

ORIGINAL

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

In Re:	:	11-0408
Complaint against	:	Case No. 09-028
Joseph G. Stafford Attorney Reg. No. 0023863	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

{¶1} This matter was heard by a panel composed of Board members Judge Arlene Singer, Toledo, Judge John Street, Chillicothe, and panel chair, retired Judge Thomas F. Bryant, Findlay.

{¶2} None of the panel members is from the appellate judicial district from which the complaint arose, and none served on the probable cause panel that certified the matter to the Board.

{¶3} Relator was represented by Lori J. Brown and Karen H. Osmond, Assistant Disciplinary Counsel. Lawrence A. Sutter and Stephanie D. Adams appeared on behalf of Respondent. The panel heard the testimony of Respondent and of 12 other witnesses, all on direct and cross-examination. A forest of documents was received in evidence.

{¶4} Relator's Amended Complaint alleges three counts of Respondent's conduct in violation of the Ohio Rules of Professional Conduct.

FILED  
MAR 14 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

## FINDINGS OF FACT

{¶5} Respondent was admitted to the practice of law in the state of Ohio in May 1985 and is, and at all times relevant to the allegations of Relator's complaint was, a partner with his brother Vincent Stafford in the law firm known as Stafford & Stafford Co., L.P.A. Stafford & Stafford Co., L.P.A. employs five lawyers and a number of staff persons. Respondent is the sole shareholder and managing partner of that firm. (Tr. 1087-1089, Ex. 113) Respondent is a certified specialist in family law. In his opening statement, Respondent's counsel observed that "Mr. Stafford is the preeminent domestic relations lawyer in northeastern Ohio" and that the evidence would show that "he represents some of the most famous people in the area, not just politicians, not just famous people, but judges, three who currently sit on the 11<sup>th</sup> District Court of Appeals. And he has his success because he is very good at what he does, and he is considered the very best." (Tr. 14, 15)

## COUNT ONE

{¶6} Count One of Relator's Amended Complaint arises from Respondent's conduct as counsel in a domestic relations case, *Tallisman v. Tallisman*, then pending in the Common Pleas Court, Division of Domestic Relations, Cuyahoga County, Ohio.

{¶7} Alan G. Tallisman is a Cleveland businessman who has acquired substantial business interests and other assets during his lifetime.

{¶8} Susan M. Tallisman and Alan G. Tallisman were married on December 15, 1993. Prior to their marriage, Susan and Alan executed a prenuptial agreement. No children were born to Alan and Susan, but Alan had two children (Dustin and Alexis) from a prior marriage.

{¶9} Alan and Susan Tallisman separated on January 15, 2005.

{¶10} Respondent filed a complaint for divorce on behalf of Susan Tallisman on January 27, 2005 seeking a divorce, temporary restraining orders, temporary and permanent spousal support, an equitable division of property, attorney fees and other and further relief. Susan's complaint named as defendants: Alan Tallisman; Chesterfield Steel Sales Co. a.k.a. Chesterfield Steel Service; ABE Realty Co.; Millbrook Associates; Imports International, Inc.; Key Bank National Association; and Huntington National Bank.

{¶11} The complaint did not allege the existence of the parties' prenuptial agreement or claim in any way the invalidity or unenforceability of that agreement for any reason.

{¶12} Counsel for Alan Tallisman filed an answer and a counterclaim for divorce on February 18, 2005. The counterclaim asserted that a prenuptial agreement defined Susan Tallisman's rights to property and support.

{¶13} Respondent did not file a reply or otherwise respond to the counterclaim, and after the time for filing a Reply to the Counterclaim had elapsed, in June 2005 Alan's counsel filed a motion for summary judgment that the parties' prenuptial agreement controlled the division of the parties' property. Alan asked in the alternative that should his motion for summary judgment be denied, the court bifurcate the proceedings to permit a separate and earlier hearing on the issues of the validity of the prenuptial agreement and its enforceability.

{¶14} On June 13, 2005, Respondent submitted a memorandum opposing the motion for summary judgment reciting that Susan Tallisman filed a complaint for divorce on January 27, 2005; that the defendant filed an answer and counterclaim on February 18, 2005; and that the document attached to the motion entitled Prenuptial Agreement was, "allegedly executed by the parties' (sic) on December 11, 1993, which is the Defendant's sole basis in moving this Court for summary judgment in his favor." Arguing against enforcement of the prenuptial agreement,

Respondent urged the court to deny defendant's motions for summary judgment and to bifurcate the proceedings. (Ex. 9) No issue was made regarding the certification and service of the answer and counterclaim.

{¶15} No judgment entry was filed ruling on the motion for summary judgment until April 18, 2007. (Ex. 32)

{¶16} Nearly two years after the motion for summary judgment was filed, the trial court set the case for trial including all pending motions to begin on April 23, 2007.

{¶17} On April 12, 2007, believing no action had been taken on his motion for summary judgment, Alan Tallisman filed and served a motion asking the court to deem that Susan Tallisman had admitted the averments in his counterclaim (arguing that a reply to the counterclaim was never filed) and asking for judgment on the pleadings as to that issue. A photocopy of the answer and counterclaim filed on February 18, 2005 was attached to the motion.

{¶18} On April 16, 2007 in conjunction with those motions, Alan Tallisman's counsel sent a letter to Respondent offering to settle property issues in the case considering that Respondent had failed to file a response to Alan Tallisman's counterclaim.

{¶19} Relator alleges that one day after receiving the letter from Alan Tallisman's counsel, Respondent embarked on a course of conduct involving dishonesty, deceit and misrepresentation.

{¶20} On April 17, 2007, in a disguised attempt to place the validity and enforceability of the prenuptial agreement in issue, Respondent filed on plaintiff's behalf a "Motion for Leave of Court to File Amended Complaint." In his motion for leave, Respondent claimed that it was necessary to amend the divorce complaint to have all necessary parties before the court.

