

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

09-2034

FILED
NOV 06 2009
CLERK OF COURT
SUPREME COURT OF OHIO

In Re:	:	
Complaint against	:	Case No. 08-030
Hon. Phil William Campbell Attorney Reg. No. 0009352	:	Findings of Fact,
	:	Conclusions of Law and
Respondent	:	Recommendation of the
	:	Board of Commissioners on
Disciplinary Counsel	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
Relator	:	
	:	

INTRODUCTION

A formal hearing was held on this matter on June 1, 2009, in Columbus, Ohio before a Panel consisting of members Patrick L. Sink, Keith A. Sommer, and William J. Novak, Panel Chair. None of the Panel members resides in the appellate district from which the Complaint arose or served as a member of the probable cause panel that reviewed the Complaint pursuant to Gov. Bar R. V(6)(D)(1). Respondent, Judge Phil William Campbell, was represented by Attorney George D. Jonson and Relator, Office of Disciplinary Counsel, was represented by Jonathan Coughlan and Heather L. Hissom.

Following the filing of a multi-count Complaint and Respondent's answer and amended answer, the parties submitted a final set of 125 amended stipulations of fact, including the stipulated violations of the Code of Judicial Conduct and Disciplinary Rules, and 150 stipulated exhibits. In addition, Respondent, Judge Phil William Campbell, testified on his own behalf. At

the time of the hearing, the Panel unanimously adopted the 125 stipulations of fact, including the stipulated violations of the Code of Judicial Conduct and Disciplinary Rules and the 150 stipulated exhibits. The Panel also heard the testimony of the Respondent.

Based upon the stipulations and motion of Relator, the Panel also unanimously agrees to the dismissal of Count Ten of the original Complaint. Further, the Panel unanimously agrees to dismiss all rule violations that were charged in the original Complaint that were not stipulated to in the final list of amended stipulations that were provided to the Panel at the time of the hearing. The Panel granted the parties an opportunity to prepare a joint brief in support of a recommended stipulated sanction of a twelve month suspension with six months stayed. Upon review of the joint brief, testimony of Respondent, and the foregoing stipulations, the Panel unanimously adopts the recommended stipulated sanction of a twelve month suspension with six months stayed.

BACKGROUND OF RESPONDENT

Respondent, Judge Phil William Campbell, was admitted to the practice of law in the State of Ohio on November 19, 1976. Respondent is subject to the Code of Judicial Conduct, the Code of Professional Responsibility, and the Rules for the Government of the Bar of Ohio. Respondent is not licensed in any other state and he has never been subject to any prior discipline. After civil practice, Respondent was appointed to the bench on March 1, 1987, as the Van Wert Municipal Judge. He was re-elected in 1993, 1999, and 2005. His current term ends December 31, 2011.

CHARGES

Respondent was charged with a Complaint filed on May 13, 2008, with misconduct in violation of the following provisions:

COUNT ONE

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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];
3. Canon 3(B)(1) [A judge shall hear and decide matters assigned to the judge except those in which disqualification is required];
4. Canon 3(B)(5) [A judge shall perform judicial duties without bias or prejudice];
5. 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 but not limited to instances 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]; and
6. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT TWO

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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];
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];

4. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT THREE

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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];
3. DR 1-102(A)(4) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and
4. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT FOUR

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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];
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
4. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT FIVE

1. 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
2. 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].

COUNT SIX

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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
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].

COUNT SEVEN

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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].

COUNT EIGHT

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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];

3. Canon 3(B)(2) [A judge shall be faithful to the law and maintain professional competence in it]; and
4. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

COUNT NINE

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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];
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];
4. Canon 3(B)(5) [A judge shall perform judicial duties without bias or prejudice]; and
5. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial in the administration of justice].

COUNT TEN

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];
2. 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
3. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

FINDINGS OF FACT

FINDINGS OF FACT COUNT ONE—JONATHAN KOENIG

1. Jonathan Koenig was convicted of underage consumption twice in 2005. In CRB050199 and CRB050200, Koenig was charged with underage consumption of alcohol and open container. This occurred in April 2005. Koenig pled guilty and was sentenced to 10 days in jail, all of which were suspended upon his compliance with the conditions of his probation.
2. Five months later, in CRB0500524, Koenig was charged with furnishing and underage consumption. This occurred in September 2005. Koenig pled guilty and was sentenced to 90 days in jail, 70 of which were suspended upon his compliance with the terms of his probation.
3. Seven months later, on April 9, 2006, Koenig was arrested while sitting in his vehicle outside of an apartment. He was charged with physical control of a vehicle while intoxicated, underage consumption of alcohol, and possession of marijuana.
4. Koenig was arraigned before Respondent on April 10, 2006. At that arraignment, City Law Director Jill Leatherman amended the physical control charge to a charge of OVI (operating a vehicle while intoxicated).
5. Because Koenig was already on probation for the two alcohol-related convictions from 2005, Respondent ordered he be incarcerated, pending the May 2, 2006, probation violation hearing. Respondent afforded Koenig work and school release as part of this incarceration. See Jt. Ex. 14, transcript of April 10, 2006.
6. The jail only permits work release for men living in the "F" dorm; however, that dorm was full when Koenig arrived there to be incarcerated after his arraignment. The Sheriff therefore placed Koenig in the "B" dorm, which did not allow work and school release.

7. On April 13, 2006, Respondent permitted Koenig to be transferred from jail to Electronic Monitored Home Arrest (EMHA) because the jail could not accommodate the Court's order to allow him work and school release. Respondent, on the record, discussed the terms of the EMHA with Koenig's parents. See Jt. Ex. 6, transcript of April 13, 2006.
8. On April 13, 2006, attorneys Kris Poppe (K. Poppe) and John Poppe (J. Poppe) entered an appearance of Counsel on behalf of Koenig in the underage consumption, marijuana, and OVI matter pending before Respondent. Counsel did not appear at the hearing on April 13, 2006. Attorney K. Poppe attended all Court proceedings on Koenig's behalf from May 3, 2006, until August 22, 2006.
9. On April 9, 2006, several other individuals—including Joseph Savage, Jennifer Spray, and Gary Saunders—were arrested for underage consumption at a party held in the apartment where Koenig had also been arrested.
10. On April 13, 2006, Savage and Spray appeared before Respondent and pled guilty to the charge of underage consumption. Respondent questioned both Savage and Spray about who brought alcohol to the party. At the time of this questioning, neither Savage nor Spray were under oath. Both stated that Koenig brought alcohol to the party. See Jt. Ex. 38, transcript of April 13, 2006.
11. After questioning Savage and Spray, off the record, Respondent spoke to Officer Scott Day. Respondent said words to the effect that Officer Day heard what was said about Koenig and that Officer Day should follow up. Respondent was referring to the testimony about Koenig bringing alcohol to the party. Officer Day then approached Officer Black and Officer Wehage, the original investigating officers, and he

informed them that Judge Campbell wanted the furnishing charge investigated on Koenig. The Van Wert Police investigated Savage and Spray's remarks, then filed a furnishing charge against Koenig on April 23, 2006.

