numerous warnings he remained unable to answer a question "yes" or "no." For instance, we

note this exchange at pages 186, 187 of the hearing transcript between Respondent and the panel Chair after a question posed by Relator (emphasis added):

> **Q**: Did you have any concern that Melody Graham, if she was outside your jurisdiction, would continue to use drugs?
> **Chair**: The answer is either yes, no, or I don't remember.
> **A**: *It depends*. As a judge or as the person George Parker? I mean, I absolutely care about her as a human being about whether she was doing drugs before, after, or during the time that she might be subject to my authority and jurisdiction as a judge
> ***
> **Chair**: Sir, excuse me. Is the answer yes?
> **A**: Yes.

Further, Respondent repeatedly contested his own stipulations while testifying. For instance, Respondent stipulated that Mrs. Gadberry did not use profanity, but instead muttered "I can't believe this." However, Respondent's Answer asserted that she had said "This is fucking bullshit." When pressed by Relator regarding the inconsistency, the following exchange occurred:

> **Q**: And you would admit today that your admission in the stipulations is completely inconsistent with your answer ***?
> **A**: No.
> **Q**: Why don't you explain to us how they are consistent.
> **A**: I know what I remember her saying. She said something different.
> **Q**: Tell us what she said.
> **A**: She said the words that are written in the answer. That's what I believed she said.
> ***
> **Q**: As you sit here today, do you recall that Mrs. Gadberry said "This is fucking bullshit"?
> **A**: Well, that would be my recollection of what occurred. However, she has said something different. Either way, in my estimate, it doesn't make a difference because she wasn't a participant in the proceedings, had no right to speak, was exhibiting the behavior that had to be met with the appropriate response.
> **Q**: That's not what I asked you, Judge. As you sit here today, do you recollect that Mrs. Gadberry said that, "This is fucking bullshit"?
> ***
> **A**: That's the way I remember her inappropriate interaction. Tr., 39-40.

During testimony regarding Respondent's ride-along in the *Ambrose* matter, the following dialogue took place:

> **Q**: The stipulation that you signed that you accompanied – that you asked Deputy Faine if you could accompany Faine to the suspect's home was accurate; correct?

A: That's what the stipulation is, yes, sir.
***
Q: Well, did you ask John Faine if you can accompany him to serve the warrant?
A: I don't believe that's the way the communication occurred. Tr., 66-67.

The above discourse demonstrates the extreme measures Respondent took to avoid answering questions openly and honestly. Respondent was uncooperative and unreasonable in his attempts to refute facts to which he had previously stipulated.

Finally, Respondent has constructed outlandish interpretations of his statements in an effort to avoid responsibility for making them. For instance, in his deposition, Respondent testified that he used the term "snake bit mean" to describe Mr. Freeze as an "alcoholic." Also, in his deposition, Respondent testified that when he told Angela Spruance to wipe off her hands and that it was "a little hypnotism," he really meant that they were putting the matter to rest. Respondent testified:

A: And hypnotism or hypnosis or – has, in Webster's dictionary, at least four definitions, and [one] of them means to put the matter to rest.
***
Q: So by you – you're telling me today then that your use of the word "hypnotism" was to inform the defense attorney that we're putting this matter to rest?
A: (Nodding head).
Q: It wasn't the use of the word hypnotism –
A: No.
Q: -- in the sense of you're hypnotizing a defendant?
A: No.

Respondent's effort to distort in order to justify his misconduct is an aggravating factor. It emphasizes Respondent's ongoing inability to accept the wrongfulness of his conduct. That lack of insight, unless corrected, portends a comparable inability to modify his behavior.

Respondent's tactics of misrepresentation, fabrication and obstruction in the face of discipline are unacceptable for any attorney, let alone a judge. "[A] judge who misrepresents the truth tarnishes the dignity and the honor of his or her office" because "[t]ruth and honesty lie at the heart of the judicial system, and judges who conduct

themselves in an untruthful manner contradict this most basic ideal." (Quotations omitted). *O'Neill* at ¶27.

RELATOR'S RECOMMENDED SANCTION

Relator recommended an eighteen month suspension with six months stayed.

RESPONDENT'S RECOMMENDED SANCTION

Respondent has recommended a sanction ranging between a public reprimand and eighteen month suspension with six months stayed.

RECOMMENDED SANCTION

Panel members Sweeney and Proenza accept Relator's recommended sanction of an eighteen month suspension with six months stayed. Panel member Whitmore rejects both recommended sanctions and would impose a sanction of a two year suspension with one year stayed. All panel members agree that a stay is subject to the conditions which are set forth below.

Respondent's pervasive conduct of misrepresentation and evasion by itself warrants an actual suspension from the practice of law for an appropriate period of time. *O'Neill* at ¶52.

In addition to *Winkfield*, and *Post*, discussed above, the Panel has reviewed the sanctions in multiple judicial grievance cases and one applicable attorney grievance case dealing with a personality disorder. In *O'Neill*, the Supreme Court imposed a two year suspension with one year stayed upon the conditions that Judge O'Neill submit to a mental health assessment; that she fully comply with recommended course of treatment; and that she submit to monitoring if reinstated. In *Cuyahoga County Bar Assoc. v. Maybaum*, 112 Ohio St.3d 93, 2006-Ohio-6507, the respondent was diagnosed with a personality disorder which included sociopathic elements and an inability to control his impulses. Based upon the sociopathic elements, respondent's bi-polar disorder, his intractable attitude toward treatment, and expert predictions of likely danger to clients, the Supreme Court indefinitely suspended Attorney Maybaum with conditions for reinstatement, including:

complying with the four elements of Section 10(B)(2)(g), probation upon reinstatement, monitoring of his practice, and continued treatment with quarterly reports. In *In re: Complaint against Judge Carol H. Squire*,[6] the Panel recommended a one year suspension, with six months stayed. However, the Board recommended a two year suspension with one year stayed. In *Squire*, there was no evidence of an existing mental disability or substance abuse. Further, there was no expert testimony regarding Judge Squire's fitness to practice law. According to the Board, Judge Squire's pattern of intemperance, discourtesy, indecision and dishonesty required a two year suspension, one year stayed, in order to protect the public.

