

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

ORIGINAL

<p>In re: :</p> <p>Complaint against :</p> <p>Christopher Thomas Cicero :</p> <p>Attorney Reg. No. 0039882 :</p> <p style="padding-left: 100px;">Respondent</p> <p>Disciplinary Counsel</p> <p style="padding-left: 100px;">Relator</p>	:	<p>Case No. 13-002</p> <p>Findings of Fact,</p> <p>Conclusions of Law, and</p> <p>Recommendation of the</p> <p>Board of Commissioners on</p> <p>Grievances and Discipline of</p> <p>the Supreme Court of Ohio</p>
--	---	--

FILED

DEC 16 2013

CLERK OF COURT

SUPREME COURT OF OHIO

OVERVIEW

{¶1} This matter was heard on August 8 and 9, 2013, in Columbus before a panel consisting of Judge Robert Ringland, David Tschantz, and Judge Beth Whitmore, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶2} Joseph Caligiuri and Donald Scheetz appeared on behalf of Relator. John Gonzales appeared on behalf of Respondent.

{¶3} On February 4, 2013, Relator filed a complaint against Respondent. The complaint alleged a single count. The count alleged that, after Respondent received a speeding ticket, he obtained a blank, signed judgment entry from the arraignment court judge, Judge Scott VanDerKarr, unilaterally reduced his speeding charge to a headlight violation charge, caused the judgment entry to be filed, and later falsely represented to the court and the prosecutor's office

that a prosecutor had approved the reduction before the entry was filed. The complaint further alleged that Respondent caused both the court and the prosecutor's office to expend unnecessary resources in attempting to discover the identity of the prosecutor who allegedly approved the reduction.

{¶4} The complaint charged Respondent with the following violations: Prof. Cond. R. 3.3(a) [making a false statement of law or fact to a tribunal]; 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].

{¶5} On February 25, 2013, Respondent filed an answer to the complaint. The parties later filed stipulations on July 12, 2013. Respondent stipulated that, previously, he had been suspended from the practice of law by the Supreme Court of Ohio on two separate occasions. See *Disciplinary Counsel v. Cicero*, 134 Ohio St.3d 311, 2012-Ohio-5457; *Office of Disciplinary Counsel v. Cicero*, 78 Ohio St.3d 351, 1997-Ohio-207. Respondent further stipulated to several of the facts underlying this disciplinary matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was admitted to the practice of law in the state of Ohio on May 16, 1988, after graduating from the University of Toledo College of Law. Respondent's practice has focused primarily on criminal defense work and, throughout his career, Respondent has handled a high level of traffic cases. Due to the nature of his practice, Respondent has appeared before the Franklin County Municipal Court on numerous occasions. Respondent was familiar with the judges and prosecutors at that courthouse as well as that court's policies at all times relevant to this disciplinary matter.

{¶7} In 1997, Respondent was suspended from the practice of law for one year because he had widely insinuated that he was having a sexual relationship with a judge at the same time that he was practicing before her. *Office of Disciplinary Counsel v. Cicero*, 78 Ohio St.3d 351-352. The Supreme Court determined that Respondent had engaged in conduct that was prejudicial to the administration of justice and that he had failed to abide by his duty to maintain a respectful attitude toward the courts. *Id.* at 352. Although the Board in that matter recommended a one-year suspension with six months stayed, the Supreme Court rejected the recommendation and imposed the full year suspension “based on the gravity of [R]espondent’s disciplinary violations.” *Id.* at 353.

{¶8} A second disciplinary action was filed against Respondent in 2011 and was still pending when Respondent engaged in the behavior that led to disciplinary charges being filed in this matter. On November 28, 2012, the second disciplinary action was decided. Respondent was again suspended from the practice of law for one year based on his having disclosed the confidential communications of a potential client to Jim Tressel, the coach of the Ohio State University football team at the time of Respondent’s improper disclosure. *Disciplinary Counsel v. Cicero*, 134 Ohio St.3d 311, 2012-Ohio-5457. In its decision, the Supreme Court noted that the Board had found five aggravating factors weighing against Respondent, including that his “testimony at the hearing was at times disingenuous and not credible” and that Respondent “refused to acknowledge the wrongful nature of his misconduct.” *Id.* at ¶17. Although the Board recommended that Respondent be suspended for six months, the Supreme Court found that Respondent’s prior disciplinary history and the aggravating factors against him warranted a one-year suspension. *Id.* at ¶2, 21.

{¶9} Respondent’s grievance in this case arose out of a traffic citation for speeding that

he received on March 21, 2012. Stipulations ¶4. Because the traffic citation was issued in Columbus, the citation was to be processed in the Franklin County Municipal Court. *Id.*; Joint Ex. 1. On March 22, 2012, Respondent went to the Franklin County Municipal Court and approached the arraignment court judge, Judge VanDerKarr. Stipulations ¶6; Hearing Tr. 37-38, 433. Respondent informed Judge VanDerKarr that he had received a speeding ticket and obtained a judgment entry from Judge VanDerKarr. Stipulations ¶6; Hearing Tr. 37-38, 435-437. The parties stipulated that Judge VanDerKarr gave Respondent a signed judgment entry that was otherwise blank.¹ Stipulations ¶6.

