

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS	1
ARGUMENT AND PROPOSITION OF LAW	2
A. The Board of Commissioners Recommended a Proper Sanction.2
CERTIFICATE OF SERVICE	6
APPENDIX	7
Appendix A Agreed Stipulations	
Appendix B Findings of Fact, Conclusions of Law and Recommendations of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio	

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Page</u>
<i>Ohio State Bar Assn. v. Johnson</i> , 96 Ohio St.3d 192, 2002-Ohio-3998	3
<i>Cincinnati Bar Assn. v. Kellogg</i> , 126 Ohio St.3d 360, 2010-Ohio-3285	3
<i>Disciplinary Counsel v. Rolla</i> , 95 Ohio St.3d 27, 2002-Ohio-1366	3

STATEMENT OF FACTS

Respondent, Joseph Patrick O'Malley, was admitted to the practice of law in the State of Ohio on November 9, 1992. (Appx. A, pg. 1) At issue in this matter is Respondent's representation of the homeowner in a multiparty foreclosure action entitle *K & L Excavation, Ltd. v. Auburn Building Company, et al. Id.* at 5. Both Respondent, on behalf of his clients, and defendant American Home Bank (AHB) filed motions for summary judgment with the court between 2006 and 2008. *Id.* In the spring or summer of 2008, Respondent was attempting to settle the AHB litigation. *Id.* at 6. However, Respondent's efforts were hindered by the fact that the summary judgment motions had not been ruled upon. *Id.* Respondent asked Cuyahoga County Auditor, Joseph Russo, to ask Judge Steven Terry, who presided over the AHB litigation to deny all motions for summary judgment. *Id.* On July 18, 2008, Judge Terry denied the motions for summary judgment. *Id.* On October 7, 2008, the AHB litigation settled for \$27,000, in favor of AHB. *Id.*

Unbeknownst to Respondent, the County Auditor, Joseph Russo, was under investigation by the federal government. *Id.* at 4. The Federal Bureau of Investigation learned of the request by Russo to Judge Terry, and questioned Respondent about it, which Respondent denied. *Id.* On April 19, 2010, Respondent was charged by way of an information with the Misprison of a Felony, 18 U.S.C. § 4 and Making a Mterially False Statement in a Matter within the Jurisdiction of the Government, 18 U.S.C. § 1001, in the United States District Court for the Northern District of Ohio. *Id.* at 2. Respondent plead

guilty to the charges and was sentenced to four months in prison on each count to run concurrently, a \$10,000 fine, two (2) years supervised release and 250 hours of community service. *Id.* On August 22, 2011, the Supreme Court of Ohio suspended Respondent from the practice of law for an interim period based upon the felony conviction. *Id.* Respondent has completed his prison sentence, paid the \$10,000 fine and nearly completed his community service. *Id.* at 4. At the time of the hearing in this matter, Relator and Respondent stipulated to all facts, aggravating and mitigating factors and recommended sanction. *Id.* The Board agreed with the parties and recommended an indefinite suspension, with credit for time served under the interim felony suspension, with reinstatement subject to Respondent completing his federally-supervised release. (Appx. B, at 8.)

ARGUMENT AND PROPOSITION OF LAW

A. The Board of Commissioners Recommended the Proper Sanction.

The Board arrived at the appropriate sanctions and weighed the aggravating and mitigating factors in this case, including not only those set forth in BCGD Proc. Reg. 10, but all factors relevant to this case.

The parties stipulated that Respondent had no prior disciplinary record, had made full and free disclosure to the Board, had a cooperative attitude toward the proceedings, presented positive character evidence, and had received criminal penalties, including a four-month prison sentence, a \$10,000 fine, and two years of supervised release.

The following cases were provided to the Panel supporting an indefinite suspension. *See Ohio State Bar Assn. v. Johnson*, 96 Ohio St.3d 192, 2002-Ohio-3998; *Cincinnati Bar Assn. v. Kellogg*, 126 Ohio St.3d 360, 2010-Ohio-3285; *Disciplinary Counsel v. Rolla*, 95 Ohio St.3d 27, 2002-Ohio-1366.