Panel members Sweeney and Proenza find Respondent's misconduct less egregious than conduct found in *O'Neill* and *Squire* and that his NPD, in part, caused Respondent's misconduct. Panel Member Whitmore finds that Respondent's conduct is equally egregious in substance though not in frequency and that the NPD, in part, was a cause of Respondent's misconduct. As in *Maybaum*, the Panel finds that Respondent's personality disorder puts the public at risk. Therefore, a defined suspension of sufficient length to facilitate therapy is an appropriate sanction.

In determining the appropriate length of a suspension, the Panel has reviewed numerous judicial grievance opinions with similar code violations, ranging from the flagrant to the relatively benign. In *Disciplinary Counsel v. Mosely* (1994), 69 Ohio St.3d 401, the respondent was disbarred for "judicial misconduct in interfering with commerce by extortion through conspiracy to use position to unlawfully obtain property not due judge, in receiving illegal payments or kickbacks from persons such as court-appointed contractors, and in committing offenses of grand theft and theft while in office."

In *Disciplinary Counsel v. Cox*, 113 Ohio St.3d 48, 2007-Ohio-979, the respondent judge held a court participant in contempt for an alleged statement made to a third party outside the

[6] A matter that was recently submitted by the Board to the Supreme Court, pending in Case No. 07-0492.

courtroom. Judge Cox had the man arrested and brought before him. The judge then conducted a hearing where he took the third party's testimony that the contemnor had stated "the judge is a crook." However, according to the stipulations, the contemnor stated more generally that "judges can be crooks too." Further, during the Relator's investigation, Judge Cox twice falsely represented that he had overheard contemnor's alleged statement. Judge Cox also told contemnor that he was "too dense to understand" the contempt proceedings and acted overtly hostile to the contemnor. In another count, Judge Cox was indicted for a felony offense of possession of drugs and eventually pled guilty to attempted possession of drugs, a first degree misdemeanor. In a third count, Judge Cox argued with two separate defense counsel, calling one a "pathological liar" and loudly taunting another with profanities and racial slurs. The Ohio Supreme Court indefinitely suspended Judge Cox for abusing his contempt power, berating counsel with profanities and slurs, and for pleading guilty to attempted possession of drugs while assigned as an acting judge.

In *Disciplinary Counsel v. Medley*, 104 Ohio St.3d 251, 2004-Ohio-6402, respondent was suspended for eighteen months with six stayed for accepting a guilty plea and dismissing other charges without the prosecutor or defense counsel present; for misrepresenting facts in a journal entry; for ex parte communications; for undue delay in disposing of a case; and a questionable procedure utilized by the judge in debt collection cases. There was no evidence that the respondent suffered from an intractable personality disorder that caused his misconduct. Respondent had cooperated in the disciplinary process.

In *Disciplinary Counsel v. Karto*, 94 Ohio St.3d 109, 2002-Ohio-61, the Court suspended respondent for six months for abusing his contempt power; for disrobing, testifying and making closing arguments in a contempt proceeding; for using an outdated statute; for conducting juvenile detention hearings without the juvenile's counsel present and asking the juvenile to cross examine state's witnesses; for conducting ex parte communications; for failure to recuse himself; and for

threatening and intimidating behavior. Judge Karto was not diagnosed with a personality disorder and he cooperated in the disciplinary proceedings.

In *Disciplinary Counsel v. Ault*, 110 Ohio St.3d 207, 2006-Ohio-4247, the respondent, a municipal court judge, was found to have abused prescription painkillers and had pled no contest to two counts of attempting to obtain a dangerous drug by deception, misdemeanors of the first degree. The Ohio Supreme Court suspended Judge Ault for two years, staying the entire suspension conditioned on Respondent's completion of a two year probation and compliance with a new two year OLAP recovery contract. The Supreme Court based its decision to stay respondent's entire suspension on several mitigating factors, including: lack of a prior disciplinary record; cooperation with the disciplinary process; a diagnosed chemical dependency; recognition of the dependency and desire for treatment; a completed OLAP contract and a demonstrated commitment to recovery; genuine remorse for his conduct; and an exemplary performance record as a judge.

Finally, in *Disciplinary Counsel v. Simonelli*, 113 Ohio St.3d 215, 2007-Ohio-1535, the respondent was suspended for one year with six months stayed for improper fee sharing, neglecting an entrusted legal matter, and conduct involving dishonesty. The Supreme Court noted that it had given a six month suspension in a prior case with similar facts, but imposed a harsher sentence on respondent Simonelli based solely on respondent's refusal to acknowledge the wrongfulness of his conduct. Essentially, the Supreme Court held that a respondent's steadfast insistence that no wrong has been committed in the face of clear and convincing evidence to the contrary justifies a harsher sentence.

It is the Panel's conclusion that a definite term of suspension is warranted. While Respondent's misconduct is not of the egregious nature warranting disbarment or indefinite suspension as in such cases as *Mosely*, *Maybaum* and *Cox*, the Panel concludes that the lack of significant mitigating factors and Respondent's chronic NPD take the case outside of a public

reprimand or a six month suspension as in *Karto*. Further, Respondent's prevarications and excuses indicate a failure to fully acknowledge responsibility for his conduct and a lack of insight as to its cause and ramifications.

It is of particular significance to the Panel that Respondent's NPD predisposes him to perceive events in a distorted and self-serving manner. For example, Dr. Beech testified that a "vast majority of people who have [NPD] don't ever go to treatment because they don't think they have problem[,]" they think the problem is "outside of themselves." Such a perception of life's events, whether on or off the bench, whether related to Respondent's personal or professional life, is chronic and inherently difficult to alter. However, Respondent has taken the step towards treatment, and should be given credit for that effort, notwithstanding such treatment was precipitated by the filing of grievances and the Panel's request for a psychiatric assessment. Additionally, while the Panel recognizes that Respondent worked in a highly public and stressful environment, such external forces will often exist, whether Respondent is a judge or a private practitioner. For these reasons we believe that ongoing psychotherapy or other appropriate psychiatric treatment is essential to provide Respondent with the tools he needs to practice in a competent, ethical and professional manner.