{¶10} According to Judge VanDerKarr, before he handed Respondent the judgment entry, Respondent named a specific prosecutor and indicated that the prosecutor he named had offered him a reduction on his speeding ticket. Hearing Tr. 436. Judge VanDerKarr could not remember the name that Respondent gave, but testified that “[i]t was a female’s name in [his] mind that [he] did not know.” *Id.* at 437. According to Respondent, he never gave Judge VanDerKarr a prosecutor’s name because, at the point in time he received the signed, blank entry from the judge, Respondent did not yet have an offer from any prosecutor. Hearing Tr.41-42. Respondent testified that he told Judge VanDerKarr he “was going to go talk to a prosecutor.” *Id.* at 42.

{¶11} At the time Respondent approached Judge VanDerKarr in arraignment court, Respondent’s traffic citation had not yet been filed with the court and no case number or file for the citation existed. Hearing Tr. 37, 47, 225; Stipulations ¶7. By approaching Judge VanDerKarr before the filing of his traffic citation, Respondent avoided having to appear for a

¹ Judge VanDerKarr testified that it was possible that he gave Respondent a signed, blank entry, but that he believed he handed Respondent the entry without a signature and signed the entry after Respondent and/or his assistant completed it and handed it back to him. Hearing Tr. 435-436; 483-484.

scheduled arraignment and having to work with the specific prosecutor assigned to the arraignment court. Hearing Tr. 45. Respondent admitted that he intentionally did not approach the arraignment court prosecutor, Rob Levering, on March 22 because he knew Levering would not offer him an amendment on his speeding violation. *Id.* Respondent testified that he wanted to seek out a more “favorable” prosecutor. *Id.* In his deposition, Respondent also testified that he wanted to deal with his traffic citation directly after he received it because he knew that Judge VanDerKarr was the judge assigned to the arraignment court that week. Respondent’s Deposition. 14. Respondent testified that Judge VanDerKarr was a “very pro-defense oriented” judge and that Respondent knew he would have a “more favorable” outcome if he dealt with Judge VanDerKarr instead of a judge who was a “stickler[.]” *Id.*

{¶12} Respondent admitted that he had received approximately 50 speeding tickets before the ticket that led to this matter and that his license had been suspended on two prior occasions as a result of all the tickets he had received. Hearing Tr. 29-30. Lara Baker-Morrish, the chief prosecutor for the city, testified in her deposition that it was “common knowledge” among the prosecutors that Respondent had received “many, many, many speeding tickets.” Baker-Morrish’s Deposition 40. Nevertheless, Respondent repeatedly denied that his driving record influenced his behavior in this matter and that, had he not received a reduction offer from a prosecutor, he simply would have pleaded to the speeding violation. Hearing Tr. 45, 55-56, 114. Respondent testified that “if there is a problem with the fact that I got an amendment because I got speeding tickets from here to my eternity, okay. Not a big deal. It really isn’t a big deal. It wasn’t a big deal then to me, and it’s not a big deal to me now.” *Id.* at 114.

{¶13} According to Respondent, at some point after he left the arraignment courtroom on March 22, 2012, he ran into Brandon Shroy, one of the city’s assistant prosecutors. Hearing

Tr. 43-44. Respondent testified that his conversation with Shroy lasted about 20 seconds and consisted of him informing Shroy he had a ticket, asking if he could amend the ticket, and receiving an affirmative response from Shroy. *Id.* at 46-47. Shroy, however, testified that no such conversation ever took place. *Id.* at 345, 373. Shroy testified that he was in the process of leaving the prosecutor's office in March 2012 and that March 23, 2012, was his last day. *Id.* at 340-341. As such, Shroy was not assigned to any cases his last week and his schedule on March 22, 2013, "involved mostly administrative stuff." *Id.* at 352. Shroy testified that he would have remembered if he had talked to Respondent because Respondent had gained some notoriety after he gave an interview about the Buckeyes on ESPN. *Id.* at 346-347. Shroy further testified that it would have been "very noteworthy" if an attorney had just presented him with a copy of a traffic citation instead of a file. *Id.* at 348-349. Additionally, Shroy stated that he would find it significant if an attorney was approaching him about an amendment to the attorney's own ticket. *Id.* at 350-352. Finally, Shroy explained that if a prosecutor offers a plea on an unassigned case that plea is memorialized in some fashion, generally by a Post-It note that will be made a part of the file. *Id.* at 392-393.

{¶14} Apart from Shroy's testimony, Baker-Morrish testified that the prosecutor's office had a policy "in place in order to avoid prosecutor shopping." Hearing Tr. 513. Although any prosecutor had the inherent authority to offer pleas, Baker-Morrish testified that it was against office policy for prosecutors "who were not assigned to the arraignment courtrooms or not on the management team" to do so. *Id.* Baker-Morrish related that, due to the high volume of traffic citation cases that come through the court, the prosecutor's office does not keep track of all the plea bargained cases unless someone, such as the officer who issued the citation, notifies them of a problem. Baker-Morrish's Deposition 41. Baker-Morrish testified that she instituted a policy

several years before this incident that requires any nonarraignment court prosecutor who offers a plea to complete a “plea offer form * * * they would have to sign and date.” Hearing Tr. 513-514. Baker-Morrish testified that she has “to trust that [the lawyers, judges, and prosecutors are] doing what [she] instructed them to do [because] [she] can’t possibly follow all of them.” *Id.* at 517. No plea offer form exists in this case.

