

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

Christopher Thomas Cicero.

Respondent.

CASE NO. 2012-0278

BOARD NO. 11-055

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE BOARD OF
COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

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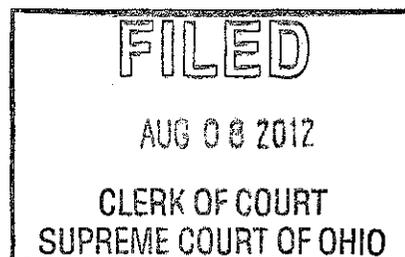


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Now comes relator, Disciplinary Counsel, and hereby submits this answer to respondent’s objections.

STATEMENT OF FACTS

Respondent was admitted to the practice of law in 1988. In 1997, this Court suspended respondent for one year for, among other things, exaggerating his personal relationship with a sitting judge. *Disciplinary Counsel v. Cicero*, 78 Ohio St.3d 351, 1997-Ohio-207, 678 N.E. 2d 517.

Edward Rife was a drug dealer who also owned a tattoo parlor on Columbus’ West Side. Prior to April 2010, respondent had known Rife for approximately 10 years and had represented Rife’s wife on a hit-skip case. [Report of Board of Commissioners on Grievances and Discipline, “Report” at ¶6, attached hereto as Appendix “A”] On April 1, 2010, law enforcement officials raided Edward Rife’s home and seized a large volume of Ohio State University football memorabilia; however, no drugs or contraband were recovered during the raid. [Report at ¶8]

On April 2, 2010, Rife met with respondent to discuss the possibility of hiring respondent to represent him in his impending criminal case. [Tr. p. 102] Rife's business partner, Joe Epling, accompanied Rife to the meeting with respondent. Id. During the initial meeting with respondent, Rife told respondent "everything about [his] case." Id. at 103. Respondent informed Rife that he would take his case for \$10,000, that he would "tell the government to screw themselves," and would have Rife's OSU memorabilia returned by the end of the week. Id. at 104. At the disciplinary hearing, Rife testified that he expected respondent to keep Rife's information confidential. Id. at 106. Rife left respondent's office without retaining him. Id. at 107. Later that day, Rife retained Attorney Stephen Palmer. Id.

Shortly after Rife left respondent's office, and unbeknownst to Rife, respondent sent an e-mail to Jim Tressel, then-coach of the OSU football team, in which respondent revealed some of the information he had obtained from Rife. [Rel. Ex. 1]

Over the next two weeks, Rife met with Palmer, who informed Rife of the crimes he would be charged with, that he was facing 10 years in prison, and that his best option was to cooperate with the federal government. [Tr. pp. 108, 163-164] After meeting with Palmer, Rife began to have second thoughts about proceeding with Palmer; consequently, Rife, through Epling, set up a second appointment with respondent to determine if Rife should retain respondent as his lawyer. Id. at 108. On April 15, 2010, Rife met with respondent for approximately 90 minutes. Id. at 39. At the time of the meeting, respondent was under the mistaken impression that he had previously represented Rife. Id. at 54. During the second meeting, which Epling also attended, Rife informed respondent that he had paid Palmer \$21,000 and that he was not feeling comfortable with Palmer. Id. at 109. Respondent instructed Rife to fire Palmer and told Rife that respondent would represent him for \$10,000. Id. During the

meeting, Rife told respondent specifics about his criminal case, including the amount of marijuana he was dealing, the amount of cash seized during the raid, the fact that he was facing 10 years in prison, the quantity of OSU memorabilia, how much he paid for the memorabilia, and the identity of several OSU football players that had given memorabilia to Rife. Id. at 110-113. At the disciplinary hearing, respondent admitted that Rife sought respondent's opinion regarding the ten-year sentence. Id. at 57. Rife left the meeting without hiring respondent and told respondent he would let him know if he was going to retain him. Id. at 113-114.

Rife expected that his conversation with respondent would remain confidential. "Because I feel any time you speak with an attorney, especially about a case, that it should be privileged information, they shouldn't go tell anyone." Id. at 106. While respondent was meeting with Rife, he was planning to reveal Rife's information to Tressel, yet never advised Rife of his intent. [Report at ¶29]

Two days later, on April 17, 2010, Rife met with Palmer and informed him that he had met with respondent and that respondent offered to represent Rife for \$10,000. [Tr. p. 166] Rife decided to remain with Palmer.

The day after Rife and respondent met, and unbeknownst to Rife, respondent revealed the information gained from Rife on April 15, 2010 to Coach Tressel in a series of emails dated April 16, 2010. Respondent titled the e-mails, "Terrell Pryor and Eddie Rife Update." The text of the first e-mail read:

Good morning.

- I hope I am not bothering you. I know you are busy with spring practice.
- And, I hope you are doing well and being blessed.
- I had Eddie Rife in my office for an hour and a half last night.

- What I tell you is confidential. (Emphasis added).
- He told me Terrell gave him some type of MVP trophy—but I don't know the year.
- He told me he has about 15 pairs of cleats (with signatures), 4-5 jerseys—all signed by players, the 2009 Wisconsin game ball (whoever that was awarded to).
- He told me he has about 9 rings Big Ten Championship, among them were Posey's, Pryor's Roy Small (no surprise here), etc... (I didn't press him for all the names because I didn't want to emphasize this part of our meeting more than others).
- T.J. Downing's National Championship ring (no surprise here either).
- He will not talk publicly about this.
- If he retains me, and he may, I will try to get these items back that the government now wants to keep for themselves; which is screwed up in and of itself. I know who specifically in the District Attorney's Office that is working on this matter and know both of them well so I will try if the opportunity presents itself. (Emphasis added.).
- These kids are selling these items for not that much and I can't understand how they could give something so precious away like their trophies and rings that they worked so hard for. In their life they will have children or maybe a parent who can really appreciate their hard work for what they earned. My father had two jobs; he worked 30 years at Republic Steel in Cleveland, and when he got off work he spent 26 as a police officer. I gave him my 1984 Fiesta Bowl watch he wore every day while on duty as a police officer. He died in 2001 at age 67. I now have the watch which sits in my office that I won't even wear because it meant so much to me that HE wore with pride. I don't get it and I am still old fashion.
- Just passing this info on... especially now that I actually talked to Mr. Rife.
- Take care Coach.
- Chris

[Rel. Ex. 2]

Later that same day, respondent sent another e-mail to Tressel divulging additional information received from Rife in confidence. Respondent wrote:

Coach:

- Only thing we can do is keep him, his house, his tattoo parlor off limits to players. I would also make sure you tell Terrelle and Posey (and whoever else) NOT to call him on his cell phone too because if he gets arrested, and that seems to be their plan, we don't want their phone numbers in his cell phone that the government will trace. He really is a drug dealer. And I know Terrell has his phone number and has called him. All I tell you is factual.
- He is in really big trouble. The federal Government has told him that his best offer is to take 10 years in prison. He wanted my opinion yesterday on his situation. (Emphasis added.).
- I will get you a slate photograph of him from the sheriff so you can show these guys you know what is going on and know who they are dealing with.
- I have to sit tight and wait to see if he retains me, but at least he came in last night to do a face to face with me. (Emphasis added.).
- One correction from my first email to you--- he did confirm to me that he put out on the street the government took 70,000 from his house, but he made that up so other associates of his would think it; so they wouldn't do a home invasion on him and his family. But, he had that much cash just lying around.
- Okay. That is all for now.
- I like the world you live in a lot better than the one I do with regard to dealing with people, despite loving what I do for a living.
- Take care. I will keep you posted as relevant information becomes available to me. Just keep our emails confidential. Thank you. (Emphasis added.).
- Chris

[Rel. Ex. 3]

Respondent never advised Rife that he sent the e-mails to Coach Tressel, nor did Rife consent to respondent releasing his information to Coach Tressel. [Report at ¶28, 29]. Rife first learned of the e-mails when he saw them on the news in early March 2011. [Tr. p. 116] Once the e-mails were released to the public, Rife began receiving death threats, threats to burn down his tattoo parlor, and his family was forced to leave their house due to the media being there “all day, every day.” Id. at 118.