12. At the disciplinary hearing, the Respondent testified that it was law enforcement's job to do investigations, and that any indication that he was trying to tell them what to do would be wrong.
13. On May 3, 2006, Respondent held a probation violation hearing and pretrial in Koenig's case. At this hearing, Respondent accepted a plea of "not guilty" from Koenig as to the charge of furnishing.
14. Jill Leatherman moved to dismiss the furnishing charge the police had filed on the stated basis that Koenig was questioned outside the presence of his attorneys and was not given a Miranda warning. Respondent denied her motion stating "Well it doesn't matter if he was given Miranda or not it is the testimony of the other people. On the new charge." Leatherman responded that Koenig had made an admission to the officer. Respondent replied, "So, he can suppress it. It doesn't change the charge." See Jt. Ex. 7, transcript of May 3, 2006.
15. Two days later, on May 5, 2006, Gary Saunders pled guilty to underage consumption. Respondent questioned Saunders regarding who brought alcohol to the party. When Saunders mentioned Koenig's name, Respondent questioned Saunders further without putting him under oath. See Jt. Ex. 40, transcript of May 5, 2006.
16. Also on May 5, 2006, Richard Griggs appeared before Respondent for a plea and sentencing. Respondent questioned Griggs as to who brought alcohol to the party.

When Griggs mentioned Koenig's name, Respondent had him put under oath and continued to question him.

17. Immediately after Griggs was put under oath, Respondent asked Leatherman who represented Koenig. Leatherman replied "Kris Poppe, Your Honor." Respondent acknowledged her response and continued his questioning of Griggs. See Jt. Ex. 41, transcript of May 5, 2006.
18. By his actions, Respondent wanted to pursue additional charges against Koenig. During his testimony before the Panel, Respondent admitted that it was improper conduct to question Griggs and Saunders about the source of the alcohol demonstrating his lack of judicial temperament.
19. On June 12, 2006, Koenig had another pretrial on the charges of physical control of a vehicle while intoxicated (amended to OVI), underage consumption of alcohol, possession of marijuana, and furnishing. Leatherman proposed a plea that would have dismissed the furnishing charge in exchange for a plea on other charges.
20. After discussion with the parties, Respondent declined, stating, "Alright, then I guess we will set that one [the furnishing charge] for trial. Furnishing is a very serious crime and this Court takes a very serious approach to that." See Jt. Ex. 16, transcript of June 12, 2006.
21. During subsequent discussion of the plea agreement, off the record, Respondent opened R.C. 2945.50, "Depositions in Criminal Cases" and left the bench. When Respondent returned, K. Poppe stated that he didn't want to depose witnesses on the furnishing charge because of the added expense.

22. Respondent then went off the record and requested the clerk get the audio records of the Savage and Saunders hearings. Respondent listened to the recordings with headphones because the Court's system only enables the hearings to be broadcast in that fashion—they may not be played over any speakers. Once Respondent listened to the recordings, he relayed what he heard to Leatherman and K. Poppe in open court. Respondent listened to the portion of the recordings where Savage and Saunders stated that Koenig brought alcohol to the party.

23. After relaying the recorded information, Respondent stated he wanted to proceed with the probation violation hearing. K. Poppe objected, stating the violation was based on the same facts as the furnishing and underage consumption charges. K. Poppe wanted the probation violation hearing continued until all of the pending charges were resolved.

24. Respondent then set the case for a pretrial and probation violation hearing for Koenig's two prior underage consumption convictions, again allowing him to remain on EMHA.

CONCLUSIONS OF LAW—COUNT ONE

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violations. Respondent engaged in misconduct by suggesting that Officer Day should follow up on the statements of Savage and Spray that Koenig brought alcohol to the party and by questioning Saunders and Griggs on May 5, 2006, about who supplied them alcohol after Koenig had been charged with furnishing alcohol to a minor. The Judicial Code violations are as follows:

1. Canon 1 [A judge shall uphold the integrity and independence of the judiciary];

2. 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
3. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

The Panel granted Relator's motion to dismiss the alleged violations of Canon 3(B)(1), Canon 3(B)(5), and Canon 3(E)(1)(a).

FINDINGS OF FACT COUNT TWO—LUKE REINHART

1. Luke Reinhart was charged with domestic violence (DV) on April 10, 2006. He was represented by John H. Rion of the law firm of Rion & Rion.
2. A second pretrial in the Municipal Court DV matter was held on May 18, 2006. Reinhart was brought to the Court from jail and placed in the holding cell at Municipal Court.
3. Attorney Matt Barbato, an associate of Rion's, and City Law Director Jill Leatherman attended the pretrial, off the record, in Respondent's chambers. During the pretrial, Barbato advised Respondent that his client was not going to take a plea agreement and wanted a Jury Trial.
4. Respondent became upset with Barbato during the pretrial. Respondent told Barbato he was "behaving like a horse's ass" during the meeting in his chambers.
5. The attorneys exited chambers into the courtroom. Shortly thereafter, Respondent exited chambers and entered the back hallway.
6. In the back hallway, Respondent encountered Officer Scott Day. Respondent asked Officer Day to open the holding cell where Reinhart was being held. In a raised

voice, and outside the presence of Rienhart's lawyer, Respondent told Reinhart that since there was not going to be a plea, Reinhart was going to be taken back to the jail. Respondent then instructed Officer Day to take Reinhart back to jail.

7. When counsel returned after lunch, Respondent continued the case for a pretrial to July 18, 2006.
8. Respondent testified that the statement he made to Attorney Barbato was "out of line." He also testified that he should not have spoken to a Defendant who had an attorney.

CONCLUSIONS OF LAW—COUNT TWO

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated violations:

1. 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
2. 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].

The Panel granted Relator's motion to dismiss the alleged violations of Canon 1 and DR 1-102(A)(5).

FINDINGS OF FACT COUNT THREE—RICARDO RIVERON

1. On January 13, 2005, Dr. Ricardo Riveron, was in Court for arraignment on charges of OVI and marijuana possession.
2. At the City Law Director's request, Dr. Riveron's urine sample was subjected to a second test. The results of the second test were not available on February 7, 2005.

3. On February 7, 2005, Dr. Riveron pled guilty to an amended charge of reckless operation. Riveron was sentenced on the same date and fined \$150.00. He was not given any jail time.
4. On or about February 15, 2005, Respondent called the Law Director's secretary, Brenda Barnes, and asked her to bring the Law Director's file to the Municipal Court to ascertain the results of the second test.
5. Barnes brought the Law Director's file to the Court. Respondent looked in the file and determined that the results from the second test were in the file.
6. The Law Director, who was unaware of Respondent's request for her file, later came to the Clerk's Office and saw her file sitting on the counter.
7. Respondent testified at the hearing that it was improper to use his judicial position to force somebody to do something; in this case requesting the Law Director's secretary to bring the Law Director's file to the Court.

CONCLUSIONS OF LAW—COUNT THREE

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violation:

1. 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].

The Panel granted Relator's motion to dismiss alleged violations of Canon 1, DR 1-102(A)(4), and DR 1-102(A)(5).

FINDINGS OF FACT COUNT FOUR—ROBERT NELSON

1. On December 15, 2006, Robert Nelson, an ironworker from Nebraska, was in Van Wert to work on a construction project and was arrested for assault, aggravated menacing, and criminal damaging causing substantial risk of physical harm—all first degree misdemeanors.
2. At his first Court appearance on Monday, December 18, 2006, the following exchange occurred concerning Nelson's eligibility for assigned Counsel:

COURT: Have you hired an attorney, Mr. Nelson?

DEFENDANT: No.

COURT: You're a union ironworker?

