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IN THE SUPREME COURT OF OHIO

	:	
Disciplinary Counsel	:	
250 Civic Center Drive, Suite 325	:	CASE NO. 2011-0408
Columbus, OH 43215	:	
Relator	:	
	:	RELATOR’S OBJECTIONS TO THE
	:	BOARD OF COMMISSIONERS’
	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW AND
	:	BRIEF IN SUPPORT
	:	
Joseph G. Stafford	:	
Reg. No. 0023863	:	
2105 Ontario Street	:	
Cleveland, OH 44115	:	
Respondent	:	
	:	

**RELATOR’S OBJECTIONS TO THE BOARD OF COMMISSIONERS’
FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND BRIEF IN SUPPORT**

INTRODUCTION

Now comes relator, Disciplinary Counsel, and hereby submits two objections to the report of the Board of Commissioners on Grievances and Discipline (the board) filed with this Court on March 11, 2011. The report is attached as Appendix A. See S. Ct. Prac. R.6.2(B)(5)(b).

The panel heard the testimony of respondent, Joseph G. Stafford, and 12 other witnesses over five days on July 26-30, 2010. Based upon clear and convincing evidence, including a “forest” of documents, the board determined that respondent committed misconduct as alleged in Counts One and Three of the amended complaint.

As to Count One, the board concluded that respondent violated Ohio Prof. Cond. Rule 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) and Prof. Cond. Rule 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). As to Count Three, the board concluded that respondent violated Prof. Cond. Rule 5.1(c)(1) (a lawyer shall be responsible for another lawyer's violation of the Ohio Rules of Professional Conduct if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved)¹; Prof. Cond. Rule 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. Rule 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation); and, Prof. Cond. Rule 8.4(d) (conduct that is prejudicial to the administration of justice). The board dismissed additional violations that were charged in Count One and Count Three and Count Two was dismissed.

The panel recommended that respondent be suspended from the practice of law for 12 months with all 12 months of the suspension stayed. Report at 28. At its meeting on February 11, 2011, the board adopted the panel's recommendations. *Id.* The board's report was certified to this Court and an order to show cause was filed March 23, 2011. Now comes relator and hereby submits two objections to the board's report and recommendation.

¹ At all times relevant to the misconduct found by the board, respondent was one of two partners and the sole shareholder of Stafford & Stafford Co., LPA. Tr. at 72. Respondent's brother, Vincent A. Stafford, is the other partner. *Id.*

FACTS SUPPORTING THE BOARD'S FINDINGS OF MISCONDUCT

Facts Regarding Count One

As determined by the board, Count One arises from respondent's misconduct as counsel in a domestic relations case, *Tallisman v. Tallisman*. Id. at 2. Susan M. Tallisman and Alan G. Tallisman were married on December 15, 1993. Prior to their marriage, Susan and Alan executed a prenuptial agreement. Id.

Respondent filed a complaint for divorce ("the complaint") on behalf of Susan Tallisman on January 27, 2005 in the Cuyahoga County Domestic Relations Court. Id. at 2-3. See, also Relator's Exhibit 2 (hereinafter "Rel. Exb."). The complaint designated Susan as the plaintiff and named the following as defendants: Alan Tallisman, Chesterfield Steel Sales Co. a.k.a. Chesterfield Steel Service, ABE Realty Co., Millbrook Associates, Imports International, Inc., KeyBank National Association, and Huntington National Bank. Id. at 3. The complaint did not allege the existence of the parties' prenuptial agreement or assert the invalidity or unenforceability of that agreement for any reason. Id. *Tallisman v. Tallisman* was assigned to the docket of Judge James Celebrezze. Tr. at 77.²

Counsel for Alan Tallisman filed an answer and a counterclaim for divorce on February 18, 2005.³ Report at 3 and Rel. Exb. 5. Alan's counterclaim asserted that the prenuptial agreement defined Susan's rights to property and support. Report at 3. A copy of the Tallismans' prenuptial agreement was attached to the answer and counterclaim filed by Alan Tallisman. Rel. Exb. 5.

² Citations to "Tr." are references to page numbers of the hearing transcript.

³ All of Alan Tallisman's pleadings and motions were made by and through his counsel at Hermann, Cahn, and Schneider LLP ("HCS"), Attorneys James S. Cahn and James L. Lane.

When it was filed on February 18, 2005, the answer and counterclaim consisted of a total of 24 pages, the last of which was a certificate of service signed by Attorney James S. Cahn verifying that a true and accurate copy of the answer and counterclaim was mailed to respondent on February 18, 2005. Id. and Tr. at 246-250; 255-256; 294-297; 506. Duplicate copies of the answer and counterclaim that are maintained in the files at HCS each contain 24 pages, including the certificate of service page. See, e.g. Tr. at 510.

Respondent did not file a reply to Alan Tallisman's counterclaim within 28 days as required by Civ. R.12(A)(2).⁴ Report at 3. On April 8, 2005, Alan Tallisman filed a Motion for Summary Judgment and a Motion to Bifurcate the Proceedings. Id.⁵ and Rel. Exb. 7. In his motion, Alan Tallisman asked the court to declare the parties' prenuptial agreement valid or in the event the motion for summary judgment was denied, to bifurcate the proceedings and hold a hearing on the validity of the prenuptial agreement before the final divorce trial. Id.

Respondent submitted a memorandum in opposition to the motion for summary judgment on June 13, 2005. Report at 3 and Rel. Exb. 9. The Introduction and Statement of Facts of respondent's memorandum in opposition states:

Susan Tallisman filed a Complaint for Divorce in this matter on January 27, 2005 and the Defendant filed an Answer and Counterclaim on February 18, 2005. On April 8, 2005, the Defendant filed a Motion for Summary Judgment and Motion to Bifurcate Proceedings. Attached to the Defendant's motions is a document entitled "Prenuptial Agreement," 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.

⁴ Civ. R.12(A)(2) provides that the "plaintiff shall serve his reply to a counterclaim in the answer within twenty-eight days after service of the answer[.]" Civ. R.7(A) requires that there be a reply to a counterclaim.

⁵ The board report states that Alan's motion for summary judgment was filed in June 2005. Report at 3, ¶13. The evidence shows that the motion was filed on April 8, 2005; therefore, this appears to be a typographical error or simply a mistake as to the date.

Id. (emphasis added.) Arguing against the prenuptial agreement, respondent urged the court to deny Alan's motion for summary judgment and his request to bifurcate the proceedings. Id. The response to the motion for summary judgment did not make an issue regarding the certification or service of the answer and counterclaim. Report at 4. On or about August 23, 2006, a trial in the *Tallisman* case including all then-pending motions was scheduled to begin on April 23, 2007. Rel. Exb. 1.

On April 12, 2007 and after concluding that no action had been taken on his motion for summary judgment, Alan Tallisman filed a motion arguing that Susan had never filed a reply to his counterclaim and asking the court to deem that Susan had admitted the averments in that counterclaim. Report at 4 and Rel. Exb. 23. Alan asked for judgment on the pleadings as to that issue. Id. A photocopy of the answer and counterclaim that had been filed on February 18, 2005 was attached to the motion. Id.

On April 16, 2007 and in conjunction with the April 12th motions, Alan Tallisman's counsel transmitted a letter to respondent offering to resolve some of the property issues in the case in light of the fact that respondent had failed to file a response to Alan's counterclaim. Report at 4 and Rel. Exb. 26. One day after receiving the letter from Alan Tallisman's counsel, respondent embarked upon a course of conduct that included dishonesty, deceit, and misrepresentation in violation of the Ohio Rules of Professional Conduct.

