

ORIGINAL

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

In re: : 13-0939
Complaint against : Case No. 12-056
Bridget Marie McCafferty : Findings of Fact,
Attorney Reg. No. 0055367 : Conclusions of Law, and
Respondent : Recommendation of the
Ohio State Bar Association : Board of Commissioners on
Relator : Grievances and Discipline of
 : the Supreme Court of Ohio
 :

OVERVIEW

{¶1} The complaint in this case, which alleges multiple violations of the Ohio Rules of Professional Conduct and the Ohio Code of Judicial Conduct, stems from Respondent's felony conviction of four counts of knowingly making false statements to the FBI. Respondent was admitted to the practice of law in Ohio on November 18, 1991 and has no prior disciplinary history.

{¶2} This matter was heard on January 23, 2013 in Columbus before a panel consisting of Judge Ashley Pike, Janica Pierce Tucker, and Paul De Marco, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that certified the complaint.

{¶3} Kimberly Vanover Riley and George Jonson appeared on behalf of Respondent. Douglas Godshall and Joseph Kodish appeared on behalf of Relator.

FILED
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CLERK OF COURT
SUPREME COURT OF OHIO

{¶4} The parties stipulated to three of the six violations alleged in the complaint and to the facts supporting them. The primary dispute in this case concerns the appropriate sanction, with Relator advocating disbarment and Respondent urging a two-year suspension. For reasons explained below, the panel recommends that Respondent be suspended indefinitely from the practice of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent's Criminal Conviction

{¶5} Respondent's criminal conviction involves conduct that occurred while she was serving as a judge of the Cuyahoga County Common Pleas Court, General Division. Respondent was first elected to that position in 1998 at the age of 31 and was reelected in 2004. Respondent served until September 15, 2010, when she was arrested and suspended from the bench. Respondent lost her bid for reelection two months later.

{¶6} The operative indictment charged Respondent with ten counts of violating 18 U.S.C. §1001 (knowingly making false statements to federal law enforcement). United States District Court for the Northern District of Ohio, Case No. 1:10CR171. These offenses arose out of a 90-minute conversation Respondent had with FBI Agents Christine Oliver and Gregory Curtis, when they showed up at Respondent's home unannounced on the evening of September 23, 2008 to discuss her involvement with Cuyahoga County Auditor Frank Russo and Cuyahoga County Commissioner James Dimora, the two prime targets of the FBI's ongoing and secret investigation of corruption among Cuyahoga County public officials.

{¶7} At the time the FBI agents visited Respondent's home, they knew from listening to several months of taped telephone calls involving Russo, Dimora, and their associates that both officials had attempted to influence Respondent's handling of cases pending before her.¹

{¶8} For example, the agents knew based on a series of taped phone calls in late April and early May of 2008 that, at the request of Dimora, Respondent had assisted Dimora's associate Steve Pumper with the "DAS case," a lawsuit against Pumper that was pending before her. In one call, Dimora told Pumper he wanted to speak with Pumper because "[I] had a nice talk with * * * Bridget." Relator's Ex. I, p. 9. In a subsequent call, Dimora told Pumper that Respondent's bailiff is "going to talk to you" and "get the particulars and talk to their staff attorney to try to get the thing worked out for you." *Id.* at 11. Later that day, Respondent's bailiff left Pumper a voicemail message offering that "myself, the judge, and our staff attorney, we can answer any questions you have about the DAS case." *Id.* at 14. Several days later, Respondent assisted Pumper in reaching a settlement in the DAS case, after which Respondent called Pumper to make sure he was satisfied with the settlement. ("I know it's more than you wanted to pay but I hope you can live with it * * *. I thought if I could just get the thing done for you and get it out of your life.") Pumper was satisfied, telling Respondent, "You did a great job for me * * *." *Id.* at 15.

{¶9} The FBI agents also knew from a taped phone call between Russo and Respondent on July 15, 2008 that Russo had contacted Respondent about a case pending before her that evidently had been stayed due to bankruptcy ("the stayed case"). Russo apparently had some association with the plaintiff in the stayed case. Respondent indicated to Russo that she had intended to expedite the case, but that the defendant's bankruptcy filing had intervened, at one point even mocking the defendant for filing the bankruptcy. ("It's kinda cagey, frankly* * *.