DEFENDANT: Well, I was until Friday.

COURT: You were on the date of – of the event?

DEFENDANT: Yes, sir.

COURT: The Court finds you're not indigent; you'll have to hire an attorney.

See Jt. Ex. 56, 58, transcript of December 18, 2006.
3. At the December 18, 2006, Court appearance, City Law Director Leatherman requested a high cash bond because of Nelson's lengthy criminal record; in addition, he was a Nebraska resident who had been working in Van Wert for a relatively short period of time. Respondent set bail at \$20,000.00 secured bond or 10% cash bond. Nelson was unable to make bail and was transported to jail.
4. On December 28, 2006, Nelson was transported to the Court for a pretrial but did not appear before Respondent.

5. The acting City Law Director, Clayton Osting, met with Nelson in the Municipal Court jury room during the pretrial on December 28, 2006. According to Osting, Nelson complained about not having counsel and requested assigned counsel. According to Osting, he conveyed Nelson's request for an assigned counsel to Respondent on December 28, 2006.
6. On January 9, 2007, Nelson was transported to the Court for trial. Nelson made three separate requests for an assigned attorney and stated on six occasions that he had no money and/or that he had no money to hire an attorney. See Jt. Ex. 62, transcript January 9, 2007.
7. Respondent denied Nelson assigned counsel stating that Nelson's eligibility for assigned counsel had previously been determined. Respondent provided Nelson a continuance to afford him an opportunity to obtain counsel. He further stated the Court would ensure the jail would allow him to do that.
8. On January 11, 2007, Attorney Steve Diller appeared in Court for Nelson and stated that they had "reached an agreement as to [Diller's] employment." Although Diller did not say he was appearing as a public defender, he represented Nelson on a pro bono basis.
9. On January 25, 2007, Diller filed a formal written appearance. On that same date, Nelson pled guilty and was sentenced to 180 days in jail with credit from December 18, 2006, with the balance suspended upon payment of the fine, one year probation and a \$250.00 fine and costs.

10. Respondent testified that he did not correctly understand the law that applies to indigents and that had he understood the law correctly, he would have done a more thorough examination of Nelson regarding his finances during the first appearance.

CONCLUSIONS OF LAW—COUNT FOUR

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violations:

1. 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
2. DR 1-102(A)(5) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice].

The Panel granted Relator's motion to dismiss alleged violations of Canon 1 and Canon 3(B)(4).

FINDINGS OF FACT COUNT FIVE—EVA YARGER

1. On April 30, 2007, three individual Defendants in custody appeared before Respondent. All three were potentially indigent and in need of appointed counsel; however, there were no public defenders available that day.
2. During Lee Freeman's arraignment, Respondent tried unsuccessfully to reach Kelly Rausch from the Public Defender's Office to determine whether someone could provide counsel for these individuals. At the time he made the call, Respondent knew that two of these individuals may be eligible for appointed counsel. Lori Webster was not arraigned yet.

3. On the record, Respondent explained to Freeman that a Public Defender is normally in Court but the “County Commissioners chose not to properly endorse the contract; so, therefore, no County—no Public Defender is here.” See Jt. Ex. 78, transcript of April 30, 2007.
4. Rausch was unavailable and Respondent told her assistant to have Rausch come to the Courthouse immediately.
5. Respondent next arraigned Lori Webster. After Webster’s arraignment, Respondent called Eva Yarger, a County Prosecutor and President of the Bar Association, from the bench, to see if she could assist Respondent in locating an attorney who was willing to act as a public defender that day. He also wished to put her on notice of the situation for future reference. Yarger was unable to locate an attorney to appear in Respondent’s court.
6. Respondent then called Lori Webster, Lee Freeman, and Willie Ward up to the bench individually. Respondent told each that there was no public defender and they were remanded to custody until the next morning.
7. Respondent then wrote a letter dated April 30, 2007, to Eva Yarger, with a copy to Kelly Rauch, reiterating what occurred.
8. Respondent agreed that it was inappropriate to make comments regarding acts of the County Commissioners. Respondent admitted that the comments he made left the impression that the reason that the three individuals were remanded to custody was because of a failure on the part of the County Commissioners, and that those were improper remarks made by Respondent.

CONCLUSIONS OF LAW - COUNT FIVE

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violation:

1. 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].

The Panel granted Relator's motion to dismiss the alleged violation of Canon 3(B)(4).

FINDINGS OF FACT COUNT SIX—ALICE CLEM

1. On August 6, 2007, Alice Clem appeared before Respondent on misdemeanor charges of possession of marijuana and drug paraphernalia (R.C. 2925.11(C)(3), R.C. 2925.14(C)(1), CRB0700573). Clem pled "no contest" to the charges. See Jt. Ex. 84, transcript of August 6, 2007.
2. The arraignments in the Van Wert Municipal Court are typically attended by a large number of defendants, each of whom are called in order and must wait their turn to be summoned to the bench.
3. After she pled no contest to the charges, Clem volunteered that she had once been prescribed marijuana, which she received in pill form. Clem stated that she continued to use marijuana in plant form which she had obtained without a prescription.
4. After Clem said she was not currently using drugs, Respondent asked her if she would take a urine drug screen. Clem agreed.
5. Clem was taken out of the courtroom by a female staff member of the behavioral center. Shortly thereafter, Clem reentered the courtroom while the Court was arraigning a different defendant. Clem accurately indicated to the Court that she

would require a blood test because she had end stage renal disease and could not produce urine.

6. At 2:19 p.m., Respondent then had Clem placed in a holding cell, which did not have a bathroom. According to Officer Day, Clem was crying while she was in the holding cell.
7. At 3:08 p.m., Respondent asked Court Officer Scott Day to bring Clem back to the courtroom and then Respondent took a recess until 3:27 p.m.
8. After the recess, Respondent had Clem placed under oath and had her swear to her medical conditions on the record and provide medical information.
9. Respondent imposed a total fine of \$100.00 and one year probation.
10. Respondent agreed that it was not prudent or necessary to take a woman who was suffering from renal disease and place her in a holding cell for fifty minutes.

CONCLUSIONS OF LAW - COUNT SIX

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violations:

1. 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
2. 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].

The Panel granted Relator's motion to dismiss the alleged violation of Canon 1.

FINDINGS OF FACT COUNT SEVEN—MAYOR FARMER

1. In December 2006, Jill Leatherman provided notice of her resignation as City Law Director—which would be effective December 31, 2006.
2. In the early morning of January 2, 2007, Respondent learned that Clayton Osting, who was anticipated to be the new Law Director, had not yet received a signed contract from the City and therefore would not participate as the Prosecutor that day.
3. Without a representative from the State (County Prosecutor or City Law Director) present at that day's arraignments, they could not go forward, and all defendants who had been detained over the New Year's Holiday would be held another day.
4. Respondent contacted Mayor Don Farmer's office. The Mayor was not yet in, so he spoke with Mayor Farmer's secretary. Mayor Farmer's office was located approximately one block from the court. Following Respondent's call to Mayor Farmer's office, the Mayor arrived in person at the court to see Respondent. On arrival, Mayor Farmer went to the Clerk's Office. Respondent saw Mayor Farmer and came into the Clerk's Office in his robe and gestured toward the courtroom.
5. At approximately 9:00 a.m., Respondent and Mayor Farmer went into the courtroom. Respondent then took the bench. Mayor Farmer was the only person in the courtroom. The clerk entered and announced that court was in session. Respondent called Mayor Farmer up to the bench.
6. Respondent then questioned the Mayor, who was not under oath, about why the contract for the new Law Director had not yet been approved. Respondent explained the contract needed to be signed by the Law Director, Clayton Osting, the Mayor, and the City Auditor before Osting would begin work. Respondent asked the Mayor if

there would be a Law Director at the Court at 11:00 a.m. The Mayor said there would. He then left the courtroom.