Within days of learning that respondent had revealed Rife’s confidential information, Rife filed a grievance against respondent. [Report at ¶33]

RELATOR’S ANSWER TO RESPONDENT’S OBJECTIONS

I. THE INFORMATION RESPONDENT REVEALED HAD NOT BECOME GENERALLY KNOWN

When considering respondent’s objections to the board’s report, it is critical to recall the board’s finding that “Respondent’s testimony at the hearing was at times disingenuous and not credible.” [Report at ¶44]. Respondent’s objections underscore his penchant for dishonesty and his continued inability to accept responsibility for his actions.

In his objections to the board’s report, respondent argues that Prof. Cond. R. 1.18 did not prevent him from divulging information obtained from his prospective client, Edward Rife, because the information obtained from Rife had become “generally known.” In the same vein, respondent argues that the panel ignored Prof. Cond. R. 1.18’s reference to Prof. Cond. R. 1.9. Respondent’s argument is absurd and his interpretation of the rules is misplaced.

Prof. Cond. R. 1.18(b) states,

Even when no lawyer-client relationship ensues, a lawyer who has had discussions with a prospective client shall not use or

reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client. (Emphasis added.).

Comment 3 to Prof. Cond. R. 1.18(b) states, “Division (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation.”

In relevant part, Prof. Cond. R. 1.9(c) states,

A lawyer who has formerly represented a client in a matter or whose present or former firm has represented a client in a matter shall not thereafter do either of the following:

- (1) Use information relating to the representation to the disadvantage of the former client except as these rules would permit or require with respect to a client or when the information has become generally known;
- (2) Reveal information relating to the representation except as these rules would permit or require with respect to a client

Prof. Cond. R. 1.18 is unambiguous. Because Rife was respondent’s prospective client, respondent was precluded from divulging the information he gained from Rife during their consultations. Contrary to respondent’s assertions, Prof. Cond. R. 1.9 reinforces the prohibition against revealing a prospective client’s confidences.

First, Prof. Cond. R. 1.18(b)’s use of the language, “*Even* when no lawyer-client relationship ensues,” implies that until the lawyer is aware that the prospective client has decided against forming a lawyer-client relationship, the information received must remain confidential. Prof. Cond. R. 1.9 comes into play only after it has become apparent that the prospective client and lawyer will not form a lawyer-client relationship. In this instance, respondent divulged Rife’s confidences while Rife was still a prospective client, as evidenced by respondent’s e-mail communications to Tressel in which he stated, “If he retains me, and he may...” and “I have to sit tight and wait to see if he retains me....” At the time respondent revealed the information to

Coach Tressel, both respondent and Rife were contemplating forming a lawyer-client relationship; consequently, respondent was precluded from revealing Rife's information.

Furthermore, the "generally known" exception to maintaining a former client's confidentiality under Prof. Cond. R. 1.9(c)(1) requires the information be "used" to the disadvantage of the [prospective] client in connection with the representation of another client. In the case at bar, respondent never "used" the information to the disadvantage of Rife; rather, he intended to—and did—reveal the information to warn Coach Tressel that his players were running with the likes of Rife and to enhance his own stature within the OSU football program. Finally, respondent was not "using" the information in connection with his representation of another client. In fact, respondent was not representing anyone when he revealed the information to Coach Tressel.

Assuming, arguendo, that Prof. Cond. Rule 1.9(c)(1) applied, respondent was still precluded from "using" the information because it had not become generally known. Had the information become generally known, there would have been no reason for respondent to "warn" Coach Tressel within hours of receiving the information from Rife. Further, had the information been generally known, there would have been no reason for respondent to specifically tell Coach Tressel in writing, "What I tell you is confidential" and instruct him to "just keep our emails confidential." Finally, respondent's argument that the information had become generally known contradicts his own testimony during the disciplinary hearing:

Relator: In this situation when you heard information both from Joe Epling and Ed Rife, you felt you had a duty to notify Coach Tressel, correct?

Respondent: I felt I had a moral obligation to inform Jim Tressel of what I learned, yes." (Emphasis added.).

Tr. p. 32.

* * *

Relator: So when you were telling Coach Tressel to keep it confidential, you meant for him to keep it confidential between you and he?

Respondent: No. I meant it so that I was telling him that I was going to keep it confidential, that I wasn't going to put it out on the street. (Emphasis added.).

[Tr. p. 54].

Clearly, respondent was unaware of the information until he “learned” of it first-hand from Rife, yet he wants this Court to believe the information was generally known.

Respondent’s argument underscores his continued refusal to acknowledge the wrongful nature of his misconduct and his willingness to fabricate in order to avoid discipline.

Finally, Prof. Cond. R. 1.9(c)(2) further reinforces the prohibition against revealing client information. Read in conjunction with Prof. Cond. R. 1.18, a lawyer may never “reveal” information obtained from a prospective client, except as the rules would permit or require. The board noted that none of the exceptions from Prof. Cond. R. 1.6(b) and (c) apply to the case at bar. [Report at ¶38] Within hours of meeting with Rife, respondent revealed the nature of their discussions to Coach Tressel in direct violation of Prof. Cond. R. 1.18.

Respondent also argues that the information contained in the e-mails was learned from Epling before respondent ever met with Rife.¹ At the disciplinary hearing, Cicero testified, “I learned all the information about all the memorabilia that was taken in the first phone call that Joe Epling gave me on April 2 and that’s in the [first] email.” Respondent’s argument is preposterous. A review of the first e-mail shows respondent had very little information

¹ Respondent and Epling testified that Epling provided the information contained in the first e-mail [Rel. Ex. 1] during a phone call to respondent and that the only meeting between respondent, Rife, and Epling occurred on April 15, 2010.

concerning the memorabilia. [Rel. Ex. 1] It was not until the second meeting with Rife that respondent learned the nature and extent of the memorabilia. [Rel. Ex. 2] Further, and perhaps more importantly, respondent's disclosures were not limited to the OSU memorabilia. On the contrary, the bulk of the information contained in the second and third emails of April 16, 2010 concerned Rife's criminal activities. That information came from Rife, not Epling.

II. RIFE WAS RESPONDENT'S PROSPECTIVE CLIENT

Prof. Cond. R. 1.18(a) states, "A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client." The evidence overwhelmingly established that Rife was respondent's prospective client. "The panel concludes that Relator has proved by clear and convincing evidence that Respondent discussed with Rife the possibility of [sic] client-lawyer relationship." [Report at ¶35] Despite the panel and board's findings, respondent asserts that Epling was his client and that he owed no duty of confidentiality to Rife, since Rife was not his prospective client.

There are two critical flaws in respondent's argument. First, respondent's own e-mails to Coach Tressel prove beyond any doubt that Rife was his prospective client and that respondent viewed Rife as such. When respondent authored the e-mails to Coach Tressel, he had every incentive to be accurate and truthful—a fact respondent conceded at the hearing.

Relator: Now, Mr. Cicero, because of your concern for the University's well-being and the player's well-being, you wanted to be sure that the information that you provided to Coach Tressel on April 16th was accurate, correct?

Respondent: Correct.

Relator: And you had an incentive to be truthful because you were trying to help the players.

Respondent: Correct.