Respondent did not mention the prenuptial agreement in his motion for leave nor did he attach a copy of the proposed amended complaint to the motion. The Court granted leave *ex parte* by entry filed the same day the motion was filed, all without an opportunity for response from Alan Tallisman.

{¶21} The amended complaint filed by Respondent included all of the original defendants and added five new defendants: LBA Industries; LBA Industries Profit Sharing Plan; Fifth Third Bank; Alan Tallisman Irrevocable Trust; and LDA Industries. (Ex. 20) All of the parties added to the amended complaint were disclosed to Respondent before April 13, 2007, in the 1993 prenuptial agreement, in Alan Tallisman's interrogatory answers, and in document production responses. (Ex. 10, 11)

{¶22} Although the prenuptial agreement was not mentioned in the original Complaint for divorce or in Respondent's motion for leave to amend the complaint, paragraph three of the amended complaint, states: "The Plaintiff sets forth that the parties executed a Pre-nuptial agreement which was the result of fraud, coercion [sic], and duress created by the Defendant, Alan Gregg Tallisman." (Ex. 30)

{¶23} It is evident that Respondent was taken unaware by the motion and letter from Alan's counsel asserting Respondent's failure to plead the unenforceability of the prenuptial agreement in either the original complaint or by reply to the counterclaim. Although the advantage Respondent gained by addition of previously known stakeholders in the filing of his amended complaint as new parties is doubtful, considering alternative discovery procedures available, the surreptitious inclusion of the paragraph amending the complaint to include a new claim for relief after the issues were drawn can have been done only to mislead the court into granting leave without full knowledge of the extent and purpose of the relief sought. Because leave to amend

was granted by *ex parte* order, defendant had no opportunity to supply the additional information until after the claim was part of the record.

{¶24} On April 18, 2007, Respondent filed a "Motion for Leave to File Reply to Counterclaim Instanter (Limited Appearance)" on behalf of Susan Tallisman: "The Plaintiff, Susan Marie Tallisman, by and through her authorized counsel, Joseph G. Stafford, and the law firm of Stafford & Stafford Co., L.P.A., enters a limited appearance to the answer and counterclaim of the Defendant and respectfully requests this court to permit her to file her Reply to the Counterclaim Instanter pursuant to Rule 6 of the Ohio Rules of Civil Procedure. The request is premised upon issues regarding service of the answer and counterclaim." The vague reference to issues regarding service is unexplained. (Ex. 31)

{¶25} Again the court *ex parte* signed a judgment entry granting Respondent's motion for leave to reply instanter to the counterclaim of the defendant. (Ex. 33) The entry was filed on April 18, 2007 and at the same time a judgment entry bearing Judge Celebrezze's signature dated October 20, 2005, denying Alan Tallisman's motion for summary judgment, was also filed. (Ex. 32)

{¶26} The "Reply to Answer and Counterclaim (Limited Appearance)" filed on behalf of Susan Tallisman, in paragraph three states, "The Plaintiff, Susan M. Tallisman, specifically sets forth that the pre-nuptial agreement, attached as Exhibit A to the Answer and Counterclaim of the Defendant, Alan G. Tallisman, is premised upon fraud, coercion, and duress." (Ex. 34)

{¶27} On April 19, 2007, counsel for Alan Tallisman responded by filing a series of motions (Ex. 38) arguing that Respondent had perpetrated a "flagrant fraud" upon the court by manipulating the Civil Rules in a manner not intended or permitted by the courts.

{¶28} Also on April 19, 2007, investigating Respondent's claim of "issues regarding service of the answer and counterclaim," Alan's attorney James Cahn sent a Hermann, Cahn & Schneider

LLP legal assistant to retrieve a copy of the answer and counterclaim from the files of the Clerk of Courts. The copy returned had no certificate of service, so Cahn went himself to the Clerk's office to investigate and found that the pleading in the Clerk's file had no certificate of service attached.

{¶29} Duplicate copies of the answer and counterclaim retained by Hermann, Cahn & Schneider LLP and maintained in that firm's files each includes a certificate of service page. Copies of correspondence from a Hermann, Cahn & Schneider LLP paralegal to Respondent, retained in the Hermann, Cahn & Schneider LLP firm's files, suggest that the originals of such documents accompanied service of the Answer and Counterclaim upon Respondent. Alan's lawyers, however, as was their custom in divorce cases, intentionally did not serve the corporate and institutional defendants with copies of the answer and counterclaim and did not certify such service, because as Cahn testified, the business entities being merely stakeholders against whom no claim is asserted "don't want to get other people's personal mail." (Tr. 300, 450)

{¶30} Testimony at the panel hearing revealed that the Cuyahoga County Clerk of Court's record of pleadings and other matter filed in the court is open to the public. Persons examining court case files are not monitored and the files are not examined after inspection by anyone. Records are often located out of the clerk's actual file elsewhere in or around the court in a judge's chambers or in a staff person's possession. Any person on the premises has access to the Clerk's files and any document may be removed surreptitiously or lost or mislaid by anyone handling the file.

