Supreme Court of Ohio Clerk of Court - Filed January 20, 2015 - Case No. 2014-1905

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL,	:	CASE NO.: 14-1905
	:	
Relator,	:	Matter Related to the Practice of
	:	Law Authorized by S. Ct. Prac. R.
-vs-	:	Section 13
	:	
ANGELA ROCHELLE STOKES,	:	
	:	
Respondent.	:	
	:	

RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF SUSPENSION UNDER GOV. BAR. R. V(5a)(C)(1)

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	:	DISSOLUTION OR MODIFICATION
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	:	UNDER GOV. BAR. R. V(5a)(C)(1)
	:	

Now comes Respondent ANGELA ROCHELLE STOKES, by and through undersigned counsel, and pursuant to Rule V (5a)(C)(1) of the Supreme Court Rules for the Government of the Bar of Ohio hereby moves this Honorable Court for an Order dissolving or modifying the order of suspension imposed herein on December 18, 2014 for the reason that Respondent Angela Rochelle Stokes no longer poses, and never did pose, a substantial threat of serious harm to the public for the reasons and evidence set forth in the Memorandum in Support, attached hereto and incorporated herein by reference, and for the available evidence filed herewith.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Introduction:

On November 4, 2014, Relator Disciplinary Counsel filed *Relator's Motion for Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a)* in which Relator alleged that Respondent Angela Rochelle Stokes had engaged in conduct that violates the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Ohio Code of Judicial Conduct and that said alleged misconduct "has caused serious public harm and poses a substantial additional and continuing threat of serious harm to the public and the administration of justice".

On November 12, 2014 Respondent filed *Motion to Permit Response to Relator's Motion for an Immediate Interim Remedial Suspension Under Gov. Bar. R. V(5a).* Said motion was granted and, on November 13, 2014, this Honorable Court issued an Order extending Respondent's time within which to file a response to Relator's Motion to November 24, 2014.

On November 24, 2014 Respondent filed her *Memorandum in Response to Motion for an Immediate Interim Remedial Suspension Under Gov. Bar. R. V(5)(a).* Thereafter, on December 1, 2014, Respondent filed an affidavit, along with numerous exhibits.

On December 18, 2014, this Court issued an Order in which this Court held, in relevant part, that "an interim remedial suspension is immediately entered against Angela Rochelle Stokes" "pending final disposition of the disciplinary proceedings predicated on the conduct threatening the serious harm".

Rule V(5a) of the Supreme Court Rules for the Government of the Bar of Ohio, entitled "Interim Remedial Suspension", provides, in relevant part:

> (C)(1) Motion for Dissolution or Modification of the Suspension.
> The respondent may request dissolution or modification of the order of suspension by filing a motion with the Supreme Court. The motion shall be filed within thirty days of entry of the order imposing the suspension, unless the respondent first obtains leave of the Supreme Court to file a motion beyond that time. The motion shall include a statement and all available evidence as to why the respondent no longer poses a substantial threat of serious harm to the public. A copy of the motion shall be served by the respondent on the relator. The relator shall have ten days from the date the motion is filed to file a response to the motion. The Supreme Court promptly shall review the motion after a response has been filed or after the time for filing a response has passed.

Respondent now moves this Court, pursuant to Rule V(5a)(C)(1) of the Supreme Court Rules for the Government of the Bar of Ohio for an Order dissolving or modifying the Order of suspension dated December 18, 2014 in the within matter. Respondent asserts and states that Respondent no longer poses, and never did pose, a substantial threat of serious harm to the public for the reasons and evidence more fully set forth below and based on the evidence filed herewith.

1. THIS COURT SHOULD DISSOLVE OR MODIFY THE ORDER OF SUSPENSION AS RESPONDENT NO LONGER POSES, AND NEVER DID POSE, A SUBSTANTIAL THREAT OF SERIOUS HARM TO THE PUBLIC BECAUSE RESPONDENT NEVER POSED SUCH A THREAT.

In *Relator's Motion for Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a),* Relator asserted that that "Respondent has engaged in conduct that violates the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct, and the Ohio Code of Judicial Conduct" and that such alleged "misconduct has caused serious public harm and poses a substantial additional and continuing threat of serious harm to the public and the administration of justice."

In support of Relator's assertion, Relator alleged the following categories of alleged misconduct (See, *Relator's Motion for Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a),* Section I (Summary of Misconduct):

> **a. Complaints to the Court**: In which Relator argued that complaints communicated to "court officials" "include mistreatment of participants in criminal hearings, including defendants, witnesses, police officers, prosecutors, private defense counsel, public defenders, court personnel, and other members of the general public". In support of this assertion, Relator cited to the Affidavit of Judge Ronald Adrine, paragraph 8;
>
> **b. Complaints to the Public Defender:** In which Relator argued that the Cuyahoga County Public Defender "has also received many complaints regarding respondent" and that "[t]he majority of those complaints focused on long hours spent in respondent's courtroom due to the mismanagement of her docket; repeated continuances; and rude and demeaning treatment of attorneys when they tried to place an objection on the record or discouraged their clients from accepting a plea offered by the prosecutor". In support of this assertion, Relator cited to the Affidavit of Robert L. Tobik, paragraph 7;
>
> **c. Specific Examples of Misconduct:** In which Relator argued that certain "examples" of Judge Stokes' conduct, as well as additional examples found in the First Amended Complaint, established misconduct "that follow the general pattern of conduct alleged in the complaint, i.e., rude and demeaning conduct, abuse of court resources, etc."

As will be established herein, the evidence and exhibits filed herewith establish that Judge Stokes no longer poses a substantial threat of serious harm to the public because, in fact, Judge Stokes never posed such a threat. The evidence establishes that, contrary to the assertions of Relator, Judge Stokes is an uncommonly conscientious judge that spends considerable time and effort to ensure that the constitutional rights of defendants are protected, taking into account the rights of victims, as well as maintaining the goal of protecting the public. As will be seen herein, rather than quickly "processing" defendants before her by simply imposing fines to clear cases off of her docket, Judge Stokes spends considerable

time with defendants to ensure that their constitutional rights are protected and/or to determine whether defendants could benefit from mental health or social services through the Court's probation department. The time and care that Judge Stokes takes with the defendants before her allegedly resulted in her daily docket moving slower than other Cleveland Municipal Court judge dockets. The resultant slower moving docket, additional use of "human and material resources", and additional requests for "mental health evaluations", have clearly led to the filing of the within matter.

However, as will be seen time and again by a more thorough examination of many of the alleged "Specific Examples of Misconduct" cited by Relator in its *Motion for Immediate Interim Remedial Suspension* and in Relator's First Amended Complaint, Judge Stokes is an uncommonly conscientious judge that, time and again, seeks to ensure that defendants are represented by legal counsel and seeks to craft appropriate sentences in an effort to change the behavior of the defendants that led to them being charged with crimes.

Many of the so-called "Specific Examples of Misconduct" that Relator asserted in support of the Order granting an interim suspension were nothing more than abbreviated conclusory statements (without supporting documentation) that, taken out of context, completely misconstrued what actually occurred during the court proceedings.

In thoroughly reviewing these alleged "Specific Examples", it is important to remember that Judge Stokes must comply with statutory enactments that relate to misdemeanor sentencing.

R.C. 2929.21, entitled "Purposes of misdemeanor sentencing", states, in relevant part:

> (A) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. *The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender*. *To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender*, and making restitution to the victim of the offense, the public, or the victim and the public.
>
> (B) *A sentence imposed for a misdemeanor* or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section *shall be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim*, and consistent with sentences imposed for similar offenses committed by similar offenders.

As will be seen below, Judge Stokes spends considerable time with defendants before her to comply with R.C. 2929.21 by determining the best way to protect the public from future crime and to change the behavior and/or rehabilitate the defendant. Again, rather than simply and quickly disposing of the cases on her docket, Judge Stokes spends considerable time with each defendant to attempt to determine the best way to sentence a defendant to protect the public from future crimes of the defendant and to change the behavior of the defendant. These factors are the overriding purposes of misdemeanor sentencing. However, rather than the imposition of thoughtful sentences, it appears that the Administrative and Presiding Judges, Larry A. Jones and Ronald B. Adrine, have been and are more concerned with

processing cases quickly and not using court resources when such resources are warranted.

A. A REVIEW OF RELATOR'S LISTED "SPECIFIC EXAMPLES OF MISCONDUCT" ESTABLISHES THAT RESPONDENT HAS NOT ENGAGED IN ANY MISCONDUCT AND, ACCORDINGLY, HAS NEVER POSED A SUBSTANTIAL THREAT OF SERIOUS HARM TO THE PUBLIC

In *Relator's Motion for Immediate Interim Remedial Suspension,* Relator asserts that Respondent poses a substantial additional and continuing threat of serious harm to the public and the administration of justice. In support of Relator's assertion, Relator relies, primarily, on Affidavits attested to by Judge Ronald Bruce Adrine and Public Defender Robert L. Tobik. These affidavits include numerous allegations of allegedly rude and demeaning treatment of others by Respondent and misuse of material resources. In an effort to support its contention, from these affidavits, Relator sets forth certain "Specific Examples of Misconduct". See, *Relator's Motion for an Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a)*, Section 2, pg. 4. This section specifically cites nineteen (19) "Specific Examples of Misconduct". By their specific inclusion in Relator's motion, it can be assumed that these "examples" represent Relator's strongest argument that Respondent Judge Stokes' conduct "has caused serious public harm and poses a substantial additional and continuing threat of serious harm to the public and the administration of justice". However, ironically, a thorough review of each of these "Specific Examples" establishes that not only does Judge Stokes NOT pose an immediate threat of serious harm to the public and the administration of justice, Judge Stokes NEVER posed such a threat. These "Specific Examples" establish that Judge Stokes is an exemplary

judge who is concerned with protecting the public and rehabilitating defendants, while also staying within court budgetary restraints.

One such "Specific Example" cited by Relator perhaps best exemplifies how Relator has misconstrued what actually occurred in Court and how Judge Ronald Adrine's interpretation of Judge Stokes' sentences has led to the filing of this action:

1. Relator's assertion:

> **- Respondent required one defendant to appear in her courtroom on 19 separate occasions during his three years of probation after a second DUI conviction during his lifetime. Ex. 2, Adrine Aff., ¶30a.**

This "Specific Example" refers to the case of *City of Cleveland v. Frederick Philhower, Cleveland Municipal Court Case No. 2012 TRC 30161*.

This is established by a review of Judge Ronald Adrine's Affidavit, which is specifically cited by Relator in support of this assertion. In Paragraph 30 of Judge Adrine's Affidavit, Judge Adrine asserted under oath:

> 30. Upon reviewing the cases reassigned from Judge Stokes' docket to my own, I obtained a much more expansive understanding of the impact her action had on those who were required to participate in her irregular processes. I offer the following small sample, gleaned from the cases reviewed, to provide some flavor of the variety of issues confronted:
>
> * * *
>
> a. Frederick Philhower, case #2012TRC30161, appeared before Judge Stokes charged with DUI. It was his second offense in a lifetime. During his 3-year probationary period, he was required to appear in court on 19 separate occasions.

WHAT REALLY HAPPENED IN THE FREDERICK PHILHOWER CASE:

On May 15, 2012, Frederick J. Philhower was charged with the following offenses:

1. Operating a Vehicle Under the Influence (OVI), in violation of Section 433.01(a)(1) of the Cleveland Codified Ordinances;

2. Operating a Vehicle With a Prohibited BAC (OVI-BAC), in violation of Section 433.01(a)(4) of the Cleveland Codified Ordinances;

3. Speeding (+99 miles per hour), in violation of Section 433.03 of the Cleveland Codified Ordinances;

4. Operation in Willful and Wanton Disregard of Safety (Reckless Operation), in violation of Section 433.02 of the Cleveland Codified Ordinances;

5. Assured Clear Distance Ahead, in violation of Section 433.03 of the Cleveland Codified Ordinances; and

6. Failure to Control, in violation of Section 431.34(a) of the Cleveland Codified Ordinances.

Mr. Philhower's case was scheduled for arraignment on May 17, 2012. On that date, Mr. Philhower entered a plea of Not Guilty as to all charges. His case was assigned to the docket of Judge Stokes. A pretrial was scheduled for June 19, 2012 at 8:30 a.m.

On or about May 30, 2012, Mr. Philhower, by and through his attorney, Jaime Serrat, filed a Motion for Driving Privileges, requesting driving privileges, as an immediate Administrative License Suspension was imposed on May 15, 2012.

Despite the previously scheduled June 19, 2012 pretrial, Mr. Philhower's case was placed on the docket of Judge Stokes on June 6, 2012 as an "add on", based on a motion filed by Mr. Serrat to advance the case for a pretrial on June 12, 2012. The case was then scheduled for pretrial on June 12, 2012, as requested by Mr. Serrat.

On June 12, 2012, Mr. Philhower, with counsel Mr. Serrat, appeared before Judge Stokes for purposes of a pretrial. At that time, the prosecutor informed Judge Stokes that it was his understanding that Mr. Philhower was going to enter a plea of

guilty to "count one", OVI, and a no contest to "count four", "reckless operation". The City intended to move to nolle and dismiss the remaining counts at the time of said plea. The prosecutor represented to Judge Stokes that this was Mr. Philhower's first lifetime alcohol related offense. Mr. Serrat confirmed that this was a correct representation:

MR. CUDNIK: . . . This will be his first lifetime alcohol-related offense.

THE COURT: Okay. Is that correct, counsel?

MR. SERRAT: That is correct, your Honor. We're ready to proceed.

(Exhibit A-Philhower 6-12-12 TR, pg. 2).

Thereafter, Mr. Philhower did enter a plea of guilty to OVI and a plea of no contest to reckless operation. During this plea hearing, a discussion occurred regarding the fact that Mr. Philhower had been charged with speeding of "99" miles per hour and that there was an accident involving another vehicle. In relevant part the following occurred:

THE COURT: Okay. Do you have the accident report?

MR. CUDNIK: I do, Judge. I was able to pull it. If the Court recalls, we kind of accelerated this case, but I was able to get the report. I wasn't able to - - I got it yesterday, so as far as hearing from anybody, I wasn't able to contact anyone.

THE COURT: That's okay.

MR. SERRAT: May I address the Court? I'm sorry.

MR. CUDNIK: I will note that one person has a listed Pennsylvania address with no phone number, and there's another car involved also.

THE COURT: So there was one additional car involved here; is that correct?

MR. CUDNIK: You know what, Judge, I'm not - -

THE COURT: Positive.

MR. CUDNIK: I didn't even really look at is until this morning.

* * *

MR. SERRAT: I do, Judge.

I've spoken with the individual from Pennsylvania. It's property damage only. He was fully insured. He's accepted his responsibility from the very beginning, Judge. He was incarcerated for two days initially. On his own, he's taking the initiative this weekend, Judge, he's already paid for the DIP Program. I have a certificate with me if the Court wants to see it. This case was scheduled for next week, we moved it till today. I was here last week to see if I could obtain driving privileges. So, on his own, Judge, he knows how serious this was. He's - - he's - - he was sober, I want to say for almost 8, 9 years. He just - - this was a slip.

THE COURT: I'm listening, counsel.

PRIVATE ATTORNEY: He's back on track, Judge. If the Court wants to see it, I can show you the certificate that indicates again full payment of the course. It's for this weekend. And I would ask the Court to consider if you could sentence him today with the - -

THE COURT: Well, this Court never sentences on a DUI until the Court has all the information.

* * *

THE COURT: Okay. And then, this matter - - I will refer, if it's acceptable - - refer Mr. Philhower's case to Probation so that they can prepare a presentencing investigative report, verify the attendance at the alternative to jail program. They'll also contact any named victims, so they can have their input at the time of sentencing. Okay. And then we can come up with a date for sentencing. Also I'd like you to submit to a urinalysis test today, sir. There was a fee of $9. You have to pay that in the Probation Department if you're able to do that. And then, when Prosecutor Cudnik comments (sic) back, we can find the best date for sentencing.

* * *

MR. SERRAT: Would the Court entertain driving privileges, your Honor?

THE COURT: Not prior to the Presentencing Investigative Report.

(Exhibit A -Philhower 6-12-12 TR, pp. 12-15).

Thereafter, during further discussion regarding the probation department contacting the victim, Mr. Cudnik informed the Court that there were *three* vehicles involved, including Mr. Philhower's vehicle:

> MR. CUDNIK: What happened was, there was - - due to the impact from the defendant's vehicle with car number two, which is the Pennsylvania gentleman, debris from car number two looks like hit another car. There was, like - - it was parked. No, it wasn't park. It was all on the road. So - -

(Exhibit A -Philhower 6-12-12 TR, pg. 16).

Ultimately, sentencing was scheduled for June 26, 2012, as Judge Stokes believed that that was the earliest date by which the probation department could prepare a presentence investigation report (Exhibit A -Philhower 6-12-12 TR, pg. 18).

On June 26, 2012 Mr. Philhower appeared before Judge Stokes with counsel Jaime Serrat for purposes of sentencing. On that date, Judge Stokes stated that the Presentence Investigative Report stated that there were two vehicles, other than Mr. Philhower's vehicle, involved and that the presentencing officer spoke to one victim, a Ronnie Brolich of Yourga Trucking and that Mr. Brolich had indicated that $8,636.77 worth of damage was done to that vehicle and that their insurance company paid for the damage, less a $5,000.00 deductible, and that they were going after Mr. Philhower's insurance company to be reimbursed (Exhibit A-1 -Philhower 6-26-12 TR, pp. 2-3). Judge Stokes stated that the second victim, Kenneth Miller, also had damage done to his vehicle by debris from the accident, and that Mr. Miller had not had his car repaired yet (Exhibit A-1 Philhower 6-26-12 TR, pg. 3). During this

hearing, a conversation occurred discussing whether Mr. Miller had been subpoenaed to appear in Court. The subpoena indicated that "there was a bad address" for Mr. Miller. Judge Stokes addressed the need for input from the victims:

> THE COURT: I think we need to get in touch with that person because they have a right to have their voice heard in this courtroom. I see a subpoena, also for - -
>
> MR. CUDNIK: Mr. Rubles [the driver of the Yourga Trucking truck].
>
> THE COURT: Right, but, it says out of the county. And we, pretty much, know that the insurance carriers are going to resolve that matter.
>
> (Exhibit A-1 Philhower 6-26-12 TR, pp. 6).

Thereafter, Mr. Cudnik was to attempt to contact Mr. Miller to attempt to find out some information regarding damage to his vehicle. Mr. Miller was reached by phone and participated by telephone (Exhibit A-1 Philhower 6-26-12 TR, pp. 7-8). In relevant part, the following occurred:

> THE COURT: . . . But, anyway, since the matter is, the defendant wants to go forward with sentencing today, what are you planning to do about the restitution?
>
> Are you looking for restitution on this case or something that you would like to pursue, civilly, with the insurance companies, we're not certain.
> THE WITNESS: Civilly, with the insurance company, as long as the insurance company takes care of the damage on the truck, I don't have a problem. I wasn't hurt at all in the accident, that part I'm not that worried about.
>
> It's basically, it's a 2000 vehicle and it's pretty much a very, in excellent condition for the year and make that it is. So, I mean, to have that side fixed one month and then within a month and-a-half, two months, whatever it was, it happened, again. I mean, I would just like to have the paint and stuff fixed up, and the dents in the door fixed.
>
> THE COURT: I understand, according to Attorney Serrat, that Mr. Philhower's insurance company has been in touch with you, correct?
>
> THE WITNESS: Yes.

THE COURT: Okay. So are you waiting, do you want to wait until that matter has been resolved before we determine if you want to pursue restitution on this case?

THE WITNESS: Yeah, that will be, yeah, that will be fine because - -

* * *

THE COURT: Okay. Well, because if things don't work out the way that you want, with respect to the insurance company, then you could pursue restitution on this case, if you so chose.

THE WITNESS: Okay.

THE COURT: We really need to know, that at the time of sentencing, if need be, this matter needs to be continued for 30 days, you will have to be diligent about contacting or getting the estimate.

MR. CUDNIK: Yes.

THE COURT: We will need you to do that and, maybe, the defendant wouldn't mind passing for sentencing for another 30 days or so, I'm not sure.

* * *

THE COURT: Prosecutor Cudnick, would it be better for me to pass? I'm going to have to pass for sentencing, I'm so sorry.

MR. SERRAT: I understand.

* * *

THE COURT: Do you want to pass for sentencing so you could resolve the restitution issues and then if you did get them resolved, you don't have to be present on the sentencing day?

THE WITNESS: Yeah, if I could get everything resolved and I don't have to be there, that would be a better thing for me.

THE COURT: If not, then you will need to be present to file the green restitution form to present that documentation to the Clerk of Courts and give that information to the prosecutor; do you understand?

(Exhibit A-1 Philhower 6-26-12 TR, pp. 9-16).

Thereafter, Judge Stokes scheduled the case for sentencing on July 24, 2012. Mr. Serrat then requested the Court to impose sentence and schedule the case for a review hearing in thirty days:

> MR. SERRAT: Because of driving privileges and things like that, could you sentence today and have a review in 30 days, and see if the matter would have to be taken care of?
>
> THE COURT: I think I would rather he wait. I'm just now seeing the full sentencing report which means - -
>
> * * *
>
> THE COURT: The assessment indicates alcohol dependency and cocaine dependency. If I grant driving privileges, I mean, there are two victims here. I will, probably, be imposing an alcohol monitoring device and interlock device. I would rather wait until the victims gets this all settled.
>
> (Exhibit A-1 Philhower 6-26-12 TR, pp. 17-18).

On July 24, 2012 Mr. Philhower appeared before Judge Stokes for purposes of sentencing, again represented by attorney Jaime Serrat. During this hearing, although Judge Stokes had been told at the time of the change of plea hearing that this was Mr. Philhower's "first lifetime alcohol-related offense", it was determined through the presentence investigation report that Mr. Philhower had previously been convicted of DUI:

> MR. SERRAT: . . . We know that this is the second one. He had a prior back in 1996. He knows he needs help and he wants to continue with the treatment as well as the meetings, your Honor. . . .
>
> (Exhibit A-2 Philhower 7-24-12 TR, pg. 6).

Judge Stokes had been provided with documentation from "Safety Through Education" and "H.O.P.E. Counseling", regarding Mr. Philhower. The report from "Safety Through Education", where Mr. Philhower had attended the 72 hour Driver

Intervention Program, stated that Mr. Philhower had had been subjected to 1 hour of screening and individual contact and 2 screening instruments, the Michigan Alcoholism Screening Test (MAST Revised) and the CAGE Screening Instrument. *See* Exhibit A-3. The results of these screenings "show the client is: At Risk". *Id*. In the "H.O.P.E. Counseling" report, under "Other Comments Regarding Substance Abuse/Use and Other Addictive Behaviors", it was reported that: "Fred reported he had four or five DUIs in the 1990s and his last alcohol related offense before his May 15, 2012 OVI was probably in 1998". Further, under the "Narrative Summary" of this report, Fred Stevens, Mr. Philhower's counselor, reported, in relevant part:

> Fred is a 42-year old male who reported he last drank alcohol June 10, 2012 and he normally drinks at least one fifth of liquor per day. Fred said he last smoked crack cocaine in December, 2011 and around that time he was using approximately four to five grams once or twice a week. According to Fred, he had four or five DUIs in the 1990s and his last alcohol related offense before his May 15, 2012 OVI was probably in 1998.
>
> Fred meets criteria for a diagnosis of Alcohol Dependence and Cocaine Dependence due to his tolerance to alcohol and cocaine, withdrawal from alcohol and cocaine, and loss of control over alcohol and cocaine. As a result of his diagnosis, I recommend that Fred have treatment/counseling to help him address his alcohol/drug use issues and related mental/emotional health concerns. Treatment and counseling will also help Fred to more effectively manage his stress. I also recommend that Fred continue to regularly attend Alcoholics Anonymous (AA) meetings. Treatment, counseling, and AA benefits Fred substantially more than incarceration at this time in his life.
>
> (Exhibit A-4 H.O.P.E. Counseling "SOQIC Adult Assessment – June 20, 2012)

During the sentencing hearing, Judge Stokes inquired regarding Mr. Philhower's treatment and substance abuse assessment, which had been privately obtained by Mr. Philhower from Fred Stevens and disclosed to the probation department:

THE COURT: All right thank you. Did you complete the five weeks of intensive outpatient treatment? Are you in the aftercare phase at this time, sir?

THE DEFENDANT: I'm two sessions from completing the five weeks.

THE COURT: The five-week program?

MR. SERRAT: Judge, I think Fred Stevens indicated that in his follow-up letter and is recommending of course to continue outpatient treatment.

THE COURT: This letter references - - I'm trying to find out what they're saying the diagnosis is. Alcohol dependency and cocaine dependency.

MR. SERRAT: Judge, may I address the cocaine issue? Fred Stevens the counselor has been treating him - - -

THE COURT: I read the report.

MR. SERRAT: You read that? Okay. I just want to bring it to the Court's attention.

THE COURT: We don't have a July urinalysis test. Would it be negative, sir?

THE DEFENDANT: Yes, your Honor it would.

(Exhibit A-2 Philhower 7-24-12 TR, pp. 7-8).

Significantly, the Presentence Investigation report indicated that Mr. Philhower stated, regarding the incident, that:

> Mr. Philhower does not remember details of the offense. He stated that he remembers drinking at his house, but does not remember leaving, and does not know where he was going. He could add nothing further.