Respondent called five witnesses. (1) Attorney John Castele has known Respondent since they were very young. They have known each other since grade school, junior high school, high school, college, and law school. Attorney Castele's testimony could not have been stronger. He has never known Respondent to act in any other way than ethical. He testified that Respondent has always represented clients first and provided numerous *pro bono* hours in serving a constituency that many of us have forgotten. (2) The Honorable Judge Michael Donnelly of the Cuyahoga County Court of Common Pleas reiterated these observations of Respondent. He, too, has known Respondent for a lifetime. He could not explain this single breach. However, he did not believe the Respondent would ever be motivated to take action that benefitted Respondent rather than the client. (3) Father Thomas Mahoney testified that he has known Respondent to offer *pro bono* services and to volunteer to assist many of those individuals who are less fortunate. Two of Respondent's clients, (4) David Mertus and (5) Vincent McMichael, testified that Respondent worked on their cases night and day—almost for free. They testified that they would not be where they are today but for the help and assistance of Respondent.

The case in question was an isolated incident for a matter in which Respondent had been involved for a number of years. Respondent was paid one thousand dollars (\$1,000.00) on a case that easily had fees in excess of thirty thousand dollars (\$30,000.00). His actions did not lead to a great financial reward to his client or him. The difference was that the client settled the case for twenty-seven thousand dollars (\$27,000.00), as opposed to twenty-four thousand dollars (\$24,000.00), as a result of the Judge denying all Motions for Summary Judgment, including that of his client. Three thousand dollars (\$3,000.00) was the benefit to the client and the client only. That three thousand dollars (\$3,000.00) was the basis of the indictment.

Respondent testified that he had a very strong Motion for Summary Judgment pending against the opposition's weak Motion for Summary Judgment. Respondent's Motion was pending when the Judge denied all Motions. Respondent did not ask the Court to rule favorably on his Motion and to deny opposing counsel's Motions. There is no question that Respondent was frustrated with the judicial process. His frustration was not an excuse. However, that is what led to his request to have the Judge deny all Motions.

Respondent submitted more than thirty-eight letters of support and could have submitted triple that number.

Lastly, Respondent would like to draw the Court's attention to two letters. The first letter is from Daniel W. McNea. He states:

As a licensed Realtor in the State of Ohio, member of the City of Cleveland's Community Relations Board, and father of two

children, I am writing on behalf of Joseph P. O'Malley. I have known Mr. O'Malley for well over fifteen years. During this time, I have come to know Mr. O'Malley as an inspirational leader, a solid individual, and a fine family man.

It is difficult to find someone as caring and compassionate as Joseph O'Malley. Ten years ago when my sister was being read her last rites just days prior to her passing from cancer, Joe showed up unsolicited to offer assistance to my family. Those were not just words, as Joe spent countless hours with my late sister Laura's boys as they attempted to get her affairs in order. Another time, Joe showed up at my door step with a large box of games and toys for my children, along with much needed furniture following my divorce. These were not surprising events as Joe O'Malley is a very generous, caring and compassionate individual. I have known Joe as always being there for everyone's needs. This is evident by the plethora of friends that Joe has. Joe is neither discriminating nor judgmental in his help of all walks of life.

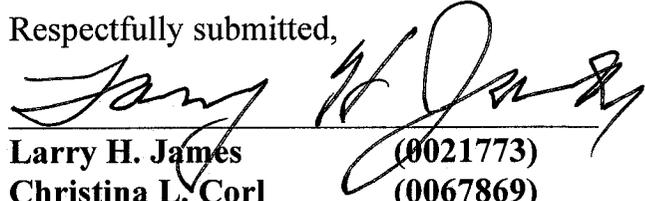
The second letter is from Attorney James P. Sammon. He states the following:

I have spent the better part of over a decade defending other lawyers in ethical issues, legal malpractice and other matters. In that experience, I have gained a profound understanding of the risks, travails, pitfalls, and benefits of the practice of law. I have followed Joe's case from the very beginning. While I will not diminish any of the charges brought against him—I can state with certainty that he has paid the price—and he has learned the lesson. His time of incarceration changed him for the better—and made him understand both the power and responsibility that come with having a license to practice law. I have seen nothing in his actions or demeanor since his release that would indicate that he does not have the qualifications necessary for reinstatement.