On April 17, 2007, in a "disguised attempt to place the validity and enforceability of the prenuptial agreement in issue," respondent filed a "Motion for Leave of Court to File Amended Complaint" on behalf of Susan Tallisman. Report at 4. In the motion for leave, respondent falsely claimed that it was necessary to amend the divorce complaint in order to have all necessary parties before the court. Id. and Rel. Exb. 28. The motion for leave referenced Alan

Tallisman's April 2007 pretrial statement and implied that Alan Tallisman had disclosed the stakeholders that were added by respondent as new defendants for the first time in that pretrial statement. Rel. Exb. 28. Respondent's motion for leave to amend did not mention the prenuptial agreement nor did respondent attach a photocopy of the proposed amended complaint to the motion for leave. Report at 5 (emphasis added.)

The *Tallisman* court granted respondent's motion for leave ex parte on the same day it was filed, "all without an opportunity for response from Alan Tallisman." Id. At paragraph three of the amended complaint that he filed on April 17, 2007, respondent surreptitiously included a new claim for relief, to wit: "The Plaintiff sets forth that the parties executed a Prenuptial agreement which was the result of fraud, coercion (sic), and duress created by the Defendant, Alan Gregg Tallisman." Id. See also Rel. Exb. 30.

Respondent also added five new defendants to the amended complaint: LBA Industries, LBA Industries Profit Sharing Plan, Fifth Third Bank, Alan Tallisman Irrevocable Trust, and LDA Industries. Id. and Rel. Exb. 20. As determined by the board, "[a]ll 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." Id. and Rel. Exb. 10, 11.

As determined by the board, "it is evident that Respondent was taken unaware by the motion [to have averments deemed admitted] and [by the April 16, 2007] 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." Report at 5. Given that any benefit to be derived by adding previously known stakeholders was "doubtful," respondent's "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.” Id.

One day after filing the amended complaint, respondent filed a “Motion for Leave to File Reply to Counterclaim Instanter (Limited Appearance)” on behalf of Susan Tallisman. Report at 6 and Rel. Exb. 31. In its entirety, the motion for leave to reply states:

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.

Id. (emphasis added). Respondent’s “vague reference to issues regarding service is unexplained.” Id.

Without obtaining a response from Alan Tallisman, the *Tallisman* court again signed an ex parte judgment entry granting respondent’s motion for leave. Id. and Rel. Exb. 33. The entry granting leave was filed on April 18, 2007 and bears the next consecutive docket number after the judgment entry bearing Judge Celebrezze’s signature dated October 20, 2005 denying Alan Tallisman’s motion for summary judgment. Report at 6 and Rel. Exb. 32.

The same day that leave was granted, respondent filed a “Reply to Answer and Counterclaim (Limited Appearance)” on behalf of Susan Tallisman. Report at 6 and Rel. Exb. 34. The reply to the answer and counterclaim states, “[t]he 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.” Id.

On April 19, 2007, counsel for Alan Tallisman filed a collection of motions arguing that respondent had perpetrated a “flagrant fraud” upon the court. Report at 6 and Rel. Exb. 38. In essence, Alan’s counsel argued that respondent’s activities in the *Tallisman* case were “manipulating the Civil Rules in a manner not intended or permitted by the courts.” Report at 6.

Concurrently and in an effort to investigate respondent’s assertion of “issues regarding service of the answer and counterclaim,” counsel for Alan Tallisman sent a representative of the law firm to the courthouse to “retrieve a copy of the answer and counterclaim from the files of the Clerk of Courts.” Report at 7. See also Tr. at 540-542. The “runner” returned from the clerk’s office with an answer and counterclaim that lacked a certificate of service page. *Id.* It was on that date and for the first time that Alan Tallisman’s counsel discovered that the certificate of service page was absent from the court’s file. Rel. Exb. 44.

On May 8, 2007, Alan Tallisman’s counsel filed a “Notice of Filing Replacement Certificate of Service Page.” Report at 7-8 and Rel. Exb. 44. The “notice” stated that “the original certificate of service had ‘mysteriously disappeared’ [from the court’s file] and that ‘[i]t is unknown whether that page was inadvertently lost, misplaced, or intentionally removed.’” Report at 7-8. The “notice” included sworn affidavits from Alan Tallisman’s counsel stating that respondent was served with the Answer and Counterclaim when it was filed in February 2005.⁶ *Id.* With the “notice,” counsel also filed a “Replacement Certificate of Service of Answer and Counterclaim for Divorce.” *Id.* As determined by the board, after the “notice” and replacement

⁶ ~~In the “Motion to Strike Defendant’s Replacement Certificate of Service of Answer and Counterclaim for Divorce,” “Motion to Strike Notice of Filing Replacement Certificate of Service Page,” and “Evidentiary Hearing Requested,”~~ filed June 25, 2007, respondent accused Cahn and Lane of lying about whether a certificate of service was attached to the answer and counterclaim. Exhibit 63. Respondent also claimed 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.”

certificate of service were filed, “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.’” Id. at 8 (citing Rel. Exb. 46, 47, and 49).

On May 24, 2007, respondent filed a “Motion for Leave of Court” asking to file a “Second Amended Complaint.” Report at 8 and Rel. Exb. 54. Respondent’s motion claimed that Alan Tallisman had “repeatedly failed to properly turn over documentation and to supply this Court with proper information regarding the parties’ assets.” Id. Respondent also claimed that during Alan Tallisman’s deposition, “certain facts became revealed” concerning the prenuptial agreement. Id. Without further explanation, respondent then claimed that leave of court was not actually necessary because “issues” had been “raised concerning the failure of the Defendant to properly serve his Answer and Counterclaim.” Id.

The same day and without obtaining a response from Alan Tallisman, the court signed a judgment entry *ex parte* granting respondent’s motion for leave to file a second amended complaint. Report at 8. See also Rel. Exb. 55. The second amended complaint was also filed on May 24, 2007. Report at 8 and Rel. Exb. 56. To the second amended complaint, respondent added eight new defendants.⁷

In contrast to respondent’s assertions during *Tallisman* and during the disciplinary process, the board concluded that all eight of the “new parties had been disclosed [to respondent] as stakeholders in prior [*Tallisman*] pleadings and discovery.” Id. at 9. The board concluded that respondent’s claims about service of Alan’s answer and counterclaim were “vague” and held

⁷ The defendants added to the second amended complaint were: Citi Smith Barney, New York Life Insurance and Annuity Corporation, Lincoln Financial Advisors Corporation, West Coast

that “[t]he 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[.]” Id.⁸

Reacting to the second amended complaint and 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.” Report at 9 and Rel. Exb. 119. The motion to vacate asserted that because the first amended complaint was a sham, a second amended complaint could not be filed. Id.

The board agreed with the arguments advanced by Alan Tallisman. According to the board:

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, [Alan Tallisman] 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 [Susan’s] motions for leave were filed. By granting [Susan’s] motions for leave the court rendered the issues moot and relieved [Susan] of any obligation to justify her two-year failure to reply to [Alan’s] counterclaim.

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

Life Insurance Company, MetLife, AIG Sun America, Inc., ING North America Insurance Corporation, and Snow Capital Management. Report at 8 and Rel. Exb. 56.