(Exhibit A-5 Philhower Sentencing Report)

Thereafter, Judge Stokes imposed a sentence of 180 days in jail, with credit for time served of two days jail and the 72 hour Driver's Intervention Program; a fine of $1,075.00 with $700.00 suspended; active probation for a period of three years; and a three year license suspension from May 15, 2012 to May 15, 2015

(Exhibit A-2 Philhowever 7-24-12 TR, pp. 8-9). Judge Stokes indicated that the three-year period of probation "can always be shortened" (Exhibit A-2 Philhower 7-24-12 TR, pg. 9). Further, Judge Stokes suspended the remaining 175 days of jail on condition that Mr. Philhower wear a continuous alcohol monitoring device, "at least while you're in the treatment phase" (Exhibit A-2 Philhower 7-24-12 TR, pg. 9). When asked by Mr. Serrat how long Mr. Philhower would be required to wear the alcohol monitoring device, Judge Stokes stated:

> THE COURT: I think that once Mr. Philhower completes all of his treatment we can reconsider it. He has to finish his intensive outpatient phase.
>
> You told me you have like two more weeks.
>
> THE DEFENDANT: Two more sessions.
>
> THE COURT: Sessions and then you have an aftercare after that, correct, for 12 weeks, correct?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Okay. So once you have successfully completed all of that, have maintained negative breathalyzer and urinalysis tests, then that's when the court can consider possibly removing the continuous alcohol monitoring device. And that device would actually be placed on your sometime today. Are you prepared for that?
>
> MR. SERRAT: I am, your Honor.
>
> (Exhibit A-2 Philhower 7-24-12 TR, pp. 10-11).
>
> The Judge explained her sentence and addressed limited driving privileges:
>
> THE COURT: Oh no that's quite all right but I thought long and hard about this. I mean second O V I in your lifetime, two victims here, however I want you to be able to maintain your employment and - -
>
> THE DEFENDANT: And I - -

> THE COURT: - - and this I think would be a good way to do that but also to safely monitor no alcohol usage and of course they will be checking urinalysis for any other illegal - - for any other substances.
>
> MR. SERRAT: I don't know if you are done or not, Judge; I was going to talk about the driving privileges. I filed a - - so he can go to work or else he won't be able. I filed the motion like two or three weeks ago. The Court - -
>
> THE COURT: He'll have an interlock device on the vehicle because even if he has an alcohol monitoring device, that doesn't mean you can't operate a vehicle. The interlock device is on the vehicle and you breathe into it. And if there is alcohol, that will stop you. The alcohol monitoring device just let us know you used alcohol. So there are a lot of things going to do to protect you and to protect the community Mr. - - I mean you have to prove yourself because there are two victims out here, two sets of victims. And I know that you are remorseful. I do believe that you are remorseful but we have to have some safe-guards in place, at least for a period of time.
>
> (Exhibit A-2 Philhower 7-24-12 TR, pp. 13-14).

With respect to limited driving privileges, Mr. Philhower, through Mr. Serrat, only had proof of insurance, which is required for the issuance of limited driving privileges, only through July 15, 2012. Further, as is typically required for limited driving privileges, Judge Stokes required a letter from Mr. Philhower's employer stating the days of the weeks and hours that Mr. Philhower would be working (Exhibit A-2 Philhower 7-24-12 TR, pp. 16-17, 21-22). Mr. Serrat informed the Court that "I'll come over tomorrow with all the details" (Exhibit A-2 Philhower 7-24-12 TR, pg. 18). Accordingly, another court appearance was necessitated by the fact that Mr. Philhower did not have the documents necessary for the Court to grant limited driving privileges. However, Judge Stokes informed Mr. Serrat that Mr. Philhower would not have to come back to Court as the information could be faxed to the Court (Exhibit A-2 Philhower 7-24-12 TR, pg. 18). Ultimately, Mr. Serrat requested a court date to return to court with the necessary documentation (Exhibit A-2 Philhower 7-

24-12 TR, pg. 24). Accordingly, a hearing on the occupational driving privileges motion was scheduled for July 25, 2012 at 8:30 a.m. (Exhibit A-2 Philhower 7-24-12 TR, pg. 28).

On July 25, 2012, Mr. Philhower appeared with counsel Jaime Serrat for purposes of the motion for limited driving privileges. Mr. Serrat did come to court prepared with the necessary documentation – a letter from Mr. Philhower's employer setting forth the dates and hours of employment, as well as verification of insurance on the vehicle. Judge Stokes granted the motion for limited driving privileges effective July 25, 2012 through January 15, 2013, which represented the end date of Mr. Philhower's verification of insurance coverage through Farmer's Insurance Company. As previously discussed on July 24, 2012, the limited privileges required an ignition interlock device on the vehicle that Mr. Philhower would be driving.

On November 6, 2012, on behalf of Mr. Philhower, Mr. Serrat filed a Motion to Remove SCRAM, Remove Interlock, and Amend Driving Privileges, thus necessitating another hearing, which was scheduled for November 19, 2012. This hearing was continued at Mr. Philhower's request to December 13, 2012, per the Court's docket.

On December 13, 2012, Mr. Philhower's Motion to Remove the SCRAM device was granted. Further, the Interlock device was ordered to remain, however, the Interlock device was transferred to another motor vehicle per Mr. Philhower's request. All other conditions were to remain in effect, per the Court's docket. The Court docket further reflects that on December 13 and December 14, 2012, the

Court probation department had difficulty determining why there was information missing from the interlock device provider.

By entry dated December 14, 2012, Mr. Philhower's case was scheduled for a probation violation hearing on January 10, 2013.

On January 9, 2013, Attorney Timothy Kucharski appeared before Judge Stokes, without Mr. Philhower and without Mr. Serrat, at an add-on hearing that had been requested by Mr. Kucharski, on Mr. Philhower's case. Mr. Philhower's case had previously been scheduled for a probation violation hearing which had been scheduled for January 10, 2013.

Mr. Kucharski informed the court that he was before the Court in an effort to explain to the Court the results of an interlock device reading. Mr. Kucharski indicated that his purpose for being there was that he was not available to appear as a witness for Mr. Philhower's probation violation hearing which was scheduled for January 10, 2013 and that he wanted to inform the Court regarding a failed ignition interlock reading. Judge Stokes indicated to Mr. Kucharski that she did not have a probation violation report to review and, therefore, could not intelligently discuss the matter. She did give Mr. Kucharski an opportunity to make a statement regarding the upcoming hearing. In relevant part, Mr. Kucharski stated:

> MR. KUCHARSKI: The readings on the interlock are extraordinarily high. It's going to be like a point five, point 36. And I think the Court knows that if a person has a point five, they would be dead. What Mr. Philhower does is he paints in an enclosed booth and he smokes while he drives. So I've instructed Mr. Philhower how he needs to handle this. Again and there aren't any issues because I guess he went - - he called his lawyer and he told him he went to go get an alcohol test, after he tested positive and he was clear. So he instructed him again about what he needs to do and how he needs to blow in the interlock so there aren't any future problems.

> So I just wanted to at least advise the Court the numbers are going to be extraordinarily high but they are not representative - - they are not accurate as to an alcohol consumption.

(Exhibit A-6 Philhower 1-9-13 TR, pp. 10-11).

On January 10, 2013, Mr. Philhower and Mr. Serrat appeared before Judge Stokes on the probation violation hearing. Judge Stokes indicated to Mr. Serrat that Mr. Kucharski had come to court the day before regarding the interlock device report, that she did not have the probation violation report at that time, and that Mr. Kucharski indicated that he was not available on January 10, 2013 to appear for the probation violation hearing and that none of the technical representatives from the interlock company that Mr. Kucharski owns were available either due to sickness. Judge Stokes stated that under the circumstance, she would continue the probation violation hearing, but that "[t]here will be no driving privileges whatsoever pending the hearing and to get the information about what happened" (Exhibit A-7 Philhower 1-10-13 TR, pg. 4). After discussion, the probation violation hearing was scheduled for January 16, 2013 at 3:00 p.m. (Exhibit A-7 Philhower 1-10-13 TR, pg. 7).

On January 16, 2013, Mr. Philhower appeared before Judge Stokes with counsel Jaime Serrat for purposes of a probation violation hearing. Mr. Kucharski, the owner of the interlock device company, also appeared as a witness. With respect to the interlock device report and the dates at issue, Judge Stokes stated:

> THE COURT: There's January, 2 where they talk about a misread test. January 2, 2013. Then they said never started the vehicle. December 29, two thousand - - that's when it was positive for alcohol .0557. And then 3:41 p.m., it was .036, all on December 29. I don't really know, and then I don't know if they give me any other dates. They said December 27, it was positive for .0274, then it says misread test on December 27, another misread test at 8:45

a.m.; and then another misread test at 9:04, and then when there was a test it was positive for .0274, so it looks like there's a few dates involved here, um - -

(Exhibit A-8 Philhower 1-16-13 TR, pg. 4).

During this hearing, Mr. Kucharski, on behalf of the interlock company, attempted to explain the alcohol positive readings from the interlock report:

MR. KUCHARSKI: If I can back up, the way the interlock is designed and the way it's used, is that it's something in there called a fuel-cell in there that determines whether there's alcohol on a person's breath.

So if - - if you go back, I can show the Court, I have - - I have his entire report for that - - that entire month that Mr. Philhower have. The fuel-cell takes, approximately, four to six seconds for it to analyze someone's breath. They cant be sitting there waiting and waiting and waiting, so it takes about four to six hours.

So if I - - if I then go to the first, the 29th, I think it was, the twenty, excuse me. There's on the 29th at 3:45 p.m., there's an alcohol test of .0557. If you look next to it, and I - - I think your report may have it, if not, I can show the Court on mine. It actually - - the fuel-cell takes 20.41 seconds which would indicate in the break off point for it to have a valid test is 21 seconds. So for, approximately, you know .59, 59 hundredths of a second away from it failing because of the fuel-cell.

* * *

MR. KUCHARSKI: SO then it does another, there's another test, um, about six minutes later, There's another positive test result, and again it's 20.39 seconds for the fuel-cell to register a reading.

Now you can take a look then at the alcohol readings of .055 and .036, which is in the six minute period of time. It's impossible to lose that amount of alcohol on their breath within that short period of time.

THE COURT: But why would it test positive for alcohol at any time?

MR. KUCHARSKI: Because the fuel-cell was going bad.

THE COURT: What about all these when he doesn't call back in? He's - - he's going to be on the SCRAM device or at the Cleveland House of Corrections. He needs to get rid of this. If this device doesn't work, he has an accident on his record, he might as well be on an alcohol monitoring device, where I know that, that device works without these problems, and he can be monitored 24 hours a day and no driving privileges. That way he can avoid the jail time. I just don't understand this and all these misread tests. I don't understand what that means.

This Court is not pleased with this, but I don't really know, Attorney Kucharski. I don't - -

MR. KUCHARSKI: I'm - - I'm trying to explain, your Honor.

THE COURT: That's why he needs to think about this alcohol monitoring device, because there is not going to be any driving privileges. If this company is this bad on this matter, then you need to figure out another company or have an alcohol monitoring device, where I know that there's no alcohol use, whatsoever.

I don't understand about why he didn't even start the vehicles, and I don't know that you can even answer that Attorney Kucharski. That's something that Attorney Serrat and his, um, and Mr. Philhower would have to explain to the Court, and I don't know what happens with those.

MR. KUCHARSKI: Well, I - - I can address the rolling retests and if you're asking - -

THE COURT: And then when he never started the vehicle on these.

MR. KUCHARSKI: And if we go to December 21, your Honor - -

THE COURT: Uh-huh.

MR. KUCHARSKI: - - and there was a miss rolling retest at 6:45 in the morning. He starts it. If everything is functioning, he misses a rolling retest. Now - -

THE COURT: But what - - why did he miss the retest?

MR. KUCHARSKI: There - - there could be any number of reasons as to what's going on there.

THE COURT: Lord have Mercy. How come he - - why can't he explain why he didn't test - - why he didn't retest?

(Exhibit A-8 Philhower 1-16-13 TR, pp. 5-9).

Ultimately, due to the failed interlock device reports and the fact that the SCRAM device had been ordered removed by the Court on December 13, 2012, Judge Stokes determined that she would not impose jail time for a probation violation, but would not continue Mr. Philhower's limited driving privileges unless Mr. Philhower was again monitored by a SCRAM device:

THE COURT: He doesn't have any privileges.

MR. SERRAT: I'm just saying, Judge - -

THE COURT: If he wants them he can have a continuous alcohol monitoring device that is the only way the Court can do this.

MR. SERRAT: He can do this. He just can't afford it, Judge.

THE COURT: I understand. There's nothing else I can do then. I am not sending him to jail. I don't know what's going on. It's just - - I'll giving him the benefit of the doubt. I'm not renewing his privileges, and I am not sending him to the Cleveland House of Corrections. He'll just continue on active probation.

(Exhibit A-8 Philhower 1-16-13 TR, pg. 19)

During the January 16, 2013 hearing which had been scheduled for 3:00 p.m., Mr. Serrat and Mr. Kucharski continuously pleaded with Judge Stokes to continue Mr. Philhower's limited driving privileges without the SCRAM device, as Mr. Philhower stated that he could not afford the SCRAM monitoring. On more than one occasion, Judge Stokes mentioned the lateness of the hour, that it was 6:00 p.m. and

that she had to leave the bench, yet Mr. Serrat and Mr. Kucharski continually pleaded with Judge Stokes to reconsider: "it's six o'clock. I'm supposed to be off this bench at five o'clock, and I know you patiently waited while we finished a huge docket" (Exhibit A-8 Philhower 1-16-13 TR, pg. 21); "[i]t's six o'clock. I have to get off the bench" (Exhibit A-8 Philhower 1-16-13 TR, pg. 27); "Attorney Kucharski, it is ten after six" (Exhibit A-8 Philhower 1-16-13 TR, pg. 29). Judge Stokes' continually expresses her conscientiousness regarding the hour, but Mr. Serrat and Mr. Kucharski persisted. Ultimately, a discussion occurred regarding Mr. Philhower switching interlock companies, given the technical malfunctions alleged by Mr. Kucharski. Mr. Serrat and Mr. Philhower indicated their desire to switch interlock companies and Judge Stokes indicated she would consider continuing Mr. Philhower's limited driving privileges if he switched interlock companies (Exhibit A-8 Philhower 1-16-13 TR, pp. 36-37). Mr. Serrat requested the opportunity for Mr. Philhower to come back the next day, January 17, 2013, to meet with the probation department concerning switching interlock device companies. Judge Stokes graciously agreed to permit Mr. Philhower to return to Court on January 17, 2013, per Mr. Serrat's request (Exhibit A-8 Philhower 1-16-13 TR, pg. 39). Further, Judge Stokes was going to determine whether there were funds available for a SCRAM device (Exhibit A-8 Philhower 1-16-13 TR, pg. 42).

Thereafter, per the Court docket, Judge Stokes issued an Order on January 18, 2013 granting Mr. Philhower's request for limited driving privileges. Additionally, an Order went on that same date that if there were no violations regarding the interlock device, the SCRAM device would be removed on February 1, 2013. Mr.

Philhower's presence in Court for the February 1, 2013 review hearing was not required by Judge Stokes.

On February 1, 2013, Judge Stokes noted that the probation department failed to provide a report regarding the interlock device, but nevertheless, Judge Stokes granted Mr. Philhower's motion to remove the SCRAM device. Judge Stokes further ordered that the SCRAM device would remain removed if there were no violations reported with respect to the interlock device, and the report was ordered to be provided to the Court by February 13, 2013. Another review hearing was then scheduled for February 13, 2013. Once again, Mr. Philhower was not required to appear for that review hearing (Exhibit A-9 Philhower 2-1-13 TR, pg. 2).

The Court docket reflects that on February 13, 2013, the interlock report was furnished to the Court and indicated no violations. Judge Stokes issued an Order that probation was continued until July 24, 2015, as previously ordered, and that an interlock report was to be submitted every thirty days, unless there is a violation, in which case the "court shall be notified immediately".

Subsequently, Mr. Philhower returned to Court on May 6, 2013, with new counsel Kevin Cafferkey, for a probation violation. Not surprisingly, the nature of this probation violation was that Mr. Philhower tested positive for alcohol consumption. On behalf of Mr. Philhower, Mr. Cafferkey addressed the Court:

> MR. CAFFERKEY: I reviewed everything with my client, your Honor, and looks like he's got two positive breath tests, point 03, in the point 03 range on the same day, April the 17th. And so he's going to admit those violations, your Honor.
>
> THE COURT: All right. So Mr. Philhower, do you understand that you are now waiving your probation violation hearing, admitting to the violations

for the interlock device, registered two positive tests for alcohol in April, April 17, 2013. Okay. That's what the record will reflect.

(Exhibit A-10 Philhower 5-6-13 TR, pg. 11).

Further and significantly, Mr. Philhower's consumption of alcohol also resulted in a separate Operating a Vehicle Under the Influence of Alcohol in Parma, Ohio[1]:

THE COURT: So we need to determine who can do the assessment, how soon he can get an assessment, and whether or not you should remain at the Cleveland House of Corrections - -

THE DEFENDANT: Please God, no.

THE COURT: - - pending getting that assessment. Or if I were to release you, Mr. Philhower, what safeguards can the Court put in place? You know, thank goodness from the interlock device, we know the consumption of alcohol, and your being honest.

But, you know, you asked me to remove the interlock device from one vehicle to another. I accommodated you, and then the vehicle that I took the interlock device off of or allowed it to be removed, is now involved in a pending fresh OVI case in Parma, which we can't talk about because it's pending.

But there are two victims on this particular case, two sets of victims on this case. I know you don't want to go back to the Cleveland House of Corrections. I understand that. But I'm trying to figure out how can I protect you and how can I protect the community.

(Exhibit A-10 Philhower 5-6-13 TR, pp. 13-14).

The Court probation department was understandably extremely concerned about the safety of the community given Mr. Philhower's conduct:

MR. ORITI: Excuse me, your Honor. I don't mean to interrupt the Cort [sic]. I was just going to say in reference to the Probation Department,

---

[1] Mr. Philhower was charged with, among other charges, Operating a Vehicle Under the Influence of Alcohol and Driving Under Suspension on or about March 22, 2013. See, City of Parma v. Frederick J. Philhower, Parma Municipal Court Case No. 13 TRC 0405.

> we're sympathetic to Mr. Philhower's plight. However, I wanted to point out that had he not been brought to this position today, we're unsure if he would have admitted to his culpable alcohol abuse if not faced with the sanctions he's facing today.
>
> And just for a basic recitation of what occurred in this matter, the Court allowed Mr. Philhower to engage the interlock device after the SCRAM, and we will stipulate that Mr. Philhower did well five months approximately on the SCRAM without incident. However, when the Court granted his interlock privileges, he was well aware that he was not supposed to drive another vehicle, and that occurred in the other matter in an outside jurisdiction. That in and of itself would (inaudible) a probation violation right there. Then what occurred was positive blows on the box that the car that we engaged also. So we're faced with that at this point.
>
> So had Mr. Philhower not been in this Court today under these circumstances where he had come to the realization of the serious alcohol abuse problem, would the community still been at risk given his actions in those matters?
>
> (Exhibit A-10 Philhower 5-6-13 TR, pp. 19-20).

Ultimately, Judge Stokes ordered that Mr. Philhower could be released from custody to attend an assessment at Rosary Hall on May 9, 2013, so long as he is wearing a SCRAM continuous alcohol monitoring device (Exhibit A-10 Philhower 5-6-13 TR, pg. 27). Judge Stokes further ordered the interlock to remain on his motor vehicle, but would determine whether he could have limited driving privileges only after the assessment was completed (Exhibit A-10 Philhower 5-6-13 TR, pg. 27).

Judge Stokes inquired about how much alcohol Mr. Philhower had been consuming:

> THE COURT: You never told me how much you were consuming except you said a lot. How much were you consuming? Just tell us, so that when they have this assessment, if you say anything different, I am going to know you were telling the truth.
>
> MR. CAFFERKEY: Is it vodka?

THE DEFENDANT: It's vodka and it's approximately a fifth a day. A lot.

(Exhibit A-10 Philhower 5-6-13 TR, pg. 28).

Judge Stokes then scheduled the case for May 21, 2013 to enable the assessment report to be completed:

JUDGE STOKES: Or is it better for me to place this on the docket like May 21st? I don't know.

MR. JENKINS: May 21st would always be better.

THE COURT: Is that fine, counsel? And if those recommendations say residential treatment, Mr. Philhower, you have to honor that. You can't make excuses about your job and everything. You're expected to complete the residential treatment. If they say 30, 60, 90 days that's - - and you need to sign the appropriate releases so that Mr. Jenkins and Mr. Wallace Green can see those assessment recommendations, and your attorney, of course, can see them.

And then I'll continue it for a Motion hearing. That's to lift those days completely on May 21st, 2013. . . .

(Exhibit A-10 Philhower 5-6-13 TR, pp. 33-34).

Ultimately, Judge Stokes ordered 168 days jail into execution on the probation violation and stayed the execution of those days until the scheduled hearing on May 21, 2013 at 10:00 a.m. to review the assessment report recommendations (Exhibit A-10 Philhower 5-6-13 TR, pg. 41).

On May 21, 2013 the Philhower case was again before Judge Stokes for review of the assessment recommendation. The assessment recommendation was for intensive outpatient treatment (Exhibit A-11 Philhower 5-21-13 TR, pg. 6). Mr. Philhower was released from jail and continued on probation while under house arrest with work release and with a SCRAM continuing alcohol monitoring device. Mr. Philhower was also to attend his intensive outpatient treatment and then,

subsequently, merged with AA meetings (Exhibit A-11 Philhower 5-21-13 TR, pp. 6-26).

On July 18, 2013, Mr. Philhower returned to Court for a hearing with regard to a motion filed by Mr. Philhower. The motion filed by Mr. Philhower requested an order to remove the interlock device from one of his vehicles. The motion was initially scheduled for hearing on July 30, 2013, but that date was advanced to July 18, 2013 at Mr. Philhower's request. Mr. Philhower appeared in Court, pro se, and asked the Court for an order removing the interlock device from his vehicle:

> THE DEFENDANT: My request, your Honor, is that the interlock device be removed from the 2002 Chevy van and that I forfeit any driving privileges for the remainder of my sentence, regarding our case.
>
> (Exhibit A-12 Philhower 7-18-13 TR, pg. 3)

Mr. Philhower explained that one of his vehicles had been re-possessed and his remaining vehicle, the Chevy van, was sitting in his driveway, unable to be used by his spouse due to the interlock device (Exhibit A-12 Philhower 7-18-13 TR, pg. 7). Judge Stokes granted the motion (Exhibit A-12 Philhower 7-18-13 TR, pg. 12).

Mr. Philhower again appeared before Judge Stokes on September 4, 2013 due to Mr. Philhower's motion to have the SCRAM device removed. Again, Mr. Philhower appeared pro se. However, at that time, Judge Stokes did not have a copy of the SCRAM report available to her (Exhibit A-13 Philhower 9-4-13 TR, pp. 5-9). Judge Stokes indicated that Mr. Oriti would call Mr. Philhower the next day after Judge Stokes had been given the SCRAM report (Exhibit A-13 Philhower 9-4-13 TR, pg. 9).

Per the Court docket, by entry dated September 7, 2013, Judge Stokes granted Mr. Philhower's motion removing the SCRAM device and electronic monitored house arrest.

On March 14, 2014, Administrative Judge Adrine removed all criminal cases from the docket of Judge Stokes and re-assigned said cases.

Despite Mr. Philhower being charged and convicted of an OVI offense while on probation with Judge Stokes, and despite Mr. Philhower's violation of Judge Stokes' probation, on March 25, 2014, after Judge Adrine had removed the criminal docket from Judge Stokes, Judge Adrine ordered a hearing to be held on March 28, 2014. The Court docket does not indicate any motion that led to the scheduling of this hearing.

By order dated April 1, 2014, Judge Adrine terminated Mr. Philhower's probation.

It can be inferred that this "Specific Example", as well as the eighteen (18) other "Specific Examples" of alleged misconduct that Relator cites, would constitute the *best* "Specific Examples" of alleged misconduct that Relator can offer, due to their specific inclusion in the *Motion for Interim Remedial Suspension*.

Frederick Philhower is a man that Relator, and Judge Adrine, infer was a victim of Judge Stokes' alleged "misconduct" by stating "Respondent *required* one defendant to appear in her courtroom on 19 separate occasions during his three years of probation after a second DUI conviction lifetime". What Relator ignores is that this man was "required" to appear *because he was violating probation by consuming alcohol, operating a vehicle that had an interlock device removed from it*

while under the influence of alcohol, and attempting to operate a vehicle equipped with an interlock device with alcohol on his breath.

In fact, on or about October 9, 2013, Mr. Philhower was convicted of Operating a Vehicle Under the Influence, following a No Contest plea, in the case captioned *City of Parma v. Frederick J. Philhower*, Parma Municipal Court Case No. 13TRC0405 *while on probation with Judge Stokes*. Further, Court records from that Parma Municipal Court case reflect that several probation violation hearings have occurred and/or been scheduled in that case.

A review of the Court records and the docket in this case reveals that there is NOT ONE Court appearance necessitated by any "misconduct" of Judge Stokes. In fact, most of the Court appearances were as a result of Mr. Philhower's violations of probation and/or motions made by Mr. Philhower or his counsel.

Simply stated, Relator has not, and cannot, establish any misconduct or violation of anything in the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct, or the Ohio Code of Judicial Conduct relative to the Philhower matter. As will be seen below, Relator has not, and cannot establish any such violations on any of the other "Specific Examples" either.

2. Relator's assertion:

- **Another defendant, after being convicted of DUI for the first time, was terminated from her nursing school program because respondent required her to make multiple eight-hour courtroom appearances in connection with her effort to have her driving privileges restored. Id. at ¶30d. That defendant was required to wear a continuous alcohol monitoring device "even though an alcohol assessment indicated that she had no alcohol problems".**

This "Specific Example" refers to the case of *City of Cleveland v. Michelle Nester, Cleveland Municipal Court Case No. 2013TRC23649*.

This is established by a review of Judge Ronald Adrine's Affidavit, which is specifically cited by Relator in support of this assertion. In Paragraph 30 of Judge Adrine's Affidavit, Judge Adrine asserted under oath:

> 30. Upon reviewing the cases reassigned from Judge Stokes' docket to my own, I obtained a much more expansive understanding of the impact her action had on those who were required to participate in her irregular processes. I offer the following small sample, gleaned from the cases reviewed, to provide some flavor of the variety of issues confronted:
>
> * * *
>
> d. Michelle Nester, case #2013TRC23649, appeared before Judge Stokes and was convicted of first offense DUI. She was enrolled in nursing school but was almost terminated from the program due to multiple 8-hour courtroom appearances she was required to make in an attempt to obtain driving privileges. She was also required to wear a continuous alcohol monitoring device even though an alcohol assessment indicated that she had no alcohol problems at the time.

<u>WHAT REALLY HAPPENED IN THE MICHELLE NESTER CASE:</u>

On April 17, 2013, Michelle Nester was charged with the following offenses:

1. Operating a Vehicle Under the Influence (OVI), in violation of R.C. 4511.19(A)(1)(a);

2. Operating a Vehicle With a Prohibited Breath Alcohol Content (OVI-BAC of .250[2]), in violation of R.C. 4511.19(A)(1)(h);

3. Reckless Operation, in violation of R.C. 4511.20.

On April 23, 2013, Ms. Nester appeared for purposes of arraignment and entered a plea of Not Guilty as to all charges. Her case was assigned to Judge Stokes' docket. A pretrial was scheduled for May 14, 2013.

