

ORIGINAL

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

In re: : **SCO No. 2013-1622**

Complaint against : **Case No. 2013-032**

Harland Hanna Hale : **Findings of Fact,**
Attorney Reg. No. 0023464 : **Conclusions of Law, and**

Respondent : **Recommendation of the**
Board of Commissioners on

Disciplinary Counsel : **Grievances and Discipline of**
the Supreme Court of Ohio

Relator :

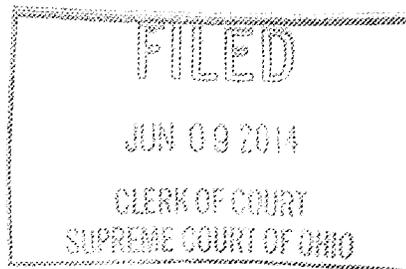
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OVERVIEW

{¶1} This matter was heard on March 3, 2014, in Columbus before a panel consisting of Sharon Harwood, Judge Beth Whitmore, and David L. Dingwell, 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 M. Caligiuri and Audrey E. Varwig appeared on behalf of Relator. Respondent was present, represented by George D. Jonson.

{¶3} Initially, the parties in this case filed a consent-to-discipline agreement that set forth stipulations of fact, rule violations, as well as an agreed sanction of a six-month suspension from the practice of law. The Board accepted the agreement entered into by Relator and Respondent.



{¶4} On November 15, 2013, the Supreme Court of Ohio rejected the agreement and remanded the matter to the Board “for further proceedings, including consideration of a more severe sanction.” *Disciplinary Counsel v. Hale*, 137 Ohio St.3d 1406, 2013-Ohio-5038.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in the state of Ohio on November 2, 1979 and is subject to the Ohio Rules of Professional Conduct, the Code of Judicial Conduct, and the Rules for the Government of the Bar of Ohio.

{¶6} The parties introduced into evidence stipulations of fact, rule violations, and sanction. Six stipulated exhibits were admitted into evidence at the hearing. In making its findings of fact, conclusions of law, and its recommendation, the panel also considered the testimony of Respondent offered at the formal hearing. Subsequent to the hearing, Respondent filed a motion to correct the record containing an affidavit of Respondent seeking to supplement the record. The panel finds the following facts to have been proven by clear and convincing evidence.

{¶7} Until his resignation from the bench on May 24, 2013, Respondent was the sole judge in the Environmental Division of the Franklin County Municipal Court.

{¶8} As an environmental division judge, Respondent also had jurisdiction similar to other Franklin County Municipal Court judges, including the jurisdiction to hear traffic cases. Hearing Tr. 32-33.

{¶9} Respondent explained that as one of the municipal court judges in Franklin County, he served in a rotation among other Franklin County Municipal Court judges to serve as “Duty Judge.” Hearing Tr. 33.

{¶10} Among other things, the duty judge was required to handle criminal arraignments, traffic matters, and other routine judicial matters. Hearing Tr. 33-34.

{¶11} Patrick Quinn is an attorney who represented Respondent in a civil suit in the Franklin County Court of Common Pleas and the United States District Court for the Southern District of Ohio.

{¶12} Quinn was representing Respondent during the time of all of the events giving rise to Relator's complaint.

{¶13} On November 21, 2011, an Ohio State Highway Patrol Trooper issued a speeding ticket to Quinn. According to Stipulated Ex. 1, Quinn's arraignment was scheduled for December 8, 2011 at 9:00 a.m.

{¶14} According to testimony at the hearing of this matter, and according to Stipulated Ex. 1, Quinn failed to appear at the arraignment for his ticket. Hearing Tr. 49-51. The docket, Stipulated Ex. 1, reflected "Fail to Appear."

{¶15} A warrant was issued for Quinn as a result of that failure to appear. Hearing Tr. 50-51.

{¶16} Quinn apparently realized that he failed to appear for the arraignment shortly after December 8, 2011. Quinn then telephoned Respondent, while Respondent was serving as the duty judge. Hearing Tr. 39-40.

{¶17} At the time that Respondent spoke with Quinn, Respondent admitted that he was aware of the fact that Quinn represented Respondent. Hearing Tr. 51.

{¶18} Respondent instructed Quinn to get the file and bring it to Respondent. Hearing Tr. 51.

{¶19} Quinn asked Respondent to arrange for him to be arraigned in absentia. However,

Respondent's testimony at the hearing was as follows:

Q: So this thing [Quinn's traffic case file] gets put into a stack. How does that thing in a stack then take the next step of you signing the entry that we see as Exhibit 3, which dismisses Count 1?

A: It goes into a stack here. That stack is contested matters. It then goes over here for me for signature on the table where I'm sitting behind. And I go through them.

Q: Okay. So when you get to that one, is it already filled out?

A: No. I did that.

Q: Okay. And who asked you to do that?

A: I did that. No one asked me to do it.