7. Respondent agreed that putting on his judicial garb and ordering the Mayor into the courtroom placed undue pressure on the Mayor and that no judge should use his office to strong arm someone to do something that they otherwise would not do.

CONCLUSIONS OF LAW- COUNT SEVEN

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violation:

1. 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].

The Panel granted Relator's motion to dismiss the alleged violation of Canon 1.

FINDINGS OF FACT COUNT EIGHT—ANNETTE YOUNGPETER

1. Annette Youngpeter had a Civil Protection Order ("CPO") prohibiting Roger Lewis from having contact with her.
2. Youngpeter had permitted Lewis to stay at her house.
3. Youngpeter's father found Lewis in her home while Youngpeter was at work.
4. On July 14, 2004, Annette Youngpeter was summoned to appear in Respondent's courtroom on charges of violating the CPO. The basis of the charge was that Youngpeter permitted Roger Lewis to come to her home.
5. On July 15, 2004, Youngpeter pled guilty to the charge, and Respondent sentenced her to serve one day in jail and pay a fine of \$50.00.

6. On or about July 21, 2004, Attorney Steve Diller entered an appearance on Youngpeter's behalf, and filed a motion to withdraw Youngpeter's guilty plea. In his motion, Diller cited *State v. Lucas*, 100 Ohio St.3d 1, 2003-Ohio-4778, a Supreme Court case for the proposition that a petitioner cannot violate her own CPO. Respondent heard Youngpeter's motion on July 29, 2004; he subsequently denied the motion. See Jt. Ex. 94.
7. Youngpeter successfully appealed the case to the Third District Court of Appeals. On January 31, 2005, the Court of Appeals issued a Journal Entry and Opinion that reversed Youngpeter's conviction finding that "Youngpeter's assertion that she could not be criminally charged with a violation of a protection order is supported by law" and that it was manifest injustice for the Court to deny her withdraw of guilty plea. The Court of Appeals vacated her plea, and reversed and remanded the case for proceedings consistent with their decision. The Court of Appeals did not dismiss the case. See Jt. Ex. 106.
8. The matter reconvened in the Van Wert Municipal Court on February 4, 2005, at which time Respondent allowed Youngpeter to withdraw her guilty plea and enter a plea of not guilty to the original charge.
9. On March 29, 2005, the charge against Youngpeter was amended to obstruction of justice, alleging she "Did purposefully hinder the discovery, apprehension, prosecution, conviction, or punishment of another for a crime." The charge was amended and not dismissed because Respondent made it clear that he would not dismiss the original charge until an amended charge was filed.

10. City Law Director Leatherman made the motion to amend after discussion, off the record, with Diller and Respondent where they discussed what charge would be appropriate. Youngpeter pled guilty to obstruction of justice, a lesser offense. Respondent sentenced Youngpeter to 10 days incarceration with all incarceration days suspended, one year probation, and a \$50.00 fine plus costs. Respondent ordered Youngpeter to have no contact with Roger Lewis as a condition of her probation.
11. Respondent clearly misunderstood what his duties were on remand. He was wrong. The matter should have been dismissed on remand.

CONCLUSIONS OF LAW - COUNT EIGHT

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violations:

1. 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
2. Canon 3(B)(2) [A judge shall be faithful to the law and maintain professional competence in it].

The Panel granted Relator's motion to dismiss the alleged violations of Canon 1 and DR 1-102(A)(5).

FINDINGS OF FACT COUNT NINE—JOSEPH OWENS / ANGELA HAMBLETT

1. On May 11, 2006, Joseph Owens appeared before Respondent for arraignment on a felony charge of breaking and entering. Owens's Personal Data Form and Bail

Questionnaire both stated that he was homeless, had no employment, and owned no property. See Jt. Ex. 116, 117.

2. Despite having this information, in assessing Owens's eligibility for assigned Counsel, Respondent asked Owens about his employment history. Respondent asked Owens, "You're not employed?"; "Why not?" (5 times); "Where did you apply last week?"; "You can't explain why you didn't apply for a job?"; "Why don't you want to work?"; "How do you expect to work if you don't apply for a job?" See Jt. Ex. 118, transcript of May 11, 2006.
3. During this exchange, Owens attempted to answer Respondent's questions, often being cut-off, but also giving responses like "I just ain't"; "I can't explain too much, really"; and "I can't explain it too good." Owens finally stated that he had not been employed since 2004.
4. Respondent then asked Owens additional questions, above and beyond the typical bail determination questions.
5. Respondent eventually asked Owens if he was on Social Security Income to which Owens responded that he used to be but was not anymore because he did not have "an address or nothing."
6. Respondent did not ask about Owens's debts, property, or other typical questions used to determine indigency.
7. Respondent set Owens's bail at \$2,500.00 cash and ordered an evaluation by the mental health center. Respondent also appointed a Public Defender. Owens could not make bond and was held in jail.

8. The Westwood Behavioral Center (hereafter "Center") evaluated Owens and submitted their report to Respondent dated May 16, 2006. Owens was found to be of "below average intelligence," and recalled one psychiatric hospitalization. The Center evaluated Owens for alcohol dependency and reported their findings, which are contradictory. The report stated "[t]his contradiction may be explained by Mr. Owens's limited comprehension level of both the interview questions and the SASSI evaluation." The Center recommended further cognitive testing of Owens to assess his cognitive functioning. See Jt. Ex. 120.
9. On May 17, 2006, Owens waived his preliminary hearing and was bound over to the Common Pleas Court.
10. On January 13, 2005, Angela Hamblett was arraigned before Respondent on a charge of burglary, a fourth degree felony.
11. Hamblett also completed a Bail Questionnaire and Personal Data Form. On these forms, Hamblett stated that she was not employed, that she was married, and that she had both "0" income and income of "\$100." She further stated that she was living at the House of Transition, a women's shelter. See Jt. Ex. 109, 110.
12. In assessing Hamblett's eligibility for assigned Counsel, Respondent asked Hamblett about where her husband, from whom she stated she was separated, worked and how much he made. During this exchange, Hamblett revealed she had a CPO against her husband; Respondent requested to see the CPO. She indicated she did not have a copy with her, "[I]t's in Greenwood, Indiana." Respondent asked her why she did not have a copy and Hamblett responded that "They didn't give me one."

13. Respondent continued to question Hamblett about a copy of the CPO. Hamblett stated that the Court did not know where she was and could not serve her. Hamblett stated that she had an attorney handling the CPO who wanted her to call when she was settled in the shelter.
14. Respondent asked Rausch, a public defender who was present, whether a copy of the CPO was needed, indicating he believed he needed it to avoid utilizing the husband's income in assessing Hamblett's eligibility for appointed Counsel. See Jt. Ex. 112.
15. After the exchange regarding the CPO, Respondent then inquired about Hamblett living in the House of Transition. Respondent stated "Miss Hamblett as I understand your statement you're homeless, correct?" Hamblett responded, "Well, I have the House of Transition" to which Respondent stated, "No, you're homeless. The house—you have no right to be at the House of Transition. That's a conditional, vol—that's an—something you're allowed to be at."
16. After an additional exchange about the House of Transition, Respondent appointed Hamblett a public defender, whom he called from the bench to tell of the appointment, set bail at \$5,000.00 cash bond, and remanded Hamblett to jail.
17. Respondent agreed that he did not treat Joseph Owens and Angela Hamblett with the requisite courtesy that should have been offered to defendants on the issue of indigency.