{¶31} On May 8, 2007, counsel for Alan Tallisman filed a "Notice of Filing Replacement Certificate of Service Page" stating in part that the original certificate of service had "mysteriously disappeared" and that "(i)t is unknown whether that page was inadvertently lost,

misplaced, or intentionally removed.” The "notice" included sworn affidavits from attorneys Cahn and Lane in support of their claim that Respondent was served with the Answer and Counterclaim when it was filed in February 2005. Counsel filed with the “notice” a "Replacement Certificate of Service of Answer and Counterclaim for Divorce." (Ex. 44)

{¶32} Thereafter a succession of motions, conferences, and bitter correspondence by the respective counsel ensued respecting the matter of the certificate of service and the effects of Alan’s counsel filing a “replacement.” (Ex. 46, 47 and 49)

{¶33} On May 24, 2007, on behalf of Susan Tallisman, Respondent filed a “Motion for Leave of Court” asking to file a “Second Amended Complaint.” (Ex. 54)

{¶34} Respondent's motion claimed that the defendant had “repeatedly failed to properly turn over documentation and to supply this Court with proper information regarding the parties’ assets.” Respondent claimed that at in the deposition of Alan Tallisman, “certain facts became revealed” concerning the prenuptial agreement. Without further explanation, Respondent claimed that leave of court was not necessary because “issues” had been “raised concerning the failure of the Defendant to properly serve his Answer and Counterclaim.”

{¶35} On May 24, 2007 the court, *ex parte*, signed a judgment entry filed the same day granting Respondent's motion for leave to file a second amended complaint. (Ex. 55) The second amended complaint also was filed on May 24, 2007. (Ex. 56)

{¶36} In the second amended complaint, in addition to all of the previously identified defendants, Respondent added eight new defendants. (Ex. 20)

{¶37} Relator argues that the second amended complaint was a subterfuge to overcome the failure to allege the existence of the Tallismans’ pre-nuptial agreement in the original complaint as now included in the second amended complaint, or to file a reply to Alan Tallisman's

counterclaim. All the eight new parties had been disclosed as stakeholders in prior pleadings and discovery. Respondent's claim of "issues" "concerning service" of the answer and counterclaim is vague and implies that Respondent was not served with an answer and counterclaim in February 2005.

{¶38} The record discloses that the answer and counterclaim were expressly acknowledged by Respondent in his memorandum filed June 13, 2005 in response to Alan's motion for summary judgment as found by the panel in paragraph 14 of this report. (Ex. 9, p. 5)

{¶39} On June 13, 2007, Alan Tallisman filed a "Motion to Vacate Order Granting Plaintiff's 'Motion for Leave of Court'" and "Motion to Strike Plaintiff's Second Amended Complaint from the Court's Record," arguing that because the first amended complaint was a sham, a second amended complaint could not be filed.

{¶40} The record of the Tallisman divorce case preserves Alan Tallisman's explanation to the domestic relations court of Respondent's deception that the panel has paraphrased as follows:

First, defendant filed motions to have averments deemed admitted and for judgment on the pleadings that were still pending decision by the court and to which Susan had not yet responded at the time plaintiff's motions for leave were filed. By granting plaintiff's motions for leave, the court rendered the issues moot and relieved plaintiff of any obligation to justify her two-year failure to reply to the counterclaim.

Second, the court granted leave to plaintiff to file her reply without requiring any showing of excusable neglect as mandated by Civ. R. 6(B)(2), without any explanation for plaintiff's failure to file a timely reply to the counterclaim, and without any opportunity for the defendant to oppose the filing of a belated reply.

Finally, Alan concludes that the second amended complaint with averments denying a valid prenuptial agreement thus became part of the record due to the deceit of plaintiff's counsel.

{¶41} Respondent's June 27, 2007 response to the foregoing motions contained untrue statements. Respondent first learned on April 13, 2007 "of numerous other assets and/or entities which the Defendant failed to previously disclose - including but not limited to, an account at Fifth Third Bank in the amount of [\$1,004,932.13]." (Ex. 64, p. 4)

{¶42} Contrary to the foregoing misrepresentations, the Fifth Third Bank account was first disclosed on June 23, 2005 at page seven of defendant's response to plaintiff's Interrogatory No. 10.

{¶43} Between April and July 2007, Respondent made various claims regarding service of the answer and counterclaim, finally claiming that defendant's answer and counterclaim were not properly before the Court as a result of the Defendant's failure to comply with Civ. R. 5(D) because he failed to "include a certificate of service" in his answer and counterclaim "filed with this Court on or about February 18, 2005, indicating any service of the Answer and Counterclaim upon counsel for the Plaintiff, Susan Tallisman." (Ex. 61)

{¶44} In his testimony to the hearing panel, Respondent stated that he had searched his office files and that no copy of the defendant's answer and counterclaim was found.

{¶45} On October 9, 2007, the court filed a judgment entry granting Alan Tallisman's April 8, 2005 motion to bifurcate the proceedings. (Ex. 66)

{¶46} The court set the matter for a hearing on the validity of the prenuptial agreement for January 7-9, 2008.

{¶47} By judgment entry filed November 8, 2007, the court held, in relevant part, that the matter was before the court on "countless motions, briefs, and other pleadings all of which have

to do with the proper pleading of an affirmative defense to Defendant's Counterclaim, which relates to the parties' Prenuptial Agreement." (Ex. 69) The court ordered both parties to brief their positions on or before November 20, 2007.

{¶48} In Plaintiff's Response to Defendant's Brief in Response to Court's Judgment Entry of November 7, 2007, filed December 21, 2007, Respondent explained that Gregory J. Moore, an associate attorney at Stafford & Stafford, prepared the Plaintiff's Memorandum in Opposition to the Defendant's Motion for Summary Judgment and Motion to Bifurcate Proceedings; and merely cited to that which was on the Court's docket in reference to the Defendant's Answer and Counterclaim.

{¶49} Respondent, in his written response, also reiterated his claim that "there is no evidence in the records of the Plaintiff's counsel or otherwise indicating that a copy of the Defendant's Answer and Counterclaim was received by the Plaintiff's counsel" and stated that in addition, there is no certificate of service in the official court record regarding service of the Answer and Counterclaim upon Respondent's counsel in compliance with Civ. R. 5(D).