¹ Neither Russo nor Dimora is a lawyer.

Ya know, I'm facing a lawsuit. Oh gee, now all of a sudden I'm bankrupt.") Respondent nonetheless assured Russo that the plaintiff's "attorney'll file a motion to reinstate it on the docket," *Id.* at 6, promising Russo "as soon as it gets reinstated, I'll make sure that I set it for a hearing and it gets some personal attention* * *. I had my * * * eye on the file for ya. I just wanted to make sure you knew." *Id.* at 7.

{¶10} Equipped with knowledge of these taped phone calls, the FBI agents' aim in visiting Respondent on the evening of September 23, 2008 was to secure her cooperation in their investigation of Russo, Dimora, and their associates, ultimately in the form of testimony against them. In case they could not secure her cooperation, the agents already had obtained a warrant to search Respondent's chambers, which they intended to execute that night.

{¶11} Though Respondent welcomed the agents into her home and talked conversationally with them around her kitchen table, they could not secure her cooperation. Over and over, Respondent denied that Russo or Dimora ever attempted to intervene in, become involved with, speak to her about, or contact her about cases pending before her. No matter how the agents worded their questions, Respondent stonewalled them. They gave her ten opportunities to tell the truth, variously asking, for example, if Russo or Dimora spoke to her about, attempted to intervene in, were in any way involved in, and/or received any special consideration regarding any cases pending before her. Each time, her answer was no. Respondent instead portrayed Russo and Dimora as public officials who would never do such things, claiming that the only reason either had spoken to her about what went on in her courtroom was to pass along some attorney's compliment about the job she was doing as a judge.

{¶12} Because the agents knew otherwise from the taped phone calls, they pressed Respondent, telling her they believed she was lying to them and even offering to play taped

phone calls using Agent Curtis's laptop to prove it. When she declined to listen to any taped calls and stuck to her denials, they specifically brought up 18 U.S.C. §1001 and the likelihood that their investigation that would lead to RICO and corruption charges. Still, Respondent would not budge. After about 90 minutes of questioning, Respondent began making phone calls in an effort to reach an attorney who could advise her. At that point, the agents ceased questioning her.

{¶13} The case as alleged in the operative indictment proceeded to a jury trial, United States District Judge Sara Lioi presiding. Agents Curtis and Oliver testified. The jury found Respondent guilty on all counts.

{¶14} Judge Lioi reduced the ten counts to four due to multiplicity and entered a judgment of conviction on August 3, 2011. She sentenced Respondent to the maximum of 14 months in prison, after making a significant upward adjustment because Respondent lied to federal agents. Judge Lioi also sentenced Respondent to three years of supervised release following incarceration, ordered her to perform 150 hours of community service, and assessed fines totaling \$400. There was no restitution order.

{¶15} On September 14, 2011, the Supreme Court of Ohio imposed an interim felony suspension on Respondent, which remains in effect. *In Re McCafferty*, 2011-Ohio 4605.

{¶16} On June 4, 2012, the United States Court of Appeals for the Sixth Circuit affirmed the conviction and the district court's sentence, stating in part as follows:

The court identified two justifications for its upward variance: McCafferty's "repeated false statements" to the FBI and her position as a judge. In explaining that McCafferty's "repeated false statements" justified an upward variance, the court noted that McCafferty was given "ten opportunities to respond to the agents' questions." The court considered the fact that McCarthy was a judge—"[t]o have a sitting judge lie repeatedly to federal agents necessitates a sentence that is higher than the guidelines suggest." "For a sitting judge to engage in this conduct shakes the very core of our system of justice, a system that's built upon the

integrity and honesty of the individuals who are given the privilege to serve. And the fact that she lied about improper conversations that she was having about cases on her docket makes her conduct even more egregious.”... If anything, with each rephrased question, the agents gave McCafferty additional chances to tell the truth—she declined each offer. The district court properly relied on McCafferty’s repeatedly lying, in spite of the agents giving her multiple chances to be truthful.... This case is indeed extraordinary. For a sitting judge to knowingly lie to FBI agents after she had unethically steered negotiations in a case to benefit her associates is a shock to our system and the rule of law * * *.