CONCLUSION OF LAW COUNT NINE

The Panel finds, by clear and convincing evidence, and unanimously adopts the stipulated rule violations:

1. 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
2. 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].

The Panel granted Relator's motion to dismiss the alleged violations of Canon 1, Canon 3(B)(5) and DR 1-102(A)(5).

FINDINGS OF FACT COUNT TEN—RYAN KING

Respondent and Relator stipulate that there was no evidence to support the violations alleged in Count Ten of the original Complaint and therefore the Panel dismisses this count and all the alleged rule violations attached to that count.

AGGRAVATING / MITIGATING FACTORS

Based upon the evidence, stipulations, and exhibits, the Panel finds the following mitigating factors in this matter:

1. Respondent has not been the subject of previous discipline;
2. Respondent has not acted with a dishonest or selfish motive;
3. Respondent has made a full and free disclosure to the Disciplinary Board and has exhibited a cooperative attitude toward the proceedings.

The foregoing mitigating factors have been stipulated to by the parties, pursuant to BCGD Proc. Reg. 10(B)(2).

SANCTION

The Supreme Court of Ohio does not condone the conduct of judges which negatively impacts upon the integrity and independence of the judiciary. An analysis of four cases where

judges were disciplined for multiple violations resulted in either a twenty-four month suspension with twelve months stayed or an eighteen month suspension with six months stayed. The cases of *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, *Disciplinary Counsel v. Squire*, 116 Ohio St.3d 110, 2007-Ohio-5588, *Disciplinary Counsel v. Medley*, 104 Ohio St.3d 251, 2004-Ohio-6402, and *Disciplinary Counsel v. Parker*, 116 Ohio St.3d 64, 2007-Ohio-5635, involved multi-count charges as here. However, the conduct of this Respondent did not rise to the level of misconduct exhibited in those decisions. As is apparent from an analysis of those cases, dishonesty, failure to accept responsibility, and/or a prior disciplinary history were present that justified a greater penalty than the one recommended here. Those cases which imposed a sanction lesser than the one recommended here, *Disciplinary Counsel v. Runyan*, 108 Ohio St.3d 43, 2006-Ohio-80, *Disciplinary Counsel v. Karto*, 94 Ohio St.3d 109, 2002-Ohio-61, and *Ohio State Bar Association v. Goldie*, 107 Ohio St.3d 201, 2005-Ohio-6186, involved less than the multi-count, multi-charge Complaint of this Respondent.

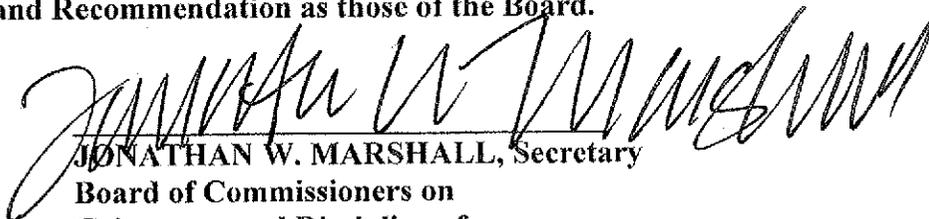
In closing, the Panel has taken into account the mitigating factors, Respondent's cooperative attitude on the witness stand, and the legal analysis provided by both parties to agree with the recommended sanction of a twelve month suspension with six months stayed. Therefore, the Panel unanimously adopts the recommended stipulated sanction.

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 October 9, 2009. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Judge Phil William Campbell, be suspended for a period of twelve months with six months stayed. 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 Recommendation as those of the Board.

A large, stylized handwritten signature in black ink, appearing to read 'Jonathan W. Marshall', is written over the printed name and title.

**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. Phil William Campbell

Respondent,

By

Disciplinary Counsel

Relator.

FILED

JUN 1 - 2009

No. 08-030 BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

AMENDED STIPULATIONS

Now comes the Relator and Respondent, hereby submitting the following stipulations of fact:

1. Respondent, Phil William Campbell, was admitted to the practice of law in the state of Ohio on November 19, 1976.
2. Respondent is subject to the Code of Judicial Conduct, the Code of Professional Responsibility, and the Rules for the Government of the Bar of Ohio.

COUNT ONE—JONATHAN KOENIG

2005

3. Jonathan Koenig was convicted of underage consumption twice in 2005.
 - a. In CRB050199 and CRB050200, Koenig was charged with underage consumption of alcohol and open container. This occurred in April 2005. Koenig pled guilty and was sentenced to 10 days in jail, all of which was suspended upon his compliance with the conditions of his probation.
 - b. Five months later, in CRB 0500524, Koenig was charged with furnishing and underage consumption. This occurred in September 2005. Koenig pled guilty and was sentenced to 90 days in jail, 70 of which were suspended upon his compliance with the terms of his probation.

April 2006

4. Seven months later, on April 9, 2006, Koenig was arrested while sitting in his vehicle outside of an apartment. He was charged with physical control of a vehicle while intoxicated (TRC0601830), underage consumption of alcohol (CRB0600270), and possession of marijuana (CRB0600271).
5. Koenig was arraigned before Respondent on April 10, 2006. At that arraignment, Law Director Jill Leatherman amended the physical control charge to a charge of OVI (Operating a Vehicle While Intoxicated).
6. Because Koenig was already on probation for the two alcohol-related convictions from 2005, Respondent ordered he be incarcerated, pending the May 2, 2006, probation violation hearing. Respondent afforded

Koenig work and school release as part of this incarceration. See Jt. Ex. 14, transcript of April 10, 2006.

7. The jail only permits work release for men living in the “F” dorm; however, that dorm was full when Koenig arrived to be incarcerated there after his arraignment. The Sheriff therefore placed Koenig in the “B” dorm, which did not allow work and school release.
8. On April 13, 2006, Respondent therefore permitted Koenig to be transferred from jail to electronic monitored home arrest (EMHA) because the jail could not then accommodate the Court’s order to allow him work and school release.
9. Respondent, on the record, discussed the terms of the EMHA with Koenig’s parents. See Jt. Ex. 6, transcript of April 13, 2006.
10. On April 13, 2006, attorneys Kris Poppe (K. Poppe) and John Poppe (J. Poppe) entered an appearance of counsel on behalf of Koenig in the underage consumption, marijuana, and OVI matter pending before Respondent. Counsel did not appear at the hearing on April 13, 2006. Attorney K. Poppe attended all court proceedings on Koenig’s behalf from May 3, 2006 until August 22, 2006.
11. On April 9, 2006, several other individuals—including Joseph Savage, Jennifer Spray and Gary Saunders—were arrested for underage consumption at a party held in the apartment where Koenig had also been arrested.
12. On April 13, 2006, Savage and Spray appeared before Respondent and pled guilty to the charge of underage consumption (CRBo600275 and

CRBo600279). Respondent questioned both Savage and Spray about who brought alcohol to the party. At the time of this questioning, neither Savage nor Spray was under oath. Both stated that Koenig brought alcohol to the party. See Jt. Ex. 38, transcript of April 13, 2006.