⁸ Not only was the answer and counterclaim expressly referenced in Susan’s response to the motion for summary judgment, if the answer and counterclaim was truly not served, respondent would not have needed to ask for leave of court to amend the complaint in April 2007. See Civ. R.15(A).

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 [Susan's] counsel.

Report at 9-10.

The board further concluded that respondent's June 27, 2007 response to Alan's motions contained false statements. *Id.* at 10. As an example, in the response, respondent falsely claimed that he 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]." Rel. Exb. 64. Contrary to respondent's claim, the Fifth Third Bank account was first disclosed to respondent on June 23, 2005 at page seven of Alan's response to plaintiff's Interrogatory No. 10. Report at 10.

In the barrage of pleadings filed between April and July 2007, respondent made various claims regarding "service" of Alan Tallisman's answer and counterclaim. *Id.* Ultimately, respondent claimed that Alan's answer and counterclaim were not properly before the court because Alan allegedly failed to comply with Civ. R.5(D). *Id.* In support of that claim, respondent asserted that Alan failed to "include a certificate of service" with his answer and counterclaim. *Id.* and Rel. Exb. 61.

In his testimony to the hearing panel, respondent claimed that he had searched his office at the time in question and that he did not locate a copy of Alan's answer and counterclaim. *Id.* In evaluating respondent's claim that he searched his office, the board found it "noteworthy" that the answer and counterclaim "was not missed for nearly two years until Respondent's lack of filing a reply to that pleading became an issue." Report at 13.

The board ultimately concluded:

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 or service or of actual service of process were discovered and became issues and alternative defenses to the claim of Respondent's failure to answer [Alan's] counterclaim.

Report at 14.

On October 9, 2007, the court filed a judgment entry granting Alan Tallisman's April 8, 2005 motion to bifurcate the proceedings. *Id.* at 10 and Rel. Exb. 66. The court set the matter for a hearing on the validity of the prenuptial agreement for January 7-9, 2008. *Id.*

By judgment entry filed November 8, 2007, the court observed that the *Tallisman* case was before it 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." *Id.* at 10-11 and Rel. Exb. 69. The court ordered both parties to brief their positions. *Id.*

In response to Alan Tallisman's observation that respondent had referred to the answer and counterclaim in his June 2005 response to the motion for summary judgment, respondent claimed in a pleading filed on December 21, 2007, that 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." See, *id.* at 11 and

Rel. Exb. 80. The December 21, 2007 pleading is the first time that respondent made such a claim about the associate's alleged observations in June 2005.⁹

On January 3, 2008, Judge Celebrezze signed a judgment entry that disposed of many of the motions that remained pending in the *Talisman* case. Report at 12 and Rel. Exb. 86. For reasons that remain unexplained, the January 3rd entry does not appear on the *Talisman* docket. Rel. Exb. 1.

Pursuant to subpoena, Judge Celebrezze testified before the hearing panel regarding the January 3, 2008 judgment entry. Report at 12. Judge Celebrezze confirmed that he signed the entry. Id. and Tr. at 276-278; 282. Judge Celebrezze indicated that he did not know why the entry was not on the docket but that he “absolutely” intended for it to have been filed. Tr. at 278 and Report at 12. According to Judge Celebrezze, in disposing of the multitude of motions, the January 3, 2008 entry was filled with “corrective measures” that essentially put the parties in nearly the same position as they were before respondent's misconduct began in April 2007. Tr. at 277.

In the entry, the court granted Defendant's Motion to Vacate Order Granting Plaintiff's Motion for Leave to Reply to Counterclaim Instanter and vacated the court's previous order granting Plaintiff's Motion for Leave to Reply to Counterclaim Instanter. Report at 11 and Rel. Exb. 86. 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 Instanter.” Id.

⁹ Evidence at the hearing included testimony from Stafford & Stafford associate, Gregory J. Moore, who claimed to be “the associate” referenced in the December 2007 pleading. See, Report at 11.

The January 3, 2008 entry also provided 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. Report at 11 and Rel. Exb. 86. 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 and vacated the court's order granting leave to file the 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." Finally, the court denied Defendant's Motion for Judgment on the Pleadings. *Id.*

After evaluating the testimony of several witnesses – including respondent – and a "forest" of documents, the board concluded that relator had presented clear and convincing evidence that respondent committed violations of Rule 8.4(c) (it is misconduct for a lawyer to engage in conduct involving fraud, deceit or dishonesty) and Rule 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). Report at 21. In finding a violation of Rule 8.4(c), the board concluded that respondent "intentionally misled the [*Talisman*] 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." *Id.* The board found that respondent violated Rule 3.3(d) by "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." *Id.* (italics sic).

According to the board, respondent's vague claims that he was amending the complaint to add stakeholders as defendants without telling the court about the language challenging the prenuptial agreement that he surreptitiously added to the body of the complaint was not full disclosure and amounts to misconduct.

Facts Regarding Count Three¹⁰

Eugene A. Lucci was elected judge of the Lake County Court of Common Pleas in November 2000. Report at 14. Lucci held that judicial office at all times pertinent to Counts Two and Three of the amended complaint. *Id.*

With the intention of ending their marriage, Judge Lucci and his now ex-wife, Deborah Lucci, separated on November 20, 2007. *Id.* It is undisputed that on March 12, 2008, Lucci met privately with respondent at respondent's law firm. Report at 15. At the time he met with respondent, Lucci was in a relationship with Amy Rymers. Tr. at 736-737. Lucci's relationship with Amy commenced in or about December 2007. Exb. 97 (Lucci's affidavit). As of the July 2010 disciplinary hearing, Amy Rymers had been separated from her husband, Jeffery Rymers, for more than three years.¹¹ Tr. at 701.

According to Lucci, during the March 12 conference, Lucci poured his heart and soul out to respondent. Tr. at 744. Lucci testified that he sought respondent's legal advice and that he

¹⁰ The hearing panel dismissed Count Two at the conclusion of all of the evidence; however, a recitation of some of the background information regarding Count Two is necessary in order to provide this Court with a full understanding of the issues in Count Three.

¹¹ In the board's report, Mr. Rymers' first name is misspelled as "Jeffrey." The correct spelling is "Jeffery." Relator has not changed the spelling when quoting from the board's report.

wanted him “on board” in his divorce from Deborah “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.” Report at 15 (citing Tr. at 744).

Respondent testified that at the meeting Lucci told him about ending his marriage to Deborah, about marital assets, about his ability to represent himself, and about preparing a separation agreement. *Id.* Respondent testified that Lucci never mentioned Amy Rymers or Jeffery Rymers. *Id.*

The March 12, 2008 meeting was the only consultation involving Eugene Lucci and respondent and respondent did not take part in Lucci’s dissolution. Report at 16. The marriage of Eugene Lucci and Deborah Lucci was dissolved on October 28, 2008, seven months after Lucci’s meeting with respondent. *Id.*

Amy Rymers and the Rymers’ three children have lived with Lucci in his home since September 4, 2008. *Id.* Amy Rymers filed a complaint for divorce against Jeffery Rymers on March 18, 2009 in the Lake County Court of Common Pleas, Domestic Relations Division. *Id.* See, also Rel. Exb. 94. *Rymers v. Rymers* was assigned to visiting judge Judith A. Nicely. Report at 16. Amy was represented by Attorney Linda Cooper. *Id.* and Tr. at 701.

