

ORIGINAL

IN THE SUPREME COURT OF OHIO

*In re*

*Complaint Against*

WILLIAM I. FARRELL (#0043635)  
RESPONDENT

Case No. 2010-1951

CINCINNATI BAR ASSOCIATION  
RELATOR

RELATOR'S ANSWER  
BRIEF

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RELATOR'S ANSWER BRIEF TO RESPONDENT'S OBEJCTIONS TO THE SHOW  
CAUSE ORDER ENTERED NOVEMBER 17, 2010

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DISCIPLINE OF THE SUPREME COURT OF OHIO PROPERLY  
RECOMMENDED THAT RESPONDENT WILLIAM FARRELL  
BE PERMANENTLY DISBARRED IN THE STATE OF OHIO  
BECAUSE THE NUMBER AND SCOPE OF DECEPTIONS  
PERPETRATED BY RESPONDENT, INCLUDING  
MULTITUDINOUS DECEITS AND SELF-SERVING  
MANIPULATIONS OF THE GRIEVANCE PROCESS, OLAP,  
TWO HEARING PANELS OF THE BOARD AND THE OHIO  
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## STATEMENT OF FACTS

Respondent, William I Farrell, is charged by the Relator, Cincinnati Bar Association, with violating his oath of office as an attorney and the Ohio Rules of Professional Conduct based on multiple tax law violations during tax years 2001-2006 and a false affidavit filed in Respondent's divorce proceeding in December 2007. Specifically, Relator asserts violations of Ohio Rule of Professional Conduct 8.4 (b) [commission of an illegal act that reflects adversely on the lawyer's honesty or trustworthiness], 8.4 (c) [conduct involving dishonesty, fraud, deceit, or misrepresentation], 8.4 (d) [conduct that is prejudicial to the administration of justice], and 8.4 (h) [conduct that adversely reflects on the lawyer's fitness to practice law].

At the time the Relator learned of the misconduct in question, there was a disciplinary matter already pending against Respondent (hereinafter, the "2007 Proceeding") before the Board of Commissioners on Grievance and Discipline ("the Board"). See *Cincinnati Bar Association v. Farrell*, 119 Ohio State 3d 529, 2008-Ohio-4540. The 2007 Proceeding had already been certified by the Board and the complaint in the prior proceeding could not be amended to include the additional misconduct now under consideration.

Relator's complaint in this proceeding was filed on February 17, 2009 (the "2009 Proceeding"). In March, 2009, Respondent answered the complaint admitting the factual allegations while denying that his conduct was in violation of the rules as alleged. Respondent later amended his answer to also admit the rule violations. The matter proceeded to hearing on May 24, 2010, and testimony essentially addressed issues of

mitigation and aggravation only. The majority of the three-member hearing panel issued its Findings of Fact, Conclusions of Law and Recommendation, recommending Respondent be indefinitely suspended from the practice of law after serving the full two-year suspension for his 2007 disciplinary proceeding and, in addition, requiring submission of evidence that Respondent has repaid the \$50,000 obtained by the forged power-of-attorney, evidence that he is current on all liabilities to all taxing authorities, evidence that he is fully compliant with all child support obligations and evidence that he has committed no additional misconduct and satisfies all prerequisites for admission to practice law in Ohio. One panel member dissented, however, arguing that the number and scope of deceptions involved in Respondent's misconduct, including "playing fast and loose" with the Ohio grievance system, warranted the more severe sanction of permanent disbarment.

On October 7, 2010, the Board adopted the Findings of Fact and Conclusions of Law of the hearing Panel majority ("Board Opinion"), but recommended permanent disbarment based on the factors enumerated in the Panel's dissent.

#### The 2007 Proceeding

The 2007 Proceeding involved a series of bizarre and inexplicable episodes of misconduct that are related to the current case. Beginning in 2004, Respondent fabricated letters from purported employers and presented them to his wife to make her believe that he had gotten a series of better, higher paying, jobs. *Cincinnati Bar Ass'n. v. Farrell*, 2008-Ohio-4540, ¶ 5-7. As Respondent has attempted to explain, when he was unable to bring enough money in through his own practice to make these claims believable,

Respondent forged his wife's signature on a power of attorney in order to obtain a line of credit from the bank. *Id.* at ¶ 8-9. When Respondent's wife discovered the increased line of credit on the bank statement, Respondent forged a letter from Fifth Third Bank claiming the statement was an error. *Id.* at ¶ 9-10. Respondent then stopped mail delivery to the house so his wife would not receive any more bank statements. *Id.* at ¶ 11. When his wife questioned the lack of mail, Respondent forged a letter from the U.S. Postal Inspector. *Id.*