{¶50} Judge Celebrezze signed a judgment entry on January 3, 2008, which provided, in relevant part, that Plaintiff's Motion to Strike Defendant's Answer and Counterclaim, Plaintiff's Motion to Strike Defendant's Motion to Have Averments Admitted, and Motion to Strike Defendant's Motion for Judgment on the Pleadings were denied. (Ex. 86)

{¶51} In that entry, the court granted Defendant's Motion to Vacate Order Granting Plaintiff's Motion for Leave to Reply to Counterclaim Instantly filed by Cahn and vacated the court's previous order granting Plaintiff's Motion for Leave to Reply to Counterclaim Instantly. The court struck Plaintiff's Reply to Defendant's Counterclaim and stated that upon a "showing of excusable neglect, the Court will entertain a Motion for Leave to Reply to Counterclaim

Instantaner." The court held that Defendant's Motion to Vacate Order Granting Plaintiff's Motion for Leave of Court to File Amended Complaint was granted and the court's order granting leave to file the Amended Complaint was vacated. The court granted Defendant's Motion to Vacate Order Granting Plaintiff's Motion for Leave of Court to File a Second Amended Complaint. The court granted Defendant's Motion to Have Averments Deemed Admitted as to the existence of the Prenuptial Agreement. The court further stated that its ruling did "not constitute an admission as to the document's enforceability." The court denied Defendant's Motion for Judgment on the Pleadings. (Ex. 86)

{¶52} Judge James P. Celebrezze was the judge who presided over the Tallisman case and who signed the Court's entries in the Tallisman case including the *ex parte* entries.

{¶53} Judge Celebrezze testified pursuant to subpoena in the panel hearing in this disciplinary matter on July 27, 2010.

{¶54} In his testimony to the panel, Judge Celebrezze confirmed that he signed the order, described in paragraphs 50 and 51 above, disposing of the many motions then before the court and identified in this cause as Exhibit 86. He testified that he intended that the signed entry be filed and confirmed that the custom of his court was to send copies of such entries to counsel by fax. When in the course of examination at the hearing, counsel noted that the entry faxed to counsel did not appear in the domestic relations court's docket entries, Judge Celebrezze did not know why the entry was not filed as he intended. (Tr. 278, 282)

{¶55} Much of Respondent's testimony in defense concerns the failure of defendant to provide accurate discovery and Respondent's efforts by his amended pleadings to gain meaningful discovery of the nature and value of Alan Tallisman's assets from sources other than Alan Tallisman.

{¶56} On July 19, 2007 Judge Celebrezze appointed Mark Dottore receiver in the Tallisman matter. Mr. Dottore conducted his own discovery, hired his own appraiser to evaluate the assets in question and his own lawyer to sort out the Tallisman pleadings and to determine their import and proposed disposition. Dottore testified that the information he discovered about the parties' assets and their financial affairs permitted them to settle the property division issues amicably before the case finally came to trial. As he testified, "I settled the case." (Tr. 997)

{¶57} There has been no allegation and no evidence has been presented that Respondent is responsible for the mysterious absence of plaintiff's certificate of service from the Clerk's records of the proceedings in the Cuyahoga County, Ohio, Common Pleas Court, Division of Domestic Relations.

{¶58} There has been no allegation and no evidence has been presented that Respondent was untruthful in stating that a search of his office did not discover a copy of defendant's answer and counterclaim said to have been served upon Respondent near the outset of the proceedings. It is noteworthy that the document was not missed for nearly two years until Respondent's lack of filing a reply to that pleading became an issue.

{¶59} There has been no allegation and no evidence has been presented that Respondent is responsible for the mysterious appearance of a domestic relations court entry of judgment denying defendant's motion for summary judgment on his counterclaim nearly two years after it was signed and dated and coincidentally filed simultaneously with the *ex parte* order granting plaintiff leave to reply instant to the defendant's counterclaim that underlay the motion for summary judgment.

{¶60} There has been no allegation and no evidence has been presented that Respondent is responsible for the mysterious failure to file Judge Celebrezze's judgment entry of January 3, 2007.

{¶61} The entry of the numerous *ex parte* orders of which Relator has complained does not appear from the evidence to have been the result of some arcane conduct of Respondent to obtain judgments without input from opposing counsel, but rather, resulted from opportunities presented by the peculiarities of practice in the Cuyahoga County Common Pleas Court, Division of Domestic Relations, and from the application of local rules of court that may conflict with the Ohio Rules of Civil Procedure.

{¶62} It is unimportant to a finding of misconduct whether or not Alan Tallisman's answer and counterclaim were certified as served upon Respondent at the time of filing, or whether they were actually served, considering that Respondent's intentionally misleading pleadings were drawn and filed in the court when everyone believed the counterclaim had been properly served and before the matters of lack of certification of service or of actual service of process were discovered and became issues and alternative defenses to the claim of Respondent's failure to answer defendant's counterclaim.

### COUNTS TWO AND THREE

{¶63} In November 2000, Eugene A. Lucci was elected judge of the Common Pleas Court of Lake County, Ohio. He held that judicial office at all times pertinent to Counts Two and Three of Relator's complaint.

{¶64} Judge Lucci was married to Deborah Lucci, but the Luccis separated on November 20, 2007 and intended to end their marriage. Deborah was represented by counsel in the matter but Eugene represented himself.

{¶65} Before and after March 12, 2008, Eugene was negotiating with Deborah and her attorney concerning a separation agreement Eugene had prepared in anticipation of dissolution of marriage.

{¶66} At some undisclosed time, Eugene Lucci became involved with Amy Rymers, a married woman who was separated from her husband Jeffrey.

