

ORIGINAL

IN THE SUPREME COURT OF OHIO

**Disciplinary Counsel,**

**CASE NO. 2013-1622**

Relator,

vs.

**Harland Hanna Hale**

Respondent.

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**RELATOR'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' FINDINGS OF  
FACT AND CONCLUSIONS OF LAW, AND BRIEF IN SUPPORT**

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IN THE SUPREME COURT OF OHIO

|                              |   |                                    |
|------------------------------|---|------------------------------------|
| <b>Disciplinary Counsel,</b> | : | <b>CASE NO. 2013-1622</b>          |
|                              | : |                                    |
| Relator,                     | : |                                    |
|                              | : |                                    |
| vs.                          | : |                                    |
|                              | : |                                    |
| <b>Harland Hanna Hale.</b>   | : | <b>RELATOR’S OBJECTIONS TO THE</b> |
|                              | : | <b>BOARD OF COMMISSIONERS’</b>     |
| Respondent.                  | : | <b>FINDINGS OF FACT AND</b>        |
|                              | : | <b>CONCLUSIONS OF LAW, AND</b>     |
|                              | : | <b>BRIEF IN SUPPORT</b>            |

Now comes relator, Disciplinary Counsel, and submits objections to the Report of the Board of Commissioners on Grievances and Discipline (the “board”) filed with the court on June 9, 2014 and attached hereto as “Appendix A.” As stated more fully herein, relator objects to the board’s recommendation of a six-month suspension from the practice of law and its dismissal of the Prof. Cond. R. 8.4(h) violation.

**PROCEDURAL HISTORY**

On May 1, 2013, the Board of Commissioners on Grievances and Discipline certified a one-count complaint alleging that respondent violated the Code of Judicial Conduct and the Rules of Professional Conduct, based upon his actions in dismissing his lawyer’s speeding ticket, creating a false entry, and engaging in improper ex parte communications in an attempt to conceal his misdeeds. Three weeks later, on May 24, 2013, respondent resigned his position as judge, which he had held since 2003.

In September 2013, the parties submitted a Consent Agreement in which respondent admitted the allegations and agreed to a recommended six-month suspension; however, on November 15, 2013, the Supreme Court of Ohio rejected the agreement and remanded the matter

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, 997 N.E.2d 550 (Table).

On March 4, 2014, the board held a hearing in which respondent was the only witness who testified. Before the hearing, the parties submitted comprehensive stipulations and again recommended a six-month suspension from the practice of law. After the hearing, respondent submitted a “Motion to Correct” a portion of his testimony at the disciplinary hearing, which prompted a response from relator. On June 9, 2014, the board issued its report.

### **FACTS**

The facts have never been in dispute. From 2003, 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. *Report* at ¶ 7. Respondent also had jurisdiction to hear traffic cases and rotated with other Franklin County Municipal Court judges to serve as “duty judge,” where he would handle criminal arraignments, traffic matters, and other routine judicial matters. *Id.* at ¶ 9, 10.

On November 21, 2011, an Ohio State Trooper issued a speeding ticket to Patrick Quinn, a lawyer who was representing respondent in two civil lawsuits. *Id.* at ¶ 11. On or shortly before December 8, 2011, Quinn gave his speeding ticket to respondent and asked if respondent could arrange for Quinn to be arraigned *in absentia* so that Quinn would not have to appear in court. Stipulation No. 5. Respondent took the ticket from Quinn and told him that he would take care of the arraignment. *Id.* at No. 6. Quinn did not appear for arraignment on the speeding ticket; consequently, the magistrate's order was marked with a "Failure to Appear." *Id.* at No. 7.

On or about December 12, 2011, respondent unilaterally approached Sergeant Alice Parks, who was serving as the liaison officer for the OSHP, and asked if she would have any problem with a reduction on Quinn's ticket to a no-point speed. Parks consented to the reduction. *Id.* at No. 8. Later that day, respondent dismissed Quinn's ticket, without any involvement from the prosecutor or Quinn. *Id.* at No. 9. On that same day, respondent falsely filled out the judgment entry form to indicate that the "Prosecutor dismisses: Count 1, Section 4511.21." *Report* at ¶ 21.