On April 29, 2009, respondent entered a notice of appearance on behalf of Jeffery Rymers in *Rymers v. Rymers*. Rel. Exb. 94. Shortly after respondent’s appearance in the *Rymers* case, Attorney Walter McNamara contacted respondent on Lucci’s behalf. McNamara complained about respondent’s representation of Jeffery Rymers and asserted Lucci’s belief that respondent had a conflict of interest. Report at 16.

Judge Nicely set a pretrial conference with the parties and counsel for June 3, 2009. Report at 17.¹² Respondent sent Nicholas M. Gallo, a recently hired associate, to appear at the conference with Jeffery Rymers.¹³ Id. Gallo and Jeffery Rymers had never met before June 3, 2009 and neither Gallo nor Jeffery Rymers had ever met Eugene Lucci. Id. (emphasis added).

On June 3, 2009 and after McNamara's efforts to secure respondent's voluntary withdrawal from *Rymers* were unsuccessful, Lucci filed a motion seeking to intervene into the Rymers' divorce.¹⁴ Report at 17 and Rel. Exb. 95. Attached to Lucci's motion to intervene is a motion to disqualify respondent. Rel. Exb. 95.

Before the start of the June 3rd pretrial, the parties and their counsel were waiting in the second floor hallway of the Lake County Courthouse. The entrance to Judge Lucci's office area is directly across the hall from the domestic relations courtroom. Tr. at 644-645. See, also Rel. Exb. 98. Shortly before the pre-trial, Linda Cooper approached Gallo and handed him a copy of Lucci's motion to intervene that had been filed earlier that day. Report at 17. About the same time, Jeffery Rymers saw a man step into the courthouse hallway from the entryway to Lucci's office area. Id. According to Rymers, he believed that the man that he saw in the hallway on June 3rd was "staring at him as if to intimidate him." Id. Apparently, Jeffery Rymers believed that the man in the hallway was Eugene Lucci. Id.

¹² In what appears to be simply a typographical error, page 17 of the board's report indicates that the pretrial was to be held June 3, 2008. It is undisputed that the pretrial occurred on June 3, 2009.

¹³ Gallo was hired as an associate at Stafford & Stafford on January 12, 2009. Tr. at 639. Gallo was admitted to the Ohio bar in May 2008. Tr. at 638.

¹⁴ Notably and despite respondent's unrelenting efforts to convince them otherwise, the panel concluded that "[n]either 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." Report at 16.

After Cooper handed him the motion to intervene, “Gallo reported by telephone to Respondent the filing of Lucci’s motion and relayed Jeffrey Rymers’ claim of Lucci’s intimidating actions.” *Id.* During their conversation, Gallo gave respondent a “general physical description of the person seen by Rymers standing at the entry to Judge Lucci’s chambers[.]” *Id.* Gallo testified that he told respondent that he saw an individual that might be Judge Lucci and he proceeded to describe that person to respondent. *Tr.* at 649. Gallo testified that respondent’s response to that description was, “maybe that’s him; that’s the guy.” *Id.* After the pretrial, Gallo looked at a small photograph of Judge Lucci on the internet to try to verify the identity of the person in the courthouse hallway. *Id.* at 653-654. See, also *Rel. Exb.* 101.

Other than talking to Gallo, respondent did not take any action to verify that Judge Lucci was in the hallway of the courthouse at the same time as Jeffery Rymers and Nicholas Gallo on June 3, 2009.¹⁵ *Report* at 17. Even though he was not sure that the person he saw in the courthouse hallway was Judge Lucci, other than talking to respondent, Jeff Rymers, and looking at a photograph on the internet, Gallo took no action to confirm that the person was Judge Lucci. *Id.* See, also *Tr.* at 653, 661.

Under the supervision of respondent and associate Greg Moore, Gallo prepared a pleading that was captioned as a motion to strike Lucci’s motion to intervene, a motion for extension of time to reply, a motion for sanctions against Lucci and McNamara, a request for attorney fees, and a memorandum in support of the motions.¹⁶ *Report* at 17, *Tr.* at 650-651; 204-205, and *Rel. Exb.* 96 (hereinafter “motion to strike”). Respondent’s name and attorney

¹⁵ It is undisputed that respondent was not at the Lake County Courthouse on June 3, 2009.

¹⁶ As a partner of Stafford & Stafford Co., LPA, respondent had ethical responsibilities superior to those of Matthew Gallo and Gregory J. Moore. See *In the Matter of Anonymous Member of the South Carolina Bar* (2001), 346 S.C. 177, 183, 552 S.E.2d 10 (“Rule 5.1(c)(1) and (2) create a heightened form of liability for attorneys”).

registration number and Gallo's name and attorney registration number appear on the motion to strike. Exb. 96. The motion was signed by Gallo and was filed on June 17, 2009. Rel. Exb. 96.

Attached to the motion to strike are affidavits executed by respondent, Gallo and Jeffery Rymers. Rel. Exb. 96. In their affidavits, Gallo and Rymers accused Judge Lucci of "threatening and intimidating" Jeffery Rymers in the courthouse on June 3, 2009 by staring at him. Report at 17 and Rel. Exb. 96. In contrast to those affidavits, there is no evidence that anyone threatened or took any menacing action toward Jeffery Rymers in the courthouse hallway on June 3, 2009.¹⁷ Report at 17.

Gallo's affidavit contains the following false statements:

- Gallo claimed that he observed Lucci standing in the hallway outside of his chambers on June 3, 2009 before the pretrial in *Rymers v. Rymers*.
- Gallo claimed that he observed Lucci staring at Jeffery Rymers in the hallway before the June 3, 2009 pretrial.
- Gallo claimed that Jeffery Rymers became more distraught after Lucci stared at Rymers for a "considerable amount of time."

Rel. Exb. 96. In his affidavit, Rymers falsely claimed that Lucci was present in the hallway outside of his chambers prior to the June 3, 2009 pretrial and that Lucci was staring at Rymers making him feel "threatened and intimidated[.]" Id.

In addition to incorporating and referencing the false affidavits of Rymers and Gallo, the motion to strike contains a number of false and misleading statements regarding Judge Lucci.

Report at 18-19. As determined by the board, "[r]espondent not only contested the merits of the

¹⁷ The person Rymers and Gallo saw in the hallway was apparently Lucci's long-time bailiff, Charles Ashman. Report at 17. Ashman was "carrying out his bailiff's duties that morning" and occasionally walked in and out of Judge Lucci's chambers looking in the hallway for counsel on cases set before Lucci that morning. Id. and Tr. at 667-669. As of June 3, 2009, Ashman did not

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.” *Id.* at 18. The board concluded that respondent’s motion to strike contains statements made with reckless disregard as to their truth or falsity concerning the integrity of Judge Eugene Lucci. Report at 24-25.

Notably, it was respondent and not Lucci who made Lucci’s status as a judge an “issue” in *Rymers v. Rymers*. Without factual or legal support, respondent used Lucci’s status as a judge to malign Lucci and his motion to intervene. See, Rel. Exb. 96. At no time did Lucci ask for permission to intervene because he is “a judge.” See Rel. Exb. 95. In fact, Lucci is referred to as “Mr. Lucci” throughout the pleadings filed on Lucci’s behalf.

In reaching its conclusion that respondent violated numerous Ohio Rules of Professional Conduct in Count Three, the board’s report references several of the offending sections of the motion to strike. For example, quoting from the memorandum, the board stated:

- The memorandum “repeatedly refers to Lucci as Judge Lucci, and as a judge, attack[s] his integrity, wisdom, and ethics and recklessly accus[es] 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].”
- “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)”

Report at 18-19.

know either Jeffery Rymers or Nicholas Gallo. *Id.* at 666. At no time did Ashman do anything to intimidate Jeffery Rymers. *Id.* at 670.