Q: And so on your own volition you dismissed it, knowing it was Pat Quinn from the law firm representing you?

A: Yes. It was an error in judgment, and I regret it. Trust me, I regret it. I've had so many sleepless nights over this, your Honor, that even you and I couldn't count them both.

Hearing Tr. 54-55.

{¶20} Respondent signed a judgment entry that dismissed the traffic case against Quinn, and Respondent did so without any input or consent from the prosecutor.

{¶21} On December 12, 2011, Respondent falsely filled out the judgment entry form to indicate that "Prosecutor dismisses: Count 1, Section 4511.21." No fines or costs were imposed against Quinn. As set forth above, there is no doubt that Respondent did this intentionally and did this with the full knowledge that Quinn was serving as Respondent's legal counsel at the time.

{¶22} Approximately four months after the December 12, 2011 dismissal entry was filed, Chief Prosecutor Lara Baker received a media inquiry regarding Respondent's disposition

of Quinn's traffic case. Baker was completely unaware of the matter, but she indicated she would investigate.

{¶23} On April 10, 2012, Respondent engaged in *ex parte* communications by leaving a voicemail message for Baker requesting that Baker sign off on an entry Respondent had prepared regarding Quinn's traffic citation. The entry purported to vacate the December 12, 2011 dismissal and rescheduled Quinn's arraignment.

{¶24} Respondent further engaged in *ex parte* communications when he contacted Quinn by e-mail asking him to sign the new judgment entry.

{¶25} Quinn signed the new judgment entry, but Baker refused to do so.

{¶26} Based upon Baker's refusal to sign the new judgment entry, Respondent prepared and signed a different judgment entry vacating the December 12, 2011 dismissal entry and further recusing himself from Quinn's case.

{¶27} Quinn subsequently pled guilty, paid \$55 in fines and \$116 in court costs.

{¶28} At the hearing, Respondent testified that after resigning his position on the bench on May 24, 2013, he did not act as an attorney on any legal matters until "late November, early December" of 2013. Hearing Tr. 29.

{¶29} Subsequent to the hearing, Respondent filed a motion to correct that contained an affidavit of Respondent setting forth at least five separate clients that he represented as an attorney in pending legal matters prior to "late November, early December."

{¶30} All five of these cases were pending in the court from which Respondent had just recently resigned.

{¶31} Respondent, through his affidavit, claims that he “did not recall any of the above-listed matters” and that someone brought them to his attention only after the hearing. May 19, 2014 Motion to Correct, Ex. A at ¶¶4-5.

{¶32} The parties stipulated to, and the panel concludes by clear and convincing evidence, based upon the stipulations, exhibits, and the testimony presented at the hearing, that Respondent’s conduct violated the following: 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]; 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 others to do so]; Jud. Cond. R. 2.2 [a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially]; Jud. Cond. R. 2.9 [a judge shall not initiate, receive, permit, or consider *ex parte* communications]; Prof. Cond. R. 8.4(c) [conduct that involves fraud, dishonesty, 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 his fitness to practice law].

MITIGATION, AGGRAVATION, AND SANCTION

{¶33} The parties stipulated to, and the panel finds, one aggravating factor, specifically, Respondent acted with a dishonest or selfish motive.

{¶34} The parties did not stipulate to, but the panel finds, an additional aggravating factor, specifically, Respondent gave false and misleading testimony at the hearing. This is based upon Respondent’s testimony that he did not act as an attorney in any legal matters until “late November, early December.” Respondent gave this testimony despite the fact that he served in precisely that capacity on at least five separate occasions in matters pending before the

court from which he had just resigned. Respondent's effort to claim that this testimony was inadvertent or that he did not recall it is not credible.

{¶35} The parties stipulated to, and the panel finds the following mitigating factors:

- Respondent has no prior disciplinary record;
- Respondent has made a full and free disclosure of his actions herein and has displayed a cooperative attitude in these proceedings;
- Respondent has a reputation for significant involvement in the community and for a commitment to the judicial system and the citizens he served; and
- Respondent has acknowledged that his actions set forth above were not appropriate and resigned from his position as judge of the Franklin County Municipal Court effective May 24, 2013.

{¶36} Relator and Respondent stipulated to a recommended sanction of a six-month suspension from the practice of law. This is the same sanction that was proposed in the consent-to-discipline agreement that was previously rejected by the Supreme Court of Ohio with express instructions to consider "a more severe sanction."

{¶37} The parties submitted an extensive joint brief discussing a wide variety of sanctions imposed not just by the Supreme Court of Ohio, but also other jurisdictions, for misconduct in various ticket-fixing cases.

{¶38} Respondent's conduct in this instance is essentially a single incident of a ticket-fixing for an individual that was serving as his legal counsel. Respondent subsequently made efforts to rectify the problem and ultimately resigned his position as judge.

{¶39} While there are no cases that are directly on point with this particular case, the panel reviewed case law cited by the parties that provide some guidance with regard to an appropriate sanction.