Exhibit D, Decision in *United States v. McCafferty*,
6th Cir. Case No. 11-3845, pp. 15-17.

{¶17} Respondent has completed her incarceration and her mandatory community service, and has paid the fines assessed. She will remain under regular supervision until September 17, 2015.

Alleged Rule Violations

{¶18} Relator’s complaint charges Respondent with violations of Prof. Cond. R. 4.1 and Prof. Cond. R. 8.4 and with violations of Jud. Cond. R. 1.1, Jud. Cond. R. 1.2, Jud. Cond. R.1.3, and Jud. Cond. R. 2.4.

{¶19} Relator and Respondent stipulated that, pursuant to Gov. Bar R. V, Section 5(B), Respondent’s federal court conviction constitutes “conclusive evidence that she engaged in the charged acts and conduct.” Agreed Stipulations of the Parties, ¶ 17.

{¶20} The parties further stipulated that Respondent violated Prof. Cond. R. 8.4 and Jud. Cond. R. 1.1 and Jud. Cond. R. 1.2. *Id.* at ¶¶ 18-19.

{¶21} The panel finds by clear and convincing evidence that Respondent’s conduct violated 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].

{¶22} The panel finds that Respondent's conduct did not violate Prof. Cond. R. 4.1 inasmuch as this rule applies only to misrepresentations made by lawyers "[i]n the course of representing a client * * *." See Comment to Rule 4.1 ("For * * * misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4."). Accordingly, the panel dismisses this alleged violation.

{¶23} The panel further finds by clear and convincing evidence that Respondent's conduct violated Jud. Cond. R. 1.1 [a judge shall comply with the law] and Jud. Cond. R. 1.2 [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety], as stipulated by the parties.

{¶24} Respondent disputes that her conduct violated Jud. Cond. R. 1.3 [a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow them to do so] and Jud. Cond. R. 2.4 [a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment [and] a judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.] "Canon 2 requires a judge to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality in the judiciary." *Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194.

{¶25} Respondent contends she did not violate these rules because there was no evidence she abused her office for her own gain and because she had no "personal motivation" to

assist Russo or Dimora or to permit her relationship with them to influence her responses to the FBI agents.

{¶26} The panel rejects this contention and finds by clear and convincing evidence that Respondent violated Jud. Cond. R. 1.3 and Jud. Cond. R. 2.4. The FBI agents came to her home to question her about her conduct as a judge, not as a private citizen. By giving false answers to their questions concerning her conduct as a judge, Respondent clearly abused the prestige of her office in an effort to conceal the fact that Russo and Dimora had attempted to exert influence over her handling of cases. What interest's motivated Respondent to conceal their attempts at influence? The panel concludes it partly was self-interest—Respondent's effort to make herself appear less susceptible to such influence than she actually was. When as a sitting judge, Respondent lied about her judicial conduct in order to look purer in the eyes of the FBI agents, she was, in the panel's view, abusing the prestige of her office to advance her personal interest.

{¶27} Respondent's false answers to the agents' questions also advanced the interests of Russo and Dimora. By denying the agents the cooperation they had the right to expect from a sitting judge, she complicated and prolonged their investigation of Russo and Dimora. When as a sitting judge, Respondent lied about the influence Russo and Dimora had over her handling of cases; she was, in the panel's view, abusing the prestige of her office to advance their interests.

{¶28} In these ways, Respondent advanced her own and their interests at the expense of her office's prestige, violating Jud. Cond. R. 1.3.

{¶29} There is, moreover, no doubt in our minds that by giving false answers to the FBI agents, Respondent allowed her political relationships with Russo and Dimora to cloud her judgment, contrary to Jud. Cond. R. 2.4. The panel finds that Respondent's motivation for concealing their influence over her handling of cases was the same as her motivation for yielding

to their influence in the first place: they were powerful political leaders whose fortunes, she apparently believed, somehow affected her own future as an office holder in Cuyahoga County. During one of their taped calls several months before her September 23, 2008 conversation with the FBI agents, Respondent told Russo that a recent article about him “establishes you as the preeminent political person to go to when someone wants to run for office,” adding “you guys gotta run when I run. I don’t want to be out there alone.”² Ex. I, p. 2. In a phone message Respondent left for Russo, she told him “you do a great job” and “the voters love you” and professed to having taken the extraordinary step of continuing an actual court proceeding so that Joe O’Malley, a lawyer assisting Russo with another matter, could use her chambers and “be available for [Russo] to work on what you need * * *.” *Id.* at 1.