{¶15} On April 3, 2012, a judgment entry resolving Respondent’s traffic citation was filed with the clerk’s office. Stipulations ¶10; Joint Ex. 2. Both Respondent and his assistant at the time, Tyler Carrell, testified that Carrell wrote out the judgment entry. Hearing Tr. 49-52; 205-206. Carrell testified that he routinely checked the clerk’s online filing website, CourtView, every day after Respondent received his speeding ticket to see whether a case number and file had been created for the ticket. *Id.* at 225-226. Carrell testified that the blank, signed judgment entry Respondent received from Judge VanDerKarr remained blank until Carrell saw that the case had been filed. *Id.* Carrell then called Respondent on the phone and received instructions on how to fill out the judgment entry. *Id.* at 226-227. Carrell filed the judgment entry at the clerk’s office after he completed the entry and received a check from Respondent for the fine. *Id.* at 228.

{¶16} The completed judgment entry amended Respondent’s speeding violation [a violation of R.C. 4511.21(C)(2)] to a headlight violation [a violation of R.C. 4513.04], an offense that eliminated any danger of suspension of Respondent’s license. Stipulations ¶8; Hearing Tr. 31-32, 55-56; Joint Ex. 2. The reduction contravened the policy of the Franklin County Municipal Court’s prosecutor’s office, as it was against policy to permit speeding violations to be amended to equipment violations (*e.g.*, a headlight violation). Stipulations ¶9; Hearing Tr. 33, 414, 517-518. Carrell testified that he had no knowledge of what the Revised

Code section he wrote down on the judgment entry meant, as he was not a lawyer. Hearing Tr. 206-207. It was Respondent's position at the hearing, however, that he never told Carrell to write down the headlight violation code section on the judgment entry. *Id.* at 52. According to Respondent, he "told [Carrell] to amend [his speeding violation] to 4521.11," the code section for a zero-points speeding violation, but Carrell "just didn't do it." *Id.* When asked by Relator how it happened to be that Carrell wrote down the headlight violation code section instead, Respondent testified that he did not "know what [Carrell] was doing when I was talking to him on the phone." *Id.* at 54. Conversely, Carrell testified that he "wrote down what [he] thought [he] heard [Respondent] say." *Id.* at 207. Carrell stated that "the only conclusion [he] could make is either [he] heard what [Respondent] said wrong or [Respondent] told [him] the wrong statute." *Id.* at 228.

{¶17} A second problem with the judgment entry that Carrell wrote out was that it was missing a finding of guilt. Hearing Tr. 298; Joint Ex. 2. During the early evening hours of April 4, 2012, Judge VanDerKarr's bailiff, Mike Basham, received a phone call from the clerk's office regarding the missing finding of guilt on the entry. Hearing Tr. 297-298; Joint Ex. 5. Basham then contacted Judge VanDerKarr to get instructions from him. Hearing Tr. 298. Basham testified that Judge VanDerKarr instructed him to contact Respondent to find out what the plea offer was and who had made it. *Id.* Basham then spoke to Respondent on the phone. *Id.* at 299. Basham testified that he told Respondent over the phone that he "needed to know who made the offer [on Respondent's case] and get a finding on [the judgment entry,]" so that it could be properly filed. *Id.* Basham testified that Respondent refused to tell him who had made the offer. *Id.* At that point, Basham called Judge VanDerKarr and "told [the judge] that [Respondent] wouldn't tell [him] who made the offer." *Id.* at 300.

{¶18} Respondent denied that Basham ever asked him for the name of the prosecutor who had offered him the amendment on his speeding citation. Hearing Tr. 58. Respondent also claimed that Basham did not disclose what problem(s) existed with the judgment entry. *Id.* at 58-59. According to Respondent, Basham only told him that “by noon tomorrow [April 5, 2012] [Judge VanDerKarr] want[ed] [Respondent] to bring in the prosecutor * * * that gave [him] the amendment to [his] ticket.” *Id.* at 60. Respondent testified that he “never knew what the issue was [with the judgment entry] the whole night.” *Id.* at 61.

{¶19} Almost directly after Respondent spoke with Basham, he received a call from Judge VanDerKarr. Hearing Tr. 59, 443; Joint Ex. 5. Judge VanDerKarr testified that he spent a “half hour screaming at [Respondent]” and demanding that Respondent give him “the name of the prosecutor [Respondent] gave [him] at the bench,” but Respondent refused to give him the name. Hearing Tr. 443. Judge VanDerKarr then told Respondent that he “was going to put a warrant for contempt out for [Respondent’s] arrest because he either lied to me in [the arraignment courtroom], or he wasn’t coming clean [regarding] who the assistant prosecutor was.” Joint Ex. 5. After speaking with Respondent, Judge VanDerKarr issued an arrest warrant for Respondent with the cash bond set at \$1 million. Joint Ex. 13.

{¶20} During his deposition, Respondent gave several different responses when questioned as to why he would not simply give Judge VanDerKarr Shroy’s name when Judge VanDerKarr asked. Respondent testified that Judge VanDerKarr was only interested in hearing the name of the prosecutor Respondent gave him at the arraignment bench and, because Respondent never named a prosecutor at the bench, he simply kept denying that he had given Judge VanDerKarr a name at the bench. Respondent’s Deposition 40. Respondent also testified that he never told Judge VanDerKarr Shroy’s name during their phone conversation because

“[t]here was no conversation”; it was just the judge “hooting and hollering and cussing.”

Respondent’s Deposition 42. Respondent also testified that he did not attempt to explain what happened to Judge VanDerKarr because the judge “didn’t tell me what the problem was. That’s this whole thing. He didn’t tell me what the problem was.” *Id.* at 43. The following exchange took place during Respondent’s deposition:

Q. What I’m getting at is you never tell him, “Judge, I got a plea offer from Brandon [Shroy] later in the day – in the morning, but I never gave you that name at the bench?