{¶40} In a 1988 decision, the Supreme Court of Ohio ordered a one-year suspension with no stay for a prosecutor that pled guilty to misdemeanor charges for his role in a protracted ticket-fixing scheme. *Office of Disciplinary Counsel v. Smakula*, 39 Ohio St.3d 143 (1998). The facts in *Smakula* were far more egregious than those presented in this matter.

{¶41} Ticket-fixing cases from other jurisdictions range broadly from public reprimands to actual term suspensions.

{¶42} In other recent decisions regarding findings of violations of Jud. Cond. R. 1.2 and Jud. Cond. R. 2.2, the Supreme Court of Ohio has ordered fully stayed suspensions in matters that involved either a pattern of misconduct or multiple incidents of misconduct. See, *Disciplinary Counsel v. Elum*, 133 Ohio St.3d 500, 2012-Ohio-4700 (Jud. Cond. R. 1.2 and Jud. Cond. R. 2.2 violations, among others, warranted a six-month stayed suspension); *Disciplinary Counsel v. McCormack*, 133 Ohio St.3d 192, 2012-Ohio-4309 (Jud. Cond. R. 1.2 and Jud. Cond. R. 2.2 violations, among others, warranted a one-year stayed suspension).

{¶43} In reviewing cases involving other types of judicial misconduct, including engaging in improper *ex parte* communications, the Supreme Court of Ohio has ordered fully stayed suspensions in matters involving either a pattern of misconduct or multiple incidents of misconduct. See, *Disciplinary Counsel v. Plough*, 126 Ohio St.3d 167, 2010-Ohio-3298 (numerous judicial conduct violations, including improper *ex parte* communications warranted a six-month stayed suspension).

{¶44} The panel also considered recent cases involving other public officials engaging in misconduct. In those cases, the Supreme Court of Ohio has determined that the respondent's position being one of public trust, like Respondent in this case, should be considered carefully when determining the appropriate sanction. See, *Disciplinary Counsel v. Dann*, 134 Ohio St.3d

68, 2012-Ohio-5337 at ¶23 (Court ordered a six-month suspension for the former Ohio Attorney General who engaged in multiple acts of misconduct, and who, like Respondent herein, voluntarily resigned his position); *Disciplinary Counsel v. Engel*, 132 Ohio St.3d 105, 2012-Ohio-2168 (Court ordered a six-month suspension for the chief legal counsel for the Ohio Department of Public Safety who pled guilty to multiple misdemeanor counts for intercepting confidential communications).

{¶45} The Court has previously held with regard to judges:

It is of utmost importance that the public have confidence in the integrity and impartiality of the judiciary.” *Disciplinary Counsel v. Allen*, 79 Ohio St.3d 494, 495, 1997-Ohio-136. And we have recognized that misconduct committed by a judge vested with the public’s trust causes incalculable harm to the public perception of the legal system. *Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194.

Dann, supra, 2012-Ohio-5337 at ¶22.

{¶46} The present case involves less egregious facts and circumstances than all of those cited above. While Respondent’s conduct and motivation was obviously dishonest, (as was the conduct in *Dann*, this was a single incident of misconduct as opposed to a pattern of misconduct or multiple instances of misconduct that the Court addressed in *Smakula*, *Elum*, *McCormack*, *Plough*, *Dann*, and *Engel*.

{¶47} Pursuant to the Court’s remand order that a more severe sanction be considered, the panel carefully evaluated this matter, considered the evidence, and considered the various cases that provide guidance with regard to the appropriate sanction.

{¶48} This evaluation by the panel includes consideration of the mitigating factors present in this particular case in that Respondent voluntarily resigned his position as judge, has no prior disciplinary record, made full and free disclosure of his conduct, and was cooperative with the disciplinary process.

{¶49} While Respondent's testimony regarding his post-resignation legal work was false and misleading, the panel does not believe that this aggravating factor warrants a sanction beyond that which both parties recommend and which the panel believes is well in line with the Court's previous cases related to judicial misconduct of this nature.

{¶50} The panel, based upon the cases, and the evidence presented in this matter, believes that the parties' recommended sanction is appropriate and in full accord with the Court's decisions considering Respondent's public position of trust.

{¶51} The panel, having considered the case law cited, the Rule violations, and the aggravating factors verses the mitigating factors, recommends that Respondent be suspended from the practice of law for a period of six months.

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, 2014. The Board amended the findings of fact conclusions of law to dismiss the alleged violation of Prof. Cond. R. 8.4(h) based on its conclusion that Respondent's conduct was not so egregious as to warrant an additional finding of a violation of that rule. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 25, 2013-Ohio-3998, ¶21. The Board then adopted the findings of fact and conclusions of law, as amended. The Board adopted the recommendation of the panel and recommends that Respondent, Harland Hanna Hale, be suspended from the practice of law in Ohio for six months. 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