This conduct led to the 2007 Proceeding in which Respondent was given a two-year suspension with the second year stayed. During the hearing for that grievance, Respondent was questioned about a letter his ex-wife had received from the IRS in which the agency reported that it lacked income tax statements for the couple for the years 2001 through 2005.(2007 Hearing Transcript, p. 87-88)<sup>1</sup> Although Respondent had a chance to admit he had not paid the taxes at the 2007 hearing, he chose to lie to the Board's hearing panel and stated he knew nothing of unpaid taxes.(2007 Hearing Transcript p. 87-88).<sup>2</sup>

### The Current Proceeding

As mentioned above, Respondent failed to file tax returns or pay taxes to the IRS, State of Ohio, and the City of Cincinnati on behalf of himself and his now ex-wife for the years 2001 through 2005. (Board Opinion, p.2). Respondent also failed to file his individual 2006 tax returns or pay the liabilities. (Board Opinion, p. 2) Respondent then executed and filed a false affidavit in the Hamilton County Domestic Relations Court in

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<sup>1</sup> Excerpts from the transcript of Respondent's November 15, 2007 disciplinary hearing were admitted into evidence at his May 24, 2010 disciplinary hearing as Exhibit I. See 2010 hearing transcript, p. 12.

<sup>2</sup> *Id.*

December 2007, stating under oath that he had filed tax returns and paid taxes for the years 1989 through 2005. (Board Opinion, p. 2).

In January 2008, the Respondent reported his misconduct to Relator. (Board Opinion, p. 2). Though Respondent alleges he self-reported his conduct, he did so only after his ex-wife's attorney discovered the false affidavit and told Respondent she would report his conduct if he did not do so himself. (Board Opinion, p. 8).

At the hearing in the current 2009 Proceeding, Respondent testified that he filed the false affidavit in his divorce proceeding because he knew that admitting he had not filed or paid taxes would increase his punishment in his then-pending 2007 disciplinary proceeding and derail the agreement for a stayed suspension reached between Relator and his counsel. (Board Opinion p. 11; see also 2010 Hearing Transcript p. 119-120, 123).

As described by both the majority and dissenting panel members in their Findings of Fact, Conclusions of Law and Recommendation, Respondent's misconduct includes not only the strange and bizarre activities conducted in his personal life, and the repercussions they caused in his surrounding professional life (including the resulting reprimand of his colleague whom he persuaded to notarize the forged signature of his wife on the power of attorney) and in the judicial system (including the false affidavit filed in the Domestic Relations Court), but also manipulative actions taken in the course of both the 2007 and 2009 grievance proceedings. These actions include his assertion that he "self-reported" to initiate the 2009 Proceeding when he actually did so only under duress when his ex-wife's counsel would otherwise have reported; that he sought professional help only after his ex-wife discovered his betrayals and filed for divorce; that he alternately denied in the 2007 Proceeding and before the Supreme Court of Ohio,

and then claimed in this 2009 Proceeding, that his conduct was the product, in whole or in part, of his depression; that he used his OLAP counseling agreement as a basis to reduce his sanction in the 2007 Proceeding to avoid suspension from practice while later denying causation from depression; that he asserted financial hardship as a basis for failing to make monthly OLAP contract payments despite his ability to continue his lavish lifestyle including dining at expensive restaurants. (Board Opinion, p13-14.18-21, 23). The Respondent further testified before the panel in the 2009 Proceeding that he had never lied to any judge other than in the context of signing the false affidavit. (2010 Hearing Tr. p. 143.) However, Respondent later admitted that he had, in fact, lied to the previous hearing panel. (2010 Hearing Tr. p. 144).

Respondent now objects to the Board's recommendation of permanent disbarment and asks the Court to impose an indefinite suspension.