Relator: There would have been no reason for you to put anything inaccurate in an e-mail that was, in fact, intended to help people, correct?

Respondent: I wasn't intending to, no.

[Tr. p. 51]

In his April 16, 2010 e-mail to Tressel, respondent wrote,

- I had Eddie Rife in my office for an hour and a half last night.
- What I tell you is confidential.

* * *

- If he retains me, and he may...

[Rel. Ex. 2]

- He is in really big trouble. The federal government has told him that his best offer is to take 10 years in prison. He wanted my opinion yesterday on his situation.
- I have to sit tight and wait to see if he retains me, but at least he came in last night to do a face to face with me.

[Rel. Ex. 3]

Clearly, respondent viewed Rife as his prospective client. In fact, the board found that respondent had offered to represent Rife for \$10,000 and that he provided legal advice to Rife.

[Report at ¶23, 26, & 27]

The second critical flaw in respondent's argument is that it directly contradicts his testimony during the disciplinary hearing. At the hearing, respondent testified that during the April 15, 2010 meeting with Rife and Epling, respondent told Epling he did not need a lawyer.

[Report at ¶25]. Even Epling confirmed that respondent told him he did not need a lawyer. [Tr. p. 192] Incredibly, respondent asks this Court to believe that when respondent wrote, "If he

retains me, and he may...,” and “I have to sit tight to see if he retains me...,” he was referring to Epling—despite the fact that he had told Epling he did not need a lawyer.

Respondent presented this baseless argument during the disciplinary hearing and it was summarily rejected by the panel. “The panel finds that [respondent’s] explanation at the hearing that he identified Rife as the prospective client rather than Epling in order to protect Epling is not credible.” [Report at ¶34]. The panel also noted that in respondent’s initial response to relator’s inquiry, he set forth various arguments as to why he did not believe he had disclosed Rife’s confidences, but did not assert that he identified Rife as his prospective client to Coach Tressel in order to protect Epling. *Id.* at ¶33. Respondent’s testimony at the hearing was nothing more than a fabricated, desperate attempt to avoid discipline.

In his objections, and for the first time, respondent cites to Prof. Cond. R. 2.3— Evaluation for Use by Third Parties—for the proposition that he was providing an evaluation for his client, Epling, “that so happened to benefit Rife.” Respondent’s argument is beyond the pale. Prof. Cond. R. 2.3 has absolutely no application to the case at bar, as evidenced by its language:

A lawyer may agree to provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer’s relationship with the client.

First, Prof. Cond. R. 2.3 requires the existence of an attorney-client relationship. In this instance, in order for respondent to invoke Prof. Cond. R. 2.3, respondent would have had to represent Epling; however, it was proven beyond any doubt that respondent did not represent Epling. At the disciplinary hearing, Epling testified that he brought Rife to Cicero’s office so Cicero could be a witness to what Rife was telling Epling. [Tr. p. 192]. Epling also testified that when he went to see respondent, he knew he did not need a lawyer. *Id.* at 194. Further, respondent told

Epling on April 2 and April 15 that Epling did not need a lawyer. Id. at 194. Finally, in his affidavit, Epling stated, “When I talked to Chris [Cicero] on April 2, 2010, he did not represent me on any legal matter on that day. I did not have any open cases.” [Rel. Ex. 9] Comment 1 to Prof. Cond. R. 2.3 reinforces the requirement that a lawyer-client relationship must exist in order for the rule to apply. “An evaluation may be performed at the client’s direction or when impliedly authorized to carry out the representation.” (Emphasis added). Respondent never represented Epling, nor did Epling ever request an evaluation; consequently Prof. Cond. R. 2.3 is inapplicable.

III. RELATOR PROVED RESPONDENT’S MISCONDUCT BY CLEAR AND CONVINCING EVIDENCE

In his objections, respondent alleges the evidence was insufficient to establish misconduct. In support of his specious argument, respondent states, “...on remand the Panel reaffirmed its reliance on the statements of an admitted felon, drug dealer and liar over a member of the practicing bar.” Respondent is correct. And simply put, the panel and board found Rife more credible than respondent. In fact, the board found respondent’s testimony was “at times disingenuous and not credible.” [Report at ¶44]. “Unless the record weighs heavily against a hearing panel’s findings, we defer to the panel’s credibility determinations, inasmuch as the panel members saw and heard the witnesses firsthand.” *Cuyahoga County Bar Assn. v. Wise* (2006), 108 Ohio St.3d 164, 842 N.E.2d 35, ¶25, citing *Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649, 800 N.E.2d 1117, ¶8.

Contrary to respondent’s assertions, respondent’s testimony at the disciplinary hearing corroborated a critical aspect of Rife’s testimony. Rife testified throughout the disciplinary

hearing that he met with respondent to determine if he was going to retain respondent as his lawyer. [Tr. pp. 102, 110, 116] In that regard, Rife discussed with respondent aspects of his case, including the potential of serving ten years in prison for drug trafficking. *Id.* at 113. At the disciplinary hearing, respondent conceded this point.

Relator: And that's actually factual, Eddie Rife wanted your opinion on the ten years, didn't he?

Respondent: He did want my opinion, but I couldn't give him one.

Relator: So you admit that Eddie Rife was looking for your legal opinion, correct?

Respondent: He asked me.

[Tr. p. 71].

Furthermore, respondent's e-mails to Coach Tressel corroborate Rife's version of events. Incredibly, respondent continues to try and distance himself from the e-mails he authored immediately following his meetings with Rife. Respondent's attempt at the hearing to inject ambiguity into his unambiguous e-mails, caused the panel to label respondent's testimony as "disingenuous and not credible." [Report at ¶44.] Respondent's e-mails prove—beyond any doubt—that Rife was respondent's prospective client. In his April 16, 2010 e-mail to Coach Tressel, respondent referred to Rife 25 times by using the pronouns, "he," "him," or "his," yet, at the disciplinary hearing, respondent told the panel that every line in the e-mail referred to Rife, except that when he wrote, "I have to sit tight and wait to see if he retains me, but at least he came in last night to do a face to face with me," he was referring to Epling. [Tr. pp. 62, 72]. Respondent's testimony was not only "disingenuous and not credible", it was a blatant lie.

In addition to respondent's e-mails and Rife's testimony, the board relied on Palmer's testimony regarding his meeting with Rife on April 17, 2010—just two days after Rife met with respondent. Palmer testified that Rife told Palmer he had met with respondent and that

respondent had offered to take his case for \$10,000. [Tr. p. 166]. In his objections, respondent argues that Rife's statement to Palmer constituted a prior consistent statement and should not have been admitted. Respondent's argument is without merit for two reasons. First, respondent did not object to Rife (or Palmer's) testimony at the disciplinary hearing. Second, while testifying at the disciplinary hearing, respondent accused Rife of "lying" and even suggested a motive as to why Rife would falsely accuse respondent. [Tr. pp. 79, 81-82]. Under Evid.R. 801(D)(1)(b), a prior consistent statement is admissible to rebut a recent charge of fabrication or improper motive.

In his objections, respondent erroneously argues the panel "failed to consider the purpose of the emails and the context in which they were sent." To the contrary, the panel addressed both issues in its report:

Respondent's motivation for revealing prospective client information to Coach Tressel in Exhibits 1, 2, and 3 was to permit Coach Tressel to better protect his players and the OSU football program. However, he could have easily given the coach a heads-up without identifying Rife as a prospective client. The panel finds that his explanation at the hearing that he identified Rife as the prospective client rather than Epling in order to protect Epling is not credible.

[Report at ¶34]

Respondent's desperate attempts to distance himself from his own e-mails to Coach Tressel illustrate the lengths respondent is willing to go to avoid discipline.