{¶30} So Respondent cultivated Russo’s and Dimora’s favor by helping them when they needed her help, a fact established by her receptiveness to their efforts to influence her during taped phone calls (*e.g.*, her contact with Russo about the stayed case and with Dimora about the DAS case), by what she promised to do in response (*e.g.*, to Russo: “I’ll make sure that I set it for a hearing and it gets some personal attention. * * * I had my * * * eye on the file for ya. I just wanted to make sure you knew”), and by her actions (*e.g.*, by Pumper: “You did a great job for me.”) Thus, Respondent cannot plausibly dispute that her instinct to help Russo and Dimora in response to their personal interventions clouded her judgment and affected her actions as a judge. Nor can Respondent plausibly dispute that her instinct to help them out of a sense of political loyalty clouded her judgment and affected her actions again when the FBI agents were questioning her about her conduct as a judge. In the panel’s view, there is no better evidence of this than the fact that, even when she learned during her conversation with the agents that the

² Respondent testified that when she first ran for judge in 1998 in a seven-candidate primary, Dimora and Russo supported other candidates. Hearing Tr. 107.

FBI had been taping Russo's and Dimora's phone calls and that it was targeting them for corruption charges, she still could not bring herself to acknowledge that they had attempted to intervene in, had exerted their influence in, had made contact with her about, had spoken to her about, or had been involved in cases pending before her.

{¶31} In summary, the panel finds, by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R. 8.4(b), Prof. Cond. R. 8.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h), and Jud. Cond. R. 1.1, Jud. Cond. R. 1.2, Jud. Cond. R. 1.3, and Jud. Cond. R. 2.4. Respondent did not violate Prof. Cond. R. 4.1, and that charge is dismissed.

AGGRAVATION, MITIGATION, AND SANCTION

{¶32} Arriving at the appropriate sanction requires consideration of the duties violated and the injuries caused, Respondent's mental state, and the sanctions imposed in similar cases. *Hoskins, supra*, 119 Ohio St.3d 17, 2008-Ohio-3194. Before recommending a sanction, the panel also weighs 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. *Id.* at ¶ 85.

The Duties Violated and the Injuries Caused

{¶33} Judges are held to the highest ethical standards known to the legal profession, higher indeed than those of attorneys. *Id.* at ¶¶ 41, 79; *Mahoning County Bar Association v. Franko*, 168 Ohio St. 17 (1958).

{¶34} "Because they are so important to our society, judges must be competent and ethical, and their actions must foster respect for their decisions as well as for the judiciary as a whole. Given that they hold positions of considerable authority and are entrusted with a great deal of power and discretion, judges are expected to conduct themselves according to high

standards of professional conduct. Indeed, it is often said that judges are subject to the highest standards of professional behavior.” *Hoskins*, at ¶ 42 (quotations and citations omitted).

{¶35} Judges must comply with these duties at all times, on and off the bench. “Canon 2 requires a judge to respect and comply with the law and act at all times in a manner that promotes public confidence in the integrity and impartiality in the judiciary.” *Id.* at ¶ 37.

{¶36} Respondent recognized it was her duty as a judge to live up to these higher standards at *all* times. “I think when you’re a judge, you know that you’re held to a higher standard and you should conduct yourself that way whether you’re on or off the bench.” Hearing Tr. 120.

{¶37} A judge’s violation of these duties can cause great harm to the judiciary and to the public’s faith in it. When, as in this case, a judge’s violation of these duties consists of dishonest acts rising to the level of felonious conduct, injury to the institution and the public’s confidence in it are inevitable. *Disciplinary Counsel v. Gallagher*, 82 Ohio St.3d 51, 1998-Ohio 592 (“such actions, when taken by a judge, likely tend to injure the public’s confidence in the judiciary. Where those whose job it is to enforce the law break it instead, the public rightfully questions whether the system itself is worthy of respect. * * * When a judge’s felonious conduct brings disrepute to the judicial system, the institution is irreparably harmed.”)

