

ORIGINAL

IN THE SUPREME COURT OF OHIO

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| Disciplinary Counsel | : | Case No. 2013-1622 |
| | : | |
| Relator | : | |
| | : | |
| vs. | : | |
| | : | |
| Harland Hanna Hale | : | |
| | : | |
| Respondent | : | |

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

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**RESPONDENT’S RESPONSE TO RELATOR’S OBJECTIONS TO THE BOARD
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AND BRIEF IN SUPPORT**

Relator objects to the Report of Board of Commissioners on Grievances and Discipline, filed June 9, 2014, on two grounds: the recommendation of a six-month suspension and the dismissal of the Rule 8.4(h) violation. Respondent disputes Relator’s first argument and submits a six-month suspension is in line with case precedent. As to the second argument, Respondent stipulated to a Rule 8.4(h) violation below and therefore takes no position in response to Relator’s argument.

I. A six-month suspension is appropriate in this case. Respondent’s misstatement at the hearing does not compel a higher sanction.

Relator’s objection is based on one misstatement: When asked when, following his voluntary retirement from the bench in May 2013, he first accepted a legal matter as a lawyer, he answered it was late November or early December, 2013. After the hearing, it was brought to Respondent’s attention that there were 5 matters in which he was briefly involved before late November 2013, and he immediately moved to correct his testimony. As he explained in his motion to correct and supporting affidavit, his involvement in the each of the five matters was brief and, to the best of his knowledge,

he was not compensated for his work. He believed he was testifying truthfully at the hearing and immediately undertook corrective action when he realized the error in his testimony. Respondent asked the panel to accept his affidavit and make it part of the record. The Panel and the Board did so and, although the Board found that his testimony at the hearing was “false and misleading,” it ultimately determined that this one misstatement did not warrant an increased sanction. The Board concluded a six-month suspension was in line with case precedent.

Relator objects to this conclusion, arguing that an increased sanction is appropriate based solely on Respondent’s answer to the above question at the hearing. In its argument, Relator suggests it was a “calculated decision to misrepresent the amount of time [Respondent] refrained from practicing law.” But this argument is unreasoned. There is no objective basis to believe Respondent made an intentional misrepresentation at the hearing. Respondent is a public figure. His civil and disciplinary cases have received wide media attention. Given the scrutiny to which Respondent has been subjected, he would have expected his testimony at the hearing to be reported. And it could be expected that the misrepresentation of a fact as obvious as whether he had practiced law since he stepped off the bench would be discovered. His involvement in pending cases is and was a matter of public record; his involvement in such cases is easily verifiable. Respondent was forthcoming about his misdeeds prior to and during the hearing, and he stipulated to his misconduct. There is no reason to believe he would put all of that in jeopardy by making an intentional misstatement—especially as he pointed out his own error and corrected it before the Panel reached its decision.

However, even operating under the Board's conclusion that his testimony was "false and misleading," the Board correctly concluded that, in light of the applicable case law, Respondent's misconduct should not result in a more severe punishment than the six-month suspension consented to and recommended. This case involved a single incident of "ticket-fixing." Putting this case in line with other comparable cases, a six-month suspension is appropriate. In *Disciplinary Counsel v. Smakula*, 39 Ohio St.3d 143 (1998), the respondent received a one-year suspension after being indicted for his participation in a protracted ticket-fixing scheme. At the other end of the spectrum, in *Disciplinary Counsel v. Elum*, 133 Ohio St.3d 500, 2012-Ohio-4700 and *Disciplinary Counsel v. McCormack*, 133 Ohio St.3d 192, 2012-Ohio-4309, the respondents received fully stayed suspensions in matters involving either a pattern of misconduct or multiple incidents. Falling between the above cases is *Disciplinary Counsel v. Plough*, 126 Ohio St.3d 167, 2010-Ohio-3298, in which the respondent judge received a six-month suspension following a finding of numerous violations.