IV. THE BOARD CORRECTLY IDENTIFIED FIVE AGGRAVATING FACTORS, ALL OF WHICH WERE SUPPORTED BY CLEAR AND CONVINCING EVIDENCE.

The board found the following aggravating factors:

- Previous discipline

- Selfish motive
- Respondent's testimony at the hearing was at times disingenuous and not credible
- Respondent refused to acknowledge the wrongful nature of his misconduct
- The disclosure of the information caused Rife (and his family) to be subjected to criticism and harassment, including persistent annoyance and unwelcome intrusion on family privacy by the news media and others as the person who took down the OSU football program.

[Report at ¶44]

Although respondent concedes his previous discipline qualifies as an aggravating factor, he argues that the board erred in finding the presence of the four other aggravating factors.² Respondent asserts the "Panel and the Board inappropriately determined that Mr. Cicero's disclosure of the prospective client relationship with Mr. Rife was for the purpose of self-aggrandizement and therefore was for a selfish motive." The board's finding was spot-on. In its report, the board stated,

Respondent's primary purpose in sending the email messages to Coach Tressel was to issue a warning in order for Coach Tressel to better protect the football players and the OSU football program. However, he could have accomplished that purpose without disclosing his prospective attorney-client relationship with Rife. His disclosure of the prospective attorney-client relationship with Rife was for the purpose of self-aggrandizement and therefore, was with a selfish motive.

[Report at ¶44].

² In his brief, respondent failed to state his reasons for objecting to the board's finding that respondent's testimony was "at times disingenuous and not credible."

By disclosing Rife's status as respondent's prospective client, respondent ensured his e-mails carried the requisite amount of authenticity and weight to warrant Coach Tressel's attention. Respondent wanted Coach Tressel to know that it was respondent who was supplying the first-hand information. To further illustrate respondent's selfish motive, two months after respondent divulged Rife's confidences, Coach Tressel sent an e-mail to respondent asking for additional information. [Rel. Ex. 5]. In a reply e-mail to Coach Tressel, respondent falsely asserted, "No more names as the federal government appears to have reached a resolution for a guilty plea for Eddy Riff [sic] to go to prison. As a result, all communication between myself and the district attorney had to cease." Id. (Emphasis added.). At the hearing, respondent admitted he had left the district attorney a voicemail, but never spoke to him. [Tr. p. 66] But respondent wanted to create the impression in Coach Tressel's eyes that he had been working behind the scenes to assist the OSU football program. It was respondent's desire to be "the eyes and ears" of the OSU football program that led him to reveal his prospective client's confidences; consequently, respondent acted with a selfish motive.

Respondent also takes exception to the board's conclusion that he refused to acknowledge the wrongful nature of his misconduct. In support of his position, respondent argues that "until this Court provides guidance on duties owed to a prospective client, respondent should not be penalized for failing to acknowledge any wrongdoing." At the time of his misconduct, respondent had been an attorney for 22 years—yet he wants this Court to believe he was unaware of his duty to maintain confidentiality. Respondent's argument is absurd, especially in light of respondent's testimony at the disciplinary hearing in which he admitted that when he met with Rife, he was under the mistaken belief that he had previously represented Rife. In other words, respondent believed Rife to be a former client; consequently, it was entirely

reasonable for respondent to view Rife as a potential repeat client. As the board found, “Given the nature of the information discussed, confidentiality was assumed by Rife and should have been assumed by Respondent.” [Report at ¶28] Further, on two separate occasions, respondent informed Coach Tressel in writing that he was waiting to see if Rife retained him. [Rel. Ex. 2, 3, Report at ¶30] Respondent knew Rife was a prospective client and he knew he was under a duty to maintain confidentiality. There is no ambiguity in Prof. Cond. R. 1.18.

Incredibly, respondent testified that he knew while he was speaking with Rife that he was planning to relay the information obtained from Rife to Coach Tressel, yet he never disclosed his intent to Rife. [Report at ¶29] Respondent was willing to betray his prospective client in order to advance his reputation within the OSU football program. Respondent’s loyalty to the OSU football program trumped his loyalty to his prospective client. Despite the plain wording of his own e-mails, respondent refused to acknowledge any wrongdoing, stating, “I owed Ed Rife nothing.” [Tr. p. 32]

Respondent also objects to the board’s finding that respondent’s disclosures of Rife’s information subjected Rife and his family to criticism and harassment. In support of his argument, respondent points to a December 2010 article in the Columbus Dispatch that disclosed Rife’s business, Fine Line Ink, as the place where several OSU football players received discounted tattoos. [Resp. Ex. C-2] The article appeared approximately ten weeks before respondent’s e-mails to Coach Tressel were made public. However, the December 2010 article contained benign information and made no reference to Rife’s drug dealing. In fact, the article specifically stated that the nature of the criminal investigation “has not been disclosed.” *Id.* On the contrary, respondent’s e-mails to Coach Tressel contained much more malignant information regarding Rife, including:

- That Rife “really is a drug dealer.”
- That Rife “is in really big trouble. The federal government has told him that his best offer is to take 10 years in prison.”
- That Rife “did confirm to me that he put out on the street the government took \$70,000 from his house, but he made that up so other associates of his would think it; so they wouldn’t do a home invasion on him and his family. But, he had that much cash just lying around.”
- “Terrell has [Rife’s] phone number and has called him.”

[Rel. Ex. 3]

Unlike the December 2010 article, respondent’s e-mails to Coach Tressel specifically linked members of the OSU football program to a drug dealer who was facing 10 years in prison. At the disciplinary hearing, Rife testified to the impact the release of the e-mails had upon him and his family.

Relator: How did the release of these e-mails affect you?

Rife: I guess the release of these e-mails impacted me a lot, because I started getting death threats, threats to burn my building down. People sitting in front of my house. The media at my house all day, every day, you know. We couldn’t stay at home because of every one coming there. You know, that’s the way it had started to impact me.

* * *

Relator: How did it impact your family?

Rife: My kids were getting picked on at school. My wife was afraid she was going to lose her job over it, you know. So we’re—I guess that’s why we’re going through a divorce now, because, I guess, all the media attention. You know, had this just been the drug case, it wouldn’t have been that bad. I don’t think.

Relator: Why do you say that?

Rife: Well, because it would have just been a regular drug case. I would have went to jail for selling drugs. I would have got out—you know, I would have did my time, got out, went on with my life.

Instead, now I have to be Edward Rife, the guy that took down the Ohio State football program, or, you know, this big notorious drug dealer. And none of this would have ever been had these e-mails not have been sent.

[Tr. pp. 118-119]

Even respondent acknowledged the impact his e-mails had on Rife and his family.

No, he's upset because everybody in Columbus, and everybody that loves Ohio State football, thinks that he is the person that is responsible for bringing down the Ohio State football program. But to be honest with you, I have some empathy in that regard to Mr. Rife, because Mr. Rife didn't bring down the Ohio State football program. Those were decisions that were made by Coach Tressel.

* * *

And then on March 8, when it became public, my e-mail with his name is in there, you know, that may be the straw that broke the camel's back, but it's just—it's just another—it's just another incident that's caused embarrassment to him and his family, and so that's—that's what it is.

Id. at 80-82.

The evidence adduced at the disciplinary hearing provided ample support for the board's finding of five aggravating factors under BCGD Proc. Reg. §10(b).