A. Look, I don’t know that that’s the problem.

Q. I know. But I’m just saying you never told him that?

A. Because it was never asked.

Q. Okay

A. Never asked.

Q. So at the end of the day, despite the fact that he’s asking you for the name of the prosecutor that you gave him at the bench, you never gave him the name of the prosecutor that gave you the plea?

A. No, I didn’t.

Q. All right. What you’re telling me is that there wasn’t an opportunity to do that?

A. I don’t want to say there wasn’t – for most – yeah, there was – well, that’s just the way it happened. I mean, I’m just shaking my head then, shaking my head now.

Id. at 46-47.

{¶21} Respondent also testified that at the time he was on the phone with Judge VanDerKarr it was going through Respondent’s mind that someone might have discovered that the judge had given him a signed, blank judgment entry, but again, Respondent insisted that he did not know what the problem was. *Id.* at 41-43.

{¶22} At the hearing before the panel, Respondent repeatedly reiterated that he did not give Judge VanDerKarr Shroy's name over the phone because the issue was not Shroy's name itself, but whether or not Respondent had given Judge VanDerKarr a name at all. Hearing Tr. 68-83. Respondent repeatedly denied that offering Shroy's name would have helped the situation, but simultaneously claimed that Judge VanDerKarr "wasn't explaining to me what was going on" and that he "couldn't get a word in edgewise." *Id.* at 79. According to Respondent, Judge VanDerKarr "wasn't interested in what really happened. The only thing he was interested in [was] what was the name of the prosecutor that you gave me at the bench." *Id.* at 82.

{¶23} Respondent also testified at the hearing that he knew the reason that Judge VanDerKarr was concerned was because he had given Respondent a signed, blank judgment entry. Hearing Tr. 69. Respondent testified that "the only thing [Judge VanDerKarr] was insisting upon was that somehow he was going to be in trouble with – with Lara Baker[-Morrish], and he wasn't going to be hung out to dry * * *, and I don't know why." *Id.* at 82. Respondent, however, never raised that issue with Judge VanDerKarr. *Id.* The following exchange took place at the hearing:

Q. And you knew at that point that what [Judge VanDerKarr] was worried about was that there was this blank signed entry form that he gave you, correct * * *?

A. Yeah.

Q. Did you ever mention that to him?

A. That, "Hey, you gave me a blank entry?"

Q. Right.

A. He knew.

Q. Did you mention it to him?

A. I didn't have to.

Q. So you didn't?

A. No.

Id. at 69-70.

{¶24} Rather than attempt to clarify anything with Judge VanDerKarr, Respondent testified that he “just let [Judge VanDerKarr] have his say and figured that there would be another opportunity for him to, you know, to maybe think it through himself * * *.” *Id.* at 80. Moreover, despite the fact that Judge VanDerKarr told Respondent he would be issuing a warrant for his arrest, Respondent denied that the phone call ended badly for him. *Id.* at 84. According to Respondent, the phone call only ended badly for Judge VanDerKarr “[b]ecause he never got what he wanted.” *Id.*

{¶25} After Respondent spoke with Judge VanDerKarr, he drafted a letter that he addressed to Baker-Morrish, the city's chief prosecutor. Hearing Tr. 85-88; Joint Ex. 3. Respondent faxed the letter to the courthouse at approximately 7:33 p.m. that same night (April 4, 2012). Hearing Tr. 85-86; Stipulations ¶11. Respondent also sent a text message to Basham, Judge VanDerKarr's bailiff, to inform him that he had faxed a document to the court. Hearing Tr. 300. Basham went to the courthouse after he received Respondent's text message, retrieved the fax, and placed the letter in Respondent's traffic citation file. *Id.* at 300. In the letter, Respondent wrote to Baker-Morrish:

It has come to my attention that you or someone in your office is making an issue of the fact I received an amendment on my speeding ticket. I talked to one of your assistance (sic) and showed that person my ticket and asked whether or not I could amend it. It was not a big deal to me either way but I asked.

I then went to the [arraignment court] judge at the time which was Judge VanDerKarr. I informed him I had a speeding ticket that your office was willing to amend, like the thousands of cases I have done before. As a result, I paid the ticket and moved on.

Now, it is to the point where I am being asked who in your office allowed me to amend the ticket and at this time I see no reason to offer that name now or ever because somebody wants to make a mountain out of a mole hill.

It should suffice whether anybody likes it or not that someone in your office did, and *that agreement made by your office was the only reason why the [arraignment court] judge which happened to be Judge VanDerKarr agreed to the amendment.*

Let's not get inane about a simple speeding ticket. If it matters to you, I will have the amendment withdrawn and pay for the speeding ticket. Call me to let me know whether or not you want this withdrawn.

(Emphasis added.) Joint Ex. 3.

{¶26} Respondent's letter to Baker-Morrish intentionally misrepresented, at a bare minimum, the order of the events that had occurred.

{¶27} During his deposition, Respondent repeatedly stated that his letter inaccurately set forth the sequence of the events that had occurred because he did not proofread the letter before he sent it. Respondent's Deposition 66-67, 70. Respondent then had a recess with his attorney. *Id.* at 70. When the deposition resumed, Respondent admitted that he had intentionally lied with regard to the sequence of events that he described in the letter. *Id.* at 72. Respondent testified that: "the information is true. The sequence is false intentionally to get [Baker-Morrish] off of [Judge VanDerKarr's] backside." *Id.* at 73. Respondent then refused to fully acknowledge his wrongdoing, however, when pushed by Relator. The following exchange took place:

Q. * * * You intentionally misrepresented the sequence of events to get Lara Baker[-Morrish] off of Judge VanDerKarr's backside?