{¶67} On March 12, 2008, Lucci met with Respondent in Respondent's office at the firm of Stafford & Stafford, LPA, by prearranged appointment. At that meeting Lucci claims to have told Respondent about his marital situation, his negotiations with his wife's attorney, Gail Hurd, his preparation of a proposed separation agreement, and his relationship with Amy Rymers.

{¶68} The testimony of Lucci and that of Respondent vary significantly concerning the specifics of the discussion they had on March 12, 2008.

{¶69} Respondent's notes taken at the conference are consistent with Respondent's testimony that Lucci told about representing himself and preparing his proposed separation agreement. (Resp. Ex. 11-M(s)). Respondent testified that there was no mention of Amy Rymers or her husband Jeffrey.

{¶70} Lucci testified that his purpose in meeting with Respondent was "[t]o get him on board with my marital situation, the potential of litigation and to seek his advice." (Tr. 737) Later he said "We all understand as lawyers how these things work. I poured my soul and heart out to him. I sought his earnest advice. I wanted him on board if the matter wasn't able to come to a quick fruition; and if her conversations with Jeff Rymers did not cease and desist, then I was fully prepared to have Mr. Stafford file litigation." (Tr. 744) Lucci said the conference lasted two hours. Respondent's office records disclose a much shorter conference.

{¶71} Lucci paid no retainer to Respondent, no retainer agreement was signed, Respondent furnished no letter of undertaking, Lucci consulted with Respondent no further, and Respondent took no part in the Lucci's dissolution proceeding. Lucci testified that he told his wife's attorney that he had met with Respondent and "I told Gail Hurd that if we don't resolve this, that Mr. Stafford will be representing me in a contested divorce." (Tr. 743)

{¶72} The Lucci's dissolution decree was entered October 28, 2008.

{¶73} Amy Rymers and her children have lived with Lucci in his home since September 4, 2008.

{¶74} In March 2009, Amy Rymers filed in the Lake County Common Pleas Court a complaint for divorce from Jeffery Rymers. Since Eugene Lucci is one of the judges of that court, a visiting judge was assigned to preside in the case.

{¶75} Amy was represented by attorney Linda Cooper. Respondent entered his appearance on behalf of Jeffery Rymers, whereupon Lucci, by his counsel Walter McNamara, contacted Respondent complaining of Respondent's representation of Jeffrey Rymers and asserting Lucci's belief that such representation was in conflict with Lucci's interests represented by Respondent in Lucci's divorce.

{¶76} Upon Respondent's refusal or failure to withdraw from the Rymers case, Lucci by his counsel filed a motion to intervene and to disqualify Respondent as counsel in the Rymers divorce, objecting to Respondent's appearance in behalf of Jeffery and claiming Respondent's conflict of interest arising from Respondent's having previously represented Eugene Lucci in the Lucci divorce matter the year before.

{¶77} Neither the propriety of nor the merit of Lucci's motion to intervene in the Rymers divorce case is pertinent to resolving this disciplinary matter alleging Respondent's misconduct.

{¶78} The visiting judge assigned to hear the Rymers divorce case ordered that a pretrial conference with counsel be held in the Lake County Courthouse on the morning of June 3, 2008. Respondent sent his recently hired associate, Nicholas M. Gallo, to attend the conference with client Jeffrey Rymers. Gallo and Rymers had never met before and neither had ever met Eugene Lucci.

{¶79} While sitting in the corridor outside the courtroom waiting for the pretrial conference to begin, Amy Rymers' attorney, Linda Cooper, approached and handed Gallo a copy of Lucci's Motion to Intervene in the Rymers case. About that time Jeffrey Rymers saw a man who Rymers concluded was Judge Lucci step from the entryway to the judge's waiting room. Rymers believed the man was staring at him as if to intimidate him.

{¶80} Gallo reported by telephone to Respondent the filing of Lucci's motion and relayed Jeffrey Rymers' claim of Lucci's intimidating actions.

{¶81} Upon hearing Gallo's general physical description of the person seen by Rymers standing at the entry to Judge Lucci's chambers, Respondent advised Gallo that description given matched that of Eugene Lucci. Gallo testified that he looked at a picture of Judge Lucci on the court's internet website to try to confirm the identity of the person seen in the courthouse hallway.

{¶82} Neither Gallo nor Respondent took any further action to verify the identity of the person Jeffrey Rymers had seen. There is no independent evidence that anyone threatened or took any menacing action toward Jeffrey Rymers in the Lake County Courthouse hallway. The person seen by Rymers and Gallo was not Eugene Lucci, but was the judge's long time bailiff, Charles Ashman, carrying out his bailiff's duties that morning.

{¶83} At the direction of Respondent, Stafford & Stafford associate Nicholas Gallo assisted by a Stafford & Stafford law clerk prepared Respondent's motion to strike Lucci's motion to

intervene, motion for extension of time to reply, and motion for sanctions, together with Respondent's memorandum in support of the motions. Also at the direction of Respondent, Gallo prepared his own affidavit and that of the client Jeffrey Rymers to be attached in support of Respondent's motions. (Tr. 652-53) Both affidavits accuse Judge Lucci of threatening and intimidating Jeffrey Rymers in the Lake County Courthouse on June 3, 2009 by staring at him. Nicholas Gallo told the panel that he based his affidavit on his conversation with Respondent to whom he had given a physical description of the person staring at and intimidating Jeffrey and whose description, Respondent told him, matched Lucci's.

{¶84} On June 17, 2009, Respondent filed on Jeffrey Rymers' behalf a "Motion to Strike and/or Dismiss Motion to Intervene" and seeking alternative and additional relief including a "Motion for Sanctions and Attorney Fees Pursuant to R.C. 2323.51 and Civil Rule 11." (Ex. 96)

{¶85} In the memorandum in support of the motion to strike Respondent not only contested the merits of the Lucci motion to intervene, but also unnecessarily and improperly alleged multiple acts of misconduct by Judge Lucci in filing the motion to intervene and by abusing his prestige as judge of the Lake County Common Pleas Court in specific instances relating to the Rymers litigation.