{¶38} Respondent freely acknowledged the extremely negative impact that her violations have had on the judiciary and the community. “* * * I understand greatly the impact that my case has had on the community and on the bench.” Hearing Tr. 118.

Respondent’s Mental State

{¶39} When a respondent offers no evidence that he or she suffered from any mental disability or chemical dependency at the time of the ethical violations, there is a presumption that

he or she was healthy and unhindered at that time. *Hoskins*, at ¶ 84, citing *Disciplinary Counsel v. Sargeant*, 118 Ohio St.3d 322, 2008-Ohio-2330.

{¶40} Respondent offered no evidence of any medical disability or chemical dependency. Respondent did, however, offer evidence that she subjectively believed “that I answered the questions in a manner I believed truthful to the best of my ability to the FBI,” although she quickly added that “my subjective belief isn’t relevant to these proceedings.” Hearing Tr. 79-80. Respondent is correct that her alleged “subjective belief” is irrelevant to the extent that, as she stipulated, her “conviction of four counts of providing false statements to the FBI on September 23, 2008, constitute[s] conclusive evidence that she engaged in the charged acts and conduct.” *See* Agreed Stipulations of the Parties, ¶17.

{¶41} The panel can, and does, take her claimed subjective belief into account, however, in evaluating the sincerity of Respondent’s expression of remorse for her actions and her purported acceptance of responsibility for them. Hearing Tr. 86 (claiming “remorse”), 110 (“I am here to take full responsibility for my conduct”), 111 (“And I want to be really clear. I am here to take responsibility for my behavior * * *.”), and 118 (“I accept responsibility for them.”) Having reviewed the parties’ agreed stipulations, the transcript of the taped phone calls involving the DAS case and the stayed case, and the testimony of Agents Oliver and Curtis,³ the panel cannot accept that respondent genuinely might have harbored a subjective belief that she was telling them the truth. Even more important, respondent’s profession of this subjective belief calls into question the genuineness of her expression of remorse and her purported acceptance of responsibility.

³ Relator offered the transcript of Agent Oliver’s testimony from Respondent’s criminal trial, and respondent countered by offering the transcript of Agent Curtis’s testimony. Hearing Tr. 133-139. Both transcripts were conditionally admitted subject to the panel’s later review. *Id.* at 139. Having now reviewed these transcripts, the panel accords them due weight to the extent they bear on issues related to the appropriate sanction.

{¶42} As an aggravating factor, the parties stipulated that Respondent's conviction arose from conduct that involved dishonesty. The panel accepts this aggravating factor as established.

{¶43} The parties did not stipulate to any mitigating factors, although in mitigation Respondent and her counsel offered proof that she had no prior disciplinary record; made full and free disclosure to the board, displayed a cooperative attitude toward these proceedings, and accepted responsibility for her actions; submitted ample evidence of her good character and reputation and her extensive service to her community; and has received other penalties and sanctions. The panel accepts as established that Respondent had no prior disciplinary record, displayed a cooperative attitude toward the proceedings, submitted many letters attesting to her good character and reputation and her extensive community service, and has received prior penalties and sanctions for her misconduct (*i.e.*, the loss of her judgeship and her incarceration.)

{¶44} The panel does not accept as established, however, that Respondent truly has accepted full responsibility for her actions. For whatever reason, Respondent felt compelled to tell the panel "that I answered the [FBI agents'] questions in a manner I believed truthful to the best of my ability * * *." Hearing Tr. 79-80. Whether this expression of her "subjective belief" reflects how Respondent still feels about her misconduct, or this simply was a momentary, irresistible relapse into her mindset before the jury made its conclusive finding that she knowingly lied to the FBI agents, the panel considers it incompatible with her claim that she has accepted responsibility for her actions.