## ARGUMENT

### PROPOSITION OF LAW

**The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio properly recommended that Respondent William Farrell be permanently disbarred in the State of Ohio because the number and scope of deceptions perpetrated by Respondent, including multitudinous deceits and self-serving manipulations of the grievance process, OLAP, two hearing panels of the Board and the Ohio Supreme Court, superimposed onto his numerous violations of disciplinary rules over six years, warrant such a severe sanction.**

Respondent's behavior shows a repeated pattern of dishonesty, and a failure to appreciate the gravity of that misconduct, that indicates a high likelihood of future harm and warrants disbarment. The proper sanction for violations of the Rules of Professional Conduct is determined by consideration of the duties violated, respondent's mental state, the injury caused, the existence of aggravating or mitigating circumstances, and applicable precedents. *Cincinnati Bar Assn. v. Farrell*, 119 Ohio St.3d 529, 2008-Ohio-4540, 895 N.E.2d 800; *Disciplinary Counsel v. Rohrer*, 124 Ohio.St.3d 65, 2009-Ohio-5930, 919 N.E.2d 180.

#### *Duties Violated*

As discussed above, Respondent eventually amended his answer to admit violations of Ohio Rule of Professional Conduct 8.4 (b) [commission of an illegal act that reflects adversely on the lawyer's honesty or trustworthiness], 8.4 (c) [conduct involving dishonesty, fraud, deceit, or misrepresentation], 8.4 (d) [conduct that is prejudicial to the administration of justice], and 8.4 (h) [conduct that adversely reflects on the lawyer's fitness to practice law].

### *Respondent's Mental State*

Also discussed above, the conflicting and inconsistent positions taken by Respondent between the 2007 Proceeding and the 2009 Proceeding put the issue of Respondent's mental state very much in doubt. As noted in the Board Opinion, the "Panel did not find [treating licensed social worker Peter] Courlas's testimony persuasive." Instead, the Panel credited the testimony of Dr. Douglas Beach, a board-certified psychiatrist retained by Relator, that the Respondent's depression was "precipitated in large part by the discovery of his forgery of his wife's signature in 2006," and agreed that "the most significant stressor triggering Respondent's depression was not forgery and a document, but getting caught doing so." Board Opinion at 19.

### *Injury Caused*

Respondent's argument that his misconduct was confined to his personal life, and that he hurt no client, was rejected, again, by the Panel noting the collateral damage caused by Respondent extends beyond the injury to his ex-wife and child, and further diminishes the public perception of the judicial system and the Bar. Board Opinion at 20.

### *Aggravating or Mitigating Circumstances*

As discussed above, the Panel found Respondent to have a prior disciplinary record, BCGD Proc. Reg. 10(B)(1)(a), a pattern of misconduct, BCGD Proc. Reg. 10(B)(1)(c), multiple instances of dishonesty in the grievance proceedings, BCGD Proc. Reg. 10(B)(1)(f), and a refusal to acknowledge the wrongful nature of his conduct, BCGD Proc. Reg. 10(B)(1)(g). (Board Opinion at 14). In discussing mitigating factors, the Panel properly rejected Respondent's arguments that his "self reporting" and depressive disorder should be credited as mitigating factors. (Board Opinion at 20).

Although the Panel credited the Respondent's character witnesses to some extent, recounting their testimony they would continue to refer clients to him "despite two disciplinary proceedings and the associated misconduct," it further noted his pattern of tax law violations coincided with his generously providing free legal services to his friend. *Id.*

### Applicable Precedents

As the dissenting hearing panelist points out, and as affirmed by the Board, unique factors in this case indicate that the proper sanction may be determined by not only a proportional assessment of misconduct in failure-to-file tax cases such as those cited by Respondent, but also by consideration of the number, nature and scope of deceptions involved, and importantly by the Respondent's manipulation of the grievance process itself, including two panels of the Board and this Ohio Supreme Court. As this Court has noted, "because each disciplinary case is unique, we are not limited to the factors specified in the rule but may take into account 'all relevant factors' in determining what sanction to impose. BCGD Proc.Reg. 10(B)." *Cleveland Metropolitan Bar Assn. v. Mishler*, 2010-Ohio-5987, 2010-0908.

Cases involving multiple acts of dishonesty, including dishonesty within the disciplinary process, support the imposition of disbarment as a sanction. For example, multiple acts of abberant, dishonest behavior were considered in the case of *Disciplinary Counsel v. Lentz*, 120 Ohio St.3d 431, 900 N.E.2d 167, 2008-Ohio-6355. The respondent in that case systematically deceived clients through lies about fictitious

complaints, non-existent hearings and other legal proceedings in which clients were taken to wait outside a courthouse door, and in one case fabricated a judgment entry. The behaviors were found to support disbarment.