At page 21 of the memorandum, respondent claimed that “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.” Report at 19 (quoting Rel. Exb. 96). The board concluded that respondent’s claims that Lucci and his attorney had threatened respondent and Jeffery Rymers were “incomplete and misleading.” Report at 19.

Following is an example of one of the incomplete and misleading “threats” claimed by respondent in the offending memorandum:

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).

Rel. Exb. 96 at 22. See, also Report at 19.

In explaining its conclusion that the statements in the memorandum are misleading, the board quoted the entire paragraph from Lucci’s lawyer’s letter of May 19, 2009:

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).

Report at 20 (quoting Rel. Exb. 96, exhibit 2 to motion). The board concluded that “[w]hen the final sentence [that was] omitted by Respondent [from the motion to strike] is included and the paragraph [is] read in its entirety, it conveys no threat by Lucci or his attorney.” Report at 20 (emphasis added).

On June 26, 2009, Lucci filed a response to the motion to strike. Report at 20 and Rel. Exb. 97. By that time, Lucci had obtained the video recordings from the courthouse surveillance cameras for June 3, 2009. Report at 20. The video confirmed that Lucci 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 times stated in their affidavits given in support of the motion to strike Lucci’s motion to intervene.” Id.

Lucci attached his own affidavit to the response and denied “that he was in the hallway of the Lake County Courthouse [on June 3, 2009] 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.” Report at 20 and Rel. Exb. 97. Among the statements in Lucci’s affidavit was the following: “I know for a fact that I never came out of my office suite and I was never present in the main hallway, on the second floor of the Lake County Court House, on June 3, 2009, between the hours of 9:09 a.m. and 12:14 p.m.” Rel. Exb. 97.

Notwithstanding Lucci’s sworn statement that he knew “for a fact” that he was not in the hallway, respondent “took no action to investigate or verify Lucci’s sworn statement that it was not he who Rymers and Gallo saw” on June 3, 2009. Id. It was not until January 25, 2010, that respondent “filed in the Rymers divorce case on behalf of Jeffrey Rymers a notice of his withdrawal of the affidavits of Jeffery Rymers and of Nicholas Gallo dated June 17, 2009.” Report at 21 and Rel. Exb. 107.

Based upon the foregoing, the board concluded that respondent violated Prof. Cond. Rule 5.1(c)(1) (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). Report at 23-24. The board stated, "Respondent instructed his subordinate associated (sic), Nicholas Gallo, to prepare a motion to strike Lucci's motion to intervene and to prepare his own affidavit that that of Jeffrey Rymers averring that Judge Lucci had threatened and intimidated Jeffrey Rymers before the pretrial conference June 3, 2009." Id.

Finding clear and convincing evidence that "the statements made in Respondent's pleadings impugning Eugene Lucci's judicial integrity were made in violation of" Prof. Cond. Rule 8.2(a), the board quoted Gov. Bar R.IV(2).¹⁸ Report at 24. To wit:

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. Those charges should be encouraged and the person making them should be protected.

Gov. Bar R.IV(2). According to the board, 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." Report at 24.

Every claim that Lucci "intimidated" or "threatened" respondent and/or Jeffery Rymers attacks the integrity of a judicial officer without any factual basis. Every claim that Lucci

“engaged in a pattern of harassing and threatening conduct” attacks the integrity of a judicial officer, is a misrepresentation of the evidence, and is without any factual basis.

The board concluded that respondent violated Prof. Cond. Rule 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) “by deliberately misrepresenting Lucci’s conduct and that of his attorney to the domestic relations court as evidence intended to deceive the court[.]” *Id.* at 25. According to the board, respondent made statements about Lucci that were “completely false as well as irrelevant to the legitimate legal issues presented.” *Id.* at 24. Referring to respondent’s claim that he was “harassed and threatened” by Lucci and his attorney, the board found that respondent’s claims were not only false, they were set forth based upon “a truncated excerpt from a letter from Lucci’s counsel” that was quoted in the motion to strike “out of context and [was presented to the *Rymers* court] in a deliberately misleading manner to imply a threatened abuse of judicial status [by Lucci] that was not made.” *Id.* at 24-25.

Finally, the board found that respondent engaged in conduct that is prejudicial to the administration of justice in violation of Prof. Cond. Rule 8.4(d), by “unnecessarily raising and belaboring issues regarding Eugene Lucci’s alleged abuse of his prestige as a judge.” Report at 25. The board stated:

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

¹⁸ Prof. Cond. Rule 8.2(a) states that 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.”

disregard as to their truth or falsity concerning the integrity of a judicial officer.”

Id.

RELATOR’S OBJECTIONS

OBJECTION ONE

RESPONDENT SHOULD BE ACTUALLY SUSPENDED FROM THE PRACTICE OF LAW

The board’s recommendation that respondent be suspended from the practice of law for 12 months with the entire suspension stayed is in contrast to the board’s factual and legal conclusions and relator objects to that recommendation. In light of the seriousness of respondent’s misconduct, the aggravating factors, and the lack of mitigation, a stayed suspension diverges from this Court’s well-established precedent. For all of the reasons set forth herein, respondent should be actually suspended from the practice of law for no less than 12 months.

The evidence and the board’s report provide this Court with an abundance of reasons supporting relator’s assertion that respondent should be actually suspended from the practice of law. The board concluded that respondent intentionally misled the *Tallisman* court; that respondent made false statements about Judge Lucci; that respondent deliberately misled the *Rymers* court; that respondent impugned Judge Lucci’s integrity; that respondent engaged in conduct that is prejudicial to the administration of justice; and, that respondent has not admitted his wrongdoing or expressed remorse for the harm that he has caused.

As to Count One, the board found that respondent violated Prof. Cond. Rules 8.4(e) and 3.3(d). The board stated:

- “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 still critical to his client's interests."

- "Respondent's violation of [Prof. Cond. Rule 3.3(d)] 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."

Report at 21.

As to Count Three, the board concluded that respondent violated Prof. Cond. Rules 5.1(c)(1), 8.2(a), 8.4(c), and 8.4(d). Describing respondent's misconduct, the board stated:

- "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."
- "Respondent's motion to strike recites, 'As set forth in the Defendant Jeffrey Rymers' Affidavit, he is intimidated and threatened by the conduct of [] [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."
- "The statement in his 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 [to respondent] 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."
- "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)."
- "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

[his] 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.”

- “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) [engaging in conduct that is prejudicial to the administration of justice].”

Report at 21-25.

In the section of its report titled “recommended sanction,” the board concluded as follows:

- “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.”
- “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.”
- “Respondent has neither admitted his violations nor expressed any remorse.”

Report at 26-27. In spite of the foregoing conclusions, the board recommended that this Court impose a period of stayed suspension rather than an actual suspension.

Focusing solely on the violations for a moment and leaving aside any aggravating or mitigating factors, respondent’s misconduct in Count Three alone warrants an actual suspension

from the practice of law. In Count Three, the board found that respondent violated the Ohio Rules of Professional Conduct by impugning Eugene Lucci's judicial integrity and deliberately making false and misleading statements regarding Judge Lucci's conduct.