It is for the above-stated reasons that Respondent strongly concurs with the stipulations of the parties and the findings of the Board, and requests that this Court adopt

the findings of the Board in their entirety. In the alternative, if this Court entertains an increase in the penalty, Respondent respectfully requests the opportunity to brief this case further and requests that this matter be set for oral argument.

Respectfully submitted,



Larry H. James (0021773)

Christina L. Corl (0067869)

Crabbe, Brown & James, LLP

500 South Front Street, Suite 1200

Columbus, OH 43215

Tel: (614) 229-4567 (614) 229-4562

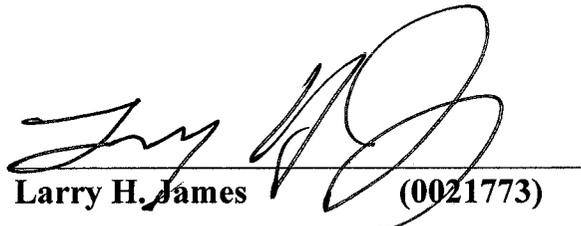
Fax: (614) 229-4559

E: ljames@cbjlawyers.com &

ccorl@cbjlawyers.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served electronically upon Joseph M. Caligiuri, Senior Assistant Disciplinary Counsel, this **8th day of January, 2013.**



Larry H. James (0021773)

APPENDIX

Appendix A Agreed Stipulation A

Appendix B Board Findings of Fact, Conclusions of Law and Recommendations
of the Board of Commissioners on Grievances and
Discipline of the Supreme Court of Ohio B

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

In re:

Joseph Patrick O'Malley, Esq.
PO Box 451244
Westlake, OH 44145

AGREED STIPULATIONS

Respondent,

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

BOARD NO. 11-113

Relator.

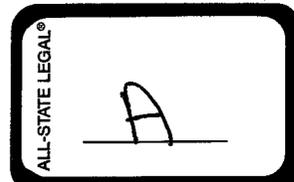
AGREED STIPULATIONS

INTRODUCTION

Relator, Disciplinary Counsel, and respondent, Joseph Patrick O'Malley, do hereby stipulate to the admission of the following facts, disciplinary rule violations, mitigation, exhibits, and recommended sanction.

STIPULATED FACTS

1. Respondent, Joseph Patrick O'Malley, was admitted to the practice of law in the state of Ohio on November 9, 1992. Respondent is subject to the Code of Professional



Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

COUNT ONE

Criminal Convictions

2. On or around April 19, 2010, respondent was charged by way of an information with Misprison of a Felony, 18 United States Code, §4 and Making a Materially False Statement in a Matter within the Jurisdiction of the Government, 18 United States Code, §1001 in the United States District Court for the Northern District of Ohio, Case No. 1:10CR171.
3. On or around April 27, 2010, respondent pled guilty to the charges before the Hon. Kathleen O'Malley.
4. On August 2, 2011, respondent was sentenced to four months in prison on each count to run concurrently, a \$10,000 fine, two years supervised release, and 250 hours of community service.
5. On August 22, 2011, the Supreme Court of Ohio suspended respondent from the practice of law for an interim period based upon respondent's felony conviction.
6. The facts underlying respondent's conviction are contained in respondent's plea agreement, which states:
 - A. Cuyahoga County, Ohio ("County") was a government agency as that term is defined in Title 18, United States Code, Section 666(d)(2), that received benefits in excess of \$10,000 during each calendar year relevant to this Information under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other form of federal assistance. Its departments included the Auditor's Office, which was headed by an elected public official.
 - B. The Cuyahoga County Auditor's Office ("Auditor's Office") was a government agency, as that term is defined in Title 18, United States Code, Section 666(d)(2), which received benefits in excess of \$10,000 during every calendar year material to this Information under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other form of Federal assistance.