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[2] The ticket itself appears to read ".250" as the BAC result. At various times during court appearances, the BAC reading is referred to as ".210" and ".250". *See* Exhibit B.

On May 14, 2013 Ms. Nester appeared in court before Judge Stokes represented by attorney Leif Christman at 8:30 a.m. It is worth noting that when this case is called, Mr. Christman wishes Judge Stokes a "[g]ood morning" (Exhibit B-1 Nester 5-14-13 TR, pg. 2). Further, the video of this hearing establishes that the case was called at 10:07 a.m. On behalf of Ms. Nester, Mr. Christman requested a continuance:

> MR. CHRISTMAN: Briefly, your Honor, may it please the Court, I had an opportunity to speak with the Prosecutor. It's my request for Discovery at the defendant's request, so I could complete some Discovery, get copies of the police report. There is an audio/video from the trooper. And I need to do some due diligence with the Intoxilyzer test that was done out in Linndale, to take a look at that equipment. So I would ask for a brief continuance for counsel to do some due diligence with respect to those issues.
>
> (Exhibit B-1 Nester 5-14-13 TR, pg. 2).

Mr. Christman further requested limited driving privileges for Ms. Nester, however, given the high breath test reading, Judge Stokes denied said motion at that time (Exhibit B-1 Nester 5-14-13 TR, pg. 4). The case was continued to June 4, 2013 at 9:00 a.m. pursuant to the request of Mr. Christman.

Ms. Nester appeared again before Judge Stokes with attorney Leif Christman on June 4, 2013. The case was initially called at 11:52 a.m. At that time, Mr. Christman and the prosecuting attorney reached a plea agreement whereby Ms. Nester would enter a plea of guilty to the OVI Charge, in violation of R.C. 4511.19(A)(1)(a) and the remaining charges would be nolled and dismissed.

Thereafter, Ms. Nester did accept this plea agreement and entered a plea of Guilty to the violation of R.C. 4511.19(A)(1)(a) offense. Significantly, although this

was only her second court appearance, Mr. Christman informed the court that Ms. Nester "is on the verge of being let go" from a nursing program that she was in:

> MR. CHRISTMAN: And what I want to bring to the Court's attention is that my client is a full time student at Brown Mackie College. She's in the last year of her program to earn an Associate's degree in surgical tech. That she has - - just starting the clinical phase of that program that's - - it's like 40 hours of clinical where she's actually working in the ER of a hospital, in the surgery. That it is a very high time, time-consuming program. It's mentally draining, a lot of work, and there's also the classroom aspect of it.
>
> * * *
>
> My client lives by herself in Lakewood in an apartment. Her college is down in Akron. She's been under a hard time, no driving privileges for the last 60 days. She really - - Judge, she spent $35,000 to date on this program and is on the verge of being let go. She has to rely on other people for rides. We did resolve the case today, but I'm imploring the Court, even under any circumstances with the Breathalyzer or anything, she really needs to get her driving privileges.
>
> (Exhibit B-2 Nester 6-4-13 TR, pp. 13-14).

Nowhere does Mr. Christman state or imply that Ms. Nester was "on the verge of being let go" because she had to make multiple eight hour courtroom appearances.

Judge Stokes indicated that if Ms. Nester would submit to a urinalysis test that date, "[t]hey could put a rush on it. This may take an hour, an hour and a half, before those results are going to come back to the courtroom" (Exhibit B-2 Nester 6-4-13 TR, pg. 15). Mr. Christman informed the Court "[t]hat's fine".

As previously indicated, Mr. Christman offered to have an interlock device installed in Ms. Nester's vehicle in an effort to obtain immediate limited driving privileges for her: "and as I said, if the Court wishes to have a Breathalyzer installed in her car, that's perfectly fine" (Exhibit B-2 Nester 6-4-13 TR, pg. 14).

Judge Stokes was understanding and gracious in accommodating the request of Mr. Christman:

> THE COURT: I understand. So, if she's interested, because I'm doing all this before I have the benefit of a probation report and everything else. If she wants an interlock device, and make sure that you're testing negative on the urinalysis test, I will write the Order. *Do you have the information about the days and hours, and all of that.*
>
> MR. CHRISTMAN: *Yes, I do.*
>
> THE COURT: But I'll have to send you down stairs for the urinalysis test. That will happen in just a few moments, but for the results to come back to this courtroom, they may not come back until 1:30 or 2. It's a long process, sometimes it's fast. And then I could have Mr. Oriti come up to ask you about the Interlock device.
>
> At the time of sentencing, I may not even think it's necessary. But I'm doing all of this presentencing, so if you are willing. . . .
>
> (Emphasis added) (Exhibit B-2 Nester 6-4-13 TR, pp. 16-17).

Regarding scheduling for sentencing, Judge Stokes accommodated Ms. Nester's school schedule and, at the request of Mr. Christman, scheduled the case for sentencing on July 11, 2013 at 8:30 a.m., a day that Judge Stokes generally has reserved for jury trials.

Later on the afternoon of June 4, 2013, Ms. Nester's case was re-called to address the limited driving privilege issue. At that time, Judge Stokes asked whether Mr. Christman or Ms. Nester had documentation for the privileges they were requesting. Judge Stokes was informed that they did not have the required documentation. As explained by Judge Stokes:

> THE COURT: Does she have that documentation for the Court? How am I - - that's what - -
>
> MR. CHRISTMAN: Brown. Judge, it's - -

THE COURT: Counsel, I - -

THE DEFENDANT: I start my internship at Kaiser in Parma tomorrow morning.

THE COURT: Excuse me. Mr. Oriti, did you not explain this? I thought I made myself - - how do I write an Order if I don't have the information? I cannot write an Order with that.

MR. ORITI: I had no idea of the amount of number of - - I thought it was strictly occupational driving privileges, your Honor. That's what I was informed.

THE COURT: But I mean I don't have anything. Even if it is a school schedule. There's some people who have occupational and school schedules, as the gentleman that we were working on the other day. I can't remember his name. But I had both. I have his school schedule and I had his work schedule. But if I don't have a schedule, I can't write an Order.

But I thought I made it clear that I - - I thought you had that information. This is the insurance information which is great.

MR. CHRISTMAN: And we have the - - it's Brown Mackie College and - -

THE DEFENDANT: It's my internship through Kaiser.

THE COURT: I have to have something in writing from them.

THE DEFENDANT: I can get something tomorrow, if she has to meet me there in the morning, from my teacher.

THE COURT: Yeah. For everybody who has Occupational Driving Privileges, I have to have a letter from the employer, if it's an employer, indicating the days and hours of employment. If it's school, I do write the Order, too. But I have something from the school which has the official schedule for the individual involved.

THE DEFENDANT: Okay.

THE COURT: I'm so sorry. I thought that you both understood that. Remember I said I'll have to have something from the employer indicating the days and hours. I cannot. Because when - - if the police were to stop you, all that's attached to the Order.

(Exhibit B-2 Nester 6-4-13 TR, pg. 23-25).

Frustrated that he did not have the required documentation, Mr. Christman indicated to the Court that he wanted to have the case scheduled for the next day to address the limited driving privileges:

> THE COURT: I'm so sorry that you didn't understand that. That's what - - I thought I made it clear.
>
> MR. CHRISTMAN: Judge - -
>
> THE COURT: I beg your pardon?
>
> MR. CHRISTMAN: Nothing.
>
> THE COURT: Yeah, because most attorneys know that they - -
>
> MR. CHRISTMAN: We'll get that - - no, he'll get that information, Judge. I don't think it's a good idea for me to talk right now, Judge.
>
> THE COURT: Because I thought that you perfectly understood that no Judge can write the Occupational Driving Privileges Order without the proper documentation.
>
> MR. CHRISTMAN: Judge, we will provide that information, and I'll get back on your docket immediately.
>
> THE COURT: Do you want a particular date, Attorney Christman?
>
> MR. CHRISTMAN: Tomorrow, if it pleases the Court.
>
> (Exhibit B-2 Nester 6-4-13 TR, pp. 27-28).

Judge Stokes was completely correct and accurate when she stated that "No Judge can write the Occupational Driving Privileges Order without the proper documentation", as it applies to Cleveland Municipal Court. In fact, when a Defendant files an Administrative License Suspension Appeal (ALS) in the Cleveland Municipal Court, which is a means by which the Defendant may obtain limited and/or occupational driving privileges, the form clearly states, in relevant part, the following:

"Alternatively, Appellant petitions the court for occupational driving privileges stating that this arrest occurred in the City of Cleveland, and that the following documentation is available for the court's inspection:

1) Proof of employment, such as a letter from your employer with a normal work schedule, and

2) Proof that insurance premiums have been paid in full for the entire period of your suspension: Your insurance policy is <u>not</u> proof of payment."

(Please See Cleveland Municipal Court Administrative License Suspension Appeal (ALS) Form, Exhibit B-3).

In addition, when the Administrative License Suspension Appeal Form is filed with the Cleveland Municipal Court, a representative from the Cleveland Municipal Court Clerk's Office gives the Defendant/Appellant and/or counsel a neon green form entitled "CLEVELAND MUNICIPAL COURT *TWELVE POINT *ADMINISTRATIVE LICENSE *NON-COMPLIANCE *PAYMENT PLAN *SUSPENSION NOTICE", which states in no uncertain terms:

"If you are requesting occupational driving privileges you must present the following at your hearing:

1. Proof of employment, such as a letter from your employer with verification of your work schedule and;

2. Proof of insurance by having your insurance agent complete this form.

You must present this completed form to the court at the above scheduled hearing. If you do not present this completed form your request for occupational privileges will be denied."

(Please See form entitled "CLEVELAND MUNICIPAL COURT *TWELVE POINT *ADMINISTRATIVE LICENSE *NON-COMPLIANCE *PAYMENT PLAN *SUSPENSION NOTICE", Exhibit B-4).

Undersigned counsel respectfully asserts that any attorney who handles OVI cases in the Cleveland Municipal Court fully understands that in order to obtain

occupational and/or limited driving privileges granted for his/her client, proof of employment and/or schooling and proof of insurance must be present. Therefore, with regard to the proof for the privileges that Judge Stokes was requiring from Ms. Nester, Judge Stokes' request was not out of the ordinary in the Cleveland Municipal Court, as well as in most courts across the State of Ohio.

As can be seen from the above, Ms. Nester and Mr. Christman requested to stay and wait for the results of the urinalysis tests in an effort to obtain limited driving privileges that day, however, when the case was recalled to address the limited driving privileges, it was revealed that neither Mr. Christman, nor Ms. Nester, possessed the proper documentation. This lengthy court appearance was not the fault of Judge Stokes, but rather, was at the request of Ms. Nester (to take a urinalysis test and wait for the results). Despite waiting for the results, the effort was fruitless, as the required documentation was not brought to Court. Judge Stokes had even asked Mr. Christman if he had the required documentation with him earlier in the morning: "[d]o you have the information about the days and hours, and all of that", to which Mr. Christman responded: "Yes, I do". This was clearly the fault of Mr. Christman, who should know to bring documentation in support of a motion for limited driving privileges.

Ultimately, with the assistance of Judge Stokes, plans were made for Ms. Nester to fax in her documentation for limited privileges, for Judge Stokes to write the limited privilege driving order, and for Ms. Nester to return to Court the next day, after her class finished (after 3:30 p.m.) to sign the limited privilege order (Exhibit B-2 Nester 6-4-13 TR, pp. 33-34).

The fact that Ms. Nester's lengthy court appearance on June 4, 2013 was as a result of Mr. Christman and Ms. Nester being unprepared by not having any documentation regarding the request for limited driving privileges is further established by the following sidebar conversation which occurred after Mr. Christman and Ms. Nester left the courtroom that day:

> MR. ORITI: I just want to apologize to the Court. This morning when you came in here, you asked for the urinalysis test. You stepped off the bench momentarily, around my lunch break, and they followed me out, and said that they - - Mr. Christman said that she was supposed to get the urinalysis right then and there. I thought that was highly unorthodox, but they both left the courtroom.
>
> THE COURT: That's why you need to check with the Court. But it's okay. And how in the world, an attorney practicing law all this time, he doesn't understand. I said on the record I have to have the employer information from the employer. They know it.
>
> MR. ORITI: And when I walked out with them, I had told her that it's true they were not prepared with that information today.
>
> THE COURT: No, And they're here all day long because they were unprepared, and I wrote that on the Journal Entry. It's ridiculous.
>
> MR. ORITI: Plus even I told her about the travel times too. I told her that she has to have reasonable travel times.
>
> (Exhibit B-2 Nester 6-4-13 TR, pp. 43-44).

On June 5, 2013 the Department Chair of the Surgical Technology department of Brown Mackie College faxed to Judge Stokes the documentation necessary for Ms. Nester to obtain limited driving privileges. This letter stated:

> Dear Angela R. Stokes,
>
> Michelle Nester attends clinical for the next four months, as a requirement of the Surgical Technology program at Brown Mackie College. In fulfillment of the program, she must attend clinical site Monday through Friday from 7:00am 3:00pm. Michelle will need to report to site by 6:30 am, and on every other Friday in the months of June and July; she will need to come to the

> Brown Mackie Campus in Akron. In the months of August and September she will need to report on Fridays to campus, plus attend her site Monday through Thursday. If you have any further questions, please feel free to contact me. *See* Exhibit B-5.

On that same date, June 5, 2013, Judge Stokes issued an "Occupational Driving Privilege Order", granting Ms. Nester limited driving privileges from June 6, 2013 to July 11, 2013 (the sentencing date) on Mondays through Fridays from 5:45 a.m. to 5:45 p.m. Under "Special Conditions" on the Occupational Driving Privilege Order, Judge Stokes wrote, in relevant part: "An interlock device shall be installed and maintained on the 2011 Nissan . . ." *See* Exhibit B-6.

On July 11, 2013 Ms. Nester appeared before Judge Stokes for purposes of sentencing, again represented by attorney Leif Christman. During the sentencing hearing Judge Stokes indicated her concerns for the record regarding Ms. Nester's level of intoxication on the night she was cited for OVI:

> THE COURT: Thank you. Miss Nester, my concerns are that you had a Disorderly Conduct Intoxication conviction in Rocky River Municipal Court in 2003. I don't think this is an isolated incident whatsoever. You have a Failure to Control, minor misdemeanor, in 1996. And then the reading on this OVI conviction was .250. How much alcohol had you consumed on the date of that offense? That information is usually in the probation report but - -
>
> MR. CHRISTMAN: Judge, if I could briefly address that - -
>
> THE COURT: No, she could address the Court.
>
> MR. CHRISTMAN: Judge, we don't believe the numbers in that report - -
>
> THE COURT: I would like for her to address how much alcohol she consumed. You weren't there and neither was the Court.
>
> THE DEFENDANT: It was - - (inaudible).
>
> THE COURT: How many - - what's the question? Do you understand the Court's question?

THE DEFENDANT: What did you ask?

THE COURT: How much alcohol did you consume?

THE DEFENDANT: I had a few drinks.

THE COURT: I know this is outrageous.

(Exhibit B-7 Nester 7-11-13 TR, pp. 4-5).

Thereafter, Judge Stokes imposed a sentence of 180 days in jail, suspended 176 days, and gave Ms. Nester credit for 3 days for the 72 hour Driver Intervention Program she attended. Judge Stokes imposed a fine of $1,075.00 and suspended $700.00 of the fine. Judge Stokes ordered Ms. Nester to be on active probation for one year, with conditions that she attend 5 Mothers Against Drunk Driving sessions. Judge Stokes accepted a report indicating that Ms. Nester did not need a formal assessment. Judge Stokes informed Ms. Nester that while on probation, she would be subject to random urinalysis and breathalyzer testing. Judge Stokes ordered a license suspension from July 11, 2013 to July 11, 2014. Judge Stokes ordered three (3) days of jail into execution immediately.

Judge Stokes continued Ms. Nester's driving privileges to September 10, 2013 (the end date of her insurance verification) and, despite not being requested to do so, ordered the continuation of the limited driving privileges without the ignition interlock device that had previously been ordered.

On September 3, 2013, attorney Christman filed *Motion to Extend Occupational Driving Privileges* on behalf of Ms. Nester. In said motion, Mr. Christman indicated to the Court that Ms. Nester had renewed her auto insurance with effective dates September 10, 2013 to March 10, 2014. Mr. Christman moved

the Court for an Order extending her limited driving privileges "under the same terms as previously granted". This motion was scheduled for hearing on September 16, 2013 at 1:30 p.m.

The Court records document that Judge Stokes' docket consisted of eighty-three (83) cases on the September 16, 2013 court date of Ms. Nester. (Please See Cleveland Municipal Court Docket Report for Monday September 16, 2013, Exhibit B-8). Moreover, of the eighty-three (83) cases on Judge Stokes' docket for that day, the Master Jail List , Form 12.32, for Monday 9-16-13, lists that Judge Stokes had twenty-four (24) jail cases, including nineteen (19) video hearings and five (5) jail cases where the individuals were being brought to court. (Please See Master Jail List, Form 12.32, Monday, 9-16-13, Exhibit B-9). In addition, the Cleveland Municipal Court, Courtroom Security Report for Judge Stokes on 9-16-13, lists those jail cases, as well as three add-ons, two of which were by video, and the other was a Cuyahoga County inmate. (Please See Cleveland Municipal Court, Courtroom Security Report for Judge Stokes on 9-16-13, Exhibit B-10). Furthermore, the page of notes given on 9-16-2013 to Judge Stokes from the Public Defender in the room on that day, lists six (6) Pleas and three (3) trials. (Please see Handwritten Note from 9-16-2013, Exhibit B-11).

Therefore, although Relator makes an issue over how long Ms. Nester waited for her case to be called, it must be noted that the case was called in less than 3 ½ hours from when it was scheduled, and Judge Stokes handled a docket full of 83 cases, of which 27 cases were jail cases, there were multiple pleas and multiple cases were trials were set to proceed.

On September 16, 2013, Ms. Nester's case was called later in the afternoon, at approximately 4:52 p.m. Mr. Christman indicated to the Court that Ms. Nester had renewed her insurance and a copy of the renewal was attached to the motion and that he was requesting that the Court extend Ms. Nester's previously granted limited driving privileges.

While reviewing the Court file, Judge Stokes addressed the previous removal of the ignition interlock device. Given the high breath test reading from the underlying OVI conviction, Judge Stokes determined that there should be an interlock device on Ms. Nester's vehicle. Accordingly, Judge Stokes informed Mr. Christman and Ms. Nester that she would renew the limited driving privileges, on condition that an interlock device was on the vehicle:

> THE COURT: I would be happy to renew them, but it would be - - I'm looking to see - - I wonder if I put it on the Journal Entry, but I'm checking.
>
> Again, I'll be happy to renew them, but it would be with the interlock device because of the high reading.
>
> If Miss Nester is willing to do that, I would be more than happy to write these.
>
> (Exhibit B-12 Nester 9-16-13 TR, pg. 4).

Subsequently, Mr. Christman informed Judge Stokes that Ms. Nester would "do whatever the Court requires". Judge Stokes appropriately indicated to Mr. Christman and Ms. Nester that the letter previously submitted from Brown Mackie College only mentioned August and September:

> THE COURT: . . . So would this just to be the Brown Mackie College at 755 White Pond Drive? Before it says see the attached letter but that was for August and September? Do you have anything? Or does she need something different for the month of October?

> THE DEFENDANT: I need it right now just until the end of the month for schooling, and then I plan to look for a job, and then I'm not sure where I would be - -
>
> THE COURT: So the Order that I should write today, should it just be to Brown Mackie College, 755 White Pond Drive, Akron, Ohio?
>
> THE DEFENDANT: And to Kaiser on Snow Road.
>
> (Exhibit B-12 Nester 9-16-13 TR, pp. 5-6).

Ultimately, Judge Stokes requested written verification that Ms. Nester would require driving privileges to and from Kaiser Hospital, which was not specifically stated in the letter from Brown Mackie College. During this discussion, Mr. Christman re-iterated to the Court that Ms. Nester was only seeking limited driving privileges to the end of September, 2013, as her educational program at Brown Mackie College would be completed by then and thereafter, she would have no educational or employment needs for limited driving privileges, until such time as she may find a job, at which time she would apply for limited driving privileges for any future job. Judge Stokes provided Mr. Christman with the fax number for the documentation to be faxed to the Court.

Mr. Christman and Ms. Nester left the courtroom at approximately 6:00 p.m.

Following this hearing, Judge Stokes issued several journal entries, one of which states:

> Richard Oriti and Dean Jenkins were informed to assist Ms. Nester with this issue and they stated she has not provided the Kaiser documentation. Defendant her fiancé and atty were rude.
>
> Another journal entry dated September 19, 2013 states:
> Motion of defendant to renew occupational/school driving privileges denied on the bases [sic] that defendant failed to provide documentation regarding Kaiser whihc [sic] is needed to allow privileges

On March 14, 2014, Administrative Judge Adrine removed all criminal cases from the docket of Judge Stokes and re-assigned said cases.

The Court docket reflects that on March 25, 2014, a hearing was scheduled for March 28, 2014 at 9:00 a.m. before Judge Ronald Adrine in Ms. Nester's case. Significantly, there was no motion filed by Ms. Nester at that time, according to the Court's docket.

On March 28, 2014 at 3:01 p.m. (per the time stamp), Mr. Christman filed a *Motion to Terminate Probation and Driver's License Suspension* on behalf of Ms. Nester. In this motion, Mr. Christman stated, in relevant part:

a. "Defendant Michelle Nester is a 34 year old women [sic] with NO previous record."

In fact, Ms. Nester had previous convictions for Disorderly Conduct/Intox in 2003 in Rocky River Municipal Court and Failure to Control in 1997 in Rocky River Municipal Court, as stated by Judge Stokes at the sentencing hearing.

b. "Defendant and counsel spent multiple 8 hour days before Judge Stokes attempting to secure driving privileges to no avail."

In fact, neither Ms. Nester, nor Mr. Christman, "spent multiple 8 hour days before Judge Stokes attempting to secure driving privileges to no avail". As recounted above, Ms. Nester appeared with Mr. Christman in Court on these dates:

1. **May 14, 2013**: First pretrial. The case was scheduled for 8:30 a.m. and the case was called by Judge Stokes at 10:07 a.m.

2. **June 4, 2013**: Change of Plea hearing. The case was scheduled for 9:00 a.m. and was initially called at 11:52 a.m. As per the above, at the request of Mr. Christman and Ms. Nester, Judge Stokes ordered a urinalysis test, and warned Mr. Christman and Ms. Nester that she would have to wait for the results before granting limited driving privileges. Mr. Christman and Ms. Nester indicated they understood and would be willing to wait. The case was thereafter recalled at 5:25

p.m. However, at that time, when Judge Stokes asked for the documentation necessary to grant limited driving privileges (that Mr. Christman had previously stated he had), it was discovered that neither Mr. Christman, nor Ms. Nester, had the necessary documentation. The documentation was faxed to Judge Stokes the next day and limited driving privileges were granted the next day.

3. **July 11, 2013:** Sentencing. The case was scheduled for sentencing on July 11, 2013 at the specific request of Ms. Nester, due to her educational schedule, however, Judge Stokes warned that that date was reserved for jury trials. Ultimately, the case was called at 3:37 p.m. Limited driving privileges were extended on this date.

4. **September 16, 2013:** Hearing on motion to extend privileges. The case was scheduled for hearing at 1:30 p.m. The case was called at 4:52 p.m. Judge Stokes renewed the limited privileges with an interlock requirement.

As can be seen, neither Ms. Nester, nor Mr. Christman, "spent multiple 8 hour days before Judge Stokes attempting to secure driving privileges to no avail". Mr. Christman and Ms. Nester spent one such day, June 4, 2013, however, they both waited in Court knowing that they would have to wait for a urinalysis test to be done and the results to be reported back to Judge Stokes. Further, the fact that limited privileges were not granted that same day (the were granted the very next day), was as a result of Mr. Christman and Ms. Nester's failure to have the required documentation, that any attorney should know to have.

Further, Mr. Christman's representation that his efforts to secure driving privileges "to no avail" is false. As can be seen from the above, limited driving privileges were granted on June 5, 2013 and extended thereafter (albeit with an interlock requirement on September 16, 2013). Mr. Christman and Ms. Nester stated in Court on September 16, 2013 that limited driving privileges were only being requested through the end of September, 2013, as Ms. Nester did not have any

educational or employment needs (as of September 16, 2013) thereafter. Mr. Christman and Ms. Nester both informed the Court on that day that her educational program at Brown Mackie College would conclude at the end of September, 2013:

> THE COURT: . . . So do you have a letter that takes you beyond August and September?
>
> MS. NESTER: No.
>
> THE COURT: Well, that's what the Court needs.
>
> MS. NESTER: No, that's all I'm trying to get is to the end of the month to finish up, and Thursday I take my CST exam.
>
> (Exhibit B-12 Nester 9-16-13 TR, pg. 11).
>
> MR. CHRISTMAN: All she needs is to the end of this program, Judge, and then she wouldn't have anything - -
>
> THE COURT: Then she won't have any privileges whatsoever.
>
> MR. CHRISTMAN: Right.
>
> (Exhibit B-12 Nester 9-16-13 TR, pg. 14).
>
> THE COURT: So then she doesn't want any privileges after September? She wants no privileges? If she - -
>
> MR. CHRISTMAN: We don't have any place to ask for them. She's not employed, and she will be done with school.
>
> (Exhibit B-12 Nester 9-16-14 TR, pg. 15).

However, in his motion to terminate probation and license suspension, filed *well after* Ms. Nester was supposed to have finished her education at Brown Mackie College, Mr. Christman states:

> *c. Defendant is a successful student at Brown-Mackie College working toward an Associates Degree in Medical Assistance.*

Unless circumstances changed from September 16, 2013 to March 28, 2014, it would be false to state that Ms. Nester "is" a student at Brown-Mackie College "working" towards an Associates Degree. If circumstances had changed between September 16, 2013 and March 28, 2014, one would expect that Mr. Christman would have filed a motion for limited driving privileges. The docket reflects that neither Mr. Christman, nor Ms. Nester, filed any motions for limited driving privileges after September 16, 2013. The next pleading filed by Mr. Christman on behalf of Ms. Nester was the *Motion to Terminate Probation and Driver's License Suspension* filed on March 28, 2014 at 3:01 p.m.