Imposing an actual six-month suspension in *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 424, 2003-Ohio-4048, 793 N.E.2d 425, this Court held that "[u]nfounded attacks against the integrity of the judiciary require an actual suspension from the practice of law." (Emphasis added). In 2009, when this Court levied an indefinite suspension upon Merrie M. Frost for "resorting to improprieties in case after case," it distinguished the lesser *Gardner* sanction on the basis of the fact that Mark Gardner's misconduct was a "one-time expression of frustration, and Gardner later apologized and acknowledged that his accusations had been unprofessional." See *Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 226, 2009-Ohio-2870, 909 N.E.2d 1271. Respondent's attacks upon Judge Lucci occurred in one case; however, respondent has neither acknowledged the unprofessional and unethical nature of his accusations nor has he apologized.

Furthermore, this Court's previous decisions, including *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 191, 658 N.E.2d 237, 240, compel respondent's actual suspension from the practice of law. In *Fowerbaugh*, this Court held that "when an attorney engages in a course of conduct * * * that violates DR 1-102(A)(4), the attorney will be actually suspended from the practice of law for an appropriate period of time."¹⁹

In the years since the *Fowerbaugh* decision, this Court has repeatedly held that when an attorney engages in fraud, deceit or misrepresentation, the only time a stayed suspension may be

¹⁹ DR 1-102(A)(4) is the precursor to Ohio Prof. Cond. Rule 8.4(c).

appropriate is when “significant mitigating factors” are present. See, e.g. *Disciplinary Counsel v. Ricketts*, 128 Ohio St.3d 271, 2010-Ohio-6240, 943 N.E.2d 981. This is not such a case.

Cases in which this court has deviated from *Fowerbaugh* include, for example, *Disciplinary Counsel v. Fumich*, 116 Ohio St.3d 257, 2007-Ohio-6040, 878 N.E.2d 6 (attorney fully cooperated in the disciplinary process; accepted responsibility for his misconduct; provided several character letters; and, did not engage in deliberate deception); *Disciplinary Counsel v. Niermeyer*, 119 Ohio St.3d 99, 2008-Ohio-3824, 892 N.E.2d 434 (attorney fully cooperated; reported his own misconduct; provided evidence of good character and reputation; was willing to accept responsibility for his misconduct; and, the misconduct was an isolated incident rather than a course of conduct); and, *Disciplinary Counsel v. Potter*, 126 Ohio St.3d 50, 2010-Ohio-2521, 930 N.E.2d 307 (attorney engaged in an effort to rectify the consequences of his misconduct; fully cooperated in the investigation; self-reported his misconduct to relator; and, provided evidence of good character and reputation). The present case is markedly distinguishable and compels this Court’s adherence to *Fowerbaugh*.

In the present case, the board attempted to account for its departure from *Fowerbaugh*.

The board stated:

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.

Report at 28. The board’s explanation is factually and legally unsupportable.

In describing the “circumstances” surrounding respondent’s misconduct, the board found that the *Talisman* misconduct occurred before the trial judge “finally took control to bring order

to the proceedings.” Id. at 27. The board described respondent’s misconduct in *Rymers* as “an apparent overreaction in kind to Lucci’s claim” that respondent was engaging in a conflict of interest by representing Jeffery Rymers. Id. The board stated that those “circumstances” were “unlikely to recur” and speculated that respondent “will not repeat his transgressions.” Id. at 27-28.

Supposition that a respondent “will not repeat” his misconduct may be an appropriate consideration in a very narrow collection of disciplinary cases; however, this is not such a case. See, e.g. *Stark Cty. Bar Assn. v. Ake*, 111 Ohio St.3d 266, 2006-Ohio-5704, 855 N.E.2d 1206 and *Dayton Bar Assn. v. Kinney*, 89 Ohio St.3d 77, 2000-Ohio-445, 728 N.E.2d 1052. The facts of this case establish that when respondent was confronted with challenging situations in 2007 (*Tallisman*), in 2009 (*Rymers*), and in 2010 (this disciplinary proceeding), he reacted by engaging in misrepresentation, fraud, and deceit. Accordingly, it is probable that respondent will repeat his transgressions.

Respondent’s deception occurred over and over during *Tallisman*. The first time respondent misled the *Tallisman* court was by filing the initial motion for leave to amend the divorce complaint. Respondent continued his fraud when he surreptitiously inserted language about the prenuptial agreement into the amended complaint. Report at 5. Throughout 2007, respondent denied Alan Tallisman’s continuing claims of wrongdoing and repeatedly made misrepresentations designed to cover-up his wrongdoing. For example, respondent convinced the *Tallisman* court that he should be granted leave to file a second amended complaint by again ~~falsely claiming that he needed leave to purportedly add new defendants.~~ As the board concluded, the reasons given by respondent were false and “the second amended complaint became part of the [*Tallisman*] record due to the deceit of [respondent].” Id. at 9-10.

Two years after his misconduct in *Talisman*, respondent committed misconduct in *Rymers*. The board described respondent's misconduct in *Rymers* as "extreme" and found that he "intentionally, unnecessarily, and recklessly" demeaned Judge Lucci in the public record. *Id.* at 26.

According to the board, respondent made statements about Lucci that were "completely false as well as irrelevant to the legitimate legal issues presented." *Id.* at 24. Respondent's claim that he was "harassed and threatened" by Lucci and his attorney was not only false, it was presented to the *Rymers* court based upon "a truncated excerpt from a letter from Lucci's counsel" that was "out of context and [presented] in a deliberately misleading manner to imply a threatened abuse of judicial status that was not made." *Id.* at 24-25. Respondent presented "materially false evidence to the *Rymers* court recklessly and unnecessarily." *Id.* at 26.

Moreover, for months after respondent was confronted with Judge Lucci's sworn denial that he tried to intimidate Jeffery Rymers, respondent did nothing to investigate the reckless claims of his associate and his client. Instead, respondent allowed the false evidence and accusations remain in the public record.

Further supporting an actual suspension are the aggravating factors identified by the board. According to the board, respondent acted with a dishonest motive; committed multiple violations; and, refused to acknowledge the wrongful nature of his conduct. Report at 25. Notably, the same evidence that established those serious aggravating factors contradicts the board's conclusion that respondent is unlikely to "repeat his transgressions."

~~Throughout this disciplinary case, respondent has denied committing any misconduct.~~
As stated by the board, "respondent has neither admitted his violations nor expressed any remorse." *Id.* at 27. Prior to the disciplinary hearing, respondent filed numerous motions

challenging relator's evidence, challenging relator's investigation, and challenging the panel chairman.²⁰ Respondent's denials of misconduct at the hearing came in the form of his own testimony as well as other evidence that the panel found unconvincing.²¹ The board's confidence that respondent will not repeat his misconduct is simply not supported by the record.

The board's reliance on *Ake* to justify a stayed suspension is misplaced. *Ake*, 111 Ohio St.3d 266. The *Ake* case is clearly distinguishable based upon the fact that Attorney David S. Ake was a pro se party in a domestic relations matter at the time he committed the misconduct that was entirely related to his own case. This Court was confident that when Ake was not facing court orders that impacted his own economic and emotional interests, he would not commit misconduct. In contrast, respondent was not acting pro se nor was he in the midst of personal litigation.