V. THE BOARD WAS JUSTIFIED IN RECOMMENDING A SIX-MONTH ACTUAL SUSPENSION FROM THE PRACTICE OF LAW.

In his objections, respondent asserts a stayed suspension is the appropriate sanction given the alleged lack of support for the aggravating factors and the alleged ambiguous language of Prof. Cond. R. 1.18. As previously discussed, the board was justified in finding the five aggravating factors and there is no ambiguity in Prof. Cond. R. 1.18. Further, it bears noting that respondent was found to have violated Prof. Cond. R. 8.4(h) as well. In support of his specious

argument, respondent lists several disciplinary cases in which lawyers were either publically reprimanded or received stayed suspensions based upon their disclosures of client confidences. (See *Disciplinary Counsel v. Yurich*, 78 Ohio St.3d 315, 1997-Ohio-239, 677 N.E.2d 1190), (lawyer publically reprimanded for inadvertently disclosing the contents of his client's trust in order to solicit new client); *Disciplinary Counsel v. Shaver*, 121 Ohio St.3d 393, 2009-Ohio-1385, 904 N.E. 2d 883, (lawyer publically reprimanded for improperly disposing of old client files); *Geauga County Bar Assn. v. Psenicka* (1991) 62 Ohio St.3d 35, 577 N.E. 2d 1074, (lawyer reprimanded for disclosure of confidences and a conflict of interest); *Columbus Bar Assn. v. Boggs* (1998), 39 Ohio St.3d 601, 529 N.E. 2d 936, (lawyer reprimanded for violating former DR 4-101). However, in each of the aforementioned cases, there were no aggravating factors. To the contrary, respondent presents before this Court with previous discipline, a selfish motive, a refusal to acknowledge the wrongful nature of his misconduct, a finding that his testimony before the panel was "at times disingenuous and not credible," and resulting harm to the victim of his misconduct. [Report at ¶44] It is the presence of the aggravating factors that separate respondent's misconduct from the aforementioned cases.

Respondent also relies upon *Disciplinary Counsel v. Kimmins*, 123 Ohio St.3d 207, 2009-Ohio-4943, 915 N.E. 2d 330, in which this Court, in a 4-3 decision, imposed a one-year, stayed suspension upon a 45-year practitioner for disclosing his client's confidences and engaging in deceitful conduct. The three dissenting justices opted for a one-year actual suspension from the practice of law. *Id.* at ¶27. Unlike respondent, the lawyer in *Kimmins* had no previous discipline and was found to have acted without a dishonest or selfish motive. *Id.* at ¶18.

In *Columbus Bar Assn. v. Dye*, 82 Ohio St. 3d 64, 1998-Ohio-266, 694 N.E.2d 440, this Court imposed a two-year suspension upon an attorney for, among other things, disclosing his

former client's confidences in open court. In imposing its sanction, the court considered Dye's previous discipline despite the fact that it occurred 17 years earlier. *Id.* at 67, 694 N.E. 2d at 442.

In the *Matter of Bottimer*, 166 Wash. 2d 759, 214 P.3d 133, the Supreme Court of Washington suspended a lawyer with no history of discipline for six months after finding that the lawyer ignored a conflict of interest and disclosed client confidences to the IRS in violation of the Rules of Professional Conduct, specifically R. 1.6 and 1.9(b). *Id.* at ¶31.

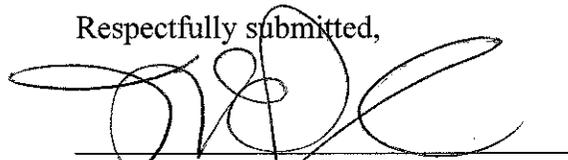
The board was justified in recommending a six-month actual suspension from the practice of law.

CONCLUSION

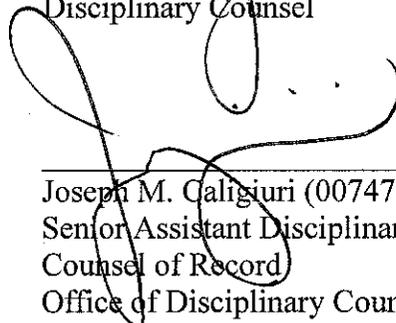
The board found that Rife discussed the possibility of hiring respondent to represent him in an impending federal drug-trafficking case and, therefore, under Prof. Cond. R. 1.18(a), Rife was respondent's prospective client. Rife consulted with respondent under the belief that his conversations would remain confidential; however, respondent betrayed Rife's trust by revealing Rife's information to Coach Tressel. Respondent's actions ran afoul of Prof. Cond. R. 1.18 and 8.4(h) and warrant a six-month actual suspension from the practice of law.

Relator respectfully requests this Court adopt the board's report, overrule respondent's objections, and suspend respondent for six months.

Respectfully submitted,



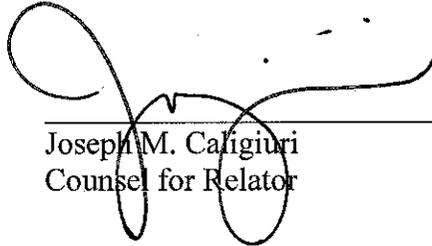
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Answer to Respondent's Objections to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline was served via U.S. Mail, postage prepaid, upon respondent's counsel, John Manuel Gonzales, Esq., Partner , The Behal Law Group LLC, 501 S. High Street Columbus, OH 43215, and via e-mail at jgonzales@gonzaleslawfirm.com, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5th Floor, Columbus, Ohio 43215, via hand delivery, this 8th day of August, 2012.



Joseph M. Caligiuri
Counsel for Relator

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

In Re:	:	SCO No. 2012-0278
Complaint against	:	Case No. 11-055
Christopher Thomas Cicero Attorney Reg. No. 0039882	:	Findings of Fact, Conclusions of Law, and
Respondent	:	Recommendation of the Board of Commissioners on
Disciplinary Counsel	:	Grievances and Discipline of the Supreme Court of Ohio
Relator	:	

OVERVIEW

{¶1} This matter is before the Board on remand from the Supreme Court of Ohio because of an error in the November 14, 2011 hearing transcript. Pursuant to the Court's April 3, 2012 order, the remand is "* * * limited to consideration of the corrected hearing transcript." The panel has neither received nor considered any additional evidence. The parties agreed that, in lieu of argument or an additional hearing, the Board may consider: (1) Respondent's motion to remand to board for reconsideration of findings of fact, conclusions of law, and recommendations and to extend or vacate briefing schedule filed with the Supreme Court on March 28, 2012; and (2) Relator's reply to Respondent's motion filed on March 29, 2012. See May 2, 2012 entry of panel chair.

{¶2} Respondent's basis for his motion for remand is that the original transcript of his hearing testimony included the statement: "I quoted him a legal fee and just that's it." However,



the corrected transcript says: "I never quoted him a legal fee and just that's it." Corrected Hearing Transcript, 238.¹

{¶3} The panel unanimously concludes that the post-hearing corrections to the transcript do not change the Board's recommendation. The panel finds that Relator proved by clear and convincing evidence that Respondent violated Prof. Cond. R. 1.18 [duties to prospective client] and Prof. Cond. R. 8.4(h) [conduct adversely reflecting upon fitness to practice]. The panel adheres to its original recommendation that Respondent be suspended from the practice of law for six months.

FINDINGS OF FACT

{¶4} The panel repeats and incorporates herein all the findings of fact contained in the February 14, 2012 Board report, except for ¶21 that quoted from the portion of Respondent's testimony affected by the correction in the transcript.

{¶5} Respondent discussed with Rife the possibility of forming a client-lawyer relationship with respect to the potential criminal matter against Rife. *Id.* at 108-112; Relator's Ex. 2, 3.

{¶6} Respondent gave advice to Rife concerning such matter. *Id.* at 112-113, 222-224; Relator's Ex. 3.

{¶7} Regardless of whether Respondent quoted a fee, Rife was, at the time that Respondent sent his email messages to Coach Tressel on April 16, 2010, Respondent's "potential client" for purposes of Prof. Cond. R. 1.18.