The originally scheduled hearing for March 28, 2014 at 9:00 a.m. on Mr. Christman's *Motion to Terminate Probation and Driver's License Suspension* (which per the docket was scheduled prior to Mr. Christman actually filing the motion) was re-scheduled for April 1, 2014 before Judge Ronald Adrine. Not surprisingly, on that date, Judge Adrine granted the motion, vacating the balance of the driver's license suspension imposed by Judge Stokes and suspended the balance of Ms. Nester's sentence.

In the within matter, none of Judge Stokes' orders were contrary to law. Ms. Nester was never "terminated" from the Brown Mackie program. The *only* representation made that Ms. Nester was in danger of termination from the program was made by Mr. Christman on June 4, 2013 during the change of plea hearing, which began at approximately 11:52 a.m., when Mr. Christman stated to the Court that Ms. Nester was on "the verge of being let go". At that time, Ms. Nester had only appeared in Court on three (3) occasions: (1) for her arraignment (not before

Judge Stokes); (2) at a pretrial conference (May 14, 2013) which lasted approximately 1 hour and 40 minutes; and (3) on June 4, 2013, the morning of the change of plea. Thus, at the time Mr. Christman made this representation, it was not in reference to alleged "multiple eight-hour courtroom appearances". Said statement was clearly made in reference to the administrative driver's license suspension imposed by the Ohio Bureau of Motor Vehicles on April 17, 2013 when Ms. Nester was arrested for operating a motor vehicle and produced a breath-alcohol result of .250.

For the previously stated reasons, nothing that Judge Stokes did in the Nester case was in violation of anything in the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct, or the Ohio Code of Judicial Conduct.

3. Relator's assertion:

- **Along the same lines, a third defendant was required to undergo weekly urinalysis and alcohol assessments after being found guilty of petty theft even though there was no indication that alcohol was a factor in his offense or that there existed a significant alcohol problem. Id. at ¶30b.**

Although Relator refers to his "Specific Example of Misconduct" by erroneously stating "his offense", this "Specific Example" refers to the case of Ariel Reidenbach, a 23 year-old young woman.

This is established by a review of Judge Ronald Adrine's Affidavit, which is specifically cited by Relator in support of this assertion. In Paragraph 30 of Judge Adrine's Affidavit, Judge Adrine asserted under oath:

> 30. Upon reviewing the cases reassigned from Judge Stokes' docket to my own, I obtained a much more expansive understanding of the impact her action had on those who were required to participate in her irregular

> processes. I offer the following small sample, gleaned from the cases reviewed, to provide some flavor of the variety of issues confronted:
>
> * * *
>
> b. Ariel Reidenbach, case #2013CRB32808, was found guilty of Petty Theft before Judge Stokes. During her probationary period, she was required to undergo weekly urinalysis, as well as alcohol assessments, even though alcohol was not implicated in the offense and there was no indication of a significant alcohol problem.

The following is a thorough review of the case of *City of Cleveland v. Ariel Reidenbach, Cleveland Municipal Court Case No. 2013 CRB 32808*. A review of the transcripts of the pre-trials and sentencing hearing establishes that Ariel Reidenbach was at the time a 23 year-old young woman who was drug dependent (crack cocaine), and said drug dependency led to the commission of the theft offense. This case illustrates the thoughtful and caring manner in which Judge Stokes imposes her sentences in compliance with the statutory guidelines for misdemeanor sentencing.

<u>THE ARIEL REIDENBACH CASE:</u>

On October 17, 2013, Ariel Reidenbach, age 23, was charged with petty theft, a first-degree misdemeanor. The Summons included, in relevant part, the following "Statement of Facts:

> On 10/07/2013 at 2:50 pm I Jon Cook, loss prevention for the Steelyard Home Depot located within Cleveland, Ohio observed Ariel Reidenbach enter the hardware department and select a Rigid power drill priced at $159.00 from the display shelf. Reidenbach exited the department with the drill and walked around the store with it for several minutes. At 3:04 pm Reidenbach bypassed all registers and ran out of the store with the unpaid for drill. *(See* Exhibit C*, Summons)*

On October 31, 2013, Ms. Reidenbach appeared in the Cleveland Municipal Court for purposes of arraignment and, after entering a plea of not guilty, her case was assigned to the docket of Judge Stokes.

At her first appearance before Judge Stokes on November 26, 2013, Ms. Reidenbach was unrepresented by counsel. When her case was called, Ms. Reidenbach stated that it was her intention to enter a plea of No Contest to the theft charge, however, Judge Stokes asked her why she didn't want to seek legal counsel (Exhibit C -1 Reidenbach 11-26-13 TR, pp. 2-3). Judge Stokes asked her if she wanted a continuance to enable her to discuss her case with the public defender's office and Ms. Reidenbach stated that she would like a continuance (Exhibit C -1 Reidenbach 11-26-13 TR, pg. 3).

Thereafter, numerous pre-trials were held in this matter due to Ms. Reidenbach's delay in seeking legal representation through the public defender's office and due to discussions between public defenders and the City Prosecutor regarding Ms. Reidenbach's potential screening for the Selective Intervention Program (SIP).

On December 16, 2013, Ms. Reidenbach appeared before Judge Stokes, represented by Public Defender Michael Heffernan who informed Judge Stokes that he had discussed with Prosecutor Aric Kinast the possibility of Ms. Reidenbach being referred for screening for SIP. The following exchange occurred:

> MR. HEFFERNAN: I talked to Mr. Kinast about the possibility of her being referred to SIP. I don't know what the Court's position is on that. She has no prior record, to my knowledge. I understand there would be an additional pretrial involved with the parties being subpoenaed from Home Depot about the incident that allegedly took place at Steel Yard Commons.

I think she would be a good candidate for SIP. I don't know what the Court's position is on it.

THE COURT: Well, did you say that Mr. Kinast is going to subpoena the witnesses to be present?

MR. KINAST: I can, if you would like.

THE COURT: Yes, and if she has substance abuse issues, the Court is not going to make a referral, but you would have to check with her, because that cannot be handled in a 90 day place - - program in the Probation Department.

MR. HEFFERNAN: I don't know that there has been a substance abuse allegation, your Honor. I think it's - -

THE COURT: She will have to submit to a urinalysis test, and if she - - if her - - if this theft was related to substance abuse, I don't know. It may not have been, but she cannot address that in a 90 day program.

MR. HEFFERNAN: All right. If she comes up clean, then she comes up clean. If not - -

THE COURT: Then I'm not making the referral, so you would have to inquire. There is no point in us going through this if that's the case, but I don't know. She would be able to let you know.

THE DEFENDANT: Your Honor, I don't use nothing at all. The only thing I smoke is my cigarettes, so - -

(Exhibit C -2 Reidenbach 12-16-13 TR, pp. 2-4).

Ultimately, the case was continued to enable Ms. Reidenbach to discuss any substance abuse issues with the public defender and to enable the City to subpoena witnesses from Home Depot.

Ms. Reidenbach next appeared in court on January 30, 2014. At that time, Ms. Reidenbach was represented by Public Defender Linda Gonzalez who requested that Ms. Reidenbach be referred for a SIP screen. Thereupon, a discussion occurred regarding whether Ms. Reidenbach would test positive for any controlled

substances. Although initially Ms. Reidenbach stated that she would not test positive for any controlled substances, Ms. Reidenbach later admitted that she was not so sure:

> THE COURT: Yeah?
>
> And, if you do test positive, that may be enough for me to say no, but if you are positive and you're honest about it, that's a different thing, because typically it's 90 days, but it could be longer if you're going to be - - if you have any alcohol or substance abuse issues; do you understand?
>
> THE DEFENDANT: Yes.
>
> THE COURT: So, $9 - - so you're sure it's going to be negative?
>
> THE DEFENDANT: To be honest, no, I'm not sure at all.
>
> THE COURT: Okay. So, can you please tell Attorney Gonzalez what's going on here; do you want to walk outside the courtroom and tell her the truth? You have to tell the truth.
>
> How about you, did you tell me the truth? Okay.
>
> MS. GONZALEZ: Your Honor, she is indicating it might be positive. She wants to be honest with the Court.
>
> THE COURT: Okay.
>
> MS. GONZALEZ: And, let the Court know.
>
> THE COURT: For what?
>
> THE DEFENDANT: Cocaine, your Honor.
>
> THE COURT: I don't know how that's going to work in the SIP Program, but she's got - -
>
> * * *
>
> THE COURT: I don't know how that would work in the SIP Program, if she has an addiction.
>
> Is this crack cocaine? Yeah.

> THE DEFENDANT: But, it is not an addiction, no. I've done it once, which was two days ago. I was underneath a lot of stress. I've been having so many family issues and everything, and with me not having a job, kind of tends to put more pressure on me, so - - but, I do know for a fact that I will pop positive for it.

(Exhibit C -3 Reidenbach 1-30-14 TR, pp. 7-9).

Thereafter, Ms. Gonzalez stated to the Court that no resolution was possible and requested that the Court schedule the case for a bench trial. Judge Stokes then scheduled the case for a bench trial on February 18, 2014 at 2:00 p.m.

On February 18, 2014, Ms. Reidenbach was represented by Public Defender Scott Hurley who requested that he and Prosecutor Tanudra have a side bar conversation with Judge Stokes. Attorney Hurley informed Judge Stokes and Prosecutor Tanudra of his client's desire to change her plea. It was agreed that Judge Stokes would pass for sentencing so that Defendant Reidenbach's case would be referred to the Probation Department to obtain a formal alcohol/substance abuse assessment to address substance abuse issues, urinalysis test results which would be paid by Probation Department funds, and review any restitution issues. Attorney Hurley explained that Defendant Reidenbach's urinalysis test "would likely be positive anyways", and "she was concerned about that." (Exhibit C -4 Reidenbach 2-18-14 TR, pp. 2-3).

Thereafter, Ms. Reidenbach entered a plea of no contest to the charge of Petty Theft. Judge Stokes accepted Ms. Reidenbach's plea and referred her to the Probation Department so that a presentence investigation report could be prepared. Upon inquiry by Judge Stokes, Ms. Reidenbach stated that she stole an item from Home Depot because of her substance abuse problem, specifically, cocaine. A

urinalysis test was ordered by Judge Stokes. The case was scheduled for sentencing on March 4, 2014. Judge Stokes told Ms. Reidenbach that it was not her intention to sentence her to jail - that she wanted Ms. Reidenbach to get help for her substance abuse problems (Exhibit C -4 Reidenbach 2-18-14 TR, pg. 12).

On March 4, 2014, Ms. Reidenbach appeared for sentencing, and was represented by Public Defender Gary Potts. Judge Stokes had thoroughly reviewed the PSI Probation Report that included, but was not limited, the following critical and important information:

1. Ms. Reidenbach admitted to being drug dependent on crack cocaine;
2. Ms. Reidenbach stated she has had suicidal thoughts since the age of six (6),
   had attempted suicide on two (2) occasions;
3. Ms. Reidenbach admitted that she was high on crack cocaine when she stole the drill from Home Depot. Ms. Reidenbach stated she would like to receive help for her crack cocaine addiction;
4. Ms. Reidenbach stated that she was molested when she was six (6) years old and that due to "a great deal of hard times in her life', she was experiencing continual thoughts of suicide when feeling stressed or pressured;
5. Ms. Reidenbach identified herself as a "cutter", the most recent act of attempting suicide being three (3) months ago when she claimed to have used a screw driver and dug into the skin between her hips and private area;
6. Ms. Reidenbach admitted that a couple of years ago she helped her brother sell crack/cocaine and as her life became more chaotic she began using crack cocaine instead of selling it;
7. Ms. Reidenbach stated she uses crack cocaine as a means of handling unwanted pressures, and that she uses crack cocaine on a weekly to bi-weekly basis;
8. Ms. Reidenbach viewed herself as having abandonment issues;
9. Ms. Reidenbach had never been in counseling or drug treatment, and she expressed her desire for help for all of her issues;
10. Ms. Reidenbach's February 18, 2014 urinalysis test result was positive for cocaine;

11. The PSI Report listed Ms. Reidenbach's residence in Cleveland, Ohio, not West Virginia.

(See Exhibit C-5*, Reidenbach PSI Probation Report)*

On the date of sentencing, attorney Potts informed the Court that Ms. Reidenbach had used crack cocaine since her last court appearance and "she wants treatment" (Exhibit C-6 Reidenbach 3-4-14 TR, pg. 3). Mr. Potts further stated that Ms. Reidenbach "needs help. She wants help". (Exhibit C-6 Reidenbach 3-4-14 TR, pg. 4). During the sentencing hearing, in relevant part the following occurred:

> THE COURT: Miss Reidenbach, who do you live with?
>
> THE DEFENDANT: Right now I am staying with my mother. I'm just out here visiting because of the fact that I moved down to West Virginia about two years ago.
>
> THE COURT: Okay. Just one second. So your home is actually West Virginia?
>
> THE DEFENDANT: Yeah.
>
> THE COURT: And so you were here just visiting - -
>
> THE DEFENDANT: Yes.
>
> THE COURT: - - when this occurred?
>
> THE DEFENDANT: Yes.
>
> THE COURT: So what's your desire? Your desire is to return to West Virginia or to just stay here now for awhile with your mother?
>
> THE DEFENDANT: Right now to try to stay here for awhile with my mother, and then yes eventually go home. Because right now I'm trying to - - the reason why I went and applied for the job, that I start this week, is so I can save up enough money so that I can get me a car to go home.
>
> (Exhibit C-6 Reidenbach 3-4-14 TR, pp. 6-7).

In an effort to help Ms. Reidenbach regarding her past-abuse issues, during the sentencing hearing, Judge Stokes obtained the telephone number for the Cleveland Rape Crisis Center for Ms. Reidenbach and engaged in a sidebar discussion with her and her counsel:

> THE COURT: Anything else you'd like to say before I proceed? Okay I'm going to give - - I need to write this out. May I have a piece of white paper over there? I'm going to write out the name of an agency that Attorney Potts is going to discuss with you about getting counseling for the traumatic events in your life.
>
> THE DEFENDANT: Okay.
>
> * * *
>
> MR. POTTS: May I approach?
>
> THE COURT: Yes, please. Thank you. I didn't put down free bus passes. Do you want me to write that down too?
>
> MR. POTTS: Okay.
>
> THE COURT: Okay. I think I have everything here, Attorney Potts.
>
> MR. POTTS: So you'll tell her about probation and I'll talk to her.
>
> THE COURT: Shall I tell her at sidebar?
>
> MR. POTTS: Yeah, I'll tell her. No, you want to tell her at sidebar?
>
> THE COURT: I'll tell her at sidebar.
>
> MR. POTTS: You want her now?
>
> THE COURT: Uh-hmn, and then I'll state what I can on the record, but I won't put this part.
>
> (Thereupon, the following proceedings were conducted at Sidebar)
>
> THE COURT: Miss Reidenbach, there are agencies that you can go to. I don't know what they all are, but one (inaudible). And they will give you free counseling. They won't charge you for counseling, for the assessment or counseling. Do you understand? But you'll have to take the first step which is

a phone call. So Attorney Potts is saying (inaudible). While he's talking to you (inaudible).

THE DEFENDANT: (Inaudible).

THE COURT: You'll have done an assessment in person. They will give you that assessment today when you go in person. You talk to a person today. You call and they'll get some general information. They'll just talk to you to see, you know, if you want their help. They'll give you a date to come in for the formal assessment.

If you don't have bus passes - - as long as you get help, then I'll give you bus passes. Everything is free. There's no charge. (Inaudible). Once you have the formal assessment and (inaudible) they will link you up with counseling who can help you. You have to think if you're wiling to do that.

THE DEFENDANT: All right.

THE COURT: I'll give you permission to go to Probation, but you contact them. And let's say you contact them, and for some reason (inaudible) then we need to have Probation help us find another agency. This is one I think you should start with because of the trauma that you've been subjected to. Oh, yeah. Are you (inaudible).

(Exhibit C-6 Reidenbach 3-4-14 TR, pp. 12-14).

* * *

Judge Stokes wrote down the number for Ms. Reidenbach to call and handed it to Mr. Potts. Judge Stokes also discussed Ms. Reidenbach getting a substance abuse assessment through the probation department:

MR. POTTS: (Inaudible) this is what the judge wrote for you. This is what the judge wrote for you. She wrote it down and that's the (inaudible) as to that.

THE DEFENDANT: Superior Avenue?

MR. POTTS: Uh-hmn.

THE COURT: That's probably when you go, when you have to go for the assessment. When you first call (inaudible) well, the probation department when they (inaudible) you, will also tell you what's your

substance abuse assessment date. Okay. I don't know if this agency can do it too. They may be able to handle everything.

THE DEFENDANT: Okay.

MR. POTTS: Probation will get to that.

THE COURT: I'll ask them to please make sure that services are not duplicated. If this agency can do it all that will be great.

MR. POTTS: Do you have questions for the judge?

THE DEFENDANT: No. Yeah. The only question I have is (inaudible) probation (inaudible), and that we need to go home. I need to and be able to come back out here for my probation. (Inaudible).

THE COURT: Are you saying just vacation trips that you want to take or when do you want to go?

THE DEFENDANT: I was planning on leaving towards the end of March.

THE COURT: To go to - -

THE DEFENDANT: West Virginia.

THE COURT: What's your purpose for going out there? Is it just to visit?

THE DEFENDANT: Yeah.

THE COURT: Or is it your desire to leave for good?

THE DEFENDANT: No, it's to visit.

THE COURT: Well, I think if you're complying with probation that you should be able to go. Who's in West Virginia?

THE DEFENDANT: My fiance's father, he has pancreatic cancer. It is in remission but it just now recently came back out.

THE COURT: I think that you should be able to travel.

(Exhibit C-6 Reidenbach 3-4-14 TR, pp. 15-17).

Thereafter, Judge Stokes imposed the following sentence: 180 days in jail suspended, active probation for one year – which Judge Stokes noted could be shortened (Exhibit C-6 Reidenbach 3-4-14 TR, pp. 19-20). Judge Stokes did order an "alcohol substance abuse assessment because of the crack cocaine usage" through the probation department (Exhibit C-6 Reidenbach 3-4-14 TR, pg. 20).

It is clear from a review of the sentencing hearing that the sentence imposed by Judge Stokes was designed to help a 23 year-old young woman who was dealing with past abuse and crack cocaine addiction to change her behavior so that she could lead a healthy, productive, and law abiding life in the future:

> THE COURT: You do need an alcohol substance abuse assessment because of the crack cocaine usage. So that will be handled through the Probation Department.
>
> THE DEFENDANT: Okay.
>
> THE COURT: But you also - - I think the root of this though stems back to the abuse issues. Okay. But you're going to call a certain agency today that we talked about at sidebar, with your attorney's permission, to call for that counseling.
>
> Today you have to call for an intake, which will be done over the phone, and they will schedule you a date to actually go in person for the formal assessment. And then they'll link you with a counselor to help you. So that's a condition of probation.
>
> You have to follow the substance abuse counseling and then the trauma counseling. Okay. Of course, no more thefts and let's see, well, you have to stay off of the property of the Home Depot stores. Okay. Okay.

Further, Judge Stokes encouraged Ms. Reidenbach to seek other employment if her new working environment was not good (Ms. Reidenbach had stated to the Court that her new job was at the "Fox's Den", a local "strip-club") and to obtain her GED, though neither encouragement was a condition of probation:

THE COURT: I see. And where's your new job?

THE DEFENDANT: Over on Brookpark Road, Fox's Den.

THE COURT: What's that?

THE DEFENDANT: It's a bar.

THE COURT: Oh, mercy. What are you going to do at that bar?

THE DEFENDANT: Bar tend, waitress.

MR. POTTS: It's legal work, judge.

THE COURT: I didn't say it's not legal. Is that what you're really going to be doing?

THE DEFENDANT: Yeah. I'm not an entertainer or anything like that. I'm just bar tending and waitressing. That's all I'm doing.

THE COURT: But that's not a good job for her who's struggling with substance abuse issues.

(Exhibit C-6 Reidenbach 3-4-14 TR, pp. 7-8).

THE COURT: . . . Well, if you determine that this job is not the best environment for you to be at, find something else. There is something else, okay.

THE DEFENDANT: I will.

* * *

THE COURT: . . . What's your level of education?

THE DEFENDANT: Ninth grade.

THE COURT: Okay. So see that's an important thing to enroll in GED classes. I'm not going to violate you on probation if you don't, but that's important.

THE DEFENDANT: I have somebody willing to help me to start getting towards that too, your Honor.

THE COURT: Who's that?

THE DEFENDANT: A friend of mine.

THE COURT: There's a really nice program at TRI-C called Women in Transition. You can go to that program because you'll be working at night and it's during the day. In fact, Attorney Potts, they start March 17th.

(Exhibit C-6 Reidenbach 3-4-14 TR, pp. 21-23).

With respect to testing for the presence of drugs, Judge Stokes stated:

THE COURT: Did Attorney Potts tell me that she used yesterday? Okay. So we know it's going to be positive for the same substance, nothing else?

THE DEFENDANT: Yes.

THE COURT: Okay. So Attorney Potts, I'll ask for an updated report and give you time to get into your counseling. That's my desire, to give you time.

I know that you're going to test positive, but you've been through quite a bit. So I'll have you come back on my docket like in 30 days.

THE DEFENDANT: Okay.

THE COURT: I don't think I should make it sooner then that, Attorney Pots. We need to giver her like 30 days. They may be asking for urinalysis testing on a weekly basis.

They'll let me know via blue form if you're testing positive. But I'm going to let them know that I'm trying to give you a chance to get things in order. Okay.

So Attorney Potts, why don't I just have it back on the docket - - today is the 4th, maybe like on the 25th. If she's complying and doing pretty well, then you don't need to be present. But if it's being consistently positive for cocaine, it's going - - I'll have to set it for a probation violation hearing.

(Exhibit C-6 Reidenbach 3-4-14 TR, pp. 31-32).

With respect to the March 25, 2014 hearing referred to by Judge Stokes above, Judge Stokes further stated:

THE COURT: Miss Reidenbach, were you planning to take a trip to West Virginia any time before the end of the month?

THE DEFENDANT: (Inaudible).

THE COURT: So it will be sometime in April that you'll go? Okay. So when this case comes back on the docket March 25th, 2014, at 10 a.m., at that time if everything is in compliance, I will make a note about the West Virginia travel to be permitted. Because you're not trying to go before March 25th, correct?

THE DEFENDANT: No.

THE COURT: Okay. So I'll set it also for a Motion hearing to remind me regarding travel to West Virginia when this comes back on the docket on March 25th.

(Exhibit C-6 Reidenbach 3-4-14 TR, pg. 34).

On March 14, 2014, Administrative Judge Adrine removed all criminal cases from the docket of Judge Stokes and re-assigned said cases.

Accordingly, on March 24, 2014, Ariel Reidenbach's case had been assigned to the docket of Judge Mabel Jasper. The ramifications of Judge Adrine's actions on defendants that had been on the docket of Judge Stokes can be seen by the confusion on display on March 24, 2014 regarding Ms. Reidebach's case:

THE BAILIFF: Ariel Riedenbach.

THE COURT (JUDGE MABEL JASPER): Capias. New bond,1,000.

THE BAILIFF: This is gonna be - -

MS. WALSH: I'm not sure. For this case - - was he already sentenced?

THE BAILIFF: Yeah. She's gonna be a no bond.

* * *

THE COURT: Probably probation violation.

MS. TAYLOR: I believe that this was just set for a review.

MR. TANUDRA: Post sentencing.

THE BAILIFF: Post sentencing.

MR. TANUDRA: Some form of post sentencing.

THE BAILIFF: I'm not sure what kind.

THE COURT: Let me see that. Why don't ya'll just give her a plain sheet of paper and fix it. (Inaudible.)

MS. TAYLOR: I only asked because our file is marked closed and it shows that he was marked sentenced on the 4th and it has all the - - so - - and I don't know that - -

THE COURT: Look at this.

THE BAILIFF: (Inaudible) Courtview, something hearing, 3-25. Petty theft. I have no idea.

MS. TAYLOR: I mean I would maybe ask for at the very least a personal bond.

THE BAILIFF: We're gonna cape the person because I'm not sure what this is.

MS. TAYLOR: I don't think it's set for - - there's no alleged violation that I saw because I took a look at that earlier.

THE BAILIFF: I've got a suggestion. We can continue it till the 9th for a probation violation.

(Exhibit C-7 Reidenback 3-25-14 TR, pp. 2-3).

***

MR. TANDURA: The judge gave her (inaudible). I think that might have been (inaudible)

MS. TAYLOR: Yeah, yeah. Yeah.

THE COURT: You have to have an unhinged mind to be able to decipher that. Vivian know that?

THE BAILIFF: Yeah.

THE COURT: What's the point in all of this?

THE BAILIFF: Like I was telling the judge, I think she writes all this stuff down and she (inaudible)."

(Exhibit C-7 Reidenback 3-25-14 TR, pp. 4-5).

Moreover, this uncalled-for attack on Judge Stokes, on the record, by the Court (Judge Mabel Jasper), and Judge Adrine's Bailiff, David Fann, was clearly unwarranted since Judge Stokes' March 3, 2014 Judgment Entry was clear. (See Exhibit C-10 March 3, 2014 Judgment Entry).

On April 9, 2014, Ms. Reidenbach's case came before Judge Ronald Adrine for purposes of a probation violation hearing. Ms. Reidenbach was represented by attorney Kelsey Taylor. The following occurred:

> MS. TAYLOR: Yes, your Honor. I believe my client is here today on an allegation of probation violation that she failed to report on a certain day. She indicated to me that she acknowledges she didn't report that day. She was ill. She called and notified her probation officer of that fact. And then on the following date there was some sort of miscommunication about - - either miscommunication or just an error on my client's part about the day that she was set to report.
>
> You know, we would acknowledge that that's a violation of the probation, but would ask to continue - -
>
> THE COURT: Why were you ordered to undergo substance abuse assessment?
>
> THE DEFENDANT: Because at the time I was using heroin.
>
> THE COURT: Did it have anything to do with the theft?
>
> THE DEFENDANT: At the time, yes. But I am getting help for it. I am trying do everything I possibly can.
>
> THE COURT: And have you gone for a substance abuse assessment or counseling?