13. After questioning Savage and Spray, and off the record, Respondent spoke to Officer Scott Day. Respondent said words to the effect that Officer Day heard what was said about Koenig and that Officer Day should follow up. Respondent was referring to the testimony about Koenig bringing alcohol to the party.
14. Officer Day then approached Officer Black and Officer Wehage, the original investigating officers, and he informed them that Judge Campbell wanted the furnishing charge investigated on Koenig.
15. The Van Wert Police investigated Savage and Spray's remarks, then filed a furnishing charge against Koenig on April 23, 2006 (CRBo600331).

May 2006

16. On May 3, 2006, Respondent held a probation violation and pre-trial hearing in *Koenig*.
17. At this hearing, Respondent accepted a plea of "not guilty" from Koenig as to the charge of furnishing.
18. Jill Leatherman moved to dismiss the furnishing charge the Police had filed on the stated basis that Koenig was questioned outside the presence of his attorneys and was not given a Miranda warning. Respondent denied her motion stating "Well it doesn't matter if he was given Miranda or not it is the testimony of the other people. On the new charge." Leatherman

responded that Koenig had made an admission to the officer. Respondent replied, "So, he can suppress it. It doesn't change the charge." See Jt. Ex. 7, transcript of May 3, 2006.

19. Two days later, on May 5, 2006, Gary Saunders pled guilty to underage consumption (CRB0600276). Respondent questioned Saunders regarding who brought alcohol to the party. When Saunders mentioned Koenig's name, Respondent questioned Saunders further without putting him under oath. See Jt. Ex. 40, transcript of May 5, 2006.
20. Also on May 5, 2006, Richard Griggs appeared before Respondent for a plea and sentencing. Respondent questioned Griggs as to who brought alcohol to the party. When Griggs mentioned Koenig's name, Respondent had him put under oath and continued to question him.
21. Immediately after Griggs was put under oath, Respondent asked Leatherman who represented Koenig. Leatherman replied "Kris Poppe Your Honor." Respondent acknowledged her response and continued his questioning of Griggs. See Jt. Ex. 41, transcript of May 5, 2006.

June 2006

22. On June 12, 2006, Koenig had another pre-trial on the charges of physical control of a vehicle while intoxicated (amended to OVI), underage consumption of alcohol, possession of marijuana, and furnishing. Leatherman proposed a plea that would have dismissed the furnishing charge in exchange for a plea on other charges.
23. After discussion with the parties, Respondent declined, stating, "Alright, then I guess we will set that one [the furnishing charge] for trial.

Furnishing is a very serious crime and this court takes a very serious approach to that." See Jt. Ex. 16, transcript of June 12, 2006.

24. During subsequent discussion of the plea agreement, and off the record, Respondent opened O.R.C. 2945.50, "depositions in criminal cases" and left the bench. When Respondent returned, K. Poppe stated that he didn't want to depose witnesses on the furnishing charge because of the added expense.
25. Respondent then went off the record and requested the clerk to get the audio records of the Savage and Saunders hearings.
26. Respondent listened to the recordings with headphones because the Court's records system only enables the hearings to be broadcast in that fashion—they may not be played over any speakers. Once Respondent listened to the recordings, he relayed what he heard to Leatherman and K. Poppe in open court. Respondent listened to the portion of the recordings where Savage and Saunders stated that Koenig brought alcohol to the party.
27. After relaying the recorded information, Respondent stated he wanted to proceed with the probation violation hearing. K. Poppe objected, stating the violation was based on the same facts as the furnishing and underage consumption charges. K. Poppe wanted the probation violation hearing continued until all of the pending charges were resolved.
28. Respondent then set the case for a pre-trial and probation violation hearing for his two prior underage consumption convictions, again allowing Koenig to remain on EMHA.

29. Respondent engaged in misconduct by: suggesting that officer Day should follow up on the statements of Savage and Spray that Koenig brought alcohol to the party and by questioning Saunders and Griggs on May 5, 2006 about who supplied them alcohol after Koenig had been charged with furnishing alcohol to a minor. Respondent conduct violates Canon 1 [A judge shall uphold the integrity and independence of the judiciary]; 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 DR 1-102(A)(5) [A lawyer shall not engage in conduct prejudicial to the administration of justice].

COUNT TWO—LUKE REINHART

30. Luke Reinhart was charged with domestic violence (“DV,” Case No. CRB-0600-266) on April 10, 2006. He was represented by John H. Rion of the law firm of Rion & Rion.
31. A second pre-trial in the Municipal Court DV matter was held on May 18, 2006. Reinhart was brought to the court from jail and placed in the holding cell at Municipal Court.
32. Attorney Matt Barbato, an associate of Rion’s, and City Law Director Jill Leatherman attended the pre-trial, off the record, in Respondent’s chambers.
33. During the pretrial, Barbato advised Respondent that his client was not going to take a plea agreement and wanted a jury trial.
34. Respondent became upset with Barbato during the pre-trial.

35. Respondent told Barbato he was "behaving like a horse's ass" during the meeting in his chambers.
36. Respondent continued the pretrial until after lunch.
37. The attorneys exited chambers into the courtroom. Shortly thereafter, Respondent exited chambers and entered the back hallway.
38. In the back hallway, Respondent encountered Officer Scott Day. Respondent asked Officer Day to open the holding cell where Reinhart was being held.
39. In a raised voice and outside the presence of Reinhart's lawyer, Respondent told Reinhart that since there wasn't going to be a plea, Reinhart was going to be taken back to the jail.
40. Respondent then instructed Officer Day to take Reinhart back to jail.
41. When counsel returned after lunch, Respondent continued the case for a pre-trial to July 18, 2006.
42. Respondent's conduct in Count Two violated only: 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, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control].

COUNT THREE—RICARDO RIVERON

43. On January 13, 2005, Ricardo Riveron, was in court for arraignment on an OVI and marijuana possession charge.
44. At the Law Director's request, Dr. Riveron's urine sample was subjected to a second test. The results of the second test were not available on February 7, 2005.
45. On February 7, 2005, Dr. Riveron pled guilty to an amended charge of reckless operation. Riveron was sentenced on the same date and fined \$150. He was not given any jail time.
46. On or about February 15, 2005, Respondent called Leatherman's secretary, Brenda Barnes, and asked her to bring the law director's file to the Municipal Court.
47. Barnes brought the law director's file to the court.
48. Respondent determined that the results from the second test were not in the file..
49. Leatherman who was unaware of Respondent's request for her file later came to the clerk's office and saw her file sitting on the counter.
50. Respondent's conduct in Count Three violated 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].

COUNT FOUR—ROBERT NELSON

51. On December 15, 2006, Robert Nelson, an ironworker from Nebraska was in Van Wert to work on a construction project and was arrested for assault, aggravated menacing, and criminal damaging causing substantial risk of physical harm—all first degree misdemeanors.

52. At his first court appearance on Monday, December 18, 2006, the following exchange occurred concerning Nelson's eligibility for assigned counsel:

COURT: Have you hired an attorney, Mr. Nelson?

DEFENDANT: No.

COURT: You're a union ironworker?