The majority of the Panel therefore recommends that Respondent be suspended from the practice of law for eighteen months with six months stayed. All Panel members have considered and rejected an indefinite suspension because Respondent has demonstrated some improved conduct. The six month stay shall be conditioned upon Respondent's participation in psychotherapy with a qualified health care practitioner of his choosing at a frequency and duration determined by that health care professional. The six month stay shall also be conditioned upon the Respondent first submitting a certification that Respondent has successfully completed psychotherapy or other appropriate treatment as determined by his health care provider and an opinion to a reasonable

degree of medical certainty that Respondent is then able to practice law in a competent, ethical and professional manner without conditions or under conditions specified in the certification. The six month stay shall also be conditioned on Respondent maintaining a contract with OLAP until the stay is effective and for four years thereafter. The six month stay is also conditioned upon there being no further violations and upon an agreement by Respondent that he will submit to monitoring for a period of two years after the expiration of his four year OLAP contract.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 7, 2007. The Board adopted the Findings of Fact and Conclusions of Law of the Panel except that it found that the canons were not violated in the *Spruance* matter in Count Seven. It recommends that the Respondent, Honorable George Matthew Parker, be suspended from the practice of law for a period of eighteen months with six months stayed upon the conditions contained in the panel report. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.

JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio

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

In re:	:	
Complaint against	:	
Hon. George Matthew Parker	:	Board No. 05-091
Respondent	:	**AMENDED STIPULATIONS**
Disciplinary Counsel	:	
Relator	:	

COME NOW the parties, and hereby stipulate to the following facts and violations, and to the admission of the attached exhibits.

STIPULATED FACTS AND VIOLATIONS

1. Respondent George Matthew Parker was admitted to the practice of law in the State of Ohio on November 5, 1990. Respondent is subject of the Code of Professional Responsibility and the Rules for Government of the Bar of Ohio.

COUNT ONE

The Gadberry Matter

2. On November 5, 2003, Respondent presided over the probation violation hearing under case 03CRB01148 involving the probationer, Brandi Keesler.

3. Respondent found the probationer Keesler, who appeared pro se, guilty of violating her probation.

EXHIBIT
84

4. While Respondent was speaking to Keesler, Naomi Gadberry, probationer's mother, who was seated in the gallery, raised her hand.

5. Respondent responded to Gadberry, stating "You know what, no. Don't raise your hand in the courtroom. Don't try and interrupt me. I've had enough out of you, I've had enough out of your daughter, just take - just walk on out, just leave, just leave."

6. Gadberry tried to explain, but Respondent interjected, telling Ms. Gadberry, "No. Just leave. That's it. I've heard enough out of you. Don't say another word or you are going to jail in your daughter's place. Just get up and leave."

7. As Gadberry was gathering her belongings and leaving the courtroom, she said, "I can't believe this."

8. Respondent slammed his gavel on the bench and ordered, "That's it. Take her into custody. Right now. I said no more words, from you ma'am."

9. Gadberry told respondent, "I didn't say anything," to which Respondent replied, "You just did." Respondent then stated, "You're a drug addict" to which Mrs. Gadberry responded, "I am not a drug addict." Respondent told Mrs. Gadberry, "I am not talking to you. That's it now you keep talking see you're going to spend more time in jail now. You are in contempt of court."

10. Respondent's bailiff escorted Gadberry to the jury box, where she was handcuffed and transported to the Warren County Jail.

11. Respondent sentenced Gadberry to 24 hours in the Warren County Jail.

COUNT TWO

The Ambrose Matter

12. In the early morning hours of March 6, 2003, Deputies Faine and Staverman responded to a call regarding theft of large neon signs from Crossroads Bar & Grill.

13. Faine and Staverman responded to the call and proceeded to the suspect's home. The suspect was David Ambrose.

14. Although the deputies knew Ambrose was in his residence located at 5140 Montego Lane, Unit 5, Maineville, Ohio 45039, he refused to answer the door.

15. Staverman and another deputy remained at Ambrose's residence, while Faine secured a search warrant.

16. At approximately 1:30 a.m., Faine called Respondent at home to see if Respondent would sign a search warrant.

17. Respondent agreed and asked Faine to pick him up.

18. Faine picked up Respondent, who was waiting outside when Faine arrived.

19. Respondent and Faine proceeded to the courthouse, where Faine typed up an affidavit and presented it to Respondent.

20. Respondent reviewed the affidavit and signed the warrant.

21. Since Respondent lived en route to the crime scene, Faine planned on taking the respondent home and then proceeding alone to Ambrose's residence.

22. On the way to Respondent's house, Respondent asked Faine if Respondent could accompany Faine to Ambrose's home.

23. Faine was uncomfortable with Respondent's request, but felt it would have been inappropriate to question Respondent.

24. At approximately 3:00 a.m., Faine and Respondent arrived at the suspect's residence, located at 5140 Montego Lane, Unit 5, Maineville, Ohio 45039.

25. Respondent did not accompany Faine and the other deputies into Ambrose's residence.

26. Faine and the other deputies entered Ambrose's residence and executed the warrant.

27. Faine arrested Ambrose, placed him in handcuffs, and retrieved the stolen neon signs and some marijuana.

28. When Faine and Staverman exited Ambrose's home with Ambrose and the contraband, they noticed that Respondent was asleep in the front seat of the police cruiser.

29. Faine tapped on the window to awaken the Respondent.

30. Respondent woke up, saw Ambrose in cuffs and the contraband and stated to the deputies, "You got the signs."

31. Faine transported Ambrose in his patrol car, while Staverman transported the Respondent.

32. Staverman transported Respondent to the jail.

33. Respondent waited in the salleyport while Faine booked Ambrose in the adjoining room.

34. Respondent then signed the commitment order.

35. Staverman then transported the Respondent back to Respondent's home.

36. On April 15, 2003, Respondent presided over Ambrose's plea to one count of theft, a first-degree misdemeanor.

37. Respondent never informed the prosecutor or the defense attorney of any of the events of March 7, 2003.

38. Respondent sentenced Ambrose to 60 days in jail, with 59 days suspended, a $250 fine, and two years probation.

39. Under Gov. Bar R.V§(4)(I)(4), respondent waives notice and hereby consents to the addition of a Canon 4 violation [a judge shall avoid the impropriety and the appearance of impropriety in all of the judge's activities] to paragraph 46 of relator's complaint.

COUNT THREE

The Garcia Matter

40. On May 15, 2003, Officer Andrew Herrlinger arrested Jose Antonio Garcia and charged him with domestic violence, resulting in the case of *City of Mason v. Jose Antonio Garcia*, case no. 03CRB00485.