Approximately four months later, Chief Prosecutor Lara Baker received a media inquiry regarding respondent's disposition of Quinn's traffic case. Baker was completely unaware of the case, but indicated that she would investigate the matter. *Id.* at ¶ 22. On April 10, 2012, respondent engaged in an ex parte communication by leaving a voicemail message for Baker requesting that Baker sign off on an entry Respondent had prepared regarding Quinn's traffic citation. Respondent engaged in another ex parte communication when he contacted Quinn by e-mail asking him to sign the new judgment entry. *Id.* at ¶ 24. Respondent's entry read:

#### **ENTRY**

This matter came on for reconsideration as to the propriety of the court handling this matter in that the defendant in this minor misdemeanor traffic citation is one of several attorneys with the law firm that is representing the court in unrelated civil litigation that is pending in other courts. At the time the court did not consider the relationship to be a conflict but upon inquiry and with reflection the court has concluded that to avoid the appearance of impropriety the court should not have handled the case.

With the consent of both the Columbus City Prosecutor's office and the defendant the court hereby vacates the December 12, 2011 dismissal of this case.

By agreement of the parties the court re-schedules the matter for arraignment in the Franklin County Municipal Court in Courtroom 1-B on the \_\_\_ day of April, 2012 at 9:00AM. The defendant hereby waives speedy trial time limitations from the date the ticket was issued on November 19, 2011 to the new arraignment date or the first trial date, whichever is later. After this

reconsideration and reinstatement of the traffic citation with the new arraignment date the court hereby recuses himself from this matter.

Judge Harland H. Hale

APPROVED:

Lara N. Baker  
Chief City Prosecutor

/s/  
Patrick M. Quinn  
Defendant

Stip. Ex. No. 4.

Quinn signed the new judgment entry, but Baker refused. *Report* at ¶ 25. Based upon Baker's refusal to sign the new judgment entry, respondent prepared and signed a different entry vacating the December 12, 2011 dismissal entry and further recusing himself from Quinn's case. *Id.* at 26.

After relator filed its formal complaint, respondent resigned from the bench on May 24, 2013.

On direct examination during the disciplinary hearing, respondent testified as follows:

Respondent's lawyer: From the time you left the Bench on May 24, 2013, when was the first legal matter that you accepted as a lawyer?

Respondent: I can't tell you the precise date, Mr. Jonson, but it was late November, early December, when this JEDZ matter surfaced.

*Report* at ¶ 28.

Two months **after** the disciplinary hearing, respondent filed a "Motion to Correct" the aforementioned testimony. Respondent's motion contained an affidavit in which he set forth at least five separate clients that he represented as an attorney in pending legal matters before "late November, early December [2013]." *Id.* at ¶ 29. All five of the aforementioned cases were

pending in the court from which respondent had resigned just one year earlier. *Id.* at ¶ 30. In his affidavit, respondent claimed that he “did not recall any of the above-listed matters” and that someone “brought them to his attention only after the hearing.” *Id.* at ¶ 31. The board found respondent’s testimony to be “false and misleading.” *Report* at ¶ 49.

## OBJECTIONS

### I. RESPONDENT’S FALSE TESTIMONY DURING THE DISCIPLINARY PROCEEDINGS WARRANTS MORE THAN A SIX-MONTH SUSPENSION.

“A judge who misrepresents the truth tarnishes the dignity and the honor of his or her office because truth and honesty lie at the heart of the judicial system, and judges who conduct themselves in an untruthful manner contradict this most basic ideal.” *Disciplinary Counsel v. O’Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286, ¶ 27.

Respondent admits that he engaged in dishonest and deceptive conduct in dismissing his lawyer’s speeding ticket and creating false entries to conceal his actions. And had respondent testified truthfully at the disciplinary hearing, relator would not have objected to the board’s report. But respondent’s false testimony—which only came to light after the hearing—exacerbates the underlying misconduct, casts serious doubt on respondent’s fitness to practice in a profession grounded in truth and integrity, and warrants a more severe sanction.

There is no dispute that—standing alone—respondent’s misconduct warrants a six-month suspension from the practice of law. Respondent and the board concede this fact. But after the hearing, respondent submitted a false affidavit, which led the board to conclude that respondent’s testimony at the hearing was “false and misleading.” Nevertheless, in its report, the board stated:

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 recommended and which the panel believes is well in line with the Court's previous cases related to judicial misconduct of this nature. *Report* at ¶ 49.