¹ Other minor technical and nonsubstantive changes were also made at pages 130, 167 and 199. The corrections appear to have caused a minor change in pagination, which may have caused minor inaccuracies in the citations to the transcript in the original panel report. For example, the above-quoted testimony appeared at page 237 of the original transcript but at page 238 of the corrected transcript.

{¶8} Respondent's testimony on this issue lacks credibility because, among other things, Respondent admitted in two of his emails to Coach Tressel facts sufficient to conclude that the potential client relationship existed and that he considered Rife to be his potential client. In Relator's Exhibit 2, Respondent stated: "If he retains me, and he may, I will try to get these items back that the government now wants to keep for themselves." In Relator's Exhibit 3, Respondent disclosed information about Rife to Coach Tressel and stated that: "I have to sit tight and wait to see if he retains me, but at least he came in last night to do a face-to-face with me."

{¶9} The panel does not believe Respondent's testimony that he did not intend in the email messages to refer to Rife as his prospective client, but that he worded his messages to Coach Tressel only for the purpose of concealing the fact that Epling had been involved in the April 15, 2010 meeting. See February 14, 2012 Board report at ¶31-34.

{¶10} While not dispositive on the issue of whether Rife was a potential client, the panel finds that Respondent did, on April 15, 2010, quote a fee to Rife for representing him. Rife so testified. Corrected Transcript at 111-112. On April 17, 2010, Rife told Palmer that he had been speaking with other attorneys, including Respondent, and that Respondent had quoted Rife a fee of \$10,000 for representing him in the criminal matter. *Id.* at 165-166.

{¶11} Respondent's conduct in revealing information learned in consultation with his prospective client was conduct that adversely reflects on his fitness to practice law within the meaning of Prof. Cond. R. 8.4(c).

CONCLUSIONS OF LAW

{¶12} The panel reaffirms and incorporates all of the conclusions contained in the February 14, 2012 Board report, except for the reference in ¶35 to Respondent's having admitted during his hearing testimony that he quoted a fee to Rife for representing him.

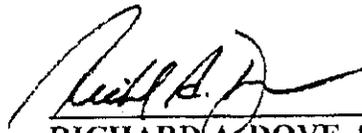
RECOMMENDATION

{¶13} The panel reaffirms its findings regarding aggravating and mitigating factors and its recommendation that Respondent be suspended from the practice of law for six months.

BOARD RECOMMENDATION

Pursuant to the April 3, 2012 remand order from the Supreme Court of Ohio, the Board of Commissioners on Grievances and Discipline considered this matter on June 7, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Christopher Thomas Cicero, be suspended from the practice of law for a period of six months. 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 Recommendation as those of the Board.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**

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

In Re:	:	
Complaint against	:	Case No. 11-055
Christopher Thomas Cicero Attorney Reg. No. 0039882	:	Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

OVERVIEW

{¶1} This matter was heard on November 14, 2011, before a panel consisting of Judge Thomas F. Bryant, Judge Lee H. Hildebrandt, Jr. and Lawrence R. Elleman, chair. None of the panel members is from the appellate district from which the complaint arose or served on the probable cause panel in this matter. Relator was represented by Joseph M. Caligiuri. Respondent was represented by Karl H. Schneider and Alvin E. Mathews, Jr. Relator called as witnesses the grievant Edward Allen Rife and attorney Stephen Palmer. Respondent testified in his own behalf and called as a witness Joseph Epling. Respondent also offered six character letters, four of which were written by municipal court judges plus a former municipal court judge and a chief deputy sheriff, attesting to Respondent's professional integrity and competence.

{¶2} Respondent sent several email messages to Jim Tressel ("Coach Tressel"), who was then head football coach at The Ohio State University, revealing information that he had learned in connection with his consultation with Rife who at that time was under investigation

for drug related offenses. The panel concludes that Respondent had discussed with Rife the possibility of Respondent representing Rife, and that Rife was Respondent's "prospective client" at the time that some of the emails were sent. The panel concludes that Respondent violated Prof. Cond. R. 1.18 (revealing information learned from consultation with a prospective client) and Prof. Cond. R. 8.4(h) (conduct adversely reflecting upon his fitness to practice law). The panel recommends that Respondent be suspended from the practice of law for a period of six months.

FINDINGS OF FACT

{¶3} Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶4} Respondent was born in 1956 and was admitted to the practice of law in 1988. He is a 1984 graduate of The Ohio State University and a 1987 graduate from the University of Toledo College of Law. Respondent practices law in Columbus, where he focuses primarily upon criminal law.

{¶5} Respondent was previously suspended from the practice of law in Ohio for one year with six months of the suspension stayed on May 14, 1997 for, among other things, exaggerating his personal relationship with a sitting judge. *Office of Disciplinary Counsel v. Cicero*, 78 Ohio St.3d 351, 1997-Ohio-207.

{¶6} As of April 2010, Respondent had known Rife for many years and had previously represented Rife's wife in an unrelated matter. Rife owned a tattoo parlor in Columbus. Rife admits that he was at the time a drug dealer. November 14, 2011 Hearing Tr. 89. He was also a collector of Ohio State University athletic memorabilia. He was supposed to, within days after the panel hearing, report for a three-year federal prison sentence based on a guilty plea for drug

trafficking and money laundering. He also has a previous conviction for felony forgery and possession of criminal tools. *Id.* at 92.

{¶7} Respondent had previously represented Epling but was not representing him in any matters in April 2010. Epling was a former associate of Rife in the tattoo parlor business and had knowledge that Rife was a drug dealer. *Id.* at 187.

{¶8} On April 1, 2010, Rife and Epling were scheduled to have breakfast together. On that date, federal law enforcement officials raided Rife's residence as part of a criminal drug trafficking investigation. During the raid, the federal officers seized jewelry, cameras, GPS devices, cell phones, bank statements, and other paperwork. In addition, they seized a large amount of Ohio State athletic memorabilia that Rife testified had a value of \$15,000 to \$20,000. There were no drugs seized. *Id.* at 97-100.

{¶9} During the raid on April 1, 2010, Epling stopped by Rife's home and observed the raid in progress. Rife told Epling some of the details about the raid, including the seizure of the Ohio State athletic memorabilia.

{¶10} The evidence is conflicting as to what happened the next day. Rife testified that he made arrangements with Epling to set up an appointment with Respondent to discuss the possibility of Respondent representing Rife in the criminal matter and that Epling, Rife, and Respondent did, in fact, meet on April 2, 2010, to discuss Respondent's potential representation of Rife. *Id.* at 101-105.

{¶11} Epling and Respondent deny that such a meeting occurred on April 2, 2010, but on that date Epling did have a telephone conversation with Respondent wherein Epling told Respondent about the raid and the seizure of the Ohio State memorabilia, and further that Epling

was concerned that given his associations with Rife, he could be drawn into the matter along with Rife. *Id.* at 32-34, 175-179, 207-208.

{¶12} Respondent was a former member of The Ohio State University football team, a loyal Ohio State University sports fan, and an acquaintance of Coach Tressel. Respondent wanted to give Coach Tressel a heads-up that certain prominent OSU football players had been given free tattoos at Rife's tattoo parlor in exchange for signed memorabilia, warn Tressel that Rife had been involved in unsavory activities and has a felony record, and advise Tressel that OSU players should not be involved with this type of person. *Id.* at 240.

{¶13} On April 2, 2010, Respondent sent an email message to Coach Tressel informing Tressel of the above information that had come to his attention. Relator's Ex. 1.