(Exhibit C-8 Reidenbach 4-9-14 TR, pp. 2-3).

On May 5, 2014, Ms. Reidenbach again appeared before Judge Adrine for purposes of a Motion to Transfer Probation that had been filed on behalf of Ms.

Reidenbach by attorney Kelsey Taylor. On that date, the work that had gone into fashioning an appropriate sentence and linking Ms. Reidenbach with appropriate social services to help her move forward in her life as a healthy, law-abiding citizen were all undone by Judge Adrine, as Judge Adrine terminated Ms. Reidenbach's probation, rather than transferring it so that Ms. Reidenbach could have the benefit of continuing social services and substance abuse treatment. During this hearing, it appears that Judge Ronald Adrine was more focused on how many hearings Ms. Reidenbach had had before Judge Stokes than with the appropriateness of the sentence imposed by Judge Stokes and/or whether Ms. Reidenbach was benefitting from the substance abuse treatment ordered by Judge Stokes:

> MS. TAYLOR: Good morning, your Honor. Kelsey Taylor on behalf of the defendant. I had filed a motion in the last week or two to transfer Ms. Reidenbach's probation down to Fort Gay, West Virginia. She was in court I think at the end of March and she was found in violation of her probation. Her probation was ordered to continue.
>
> After speaking with Ms. Reidenbach and several members of her family, it appears that the - - the original incident stemmed from addiction issues that she is facing. And she and her family feel that if she's allowed to complete the terms of probation in West Virginia, she'll be removed from some of the forces that have kept her sort of in the holds of her addiction. We understand this isn't a usual request, but if this Court would be inclined to grant it, Ms. Reidenbach could go down to probation, work out the details with them.
>
> THE COURT (JUDGE ADRINE): Ma'am, when were you originally - - when did you originally come to court?
>
> THE DEFENDANT: The original date that I came to court the first time was - -
>
> MS. TAYLOR: It was back in October of 2013, I believe.
>
> THE COURT: And between October of 2013 and today how many court appearances have you been required to make?

THE DEFENDANT: Altogether about six (inaudible).

MS. TAYLOR: I count seven, your Honor. I'm just flipping through the docket really quickly, so my calculation could be off. And several of those, I believe, were sort of check-in dates - - Judge Stokes.

THE COURT: Compliance dates?

MS. TAYLOR: Correct.

THE COURT: What do you think about this?

THE DEFENDANT: To be honest, your Honor, I live actually out in West Virginia. I do not live out here. I just came out here visiting and then when I got into trouble. Everything that has been going on has been keeping me out here. I am better off going back down to West Virginia where I originally stay at to finish out my probation out there.

THE COURT: Ms. Reidenbach, you know, I'm looking at this and it seems to me that what's going on with you extends well-beyond what we can do or maybe even what the probation department in West Virginia, whoever the heck that's gonna be, to help you, really extends to what you're willing to do for yourself. The question is really, seriously, at this point what are you ready to do for yourself.

THE DEFENDANT: To be honest, your Honor, I was clean when I was out in West Virginia. I had an addiction problem before when I first was out here in Cleveland before I moved out there. When I moved out there I ended up getting better. My mom came out there to visit me. I was clean. But when I came back out here it was a different story, and I ended up using again and - -

THE COURT: You're currently residing in West Virginia?

THE DEFENDANT: Yes. I am currently living in West Virginia, yes.

MS. TAYLOR: I've spoken with family members before that basically confirm that exact version of events, your Honor.

THE COURT: This entry is gonna read probation violation hearing is waived defendant's found in violation of probation. Sentence is re-suspended. Probation will be terminated. Good luck to you, ma'am.

(Exhibit C-9 Reidenbach 5-5-14 TR, pp. 2-5).

As can be seen from a thorough review of the facts of this case, while in front of Judge Stokes, Ms. Reidenbach stated that it was her desire to stay in Cleveland for "awhile" with her mother and Ms. Reidenbach requested "help" in the form of substance abusing treatment. Judge Stokes spent considerable time and care with Ms. Reidenbach in an effort to impose a sentence (and offer other counseling recommendations) that would achieve the purposes of misdemeanor sentencing, as set forth in R.C. 2929.21. Again, *"[t]he overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender"* and, to achieve those purposes, "*the sentencing court shall consider . . . the need for changing the offender's behavior, [and] rehabilitating the offender".*

Approximately sixty (60) days after imposing sentence upon Ms. Reidenbach, despite Ms. Reidenbach's lack of adherence to the conditions of probation and her clear and unequivocal history of psychological and substance abuse issues, Judge Adrine effectively cut Ms. Reidenbach loose, without the safety-net of court supervision and without the assistance of social services or substance abuse treatment. As a result of Judge Adrine's order, Ms. Reidenbach has now been left to her own devices.

Again, with respect to the Reidenbach case, Relator has not, and cannot, establish any misconduct or violation of anything in the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct, or the Ohio Code of Judicial Conduct.

4. Relator's assertion:

- Respondent ordered one defendant to undergo grief counseling after losing her fiancé in an accident that was unrelated to her conviction for physical control of her vehicle. Id. at ¶30c.

This "Specific Example" refers to the case of *City of Cleveland v. Isabelle Bucsanyi, Cleveland Municipal Court Case No. 2014 TRC 2967*.

This is established by a review of Judge Ronald Adrine's Affidavit, which is specifically cited by Relator in support of this assertion. In Paragraph 30 of Judge Adrine's Affidavit, Judge Adrine asserted under oath:

> 30. Upon reviewing the cases reassigned from Judge Stokes' docket to my own, I obtained a much more expansive understanding of the impact her action had on those who were required to participate in her irregular processes. I offer the following small sample, gleaned from the cases reviewed, to provide some flavor of the variety of issues confronted:
>
> * * *
>
> c. Isabelle, case #2014TRC2967, was convicted on an amended charge of Physical Control. Judge Stokes mandated that the defendant undergo grief counseling because of the fact that she had lost her fiancé in an accident which occurred on Lake Erie.

WHAT REALLY HAPPENED IN THE ISABELLE BUCSANYI CASE:

On January 12, 2014, Isabelle Bucsanyi was charged with Operating a Vehicle Under the Influence of Alcohol and Turns at Intersection: Right Turn from Left Lane. Further, Ms. Bucsanyi was charged with Open Container of Alcoholic Beverage in a Motor Vehicle.

On January 17, 2014, Ms. Bucsanyi appeared in the Cleveland Municipal Court for purposes of arraignment and entered a plea of Not Guilty to all of the

charges. The cases were assigned to the docket of Judge Stokes. A pretrial was scheduled for February 7, 2014.

On February 7, 2014, Ms. Bucsanyi appeared before Judge Stokes and was represented by attorney Daniel Shields. On behalf of Ms. Bucsanyi, attorney Shields requested a continuance for another pretrial date. Pursuant to said request, the case was scheduled for a pretrial on February 26, 2014 at 11:30 a.m. Further on that date, pursuant to a motion for limited driving privileges made by Mr. Shields, Judge Stokes granted limited driving privileges to Ms. Bucsanyi (Exhibit D Bucsanyi 2-7-14 TR, pp. 5-16).

On February 26, 2014, Ms. Bucsanyi appeared before Judge Stokes with counsel Daniel Shields. At that time, prosecuting attorney Mr. Tanudra indicated to the Court that the City would be offering a physical control. Mr. Shields addressed Judge Stokes and indicated that that was accurate. In discussing the plea offer, Mr. Shields stated that at the time of the incident, Ms. Bucsanyi was "coming from the funeral service of her partner where he died" (Exhibit D-1 Bucsanyi 2-26-14 TR, pg. 2).

With respect to imposing sentence, Judge Stokes indicated that she was not inclined to impose a license suspension if Ms. Bucsanyi tested negative, but suggested that they come back to Court for sentencing in two weeks, rather than wait for a test result:

> THE COURT: Do you want me to pass for sentencing or - - I hate for people to have to come back. Since it's a physical control and I'll have to suspend her license, but if she's negative, then I'm not going to suspend it. If she's positive, then I would suspend it.
>
> * * *

THE COURT: (Inaudible) then come back for sentencing in two weeks?

MR. SHIELDS: Sure.

THE COURT: Your sure?

MR. SHIELDS: Yes.

THE COURT: That's okay? Because the other day we tried to do this for someone and they were - - I mean we waited six hours for a report. It's just too much.

MR. SHIELDS: Oh, on that same day? No, we'll come back.

(Exhibit D-1 Bucsanyi 2-26-14 TR, pp. 3-4).

Thereafter, Ms. Bucsanyi entered a plea of guilty to the amended charge of Physical Control. The prohibited turn charge was dismissed as part of the plea agreement. After accepting her plea, Judge Stokes inquired of Ms. Bucsanyi regarding the incident:

THE COURT: . . . So, was this related to a particular incident going on in your life at the time?

THE DEFENDANT: Yeah. I just recently lost my fiancé, the day after Christmas. He was the one that was found in the lake.

THE COURT: Oh.

MR. SHIELDS: Your Honor, if I may assist her.

As we indicated because the Court graciously granted her driving privileges during the pendency of this action, she was returning from a gathering on behalf of her - - the funeral, as it were and was coming from downtown to head home at that time. So she was very upset. I know. And she's indicated to me and I can indicate to the Court.

Nonetheless she was cooperative. She's indicated to me that she's alcohol and drug free. She's - - she has three young children with her fiancé and she's just on a day-to-day basis just keeping them in school. And as the

Court will recall, she was going to work at a temporary service. So that really - - she's got her hands full, but she's going to be okay.

THE COURT: Okay. Just one moment.

MR. SHIELDS: Yes.

THE COURT: We usually have a box of tissues in the courtroom and I was going to give her some tissues. That's okay. She can have those. It's okay.

MR. SHIELDS: She can.

THE COURT: Yeah. That's fine. They're usually in the courtroom, but I - - may I see the attornies at sidebar for a moment, please?

- - -

(Thereupon, a discussion was had between Court and counsel at sidebar as follows:)

THE COURT: I'm okay with sentencing today, okay?

MR. SHIELDS: Sure.

THE COURT: I think it's too much for her to come back in the courtroom. She really does need to get some help with her grieving process. So I'm thinking of what I'll do. I'll sentence her. I don't think she necessarily needs an alcohol assessment. I don't think so. Did she (inaudible). Do you think if I put her on a short-term Probation and I won't spend her license. Do you think I should order like grief counseling or do you think she should have an assessment. She needs something to help her deal with her grief, so she doesn't used alcohol to console herself. But, I don't know (inaudible).

MR. SHIELDS: I don't believe she has. I think the grief counseling would be appropriate.

THE COURT: Okay.

MR. SHIELDS: Counseling. That's what she needs because she's out there on her own.

* * *

THE COURT: So what do you think? Do you think six months or longer, grief counseling - -

MR. SHIELDS: Yes.

THE COURT: - - and then during the time period, if she finds (inaudible) or not, then she can maybe get an assessment if she needs it, and there's some good places. Maybe I'll ask (Inaudible).

MR. SHIELDS: Right.

THE COURT: It's called Oak (inaudible). Have you heard of it?

MR. SHIELDS: My sister lost her son. My sister goes there.

THE COURT: So you know about it. I think it's in Brunswick.

* * *

THE COURT: And they work - - they won't charge her a fee.

MR. SHIELDS: That's an excellent idea.

THE COURT: We'll do that.

(Exhibit D-1 Bucsanyi 2-26-14 TR, pp. 9-14).

Thereafter, Judge Stokes imposed sentence by suspending 180 days jail; issuing no driver's license suspension; six months active probation "[m]ostly to receive counseling - - grief counseling" (Exhibit D-1 Bucsanyi 2-26-14 TR, pg. 16). Judge Stokes explained to Ms. Bucsanyi:

THE COURT: . . . The Probation Department can tell you about different agencies your attorney and I talked about one at sidebar. I know it's a good one, but whichever one you select. It's called Cornerstone of Hope. It's a wonderful program and even family members can go with you and they won't charge you, you know, because of your financial status. It's a really good program. I think in Independence, Ohio.

So that's what I'm going to say that's something you have to go to is the grief counseling, but whichever agency you and your attorney select is okay with me. I just know that one is good, but I don't know about the others. They allow children and they - -

THE DEFENDANT: (Inaudible).

> THE COURT: See, it's a really good program. They'll let your family come. They won't charge. It's a wonderful program. I've made it for a short period of time because once you complete your grief counseling session and you're doing well, Attorney Shields knows how to petition the Court. I will terminate Probation because I won't think that you need to be on Probation any longer. You know?
>
> (Exhibit D-1 Bucsanyi 2-26-14 TR, pp. 16-17).

Again, as in the other examples previously discussed, Judge Stokes' sentence was not only consistent with the purposes of misdemeanor sentencing, Ms. Bucsanyi's counsel felt that ordering grief counseling was "an excellent idea". Further, despite Relator's unfounded statement that grief counseling was not appropriate, the record clearly establishes that the grief that Ms. Bucsanyi was understandably dealing with at the time of the incident led to the Physical Control conviction, as stated by her attorney. Further, Ms. Bucsanyi was crying at the time of the hearing, due to her grief issues. Accordingly, this "Specific Example" cited by Relator is, in fact, a specific example of a thoughtful and appropriate sentence imposed by Judge Stokes.

Nothing that Judge Stokes did in the Bucsanyi case can be construed as a violation of the Ohio Code of Professional Responsibility, the Ohio Rules of Professional Conduct, or the Ohio Code of Judicial Conduct.

5. Relator's assertion:

> **- Another defendant was required to undergo a psychiatric evaluation,**
>
> **serve 44 days in jail, and undergo intensive outpatient treatment after being convicted on charges for not having a driver's license and failing to stop after an accident. Id. at ¶30e. Respondent required that defendant to appear in her courtroom on nine separate occasions. Id. at ¶30e.**

This "Specific Example" refers to the case of *City of Cleveland v. Matthew Lewandowski, Cleveland Municipal Court Case No. 2013 TRD 2588*.

This is established by a review of Judge Ronald Adrine's Affidavit, which is specifically cited by Relator in support of this assertion. In Paragraph 30 of Judge Adrine's Affidavit, Judge Adrine asserted under oath:

> 30. Upon reviewing the cases reassigned from Judge Stokes' docket to my own, I obtained a much more expansive understanding of the impact her action had on those who were required to participate in her irregular processes. I offer the following small sample, gleaned from the cases reviewed, to provide some flavor of the variety of issues confronted:
>
> * * *
>
> e. Matthew Lewandowski, case #2013TRD2588, was charged with No Driver's License and Failure to Stop after an Accident. He was required to undergo a psychiatric evaluation, sentenced to 180 days in jail, required to serve 44 of those days, placed on intensive outpatient treatment and appeared before the court on 9 separate occasions.

<u>WHAT REALLY HAPPENED IN THE MATTHEW LEWANDOWSKI CASE:</u>

On January 9, 2013 Matthew J. Lewandowski was charged with Failure to Control, in violation of Section 431.34A of the Cleveland Codified Ordinances; Stopping (Failure) After Accident Upon Streets, in violation of Section 435.15 of the Cleveland Codified Ordinances; and License Required to Operate, in violation of Section 435.01A of the Cleveland Codified Ordinances.

The case was assigned to the docket of Judge Stokes. On February 21, 2013, Mr. Lewandowski appeared before Judge Stokes, unrepresented by counsel. Judge Stokes advised Mr. Lewandowski of his right to counsel and that if he could not afford to retain an attorney, he could go to the public defender's office for free legal representation (Exhibit E Lewandowski 2-21-13 TR, pg. 2). Further, at that time, Mr.

Lewandowski had arrest warrants from two other jurisdictions: University Heights and Ravenna Police Department, so Mr. Lewandowski was taken into custody while the court bailiffs determined the status of the warrants. A pretrial was scheduled for March 5, 2013 to enable Mr. Lewandowski time to seek legal counsel (Exhibit E Lewandowski 2-21-13 TR, pg. 3). Ultimately it was determined that although the warrants were still active, Mr. Lewandowski was out of the pick-up range of the jurisdictions, so Mr. Lewandowski was released and advised by Judge Stokes to take care of the warrants (Exhibit E Lewandowski 2-21-13 TR, pg. 4).

On March 5, 2013 Mr. Lewandowski again appeared before Judge Stokes for purposes of a pretrial conference. At that time, Mr. Lewandowski was represented by Tina Tricarichi of the public defender's office. At that time, Ms. Tricarichi informed Judge Stokes that it was Mr. Lewandowski's intention to enter a plea of no contest, with a consent to a finding of guilt, to the charges of License Required to Operate and Failure to Stop after an Accident. In exchange for this plea, the City intended to nolle and dismiss the charge of Failure to Control. Judge Stokes advised Mr. Lewandowski of his constitutional rights, accepted his pleas, and referred Mr. Lewandowski to the probation department for a presentence investigation report. Judge Stokes noted at that time, after hearing that another vehicle was involved in the accident caused by Mr. Lewandowski, that "there may be restitution issues regarding the parked vehicle" (Exhibit E-1 Lewandowski 3-5-13 TR, pg. 8). The case was scheduled for sentencing on March 26, 2013. Further, Judge Stokes ordered Mr. Lewandowski to submit to a urinalysis test, due to the fact that Mr. Lewandowski left the scene of a motor vehicle accident:

THE COURT: . . . He left the scene of the accident. I don't know why he left - - for alcohol or drug reasons - - I have no idea, but he will submit to a urinalysis test today. That's fine. Probation has the money. He will have a urinalysis test. Have a seat. It will be done.
(Exhibit E-1 Lewandowski 3-5-13 TR, pp. 9-10).

On March 26, 2013, Mr. Lewandowski appeared before Judge Stokes for purposes of sentencing. At that time, Mr. Lewandowski was represented by attorney Scott Hurley from the public defender's office. Had Judge Stokes not referred Mr. Lewandowski for a pre-sentence investigation report, Judge Stokes would likely not have learned that two (2) people were victimized by Mr. Lewandowski: the owner of the vehicle that he was driving (Miss Ponomrenko) and the owner of the vehicle that he struck (Mr. Ridings). In relevant part, the following occurred:

MR. HURLEY: There are really two different cars here at stake.

THE COURT: Two cars?

MR. HURLEY: The car that I believe this lady owns is the one that he was driving and caused damage to.

THE COURT: Okay. So she's the owner of the vehicle that the defendant was operating?

MR. HURLEY: Correct.

THE COURT: Okay.

MR. HURLEY: There is also another vehicle that was damaged.

THE COURT: I see. And that's Mr. Timothy Ridings' case?

MR. HURLEY: Correct.

(Exhibit E-2 Lewandowski 3-26-13 TR, pg. 3).

While discussing restitution, Judge Stokes was informed that the owner of the vehicle had to pay $500.00 out of pocket to cover her deductible to pay for damage to her vehicle. During this discussion, the following occurred:

THE COURT: Is she looking for reimbursement of the $500 deductible?

MS. GARRETT: That's correct. Yes.

THE COURT: How did Mr. Lewandowski have your vehicle?

THE COMPLAINANT: Okay.

THE COURT: You gave him permission?

THE COMPLAINANT: No. No, no, no. What happened, your Honor, is that I have a car that my late husband, who just passed away a couple of years ago, gave me, and I paid it off with the credit union. And my granddaughter, who lives with me, and I paid it off with the credit union. And my granddaughter, who lives with me, has a baby, and I was going to give her the car, and switch it over into her name so she could have a decent vehicle because of the baby. I guess she was at her boyfriend's house out in Cleveland, and I live in Parma.

Anyway, I got a phone call from my granddaughter saying that my car was stolen, and that Matt smashed it. My car was totally demolished. And I never - -

THE COURT: Does your granddaughter know Mr. Lewandowski?

THE COMPLAINANT: I guess. I don't even know her friends.

THE COURT: I see.

THE COMPLAINANT: But I never gave him permission, nor did I know him. All I know is my granddaughter is the only one that is on my insurance and that was allowed to drive the car.

THE COURT: Okay.

MR. HURLEY: Defense agrees with that statement of fact.

(Exhibit E-2 Lewandowski 3-26-13 TR, pp. 5-6).

Thereafter, counsel for Mr. Lewandowski, Mr. Hurley, requested that the Court continue the sentencing hearing so that the other victim in the matter could be located. Further, Mr. Hurley requested that Mr. Lewandowski be referred for a substance abuse assessment, as Mr. Lewandowski tested positive for marijuana after the change of plea on March 5, 2013 (Exhibit E-2 Lewandowski 3-26-13 TR, pp. 6-7). Judge Stokes, however, wished to proceed with sentencing, in light of the fact that the other victim was present in court. Judge Stokes stated that she would prefer to impose sentence and set a restitution hearing regarding the other victim at a later date (Exhibit E-2 Lewandowski 3-26-13 TR, pg. 10).

Judge Stokes obtained a victim advocate to come to the courtroom for and on behalf of the owner of the vehicle that Mr. Lewandowski had been driving. Further, the prosecuting attorney attempted to call the remaining victim (the owner of the parked vehicle that had been struck by Mr. Lewandowski). The case was recalled later in the day to proceed with sentencing (Exhibit E-2 Lewandowski 3-26-13 TR, pg. 16). Prior to recalling the case, the other victim, Timothy Ridings, had been contacted by phone and reportedly stated that he had not received any notification about the hearing from the Court probation department or from the prosecutor's office (Exhibit E-2 Lewandowski 3-26-13 TR, pg. 16). Judge Stokes stated that she was going to proceed with sentencing and then conduct a restitution hearing as to Mr. Ridings at a later date. Thereupon, the owner of the vehicle that Mr. Lewandowski was driving addressed the Court:

> THE COMPLAINANT:Yes, your Honor. Okay. I just want the courts to note that what Mr. Lewandowski has done, okay, made me a victim because the car that I had, I took care of it, my late husband gave it to me, and he stole it, and he demolished it. And it's been two years since - -

* * *

THE COMPLAINANT:Yesterday's been two years since my husband's death. And Mr. Lewandowski was bragging on the Internet, he's laughing about it, he thinks it's a joke.

THE COURT: About your husband's death?

THE COMPLANAINT:No, about stealing my car or demolishing it and everything. And he knows what I'm going through. And he's making a joke out of it, he thinks it's funny. He's bragging on the Internet. He tells my granddaughter. And it's like to him, it's a big joke. And this is very emotional for me. I'm not out for revenge, but it's not fair that he did this to me because it's costing me a lot. I'm sorry, your Honor, but this is very emotional for me because he thinks it's a joke.

THE COURT: Well, we had a conversation in the back when we were talking to Mr. Ridings on the phone where Attorney Hurley made very clear there may or may not be a pending felony, but at this point, it's not before this Court, okay. The felony will never be before this Court.

So, I have to focus on this charge of Failure to Stop After an Accident on the Street. Mr. Lewandowski is not before this Court on Grand Theft of a Motor Vehicle or anything like that. So, I have to focus on narrow issues before the Court, which would be like damage to your vehicle, how this has affected you. But I understand why you are bringing in that information, but he hasn't been charged with a Felony II. To my knowledge yet, he may be, but I cannot judge him based upon something - - I can't judge him on a felony, okay?

(Exhibit E-2 Lewandowski 3-26-13 TR, pp. 18-19).

On behalf of Mr. Lewandowski, public defender Hurley, after having previously requested the Court to order a substance abuse assessment, again addressed the Court about the appropriateness of a substance abuse assessment:

MR. HURLEY: . . . Obviously, he's got other headaches on top of all this, too. He's going to be making sure that there is no drugs or alcohol in his system in the interim here. My expectation is that there's going to be an assessment conducted, and this is, hopefully, going to be a chance for him to prove her [the victim] wrong about him as a young man. And hopefully, he could demonstrate to her as well as the Court that he's got his head screwed on straight about this, and he's going to do what he can to show this Court

and the lady whose car he damaged that he is never going to be in this situation again.

(Lewandowski 3-26-13 TR, pg. 21).

After Mr. Lewandowski addressed the Court, Judge Stokes discussed pending warrants for Mr. Lewandowski's arrest from other jurisdictions:

THE COURT: So, it might be best for this Court to have, since he has warrants in two other jurisdictions, I believe, I think he has two other warrants.

MR. HURLEY: University Heights is no longer a warrant - -

THE COURT: But he has one in Portage County, right?

MR. HURLEY: Portage is still pending, correct.

THE COURT: So maybe it's best for this Court to order the assessment while he's still in custody. He's testing positive for marijuana, he has a warrant out for another jurisdiction, which he hasn't taken care of, since he's been on the Court's docket. The Court is not that far away for him to take care of that warrant.

(Exhibit E-2 Lewandowski 3-26-13 TR, pg. 23).

During discussion regarding scheduling the restitution hearing, the following discussion occurred:

THE COURT: But we don't know how much damage. But there are two victims here because of your conduct. Two victims.

Do you think he could get it done? No?

Attorney Hurley, but you are here on the 16th. They may make an exception and allow me to bring him back on a Tuesday. Usually, the prisoners, in person, are on a Thursday, in person, and by video conference on Wednesdays. But you won't be here on either one like on the 18th, right?

They may make a special exception, and I'll order him on that date. Maybe they'll allow.

MR. HURLEY: I guess that I had a different idea.

THE COURT: Well, I did, too, until I realized how horrible this is. I mean there are two victims, and you left the scene of the accident, and he's still testing positive for marijuana. He has warrants. He has a matter pending, which I can't hold that against him, criminal damaging, I think, in Shaker Heights, and a warrant out in Portage County.

* * *

THE COURT: You need to take care of it. I'm not changing my mind. There are two victims on this matter.

And I will try to get special permission, Attorney Hurley, if there is any way they could bring him in.

Can you be here the morning of - - we'll leave it at 2 o'clock. I will just order him returned with his personal clothes and belongings with the intention of releasing him on the 16th when you come.

I'm ordering him returned with his personal clothes and belongings so he could be released. He should have had the assessment by the; is that okay?

MR. HURLEY: I understand your decision, Judge. I guess, I was expecting that you were going to impose some jail days and have him back here on his own on the 16th. That was my expectation.

THE COURT: Well, I had thought about that, but he has this Portage County hold, and there are two victims. And this victim is really devastated by all of this.

I don't know about any laughing on Facebook, and all that. I have no idea. Let's hope that he's not doing anything like that. But I'm going to issue a No Contact Order with respect to this victim. Just wisdom would tell you not to post anything about her - -

THE DEFENDANT: (Inaudible.)