A. Yeah.

Q. Okay. So just a few moments ago before we took the break when you said that you screwed the sequence up and that it was a mistake, that was actually false.

A. Yeah. And, I misunderstood, I think, what you were trying to say, I thought about it, and I just said it wrong to you then.

Id.

{¶28} Respondent continued to give evasive answers at the hearing before the Panel.

{¶29} When questioned about the letter at the hearing, Respondent testified as follows:

Q. When I * * * asked you this question originally in your deposition as to what I believed was a misrepresentation of the letter, you testified under oath that you simply made a mistake and failed to proofread it before you sent it, correct?

A. Right. And then I told you that –

Q. Well –

A. Hold on, let me finish my answer.

Q. You are right.

A. And then I told you that I misunderstood your question, and I corrected it by telling you that – that I had misrepresented the sequence intentionally, but that the facts contained in it were accurate.

* * *

Q. After a break with your attorney, you came back in, you admitted that you lied in the letter to Lara Baker[-Morrish], correct?

A. If that's what we did in terms of if we took a recess. If we took a recess, we took a recess.

Hearing Tr. 91-92.

{¶30} Respondent repeatedly insisted that the facts contained in the letter were accurate, just given in the wrong sequence. *Id.* at 93-97. Respondent also testified that his letter was an attempt “to get to the bottom of this because nobody [was] telling [him] what the problem [was].” *Id.* at 97.

{¶31} After Respondent faxed the letter addressed to Baker-Morrish, Judge VanDerKarr called him for a second time that same night (April 4, 2012). Hearing Tr. 101-103; Joint Ex. 5,

11. Respondent recorded a portion of his second phone call with the judge, as he testified that he was in the habit of recording phone calls. Hearing Tr. 68; Joint Ex. 11. During the second phone call, Judge VanDerKarr once again demanded that Respondent give him the name of the prosecutor who made the offer to Respondent, and Respondent refused. Hearing Tr. 103-108; Joint Ex. 11. Respondent again testified that he did not give Judge VanDerKarr a name because the judge was only interested in hearing that Respondent gave a name to him at the arraignment bench, and Respondent knew that he had not given a name. Hearing Tr. 103-108. The short transcription of the second phone call between Respondent and Judge VanDerKarr, however, did not include any indication that Judge VanDerKarr was only interested in the name Respondent gave "at the bench." Joint Ex. 11. Relator questioned Respondent about that fact as follows:

Q. * * * [C]an you show the panel anywhere in these two pages [of the transcribed phone call] where [Judge VanDerKarr] mentions anything about [you] giving [] a name at the bench?

A. Yeah. "Just buck up, tell me who it was." He's wanting the name at the bench.

Q. But I'm asking where –

A. That's all he cares about. Well, because you asked me, I just told you, "Just buck up, tell me who it was."

Q. So at the end, [Judge VanDerKarr] says, "Tell me the name," he is not making any reference to tell me the name at the bench?

A. Yeah, he is. He is telling me this in this conversation. You don't have it all, but, yeah, he is telling me that in this conversation.

Hearing Tr. 105-106.

{¶32} Respondent's second phone call with Judge VanDerKarr ended either because Respondent terminated it or a disconnection occurred, and the judge was unable to get into contact with him again that night, despite repeated attempts. Hearing Tr. 104-105; Joint Ex. 5.

{¶33} At 9:54 p.m. that same night, Respondent sent an email to Baker-Morrish and Bill Hedrick, the Chief of Staff for the prosecutor's office. Hearing Tr. 101; Stipulations ¶ 12; Joint Ex. 4. In the email, Respondent wrote:

I wished one or both of you would have come to me first to ask me who in your office said it was okay to amend my speeding ticket the way it was. I was not making a federal case out of a speeding ticket that if I couldn't (sic) get it amended I would not have lost any sleep over it. *I took the amendment to the [arraignment court] judge* who just happened to be Judge VanDerKarr and handled it the same way every other case is done. It is not protocol to put any prosecutor's name on an Entry. What is really going on? And why are we making a federal case out of an amended, not dismissed speeding ticket that I paid the maximum fine of \$150.00? Again, if your office wants me to withdraw the amendment I am fine with that.

Joint Ex. 4, (emphasis added).

{¶34} Although the email indicated that Respondent had an offer from a prosecutor before approaching Judge VanDerKarr, Respondent denied that he intentionally misrepresented the sequence of events in his email. Hearing Tr. 112. According to Respondent, he was simply "making the e-mail consistent with the letter." *Id.* Respondent testified that the purpose of the email was not to help out Judge VanDerKarr, but to "figure out what it [was] on [the prosecutor's] end of the table that [was] causing so much distress for Judge VanDerKarr * * *." *Id.* at 113-114.

{¶35} The following morning, April 5, 2012, Respondent appeared before Judge VanDerKarr on the warrant for his arrest, and the judge held a hearing. Stipulations ¶13; Joint Ex. 5. Both Baker-Morrish and Hedrick were present at the hearing, as they became aware of the situation after receiving Respondent's email the night before. Joint Ex. 5. Although Judge VanDerKarr directly asked Respondent at the hearing for the name of the prosecutor who gave Respondent the offer, Respondent refused to answer. *Id.* The following exchange took place:

THE COURT: You know, if you can't show me the respect of answering a question when you brought something in front of me in arraignment court and then you can't man up and tell me who the prosecutor was that made the offer, then I can't trust you anymore, but I think you need to tell me now.