{¶14} On April 2, 2010 or perhaps a day earlier, Rife contacted another Columbus criminal defense attorney, Stephen Palmer. They first met on April 2, 2010. Palmer was formally retained and given a \$25,000 retainer on or about April 5, 2010. Palmer testified that Rife told him that he had met with other lawyers, including Respondent, about representing him. November 14, 2011 Hearing Tr. 161.

{¶15} Between the dates of April 2 and April 17, 2010, Palmer was in contact with Rife and with representatives of the United States Attorney's Office. There was discussion of a plea deal with the possibility of a ten-year prison sentence. *Id.* at 107-108 and 162-164.

{¶16} By mid-April 2010, Rife was becoming dissatisfied with Palmer and was considering engaging in a contested trial rather than a voluntary plea. According to Rife, a meeting was scheduled with Respondent so that he could have a discussion with Respondent about Respondent, instead of Palmer, representing him. *Id.* at 108-109.

{¶17} On April 15, 2010, Rife, Epling, and Respondent met for approximately 90 minutes in Respondent's office.

{¶18} Respondent and Epling each testified that the purpose of this meeting was to have Rife confirm to Epling and to Respondent that Epling had no involvement in the drug activities which they perceived to be the subject of the pending drug investigation. *Id.* at 39 and 180-181.

{¶19} Assuming the truth of Respondent's testimony as to the purpose of the meeting, that testimony does not necessarily preclude the possibility that there was also a discussion at the meeting about Respondent representing Rife in the criminal case.

{¶20} Rife testified that the discussion at both the April 2 meeting, which Respondent denies occurred, and the April 15 meeting included the possibility of Respondent representing him. According to Rife, Respondent told Rife that Rife could go back to Palmer and ask for a refund of a portion of the retainer that he had given to Palmer and that Respondent would "take my case for \$10,000." *Id.* at 104-105.

{¶21} While denying the truth of much of Rife's testimony, Respondent conceded on the witness stand that he had quoted Rife a legal fee to represent him:

Mr. Caligiuri: * * * I'm asking whether or not you ever told him you can't represent him?

Respondent: No. The purpose of the meeting, Mr. Caligiuri, was so that he could come in and tell me that Mr. Epling didn't have any involvement with his federal drug investigation.

So I'm going to say this one last time to these three gentlemen right here. He never came into my office to ask me to represent him. He never came into my office to ask me to get back OSU memorabilia. *I quoted him a legal fee* and just that's it. *Id.* at 237-238. (Emphasis added).

{¶22} Mr. Palmer testified that Rife returned to Palmer's office on April 17, 2010, to discuss the issue of whether to take a plea deal or to do a contested trial. Rife told Palmer that he

had spoken to a number of attorneys including Respondent, and further that Respondent had quoted to Rife a fee of \$10,000 for representing him in the criminal matter. *Id.* at 165-166. Rife eventually decided not to hire Respondent but to stay with Palmer.

{¶23} The panel finds that Relator proved by clear and convincing evidence that Respondent offered to represent Rife in the criminal case for a fee of \$10,000.

{¶24} During the April 15 meeting among Respondent, Rife, and Epling, they discussed some of the details of the federal investigation. Respondent denies that he gave any legal advice at the meeting, but for the reasons set forth in ¶¶25-27 below, the panel finds that Relator proved by clear and convincing evidence that Respondent did express legal opinions.

{¶25} During the April 15 meeting and before, Respondent assured Epling that Epling did not need to hire a lawyer. *Id.* at 42 and 192-194. While this advice could be deemed to have been given to Epling rather than to Rife, the panel finds it was necessary for Respondent to give that advice in order for Respondent to clear the way for his representation of Rife because if Epling had needed counsel, Respondent would have had a potential conflict in representing both of them.

{¶26} During the meeting, there was a discussion about whether Rife could get his OSU athletic memorabilia back. Respondent advised that if the government believed the material had been purchased with drug money, Rife would not be able to get the memorabilia back. *Id.* at 222-223. Respondent apparently does not believe that this was legal advice, but the panel finds that this was something within the particular expertise of a criminal law attorney and constituted legal advice.

{¶27} At the meeting on April 15, the participants discussed the issue of potential penalties for drug trafficking. This part of the discussion lasted approximately a half an hour.

The discussion was about a “guide book” Rife had received from someone that apparently discussed some of the federal sentencing guidelines. Rife asked Respondent if he could really receive a ten-year prison sentence even though no drugs were found by law enforcement officers during the raid. Respondent stated he was unable to answer the question because he did not have enough information to do so. *Id.* at 57-58. However, Respondent did say during the meeting that “You’ve got basically two choices. You can either sit in the county jail for a long period of time, or you can start cooperating with the federal government and become a snitch.” *Id.* at 222-224.

{¶28} Respondent did not, during the meeting, expressly assure Rife of confidentiality. Rife did not specifically ask for it. However, given the nature of the information discussed, confidentiality was assumed by Rife (*Id.* at 134) and should have been assumed by Respondent. Rife never gave permission to reveal the contents of this discussion to Coach Tressel. *Id.* at 116-117.

{¶29} The panel finds that Respondent knew on April 15, 2010, that he was planning to forward the information he learned in the meeting to Coach Tressel, but he never disclosed this intent to Rife. *Id.* at 144-145.

{¶30} On the morning of April 16, Respondent sent his second email message to Coach Tressel in which he revealed the content of some of his discussions with Rife and Epling of the previous evening. In this message, he said that he had Rife in his office for an hour and a half and that the information he was giving Tressel “is confidential.” He described the specifics of the items that had been seized by the government and specifically identified Rife as his prospective client, stating: “If he retains me, and he may, I will try to get these items back that the government now wants to keep for themselves * * *.” Relator’s Ex. 2.

{¶31} Respondent initially testified that he had not intended in this email message to refer to Rife as his prospective client, but that he worded the message in the manner he did so as to conceal the fact that Epling had been in the meeting. He testified that he did this out of concern that Epling, his former client, might be implicated in some way if he used Epling's name in the email. Respondent testified about this as follows:

Mr. Caligiuri: And when you wrote, "...if he if retains me and he may," you were referring Eddie Rife?

Respondent: No, I was not.

November 14, 2011 Hearing Tr. at 61.

However, Respondent later conceded that the message reads in such a way as to refer to Rife as the client who might retain him rather than anyone else. *Id.* at 62 and 68.

{¶32} On April 16, 2010, Respondent sent his third email message to Coach Tressel. In that message, he disclosed further information about Rife, stating that Rife "really is a drug dealer," that Rife is "in really big trouble," and that Rife "wanted my opinion" about the government's best offer for a plea deal. Significantly, he stated "I have to sit tight and wait to see if he retains me, but at least he came in last night to do a face-to-face with me." He closed the message with an instruction to Coach Tressel "just keep our emails confidential." Relator's Ex. 3.

{¶33} Respondent's email messages to Coach Tressel were revealed in the news media on or about March 7, 2011. Rife filed a grievance on March 11, 2011. Respondent's Ex. A. Respondent answered the grievance in a letter to Relator dated April 22, 2011. In that response, Respondent set forth various arguments as to why he did not believe he had disclosed Rife's confidences. However, he did not in that letter assert that he had identified Rife as his

prospective client to Coach Tressel in order to protect Epling as he later asserted at the panel hearing. Realtor's Ex. 7.

{¶34} Respondent's motivation for revealing prospective client information to Coach Tressel in Exhibits 1, 2, and 3 was to permit Coach Tressel to better protect his players and the OSU football program. However, he could easily have given the coach a heads-up without identifying Rife as a prospective client. The panel finds that his explanation at the hearing that he identified Rife as the prospective client rather than Epling in order to protect Epling is not credible.