THE COURT: I don't know if it's true. I'm just saying - -

MR. HURLEY: Don't say anything.

THE COURT: - - please don't do that. I don't know if it's true.

* * *

THE DEFENDANT: I'm going to jail because a woman is crying.

THE COURT: What is he saying, Attorney Hurley?

MR. HURLEY: He's going to jail because she's crying. And in a way, now you're crying, okay?

THE COURT: He's going to jail because this Court could impose - - excuse me - -

THE DEFENDANT: - - my eyes.

THE COURT: The Court could impose 180 days.

MR. HURLEY: Don't get cutesy, don't get cutesy. There is a camera on both of us right now, and I'm doing my best to be the effective lawyer that I can for you 50 years after Gideon versus Wainwright puts a lawyer standing next to you. I'm doing the best I can; do you understand me?

And don't kid yourself. You are the guy that crashes this car into some other car - -

THE DEFENDANT: Yes, I understand that.

MR. HURLEY: You are going to make her whole, right? Then stop feeling sorry for yourself - -

THE DEFENDANT: Now, how do I make her feel whole if I'm in jail where I can't pay no fines or nothing.

THE COURT: You know what? Because you don't comprehend this, I might just impose 180 days because I don't think you're ever going to pay her or the other gentleman.

THE DEFENDANT: I am.
THE COURT: You are not going to act up in this courtroom. Your record is terrible. I don't have to put all of this on the record. All of these – it's just ridiculous.

You have to change things around in your life, Mr. Lewandowski, and not blame anyone else but yourself. And this is the Court's decision.

(Exhibit E-2 Lewandowski 3-26-13 TR, pp. 24-30).

The Court then imposed a sentence of 180 days in jail, but informed Mr. Lewandowski that the sentence would be shortened:

THE COURT: And then we will set for a restitution - - oh, I'm sorry. So, at this time, this sentence ordered into execution will be 180 days, but you are not going to be there that long. You are coming back to be released on April 16th; do you understand?

(Exhibit E-2 Lewandowski 3-26-13 TR, pg. 31).

Judge Stokes suspended all fines and court costs; ordered two years of active probation, with alcohol or drug abuse assessment, as requested by attorney Hurley, treatment and counseling as may be warranted; restitution; and random urinalysis while on probation (Exhibit E-2 Lewandowski 3-26-13 TR, pp. 32-33).

Later that same day, the Lewandowski case was again called in open court. The following discussion occurred at SIDEBAR:

MR. HURLEY: Listen, just to be clear, first of all, he has, by the way, in the past, he was taking medications for anxiety disorders. It got awful claustrophobic back there for him, and he was struggling with that. I think he's got his breath. I think he's okay. I don't see any reason for 9-1-1 to be called right now.

But I will tell you, that while he has no reason to harm to himself or others, his mental health history here that maybe relevant eventually.

THE COURT: Do you want me to make a referral to the Court Psychiatric Clinic? We could do the evaluation while he's in custody.

MR. HURLEY: IF the Court is inclined to do that, I could understand why.

THE COURT: I can, but what is his diagnosis?

MR. HURLEY: Depression and anxiety?

THE DEFENDANT: I have anxiety and I'm depressed. Bipolar. OCC.

* * *

MR. HURLEY: Focus on one question at a time here, okay. All we're really trying to do is get a picture so bad we need you plugged into the right resources in the community; do you understand?

Do you want to sit down? (Inaudible.)

THE COURT: Is he - - are you presently under the care of a psychiatrist?

THE DEFENDANT: Not right now. I was trying to get back over - - (inaudible.)

* * *

MR. HURLEY: That's fine, okay. And this was through Bellefaire. He did have services through Bellefaire at some point.

THE DEFENDANT: I was in - - in - -

THE COURT: How long ago?

MR. HURLEY: Two years ago.

* * *

THE COURT: And he hasn't seen a psychiatrist since 2010; is that right?

MR. HURLEY: That sounds accurate.

Now, listen - - (inaudible) - - sign a request to release information - - (inaudible) - - prior - - (inaudible) - - that's a good thing, because that, at least, gives us a reference for medications that work. If it didn't work, give you new medications, okay. But you need to address those issues, and you mind as well address them now; do you see when I'm saying?

(Exhibit E-2 Lewandowski 3-26-13 TR, pp. 36-40).

Thereafter, the Court, upon reminder from the journalizer, imposed sentence on the License Required to Operate conviction and made a referral to the Court Psychiatric Clinic based on the information previously discussed at sidebar (Exhibit E-2 Lewandowski 3-26-13 TR, pp. 44-45).

On April 16, 2013, Mr. Lewandowski was returned to Court, as scheduled at the March 26, 2013 sentencing. At that time, the psychiatric evaluation had been completed. The report indicated that Mr. Lewandowski did not meet the criteria for

the Mental Health Docket (Exhibit E-3 Lewandowski 4-16-13 TR, pg. 2). Judge Stokes noted that the substance abuse assessment had not yet been completed, but was scheduled for the next day, April 17, 2013. The Court indicated that the recommendations following that assessment would be available one week later, on April 24, 2013 at 1:00 p.m. (Exhibit E-3 Lewandowski 4-16-13 TR, pg. 3). Accordingly, the case was scheduled for a hearing on that date, April 24, 2013. With respect to restitution as to the second victim, the Court ultimately ordered Mr. Lewandowski to pay the second victim $50.00, which represented the deductible that the second victim had to pay to his insurance company (Exhibit E-3 Lewandowski 4-16-13 TR, pg. 13).

The Lewandowski case was not before the Court again until May 1, 2013. On that date, public defender Malbasa represented Mr. Lewandowski. Judge Stokes noted that the substance abuse assessment recommendations were in the Court's possession and that the recommendations were for intensive outpatient treatment. Attorney Malbasa moved the Court to mitigate Mr. Lewandowski's sentence. That motion was granted by Judge Stokes. Judge Stokes ordered Mr. Lewandowski to be released from jail and ordered Mr. Lewandowski to follow through with intensive outpatient treatment as part of his probation (Exhibit E-4 Lewandowski 5-1-13 TR, pp. 2-6).

On November 13, 2013, Mr. Lewandowski appeared again before Judge Stokes, having been arrested on November 7, 2013 on a capias warrant that was issued for his arrest for violating the terms of his probation. At that time, Judge Stokes indicated that Mr. Lewandowski had tested positive for marijuana on June 5,

2013, had failed to submit a urine sample, had failed to report to probation, and had failed to appear in Court for a Probation Violation hearing on July 10, 2013, which led to the issuance of the capias. Judge Stokes noted that Mr. Lewandowski had not paid restitution as of November 13, 2013, but gave Mr. Lewandowski another chance by giving him credit for time served and continuing him on probation (Exhibit E-5 Lewandowski 11-13-13 TR, pp. 2-6).

The Court docket on the Lewandowski case indicates that on February 10, 2014 the Community Control Officer notified the Court that Mr. Lewandowski had again violated the terms of his probation. A capias was issued.

On June 11, 2014, the public defender's office filed a *Motion to Recall Capias and Issue New Court Date*. By this time, the case had been removed from the docket of Judge Stokes per the administrative order issued by Judge Adrine. This motion was scheduled for hearing before Judge Adrine for June 23, 2014.

On June 23, 2014, in relevant part, the following occurred before Judge Ronald Adrine:

> MR. RINI (PUBLIC DEFENDER): Mr. Lewandowski. Kelsey filed a Motion to get it back before the Court. I'm not sure he was ever notified though of a court date. I don't see anything in the file. The file was just left on my desk this morning, so - -
>
> THE COURT: Was this a capias recall?
>
> MR. RINI: Yes. It was a Stokes' case, judge? I was just tracking her Motion right now.
>
> It looks like he served a number - - a significant number of days on the matter. And it was a traffic matter, but I think he was also supposed to be going, dropping urine and stuff for a traffic matter. It's the usual that we've encountered.

I think several days he was put back, or several times he was put back in jail and given credit. I don't know if it was a cumulative amount or each day, or for every time he came before her. She just totaled the number of days he had received. And according to Kelsey's notes it was one point in time he was supposed to be given like I think it was - -

THE COURT: Was it the only - - I mean the major charge on this was the No Drivers License?

MR. RINI: And a Hit Skip. There was a Hit Skip too.

THE COURT: And he pled to both of those?

MR. RINI: That's my understanding, judge. There was one point he was supposed to be given 21 days and wound up sitting there for 37 days.

If he were here, I'd make a Motion to terminate probation and give him credit.

THE COURT: Well, you know, you could still make the Motion.

MR. RINI: Okay, judge. With that in mind, let me make the Motion to terminate probation, give him credit for time served, which I believe is in excess of 47 days, and it may be more than that. I was just trying to calculate, based on what I've seen here. But the paperwork isn't - - doesn't seem to be accurate.

THE COURT: But there is at least 44 days that the Court gave him credit for.

MR. RINI: I know. And I saw more days. Then I saw a note about at one point he was supposed to do 21 days, but wound up sitting there for 37 days before he was brought back, so I think that may be in addition to other days he got.

So if the Court would consider recalling the capias, releasing the warrant block, giving him credit for time served, and terminating his probation, I will waive the hearing and see about notifying him (inaudible) results.

THE COURT: He was referred for both a psychiatric evaluation and formal alcohol drug assessment.

MR. RINI: I didn't know about the psychiatric. I knew about the alcohol assessment.

THE COURT: All done at the same time of sentencing. What is the basis for the psychiatric exam, do you know?

MR. RINI: Judge, I wasn't there. I think Kelsey may have been. I - - she did it often times. I mean I don't - -

THE COURT: Prior psychiatric history. It says defendant has not seen a psychiatrist since 2010 and used to take medications for anxiety, and then treated at Bellefaire. That defendant's diagnosis are bipolar.

MR. RINI: (Inaudible) is unrelated to the traffic matter.

THE COURT: Depression, anxiety, panic attacks, and obsessive/compulsive disorder.

MR. RINI: No relationship to what he was before the Court on?

THE COURT: Probation violation hearing having been waived, defendant is found in violation of probation. Sentence is resuspended. Probation is terminated.

(Exhibit E-6 Lewandowski 6-23-14 TR, pp. 2-5).

Significantly, whereas Judge Stokes held all psychiatric discussions properly at sidebar, Judge Adrine impermissibly discussed Mr. Lewandowski's psychiatric issues in open court.

Again, as was seen before in the Reidenbach case, a thoughtful and appropriate sentence imposed by Judge Stokes, in which Judge Stokes considered the impact of the offense upon the victims and the need for changing Mr. Lewandowski's behavior and/or rehabilitating him was simply tossed aside by Judge Adrine, with no consideration of the effect of terminating his probation would have on the victims of Mr. Lewandowski's conduct, especially Miss Ponomrenko.

Further, Judge Adrine terminated Mr. Lewandowski's probation without even determining whether Mr. Lewandowski had paid restitution to Miss Ponomrenko and Mr. Ridings.

Pursuant to R.C. 2929.22, entitled "Determining appropriate sentence for misdemeanors", the court has discretion "to determine the most effective way to achieve the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code". Further, this statute specifically stated that "a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under sections 2929.24 to 2929.28 [jail terms, community control sanctions, community residential sanctions, nonresidential sanctions, and financial sanctions] of the Revised Code".

In imposing sentence, the Court must consider all of the following factors:

> (a) The nature and circumstances of the offense or offenses;
>
> (b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;
>
> (c) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;
>
> (d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;
>
> (e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B)(1)(b) and (c) of this section;
>
> (f) Whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses;

(g) The offender's military service record.

(R.C. 2929.22(B))

Further, the Court must "consider any relevant oral . . . statement made by the victim, the defendant, the defense attorney, or the prosecuting attorney regarding sentencing for misdemeanor". R.C. 2929.22(D)(1).

Finally, the Court must notify the victim of the offense "at the time of sentencing for a misdemeanor or as soon as possible after sentencing" of the victim's right to file an application for an award of reparations. R.C. 2929.22(D)(2).

In *State v. Jones* (1990), 49 Ohio St.3d 51, 53, 550 N.E.2d 469, this Court held that:

> [i]n determining whether a condition of probation is related to the 'interests of doing justice, rehabilitating the offender, and insuring his good behavior,' courts should consider whether the condition (1) is reasonably related the rehabilitating offender, (2) has some relationship to the crime of which the offender is convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation." See also, *State v. Walker*, 164 Ohio App.3d 114 (Ohio App.2 Dist. 2005), 841 N.E.2d 376, 2005-Ohio-5592.

In this "Specific Example", Judge Stokes fully and completely complied with R.C. 2929.22 and the purposes of misdemeanor sentencing set forth in R.C. 2929.21. As mandated, she considered all of the factors set forth in R.C. 2929.22(B) and considered the oral statements made by the prosecuting attorney, victims, Mr. Lewandowski, and Mr. Lewandowski's attorneys. Based on Judge Stokes consideration of the nature and circumstances of the offense, Judge Stokes ordered a urinalysis test be performed on Mr. Lewandowski. As this test was positive for marijuana, Mr. Lewandowski's attorney requested a substance abuse assessment, which the Judge thereafter ordered. Further, the Judge ordered a psychiatric

evaluation based on Mr. Lewandowski's representations and request and based on statements made by Mr. Lewandowski and his attorney. Finally, Judge Stokes protected the rights of the victims by making sure they were notified of the sentencing hearing so that they could be heard and so that their right to restitution could be protected. Appropriately, Judge Stokes fashioned a sentence that would best protect the public from future crime and that would punish Mr. Lewandowski and/or change his behavior. The sentence further included protections for the victims by making it a condition of probation that Mr. Lewandowski have no contact with Miss Ponomrenko and that Mr. Lewandowski make restitution to the victims.

Despite the appropriateness of this sentence, Judge Adrine, without knowing whether Mr. Lewandowski paid restitution to the victims and without notifying Miss Ponomrenko that Mr. Lewandowski's probation would be terminated, thus effectively nullifying the no contact order, Judge Adrine awarded Mr. Lewandowski's probation violations by terminating his probation.

Once again, nothing that Judge Stokes did in the Lewandowski matter can be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

6. Relator's assertion:

- On August 29, 2011, Denise Pederson came before respondent on an open container charge. Pederson pled no contest to the charge. Respondent imposed a $20 fine and inquired whether Pederson could pay it within 24 hours. Pederson or her attorney stated that she was unable to pay the fine within 24 hours because she was on disability and would not receive her next check until September 3, 2011. Respondent then inquired into Pederson's specific disability. Upon learning the [sic] Pederson had schizophrenia, respondent placed Pederson on one-year of active

probation, decided that Pederson needed to be evaluated, and took her into custody for a psychiatric evaluation.

WHAT REALLY HAPPENED IN THE DENISE PEDERSON CASE:

On August 29, 2011, Denise Pederson appeared before Judge Stokes for purposes of arraignment on a charge of Open Container, a misdemeanor of the fourth degree. At the commencement of the hearing, Public Defender Scott Malbasa, on behalf of Ms. Pederson, informed Judge Stokes that Ms. Pederson was going to enter a plea of No Contest to the charge of Open Container (Exhibit F Pederson 8-29-11 TR, pg. 2). Judge Stokes appropriately advised Ms. Pederson of her constitutional rights and accepted the No Contest plea (Exhibit F Pederson 8-29-11 TR, pg. 2-4).

At the time of sentencing, Attorney Malbasa stated that he had nothing to say on behalf of Ms. Pederson. After an exchange between Attorney Malbasa and Ms. Pederson, Attorney Malbasa stated that Ms. Pederson would like to address the Court regarding the fine. Ms. Pederson then stated to the Court that she would like to do community work service in lieu of a fine (Exhibit F Pederson 8-29-11 TR, pg. 5).

Whereupon, Judge Stokes asked Ms. Pederson where she lived, as the ticket indicated she lived in Buffalo, New York. Ms. Pederson stated that she had moved to Cleveland, Ohio (Exhibit F Pederson 8-29-11 TR, pg. 5).

Judge Stokes imposed a fine of $250.00, with $230.00 suspended and imposed thirty days ail, with all thirty days suspended, leaving a balance of $20.00 and court costs (Exhibit F Pederson 8-29-11 TR, pg. 5). Judge Stokes indicated that if Ms. Pederson were unemployed, she could suspend court costs. Ms. Pederson stated

that she was unemployed (Exhibit F Pederson 8-29-11 TR, pg. 6). The following then occurred, in relevant part:

THE COURT: How does she pay for her rent and so forth?

MR. MALBASA: I don't know. She receives disability, your Honor.

THE COURT: And how much does she get in disability benefits monthly, that she can't pay a $20.00 fine to the Cleveland Municipal Court? So then she can. If she can pay it, she can pay it right now.

If you want to make a motion about the court costs, the Court understands if there's a disability here. Is there a motion, Attorney Malbasa?

MR. MALBASA: Motion to suspend courts, your Honor.

THE COURT: Any objection?

MS. JERLSTROM: No, your Honor.

THE COURT: There's no objection.

MS. JERLSTROM: No.

THE COURT: Court costs will be suspended based upon a finding of indigency. And Attorney Malbasa, she can make a $20 - - pay within 24 hours a payment of the $20 fine?

MR. MALBASA: Can you pay the payment within 24 hours? Yes or no. No? When do you get your next paycheck, your next disability check? The 3rd? So September 3rd?

THE COURT: What is the disability? What's her mental disability? Just tell him quietly. He'll tell me quietly.

MR. MALBASA: Schizophrenia.

THE COURT: So why is she consuming alcohol with her psychotropic meds? Do you take your psychotropic medication?

THE DEFENDANT: I don't take any medicine.

THE COURT: Why? Are you supposed to?

THE DEFENDANT: No, I'm not supposed to.

THE COURT: Maybe I'll place this one on probation. I think I will. Attorney Malbasa, I'm a little uncomfortable but I'm not imposing jail time, but I'm going to place her on one year of active probation. And if I need to make a referral to the Court psychiatric clinic to see if this belongs on the mental health court docket, that's fine. She needs to be evaluated. But also Attorney Malbasa, do you want me to give a time to pay date, Attorney Malbasa?

MR. MALBASA: Judge, maybe in this case it'd be best if we enter a not guilty plea and she spoke to an attorney.

THE COURT: And I will probably make a referral and if I decide to put a bond on it, I will certainly do that also. It's fine with the court.

MR. MALBASA: I'm just - -

THE COURT: I understand. If you want her to vacate this it's fine, and I may put a bond on it, and I may make a referral to the - - I am going to make a referral to the Court psychiatric clinic no matter what. So it's fine if she wants to vacate that. I have no problem with that. She can certainly do that. Do you want her to enter a not guilty plea?

Well, you all talk about it. I will call the next case. She may have a seat over here. You all just make sure she doesn't leave the courtroom.

Thereafter, Attorney Malbasa, on behalf of Ms. Pederson, moved to vacate her no contest plea, which was granted by the court. A not guilty plea was then entered. While discussing a psychiatric clinic referral, Judge Stokes indicated an intention to do a "no bond Clinic mit [mittimus]", Ms. Pederson stated that she already had an appointment the next day "with a mental health worker about my housing and doctor's appointments". Judge Stokes stated that "That's just fine". Exhibit F.

Subsequently, Ms. Pederson became irate and indignant, challenging Judge Stokes and, apparently, cursing in open court. (Exhibit F Pederson 8-29-11 TR, pg. 10). Judge Stokes asked Ms. Pederson to "just wait one moment" and warned her about cursing in the courtroom and the possibility of contempt of court (Exhibit F

Pederson 8-29-11 TR, pg. 10). Ms. Pederson continued her outburst in open court at which time Judge Stokes ordered Ms. Pederson to be taken into custody for contempt of court:

> THE DEFENDANT: I don't think it was okay the way you treated me - -
>
> THE COURT: Excuse me. Excuse me.
>
> THE DEFENDANT: - - up here because of having a mental illness, that you think you can treat me like you do.
>
> THE COURT: Excuse me. Excuse me.
>
> THE DEFENDANT: And order me this and that.
>
> THE COURT: There's no bond Clinic mit. Excuse me. Excuse me.
>
> THE DEFENDANT: (Inaudible) one beer (inaudible) what is so severely bad about that? And now you're treating me like I'm a retard because of my mental illness.
>
> THE COURT: That is not true.
>
> THE DEFENDANT: This is not right. This is - -
>
> THE COURT: You all just take her into custody at this point.
>
> THE DEFENDANT: Why am I going into custody? This is (inaudible).
>
> THE COURT: Take her into custody. She's not going to disturb this courtroom any longer.
>
> (Exhibit F Pederson 8-29-11 TR, pp. 10-11)

Here, Judge Stokes was clearly attempting to help Ms. Pederson by, initially, fashioning a sentence that would minimize the chance that Ms. Pederson would commit another criminal offense and/or would protect the public from the possibility that Ms. Pederson might commit another criminal offense in the future.

R.C. 2929.22, entitled "Determining appropriate sentence for misdemeanors" states, in relevant part, that a "sentencing court shall consider any relevant oral . . . statement made by the defendant . . . regarding sentencing for a misdemeanor". R.C. 2929.22(D)(1). While addressing sentencing, Judge Stokes was informed by Ms. Pederson that she suffers from schizophrenia and was not taking any medications.

Upon hearing this information, Judge Stokes was attempting to help Ms. Pederson by making a referral to the Court psychiatric clinic "to see if this belongs on the mental health court docket". Such referral would have been *for the benefit of Ms. Pederson.* As stated on the Cleveland Municipal Court's own website:

> The Mental Health Docket operates in cooperation with area community mentalhealth agencies to provide intensive supervision to offenders living with the challenges of mental illness. The Cleveland Municipal Court has recognized the need for behavioral health services, case management and supervision for clinically diagnosed mentally ill and/or developmentally disabled offenders to remain in the community and function as healthy, law-abiding citizens and to reduce the likelihood that they will come back into the criminal justice system as offenders.
>
> The Judges of the Cleveland Municipal Court identify defendants with possible mental health issues. An assessment of the defendant is made via in-depth interview by the Court Psychiatric Unit to determine whether the defendant is a candidate for the Mental Health Docket, currently under the direction of Judge Ed Wade.
>
> If eligible, after placement into the program the offender may be linked to a variety of community programs and agencies with the assistance of specially trained Probation Officers. Certain offenders may be offered a full range of services provided by agency providers, including forensic psychiatry, medication management, intensive outpatient substance abuse treatment for dually diagnosed offenders, partial hospitalization services and support services.
>
> See Exhibit F-1: https://clevelandmunicipalcourt.org/judicial-services/court-programs-services/mental-health-docket

Although Judge Stokes was in the process of attempting to help Ms. Pederson, Mr. Malbasa sought to vacate the no contest plea entered just moments before. Judge Stokes granted that motion, but still indicated her intentions to make the referral.

In a theme seen again and again in Relator's Complaint, First Amended Complaint, and Motion for Interim Suspension, actions taken by Judge Stokes to attempt to help criminal defendants before her by: (a) attempting to protect their constitutional rights to counsel by ensuring that defendants are aware of their rights and by attempting to make sure defendants are represented by legal counsel, and by (b) attempting to identify defendants with possible mental health issues so that said defendants can be provided with mental health treatment, are seen as punitive actions. Nothing could be further from the truth.

In the case of Ms. Pederson, Judge Stokes had before her a woman who had admitted that she suffered from a mental health issue and was not taking any medications for this issue. In sentencing Ms. Pederson, as with all criminal defendants before her, Judge Stokes is guided by R.C. 2929.21 ("Purposes of misdemeanor sentencing") and R.C. 2929.22 ("Determining appropriate sentence for misdemeanors").

In carrying out her judicial discretion and duties in sentencing defendants before her, Judge Stokes must comply with the "overriding purposes of misdemeanor sentencing . . . to protect the public from future crime by the offender and others and to punish the offender". R.C. 2929.21(A). As set forth in that statute:

> To achieve those purposes, sentencing court shall consider the impact of the offense upon the victim and the need for changing the

> offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.

Thus, Judge Stokes was statutorily required to "consider the . . . need for changing the offender's behavior" and "rehabilitating the offender". In carrying out her sworn duty, Judge Stokes attempted to help change the behavior of Ms. Pederson by referring her for a mental health evaluation so that, if appropriate, Ms. Pederson could be placed on the Cleveland Municipal Court Mental Health Docket.

Judge Stokes efforts to do so were clearly seen as punitive by Ms. Pederson, who lashed out at Judge Stokes in open court. Ms. Pederson's conduct clearly was a direct contempt of court and resulted in her removal from the courtroom and incarceration.

Contempts of court are classified as either direct or indirect. Direct contempts of court occur in the presence of the court and obstruct the due and orderly administration of justice. *See, In re: Contempt of Heffernan* (2008), 895 N.E. 2d 215. *See also,* ORC 2705.01 and 2705.02.

Direct contempt is defined in R.C. 2705.01, entitled "Summary punishment for contempt":

> A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

It has been said that R.C. 2705.01 "merely restates the inherent power of a court to summarily punish contemptuous acts committed in the presence of the court." *In re Carroll,* 28 Ohio App. 3d 6, 8, 501 N.E. 2d 1204 (8th Dist. 1985), fn. 5.

Further, in *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court has held that, with respect to a court inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense".

Here, Ms. Pederson's conduct clearly amounted to direct contempt of court, as it occurred in the presence of Judge Stokes and obstructed the due and orderly administration of justice. Judge Stokes warned Ms. Pederson about cursing in open court and, thereafter, Ms. Pederson continually interrupted the Court. This conduct was clearly contemptuous and, as evidenced by Judge Stokes stating "[s]he's not going to disturb this courtroom any longer", it is clear that Ms. Pederson obstructed the due and orderly administration of justice. Accordingly, Judge Stokes properly held Ms. Pederson in direct contempt of court and Ms. Pederson was appropriately summarily punished.

This is yet another example of a "Specific Example", erroneously cited by Relator as "misconduct", that establishes exactly the opposite: that Judge Stokes is an incredibly conscientious judge who, rather than simply rushes through cases, spends the time necessary to ensure that the constitutional rights of the defendants

before her have been protected and to determine whether the defendants could benefit for mental health or other social services.