{¶45} That Respondent still expresses this "subjective belief" in her truthfulness also diminishes the weight we can accord to the mitigating factors present in this case. Respondent's character letters portray her as a public servant who did wrong but has seen clearly the error of her ways. Respondent herself depicts her misconduct as "an aberration in an otherwise ... law-

abiding * * * life of public service.” Hearing Tr. 121. The panel confidences in these portrayals of Respondent and our ability to credit her with forthrightness in these proceedings are tempered by our realization that she apparently clings to—and still cannot help expressing—the groundless notion that she did her best to tell the FBI agents the truth. As both Judge Lioi and the Sixth Circuit recognized, the agents were asking Respondent “ ‘about improper conversations that she was having about cases on her docket,’ ” and they gave her “ ‘ten opportunities to respond’ ”—in essence, ten “ ‘chances to tell the truth’ ”—but “ ‘she declined each offer.’ ” Exhibit D at 15-16.

{¶46} Even if we were inclined to give the same weight to Respondent’s previously clean disciplinary record, cooperative attitude, character letters, and record of community service as we would give to these mitigating factors in a case involving an attorney, the Supreme Court has made it clear that such factors, while not totally irrelevant, at least “pale” when it comes to selecting the appropriate sanction for a member of the judiciary whose illegal conduct involves moral turpitude and brings disrepute to the judicial system. *See Disciplinary Counsel v. McAuliffe*, 121 Ohio St.3d 315, 2009-Ohio-1151; *Disciplinary Counsel v. Gallagher, supra*, 82 Ohio St.3d at 53; *see id.* at 54 (Lundberg Stratton, J., concurring).

Sanctions Imposed in Similar Cases

{¶47} At the panel’s direction, the parties submitted post-hearing briefs discussing in detail prior cases relevant to the panel’s recommendation of the appropriate sanction.

{¶48} In its brief, Relator maintains that “the case law is clear: she should be disbarred.” Relator’s Post-Hearing Brief and Recommended Sanction, p. 9. Relator’s conclusion rests on three cases in which judges engaged in illegal conduct involving dishonesty; *Gallagher, supra*, 82 Ohio St.3d 51, *McAuliffe, supra*, 121 Ohio St.3d 315, 2009-Ohio-1151, and *Hoskins, supra*, 119 Ohio St.3d 17, 2008-Ohio-3194. In *Gallagher* and *McAuliffe*, the judges

were convicted of felonies; in *Hoskins*, the judge was acquitted of felony charges. All three judges were disbarred.

{¶49} The judge in *Gallagher* was arrested and charged with attempting to distribute cocaine. He was released on a \$10,000 bond, which was revoked after he tested positive for cocaine and marijuana at a random drug screen. The panel and Board recommended an indefinite suspension, but the Supreme Court imposed the ultimate sanction of disbarment. Even though there was strong evidence of mitigation (*i.e.*, the judge's cocaine addiction), the Court concluded that disbarment was warranted. *See Gallagher*, 82 Ohio St.3d at 54 (Lundberg Stratton, J., concurring).

{¶50} The judge in *McAuliffe* tried twice to have his own house set on fire, succeeding on the second try. He then signed and submitted to his insurance company claim forms that contained false statements regarding his knowledge of the cause and origin of the fire. He also entered into a \$235,000 settlement and in so doing signed another form falsely stating that he did not know the origin of the fire. *McAuliffe*, at ¶ 25. The Board recommended disbarment. The Court agreed, quoting this excerpt from *Gallagher*:

Mitigating factors have little relevance * * * when judges engage in illegal conduct involving moral turpitude * * *. When a judge's felonious conduct brings disrepute to the judicial system, the institution is irreparably harmed * * *. By this sanction, we aim to protect both the public and the integrity of the judicial system itself. Mitigating factors relevant to this individual attorney pale when he is viewed in his institutional role as a judge. We, therefore, find that respondent deserves the full measure of our disciplinary authority.

McAuliffe, at ¶ 29, quoting *Gallagher*, 82 Ohio St.3d at 53.