In addition to *Fowerbaugh*, several other cases compel respondent's actual suspension from the practice of law. During *Tallisman*, respondent engaged in a course of action to defraud the court. See, e.g. Report at 4-14 (¶¶ 20-23, 33-38, 40-42, 62). As this Court has repeatedly held, "[w]hen a lawyer plans and administers 'a multistep process to defraud' those entitled to

²⁰ Pre-trial motions filed by respondent include but are not limited to: Rule 12(F) Motion to Strike; Motion for Summary Judgment; Motion in Limine to Exclude References to Allegations not Certified by the Probable Cause Panel; First Motion for a Protective Order; Gov. Bar R. V Motion to Dismiss; Civ. R.12(C) Motion for Judgment on the Pleadings; Second Motion for a Protective Order; Motion in Limine to Exclude Allegations that all Assets were Properly and Timely disclosed; Motion to Dismiss Counts Two and Three; Motion in Limine to Preclude Relator from arguing that respondent had knowledge of the Pre-nuptial agreement; Motion in Limine to exclude arguments relating to an Attorney Client Relationship; Motion to Disqualify Panel Chairman Hon. Thomas F. Bryant; Motion to preclude relator from using Lucci's position as judge in Violation of Canon 1.3; and, Motions to Compel Discovery.

²¹ Relator does not dispute a respondent's right to vigorously defend himself during a disciplinary proceeding. See, e.g. *In re Morse* (1995), 11 Cal.4th 184, 209, 900 P.2d 1170. In the present case however, respondent deflected attention and blame to others and displayed a staunch unwillingness to acknowledge that his actions were wrong. See, e.g. *In the Matter of Lurkins* (Mo. 1964), 374 S.W.2d 67, 69.

rely on the validity of documents, the violation of DR 1-102(A)(4) warrants an actual suspension from the practice of law. * * * A lawyer's '[r]epeated or continuous attempts to mislead' fall into the same category." *Cincinnati Bar Assn. v. Farrell*, 119 Ohio St.3d 529, 533, 2008-Ohio-4540, 895 N.E.2d 800 (citations omitted).

In *Disciplinary Counsel v. Johnson*, 113 Ohio St.3d 344, 358, 2007-Ohio-2074, 865 N.E.2d 873, this Court rejected Bryan B. Johnson's plea for dismissal or a public reprimand. In suspending Johnson for 12 months with six months stayed, this Court followed *Disciplinary Counsel v. Holland*, 106 Ohio St.3d 372, 2005-Ohio-5322, 835 N.E.2d 361. Finding that Johnson exploited both his wards as well as the probate court's process for approving fees, this Court held that such misconduct "lessen[s] public confidence in the legal profession and compromise[s] its integrity." *Johnson*, 113 Ohio St.3d at 359. This Court stated, "[t]hese improprieties also warrant a one-year suspension for the public's protection and to deter future misconduct." *Id.*²²

Just like Johnson, respondent took advantage of a court. Respondent filed "intentionally misleading pleadings" that "tricked" the *Talisman* court into allowing him to amend the complaint for divorce not once but twice. The board concluded that respondent "deliberately misled and deceived the [*Talisman*] 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." Report at 26. As this Court has often stated, "[c]ourts cannot function properly unless the lawyers practicing before them observe their duties of candor." See, e.g., *Disciplinary Counsel v. (Vincent A.) Stafford*, 2011-Ohio-1484, ¶12, slip op. (citations omitted).

As the board determined, respondent's conduct in *Tallisman* violated Rule 8.4(c) and Rule 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). *Id.* at 21. According to the board, "[r]espondent's violation [of Rule 3.3(d)] 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." *Id.* As to Count One, respondent's misconduct unfairly exploited the *Tallisman* court and like the misconduct in Count Three, demands that this Court impose an actual suspension from the practice of law.

The board's conclusion that there are two mitigating factors is not supported by the record.²³ See Report at 25. Most importantly, consistent with his steadfast refusal to acknowledge the wrongful nature of his conduct, respondent did not offer any "mitigation" evidence.²⁴ Moreover, there is absolutely no evidence supporting the board's conclusion that respondent "enjoys a longstanding, good professional reputation." *Id.* at 26.

For reasons that are inexplicable, the board credited respondent with favorable character evidence based upon respondent's lawyer's claim that respondent is "the preeminent domestic relations lawyer in northeastern Ohio." Report at 2. That assertion is not evidence. See, e.g. *In re Disciplinary Proceedings against Ziegler* (2008), 309 Wis.2d 253, 266, 750 N.W.2d 710 (statements of counsel ordinarily do not constitute evidence supporting a finding of fact).

²² In contrast to respondent, Johnson actually offered mitigation evidence. See *Johnson*, 113 Ohio St.3d at 351.

²³ Relator acknowledges and it is a matter of public record that respondent has not been previously disciplined by this Court.

²⁴ Respondent did not offer "character witnesses" nor did he submit "character letters."

The board also cited the testimony of one of relator's witnesses. According to the board, the witness "agreed [during cross examination] that Respondent is an excellent lawyer." Report at 27. The testimony of James Cahn was as follows:

Q [by respondent's counsel]: The truth is, though, Mr. Cahn, you have had cases with Mr. Stafford in the past, have you not?

A [by James Cahn]: I have.

Q: And you'll concede that he tries a lot of cases?

A: He tries many cases.

Q: In fact, you'll concede that he is in fact, a very good lawyer?

A: He is a very good lawyer.

Tr. at 351:20-352:5. Considered in context, Cahn's testimony clearly relates to respondent's trial skills. There is no evidence that the testimony was offered to prove Cahn's knowledge or opinion of respondent's professional reputation. Moreover, there is no support for the board's view that being a "very good lawyer" amounts to "mitigation" that is worthy of a departure from *Fowerbaugh*.

In Ohio, Evid. R.405 is the sole method of proving a person's character. See, e.g. *State v. Krug*, 2009-Ohio-3815, Lake App. No. 2008-L-085 and *State v. Batrez*, 2008-Ohio-3117, Richland App. No. 2007-CA-75. Throughout the five-day hearing, no witness was asked for "testimony as to [respondent's] reputation" nor was a witness asked for an "opinion" as to respondent's character. Evid. R.405. Quite simply, there was no character or reputation evidence offered in this disciplinary case.

Even considering that respondent has no previous discipline, a stayed suspension is still inappropriate. Violations like those committed by respondent, including violations of Rules

8.4(c) and 8.2(a), make a lesser sanction suitable only in cases where “there are either no aggravating factors and at least some mitigating factors, or where the mitigating factors clearly outweigh any aggravating factors.” *In the Matter of Halverson* (2000), 140 Wash. 2d 475, 497, 998 P.2d 833. As a result, the board’s recommendation of a stayed suspension is inadequate where there are serious aggravating factors.

The board’s “belief” that respondent will not repeat his transgressions is based upon utter speculation. At no time did respondent acknowledge the wrongful nature of his conduct nor did he testify that it would never happen again. When an attorney is unable or refuses to see the clear and convincing evidence of his misconduct, it is more than likely that such misconduct will be repeated.

Based upon the seriousness of respondent’s misconduct, the aggravating factors, and the lack of mitigation, a stayed suspension diverges from this Court’s well-established precedent and is entirely inappropriate. For all of the reasons set forth herein, respondent should be actually suspended from the practice of law for no less than 12 months.

OBJECTION TWO

RESPONDENT VIOLATED RULE 8.4(d) IN COUNT ONE

In Count One, the board found that respondent “intentionally misled the [*Talisman*] court” and that respondent misled “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.” Report at 21. The board concluded that respondent violated Prof. Cond. Rule 8.4(c) (engaging in conduct involving dishonest, fraud, deceit or misrepresentation) and Rule 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). Notwithstanding the foregoing, the board dismissed the allegation that respondent’s conduct was prejudicial to the administration of justice in violation of Prof. Cond. Rule 8.4(d). For the reasons set forth herein, relator objects to the dismissal of Rule 8.4(d).