Once again, nothing that Judge Stokes did in this matter can be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

7) Relator's Assertion:

- **On March 5, 2013, respondent ordered that Jamese Johnson, a defendant, Jasmine Edwards, another defendant, and Lisa Barbee, a member of the public, be placed in the holding cell without giving them any warning or opportunity to explain their conduct. Johnson had made a noise or statement in the courtroom and respondent believed that it was Edwards who had made the noise or statement. When Johnson, Edward, and Barbee attempted to correct respondent as to who made the noise or statement, respondent ordered all three of them confined in the holding cell.**

WHAT REALLY HAPPENED IN THE JOHNSON, EDWARDS, AND BARBEE MATTER:

At approx. 11:47am, while in the middle of her Docket, Respondent clearly overhears a disruptive noise coming from the gallery. According to the First Amended Complaint, Defendant Jamese Johnson loudly stated "Ouch" "F—k" "or something similar to express momentary pain caused by getting her hair caught in her zipper." First Am. Compl. ¶ 126. Sitting next to Johnson was her mother in law, Lisa Barbee and defendant Jasmine Edwards.

Upon hearing the disruptive profanity coming from the gallery, Respondent immediately looks in Johnson's direction and states, "Excuse me!?" Apparently, Defendant Jasmine Edwards found Johnson's disrespectful and undoubtedly contemptuous statement to be humorous, and began to laugh. Judge Stokes

immediately directs the bailiff to put "the one who is laughing making all this noise in the courtroom" into the holding cell, referring to Defendant Edwards.

Lisa Barbee, Defendant Johnson's mother in law, then challenges Judge Stokes's order and states something to the effect of "She didn't do it" or that they "had done nothing wrong." First. Am. Compl. ¶129). Immediately thereafter, Defendant Johnson stands up and admits to her contemptuous conduct, stating, "I said it, my hair got caught in my zipper." Outraged by each of the three individual's respective conduct, Judge Stokes then holds all three in contempt of court and orders them placed into a holding cell.

It is worth noting that Relator alleges that Attorney Ian Friedman was closer in proximity to Johnson, Edwards, and Barbee than Respondent, and that he "did not hear any discussion or disruptive behavior from them prior to Respondent ordering her bailiff to place Edwards into the holding cell." (First Am. Compl. ¶131). This assertion however is contradicted by Johnson's statement, "I said it, my hair got caught in my zipper." Given Johnson's admission, whether or not a noise was made is not reasonably subject to dispute.

While the allegations contained in the complaint paint this incident as yet another example of Judge Stokes arbitrarily holding individuals in contempt of court for *de minimus* reasons, the video of the incident tells a different story. Judge Stokes had sufficient grounds to find Johnson, Barbee and Edwards in contempt of court. First, Johnson openly admitted to using profanity while in Judge Stokes's courtroom, specifically, saying "F—K" loud enough to be heard by Judge Stokes who was across the courtroom. Such disrespectful conduct is unquestionably sufficient to hold an

individual in contempt of court. See, *State v. Perkins*, 154 Ohio App. 3d 631, 798 N.E.2d 646, 2003 Ohio App. LEXIS 4605, 2003-Ohio-5092, (2003) (defendant lawfully found to be in direct contempt where his outburst after his arraignment temporarily disrupted the following court proceeding).

Secondly, Defendant Edwards's conduct, laughing and making noise, could not only be interpreted as encouraging Johnson's contemptuous conduct, but also disrespectful and disruptive in itself. Thus, based on Edwards's own disruptive conduct, Judge Stokes had sufficient grounds to hold her in contempt of court. Thirdly, Lisa Barbee's attempt to "correct" Judge Stokes after she allegedly mistakenly attributed Johnson's conduct to Edwards, was nothing short of a challenge to Judge Stokes's legally justified finding of contempt. Thus, in challenging the Court's order, Lisa Barbee's conduct was of such a disrespectful and rude nature that it warranted Judge Stokes decision to find her in contempt of court as well.

Again, it is within a judges' inherent power of contempt to hold an individual in direct contempt of court for *shouting the work "F—k" in open court*, as Johnson admitted to doing. Similarly, it is within a judge's inherent power of contempt to find an individual who challenged their order in such a disrespectful way in direct contempt of court. It is likewise within a judges inherent power of contempt to find the disruption caused by Edwards' noise and laughing to constitute direct contempt under the circumstances as it only contributed to the unnecessary delay of courtroom proceedings.

Direct contempt is defined in R.C. 2705.01, entitled "Summary punishment for contempt":

> A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

It has been said that R.C. 2705.01 "merely restates the inherent power of a court to summarily punish contemptuous acts committed in the presence of the court." *In re Carroll,* 28 Ohio App. 3d 6, 8, 501 N.E. 2d 1204 (8th Dist. 1985), fn. 5.

Further, in *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court has held that, with respect to a court inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense".

Accordingly, nothing that Judge Stokes did with respect to this incident can be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

8) Relator's Assertion:

- **On June 25, 2013, respondent ordered that a non-incarcerated defendant to use the restroom in the holding cell instead of permitting him to leave the courtroom to use the public bathroom.**

WHAT REALLY HAPPENED ON JUNE 25, 2013:

On June 25, 2013, there are four different incidents where Judge Stokes is alleged to have made a "non-incarcerated" defendant use the restroom in the holding cell rather than permit them to leave the courtroom to use the public restroom.

The First Incident:

During the first incident, while Judge Stokes is conducting her docket, an individual can be overheard (off camera) making noise and/or talking in the gallery. Apparently, the individual is indicating to a bailiff that he needed to use the restroom (though the exact statements are inaudible.) Additionally, it is unclear whether this individual is, or is not, in custody at the time of the disruption. In light of the disruption, Judge Stokes stops what she is doing and states, "Excuse me?" to the individual. Realizing that the individual was indicating that he needed to use the restroom, Judge Stokes instructs the bailiff to says "Take him into the holding cell, there is a restroom in there."

If this individual was incarcerated at the time, there would be nothing unusual or inappropriate in Judge Stokes instructing a bailiff to take the individual to the holding cell in the restroom.

If this individual was not incarcerated at the time, there would have been no reason for the individual to disrupt court proceedings by announcing his need to use the restroom – he could have and should have merely excused himself to use the public restroom.

Accordingly, assuming *arguendo*, that this individual was not incarcerated at the time, the individual's clear and audible disruption of court proceedings alone

would have justified Judge Stokes in holding the individual in contempt of court. Thus, Judge Stokes' instruction to "take him to the holding cell" to use the restroom was wholly justified in light of the individual's disruptive and rude conduct before the court.

The Second Incident:

During the second "restroom incident" occurring on June 25, 2013, Public Defender Scott Malbasa asks to approach the bench while Judge Stokes is seen taking notes. When Judge Stokes asks Attorney Malbasa "Is it an emergency?" Attorney Malbasa informs Judge Stokes that his client "needs to use the restroom." Though the defendant is not seen on the video recording of the incident, it is likely that this particular defendant is not in custody based on what occurs next.

Regarding Attorney Malbasa's client, Judge Stokes states, "he can use the restroom . . . the bailiffs can help him use the restroom . . . if he has a warrant then he has to go through here, they know that." Judge Stokes then adds, "I don't know if he has a warrant or not," to which someone, (presumably Attorney Malbasa) states "we don't know." *Attorney Malbasa then informs Judge Stokes that he didn't want his client to leave the courtroom to use the restroom.*

Agreeing with Attorney Malbasa's apparent decision to err on the side of caution, Judge Stokes states, "that's right…just because I don't know, bailiffs, take him there (the holding cell) so he can use the restroom."

Judge Stokes' instructed the "non-incarcerated" individual to use the holding cell's restroom because it was unclear whether or not the individual had an outstanding warrant for his arrest. *Perhaps more importantly, Attorney Malbasa*

informed Judge Stokes that he did not want his client to leave the courtroom to use the restroom. Judge Stokes did not want to risk the individual leaving the courtroom and, in light of a warrant that he might have had for his arrest, fleeing the courthouse.

Accordingly, there was nothing inappropriate about Judge Stokes' decision to have this individual use the holding cell's restroom for four reasons. First, this restroom issue was needlessly delaying courtroom proceedings and Judge Stokes sought to quickly resolve the issue. Second, Judge Stokes recognized the individual's need to use the restroom and did not want to make the individual wait until it was determined whether or not he had an active warrant. Third, Judge Stokes wanted to allow the individual to use the restroom without risking the individual fleeing the courthouse, in the event that he did have a warrant. Fourth, the individual's own counsel, Attorney Malbasa, informed the Court that he did not want his own client to leave the courtroom to use the restroom.

The Third Incident:

During the third "restroom incident," while Judge Stokes is presiding over another defendant's case, she observes a female defendant trying to leave the courtroom. Apparently, the female defendant was waiting for her case to be re-called while her probation report was en route to Judge Stokes' courtroom.

Observing the defendant trying to leave, Judge Stokes states from the bench, "excuse me, she cannot leave the courtroom, I think she has positive test results for cocaine . . . she can have a seat over here to her right."

Clearly, Judge Stokes was not arbitrarily forbidding an individual from leaving her courtroom. Upon information and belief, and based on the circumstances, Judge Stokes had reason to believe that the female defendant was in violation of her probation and reasonably believed that she might flee (for fear of being found in violation of her probation) if she were permitted to leave the courtroom. Under these circumstances, *any judge* would be concerned about the female individual's willingness to return to the courtroom knowing that she may be remanded into custody that day. Accordingly, there was nothing inappropriate about this incident.

The Fourth Incident:

The fourth and final "restroom incident" occurring on June 25, 2013, is illustrative of Judge Stokes' concerns and intentions regarding defendants' use of the restroom. Here, Judge Stokes is seen hearing a case when an unknown attorney interrupts the judge to inform her that his client needs to use the restroom. Judge Stokes stops what she is doing and asks the attorney, "does she have a warrant?" to which the attorney replies, "I don't know."

In an attempt to address the defendant's need in a timely manner, Judge Stokes asks for the defendant's name. After the attorney informs Judge Stokes that the defendant's name is "Karen Murphy," Judge Stokes asks for Ms. Murphy's file. Judge Stokes is observed quickly reviewing Ms. Murphy's file and determines that she does not have a warrant. Judge Stokes then allows Ms. Murphy to leave the courtroom to use the public restroom.

Again, it is clear that Judge Stokes was more than willing to permit the defendant to use the restroom, however, she did not want to risk giving a capiased defendant an opportunity to flee. Finally, it should be noted that this final "restroom incident" lasted less than one minute before Judge Stokes permitted Ms. Murphy to leave the courtroom and use *the public restroom.*

Accordingly, nothing that Judge Stokes did on June 25, 2013 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

9) Relator's Assertion:

- **On August 13, 2013, Tabbatha Toon appeared before respondent on charges of license required to operate and right of way when turning left. The matter was continued so that Ms. Toon could retain counsel. As Ms. Toon was leaving the courtroom, she allegedly pushed too hard on the courtroom door. Respondent immediately ordered that Ms. Toon be brought back into the courtroom and confined in the holding cell. Respondent did not tell Ms. Toon why she was being held in contempt, nor did she give Ms. Toon an opportunity to speak, much less explain her conduct.**

WHAT REALLY HAPPENED IN THE TABITHA TOON MATTER:

On August 13, 2013, Tabitha Toon appeared before Judge Stokes on charges of license required to operate and right of way when turning left. The matter was continued to enable Ms. Toon to obtain counsel. As Ms. Toon leaves the courtroom, the courtroom door can be clearly heard being forcefully slammed open and slammed closed.

Judge Stokes immediately orders the bailiffs to bring Ms. Toon back into the courtroom and holds Ms. Toon in contempt of court. *(*Exhibit I *August 13, 2013 Transcript, p. 4, lines 7-18)*. Based on the forceful nature in which the door was

opened and slammed closed, all of which is clearly and loudly audible, Judge Stokes reasonably believed that Ms. Toon's conduct was intentional and thus in direct contempt of court. While Judge Stokes did not afford Ms. Toon an opportunity to explain why she had slammed the courtroom doors, Judge Stokes believed that Ms. Toon's conduct was so disruptive to courtroom proceedings and disrespectful to the court, that it warranted Ms. Toon's immediate remand into custody. It is respectfully asserted that any judge, in any court, could reasonably hold an individual in contempt of court for slamming the courtroom door. Ms. Toon later apologized to the Court and was released that same day.

Direct contempt is defined in R.C. 2705.01, entitled "Summary punishment for contempt":

> A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

It has been said that R.C. 2705.01 "merely restates the inherent power of a court to summarily punish contemptuous acts committed in the presence of the court." *In re Carroll,* 28 Ohio App. 3d 6, 8, 501 N.E. 2d 1204 (8th Dist. 1985), fn. 5.

Further, in *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court has held that, with respect to a court inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense".

Accordingly, nothing that Judge Stokes did in the Tabitha Toon matter could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

10) Relator's Assertion:

- **On March 21, 2013, respondent ordered that all cell phones in the courtroom be confiscated due to the fact that two individuals were using their cell phones in the courtroom.**

WHAT REALLY HAPPENED ON MARCH 21, 2013:

While Judge Stokes is hearing a case a cell phone is overheard going off in open court. As such an occurrence is disruptive, Judge Stokes halts the proceedings and states "Please just confiscate it. The lady in the back has been using that phone, I've been watching her I just didn't ask . . ." The bailiff then is overheard asking, "who has they phones?" Judge Stokes then states, "they do, the lady to your right and the man in front of them. Take those phones. At this point, Kathy, confiscate all the phones in the courtroom."

It is worth noting here that Judge Stokes acknowledges having watched this particular individual use her cell phone in her courtroom, though she did not confiscate the phone until it went off and disrupted the proceedings. Additionally, there is a well-known policy against using cell phones in not only Judge Stokes's courtroom, but all of the courtrooms in the Cleveland Municipal Court. In fact,

during arraignments in the Cleveland Municipal Court, a 6-minute video is played which advises defendants that if they use a cell phone during court proceedings, that it may be confiscated.

Further, as testified to by Public Defender Scott Hurley during his deposition, many of the Cleveland Municipal Court judges have cell phone policies posted on their doors:

> Q: And what were those posted policies?
>
> A: If your cell phone goes off, it gets confiscated.
>
> Q: And you have seen that happen in rooms other than Judge Stokes' room?
>
> Q: Yes. I would point out when it is confiscated it would be only temporarily taken in Judge Stokes' courtroom, as opposed to you will never see this phone again.
>
> Q: You have always seen her or her staff return the phone at the end of a session?
>
> A: I think it is fair to say always, yes.

(Exhibit J Hurley Deposition TR, pg. 52).

Judge Stokes' decision to confiscate all cell phones in her courtroom was merely an attempt to prevent further needless disruptions of courtroom proceedings. In light of the well-known policy against cell phone use, Judge Stokes was justified in using such a preventative action to ensure there would be no additional cell-phone related disturbances of court proceedings that day. Finally, even though certain judges on the Cleveland Municipal Court bench confiscate individuals' cell phones permanently after a violation, upon belief, all cell phones were returned to their respective owners by Judge Stokes' bailiffs later that day.

In fact, Public Defender Scott Hurley, who was often in Judge Stokes' courtroom, has testified during deposition in the within matter that Judge Stokes "was not one to keep cell phones" (Exhibit J Hurley Deposition TR, pg. 49).

Clearly the use of cell phones in the court could constitute a disruptive delay in court proceedings, as it did on March 21, 2013. Such disruption can amount to an obstruction of the administration of justice, constituting contempt of court.

In *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court has held that, with respect to a court inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense". In an effort to assure that there would be no contempts of court by way of disruptive cell phone usage, Judge Stokes was within her inherent power to determine how to assure that no disruptions would occur in her courtroom on that date.

Accordingly, nothing that Judge Stokes did on March 21, 2013 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

11) Relator's Assertion:

- **On August 19, 2010, respondent threatened Attorney Michael**

Winston with contempt and confinement in the holding cell due to Winston's attempt to place an objection on the record on behalf of a client.

OBJECTION TO THE USE OF THIS INCIDENT AS A "SPECIFIC EXAMPLE" BY RELATOR:

Initially, it should be noted that this alleged "Specific Example" cited by Relator was previously the subject of a grievance allegation against Respondent Judge Stokes filed by Mr. Winson. This incident has already reviewed and dismissed. *See* Exhibit K April 7, 2011 Letter to Attorney Michael Winston from the Officer of Disciplinary Counsel regarding ODC Case No.: BO-2588J, failing to find "substantial, credible of misconduct by Judge Stokes" and dismissing Attorney Winston's grievance. Accordingly, Respondent objects to Relator's use of the incident involving Attorney Michael Winston and Defendant Keynan Williams on August 19, 2010 in support of its Motion.

However, assuming, arguendo, that this Court decides that this incident can still be considered, notwithstanding Disciplinary Counsel's previous finding that Respondent did not engage in misconduct, Respondent respectfully asserts, again, that her conduct was wholly justified and ethical. At the time this issue initially came before Disciplinary Counsel, Attorney Kimberly Riley, on behalf of the Respondent, addressed the merits of this issue in her letter to Disciplinary Counsel dated January 19, 2011. *See* Exhibit K-1. It was this letter that, in large part, led to the Disciplinary Counsel's finding that the Respondent had not engaged in misconduct.

The analysis of this incident and exhibits, as set forth below, has been taken primarily from Attorney Riley's January 19, 2011 letter to Disciplinary Counsel:

WHAT REALLY HAPPENED IN THE MICHAEL WINSTON MATTER[3]:

On August 19, 2010, attorney Michael Winston appeared before Judge Stokes on behalf of Keynan Williams on three (3) separate cases: Case No. 2007 CRB 014927, in which Mr. Williams was charged with Drug Abuse (marijuana); Case No. 2010 TRD 038170, in which Mr. Williams was charged with Driving Under Suspension and a Seatbelt Required violation; and Case No. 2010 CRB 021617, in which Mr. Williams was charged with Drug Abuse (marijuana) and Open Container. The timeline of these cases is as follows:

2007 CRB 014927 - May 10, 2007:

> Williams was issued a citation for drug abuse/ marijuana possession (MM); he was ordered to appear on May 24, 2007. When he failed to appear a capias was issued, later, a warrant block followed.

2010 TRD 038170 & 2010 CRB 021617 - June 7, 2010:

> Williams was issued three citations—one for DUS and failure to wear a seatbelt, one for drug abuse/ marijuana possession and for violating the open container law in his vehicle. He was ordered to appear on June 21, 2010.

On June 21, 2010, Mr. Williams appeared in Cleveland Municipal Court for arraignment on the two 2010 cases, the capias alert from the 2007 case was cancelled. Mr. Williams entered a plea of not guilty on all 5 charges; he was advised of his right to counsel. By random lottery his case was assigned to Judge Stokes. A pretrial was scheduled for July 7, 2010.

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[3] Although Relator asserts that this "Specific Example" occurred on August 19, 2010, it is clear that the incident that Relator is referred to occurred on August 23, 2010.

On July 7, 2010, Williams appeared before Judge Stokes for pretrial. As Mr. Williams had not yet obtained counsel, Judge Stokes the matter to July 20, 2010 to enable Mr. Williams to obtain counsel.

On July 20, 2010 Attorney Michael Winston entered an appearance on behalf of Mr. Williams and moved to stay the matters while he sought to have them transferred to Judge Adrine's docket, as Judge Adrine had previously adjudicated other matters Williams' had in the Cleveland Municipal Court.[4] Respondent deferred the decision on this motion to Judge Adrine in his capacity as the presiding and administrative judge.

On July 22, 2010, Mr. Williams' Motion to Transfer was denied by Judge Adrine. A summons was issued for Williams to appear before Judge Stokes on August 11, 2010 for a pretrial. In addition, a call was placed to Attorney Winston's office, apprising him of the next hearing date.

The matter was continued to August 19, 2010 at Attorney Winston's request so that Williams might begin a payment plan with the BMV to obtain limited driving privileges. The court granted the continuance until August 19, 2010 for this purpose.

On August 19, 2010, Mr. Winston again appeared before Judge Stokes on behalf of Mr. Williams for purposes of a pretrial. Per the information previously provided to Disciplinary Counsel, potential resolutions were discussed with Judge Stokes during sidebar conference. During discussions, Judge Stokes indicated her intention to order a drug abuse assessment and treatment, if recommended, given

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[4] According to the court's local rules, Williams' current cases, including the 2007 drug abuse charge, would remain on the assigned judge's docket (i.e., Respondent's docket) unless he had pending cases before Judge Adrine.

Mr. Williams two pending Drug Abuse (marijuana) charges. The fact that at least one sidebar conference was held is reflected in the transcript from August 19, 2010:

THE COURT: Keynan Lee Williams, case.

MR. WINSTON: Good morning, your Honor, or afternoon.

THE COURT: This would be docket 62, 63, and 64.

MR. WINSTON: May we approach on these cases, your Honor.

THE COURT: Certainly.

* * *

THE COURT: What do you want to do?

MS. HOPP: Do you want to proceed with the plea today.

MR. WINSTON: Yes, and then we'll do what we talked about.

(Exhibit K-2 Williams 8-19-10 TR, pg. 2).

A plea agreement was reached between Mr. Winston and the City of Cleveland. Pursuant to this plea agreement, Mr. Williams would enter a No Contest plea to the charge of Drug Abuse, as charged in Case No. 2010 CRB 021617 and a No Contest plea to the charge of Driving Under Suspension, as charged in Case No. 2010 TRD 038170. In exchange for these pleas, the City would move to nolle and dismiss the remaining charges.

Mr. Williams did enter these pleas and the case was passed for sentencing to August 23, 2010 at 11:00 a.m.

On August 23, 2010, Mr. Winston again appeared on behalf of Mr. Williams before Judge Stokes for purposes of sentencing.

During the sentencing hearing, in relevant part the following occurred:

THE COURT: All right. Thank you. Mr. Williams, do you want to say anything in addition to what your attorney has stated?

THE DEFENDANT: Yeah, of course. First of all, I want to apologize for being here. It's my fault for being here. Like he was saying, before I didn't even know I was eligible to get a driver's license. Not that I should have been driving anyways, but if I would have known, I would have been able to take care of it, or I could have gotten a driver's license the right way. But I didn't know, and whenever I got pulled over, that's when I found out I was eligible to even get my license back.

But I'm basically sorry for having to be here, and it won't happen again.

THE COURT: You'll deal with your marijuana problem on probation?

THE DEFENDANT: Absolutely.

* * *

(Exhibit K-3 Williams 8-23-10 TR, pp. 6-7)

On the Driving Under Suspension, Judge Stokes imposed sentence, in relevant part, of 180 days jail with 178 days suspended, leaving 2 days jail to be served by Mr. Williams. Further, Judge Stokes placed Mr. Williams on one year active probation and, as part of probation:

THE COURT: You'll be referred for a formal alcohol drug abuse assessment treatment and counseling as warranted, and there will be random Breathalyzer and urinalysis testing. . . .

(Exhibit K-3 Williams 8-23-10 TR, pg. 8).

With respect to Judge Stokes only imposing two (2) days of jail, Mr. Williams stated to Judge Stokes "I respect your decision" and when asked "[a]nything else?" by Judge Stokes, Mr. Winston stated "[n]o" (Exhibit K-3 Williams 8-23-10 TR, pg. 10).

After Mr. Williams had been escorted out of the courtroom to serve his sentence, Mr. Winston addressed the record. Despite the fact that the sentence was clearly legal and despite the fact that a possible sentence had previously been discussed at the August 19, 2010 sidebar conference in which Judge Stokes discussed ordering a substance abuse assessment and treatment, if recommended, due to Mr. Williams' marijuana charges, Mr. Winston objected to this part of the sentence. In relevant part, the following occurred:

> MR. WINSTON: Your Honor, I need to address - - just make an objection for the record. I wanted to note, just for the record, that I object to the imposition of the one-year active probation required, which requires the random drug tests on the grounds - -
>
> THE COURT: Why? The companion case is Drug Abuse marijuana. He admits he has a problem with marijuana. This is a companion case from the same date.
>
> MR. WINSTON: That was a minor misdemeanor, though. The maximum sentence on that - -
>
> THE COURT: That's right, but it's a companion case. See? I'm not sending him to jail on the minor misdemeanor, I'm sending him to jail on the Driving Under Suspension, and ordering treatment so he could use better judgment, since his judgment is obviously clouded by marijuana. I don't think that he objects to getting the treatment, Counsel?
>
> MR. WINSTON: No.
>
> THE COURT: If that's the case, I would have never accepted the plea - -
>
> MR. WINSTON: - - his objection is to the - -
>
> THE COURT: - - do you want him to vacate this and let him plea on the M4?
>
> MR. WINSTON: No, no, no, your Honor - -

THE COURT: You know what? This makes absolutely no sense, Counsel. Your client has a drug problem that he admits, it's a companion case - -

MR. WINSTON: - - this Court only has a certain amount of authority - -

THE COURT: Sir - -

(Exhibit K-3 Williams 8-23-10 TR, pp. 10-11).

As can be seen, Mr. Winston continuously interrupted Judge Stokes while Judge Stokes was attempting to explain her clearly legal sentence. Further, Mr. Winston had already placed his objection on the record, and thereafter began arguing with the Court by challenging the Court's authority. Mr. Winston's contemptuous conduct continued:

MR. WINSTON: - - this Court doesn't have unfettered authority - -

THE COURT: You know what? I could order 180 days. Do you want me - - bring him back out.

MR. WINSTON: Well, wait a minute - -

THE COURT: Bring him back out.

MR. WINSTON: Your Honor, this is retaliation - -

THE COURT: I am tired of this nonsense. You are out of order - -

MR. WINSTON: Your Honor, listen, can I - -

THE COURT: You are out of order, Counsel. I gave your client a break by only ordering two days of this sentence into execution, and I think I actually said three days - - [referring to the 8-19-10 sidebar discussion]

MR. WINSTON: Your Honor, my objection - -

THE COURT: Is for him to get drug treatment first and - -

MR. WINSTON: Listen, wait a minute, wait a minute - -

THE COURT: Bring him back into the courtroom. Bring him back.

MR. WINSTON: You've already sentenced him. This is now retaliation for my objection - -

THE COURT: Sir - -

MR. WINSTON: - - to the sentence.

THE COURT: Sir, the Court - - but if you have anything to say - -

MR. WINSTON: Your Honor - -

THE COURT: Shut your mouth or I am going to - - you're going to be in that holding cell with him. He has a right to be in here to hear what you are saying, that's why I want him in this courtroom.

Sir, this is outrageous. I have sentenced him to one year active probation to deal with his drug abuse problem which he freely admits to, and I've ordered two days of the sentence into execution which is less than what I told you and the Prosecutor that the Court would order into execution. Your objection is noted for the record. It has absolutely no merit.