In *Cleveland Metropolitan Bar Assn. v. Mishler*, 2010-Ohio-5987, 2010-0908, the respondent was permanently disbarred based upon aggravating circumstances that included a prior disciplinary offense, a dishonest or selfish motive, a pattern of misconduct, multiple offenses, lack of cooperation in the disciplinary process, submission of false evidence, false statements or other deceptive practices during the disciplinary process, refusal to acknowledge wrongful nature of conduct, the vulnerability and resulting harm to victims, and the failure to make restitution. After the conclusion of the panel hearing, the respondent had attempted to move into evidence his own contradictory statements that the panel characterized as "inconsistent, contradictory Flapdoodle." *Id.* Again, the respondent was disbarred.

Although not a disbarment case, a bar applicant who had already passed her bar exam and whose character, fitness, and moral qualifications had been approved for admission to the practice of law in Ohio was subsequently and permanently denied admission to the bar based upon her multiple episodes of dishonesty and "strange behavior." *In re Application of Aboyade* 103 Ohio St.3d 318, 815 N.E.2d 383, 2004-Ohio-4773. In its opinion, this Court noted, "[a]n applicant whose honesty and integrity are intrinsically suspect cannot be admitted to the Ohio bar." *Id.*

A respondent who is predisposed to dishonesty and lacked integrity was disbarred by this Court in *Cincinnati Bar Association v. Deaton*, 102 Ohio St.3d 19, 2004-Ohio-1537. In *Deaton*, the respondent frequently lied to clients and falsified settlement offers,

time sheets, and firm records. *Id.* at ¶ 25. The court stated that an indefinite suspension would be too lenient, as the respondent deliberately concealed his neglect to protect his personal interest. *Id.* at ¶ 30.

In *Dayton Bar Ass'n v. Overman*, 75 Ohio St. 3d 48, 1996-Ohio-252, the respondent falsified court documents, filed false affidavits and encouraged clients to forge signatures. The respondent was disbarred for these actions. *Id.* at 53. The court said it could not “allow respondent to continue practicing law in this manner- the actual and potential harm is too great.” *Id.*

Lastly, in *Cincinnati Bar Association v. Shabazz*, 74 Ohio St.3d 24, 1995 -Ohio-177, the court permanently disbarred the respondent after he was charged with further misconduct during a two year suspension with the second year stayed. In the instant case, Respondent Farrell was given a chance at suspension and recovery under an OLAP plan. He has admitted further misconduct during the suspension period during which the stayed suspension might also be addressed, although he has chosen not to reapply for reinstatement during the pendency of the current grievance. Like the respondent in *Shabazz*, the instant Respondent was already suspended from the practice of law when further misconduct came to light. The severity of this misconduct, coupled with the previous suspension, also warrants disbarment in this case.

#### Respondent's Legal Authority

In Respondent's Brief at pp. 8-10, Respondent offers legal authority in support of his contention that his sanction should be an indefinite suspension, consisting of several cases, most of which do not involve the issue of an attorney's dishonesty to a court or

fabrication of legal documents. One relevant case, *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, concerned falsification by an attorney of a municipal court hearing transcript, presented by the attorney to an insurance company in order to improperly effectuate a settlement. The *McMahon* case involved "one isolated incident of wrongdoing" concerning one letter, and no financial loss to any party concerned. *Id.* at 334. As the Court stated in that case,

Lawyers who choose to engage in fabrication of evidence, deceit, misrepresentation of facts, and distortion of truth do so at their peril. They are admonished that the practice of law is not a right, and our code of professional responsibility demands far more of those in our profession. Here, respondent has presented much evidence in mitigation, but an actual suspension is appropriate for this conduct.

*Id.* at 335.

Respondent also cites *Disciplinary Counsel v. Robinson*, 2010-Ohio-3829, 126 Ohio St.3d 371, \_\_\_ N.E.2d \_\_\_, a case in which a one-year suspension was levied against an attorney who removed and destroyed documents from his former law office and who was found to have made knowingly false statements under oath in a sworn deposition. This case is similarly distinguishable because the fabrication and dishonesty occurred within a relatively brief three-month period and did not occur within the context of the disciplinary process. The *Robinson* case cited with approval Delaware and Maryland cases finding there to be no distinction between conduct in a private as opposed to a professional setting, and, in one, disbarring the offender. *Id.* at 377-378. As the Ohio Supreme Court further stated,

Likewise, we have recognized: "One of the fundamental tenets of the professional responsibility of a lawyer is that he should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the

profession can be maintained only if the conduct of the individual attorney is above reproach. He should refrain from any illegal conduct. Anything short of this lessens public confidence in the legal profession — because obedience to the law exemplifies respect for the law." *Cleveland Bar Assn. v. Stein* (1972), 29 Ohio St.2d 77, 81, 58 O.O.2d 151, 278 N.E.2d 670.