41. On October 16, 2003, Respondent presided over a jury trial in *City of Mason v. Jose Antonio Garcia*, case no. 03CRB00485.

42. During the prosecution's case-in-chief, and while witnesses were testifying, Respondent allowed the jurors to eat lunch in the jury box.

43. During the prosecutor's case-in-chief, a juror informed the judge that she could not hear the interpreter and that she "got lost five minutes ago."

44. Addressing the entire jury, Respondent replied, "You are about five minutes ahead of me, I got lost five minutes before that." Respondent then recessed the jury for a short break.

45. After the jury left the courtroom, Respondent stepped down from the bench, approached defense counsel, and stated, "Matt [Graber, the prosecutor] is about ready to offer you a minor misdemeanor to disorderly conduct and you are about ready to take it, I think."

46. Graber had never made a plea offer to defense counsel either before or during the trial.

47. Respondent left the courtroom and Graber informed Garvin that he was not willing to offer a minor misdemeanor, but that he would offer a fourth-degree misdemeanor.

48. When Respondent returned to the bench, Garvin [defendant Garcia's attorney] informed Respondent that his client was willing to accept a minor misdemeanor, but that the prosecutor was only willing to offer a fourth-degree misdemeanor.

49. Respondent then continued with the trial.

50. Approximately 15 minutes later, still during prosecution's case-in-chief, Respondent ordered the arresting officer and both attorneys into chambers and recessed the jury.

51. While in chambers, Respondent asked why the prosecutor and arresting officer were not offering a minor misdemeanor.

52. Respondent asked the prosecutor and arresting officer, "Are you listening to the same trial that I am listening to?" and "Do you know that you are watching an acquittal?"

53. When the arresting officer informed Respondent that he was not willing to offer a minor misdemeanor, Respondent became unsettled and ordered everyone out of his chambers.

54. As the parties were leaving, Respondent told the arresting officer, Andrew Herrlinger, to remain in chambers.

55. While in his chambers, Respondent asked why Herrlinger would not agree to a minor misdemeanor.

56. Herrlinger stated his reasons for not agreeing to a minor misdemeanor plea.

57. Respondent asked Herrlinger if he knew what happened on May 15, 2003, which was the date Herrlinger arrested Garcia.

58. Respondent informed Herrlinger that May 15, 2003 was the day that Respondent had to arrest the Mason police chief.

59. Herrlinger told respondent that he did not understand how the May 15, 2003 arrest of the police chief had anything to do with the current case.

60. Herrlinger felt uncomfortable and pressured to agree to a plea bargain.

61. Respondent returned to the bench and continued with the jury trial.

62. The jury returned a not-guilty verdict.

The Graham Matter

63. On April 18, 2003, Melody Graham was arrested and charged with theft of a credit card under Ohio Revised Code §2913.02, a fifth-degree felony, and misdemeanor possession of drug paraphernalia.

64. The court scheduled a preliminary hearing for May 7, 2003, at which time Attorney Craig Newburger appeared on Graham's behalf.

65. The Assistant Prosecuting Attorney, Matthew Graber, informed respondent that Graham was waiving her right to a preliminary hearing.

66. Shortly thereafter, Respondent inquired as to whether the matter could be resolved in municipal court rather than sending the matter to common pleas court.

67. Graber informed Respondent that the State did not wish to offer a misdemeanor plea, and that the case was going to remain a felony.

68. Respondent then informed the victim that the defendant had expressed a desire to plead guilty to a lesser-included offense (misdemeanor), but that the matter was now going to be bound over to the common pleas court.

69. Respondent instructed Newburger to sign the waiver form, as required under Criminal Rule 5(B)(1).

70. Newburger and Graham executed the required waiver.

71. Respondent then stated that he would not accept the waiver and ordered Graber to conduct a preliminary hearing.

72. Graber proceeded to call two witnesses.

73. Before the close of the preliminary hearing, Respondent stated, "They say no good deed goes unpunished. I should have accepted the waiver and let you move

on, but I just couldn't do it-not in good conscience. So therefore, these folks are sitting around from one til two til three til four til five, we'll be here til about eight."

74. At the close of the preliminary hearing, Respondent concluded there was not probable cause to believe the felony alleged in the complaint had been committed.

Respondent: State versus Webb. 'There is insufficient proof that the stolen guns were operable to support a conviction under 2913.71.' And the missing question, were your credit cards active? Could somebody have used your credit cards, signed your name, and used your good name and credit. And if they would have done that, guess what? They would have been guilty of a first-degree misdemeanor. That is what she is standing trial on. First-degree misdemeanor. Misuse of credit cards. And, she is going to stand trial on the fourth-degree possession of drug paraphernalia case. Now do want to proceed on those matters in the same manner that you previously stated?

Newburger: We would like to set this for pretrial.

Respondent: Well, I though you previously said she was going to make a plea?

Newburger: Let me discuss that with my client.

Respondent: Yeh, why don't you do that. Let's have the case with the trooper on it.

Newburger: Permission to approach your honor.

Respondent: Yep. Long time is the answer. Just in case you are wondering. That will be the answer. Just in case you were wondering. Long time.

Newburger: She'll get some jail time?

Respondent: Oh yeh. Make a plea – she' gonna do it today. Bind her over. Take your pick?

Newburger: What you're saying is plead to a first degree misdemeanor?

Respondent: I'd take your pick. They can dismiss anytime you want, can't you? Take a felony. Have to go up to common pleas court, spend about a week there, go through the whole process again, might end up being a misdemeanor again. So.

75. Graber attempted, through oral motion, to dismiss the charges for direct presentment to the grand jury.

76. Respondent denied the State's attempt to dismiss the charges.

77. On June 17, 2003, Graham pled guilty to theft – a first-degree misdemeanor.

COUNT FOUR

The Jane Doe Matter

78. On March 23, 2004, the defendant, hereinafter referred to as John Doe, along with his attorney, Alan Fischoff, appeared in Respondent's courtroom for arraignment on the charge of domestic violence.

79. The victim, hereinafter referred to as Jane Doe, appeared at the arraignment and asked the prosecutor to drop the charges against her husband, but the prosecutor refused.

80. When Respondent called the case, Fischoff requested that the charges be dismissed.

81. After Jane Doe explained her reasons for requesting dismissal of the charges, Respondent denied the motion to dismiss the charges and recessed the Court in order for the parties to try to reach a resolution.