DEFENDANT: Well, I was until Friday.

COURT: You were on the date of – of the event?

DEFENDANT: Yes, sir.

COURT: The Court finds you're not indigent; you'll have to hire an attorney. See Jt. Ex. 56, 58 transcript of December 18, 2006

53. At the December 18, 2006, court appearance, Law Director Leatherman requested a high cash bond because of Nelson's lengthy criminal record; in addition, he was a Nebraska resident who had been working in Van Wert for a relatively short period of time. Respondent set bail at \$20,000 secured bond or 10% cash bond. Nelson was unable to make bail and was transported to the jail.

54. On December 28, 2006, Nelson was transported to the court for a pre-trial but did not appear before Respondent.

55. The acting law director, Clayton Osting, met with Nelson in the Municipal Court jury room during the December 28, 2006, pre-trial.
56. According to Osting, Nelson complained about not having counsel and requested assigned counsel.
57. According to Osting, he conveyed Nelson's request for an assigned counsel to Respondent on December 28, 2006.
58. On January 9, 2007, Nelson was transported to the court for trial.
59. On January 9, 2007, Nelson made three separate requests for an assigned attorney and stated on six occasions that he had no money and/or that he had no money to hire an attorney. See Jt. Ex. 62, transcript January 9, 2007
60. Respondent denied Nelson an assigned counsel stating that Nelson's eligibility for assigned counsel had previously been determined. Respondent provided Nelson a continuance to afford him an opportunity to obtain counsel. He further stated the Court would ensure the jail would allow him to do that.
61. On January 11, 2007, Attorney Steve Diller appeared in court for Nelson and stated they had "reached an agreement as to [Diller's] employment." Although Diller did not say he was appearing as a Public Defender, he represented Nelson on a pro bono basis.
62. On January 25, 2007, Diller filed a formal written appearance. On that same date, Nelson pled guilty and was sentenced to 180 days in jail with credit from December 18, 2006, with the balance suspended upon payment of the fine, one year probation and a \$250 fine and costs.

63. Respondent's conduct in Count Four violated 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 DR 1-102(A)(5) [A lawyer shall not engage in conduct prejudicial to the administration of justice].

COUNT FIVE—EVA YARGER

64. On April 30, 2007, three individual defendants in custody appeared before Respondent. All three were potentially indigent and in need of appointed counsel; however there were no public defenders available that day.
65. The three defendants: Willie Ward, Lee Freeman and Lori Webster were all unemployed. Willie Ward did not have an address and appeared to be homeless. Lee Freeman lived with his parents and Lori Webster was recently released from the Ohio Reformatory for Women.
66. During Lee Freeman's arraignment, Respondent tried unsuccessfully to reach Kelly Rausch from the public defender's office to determine whether someone could provide counsel for these individuals. At the time he made the call, Respondent knew that two of these individuals may be eligible for appointed counsel. Lori Webster was not arraigned yet.
67. On the record Respondent explained to Freeman that a public defender is normally in court but the "county commissioners chose not to properly endorse the contract; so, therefore, no county—no public defender is here." See Jt. Ex. 78, transcript of April 30, 2007.
68. Rausch was unavailable and Respondent told her assistant to have Rausch come to the courthouse immediately.
69. Respondent next arraigned Lori Webster.
70. After Webster's arraignment, Respondent called Eva Yarger, a county prosecutor and president of the bar association, from the bench, to see if she could assist Respondent in locating an attorney who was willing to act

as a public defender that day. He also wished to put her on notice of the situation for future reference.

71. Yarger was unable to locate an attorney to appear in Respondent's court.
72. Respondent then called Lori Webster, Lee Freeman and Willie Ward up to the bench individually. Respondent tells each that there is no public defender and they are remanded to custody until the next morning.
73. Respondent then wrote a letter dated April 30, 2007, to Eva Yarger, with a copy to Kelly Rauch, reiterating what occurred.
74. Respondent's conduct in Count Five violates only: 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].

COUNT SIX—ALICE CLEM

75. On August 6, 2007, Alice Clem appeared before Respondent on misdemeanor charges of possession of marijuana and drug paraphernalia (ORC 2925.11(C)(3), ORC 2925.14(C)(1), CRB0700573). Clem pled “no contest” to the charges. See Jt. Ex. 84, transcript of August 6, 2007.
76. The arraignments in the Van Wert Municipal Court are typically attended by a large number of defendants, each of whom is called in order and must wait their turn to be summoned to the bench.
77. After she pled no contest to the charges, Clem volunteered that she had once been prescribed marijuana, which she received in pill form. Clem stated that she continued to use marijuana in plant form which she had obtained without a prescription.
78. After Clem said she was not currently using drugs, Respondent asked her if she would take a urine drug screen. Clem agreed.
79. Clem was taken out of the courtroom by a female staff member of the behavioral center. Shortly thereafter, Clem reentered the courtroom while the Court was arraigning a different defendant. Clem accurately indicated to the Court that she would require a blood test because she had end stage renal disease and could not produce urine.
80. At 2:19 p.m. Respondent then had Clem placed in a holding cell, which did not have a bathroom.
81. According to Officer Day, Clem was crying while she was in the holding cell.

82. At 3:08 pm Respondent asked Court Officer Scott Day to bring Clem back to the Courtroom and then Respondent took a recess until 3:27 pm.
83. After the recess, Respondent had Clem placed under oath and had her swear to her medical conditions on the record and provide medical information.
84. Respondent imposed a total fine of \$100 and one year probation.
85. Respondent's conduct in Count Six violated only: 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, and shall require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control].

COUNT SEVEN—MAYOR FARMER

86. In December 2006, Jill Leatherman provided notice of her resignation as city law director—which would be effective December 31, 2006.
87. In the early morning of January 2, 2007, Respondent learned that Clayton Osting, who was anticipated to be the new Law Director, had not yet received a signed contract from the City and therefore would not participate as the prosecutor that day.
88. Without a representative from the State (County Prosecutor or City Law Director) present at that day's arraignments, they could not go forward, and all defendants who had been detained over the new year's holiday would be held another day.
89. Respondent contacted Mayor Don Farmer's office. The Mayor was not yet in, so he spoke with Mayor Farmer's secretary.
90. Mayor Farmer's office was located approximately one block from the Court.
91. Following Respondent's call to Mayor Farmer's Office, the Mayor arrived in person at the Court to see Respondent. On arrival, Mayor Farmer went to the clerk's office. Respondent saw Mayor Farmer and came into the clerk's office in his robe and gestured toward the courtroom. At approximately 9 a.m. Respondent and Mayor Farmer went into the courtroom. Respondent then took the bench. Mayor Farmer was the only person in the courtroom.
92. The clerk entered and announced that court was in session. Respondent called Mayor Farmer up to the bench.

93. Respondent then questioned the mayor, who was not under oath, about why the contract for the new law director hadn't been approved yet. Respondent explained the contract needed to be signed by the law director, Clayton Osting, the Mayor, and the city auditor before Osting would begin work.
94. Respondent asked the Mayor if there would be a law director at the Court at 11:00. The Mayor said there would be, then he left the courtroom.
95. Respondent's conduct in Count Seven violated only 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].