{¶86} Respondent's memorandum supporting his motions to strike and for other relief addresses not only the merit or lack of merit of Lucci's motion to intervene and to disqualify Respondent, but also repeatedly refers to Lucci as Judge Lucci, and as a judge, attacking his integrity, wisdom, and ethics and recklessly accusing Lucci of threatening conduct toward Jeffrey Rymers in person and toward Respondent in writing. The memorandum accuses Lucci of specifically violating Jud. Cond. Rule 1.3 [Avoiding Abuse of the Prestige of Judicial Office].

{¶87} The text of the motion to strike refers to Jeffrey's affidavit:

“Further, as set forth in the Defendant, Jeffrey G. Rymers’ Affidavit, he is intimidated and threatened by the conduct of the Applicant in this matter, including but not limited to, his threats and his conduct at the most recent pretrial in this matter. This is especially so, given the Applicant’s position as a presiding (sic) in the Lake County Court of Common Pleas.” (Ex. 96, p. 17)

{¶88} Another statement in the memorandum asserts "In this matter, the Applicant and his legal counsel have engaged in a pattern of harassing and threatening conduct toward the Defendant, Jeffrey Rymers, and Joseph Stafford; and have intimated on numerous occasions these threats, based upon the Applicant's position as a Presiding Judge in the Lake County Court of Common Pleas." (Ex. 96)

{¶89} An example of a threat claimed by Respondent is set forth in exhibit 96 at page 22:

“The Applicant and his counsel have engaged in conduct that appears to be in violation of the Ohio Code of Judicial Conduct and Ohio Rules of Professional Conduct. The May 19, 2009, correspondence from the Applicant's counsel to Joseph Stafford contains veiled threats and the appearance of impropriety. In the May 19, 2009 correspondence, in which the Applicant's counsel demands that Joseph Stafford withdraw from the Rymers' divorce action, the following is stated:

In addition, in earlier discussions between the Rymers, Mr. Rymers claimed that, among the issues he intends to raise in his custody fight, is the danger of Mrs. Rymers being involved with Mr. Lucci, **who as you know is a Common Pleas Judge in Lake County.** (Emphasis added)”

(Ex. 96, p. 22)

{¶90} The foregoing excerpt, quoted by Respondent to illustrate a threat to Respondent by Lucci and his attorney is incomplete and misleading. The entire paragraph from Lucci’s lawyer’s letter of May 19, 2009 is:

In addition, in earlier discussions between the Rymers, Mr. Rymers claimed that, among the issues he intends to raise in his custody fight, is the danger of Mrs. Rymers being involved with Mr. Lucci, who as you know is a Common Pleas Judge in Lake County. **Mr. Rymers said he is concerned for the children's safety if potential transgressors, etc. seek revenge against a judge.** (Emphasis added.)

(Ex. 96, exhibit 2 to motion)

{¶91} When the final sentence omitted by Respondent is included and the paragraph read in its entirety, it conveys no threat by Lucci or his attorney.

{¶92} On June 25, 2009, Nicholas Gallo left his employment at Stafford & Stafford.

{¶93} On June 26, 2009, Lucci filed a response to Jeffrey Rymers motion to strike attaching his own affidavit denying that he was in the hallway of the Lake County Courthouse or that he had stared at or intimidated Jeffrey Rymers as alleged in the Rymers and Gallo affidavits and in the memorandum supporting the motion to strike the motion to intervene.

{¶94} Lucci had obtained copies of the photos taken by the courthouse surveillance cameras on the morning of June 3, 2009, to verify that he was not in the hallway outside his chambers or in the doorway of his courthouse chambers in the presence of Jeffrey Rymers or Nicholas Gallo to be seen by them on the date and at the times stated in their affidavits given in support of the motion to strike the Lucci motion to intervene.

{¶95} Respondent took no action to investigate or verify Lucci's sworn statement that it was not he who Rymers and Gallo saw in the hallway of the Lake County Courthouse before the pretrial June 3, 2009.

{¶96} Lucci did not refer to the surveillance photos in his opposition to the motion to strike nor did he furnish to Respondent copies of the DVDs made of them. Instead he filed a grievance against attorney Gallo. In preparing his defense to the grievance, Gallo's attorney learned of the DVDs and the import of their content and advised Gallo. Gallo in turn advised Respondent and

some months later on February 1, 2010 Gallo filed in the Rymers case his motion to withdraw his prior false affidavit. (Ex. 108) On January 25, 2010, Respondent filed in the Rymers divorce case on behalf of Jeffrey Rymers a notice of his withdrawal of the affidavits of Jeffrey Rymers and of Nicholas Gallo dated June 17, 2009. (Ex. 107)

## CONCLUSIONS OF LAW

### COUNT ONE

{¶97} In Relator's amended complaint against Respondent Joseph G. Stafford, Count One alleges three separate violations of Prof. Cond. R. 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); two separate violations of Prof. Cond. R. 3.3(a)(1) (a lawyer shall not knowingly make a false statement of fact or law to a tribunal); two separate violations of Prof. Cond. R. 3.3(d) (in an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse); three separate violations of Prof. Cond. R. 8.4(d) (conduct that is prejudicial to the administration of justice); and three separate violations of Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law).

{¶98} The panel finds by clear and convincing evidence one violation by Respondent of Prof. Cond. R. 8.4(c). Respondent intentionally misled the court by filing his motion for leave to file an amended complaint on specific grounds stated and then surreptitiously including an additional allegation regarding the prenuptial agreement omitted in the original complaint but critical to his client's interests. The panel also finds one violation by Respondent of Prof. Cond. R. 3.3(d). Respondent's violation consists of misleading the court to grant relief *ex parte* without the court's full knowledge of the extent and purpose of the relief sought and by taking advantage of local rules not designed for the purpose to do so.