82. Revised Code § 1901.20(A)(2) states:

> A judge of a municipal court does not have the authority to dismiss a criminal complaint, charge, information, or indictment solely at the request of the complaining witness and over the objection of the prosecuting attorney, village

solicitor, city director of law, or other chief legal officer who is responsible for the prosecution of the case.

83. While defendant, his wife, the victim-advocate, and Attorney Fischoff were discussing the matter in a conference room, Respondent sent his parole officer into the room to photograph the marks on the victim's face.

84. The prosecutor offered a plea to disorderly conduct, a 4th degree misdemeanor.

85. Once the Court reconvened, the parties returned to the courtroom, and Respondent ordered Jane Doe to allow the probation officer to photograph her.

86. Jane Doe expressed her reservation, but Respondent explained the necessity of the photograph, stating that he wanted to remember what he saw.

87. Fischoff objected to Respondent's actions, stating that it was not Respondent's role to participate in the gathering of evidence.

88. Respondent told Fischoff to make his record.

89. Respondent ordered Jane Doe to pull her hair back and to stand in front of Respondent's bench, facing the gallery, while the probation officer used his cell phone to photograph Jane Doe.

90. Jane Doe was humiliated by Respondent's conduct.

91. Two days later, John Doe entered a plea to disorderly conduct, a 4th degree misdemeanor.

COUNT FIVE

The 9-1-1 Matter

92. On Wednesday, May 14, 2003, Attorney Michael Davis appeared in Mason Municipal Court for trial in *State of Ohio v. Jason Michel*, case no. 03CRB00347 and for pre-trial in *State of Ohio v. Jason Michel*, case no. 03CRB00412.

93. Acting Judge James Whitaker was sitting for Respondent, although Respondent was present in the courthouse.

94. Attorney Davis' client, Jason Michel, was not transported from the Warren County Jail, despite the fact that a valid conveyance order had entered.

95. Attorney Davis asked for a dismissal of the charges and the prosecutor, Matt Graber objected.

96. Acting Judge Whitaker instructed the attorneys to consult with Respondent concerning the prisoner transport order.

97. While in Respondent's chambers, Davis informed Respondent that the police department would not transport his client and that his client had a right to attend the court proceeding.

98. In the presence of the attorneys, Respondent picked up his phone and dialed 911.

99. The emergency operator inquired if this was an emergency—Respondent replied that it was not an emergency, but that he wanted a police officer to report to his chambers.

100. Within minutes, Sergeant Peter Schultz arrived at Respondent's chambers.

101. Respondent ordered Schultz to transport Michel from the Warren County Jail to the Mason Municipal Court.

102. Schultz refused to honor Respondent's request.

103. Respondent took the bench, ordered Michel's release on his own recognizance and continued the case.

104. On Saturday May 17, 2003, the Cincinnati Enquirer printed a story entitled, "Judge Called 911 to Get Officer Sent."

105. That same morning, Respondent called Davis at his home and asked Davis to recall the incident that occurred in chambers last Wednesday evening.

106. Davis relayed to Respondent his recollections of events.

107. Respondent asked Davis to write a letter summarizing what had transpired.

108. Davis did not respond to Respondent's request.

109. Respondent's clerk, William Scherpenberg, called Davis' office on numerous occasions to check on the status of the letter.

110. Davis did not return the calls and never wrote the letter.

COUNT SIX

The McConnell Matter

111. On November 5, 2003, Katherine McConnell was convicted of Driving Under Suspension under case no. 03TRD04668 and placed on two years' probation.

112. On or before February 9, 2004, McConnell tested positive for marijuana and was charged with violating her probation.

113. On April 14, 2004, McConnell and her attorney, Jeff Stueve, appeared before Respondent on the probation violation.

114. After pleading no contest to the probation violation in open court, Respondent asked McConnell for the name, address, and telephone number of her drug dealer.

115. McConnell complied with Respondent's request.

116. Respondent then proceeded to call the number provided by McConnell:

Respondent: Bill, dial 850-4591. Bill would put that on speaker phone and dial 850-4591.

McConnell: It's 1-9 sir.

Respondent: Oh. 850-4519 – I'm sorry. 850-4519 (phone rings)

Respondent: Hi, is this Chad? Hi, is this – Hi is this Chad?

Unknown: Yes it is.

Respondent: Uh, Chad this is somebody who understands you are selling drugs to people. Uh, Chad, they're gonna getcha buddy. Stop selling drugs if you are. If not, sorry about the call. Have a good day.

Respondent: You can hang up on him now Bill.

Respondent: If someone like me can think of that, imagine what the other people in the government will do. They'll find him. You don't want to be anywhere around him. You better not be selling drugs or giving drugs to anybody else. Continue your probation. Go home. Have a good day.

117. McConnell then left the courtroom and was visibly upset.

COUNT SEVEN

The Gadberry Matter

118. Respondent incorporated herein by reference, as if full restated, his previous stipulations to paragraphs 2-11.

The Jane Doe Matter

119. Respondent incorporates herein by reference, as if fully restated, his previous stipulations to paragraphs 78 through 91.

The McConnell Matter

120. Respondent incorporates herein by reference, as if fully restated, his previous stipulations to paragraphs 111 through 117.

The Keene Matter

121. On July 23, 2004, David Keene was arrested and charged with domestic violence.

122. The Complaint alleged he punched and choked his wife, Laura Keene.

123. On August 10, 2004, Keene entered a guilty plea to domestic violence, a first degree misdemeanor.

124. The victim, Laura Keene, was present during the August 10, 2004 court appearance.

125. When Respondent called the case, Respondent asked, "Ms. Keene, you want to come on up? You don't have to. You can stay right there. Whatever's your pleasure. But I just wanted to let you know you have a right to address the court."

126. Laura Keene shook her head indicating that she did not want to come forward.

127. Respondent accepted the defendant's guilty plea and proceeded to sentencing.

128. Before sentencing Keene, Respondent stated that he needed the victim's help and that he had the ability to incarcerate her husband for six months and fine him $1,000.

129. Laura Keene reluctantly came forward.

130. Respondent told Laura Keene that he had to punish her husband and that he relies heavily on the victim's position.

131. Respondent then asked Laura Keene if she forgave her husband.

132. Laura Keene was appalled by the question and afraid to answer for fear that a wrong answer would upset her husband and/or the Respondent.