- C. Public Official 2 (“PO2”) was an elected County official with overall responsibility for all County funds. He had the power to influence contracts and expenditures within the Office he was elected to operate. He also had the authority to influence personnel decisions within the County, including hiring, approving raises or promotions, terminating employment, and establishing job duties. PO2 was an agent of the County.
- D. Public Employee 4 (“PE4”) was a County employee who was an employee of PO2.
- E. Defendant JOSEPH P. O’MALLEY was an attorney licensed to practice law in the State of Ohio. Defendant was a County employee who worked for PO2 from in or about March 1997 to in or about April 2004. From on about January 1, 2008, to on or about December 31, 2009, Defendant worked as an independent contractor for the Cuyahoga County Information Service Center.
- F. During the Summer of 2006, Defendant knew that Joseph Gallucci was a candidate for county-wide office, running against PO2, the incumbent. Defendant knew in the Summer and Fall of 2006 that Gallucci’s chance of winning the election was small. Defendant attended a meeting in August 2006 with PO2, Gallucci and PE4 in which Gallucci expressed an interest in obtaining a County job after the election. Defendant knew that in October 2006, Gallucci withdrew from the race. Defendant knew in November 2006 that PO2 gave Gallucci a County job.

Misprison of a Felony

- G. In the Spring of 2008, the Cleveland Plain Dealer began investigating patronage in the Auditor’s Office. As part of that investigation, the Plain Dealer requested from the Auditor’s Office the employment files of certain individuals, including Gallucci. PO2 requested that Defendant assist PO2 in responding to the Plain Dealer’s requests for information. Specifically, PO2 asked Defendant to review the requested employment applications. In particular, PO2 requested that Defendant review Gallucci’s personnel file. Defendant did so, and found it to contain so little information about Gallucci that a determination about his qualifications for the position he held could not have been made on the basis of the application. As a result of his review, Defendant suggested that Gallucci “complete” his application, which Defendant believed Gallucci then did.
- H. From on or about October 2006 to on or about April 29, 2008, in the Northern District of Ohio, Eastern Division, Defendant, JOSEPH P. O’MALLEY, ignoring a high probability of the actual commission of a felony cognizable by a court of the United States, to wit, conspiracy to commit any offense against the United States: that is, bribery concerning programs receiving federal funds, 18 U.S.C. §§

666 (a)(1) and (2), in violation of Title 18, United States Code, Section 371, and deliberately closing his eyes to what was obvious, did conceal the same by agreeing with PO2 to cause the employment application of Joseph Gallucci then on file at the Cuyahoga County Auditor's Office to be supplemented in response to a media public information request, and did not as soon as possible make known the same to some judge or other person in civil authority under the United States.

- I. Public Official 7 ("PO7") was a Cuyahoga County Common Pleas Judge.
- J. Beginning on a date known to the United States Attorney and well before May 23, 2008, and continuing after the date of the filing of this Information, the FBI and IRS, both part of the executive branch of Government of the United States, and acting within their jurisdiction, were investigating PO2, PO7, Defendant JOSEPH P. O'MALLEY and others for possible violations of federal law in connection with civil cases pending before PO7.
- K. On or about September 26, 2008, Special Agents of the FBI interviewed Defendant in connection with the investigation.

False Statements to the FBI

- L. On or about September 26, 2008, in the Northern District of Ohio, Eastern Division, Defendant JOSEPH P. O'MALLEY knowingly and willfully made the following material false statements in a matter within the jurisdiction of the executive branch of the Government of the United States: (1) that he had not asked PO2 for any help on his cases and (2) that his private law practice was limited to representing indigent criminal defendants; well knowing at the time that he made the statements to Special Agents of the FBI that (1) in two related cases in which Defendant represented two of the parties, Defendant had asked PO2 to tell PO7 to deny motions for summary judgment, that PO2 did as requested and had asked PO7 to deny the motions for summary judgment, that PO7's order denying the motions for summary judgment allowing Defendant to settle a portion of the lawsuits on terms favorable to his clients; and (2) Defendant's practice was not limited to representing indigent criminal defendants.

- 7. Respondent has paid the \$10,000 fine and has nearly completed his community service.