This Court and courts across the country have repeatedly held that lying to or misleading a court can violate Rule 8.4(d). See, e.g., *In the Matter of Brenner* (2007), 840 N.Y.S.2d 349, 44 A.D.3d 160 (in making a routine *pro hac vice* motion, attorney intentionally misled court by making a false statement and *inter alia* engaged in conduct prejudicial to the administration of justice) and *In re Warren* (Ind. 2000), 724 N.E.2d 1097 (lawyer asking for an increase in child support engaged in conduct prejudicial to the administration of justice by failing to inform court of an out-of-state decree governing post-dissolution matters thereby causing unnecessary litigation and a waste of judicial resources).

In a decision based upon facts that are very similar to the present case, the Supreme Court of Maryland concluded that filing a lawsuit that was completely without foundation was

prejudicial to the administration of justice. *Atty. Grievance Commn. v. Alison* (1998), 349 Md. 623, 640, 709 A.2d 1212. The *Alison* court held that the conduct was prejudicial to the administration of justice because it “generated a lot of court time, unnecessary pleadings and involvement of parties for the sole purpose of harassing [one of the defendants].” *Id.* The court also held that the inclusion of a meritless count in a complaint is prejudicial to the administration of justice. *Id.* at 633.

Similarly, in the course of intentionally misleading the *Talisman* court, respondent’s conduct generated an incomprehensible number of pleadings and the constant involvement of the parties. Like *Alison*, respondent’s conduct is prejudicial to the administration of justice.

In *Cuyahoga Cty. Bar Assn. v. Hardiman*, 100 Ohio St.3d 260, 2003-Ohio-5596, 798 N.E.2d 369, this Court held that an attorney engages in conduct that is prejudicial to the administration of justice “when he or she breaches his or her professional responsibility to deal fairly with the court and the client.” *Id.* at 264 (citing *Cleveland Bar Assn. v. Cleary*, 93 Ohio St.3d 191, 206, 2001-Ohio-1326, 754 N.E.2d 235).

In *Akron Bar Assn. v. Markovich*, 117 Ohio St.3d 313, 314, 2008-Ohio-862, 883 N.E.2d 1046, this Court held that in filing an unapproved dismissal entry, the attorney misled the court and opposing counsel. The *Markovich* court found violations of DR 1-102(A)(4), DR 1-102(A)(5)²⁵, and DR 1-102(A)(6). Correspondingly, when respondent misled the *Talisman* court by fabricating the reason he was asking to amend the divorce complaint, he engaged in conduct that was prejudicial to the administration of justice.

Overall, it is beyond question that an attorney who engages in conduct that “intentionally” misleads a court and takes advantage of local rules to mislead a court engages in

²⁵ Ohio’s DR 1-102(A)(5) is the precursor to Rule 8.4(d).

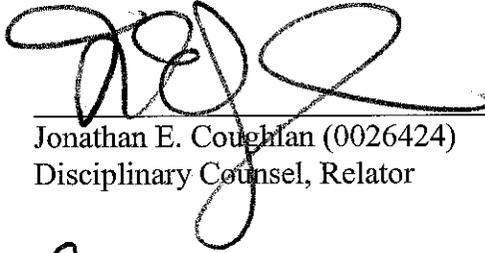
conduct that is prejudicial to the administration of justice. See, e.g. *Disciplinary Counsel v. Robinson*, 126 Ohio St.3d 371, 2010-Ohio-3829, 933 N.E.2d 1095. The evidence in this case establishes that in the course of representing Susan Tallisman, respondent engaged in conduct that was prejudicial to the administration of justice. Accordingly, this Court should sustain relator's second objection and find a violation of Rule 8.4(d).

CONCLUSION

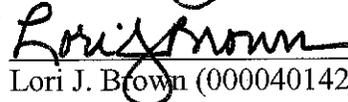
The board's recommendation that respondent be suspended from the practice of law for 12 months with the entire suspension stayed is in contrast to the board's factual and legal conclusions and disregards this Court's well-established precedent. Relator has objected to that recommendation. Relator has also objected to the board's failure to find a violation of Rule 8.4(d) in Count One.

In light of the seriousness of respondent's misconduct, the aggravating factors, and the lack of mitigation, a stayed suspension is entirely inappropriate. For all of the reasons set forth herein, respondent should be actually suspended from the practice of law for no less than 12 months.

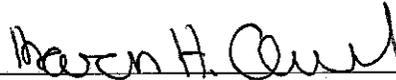
Respectfully submitted,



Jonathan E. Coughlan (0026424)
Disciplinary Counsel, Relator



Lori J. Brown (000040142)
Chief Assistant Disciplinary Counsel
Counsel of Record

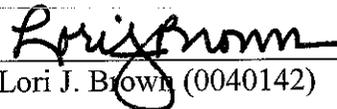


Karen H. Osmond (0082202)
Staff Attorney
Counsel of Record

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Columbus, Ohio 43215-7411
614.461.0256

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing objections have been served upon the Board of Commissioners on Grievances and Discipline, Jonathan W. Marshall, Secretary, 65 South Front Street, 5th Floor, Columbus, Ohio 43215, and upon respondent's counsel Lawrence A. Sutter III and Stephanie D. Adams, at Sutter, O'Connell, and Farchione, 3600 Erieview Tower, 1301 E. 9th Street, Cleveland, OH 44114, via regular U.S. mail, postage paid, this 2nd day of May, 2011.



Lori J. Brown (0040142)

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

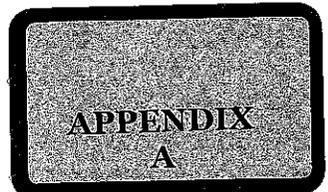
In Re:	:	
Complaint against	:	Case No. 09-028
Joseph G. Stafford	:	Findings of Fact,
Attorney Reg. No. 0023863	:	Conclusions of Law and
Respondent	:	Recommendation of the
Disciplinary Counsel	:	Board of Commissioners on
Relator	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
	:	
	:	

{¶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.



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 11th 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 Jeffery 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 intimidated 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.

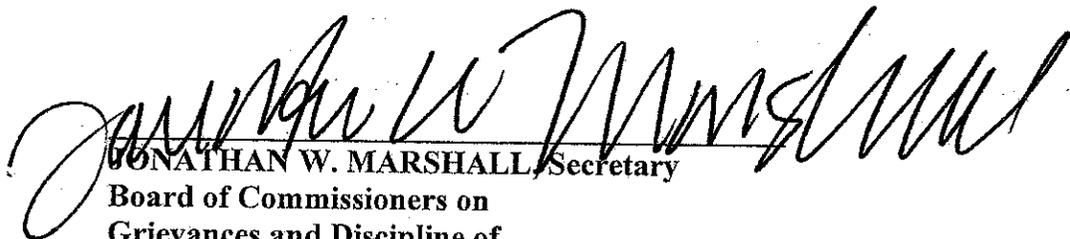
{¶129} Considering the circumstances in which Respondent's violations arose, considering the nature of the violations found, and considering the authorities cited as well as the matters in aggravation and mitigation of sanction including Respondent's reputation, the panel recommends that Respondent be 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