133. Laura Keene stated that her husband was doing all the right things.

134. Respondent then told Laura Keene, "I am asking you a direct question, and I really need a direct answer. Do you forgive him?"

135. Laura Keene felt pressured by Respondent and stated that she was working on forgiving her husband.

136. Respondent then sentenced Keene to one year community control term, one year probation, Amend program, and a $100 "token" fine.

137. The victim left the courtroom and was visibly distraught.

138. Conn apologized to the victim for Respondent's behavior.

The Freeze Matter

139. Attorney Jim Hardin represented the defendant, Jonathan Freeze, who was charged with criminal damaging, a first-degree misdemeanor, Case No. 04CRB00514.

140. Freeze entered a plea of not guilty and the matter was set for trial on May 25, 2004.

141. On May 25, 2004, Respondent presided over the bench trial.

142. Freeze testified on his own behalf.

143. During Freeze's testimony, an objection was made, but before Respondent ruled on the objection, Freeze began to answer the question.

144. Respondent interrupted Freeze and stated, "I explained to other gentleman; I should have explained to you; usually frequent fliers know the rules. Mr. Freeze, if either lawyer says the word objection, stop talking, alright? Until we sort it out. Ok?"

145. After Freeze finished testifying, Respondent asked to see Freeze's walking cane.

146. Respondent retained the cane and ordered Freeze to return to his seat at the defense table without the aid of his cane.

147. Hardin asked Respondent if his client could use the cane to return to his seat at the defense table.

148. Respondent refused to give Freeze his cane.

149. Hardin assisted his client in returning to his seat.

150. After closing arguments, Respondent stated, in the presence of the arresting police officer, "Well, I have to say, this is another crack law enforcement job of gathering the physical evidence to make the difference between two peoples' opinions."

151. Respondent then directed his comments towards Freeze, stating, "You are too old to be acting like that. Grow up...Why would you do that to a stranger? Tell me why?"

152. Consistent with his sworn testimony, Freeze stated that he didn't do it, to which Respondent replied, "Yeah, ok. There are a lot of people sitting in jail that didn't do it-is that what you want to be? You gonna come clean now and get it over with? ...Why did you do that to him?"

153. Again Freeze stated that he didn't do it.

154. Respondent stated, "Okay. I suspect the court of appeals – you'll be able to appeal an adverse decision then, Mr. Hardin, to the court of appeals."

155. Respondent also stated that he was making a factual finding that Freeze was "snake-bit mean."

The Wilson Matters

156. On July 9, 2003, Lisa Wilson, a victim-witness advocate, appeared in court with a domestic violence victim.

157. After Respondent continued the case, Wilson inquired of Respondent if the victim could be excused. The following exchange occurred:

Wilson: Your honor, the victim is here ... may she be excused?

Respondent: Ma'am, are you Mrs. Garcia?

Mrs. Garcia: Yes I am.

Respondent: Okay. Yes ma'am, you may be excused.

158. The victim in the Garcia matter (the same Garcia matter addressed in Count Three) was a male named Jose Alfredo Garcia).

159. Respondent then called the acting prosecutor, Martin Hubbell, to the bench and the following conversation ensued:

> Respondent: Mr. Hubbell why don't you tell the lady that sits with you that in a court of law only lawyers are allowed to address the court and that the next time that she does that to you, you are going to tell her to get out. Fair enough? How 'bout that? Cause I know you can do a good enough job -- that's why they asked you to do it...what do you think?
>
> Mr. Hubbell: Yes sir.

160. Hubbell then returned to the prosecutor's table and told Wilson that if she spoke again, respondent would throw her out of court.

161. Wilson thought Hubbell was joking.

162. Later, Wilson asked Hubbell why Hubbell made that comment and Hubbell informed Wilson that the respondent was serious.

163. Wilson felt humiliated by respondent's comments.

164. On another occasion, respondent stated in open court that the court did not have to worry about making a mistake because Ms. Wilson was in court all the time so that whenever respondent makes a mistake, she can run and tell the newspaper.

165. Ms. Wilson was embarrassed by respondent's comments.

166. On another occasion, Ms. Wilson directed a female defendant that had appeared before Respondent, to the clerk's office to obtain a letter for her employer stating that the defendant was in court all day.

167. Shortly thereafter, the female defendant was brought back before Respondent for creating a disturbance in the lobby.

168. When a defendant informed Respondent that she was told by Ms. Wilson to obtain a letter from the clerk, Respondent stated, "That's what you get for taking advice from a random person in the courtroom – Ms. Wilson has nothing to do with the court and has no business giving anyone advice."

169. Ms. Wilson was embarrassed and humiliated by Respondent's comments.

Operating a Vehicle Under the Influence of Alcohol Offenses (OVI) –

170. On May 25, 2004, William Metzger pled guilty to Driving Under the Influence of Alcohol (2nd offense) a first degree misdemeanor.

171. After Metzger pled guilty and after Respondent pronounced sentence, Respondent ordered Metzger, in open court, to repeat the following words:

"My name is William Metzger and I am an alcoholic."

172. When Respondent asked Metzger what he was going to do about his alcoholism, Metzger replied that he needed to change his life, that he disappointed himself and let his family down.

173. Respondent replied, "Yeah, okay, this isn't the time to start talking about me, me, me, me, me, me, me...my name is William Lee Metzger and I am an alcoholic...I need help. I can't beat the alcohol demon on my own..."

174. On April 14, 2004, Gina Butler pled guilty to OVI (2nd offense) a first degree misdemeanor.

175. After Respondent accepted Butler's guilty plea and sentenced Butler, Respondent stated, "Repeat after me, my name is Gina Butler. And what? What is the next part of it? My name is Gina Butler and I am an alcoholic."

176. Butler repeated the words in open court, but took exception to Respondent classifying her as an alcoholic.

177. Respondent then turned his computer monitor toward Butler and, in open court, ordered her to look into the monitor and asked Butler if she saw her reflection on the monitor's screen.

178. Butler stated that she saw her reflection.

179. While Butler looked at the monitor, Respondent asked Butler, "Who is that (in the reflection)?"

180. On various occasions, Respondent had ordered OVI defendants who had entered guilty pleas, to reach into their pockets and pull out their "imaginary" car keys and throw them away.