{¶51} The judge in *Hoskins* "acted in a deceptive manner on many occasions," demonstrating "a pattern of dishonest and deceitful conduct." *Hoskins*, at ¶ 86. He "committed numerous improper acts incompatible with his duties as a judge and a lawyer," *Id.* at ¶ 2,

including “contriv[ing] a way to avoid an appearance of partiality,” making “misleading, if not false,” public comments when his administrator was indicted implying she was innocent, and failing to disqualify himself in a foreclosure action against the administrator and her husband and in a criminal case against her son. *Id.* at ¶¶39, 48-49, 52. Worse still, the judge was caught on tape counseling a felon convicted of credit-card fraud (whom he had represented in private practice) “step-by-step” on how to launder the proceeds of the fraud, to which the judge believed the felon still had access. *Id.* at ¶12. The judge laid out a scheme for the felon to acquire a commercial building controlled by the judge for almost \$600,000 more than its appraised value, so that the judge could profit from the illegally obtained proceeds, solve his own financial problems, and recoup a \$25,000 loan made earlier to the felon or his wife. The judge twice ignored advice from an attorney whom he consulted, who told him not to have further dealings with the felon.

{¶52} Respondent’s position is that there is no hard-and-fast rule that “if you’re a judge and you committed a felony, you should be disbarred.” Hearing Tr. 118. While Respondent’s post-hearing brief acknowledges that sitting judges in *McAuliffe* and *Gallagher* were disbarred for engaging in dishonest acts leading to felony convictions, the brief nevertheless argues that both cases “make it clear that all the circumstances surrounding respondent’s conduct must be taken into consideration before a judge is disbarred” and that the “totalities of circumstances in both *McAuliffe* and *Gallagher* are distinguishable from the instant case on many fronts * * *.” Closing Argument Brief of Respondent Bridget M. McCafferty, p. 44. Respondent’s brief further urges the panel to look beyond *McAuliffe* and *Gallagher* and examine all “judicial dishonesty cases as one category, without regard to whether the lies occurred on the bench, off the bench, on the record, off the record.” *Id.* at 33. When viewed in this way, Respondent’s

brief suggests, the entire category of judicial dishonesty cases would not support disbarment in this instance, but rather a fixed-term suspension of two years.

{¶53} The panel agrees with Respondent, up to a point. The Supreme Court has stated, “[W]e reserve the ultimate sanction of permanent disbarment for the most egregious misconduct. Consequently, we have disbarred judges and former judges based on felony convictions.” *Hoskins*, at ¶ 92. The Supreme Court has observed that disbarment is “*not uncommon*” and is “*an appropriate sanction*” when judges’ violations involving dishonesty “stem from felony convictions.” *Gallagher*, 82 Ohio St.3d at 52 (emphasis added), citing, *inter alia*, *Office of Disciplinary Counsel v. Williams*, 80 Ohio St.3d 539 (1997) (respondent disbarred after pleading guilty to the felonies of theft and receiving stolen property); *Disciplinary Counsel v. Ostheimer*, 72 Ohio St.3d 304, 1995-Ohio-38 (respondent disbarred following felony convictions for forgery and attempted felonious sexual penetration); *Disciplinary Counsel v. Mosely*, 69 Ohio St.3d 401, 1994-Ohio-119, 1994-Ohio-195 (judge disbarred upon felony conviction for extortion). To date, however, the Supreme Court has not stated that disbarment is the only appropriate sanction when judges are convicted of felonies involving dishonesty. Rather, determining whether in a given case a judge’s felonious conduct warrants disbarment “requires consideration of all of the circumstances surrounding the illegal conduct.” *McAuliffe*, at ¶ 24.

{¶54} The panel agrees with Respondent that a sitting judge’s felony conviction for dishonest behavior has not invariably resulted in disbarment. See *Office of Disciplinary Counsel v. Crane*, 56 Ohio St.3d 38 (1990) (tax evasion and filing a false tax return; indefinite suspension).⁴ The panel also agrees with Respondent that the circumstances of this case can be distinguished from those in *Gallagher* and *McAuliffe*. The violations alleged in the complaint,

⁴ See also *United States v. Crane*, 1988 WL 12138, *1 (6th Cir., Feb. 18, 1988) (identifying the same respondent as a municipal court judge).

which the panel finds Respondent committed by clear and convincing evidence, occurred during a single 90-minute conversation at her kitchen table. Without prior notice, FBI agents showed up and began asking her questions, which she knowingly answered untruthfully. There is no doubt about the seriousness of such criminal conduct. Still, the panel cannot lose sight of the fact that it occurred in one relatively short conversation in an informal setting and that, unlike the conduct of the judges in *Gallagher* (drug dealing) and *McAuliffe* (arson and insurance fraud), it was not part of a pattern of sustained, premeditated criminal conduct. *See also Mosely, supra*, 69 Ohio St.3d 401 (judge disbarred after being convicted of six felony extortion counts involving illegal kickbacks and theft in office.)