[RESPONDENT]: I've been asked not to say anything.

THE COURT: You've been asked by whom?

[RESPONDENT]: Just – I've already – you and I have had this conversation all night.

THE COURT: What you're saying is you're refusing to answer the Court's question?

[RESPONDENT]: Yeah.

Joint Ex. 5, page 9.

{¶36} After being pressed repeatedly at the hearing, Respondent then asked for 24 hours “[b]ecause [he] want[ed] to talk to somebody.” *Id.* at 13. Judge VanDerKarr held Respondent in the courtroom while he attended to other matters and took a recess. *Id.* at 16-17. When the hearing resumed, Baker-Morrish informed the court that she had checked with all the members of the prosecutor's office staff and had spoken to “all but three of them.” *Id.* at 17. Baker-Morrish indicated that she did not believe that two of those individuals had made the offer and that the third was Brandon Shroy. Baker-Morrish stated that “[e]very other member of the staff that we've spoken to in person this morning has denied making this offer.” *Id.* 18. Judge VanDerKarr then continued the hearing until the next day and gave Respondent the opportunity to post a \$1,000 cash bond for his release. *Id.*

{¶37} Directly after the hearing ended and having heard Shroy's name, Respondent approached Basham, Judge VanDerKarr's bailiff, and told him that Shroy was the prosecutor who had made Respondent the offer. Hearing Tr. 133. Respondent offered several reasons for not giving Judge VanDerKarr Shroy's name on the record, including that (1) the judge “cut [him]

off,” *Id.* at 136; (2) he was worried Shroy might be in trouble if Respondent gave his name out, *Id.* at 145-148; (3) he wanted to know what Shroy knew about the situation before he said anything, *Id.* at 156; and (4) things happened so fast that he could not react quickly enough, *Id.* at 169-170. Respondent also testified that he did not explain the events that occurred at the hearing because the prosecutors were there and he “wasn’t going to go on the record, and * * * lay the judge out in front of [the prosecutors],” for having given him a signed, blank entry. Hearing Tr. 141.

{¶38} Directly after Respondent gave Basham Shroy’s name, he left the courthouse and called Shroy. Hearing Tr. 177. Although it was Respondent’s habit to record conversations and he had a recording device available to him near the time he called Shroy, Respondent testified that he did not record the first phone conversation he had with Shroy. *Id.* at 174-175. According to Respondent, he ‘didn’t think it was necessary’ to record the phone conversation. *Id.* at 175. Respondent testified that during his first phone call with Shroy, he told Shroy there was a problem with the amendment Shroy had given him on his traffic citation and asked Shroy if he remembered the offer. *Id.* at 177-180. Shroy, however, testified that when Respondent called him, Respondent asked if he could use Shroy’s name in connection with a ticket he had received. *Id.* at 362. Shroy testified that he became uncomfortable with the conversation and ended the phone call. *Id.* at 362-363.

{¶39} Subsequently, Shroy called Respondent back and told him that he could not use Shroy’s name. *Id.* at 367. Shroy testified that, at that point, it still seemed as if Respondent was trying to brainstorm and began asking Shroy when his last day at the office was. *Id.* Respondent testified that he recorded most of his second phone call with Shroy and submitted a transcript of that phone call. Respondent Ex. A. In the transcript of the phone call, Shroy tells Respondent

that his “official answer” would be that he never talked with Respondent about a plea offer. *Id.* Shroy, however, denied that he ever said anything about an “official answer” when he spoke with Respondent. Hearing Tr. 400. Moreover, Respondent was unable to produce the recording of the phone call he had with Shroy. According to Respondent, he or someone else at his office lost the tape of his second phone call with Shroy after the tape was transcribed. *Id.* at 181. The transcript of the phone call, therefore, could not be cross-referenced with the actual tape of the conversation to ensure its accuracy.

{¶40} Respondent was scheduled to appear before Judge VanDerKarr again the following morning, April 6, 2012, on the contempt issue. Before the contempt hearing resumed, Respondent had Carrell, his assistant, get Basham, Judge VanDerKarr’s bailiff, and meet Respondent in a different area of the courthouse. Hearing Tr. 182, 254. Respondent recorded their conversation and had it transcribed. Joint Ex. 12. During his conversation with Basham, Respondent stated the following:

[RESPONDENT]: So listen – alright. Here’s – you go tell the judge – look Brandon Shroyer (sic). And then I want it done. “That’s the name you gave?”
“Yeah, that’s the name I gave.”

[BASHAM]: Okay.

[RESPONDENT]: And it’s okay – “I just want to make sure that’s the guy’s name you gave me.”

Id.

{¶41} Respondent admitted at the hearing that he was telling Basham what he planned on saying at the contempt hearing, but denied that he was trying to instruct Basham on how he wanted Judge VanDerKarr to question him. Hearing Tr. 185-188.

{¶42} After speaking with Respondent and before the contempt hearing resumed, Basham told Judge VanDerKarr that he had spoken with Respondent and that Respondent had

indicated that he did not have an offer from a prosecutor at the time he approached Judge VanDerKarr in the arraignment court. Joint Ex. 6. Judge VanDerKarr relayed his bailiff's statement to Respondent when the hearing resumed, and Respondent denied Basham's version of the events. Joint Ex. 6, page 6. Judge VanDerKarr then gave Respondent an opportunity to explain:

THE COURT: Well, what did you say?

[RESPONDENT]: Well, I didn't say that.

THE COURT: Well, what did you say?

[RESPONDENT]: I think we were talking about the procedure, about how it came about. That's all.