{¶99} The panel recommends that the Board dismiss Relator's two additional allegations of Respondent's violation Prof. Cond. Rule 8.4(c), that the Board dismiss Relator's one additional allegation of Respondent's violation of Prof. Cond. R. 3.3(d), and that the Board dismiss all the remaining allegations of violations of Prof. Cond. R. 3.3(a)(1), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

### COUNT TWO

{¶100} The allegations of misconduct alleged in Count Two in substantial part assume Respondent's claimed conflict of interest arising from his former representation of Eugene Lucci.

{¶101} The hearing panel found the allegation of Respondent's attorney-client relationship with Eugene Lucci was not proven by clear and convincing evidence; that Lucci could not have reasonably relied on the fact that Respondent represented him in any respect concerning Jeffrey Rymers or otherwise; and that had an attorney-client relationship been formed regarding the Lucci divorce in the summer of 2008, the Rymers divorce of the summer of 2009 was not substantially related to the Lucci representation claimed to present Respondent's conflict.

{¶102} On Respondent's motion at the conclusion of the evidence, the hearing panel dismissed Count Two of the complaint for lack of clear and convincing evidence that an attorney-client relationship existed between Respondent and Eugene Lucci.

### COUNT THREE

{¶103} Relator alleges that Respondent's conduct pertaining to Count Three violates:

Prof. Cond. R. 3.3(a)(3) (if a lawyer, the lawyer's client, or a witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable measures to remedy the situation, including, if necessary, disclosure to the tribunal);

Prof. Cond. R. 4.1(b) (in the course of representing a client, a lawyer shall not knowingly fail to disclose a material fact when disclosure is necessary to avoid assisting a fraudulent act by a client);

Prof. Cond. R. 5.1(c) (a lawyer shall be responsible for another lawyer's violation of the Ohio Rules of Professional Conduct if either of the following applies: (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; (2) the lawyer is a partner in the law firm in which the lawyer practices and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action);

Prof. Cond. R. 8.2(a) (a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the integrity of a judicial officer);

Prof. Cond. R. 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation);

Prof. Cond. R. 8.4(d) (conduct that is prejudicial to the administration of justice); and

Prof. Cond. R. 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law).

{¶104} The panel does not find that Relator's allegations of Respondent's violation of Prof. Cond. R. 3.3(a)(3), Prof. Cond. R. 4.1(b), and Prof. Cond. R. 5.1(c)(2) were proven by clear and convincing evidence and therefore recommends their dismissal. The panel finds that the allegations of Respondent's violation of Prof. Cond. R. 8.4(h) is redundant to the previous circumstances and therefore recommends that the Board dismiss that allegation also.

{¶105} The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 5.1(c)(1). Respondent instructed his subordinate associated, Nicholas Gallo, to prepare a motion to strike Lucci's motion to intervene and to prepare his own affidavit and that of Jeffrey

Rymers averring that Judge Lucci had threatened and intimidated Jeffrey Rymers before the pretrial conference June 3, 2009. By doing so in the circumstances, Respondent violated Prof. Cond. R. 5.1(c)(1).

{¶106} The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.2(a). Gov. Bar R. IV(2) provides:

"It is the duty of the lawyer to maintain a respectful attitude towards the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges and Justices, not being wholly free to defend themselves, are peculiarly entitled to receive the support of lawyers against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit a grievance to proper authorities. These charges should be encouraged and the person making them should be protected."

{¶107} The statements made in Respondent's pleadings impugning Eugene Lucci's judicial integrity were made in violation of Prof. Cond. Rule 8.2(a). If Respondent truly believed Judge Lucci had violated Jud. Cond. Rule 1.3, Gov. Bar R. IV(2) provided the appropriate means of bringing an abuse of judicial prestige to the attention of a disciplinary authority.

{¶108} Respondent's motion to strike recites, "As set forth in the Defendant Jeffrey Rymers' Affidavit, he is intimidated and threatened by the conduct of the [Eugene Lucci] in this matter, including but not limited to, his threats and his conduct at the most recent pretrial." This statement is completely false as well as irrelevant to the legitimate legal issues presented.

{¶109} The statement in the motion, "In this matter, the Applicant and his legal counsel have engaged in a pattern of harassing and threatening conduct toward the Defendant, Jeffrey Rymers, and Joseph Stafford; and have intimated on numerous occasions these threats, based upon the Applicant's position as a Presiding Judge in the Lake County Court of Common Pleas" is not only false, but relies on a truncated excerpt from a letter from Lucci's counsel and presents that

excerpted statement out of context and in a deliberately misleading manner to imply a threatened abuse of judicial status that was not made.

{¶110} The panel finds that by deliberately misrepresenting Lucci's conduct and that of his attorney to the domestic relations court as evidence intended to deceive the court, Respondent violated Prof. Cond. R. 8.4(c).

{¶111} Regardless of what Respondent thought about Eugene Lucci's motives for filing his motion to intervene in the Rymers Divorce matter, and regardless of what Respondent thought of Lucci's arguments in his motion and the basis for them in law, he nevertheless had a duty to ensure that that motion to strike was factually accurate, directed to the legal issues, and that the statements therein were not made maliciously or with reckless disregard as to their truth or falsity concerning the integrity of a judicial officer.

{¶112} The panel finds that Respondent's conduct unnecessarily raising and belaboring issues regarding Eugene Lucci's alleged abuse of his prestige as a judge violated Prof. Cond. R. 8.4(d).