In other words, there are no consequences for lying under oath.

In *Disciplinary Counsel v. Cox*, 113 Ohio St.3d 48, 2007-Ohio-979, 862 N.E.2d 514, a judge, among other things, abused his contempt power, then misrepresented the events during the disciplinary investigation. *Id.* at ¶ 28. In rejecting the board's recommendation of a one year suspension from the practice of law, and instead imposing an indefinite suspension, the Court stated, "Moreover, although neither the panel nor the board emphatically denounced respondent's false accounts of the events underlying the Portis contempt citation, we find these untruths intolerable \* \* \* such falsehoods certainly exacerbate the misconduct committed in this case." *Id.* at ¶ 43.

While it's true that in the case at bar, respondent admitted the initial misconduct, he deliberately misled the panel to guard against the imposition of a greater sanction. Then, when confronted with his false testimony—after the record had closed—respondent compounded the problem by submitting a false affidavit. Respondent's actions illustrate a disturbing pattern of deceptive conduct and a complete disregard for the disciplinary system, thus requiring a harsher sanction. "That a lawyer who once served as a member of the judiciary in this state would submit dishonest or misleading information during a disciplinary hearing to cover up his misuse of judicial authority is an affront to our entire legal and disciplinary system." *Id.* at ¶ 44.

Respondent's deception was a calculated, strategic decision aimed at guarding against this Court issuing a sanction of greater than six months. When this Court rejected the parties' Consent Agreement and remanded the matter to the board "for consideration of a more severe

sanction,” respondent was on notice that his misconduct could warrant a suspension of greater than six months. Consequently, at the hearing, respondent made the calculated decision to misrepresent the amount of time he had refrained from practicing law so as to convince the panel—and ultimately this Court—that a six-month suspension, coupled with the time he allegedly refrained from practicing law, equated to a year-long suspension. In fact, during his closing argument, respondent’s counsel argued:

What makes this case difficult is the fact that the six-month suspension that was agreed upon by the parties was initially rejected, and the question is why. \* \* \* So, he’s a person who has paid a significant price both in advocating—I’m sorry, abdicating his judicial post and being absent from the practice of law for between five and six months, and for agreeing to an additional stay.<sup>1</sup>

And so we believe the sanction that was stipulated to was appropriate and remains appropriate. If anything, it may be on the severe side, but he understands it.

He’s accepted it, and we are advocating it to this Hearing Panel. What I don’t think is appropriate is that any more severe of a sanction be imposed. Tr. p. 68, 70.

Clearly, respondent was hoping no one would question his testimony that he refrained from practicing law between May 24 and November 2013. Had the matter not been “brought to his attention,” respondent’s deception would have worked its way through the disciplinary system undetected. The fact that a former judge would testify falsely under oath in a disciplinary hearing in order to insulate himself from a harsher sanction is proof that respondent is unfit to practice law.

Respondent’s latest deception is part of a pattern. His behavior during and after the disciplinary hearing is strikingly similar to the misconduct that led to this disciplinary action. Respondent unilaterally dismissed his lawyer’s speeding ticket, and then created a false journal entry to conceal his actions. When the prosecutor questioned the dismissal, respondent created a

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<sup>1</sup> Upon information and belief, respondent’s counsel meant to say “suspension” rather than “stay.”

second false entry; however, the prosecutor refused to sign it. At the disciplinary hearing, respondent testified falsely about his alleged abstention from the practice of law. When the matter was “brought to his attention”, respondent opted to execute a false affidavit stating he forgot about the first five cases he handled as a lawyer—after having been on the bench for the preceding ten years. Although the board soundly rejected respondent’s assertions and characterized his testimony as “false and misleading,” it minimized its impact by imposing the same sanction had respondent testified truthfully. If this Court were to adopt the board’s recommended sanction, lawyers would not be deterred from testifying falsely in their own disciplinary hearings. In order to maintain the integrity of the judiciary and the disciplinary process, there must be consequences to lying under oath.