STIPULATED RULE VIOLATIONS—COUNT ONE

Respondent and relator hereby agree and stipulate that respondent's misconduct in Count One violated the following Rules of Professional Conduct:

- Prof. Cond. R. 8.4(b) [A lawyer shall not commit an illegal act that reflects adversely on the lawyer's honesty or trustworthiness];
- Prof. Cond. R. 8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation];
- Prof. Cond. R. 8.4(d) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and,
- Prof. Cond. R. 8.4(h) [A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law].

STIPULATED FACTS—COUNT TWO

The AHB Litigation

8. Respondent represented the homeowner in a multiparty foreclosure action entitled K & L Excavation, Ltd. v. Auburn Building Company, et. al., case no. 03 CV 515172 in the Cuyahoga County Court of Common Pleas, hereinafter referred to as the AHB litigation.
9. On or about November 26, 2006, respondent filed a motion for summary judgment on behalf of his client.
10. On or about March 28, 2008, defendant American Home Bank (AHB) filed a motion for summary judgment.

11. In the spring or summer of 2008, respondent was attempting to settle the AHB litigation; however, respondent's efforts were hindered by the fact that the summary judgment motions had not been ruled upon.
12. Respondent asked Cuyahoga County Auditor, Joseph Russo, to tell Judge Steven Terry, who presided over the AHB litigation, to deny the motions for summary judgment.
13. On July 18, 2008, Judge Terry denied the motions for summary judgment as instructed by Russo. On that same day, Terry told respondent that he had denied the motions for summary judgment.
14. Later that same day, respondent contacted Russo and stated, "You took care of that, he [Terry] just told me...that's huge. I should be able to settle that thing. It's a nightmare."
15. On October 7, 2008 the AHB litigation settled for \$27,000 in favor of AHB.

STIPULATED RULE VIOLATIONS—COUNT TWO

Respondent and relator hereby agree and stipulate that respondent's misconduct in Count Two violated the following Rules of Professional Conduct:

- Prof. Cond. R. 3.5(a)(1) [A lawyer shall not seek to influence a judicial officer by means prohibited by law];
- Prof. Cond. R. 3.5(a)(3) [A lawyer shall not communicate ex parte with a judicial officer about the merits of the case during the proceeding unless authorized to do so by law or court order];
- Prof. Cond. R. 8.4(c) [A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation];
- Prof. Cond. R. 8.4(d) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice]; and,
- Prof. Cond. R. 8.4(h) [A lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law].

STIPULATED MITIGATION

Respondent and relator hereby agree and stipulate to the mitigating factors under BCGD Proc.

Reg. §10(b)(2):

- Respondent has no prior disciplinary record.
- Full and free disclosure to the disciplinary board and cooperative attitude toward the proceedings.
- Imposition of criminal penalties including a four-month prison sentence, \$10,000 fine, and two years supervised release.
- Positive character evidence.

STIPULATED AGGRAVATION

Respondent and relator hereby agree and stipulate to the aggravating factors under BCGD Proc.

Reg. §10(b)(1):

- Respondent acted with a dishonest and selfish motive.
- Respondent committed multiple offenses.

JOINT RECOMMENDED SANCTION

Relator and respondent jointly recommend an indefinite suspension from the practice of law with credit for time served under the interim suspension of August 22, 2011 on condition that respondent complete his federal supervised release prior to reinstatement.

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

In re:	:	
Complaint against	:	Case No. 11-113
Joseph Patrick O'Malley Attorney Reg. No. 0060087	:	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 hearing on November 1, 2012, in Columbus, Ohio before a consisting of members Bernie Bauer, Janica Pierce Tucker, and Paul De Marco, chair. None of the panel members is from the district from which the complaint arose or a member of the probable cause panel in this matter.

{¶2} Larry James appeared on behalf of Respondent, and Joseph Caligiuri appeared on behalf of Relator.

{¶3} The parties have stipulated to all of the violations alleged and to the facts supporting them.

{¶4} The complaint in this case consists of two counts, each alleging multiple violations of the Rules of Professional Conduct by Respondent. The panel finds sufficient evidence to support the misconduct alleged in the complaint and recommends that Respondent be indefinitely suspended from the practice of law.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 5} Respondent was admitted to the practice of law in Ohio on November 9, 1992 and, prior to the events underlying this complaint, had no previous disciplinary history.