#### **MATTERS IN AGGRAVATION**

{¶113} The evidence supports the panel's finding the existence of three of the aggravating factors set forth in BCGD Proc. Reg. 10(B)(1):

(b) Respondent has acted with dishonest motive;

(d) Respondent has committed multiple violations of the Ohio Rules of Professional

Conduct; and

(g) Respondent has refused to acknowledge the wrongful nature of his conduct.

#### **MATTERS IN MITIGATION**

{¶114} Two of the mitigating factors set forth in BCGD Proc. Reg. 10(B)(2) are present:

(a) Respondent has no record of prior findings of misconduct sanctioned

by the Ohio Supreme Court; and

(e) Respondent enjoys a longstanding, good professional reputation.

### RECOMMENDED SANCTION

{¶115} Respondent urges the panel to find that no misconduct has been proven and therefore dismiss Relator's complaint.

{¶116} Relator recommends that Respondent's license to practice law be suspended for at least eighteen months upon proof of the allegations of the complaint.

{¶117} Relator relies upon the decision of *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 190, wherein the court explained that: "A lawyer who engages in a material misrepresentation to a court \* \* \* violates, at a minimum, the lawyer's oath of office that he or she will not 'knowingly employ or countenance any \* \* \* deception, falsehood or fraud.' Gov. Bar R. I(8)(A). Such conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer."

{¶118} In Count One, the panel has found Respondent to have deliberately misled and deceived the court by requesting leave to amend a pleading in one respect while surreptitiously including an additional and unrelated amendment without advising the court of the entire relief sought and the real purpose to be served.

{¶119} Respondent is a prominent lawyer of many years experience, certified in his specialty. His conduct in Count One and Count Three is hardly that to be expected of the preeminent attorney described by his counsel.

{¶120} Respondent's conduct toward Eugene Lucci was extreme, demeaning Lucci as a judge intentionally, unnecessarily, and recklessly in the public record. Respondent presented materially false evidence to the Rymers court recklessly and unnecessarily. In other pleadings Respondent

made false statements regarding the integrity of a judicial officer. In none of the instances was Lucci's status as a judge or Lucci's motives for legal action as a citizen relevant to the legal issues presented.

{¶121} The Supreme Court of Ohio has held that "When an attorney engages in a course of conduct resulting in a finding that the attorney has violated [Rule 8.4(c)], the attorney will be actually suspended from the practice of law for an appropriate period of time." *Fowerbaugh*, 74 Ohio St.3d at 190.

{¶122} Respondent has neither admitted his violations nor expressed any remorse.

{¶123} Respondent has not been sanctioned previously and when asked on cross-examination, Respondent's opposing counsel in *Talisman* case agreed that Respondent is an excellent lawyer.

{¶124} The Supreme Court has clearly established that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. See, e.g. *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704.

{¶125} Respondent's misconduct in the *Talisman* case occurred before the trial judge finally took control to bring order to the proceedings and effect an amicable settlement. Panel members consider the unusual circumstances in which the violations were made are unlikely to recur.

{¶126} Likewise, Respondent's attack upon Judge Lucci's judicial integrity, an apparent overreaction in kind to Lucci's claim of Stafford's breach of ethics by appearing as counsel in the Rymers case, arose in a highly unusual circumstance unlikely to recur.

{¶127} In a similar case of unusual circumstances, the Supreme Court has taken into account that Respondent is not likely to ever repeat his violations. In *Stark Cty. Bar Assn. v. Ake*, 111 Ohio St.3d 266, 2006-Ohio-5704, in which the respondent Ake represented himself as attorney of record and officer of the court, Ake deliberately ignored a court's order on five separate

occasions in the course of his own divorce case, because he disagreed with the order and because it suited his economic interest to do so, violating: DR 1-102(A)(4) (prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(5) (prohibiting conduct that is prejudicial to the administration of justice); DR 1-102(A)(6) (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law); and DR 7-102(A)(1) (prohibiting a lawyer from taking any action on behalf of his client that the lawyer knows will serve merely to harass or maliciously injure another). Confident that respondent would never repeat his transgressions, the Supreme Court suspended Ake from the practice of law in Ohio for six months with the suspension stayed on the condition that he commit no further misconduct.

{¶128} The panel believes that Respondent Stafford will not repeat his transgressions.

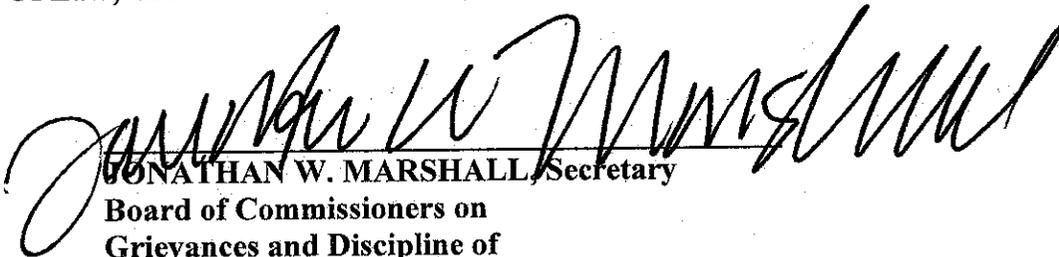
{¶129} Considering the circumstances in which Respondent's violations arose, considering the nature of the violations found, and considering the authorities cited as well as the matters in aggravation and mitigation of sanction including Respondent's reputation, the panel recommends that Respondent be suspended from the practice of law for twelve months with all twelve months stayed upon condition that he engage in no further professional misconduct and that he pay the costs of the proceedings.

#### **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 February 11, 2011. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the panel and recommends that Respondent, Joseph G. Stafford, be suspended from the practice of law for a period of twelve months with the entire twelve months stayed upon the conditions contained in the panel

report. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

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

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