{¶55} While Relator directs our attention narrowly to cases involving judges' felony convictions stemming from dishonest acts, Respondent essentially urges us to focus more broadly on cases involving lawyers, judges, and other public officials who made false statements or engaged in other forms of public corruption. Although it is tempting to explore the sanctions lawyers have received for telling lies similar to Respondent's, the panel is mindful of the Supreme Court's edict that judges are to be held to a higher standard than lawyers. *Hoskins, supra*, 119 Ohio St.3d 17, 2008-Ohio-3194; *Mahoning County Bar Association v. Franko, supra*, 168 Ohio St. at 23; *see also Cincinnati Bar Association v. Heitzler*, 32 Ohio St.3d 214, (1972) ("misconduct by a lawyer who is a judge brings even greater discredit upon the legal profession than the same misconduct if performed by a lawyer who has not been entrusted with that high office.")

{¶56} More akin to this case, the panel believes, is a subset of the Supreme Court's decisions involving dishonesty by judges, *i.e.*, those specifically involving judges who lied about court proceedings before them. Although Respondent's lies led to felony convictions because

she told them to federal law enforcement, it is difficult to distinguish them qualitatively from cases involving lies that other judges told about events that occurred during or in connection with court proceedings before them. In one such case, the Supreme Court stated:

By misrepresenting events that occurred in court proceedings and in the court itself, respondent failed to treat other judges, litigants, attorneys, and court personnel with courtesy, respect, and honesty and thus undermined public confidence in the integrity of the judicial system. As the Supreme Court of Iowa recently observed, “a judge who misrepresents the truth tarnishes the dignity and honor of his or her office” because “[t]ruth and honesty lie at the heart of the judicial system, and judges who conduct themselves in an untruthful manner contradict this most basic ideal.” *In re Inquiry Concerning McCormick* (Iowa 2002), 639 N.W.2d 12, 16.

Disciplinary Counsel v. O’Neill, 103 Ohio St.3d 204, 2004-Ohio-4704.

{¶57} The sanctions imposed in such cases have varied, and it is difficult to discern a particular pattern, partly because other conduct and aggravating and mitigating factors also figured in the Court’s analysis of the appropriate sanction in those cases. *See, e.g., id.* at ¶55 (two-year suspension, with the second year stayed); *Disciplinary Counsel v. Cox*, 113 Ohio St.3d 48, 2007-Ohio-979 (judge who lied during the disciplinary process about events in court proceedings before him was indefinitely suspended.) But such cases leave no doubt that a judge’s lies about court proceedings warrant a severe sanction because they tarnish the dignity and integrity of the judicial system.

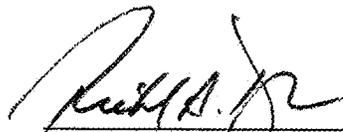
{¶58} Considering the relevant precedents in the light of the circumstances surrounding Respondent’s illegal conduct, *McAuliffe*, at ¶24—including that she was convicted on multiple felony counts of lying to FBI agents, that she knowingly told these lies while serving as a sitting judge, that her lies and refusal to cooperate complicated and prolonged an important federal investigation of public corruption, and that she continues to assert that she did her best to tell the agents the truth, the panel concludes that, while permanent disbarment is not warranted, neither

is a fixed-term suspension at the end of which would Respondent simply would return to the practice of law. The panel recommends that Respondent be suspended indefinitely from the practice of law. Because in our view Respondent has not yet fully accepted responsibility for her actions and because she will remain on federal supervised release until September 17, 2015, the panel further recommends that Respondent receive no credit for the time she has served under the Supreme Court's interim felony suspension order dated September 14, 2011. *See Columbus Bar Assn. v. McGowan*, Slip Opinion No. 2013-Ohio-1470.

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 June 6, 2013. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the panel and recommends that Respondent, Bridget Marie McCafferty, be suspended indefinitely from the practice of law in Ohio with no credit for time served under the interim felony suspension imposed in September 2011. The Board further recommends 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. DOVE, Secretary