ANALYSIS AND CONCLUSIONS

{¶35} Prof. Cond. R. 1.18(a) provides that "[a] person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client." The panel concludes that Relator has proved by clear and convincing evidence that Respondent discussed with Rife the possibility of client-lawyer relationship. The evidentiary basis for this conclusion is at least the following: (1) that Respondent admitted it in his email messages to Coach Tressel; (2) that Respondent admitted at the panel hearing that he quoted a fee to Rife for representing him; (3) the testimony of Rife; and (4) the corroborating testimony of Palmer that Rife told him that he had discussed representation with Respondent and that Respondent had quoted him a fee of \$10,000.

{¶36} Prof. Cond. R. 1.18(b) provides that "[E]ven when no lawyer-client relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation * * *."

{¶37} Comment [1] to Rule 1.18 provides:

Prospective clients, like clients, may disclose information to a lawyer, place documents or property in the lawyer's custody, or rely on the

lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all the protection afforded clients.

There appears to be no applicable Ohio case law regarding the construction of Prof. Cond. R. 1.18 regarding a lawyer's confidentiality obligations to prospective clients. However, the last sentence of Comment [1] refers the reader back to some of the "protection afforded clients" under Prof. Cond. R. 1.6. The panel therefore looks to Prof. Cond. R. 1.6 for guidance in construing Prof. Cond. R. 1.18.

{¶38} Prof. Cond. R. 1.6(a) provides that "a lawyer shall not reveal information relating to the representation of a client, including information protected by the attorney-client privilege under applicable law, unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by division (b) or division (c) of this Rule." Divisions (b) and (c) of Prof. Cond. R. 1.6 are not applicable to this case.

{¶39} Comment [3] to Prof. Cond. R. 1.6 makes it clear that the confidentiality under Prof. Cond. R. 1.6 is not limited to information covered by the attorney-client privilege or the work-product doctrine:

The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work-product doctrine, and the rule of confidentiality established in professional ethics. The attorney-client privilege and the work-product doctrine apply in judicial and other proceedings in which the lawyer may be called as a witness or otherwise required to produce evidence concerning the client. The rule of client-lawyer confidentiality applies to situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Ohio Rules of Professional Conduct or other law.

{¶40} In this case, the information disclosed to Respondent was disclosed in the presence of a third party, *i.e.* Epling. Therefore, that information may not have been covered by the attorney-client privilege but is nevertheless considered secret under the rules of ethics. In *Akron Bar Assn. v. Holder*, 102 Ohio St.3d 307, 2004-Ohio-2835, the Supreme Court of Ohio found that Holder violated DR 4-101(B)(1), a predecessor to the current Prof. Cond. R. 1.6, for disclosing his client's criminal background despite that the information was a matter of public record and that the respondent had learned of the information when his client disclosed it during a deposition. The Court stated:

There being an ethical duty to maintain client secrets available from sources other than the client, it follows that an attorney is not free to disclose embarrassing or harmful features of a client's life just because they are documented in public records or the attorney learned of them in some other way.

Id. at ¶39 (citations omitted).

{¶41} The panel finds that Relator proved by clear and convincing evidence that Respondent disclosed to Coach Tressel personal information about Rife, including information that he exchanged free tattoos for OSU memorabilia, that "he really is a drug dealer," that "he is in really big trouble," that the federal government had told Rife that its best offer was to take ten years in prison, and that Rife asked for his opinion on the government's offer.

{¶42} The panel concludes that Relator has proved by clear and convincing evidence that Respondent violated Prof. Cond. Rule 1.18 and Prof. Cond. R. 8.4(h).

AGGRAVATING AND MITIGATING FACTORS

{¶43} The panel finds as a mitigating factor that Respondent has an excellent reputation among judges and attorneys for professional integrity and professional competence.

{¶44} The panel finds the following aggravating factors:

- Respondent has a prior disciplinary offense for violation of DR 1-102(A)(5) (conduct that is prejudicial to the administration of justice) and Gov. Bar R. IV, Section 2 (duty of a lawyer to maintain respectful attitude toward the courts).
 - Respondent's primary motivation in sending the email messages to Coach Tressel was to issue a warning in order for Coach Tressel to better protect the football players and the OSU football program. However, he could have accomplished that purpose without disclosing his prospective attorney-client relationship with Rife. His disclosure of the prospective client relationship with Rife was for the purpose of self-aggrandizement and therefore, was with a selfish motive.
 - Respondent's testimony at the hearing was at times disingenuous and not credible.
 - Respondent refused to acknowledge the wrongful nature of his misconduct.
 - The disclosure of the information about the OSU memorabilia caused Rife (and his family) to be subjected to criticism and harassment, including persistent annoyance and unwelcome intrusion on family privacy by the news media and others as the person who took down the OSU football program.
- November 14, 2011 Hearing Tr. at 119.

RECOMMENDATIONS

{¶45} Relator recommended a six-month actual suspension from the practice of law.

Respondent recommended that the complaint be dismissed with no sanction.

{¶46} The panel has reviewed the case law cited by Relator and Respondent. It appears there are no applicable reported cases in Ohio relating to sanctions for disclosing information regarding a prospective client under Prof. Cond. R. 1.18.

{¶47} Relator cites *Akron Bar Assn. v. Holder, supra* (two-year suspension with 18 months stayed for disclosing an existing client's criminal background and engaging in conduct involving fraud, deceit, or misrepresentation) and *Columbus Bar Assn. v. Dye*, 82 Ohio St.3d 64, 1998-Ohio-266, (two-year suspension for disclosing client confidences and numerous other serious violations, including conduct involving dishonesty, fraud, deceit, and misrepresentation). These cases are not instructive on the issue of sanctions because they involve other serious violations in addition to disclosing client information.

{¶48} Respondent cites case law involving the disclosure of existing client secrets or similar offenses where the sanction was a public reprimand or a stayed suspension. See *Office of Disciplinary Counsel v. Yurich*, 78 Ohio St.3d 315, 1997-Ohio-239 (public reprimand for disclosing client's secrets and sending an improper targeted mailing soliciting legal business); *Disciplinary Counsel v. Shaver*, 121 Ohio St.3d 393, 2009-Ohio-1385 (public reprimand for improper disposal of client files and other materials); *Geauga Cty. Bar Assn. v. Psenicka* (1991), 62 Ohio St.3d 35 (public reprimand for disclosure of client confidences and conflict of interest in representing one spouse in a divorce action after ceasing to represent the other spouse); *Columbus Bar Ass'n. v. Boggs* (1988), 39 Ohio St.3d 601 (cited and explained in *Columbus Bar Assn. v. Boggs*, 103 Ohio St.3d 108, 2004-Ohio-4657) (public reprimand for breaching a client's confidence). The panel concludes that the aggravating factors in this case exceed any aggravating factors in any of these cases cited by Respondent.

{¶49} Both sides cite *Disciplinary Counsel v. Kimmins*, 123 Ohio St.3d 207, 2009-Ohio-4943, where the Court imposed a one-year suspension, all stayed, for among other things disclosing client information. It is true that, as argued by Respondent, Kimmins violated numerous other sections of the Code of Professional Responsibility in addition to disclosing client information; yet he received only a stayed suspension. However, the Court noted fewer aggravating factors and more mitigating factors than in this case, including significantly, that Kimmins had no prior discipline, whereas Respondent in this case had previous discipline.

{¶50} The panel, having considered the relevant factors, including the ethical duties that Respondent violated, the sanctions imposed in similar cases, and the aggravating and mitigating factors, recommends that Respondent be suspended from the practice of law for six months.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 10, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Christopher Thomas Cicero, be suspended from the practice of law for a period of six months. 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 Recommendation as those of the Board.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**