Before the hearing, the parties jointly recommended a six-month suspension from the practice of law. But that recommendation was based upon the reasonable assumption that respondent would testify truthfully at the disciplinary hearing. In fact, before the hearing, relator stipulated to several mitigating factors, including that respondent had “made full and free disclosure of his actions and displayed a cooperative attitude” in the disciplinary proceedings. But when respondent opted to deceive the panel, he forfeited the benefit of a jointly recommended sanction and turned that mitigating factor into an aggravating factor. It’s inconceivable that a former judge could testify falsely, then compound his misconduct by submitting a false affidavit, and still walk away with the same sanction. This Court must correct the board’s finding and impose a greater sanction. To do otherwise would undermine the disciplinary process and tarnish the integrity of the judiciary.

This Court was concerned with the severity of the sanction based solely upon the egregious nature of the alleged misconduct. Respondent now presents before this Court having

compounded his misconduct by testifying falsely under oath; consequently, his actions warrant a harsher sanction.

## **II. RESPONDENT'S MISCONDUCT VIOLATED PROF. COND. R. 8.4(h)**

Before the disciplinary hearing, the parties entered into the following stipulation regarding the Prof. Cond. R. 8.4(h) violation:

In light of the Court's decision in *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, the parties agree that the Prof. Cond. R. 8.4(h) violation is warranted based upon the fact that the misconduct occurred while respondent was a judge and that his actions severely undermined the integrity and independence of the judiciary. Stip. p. 5, fn. 1.

The panel adopted the stipulations and found that respondent's misconduct adversely reflected on his fitness to practice law in violation of Prof. Cond. R. 8.4(h); however, the board dismissed the Prof. Cond. R. 8.4(h) violation, citing *Bricker*, and stating that respondent's conduct "was not so egregious as to warrant an additional finding of a violation of that rule." *Report* at p. 10.

In *Bricker*, this Court held:

In order to find a violation of Prof. Cond. R. 8.4(h), there must be clear and convincing evidence that the lawyer has engaged in misconduct that adversely reflects on the lawyer's fitness to practice law, even though that conduct is not specifically prohibited by the rules, or there must be proof that the conduct giving rise to a specific rule violation is so egregious as to warrant an additional finding that it adversely reflects on the lawyer's fitness to practice law.

*Bricker*, at ¶ 22.

It's difficult to imagine a case more worthy of a Prof. Cond. R. 8.4(h) violation. While enmeshed in a civil lawsuit, respondent's personal attorney, Patrick Quinn, was issued a speeding ticket by an Ohio State Patrolman. First, respondent engaged in several ex parte communications in an effort to dispose of Quinn's ticket without the prosecutor's involvement. Then, respondent unilaterally dismissed the ticket by creating a false journal entry. But for a

reporter's curiosity, respondent's conduct would likely have gone undetected. When the media got wind of the dismissal, respondent engaged in additional improper ex parte communications and created a second false entry to cover his tracks. But when the prosecutor refused to go along with respondent's ruse, he vacated the original dismissal, set the matter for hearing, and recused himself from the case. Without question, respondent's conduct was so egregious that it warrants a finding that his actions adversely reflected on his fitness to practice law.

The *Bricker* Court noted several cases in which lawyers stipulated to a Prof. Cond. R. 8.4(h) violation but where the "egregious nature of their misconduct also warranted the additional finding that they had engaged in conduct that adversely reflected on their fitness to practice law." *Id.* at ¶ 23. Two of those cases, *Disciplinary Counsel v. LaRue*, 122 Ohio St.3d 445, 2009-Ohio-3604, 912 N.E.2d 101, and *Disciplinary Counsel v. Murraine*, 130 Ohio St.3d 397, 2011-Ohio-5795, 958 N.E.2d 942, involved lawyers who "actively deposited earned fees into their client trust accounts." *Bricker*, at ¶ 23. The misconduct in *LaRue* and *Murraine* pale in comparison to respondent's blatant abuse of power, deceit, and misrepresentation. Unlike the lawyers in *LaRue* and *Murraine*, respondent used deceit to prejudice the administration of justice and undermine the public's confidence in the integrity and impartiality of the judiciary. By respondent's own admission, his ticket-fixing and subsequent cover-up was sufficiently egregious to warrant a finding that his misconduct adversely reflected on his fitness to practice law.