THE COURT: So how did it come about?

[RESPONDENT]: And that's what he and I talked about.

THE COURT: I mean, did you call [Shroy]? Did you go in person and see him? How did you talk with Mr. Shroy?

[RESPONDENT]: And that's where I'll end this conversation as to how it happened.

THE COURT: No, you won't end the conversation. How did this plea offer get made?

[RESPONDENT]: The plea offer got made by me having contact with Mr. Shroyer (sic).

THE COURT: By phone? In person?

[RESPONDENT]: Your Honor, at this point in time, this is where I am, you know. If I'm going to have to proceed any further based on what I've just said, then I would like to talk to somebody.

Id. at 6-7.

{¶43} Judge VanDerKarr then continued the hearing until the beginning of the following week (after the Monday holiday), revoked Respondent's bond, and remanded him into custody.

Id. at 7. Respondent spent five days in jail.

{¶44} At the hearing before the panel, Respondent repeatedly placed the blame for his failure to explain himself at the contempt hearing on Judge VanDerKarr. Hearing Tr. 193-199. According to Respondent, he was not answering the judge's questions because the judge must not have been thinking through what he was asking. *Id.* at 194. Respondent insisted that he did not want to expose Judge VanDerKarr's practice of giving out signed, blank judgment entries in front of the prosecutor. *Id.* at 142. Respondent also claimed that he was worried that, if he told the truth, Judge VanDerKarr might place him in jail for an even longer period of time. *Id.* at 199-200.

{¶45} Respondent appeared before Judge VanDerKarr again on April 10, 2012 with an attorney, withdrew his plea to the headlight violation, and pleaded no contest to the speeding violation. Stipulations ¶12; Joint Ex. 7. Judge VanDerKarr also issued a contempt ruling at that time, finding Respondent in contempt and sentencing him to time served. *Id.* at 4. At the April 10 hearing, Respondent's attorney placed a statement on the record that Respondent "recognize[d] that his failure to answer the question delayed the Court proceedings." *Id.* at 3. He further stated that "a fundamental misunderstanding among [his] client, the prosecutor's office and the Court [had] occurred" and that Respondent "sincerely apologize[d] for the inconvenience." *Id.* At the hearing before the panel, however, Respondent described his attorney's statement as "a canned answer" rather than agreeing that he had caused a delay in the court proceedings. Hearing Tr. 201. The contempt order Judge VanDerKarr issued was upheld by the Tenth District Court of Appeals on appeal. *Columbus v. Cicero*, 10th Dist. Franklin No. 12AP-407, 2013-Ohio-3010.

{¶46} The panel finds that Respondent routinely engaged in deceitful, self-serving

conduct throughout this matter and turned a minor speeding infraction into an ethical tar pit that drew in numerous other individuals and harmed the very administration of justice. Having familiarity with the workings of the municipal court, Respondent sought to take advantage of a lax system and refused to acknowledge his wrongdoing when discovered. Respondent's refusal to accept responsibility was a theme that continued even at the hearing before the panel.

Respondent gave evasive responses at virtually every stage of this matter, and it is clear to the panel that Respondent still sees nothing wrong with his behavior. Respondent caused the filing of a judgment entry that lacked prosecutorial input and contravened the policy of the prosecutor's office. Respondent then attempted to blame his assistant for the error in the amendment. Respondent's insistence that his assistant, a nonlawyer, just happened to write down the equipment violation section of the Revised Code instead of the zero-points speeding section on the journal entry, is incredible. Respondent's insistence that he was not aware of the problem surrounding the judgment entry is also incredible, given that Respondent authored both a letter and email to the prosecutor's office, in which he referenced the amendment that he received and made to sure include both that (1) some unnamed prosecutor had approved the amendment, and (2) the approval for the amendment occurred before he approached Judge VanDerKarr. Respondent's refusal to admit that he flat-out lied in both the letter and the email lends further support to the panel's conclusion that Respondent simply will not accept responsibility for his actions.

{¶47} To accept Respondent's version of the events, one must conclude that multiple individuals, including a sitting municipal court judge, the judge's bailiff, and a former assistant prosecutor for the city, lied throughout these proceedings. The panel finds that Respondent never received an offer from a prosecutor to amend his traffic citation and unilaterally amended

his speeding violation to a violation that removed any danger of a license suspension. The panel further finds that rather than admit his misconduct when it first came to light, Respondent chose to further muddy the waters by claiming that he was simply refusing to disclose the name of the prosecutor involved. The charade continued until Baker-Morrish named Shroy as the only prosecutor who possibly could have made the plea. Respondent then named Shroy as the prosecutor and tried to secure Shroy's cooperation in this matter. Even after multiple hearings, a warrant for his arrest, and a five-day jail sentence, Respondent refused to even acknowledge that he had caused a delay in the court proceedings.

{¶48} Respondent's behavior at many points in this proceeding was inexcusable. Apart from making oral misrepresentations at almost every turn and allowing false documents to be made a part of the court's file, Respondent repeatedly attempted to shift the blame in these proceedings to Judge VanDerKarr. In his deposition, Respondent referred to the situation as "bulls***" and referred to Judge VanDerKarr as a liar, a "f***er," and a "mother****er." Respondent's Deposition 88, 97-98. Respondent also indicated at one point in his deposition that he "wanted to rip [Judge VanDerKarr's] goddamn heart out." *Id.* at 98.