*Id.*

The remaining authority cited by Respondent, as mentioned, does not involve the issue of an attorney's dishonesty to a court and fabrication of legal documents, and the cases frequently express that important and fundamental distinction in their reasoning. See, e.g., *Columbus Bar Assn. v. Patterson*, 95 Ohio St.3d 502, 503, 2002-Ohio-2487, para. 18 ("the parties agree that (1) respondent's violations did not directly relate to the practice of law, (2) respondent's violations did not adversely affect his clients *or the judicial system*, and (3) respondent suffered a separate punishment or sanction for each of these violations")(emphasis added); *Toledo Bar Assn. v. Abood*, 104 Ohio St.3d 655, 657, 2004-Ohio-7015, para.10 (respondent had no problems with his clients, lawyers, *or judges* and that his problems were 'of a financial nature, and deal exclusively with the IRS, not with his practice, or his capacity as an attorney')(emphasis added). Respondent Farrell's failure to grasp this fundamental difference between the nature of his conduct and that involved in the cases he cited belies his asserted understanding of the wrongful nature of his conduct.

Respondent further notes that attorneys convicted of state or federal felonies have received indefinite suspensions or lesser sanctions, apparently arguing his sanction should be proportional to the conduct in those cases and thereby reduced from disbarment. Respondent's Brief at 10. These cases involve felonious conduct such as transportation and import of obscene material, misappropriation of varying funds from

individuals and a law firm, money laundering and financial crimes, bank fraud, drug trafficking and illegal processing of drug documents, and importuning. In each of them, the respondent also served jail time. It should be noted that in this case, the Respondent's actions in forging his wife's power of attorney to obtain a bank loan and fabricating United States postal system letters, could have easily resulted in felony charges against him, for which he has escaped serving time.

Respondent's argument in support of a lesser sanction is ultimately one of proportionality: he argues this Court, in fairness, should arrive at his sanction by attempting to match the nature, frequency and severity of the misconduct with the sanction imposed in similar cases. Unfortunately, his conduct is so aberrant and unique, there are few cases to compare. Proportionality in his case, and the relative fairness of the sanction to Respondent, must be subservient to this Court's fundamental concerns for the public welfare and the integrity of the profession. As the majority writes in its decision, it was reluctant to permanently disbar Respondent "given existing case law," but further expressed its inability "to confidently and establish a timeframe within which we believe Respondent could return to the ethical practice of law." Board Opinion at 21. Despite Respondent's argument, found within his "Response To Show Cause Order," that the majority of the panel would have imposed a lesser sanction because they had the opportunity to observe the demeanor of the witnesses, the text of the majority's decision indicates that, but for other case law and a concern for proportionality, they too would have endorsed the dissenting panel member's sanction. This Court can exercise its discretion, however, as the ultimate arbiter of the sanction to be imposed, and impose a

sanction that protects the public and the profession and avoids the dilemma of proportionality faced by the hearing panel.

## CONCLUSION

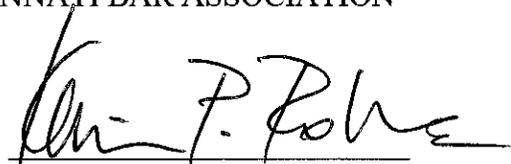
Respondent's argument that he should receive an indefinite suspension rather than the Board's recommended sanction of permanent disbarment is startling in its failure to account for the distinguishing feature of his case, one that involves deceptions occurring within the grievance process itself and before this Court. He utterly fails to address the fact that he lied to the hearing panel in his Brief. In his assessment and discussion of the case law, Respondent simply ignores this distinguishing misconduct, perhaps out of a lack of self-awareness, or perhaps in the hope that others, too, will overlook his peculiar distinction.

Therefore, Relator respectfully asks this Court to permanently disbar Respondent from the practice of law in Ohio.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Relator's Answer Brief to Respondent's Objections to the Show Cause Order Entered November 17, 2010, was mailed by first class U.S. mail, postage prepaid, to William I. Farrell, 3423 Burch Ave., Apt. #2, Cincinnati, OH 45208 on this 21st day of December, 2010.

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