Count One-Criminal Convictions

{¶ 6} Respondent's criminal convictions involve conduct that occurred while he was serving as a public employee and conduct that later occurred while he was engaging in the private practice of law.

{¶ 7} On or around April 19, 2010, Respondent was charged by way of an information with misprision of a felony, in violation of 18 U.S.C. § 4, and with making a materially false statement in a matter within the jurisdiction of the government, in violation of 18 U.S.C. § 1001. United States District Court for the Northern District of Ohio, Case No. 1:10CR171.

{¶ 8} On or around April 27, 2010, Respondent pleaded guilty to these charges before Judge Kathleen O'Malley (who is no relation to Respondent), then a United States District Judge for the Northern District of Ohio. On August 2, 2011, Respondent was sentenced to four months in prison on each count to run concurrently, a \$10,000 fine, two years of supervised release, and 250 hours of community service.

{¶ 9} On August 22, 2011, the Supreme Court of Ohio suspended Respondent from the practice of law for an interim period based upon Respondent's felony conviction. *In re Joseph Patrick O'Malley*, 2011-Ohio-4146. The Supreme Court imposed a registration suspension on November 1, 2011.

{¶ 10} The facts underlying Respondent's convictions are contained in Respondent's plea agreement. The plea agreement used "Public Official 2 (PO2)," "Public Employee 4 (PE4)" and "Public Official 7 (PO7)" as substitute identifiers for particular individuals. During

Respondent's disciplinary hearing, however, he identified PO2 as Frank Russo, then Cuyahoga County's Auditor; PE4 as Joseph Gallucci; and PE7 as Steven Terry, then a judge of the Cuyahoga County Common Pleas Court. Respondent's plea agreement stated as follows:

1. Cuyahoga County, Ohio ("County") was a government agency as that term is defined in Title 18, United States Code, Section 666(d)(2), that received benefits in excess of \$10,000 during each calendar year relevant to this Information under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other form of federal assistance. Its departments included the Auditor's Office, which was headed by an elected public official.

2. The Cuyahoga County Auditor's Office ("Auditor's Office") was a government agency, as that term is defined in Title 18, United States Code, Section 666(d)(2), which received benefits in excess of \$10,000 during every calendar year material to this Information under a Federal program involving a grant, contract, subsidy, loan, guarantee, insurance and other form of Federal assistance.

3. Public Official 2 ("PO2") was an elected County official with overall responsibility for all County funds. He had the power to influence contracts and expenditures within the Office he was elected to operate. He also had the authority to influence personnel decisions within the County, including hiring, approving raises or promotions, terminating employment, and establishing job duties. PO2 was an agent of the County.

4. Public Employee 4 ("PE4") was a County employee who was an employee of PO2.

5. Defendant JOSEPH P. O'MALLEY was an attorney licensed to practice law in the State of Ohio. Defendant was a County employee who worked for PO2 from in or about March 1997 to in or about April 2004. From on or about January 1, 2008, to on or about December 31, 2009, Defendant worked as an independent contractor for the Cuyahoga County Information Service Center.

6. During the Summer of 2006, Defendant knew that Joseph Gallucci was a candidate for county-wide office, running against PO2, the incumbent. Defendant knew in the Summer and Fall of 2006 that Gallucci's chance of winning the election was small. Defendant attended a meeting in August 2006 with PO2, Gallucci and PE4 in which Gallucci expressed an interest in obtaining a County job after the election. Defendant knew that in October 2006, Gallucci withdrew from the race. Defendant knew in November 2006 that PO2 gave Gallucci a County job.

Misprision of a Felony

7. In the Spring of 2008, the Cleveland Plain Dealer began investigating patronage in the Auditor's Office. As part of that investigation, the Plain Dealer requested from the Auditor's Office the employment files of certain individuals, including Gallucci. PO2 requested that the Defendant assist PO2 in responding to the Plain Dealer's requests for information. Specifically, PO2 asked Defendant to review the requested employment applications. In particular, PO2 requested that Defendant review Gallucci's personnel file. Defendant did so, and found it to contain so little information about Gallucci that a determination about his qualifications for the position he held could not have been made on the basis of the application. As a result of his review, Defendant suggested that Gallucci "complete" his application, which Defendant believed Gallucci then did.