COUNT EIGHT--YOUNGPETER

96. Annette Youngpeter had a CPO prohibiting Roger Lewis from having contact with her. Youngpeter had permitted Lewis to stay at her house. Youngpeter's father found Lewis in her home while Youngpeter was at work.
97. On July 14, 2004, Annette Youngpeter was summoned to appear in Respondent's courtroom on charges of violating the CPO. The basis of the charge was that Youngpeter permitted Roger Lewis to come to her home.
98. On July 15, 2004, Youngpeter pled guilty to the charge and Respondent sentenced her to serve one day in jail and pay fine of \$50.
99. On or about July 21, 2004, Attorney Steve Diller entered an appearance on Youngpeter's behalf, and filed a motion to withdraw Youngpeter's guilty plea. In his motion, Diller cited State v. Lucas, 100 Ohio St.3d 1, an Ohio Supreme Court case for the proposition that a petitioner cannot violate her own CPO. Respondent heard Youngpeter's motion on July 29, 2004; he subsequently denied the motion. See Jt. Ex. 94
100. Youngpeter successfully appealed the case to the Third District Court of Appeals.
101. On January 31, 2005, the Court of Appeals issued a Journal Entry and Opinion that reversed Youngpeter's conviction finding that "Youngpeter's assertion that she could not be criminally charged with a violation of a protection order is supported by law" and that it was manifest injustice for the court to deny her withdrawal of guilty plea. The Court of Appeals vacated her plea; and reversed and remanded the case for proceedings

consistent with their decision. The Court of Appeals did not dismiss the case. See Jt. Ex. 106.

102. The matter reconvened in the Van Wert Municipal Court on February 4, 2005. At which time, Respondent allowed Youngpeter to withdraw her guilty plea and enter a plea of not guilty to the original charge.
103. On March 29, 2005, the charge against Youngpeter was amended to obstruction of justice, alleging she “did purposefully hinder the discovery, apprehension, prosecution, conviction, or punishment of another for a crime.” The charge was amended and not dismissed because Respondent made it clear that he would not dismiss the original charge until an amended charge was filed. Leatherman made the motion to amend after discussion, off the record, with Diller and Respondent where they discussed what charge would be appropriate.
104. Youngpeter pled guilty to obstruction of justice, a lesser offense. Respondent sentenced Youngpeter to 10 days incarceration with all incarceration suspended, one year probation and imposed a \$50 fine plus costs. Respondent ordered Youngpeter to have no contact with Roger Lewis as a condition of her probation.
105. Respondent’s conduct in Count Nine violated only: 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)(2) [A judge shall be faithful to the law and maintain professional competence in it].

COUNT NINE--JOSEPH OWENS / ANGELA HAMBLETT

106. On May 11, 2006, Joseph Owens appeared before Respondent for arraignment on a felony charge of breaking and entering.
107. Owens Personal Data Form and Bail Questionnaire both state that he is homeless, has no employment and no property. See Jt. Ex. 116, 117.
108. Despite having this information, in assessing Owens' eligibility for assigned counsel, Respondent asked Owens about his employment history. Respondent asked Owens "you're not employed?," "Why not?" (5 times), "Where did you apply last week?," "You can't explain why you didn't apply for a job?," "Why don't you want to work?," "How do you expect to work if you don't apply for a job?" See Jt. Ex. 118, transcript of May 11, 2006
109. During this exchange Owens attempted to answer Respondent's questions, often being cut-off, but also giving responses like "I just ain't", "I can't explain too much, really," and "I can't explain it too good."
110. Owens finally stated that he had not been employed since 2004.
111. Respondent then asked Owens additional questions, above and beyond the typical bail determination questions.
112. Respondent eventually asked Owens if he was on Social Security Income to which Owens responded that he used to be but isn't anymore because he doesn't have "an address or nothing."
113. Respondent did not ask about Owens debts, property or other typical questions used to determine indigency.

114. Respondent sets Owens' bail at \$2,500 cash and ordered an evaluation by the mental health center. Respondent also appointed a public defender. Owens could not make bond and was held in jail.
115. The Westwood Behavioral Center (hereafter "Center") evaluated Owens and submitted their report to Respondent dated May 16, 2006. Owens was found to be of "below average intelligence," and recalled one psychiatric hospitalization. The Center evaluated Owens for alcohol dependency and reported their findings, which are contradictory, stating "[t]his contradiction may be explained by Mr. Owens limited comprehension level of both the interview questions and the SASSI evaluation." The Center recommended further cognitive testing of Owens to assess his cognitive functioning. See Jt. Ex. 120
116. On May 17, 2006, Owens waived his preliminary hearing and was bound over to the Common Pleas Court.
117. On January 13, 2005, Angela Hamblett was arraigned before Respondent on a charge of burglary, a fourth degree felony.
118. Hamblett also completed a Bail Questionnaire and Personal Data Form. On these forms, Hamblett stated that she was not employed, that she was married, that she had both "0" income and income of "\$100". She further stated that she was living at the House of Transition, a women's shelter. See Jt. Ex. 109, 110.
119. In assessing Hamblett's eligibility for assigned counsel, Respondent asked Hamblett about where her husband, from whom she states she was separated, worked and how much he made. During this exchange,

Hamblett revealed she had a CPO against her husband; Respondent requested to see the CPO. When she indicated she did not have a copy with her, “[i]t’s in Greenwood, Indiana. Respondent asked her why she did not have a copy and Hamblett responded that “They didn’t give me one.” Respondent continued to question Hamblett about a copy of the CPO. Hamblett stated that the court did not know where she was and could not serve her. Hamblett stated that she had an attorney handling the CPO who wanted her to call when she was settled in the shelter. Respondent asked Rausch, who was present, whether a copy of the CPO was needed, indicating he believed he needed it to avoid utilizing the husband’s income in assessing Hamblett’s eligibility for appointed counsel. See Jt. Ex. 112.

120. After the exchange regarding the CPO, Respondent then inquired about Hamblett living in the House of Transition. Respondent stated “Miss Hamblett as I understand your statement your homeless correct?” Hamblett responded, “Well, I have the House of Transition” to which Respondent stated, “No, you’re homeless. The house—You have no right to be at the House of Transition. That’s a conditional, vol—that’s an—something you’re allowed to be at”.
121. After an additional exchange about the House of Transition, Respondent appointed Hamblett a public defender, whom he called from the bench to tell of the appointment, set bail at \$5,000 cash bond, and remanded Hamblett to jail.
122. Respondent’s conduct in Count Nine violates only 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, and shall require similar conduct of lawyers, and of staff, court officials, and other subject to the judge's direction and control].

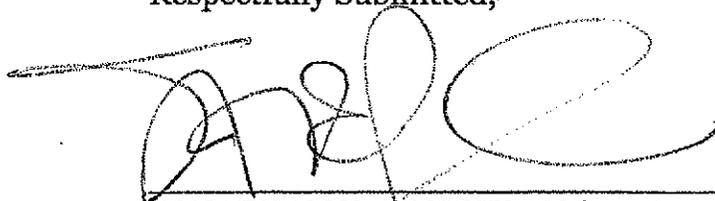
MITIGATION

123. Respondent has not been the subject of previous discipline.
124. Respondent has not acted with a dishonest or selfish motive.
125. Respondent has made a full and free disclosure to the disciplinary Board and has exhibited a cooperative attitude toward the proceedings.

RECOMMENDED SANCTION

Relator and Respondent, by and through counsel, hereby recommend a sanction of a 12 month suspension of Respondent's license to practice law, with 6 months stayed.

Respectfully Submitted,



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