Post *Bricker*, this Court found a Prof. Cond. R. 8.4(h) violation in a case where a lawyer deposited personal funds into his trust account, then used the funds to pay personal expenses. *Disciplinary Counsel v. Turner*, Slip Opinion No. 2014 -Ohio- 3158, ¶ 8. In another case, the Court found an 8.4(h) violation after finding that a lawyer, with her client's permission, signed

her client's name to five affidavits, and then improperly notarized the signatures, resulting in a public reprimand. *Disciplinary Counsel v. Flowers*, 139, Ohio St.3d 338, 2014 Ohio 2123, 11 N.E.2d 1174, ¶ 1, 3. Clearly, respondent's misconduct dwarfs the misconduct in *Turner* and *Flowers*.

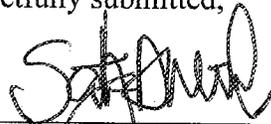
In the case at bar, respondent engaged in improper ex parte communications in order to dispose of his lawyer's ticket, created a false entry dismissing the ticket, then engaged in deceptive conduct aimed at concealing his misdeeds. Under *Bricker*, respondent's misconduct was particularly egregious to warrant a Prof. Cond. R. 8.4(h) violation.

### CONCLUSION

“A lawyer who engages in a material misrepresentation to a court \* \* \* violates, at a minimum, the lawyer's oath of office that he or she will not ‘knowingly \* \* \* employ or countenance any \* \* \* deception, falsehood, or fraud.’” *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909, 965 N.E.2d 971, ¶ 68, citing *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 190, 658 N.E.2d 237 (1995), quoting former Gov.Bar R. I(8)(A). “Such conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer.” *Id.*

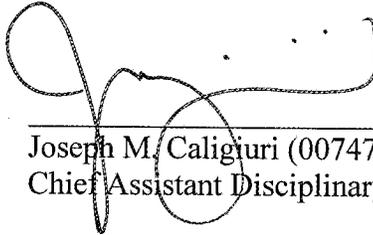
Respondent's dishonest conduct on the bench and during the disciplinary process warrants a sharp rebuke from this Court. Increasing the sanction beyond six months would send a clear message to lawyers that false testimony will not be tolerated and, at the same time, protect the public from lawyers who exhibit a propensity to lie.

Respectfully submitted,



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Scott J. Dréxel (0091467)  
Disciplinary Counsel



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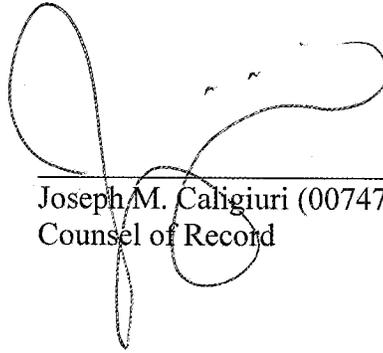
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Relator's Objections to the Board of Commissioners' Report and Recommendation has been served upon via ordinary U.S. mail and e-mail transmission upon, George D. Jonson, Montgomery, Rennie & Jonson, 36 East Seventh Street, Suite 2100, Cincinnati, Ohio 45202 ([gjonson@mrjlaw.com](mailto:gjonson@mrjlaw.com)), and hand delivered to Richard Dove, Secretary, Board of Commissioners on Grievances and Discipline, Supreme Court of Ohio, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215, this 4<sup>th</sup> day of August, 2014.



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Joseph M. Caligiuri (0074786)  
Counsel of Record

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

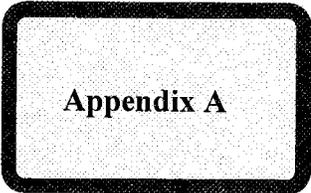
|   |   |   |
|---|---|---|
| In re:  | : |   |
| Complaint against                               | : | Case No. 2013-032   |
| Harland Hanna Hale<br>Attorney Reg. No. 0023464 | : | Findings of Fact,<br>Conclusions of Law, and              |
| Respondent                                      | : | Recommendation of the<br>Board of Commissioners on        |
| Disciplinary Counsel                            | : | Grievances and Discipline of<br>the Supreme Court of Ohio |
| Relator   | : |   |
|   | : |   |

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.

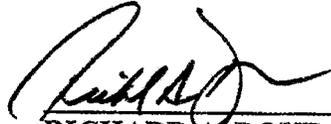
{¶50} The panel, based upon the cases, and the evidence presented in this matter, believes that the parties' recommended sanction is appropriate and in full accord with the Court's decisions considering Respondent's public position of trust.

{¶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**