Here, Respondent's conduct did not involve an ongoing pattern of misconduct or multiple incidents—it was one incident, and there were many mitigating factors involved.¹ Thus, even considering Respondent's misstatement at the hearing as an aggravating factor, the Board correctly concluded a six-month suspension was appropriate.

Relator does not counter any of the above cases or attempt to explain where this case falls in the continuum of comparable cases, instead arguing under *Disciplinary*

¹ Respondent has no prior disciplinary record; Respondent made full and free disclosure of his actions herein and displayed a cooperative attitude in the 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 acknowledged his actions were not appropriate and resigned from his position as judge of the Franklin County Municipal Court effective May 24, 2013. (Report, ¶ 35.)

Counsel v. Cox, 113 Ohio St.3d 48, 2007-Ohio-979; 862 N.E.2d 514, that Respondent's misstatements at the hearing should result in a greater sanction. *Cox* does not support this conclusion. In *Cox*, the respondent judge: (1) abused his contempt power by improperly threatening, insulting, restraining, and fining a man who accompanied his nephew to the defendant's court room, (2) pled guilty to attempted possession of cocaine, and, (3) while acting as a plaintiff's attorney, accused a defense attorney of lying and publicly taunted a second attorney with profanities and racial slurs. In his response to the charges against him, the judge lied about what had happened in his courtroom that led to his abuse of his power of contempt. *Id.* During the investigation, he also told the relator that the man had not been fined when in fact the man had paid a total of \$569 to the court due purely to the judge's abuse of his contempt power. *Id.* at ¶ 27-29. This Court concluded that the respondent submitted "dishonest or misleading information during a disciplinary investigation to cover up his misuse of judicial authority," which exacerbated his misconduct. *Id.* at ¶ 43-44.

In *Cox*, the respondent's statements were an attempt to avoid prosecution and responsibility as to the entirety of his misconduct. Similarly, in *Disciplinary Counsel v. Parker*, 116 Ohio St.3d 64, 2007-Ohio-5635, 876 N.E.2d 556, at ¶87, this Court found it to be an aggravating factor that the respondent judge "impeded the investigation and fact-finding process by providing numerous inconsistent and untrue accounts of the underlying events." The respondent further "contradicted and contested his own factual stipulations while testifying." *Id.* at ¶95. As in *Cox*, this Court focused on the fact that respondent Parker offered false and deceptive statements in an effort to "justify his misconduct." *Id.* at ¶119.

This case is distinguishable. Judge Hale made one misstatement while testifying on the stand and then moved to correct that statement following the hearing. His statements were not intended to detract from or excuse his misconduct. He has taken full responsibility for his misconduct, even going so far as to resign his judicial position of ten years. A six-month suspension is appropriate.

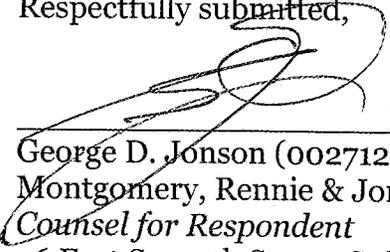
II. Respondent takes no position on Relator's second argument related to the Rule 8.4(h) violation.

Respondent previously stipulated that his conduct in this case amounted to a Rule 8.4(h) violation; therefore, he takes no position in response to Relator's second argument related to this charge.

Conclusion

For the reasons cited herein, Respondent respectfully requests this Court overrule Relator's objections, accept the Board's recommendation and impose a six-month suspension.

Respectfully submitted,

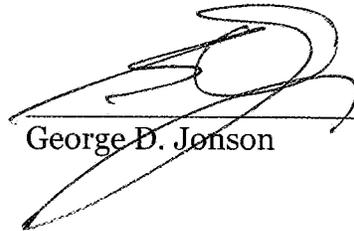


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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by First-Class U.S. Mail, postage prepaid, and E-mail upon the following on this 28th day of August, 2014:

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