8. From on or about October 2006 to on or about April 29, 2008, in the Northern District of Ohio, Eastern Division, Defendant, JOSEPH P. O'MALLEY, ignoring a high probability of the actual commission of a felony cognizable by a court of the United States, to wit, conspiracy to commit any offense against the United States: that is, bribery concerning programs receiving federal funds, 18 U.S.C. §§ 666(a)(1) and (2), in violation of Title 18, United States Code, Section 371, and deliberately closing his eyes to what was obvious, did conceal the same by agreeing with PO2 to cause the employment application of Joseph Gallucci then on file at the Cuyahoga County Auditor's Office to be supplemented in response to a media public information request, and did not as soon as possible make known the same to some judge or other person in civil authority under the United States.

9. Public Official 7 ("PO7") was a Cuyahoga County Common Pleas Judge.

10. Beginning on a date known to the United States Attorney and well before May 23, 2008, and continuing after the date of the filing of this Information, the FBI and IRS, both part of the executive branch of Government of the United States, and acting within their jurisdiction, were investigating PO2, PO7, Defendant JOSEPH P. O'MALLEY and others for possible violations of federal law in connection with civil cases pending before PO7.

11. On or about September 26, 2008, Special Agents of the FBI interviewed Defendant in connection with the investigation.

False Statements to the FBI

12. On or about September 26, 2008, in the Northern District of Ohio, Eastern Division, Defendant JOSEPH P. O'MALLEY knowingly and willfully made the following material false statements in a matter within the jurisdiction of the executive branch of the Government of the United States: (1) that he had not asked PO2 for any help on his cases and (2) that his private law practice was limited to representing indigent criminal defendants; well knowing at the time that he made the statements to Special

Agents of the FBI that (1) in two related cases in which Defendant represented two of the parties, Defendant has asked PO2 to tell PO7 to deny motions for summary judgment, that PO2 did as requested and had asked PO7 to deny the motions for summary judgment, that PO7's order denying the motions for summary judgment allowing Defendant to settle a portion of the lawsuits on terms favorable to his clients; and (2) Defendant's practice was not limited to representing indigent criminal defendants.

{¶ 11} The facts contained in the plea agreement reflect conversations involving Respondent, which were taped by federal authorities while they primarily were investigating others.

{¶ 12} Respondent has paid the \$10,000 fine imposed by the federal court in connection with his sentence and has nearly completed his community service.

{¶ 13} As to Count One, Respondent and Relator have stipulated that Respondent violated the following: Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness]; 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].

{¶ 14} The panel finds these violations have been established by clear and convincing evidence.

Count Two-The AHB Litigation

{¶ 15} Respondent represented the homeowners in a multiparty foreclosure action entitled *K & L Excavation, Ltd. v. Auburn Building Company, et al.*, Case No. 03 CV 515172 in the Cuyahoga County Court of Common Pleas (hereinafter, "the AHB litigation").

{¶ 16} On or about November 26, 2006, Respondent filed summary judgment motions against the defendants on behalf of his clients in the AHB litigation.

{¶ 17} On or about March 28, 2008, defendant American Home Bank (“AHB”) filed a motion for summary judgment against Respondent’s clients, as did other defendants in the case.

{¶ 18} In the spring or summer of 2008, Respondent was attempting to settle the AHB litigation. Respondent’s efforts were hindered by the fact that Judge Steven Terry, who was presiding over the litigation, had not ruled on the various summary judgment motions.

{¶ 19} Respondent asked then-Cuyahoga County Auditor Russo to tell Judge Terry to deny the summary judgment motions.

{¶ 20} On July 18, 2008, Judge Terry denied to the motions for summary judgment as instructed by Russo, including the motions Respondent had filed on behalf of his own clients, one of which Respondent considered meritorious.

{¶ 21} The same day, Judge Terry told Respondent that he had denied the summary judgment motions.