181. On various occasions, Respondent ordered OVI defendants, who had entered guilty pleas, to pretend that they were putting another person in a headlock.

182. Respondent would show the defendants how to do this by using one hand to grip his other wrist and squeeze.

183. When the defendants imitated Respondent, Respondent would tell the defendants that by doing that, they were wrestling the alcohol demon.

Underage Consumption of Alcohol Offenses

184. In one case involving the underage consumption of alcohol, respondent chastised a defendant, who was a student at St. Xavier High School—a Roman Catholic institution.

185. Respondent stated, "Is that (alcohol consumption) what the Jesuits teach good Catholic boys?"

186. When the defendant stated that he was not Catholic, but Jewish, respondent stated, "What is a Jewish kid doing going to Xavier?"

187. On June 25, 2003, an 18 year-old female defendant appeared before Respondent on a charge of underage consumption of alcohol, case no. 03CRB00639.

188. The defendant stated that she wanted to enter a guilty plea.

189. When the defendant informed Respondent that her parents did not know of her arrest, Respondent suggested that the defendant call her mother before entering a plea.

190. While Respondent was talking to the defendant, she began to cry.

191. Respondent stated, "You have to stop doing that (crying). You are going to make me cry. That doesn't look very well."

192. On the same day, a 20 year-old female defendant, who was an Ohio University student, appeared before Respondent on a charge of underage consumption of alcohol, case no. 03CRB00635.

193. The defendant entered a no contest plea.

194. When Respondent asked the defendant if she studied American Government at Ohio University, the defendant replied that she was an anthropology

major, to which Respondent stated, "So that means you've been digging up old beer to drink?"

195. When Respondent asked the defendant why she was drinking while underage, the defendant replied that she "made a mistake."

196. Respondent then stated,

> "You gotta pen there? Turn the piece of paper over. Add together 462 + 535. Ok. Now. You done? Give me your paper. You are done. Now, that's a mistake. Cause, let's see. Well, you did pretty well. You are a very intelligent person. Adding together math-it's a mistake right? (Respondent then gestured like he was drinking from a bottle). That's not a mistake young lady. Mistakes aren't intentional acts. All you had to wait was three months didn't you? That is all you had to wait-three months-drink 'til you throw-up on yourself. Is it illegal to drink and throw up on yourself-of course not. Now look, seriously, you can't cry. We are running out of tissues."

Theft Offenses

197. On June 25, 2003, Respondent presided over a theft case involving three college students who were accused of stealing two street signs, case numbers 03CRB00559, 03CRB00560, and 03CRB00561.

198. The three students appeared in court with their attorneys and parents.

199. The prosecutor offered pre-trial diversion and the defendants accepted.

200. During the proceedings, Respondent addressed all three defendants, stating,

> Respondent: This was a stupid move by spoiled brats. Right? Stupid move by spoiled brats. Get your heads out of your proverbial sand young men. Grow up. Sign up for the military. They're willing to die for the rights that looks like you guys don't even care a whole lot about...Westchester, Maineville, and Cincinnati. Let's see, so you went to, did you go to Moeller High School.
>
> Defendants: St. Xavier High School.

Respondent: Ok, so the Jesuits are not doing jumping jacks today in their-that's not a monastery-whatever you call it. Come on. Really. And then to be flip about enough about it to say, well 'it was Miami St. and College Street.' Come on. Y'know, you got all lawyered up-you talk about how we are going to get this pretrial diversion (pause) and ah yeh, that's a measure of mercy that the prosecutor is allowed to show from the executive branch of government because they are the charging agent. As the judicial officer, a person from the executive branch of government, which I know you guys understand because you went to St. X high school. Uh, that I have some responsibility and some discretion. Your parents, I am sure are here with you. Are they not? Ok. Where are the moms and dads. Ok. What an embarrassing, humiliating situation for you parents to have to come in here because you did this...why don't we just let the city workers or the township workers go...You guys still have rooms at your parents' house? Ok. And who is the president of the fraternity here? Which one of you? Oh, you are not in a fraternity together? You just are three kids doing stupid things.

Unidentified: They go to different schools now.

Respondent: Oh ok. So we are going to let the city workers go into your house and they are just going to take whatever they want out of that room. How's that? Sound good? What is the favorite thing in your room young man?

Defendant 1: Probably my guitar.

Respondent: Ok you bring that in. That's part of your community service. You are gonna let that sit here for how many-well I don't know what you (court personnel) are going to do with it-set it in the back-maybe I'll learn guitar. Bring your guitar in. What is your favorite thing?

Defendant 2: Probably my cds.

Respondent: Ok, bring 'em in. What's your favorite thing?

Defendant 3: Stereo.

Respondent: Yep. Well, until you are done with your community service. All three of you are bringing this stuff in. Have it here this

> Saturday morning...that is where you are going to do your community service – in the Mason Reclamation Project. (Pause) and as St. X graduates, you all ought to realize what blessings you have as parents. Parents that will stick through you through thick and thin...that's love.

201. On July 9, 2003, Respondent accepted a guilty plea from the defendant Angela Spruance, who had been charged with theft.

202. While speaking to Spruance in open court, Respondent stated: "You got some proverbial sticky fingers, don't you? So take that Kleenex there right now. Set your papers down. Wipe your hands off. Today is the first day-this is a little hypnotism here-today is the first day of the rest of your life you will no longer take what is not yours. Do you understand me?"

203. Spruance complied with Respondent's order and wiped her hands with the Kleenex.

The Stendahl Matter

204. Respondent understands that the allegations contained in "The Stendahl Matter" were not part of the formal complaint.

205. Respondent understands that it was relator's intent to amend the formal complaint to add the allegations contained in The Stendahl Matter to Count VII of the formal complaint.

206. Under Gov. Bar R.V§(4)(I)(4), respondent waives notice of the allegations contained in The Stendahl Matter and stipulates to the following:

207. On September 22, 2004, David Stendahl was arrested for driving under the influence (DUI), resulting in Mason Municipal Court case *State. v. Stendahl*, no. 04 TRC 04619.

208. Attorney Jeffrey Meadows represented the defendant, Stendahl, while assistant prosecutor, Teresa Wade, represented the City of Mason.

209. Meadows filed a motion to suppress the results of the breathalyzer test and the horizontal gaze nystagmus (HGN).

210. On February 7, 2005, after an oral hearing and post-hearing written arguments, respondent granted defendant's motion to suppress the results of the breathalyzer test and the HGN.