{¶49} Based upon the exhibits, stipulations, and the record of the hearing, the panel finds by clear and convincing evidence that Respondent has committed the following ethical violations: Prof. Cond. R. Rule 3.3(a) [make a false statement of law or fact to a tribunal], 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 reflects adversely on a lawyer's fitness to practice law].

MITIGATION, AGGRAVATION, AND SANCTION

{¶50} The parties did not stipulate to any mitigating factors in this case, but Respondent offered character witness testimony. Gerald Simmons, a practitioner with almost 42 years of experience, testified on Respondent's behalf. Simmons testified that he specializes in criminal law and has known Respondent for approximately 25 years. Hearing Tr. 280. Simmons described Respondent as "very hardworking" and "very dedicated." *Id.* at 283. He also testified that Respondent is "very concerned about his clients" and about "[making] the system work." *Id.* at 286. According to Simmons, Respondent's first disciplinary action was "very upsetting" to Respondent and caused him to work harder and "try to do things the right way." *Id.* at 289. Simmons further opined that Respondent's second disciplinary action stemmed from the fact that Respondent is "a very loyal person" and "was attempting to be loyal to his alma mater, the Ohio State University." *Id.* at 290.

{¶51} The parties did not stipulate to any aggravating factors in this case, but the panel finds that certain aggravating factors exist. Respondent has a prior disciplinary record. BCGD Proc. Reg. 10(B)(1)(a); *Disciplinary Counsel v. Cicero*, 134 Ohio St.3d 311, 2012-Ohio-5457; *Office of Disciplinary Counsel v. Cicero*, 78 Ohio St.3d 351, 1997-Ohio-207. Respondent also acted with a dishonest or selfish motive, as the actions he undertook were aimed at preventing a possible suspension of his driver's license and later at protecting his own professional reputation while drawing others' reputations into question. BCGD Proc. Reg. 10(B)(1)(b). Moreover, the panel finds that Respondent has engaged in a pattern of misconduct given: (1) his prior disciplinary record; (2) his repeated misrepresentations in the courtroom before Judge VanDerKarr, in a faxed letter to Baker-Morrish, in an email to Baker-Morrish and Hedrick, and during multiple phone calls; and (3) his insistence on injecting uncertainty and causing delay in

every proceeding involved in this matter due to his inability to accept responsibility for his actions and relay the truth. BCGD Proc. Reg. 10(B)(1)(c). Additionally, Respondent has repeatedly refused to acknowledge the wrongful nature of his conduct. BCGD Proc. Reg. 10(B)(1)(g).

{¶52} “[A] violation of Prof. Cond. R. 8.4(c) generally requires an actual suspension from the practice of law.” *Akron Bar Assn. v. Gibson*, 128 Ohio St.3d 347, 2011-Ohio-628, ¶ 10. Further, the Supreme Court of Ohio has held that it “will not allow attorneys who lie to courts to continue practicing law without interruption.” *Cleveland Bar Assn. v. Herzog*, 87 Ohio St.3d 215, 217, 1999-Ohio-30. “In more extreme cases involving an unfounded attack against the integrity of a judicial officer, [the Supreme Court has] indefinitely suspended offending attorneys and have even imposed permanent disbarment.” *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909, ¶69.

{¶53} The panel finds that Respondent’s conduct, in conjunction with all of the aggravating factors weighing against him and the lack of mitigating factors in his favor, warrants an indefinite suspension. Respondent has committed acts of dishonesty, has engaged in a pattern of misconduct, has failed to acknowledge the wrongfulness of his conduct, and has made statements that the panel believes impugn the integrity of a member of the judiciary and other court personnel. *See Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 2009-Ohio-2870 (indefinite suspension upheld). Additionally, Respondent acted with a dishonest or selfish motive and has been the subject of two prior disciplinary actions. *See Columbus Bar Assn. v. Squeo*, 133 Ohio St.3d 536, 2012-Ohio-5004 (indefinite suspension upheld). Respondent’s prior two disciplinary cases resulted in one-year suspensions, and Respondent’s misconduct in this case occurred *while his second disciplinary case was pending*. It is the panel’s assessment that

Respondent's "actions show disrespect for the judicial system as a whole," and so an indefinite suspension is warranted. *Trumbull Cty. Bar Assn. v. Kafantaris*, 121 Ohio St.3d 387, 2009-Ohio-1389, ¶ 15.

{¶54} The panel recommends that Respondent be indefinitely suspended from the practice of law in Ohio and, pursuant to Gov. Bar R. V, Section 10(B) be prohibited from petitioning for reinstatement for at least two years.

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 13, 2013. The Board amended the findings of fact and conclusions of law recommended by the panel to make a specific finding that Respondent's conduct was sufficiently egregious to merit the additional finding of the Prof. Cond. R. 8.4(h) violation found by the panel. See *Disciplinary Counsel v. Bricker*, 2013-Ohio-3998, ¶21. After discussion, the Board modified the sanction recommended by the panel and voted to recommend that Respondent, Christopher Thomas Cicero, be permanently disbarred. The Board's recommendation is predicated on: (1) Respondent's repeated disciplinary violations; (2) the pattern of dishonesty and self-serving behavior that is prevalent throughout Respondent's disciplinary cases; (3) engaging in the misconduct that is the subject of this proceeding while his most recent disciplinary case was pending; (4) the Board's conclusion that Respondent is no longer fit to practice a profession grounded on trust, integrity, and candor; and (5) the Board's conclusion that disbarment is necessary to ensure the protection of the public. See *Cincinnati Bar Assn. v. Farrell*, 129 Ohio St.3d 223, 2011-Ohio-2879. 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.**

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

RICHARD A. DOVE, Secretary