{¶ 22} Later that day, Respondent contacted Russo and stated, “You took care of that, he [Terry] just told me ... that’s huge. I should be able to settle that thing. It’s a nightmare.”

{¶ 23} On October 7, 2008, the AHB litigation settled for \$27,000 in favor of AHB.

{¶ 24} As to Count Two, Respondent and Relator have stipulated that Respondent’s conduct violated the following: Prof. Cond. R. 3.5(a)(1) [a lawyer shall not seek to influence a judicial officer by means prohibited by law]; Prof. Cond. R. 3.5(a)(3) [a lawyer shall not communicate ex parte with a judicial officer about the merits of the case during the proceeding unless authorized to do so by law or court order]; Prof. Cond. R. 8.4(c); Prof. Cond. R. 8.4(d); and Prof. Cond. R. 8.4(h).

{¶ 25} The panel finds these violations have been established by clear and convincing evidence.

AGGRAVATION, MITIGATION, AND SANCTION

{¶ 26} Arriving at the appropriate sanction requires consideration of the attorney's misconduct, the duties violated, the injuries caused, the attorney's mental state, and the sanctions imposed in similar cases. *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, ¶24. Before recommending a sanction, we also weigh the aggravating and mitigating factors in the case, including not only those set forth in BCGD Proc. Reg. 10, but all factors relevant to the case. *Cincinnati Bar Assn. v. Mullaney*, 119 Ohio St.3d 412, 2008-Ohio-4541, ¶40.

{¶ 27} As aggravating factors, the parties stipulated that Respondent committed multiple offenses and acted with a dishonest and selfish motive. The panel accepts these aggravating factors as established. As mitigating factors, the parties stipulated that Respondent has no prior disciplinary record, has made full and free disclosure to the Board and has had a cooperative attitude toward these proceedings, has presented positive character evidence, and has received criminal penalties including a four-month prison sentence, a \$10,000 fine, and two years of supervised release. The panel accepts these mitigating factors as established.

{¶ 28} Relator and Respondent jointly recommend that Respondent be suspended indefinitely from the practice of law with credit for the time served under his interim suspension of August 22, 2011, on the condition that Respondent complete his federal supervised release prior to reinstatement. Relator submitted case law to the panel supporting an indefinite suspension in lieu of disbarment. *See Ohio State Bar Assn. v. Johnson*, 96 Ohio St.3d 192, 2002-Ohio-3998; *Cincinnati Bar Assn. v. Kellogg*, 126 Ohio St.3d 360, 2010-Ohio-3285; *Disciplinary Counsel v. Smith*, 128 Ohio St.3d 390, 2011-Ohio-957; *Disciplinary Counsel v. Rolla*, 95 Ohio St.3d 27, 2002-Ohio-1366.

{¶ 29} At the hearing, Respondent presented persuasive character evidence through witnesses who were familiar with Respondent and his misdeeds, as well as a large number of character letters from individuals from all corners of Respondent's life. Based on this evidence, the panel is convinced that, while Respondent has committed significant misconduct including violations of the public trust and efforts to undermine the administration of justice, in the future he may be capable of returning to the ethical practice of law. Under similar circumstances involving attorneys convicted of felonies, the Supreme Court has chosen to impose indefinite suspensions in lieu of disbarment. *See Johnson, supra*, at ¶9, and other cases cited above; *see also Dayton Bar Assn. v. Brunner*, 91 Ohio St.3d 398, 2001-Ohio-82. Moreover, the Court has given such individuals credit for the time they served under interim felony suspensions. *Id.*

{¶ 30} Accordingly, the panel recommends that Respondent be suspended indefinitely from the practice of law with credit for the time served under his interim felony suspension, with reinstatement conditioned on Respondent completing his federal supervised release and complying with all requirements of his interim suspension order.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 7, 2012. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Joseph Patrick O'Malley, be indefinitely suspended from the practice of law in the State of Ohio, with credit for time served under the interim felony suspension imposed on August 22, 2011. The Board further recommends that Respondent's reinstatement be subject to the conditions set forth in ¶30 of this report and that the costs 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. BOVE, Secretary