211. In arriving at his decision, the following dialogue occurred:

> Respondent: ...[h]aving heard the evidence in this case, I do not find that the officer made a determination based upon the horizontal gaze nystagmus test in a manner that was at least in substantial compliance. Question of what substantial compliance would be would require there to be some de minimus deviations. I don't think the assertion by the state that those deviations were de minimus is sufficient, so...
>
> Wade: What specific deviations were there?
>
> Respondent: Well Ms. Wade, if I had to explain it to you, I doubt you'd understand it. The record speaks for itself on that matter.

212. Wade was embarrassed and humiliated by respondent's comment

213. Respondent's entry suppressing the results of the breathalyzer and the HGN stated that the HGN test was not conducted in substantial compliance with the NHSTA manual and that the state "failed to establish substantial compliance with the Ohio Department of Health regulations regarding breath alcohol procedures."

214. Wade appealed Respondent's decision to the twelfth district court of appeals, case no. CA2005-03-034.

215. The court of appeals reversed Respondent's decision and remanded the case to the Mason Municipal Court.

STIPULATED DISCIPLINARY RULE VIOLATIONS

Respondent agrees that his comments and gestures recounted in Count Seven violate Canon 2 [A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary] and Canon 3(B)(4) [A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity.]

Respondent and Relator, while acknowledging that their agreement is not binding on the panel in any way, agree that a public reprimand would be an appropriate sanction for the violations set forth in Count Seven.

STIPULATED DISMISSALS

Relator dismisses the allegation in paragraph 224 of the complaint that Respondent's conduct in Count Seven violates Canon 1 [A judge shall uphold the integrity and independence of the judiciary].

STIPULATED MITIGATION EVIDENCE

Respondent has no prior disciplinary record.

Respondent has cooperated in the disciplinary proceedings.

Respondent reserves the right to submit character evidence.

STIPULATED EXHIBITS

Exhibit		Count One
		The Gadberry Matter
1.		Entry in Contempt, 03 CRB 01215
2.		Commitment—Sentenced
3.		Cincinnati Enquirer Newspaper Article
4.		Audio/Video of Court Proceedings
5.		Miscellaneous Documents from Court File
		Count Two
		The Ambrose Matter
6.		Criminal Complaint, 03 CRA 00199
7.		Commitment Order
8.		Waiver of Counsel and Right to Jury Trial
9.		Praecipe and Subpoenas
10.		Journal Entry, April 15, 2003
11.		Journal Entry, April 15, 2003
12.		Map (Mason/Maineville)
13.		Audio Recording of Proceedings
14.		Miscellaneous Documents from Court File
		Count Three
		The Garcia Matter
15.		Criminal Complaint, 03 CRB 00485
16.		Court's Docket Sheet
17.		Journal Entry, October 16, 2003
18.		Audio Recording of Proceedings on October 16, 2003
19.		Miscellaneous Documents from Court File
		The Graham Matter
20.		Ohio Revised Code §2913.02
21.		Ohio Revised Code §2913.71
22.		Ohio Criminal Rule 5
23.		Criminal Complaint for Theft
24.		Criminal Complaint for Possession of Drug Paraphernalia
25.		Commitment
26.		Journal Entry, April 23, 2003
27.		Journal Entry, April 30, 2003
28.		Waiver of Right to a Preliminary Hearing
29.		Waiver of Right to a Preliminary Hearing (rejected)
30.		Prosecutor's Request to Dismiss F5 Theft
31.		Journal Entry dated May 7, 2003
32.		Journal Entry, June 17, 2003

33.		Facsimile to Craig Newburger re: Opioid Dependency
34.		Appearance Bond
35.		Pretrial conference report
36.		Judgment Entry
37.		Letter to Respondent
38.		*State v. Webb*, 1992 WL 1028
39.		*State v. Busch*, 76 Ohio St.3d 613
40.		Audio Recording of Proceedings
41.		Miscellaneous Documents from Court File
		Count Four
		The Jane Doe Matter
42.		Criminal Complaint, 04 CRB 00357
43.		Designation of Trial Attorney
44.		Case Worksheet
45.		Pretrial Conference Report
46.		Sentencing Entry, April 25, 2004
47.		Waiver of Issuance of New Complaint
48.		Waiver of Counsel & Right to Jury Trial
49.		Journal Entry, April 25, 2004
50.		Photograph
51.		Audio Recording of Proceedings
52.		Miscellaneous Documents from Court File
		Count Five
		The 9-1-1 Matter
53.		Criminal Complaint, 03 CRB 00412
54.		Notice of Appearance, 03 CRB 00412
55.		Discovery Demand, 03 CRB 00412
56.		Request for Evidence Notice, 03 CRB 00412
57.		Request for Bill of Particulars, 03 CRB 00412
58.		Motion to Suppress, 00 CRB 00412
59.		Motion to Release from Jail and/or to Review Bond
60.		Commitment, May 13, 2003
61.		Facsimile to Deputy Wyatt, May 13, 2003
62.		Entry Order to Convey. 03CRB00412, 03CRB00347
63.		Journal Entry, May 14, 2003
64.		Journal Entry, May 13, 2003
65.		Bail Order, May 14, 2003
66.		Cincinnati Enquirer Newspaper Article
67.		Audio Recording of Proceedings
68.		Miscellaneous Documents from Court File
		Count Six
		The McConnell Matter

69.		Criminal Complaint, 04 CRB 00268
70.		Case Worksheet
71.		Arraignment Procedures and Understanding of Rights Form
72.		Pretrial Conference Report
73.		Waiver of Counsel and Right to Jury Trial
74.		Journal Entry
75.		Judge's Sheet for Preparation of Sentencing Entry
76.		Audio Recording of Proceedings
77.		Miscellaneous Documents from Court File
		Count Seven
78.		Selected Audio Recordings of Proceedings
79.		Respondent's February 21, 2005 Reply to Letter of Inquiry and selected documents
80.		Respondent's July 25, 2005 Reply to Letter of Inquiry and selected documents
81.		Deposition Transcripts from Selected Witnesses
82.		Respondent's Character Letters
83.		Respondent's OLAP contract

The above are stipulated to and entered into evidence by agreement of the undersigned parties on this 27th day of June, 2006.

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