And sir, you are on one year of active probation to deal with your drug problem.

Do you have a problem with your alcohol drug abuse treatment while you are on probation for Driving Under Suspension? I believe this is your seventh conviction?

MR. WINSTON: He never said he had a problem with any of that stuff.

THE DEFENDANT: No.

THE COURT: Do you? Do you want to get the help or do you not want to get the help on the drug abuse charge?

THE DEFENDANT: I don't think that I have a problem, Judge.

THE COURT: Well, tell me this: Would you test positive today if I sent you down for a urinalysis test?

THE DEFENDANT: Of course.

THE COURT: Well, why do you think - -

(Exhibit K-3 Williams 8-23-10 TR, pp. 12-14).

And, once again, Mr. Winston interrupted Judge Stokes as she was attempting to address Mr. Williams:

> MR. WINSTON: Because the Court doesn't have authority to just do whatever it wants - -
>
> THE COURT: The Court is putting him on - - let me tell you, if interrupt me one more time - -
>
> MR. WINSTON: - - I was going to make an objection - - I asked your permission - -
>
> THE COURT: You better shut your mouth and not interrupt this Court, or you will be in that holding cell serving in Contempt. The Court does have jurisdiction to order him into treatment when he has a companion case for marijuana. And the only reason the Court allowed this is because you all wanted the Open Container, the M4, nollied. And I allowed that because he pled to the M1.
>
> But it is a companion case, it is not that this case is unrelated to his drug problem. And he wouldn't drive if he would use better judgment. That's it. The sentence stands. Your objection is noted for the record. . . .
>
> (Exhibit K-3 Williams 8-23-10 TR, pp. 14-15).

Attorney Winston's objection lacked any legal merit. Williams' history in the Cleveland Municipal Court included both drug and alcohol related convictions. Further, because the DUS charge had a maximum penalty of six-months in jail and a fine of $1,000.00, Respondent was entitled to order active probation for up to five years. R.C. § 2929.25. Finally, because of his two drug abuse charges-even though one was dismissed and the other had a maximum penalty of a fine-the law makes absolutely clear that Respondent was permitted to order drug testing as part of the probation conditions on the DUS case.

Pursuant to R.C. 2929.22, entitled "Determining appropriate sentence for misdemeanors", the court has discretion "to determine the most effective way to

achieve the purposes and principles of sentencing set forth in section 2929.21 of the Revised Code". Further, this statute specifically stated that "a court that imposes a sentence upon an offender for a misdemeanor may impose on the offender any sanction or combination of sanctions under sections 2929.24 to 2929.28 [jail terms, community control sanctions, community residential sanctions, nonresidential sanctions, and financial sanctions] of the Revised Code".

In imposing sentence, the Court must consider all of the following factors:

> (a) The nature and circumstances of the offense or offenses;
>
> (b) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender has a history of persistent criminal activity and that the offender's character and condition reveal a substantial risk that the offender will commit another offense;
>
> (c) Whether the circumstances regarding the offender and the offense or offenses indicate that the offender's history, character, and condition reveal a substantial risk that the offender will be a danger to others and that the offender's conduct has been characterized by a pattern of repetitive, compulsive, or aggressive behavior with heedless indifference to the consequences;
>
> (d) Whether the victim's youth, age, disability, or other factor made the victim particularly vulnerable to the offense or made the impact of the offense more serious;
>
> (e) Whether the offender is likely to commit future crimes in general, in addition to the circumstances described in divisions (B)(1)(b) and (c) of this section;
>
> (f) Whether the offender has an emotional, mental, or physical condition that is traceable to the offender's service in the armed forces of the United States and that was a contributing factor in the offender's commission of the offense or offenses;
>
> (g) The offender's military service record.
>
> (R.C. 2929.22(B))

When determining whether a condition of probation is related to the "interests of doing justice, rehabilitating the offender and insuring his good behavior," courts should consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality." *State v. Jones* (1990), 49 Ohio St.3d 51, 53, 550 N.E.2d 469. Accordingly, the Supreme Court of Ohio has determined that this standard "stands for the proposition that probation conditions must be reasonably related to the statutory ends* * * and must not be over broad." *State v. Talty*, 103 Ohio St.3d 177, 2004 Ohio 4888, ¶ 16, 814 N.E.2d 1201.

The courts have been given wide berth in this regard. Trial courts have "broad discretion in imposing conditions of community control." *Lakewood v. Hartman* (1999), 86 Ohio St.3d 275, 277, 1999-Ohio-101, 714 N.E.2d 902. The imposition of these conditions is reviewed under an abuse of discretion standard, meaning that mere errors in judgment will stand and only those decisions that are unreasonable, arbitrary, or unconscionable will be overturned on appeal. *Talty*, at ¶ 10.

Further, the courts have made clear that imposing a condition of drug and alcohol evaluation/ testing in probation is proper, even when the conviction is not for an alcohol or drug related offense- the only condition precedent to such a requirement is that the defendant have some past or current demonstration of a problem with drugs or alcohol. In *State v. Chavers*, 2008-Ohio-3199, at ¶¶ 5-11, the defendant challenged the condition of alcohol abstention and testing that were part

of his probation for his cocaine possession and drug use conviction. However, because the court had information regarding the defendant's past track record with alcohol related offenses (specifically, two prior DUIs), it was proper for inclusion on probation in this new crime that was unrelated to alcohol. By contrast, in *State v. Robinson*, 2004 Ohio 5984, at ¶¶3-15, the Court reversed a probation order that imposed a curfew and drug/alcohol testing for a defendant whose only conviction was for violating a protection order, and whose criminal history showed no evidence of alcohol or drug abuses. The Court held that the drug and alcohol testing could not be part of a "standard, non-case specific" set of probation conditions without any connection to the *Jones* test that they bear some relationship to rehabilitation.

Once Attorney Winston raised his objection, Respondent asked for Williams to be returned to the Courtroom; Williams had presumably been informed of every previous sidebar conference about the plea, and she believed that he not only understood and consented to the requirement of drug testing as a part of his plea, but she had no basis to believe his attorney was even speaking on his behalf or conveying his wishes. It was only after Williams was in the holding cell that Attorney Winston raised his objection; therefore, Respondent asked for Williams to be brought back into the Courtroom.

Attorney Winston accused Respondent of doing this out of retaliation, but this was not the case. Respondent wanted to ensure that the attorney was seeking something the client wanted, and Williams had told Respondent himself that he "absolutely" would seek treatment for his marijuana problem earlier during the

sentencing hearing. Respondent ordered Williams brought back in to the courtroom because he had a constitutional right to be present and so she could determine if Attorney Winston's objection was even made with his client's consent (Exhibit K-3 Williams 8-23-10 TR, pg. 13). At that time, Williams said he would not have a problem dealing with his alcohol/ drug abuse treatment with on probation, and conceded that he would test positive for marijuana if tested that day (Exhibit K-3 Williams 8-23-10 TR, pp. 13-14).

Further, Judge Stokes had the absolute right to control Mr. Winston's contemptuous conduct in her courtroom. After placing his objection on the record, Mr. Winston continuously interrupted Judge Stokes and argued with Judge Stokes about the Court's authority to impose substance abuse assessment and/or treatment as a condition of probation. Mr. Winston's conduct can only be described as direct contempt of court.

Direct contempt is defined in R.C. 2705.01, entitled "Summary punishment for contempt":

> A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

It has been said that R.C. 2705.01 "merely restates the inherent power of a court to summarily punish contemptuous acts committed in the presence of the court." *In re Carroll,* 28 Ohio App. 3d 6, 8, 501 N.E. 2d 1204 (8th Dist. 1985), fn. 5.

Further, in *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court has held that, with respect to a court inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense". Although she was absolutely authorized to do so, Judge Stokes did not hold Mr. Winston in contempt of court, rather, she warned Mr. Winston that he would be held in contempt of court if he did not control his conduct.

Accordingly, nothing that Judge Stokes did on August 23, 2010 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

12) Relator's Assertion:

- **On June 16, 2011, respondent repeatedly yelled at Assistant Public Defender Scott Malbasa, ordered him to "shut his mouth" and threatened to hold him in contempt when he attempted to place an objection on the record.**

WHAT REALLY HAPPENED ON JUNE 16, 2011:

Relator alleges in its motion that Respondent engaged in misconduct when, on June 16, 2011, Respondent "repeatedly yelled" at Assistant Public Defendant Scott Malbasa, ordered him to "shut his mouth," and threatened to hold him in contempt, when he "attempted to place an objection on the record."

On its face, Respondent's actions would seem wholly improper if a determination of misconduct was based only upon the isolated synopsis set forth in Relator's Motion. However, a review of the record makes clear that in light of Attorney Malbasa's own disrespectful, rude and demeaning conduct, Respondent's conduct was undoubtedly justified.

On June 16, 2011, Defendant David Brown appeared with Public Defender Scott Malbasa for a bench trial before Respondent in Case No.: 2010 CRB 044063. Defendant Brown was charged with Aggravated Disorderly Conduct and Obstructing Official Business.

Throughout the trial, Attorney Malbasa regularly cut-off witnesses when they would attempt to answer a question. At one point, during the cross-examination of a police officer, Attorney Malbasa interrupted the officer and began to ask a follow up question. Recognizing that the Officer was unable to provide a full response to Attorney Malbasa's initial question, Respondent admonished Attorney Malbasa, stating, "Attorney Malbasa, you have to let him answer the question. You have done this repeatedly. Ask the question and let him answer and then ask the next question." (Exhibit L Brown TR, pg. 19).

During the defense's case in chief, Prosecutor Aqueelah Jordan began to cross-examine an arguably difficult and hostile defense witness. The witness, Walter

Gray, was not seated in the witness box, but rather, was standing next to Attorney Malbasa at the podium. At one point, Attorney Malbasa objected to one of the prosecutor's questions on the grounds of relevance. Thereafter, the following exchange occurred:

> THE COURT: I'm sorry what was the basis for the objection, Attorney Malbasa?
>
> MR. MALBASA: Your honor, it's irrelevant whether he—
>
> MS. JORDAN: If the weed he swallowed and digested distorted his view if he was high on weed, you Honor, I think that it's absolutely relevant.
>
> THE COURT: Overruled. He can answer.
>
> MR. MALBASA: Objection. He doesn't have to—
>
> THE COURT: And the Court has ruled, and I said he can answer. Your objection is noted for the record. That's it.
>
> MR. MALBASA: Thank you.
>
> THE COURT: My gracious. You need to accept the Court's ruling. If you disagree, so be it, but when I rule, that's it, Attorney Malbasa.
>
> (Exhibit L Brown TR, pg. 53).

Thus, as the proceedings continued, it became clear that Attorney Malbasa was regularly challenging Judge Stokes' rulings and engaging in disrespectful conduct.

At one point, during the cross-examination of Defense witness Walter Gray, Mr. Gray began to interrupt and talk over the prosecutor. Accordingly, Judge Stokes admonished Mr. Gray for his rude conduct and advised him "not to interrupt the

prosecutor," and the prosecutor is going to let him speak (Exhibit L Brown TR, pg. 56).

During his cross-examination, Mr. Gray was not seated in the witness box, but rather, he was standing next to Attorney Malbasa at the podium. Frustrated by Mr. Gray's argumentative interruptions of Prosecutor Jordan's line of questioning, and in an attempt to ensure order throughout the trial, Respondent stated, "[y]ou know it might be better if these individuals sit at the witness stand. He's out of control in this courtroom and I'm not going to permit it." *Id*.

Attorney Malabasa immediately objected to Respondent's statement regarding the placement of the witness. As the following exchange makes clear, Attorney Malbasa proceeded to interrupt Respondent *repeatedly* after being told to stop, and actually believed that he *had a right to do so*:

MR. MALBASA: Your Honor.

THE COURT: Excuse me.

MR. MALBASA: Objection.

THE COURT: He is not going to—

MR. MALBASA: Objection.

THE COURT: Excuse me. You are not going to interrupt this Court either.

MR. MALBASA: Objection.

THE COURT: Excuse me.

MR. MALBASA: **I have a right to interrupt this Court.**

THE COURT: You do not have a right to interrupt this Court and be rude when I'm speaking…. You can make your objection when I am finished speaking. You are not going to

interrupt this Court. You will both be in that holding cell if you—

MR. MALBASA: I have—

THE COURT: Excuse me. Side bar on the record. Just keep your mouth closed until this is on the record. I have had it.

(Exhibit L Brown TR, pp. 56-57 – Emphasis added).

Unable to restore order, and unable to speak without being interrupted by Attorney Malbasa, Respondent called a sidebar on the record. While it is true that at side bar, Respondent can be heard telling Attorney Malbasa to "shut his mouth," this is only after Attorney Malbasa had engage in various forms of disrespectful conduct, such as challenging the Court's ruling and repeatedly interrupting the Court after being told not to do so. Then, Attorney Malbasa can be heard yelling, "I object! I object! I object!" and Respondent orders Attorney Malbasa into her chambers to discuss the incident. As Attorney Malbasa and Respondent exit the courtroom, Malbasa can be heard stating, "What are you going to do if I object?" (Exhibit L Brown TR, pp. 57-58).

Outside the courtroom, but still on the record, the following exchange takes place:

THE COURT: Excuse me Mr. Malbasa, you are out of order. I do not have any problems with any attorneys making their record, but when I'm speaking, let the Court finish and then make your objection.

I don't have any problem with that but you are not going to interrupt me. Excuse me, when you interrupt the witnesses, I told you not to do that. When you, Mr. Malbasa, interrupted the Prosecutor. I would say that to anybody that, that's rude behavior. I want the testimony to come forward. I want you to make your objection. When the prosecutor wants to object, she doesn't interrupt the Court. She let me finish speaking. I'm not goint to interrupt you at all, too.

When I'm speaking, and you won't let me finish speaking, then I not going to allow that to happen. I'm never going to stop anyone from making a record. I am not going to allow you to be rude to the Court.

* * *

MR. MALBASA: Judge, I've always allowed you to finish what you're saying and never object to what you're saying. You are objecting to my objection.

* * *

MR. MALBASA: Judge, I have not been rude. I have not interrupted you.

(Exhibit L Brown TR, pp. 59-63).

The discussion between the Respondent and Attorney Malbasa continued outside of the courtroom, but on the record, for a number of minutes. Attorney Malbasa continued to deny being rude to the Court and interrupting the Court while Respondent continued to advise him to stop interrupting the Court. Additionally, Respondent advised Mr. Malbasa that the court will not permit Mr. Malbasa's witness to interrupt the Court either, as this too was disrespectful and rude. Finally, after Attorney Malbasa continued to argue with Respondent, Respondent states, "We need to proceed. We just have to understand the guidelines which any judge would expect. That you have to just be professional about how you do this, and just take a moment" (Exhibit L Brown TR, pg. 69).

This entire interaction was not, as Relator briefly alleges, a situation where Respondent told Attorney Malbasa to "shut his mouth" and threatened him with contempt for simply attempting to place an objection on the record. As set forth above, these statements by Respondent came only after Attorney Malbasa

repeatedly choose to disregard the Court's order to stop interrupting the Court, then proceeded to argue with the Court to the point where Respondent felt the need to continue the discussion outside of the courtroom. It is noteworthy that Attorney Malbasa refused to even acknowledge interrupting Respondent or concede that his behavior and conduct was disrespectful and/or rude.

Even Attorney Malbasa's colleagues recognize Attorney Malbasa's tendency to become excited and act in what is perceived by many to be a disrespectful manner during court proceedings. During deposition in this case, Attorney Malbasa's colleague, Assistant Public Defender Scott Hurley, testified to speaking with Attorney Malbasa about his conduct in the courtroom, stating: "[W]hen he would get excited, you know, his voice would go up and start to sound like this (indicating). You know, that's kind of a natural thing, I suppose, in that kind of realm. I think I kind of advised him that that's something he needs to work on . . . because someone's emotional response can be misinterpreted as disrespectful." See, Exhibit J Transcript of Deposition of Scott Hurley, p. 70, January 16, 2015.

Based on Attorney Malbasa's behavior, Respondent as well as any judge in any court, would have had more than sufficient grounds to hold him in direct contempt of court. Attorney Malbasa's conduct delayed the proceedings for at least 10 minutes and as such, was a textbook example of conduct that obstructs the administration of justice.

Direct contempt is defined in R.C. 2705.01, entitled "Summary punishment for contempt":

> A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

It has been said that R.C. 2705.01 "merely restates the inherent power of a court to summarily punish contemptuous acts committed in the presence of the court." *In re Carroll,* 28 Ohio App. 3d 6, 8, 501 N.E. 2d 1204 (8th Dist. 1985), fn. 5.

Further, in *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court has held that, with respect to a court inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense". Although she was absolutely authorized to do so, Judge Stokes did not hold Mr. Malbasa in contempt of court, rather, she took the time and energy to continually advise Mr. Malbasa of what conduct was appropriate in her courtroom regarding making objections. The basic "ground rule" set forth by Judge Stokes constituted accepted practice in all courtrooms: do not interrupt the judge when the judge is speaking. Despite Judge Stokes' efforts to control the trial, attorney Malbasa continued to interrupt the proceedings. Ironically, Judge Stokes showed admirable restraint in not holding Mr. Malbasa in contempt of court on June 16, 2011.

Accordingly, nothing that Judge Stokes did on June 16, 2011 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

13) Relator's Assertion:

- **On May 16, 2013, respondent ordered Malbasa to be confined in the holding cell for advocating on behalf of his client in another case. Tobik Aff. ¶9.**

WHAT REALLY HAPPENED ON MAY 16, 2013:

Relator alleges that on May 16, 2013, Respondent ordered Assistant Public Defender Scott Malbasa "to be confined in a holding cell for advocating on behalf of his client in another case." Just as Relator's brief description of the incident involving Attorney Malbasa's misconduct on June 16, 2011 fails to tell the entire story, so too does Relator's description of this incident.

On May 16, 2013, Attorney Malbasa appeared before Respondent on behalf of his client Tarah Hernandez in Case No: 2010CRB010656. Respondent, Attorney Malbasa, and the Prosecutor began to discuss the defendant's eligibility for a Selective Intervention program and Respondent proceeded to ask the defendant some standard questions. (Exhibit M Hernandez TR, pg. 4).

Respondent then stated to Ms. Hernandez that she would have to undergo a urinalysis test, which requires a fee of $9.00. Judge Stokes asked Ms. Hernandez if she was prepared to pay the $9.00 fee today. When Ms. Hernandez stated that she could not pay the fee that day, Judge Stokes asked Ms. Hernandez if she wanted a continuance to a date that she could pay the fee (Exhibit M Hernandez TR, pg. 5). Ms. Hernandez stated that she would not be able to pay the fee until the next day

(Exhibit M Hernandez TR, pp. 5-6). Mr. Malbasa stated: "[t]omorrow, Judge for her to pay the nine dollars" (Exhibit M Hernandez TR, pg. 6). After Judge Stokes attempted to schedule a pretrial for the next day, Attorney Malbasa then requested that Respondent continue the matter to the following Monday. In an attempt to accommodate attorney Malbasa's request, Respondent checked the availability for the following Monday's docket. After determining that the docket that day was too full, Respondent asked attorney Malbasa why the defendant could not be present the following day.

Attorney Malbasa then stated, "She's just not sure she can be here all day tomorrow. She has a job." *Id*. at p. 7. As the defendant and Attorney Malbasa were clearly struggling to determine when would be best to continue the matter, Respondent then stated, "[s]he can be here in the morning. What time does she want to be here tomorrow? I'm in this courtroom all day. I am going to call another case while she figures out what time she wants to be in this courtroom."

Attorney Malbasa immediately challenged Judge Stokes' order to which Respondent stated, " Because I don't have any other days. So you can sit down and she can figure out her date, I'm calling another case." Malbasa's disrespect continued when he abruptly asked "What is wrong with Tuesday or Wednesday of next week, or--" (Exhibit M Hernandez TR, pg. 7).

Frustrated with that day's slow moving docket, Attorney Malbasa only contributed to the issues when he continued to argue with Respondent by stating, "[S]he has been here all day" Respondent reminded Attorney Malbasa that "[s]o has

everyone else" and ordered Attorney Malbasa to "[s]it down and don't say another word." (Exhibit M Hernandez TR, pg. 8).

Then, Malbasa began to repeatedly interrupt Respondent and disobeyed her order to sit down and remain quite. Only after Malbasa's consistent decisions to disregard Respondent's orders does Respondent state, "[o]ne other word, you can go to the holding cell" (Exhibit M Hernandez TR, pg. 9). Immediately, Attorney Malbasa states, "It's not right, this is not right. The Public defender's clients…" Respondent, true to her word, orders Attorney Malbasa to be placed into the holding cell, and states, "I told you not to argue with this Court." (Exhibit M Hernandez TR, pg. 9).

Then, the following occurred:

MR. MALBASA: Judge - -

THE COURT: Sir - -

MR. MALBASA: - - stop for a - -

THE COURT: - - let me tell you something, especially by your representation and your conduct in this courtroom.

MR. MALBASA: (Inaudible).

THE COURT: Now Mr. Malbasa, Just a moment - -

Gallagher, just bring him to the door. I'm so tired of his nonsense in this courtroom. It's outrageous.

Have a seat.

Attorney Malbasa, you are not going to conduct yourself like this in this courtroom. I have warned you as many times as I am going to do that. If you conduct yourself properly, you can stay in this courtroom. But if not, you are going to leave and I will call your superiors.

Now I am not going to argue with you. She can come tomorrow at whatever time she chooses. I do not care what time it is, but I am going to call other cases because I am not going to hold up this docket for your conduct in this courtroom. I'm calling the next case.

MR. MALBASA: Your Honor - -

THE COURT: You all figure it out - -

MR. MALBASA: Your Honor - -

THE COURT: No.

MR. MALBASA: - - I want to say some - -

THE COURT: No. You are not - -

MR. MALBASA: - - I want to say - -

THE COURT: - - No. You are not going to say - -

MR. MALBASA: Your Honor - -

THE COURT: No. Because I'm tired of you yelling at this Court.

Thereafter, Mr. Malbasa continued to speak, despite being warned not to. After continuously speaking, Judge Stokes instructed the bailiff to:

THE COURT: Place him in the holding cell. He is not going to conduct himself.

I have warned you enough time. I have had enough of your improper conduct in this courtroom. . . .

(Exhibit M Hernandez TR, pg. 11).

Relator's assertion that Attorney Malbasa was held in direct contempt "for advocating" on behalf of his client is clearly erroneous. As set forth above, it was Attorney Malbasa's repeated disrespectful and rude conduct that led to him being held in contempt, not his attempt to advocate on behalf of his client. It appears that Attorney Malbasa's frustrations got the better of him and again, and unreasonably

decided to disobey Respondent's order and proceeded to argue with the Court. This conduct only caused additional delay in Respondent's docket, the very reason Attorney Malbasa appeared to be upset. Regardless, Attorney Malbasa's conduct clearly delayed Judge Stokes' attempts to proceed through her docket and therefore obstructed the administration of justice.

Further, as previously stated, Assistant Public Defender Scott Hurley has testified to speaking with Attorney Malbasa about his conduct in the courtroom, stating during a deposition in this case: "[W]hen he would get excited, you know, his voice would go up and start to sound like this (indicating). You know, that's kind of a natural thing, I suppose, in that kind of realm. I think I kind of advised him that that's something he needs to work on . . . because someone's emotional response can be misinterpreted as disrespectful." See, Exhibit J Transcript of Deposition of Scott Hurley, p. 70, January 16, 2015.

Direct contempt is defined in R.C. 2705.01, entitled "Summary punishment for contempt":

> A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice.

It has been said that R.C. 2705.01 "merely restates the inherent power of a court to summarily punish contemptuous acts committed in the presence of the court." *In re Carroll,* 28 Ohio App. 3d 6, 8, 501 N.E. 2d 1204 (8th Dist. 1985), fn. 5.

Further, in *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court has held that, with respect to a court inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense". Despite repeatedly warning Mr. Malbasa, Mr. Malbasa persisted in challenging Judge Stokes, resulting in direct contempt of court.

Accordingly, nothing that Judge Stokes did on May 16, 2013 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

14) Relator's Assertion:

- **On September 25, 2012, respondent told defense attorney Henry Hilow that he was "out of order" and that he need to "watch [his] conduct" in her courtroom. . . . After waiting over three hours for his client's case to be called, Hilow had simply asked whether it was appropriate to request a later appearance time for a future pre-trial since it appeared that respondent called cases involving police officers first.**

WHAT REALLY HAPPENED IN THE HENRY HILOW MATTER:

On September 25, 2012, Attorney Henry Hilow appeared before Judge Stokes for a pretrial in the case captioned *City of Cleveland v. Frank Petrucci, Cleveland Municipal Court Case No. 2012 TRC 050939.* While before Judge Stokes, in relevant part the following occurred:

MR. HILOW: Your Honor, I talked to the prosecutor. I just met with Mr. Petrucci yesterday. We're asking for a continuance, your Honor and if the Court would consider the date of October 24th.

THE COURT: Is that fine with the city?

MS. RICHARDSON: Yes, your Honor.

THE COURT: That date's good. Do you need witnesses present on that date?

MR. HILOW: I think we can resolve it, your Honor.

THE COURT: On that - - okay.

MR. HILOW: - - without the witnesses being subpoenaed.

THE COURT: Sure. Continued at the defendant's request, set for a pretrial October 24th, 2012. What time would you like, attorney Hilow?

(Exhibit N- Petrucci TR, pp. 2-3).

At this point, rather than simply requesting a certain time, late morning, early afternoon, etc., Mr. Hilow made certain statements in open court that Judge Stokes did not agree were accurate. During the time in which Judge Stokes was explaining how her docket moved that morning, Mr. Hilow interrupted Judge Stokes several times:

MR. HILOW: Your Honor, I have a request of the Court. I notice that if the police officers are here they get called first. So would it be better to have - - since we're not subpoenaing police officers, show up later in the day.

THE COURT: I think that your observation is incorrect. What's - -

MR. HILOW: Well I - -

THE COURT: The Court - - I have messages, first of all. That one gentleman was having heart problems. The other gentleman they told me his father passed away and he was having a hard time. The other - -

MR. HILOW: Judge - -

THE COURT: Excuse me. You make an accusation to this Court against this Court, this Court is going to respond. The other gentleman had mental health issues and I have gone back and forth between private attorneys and with these officers.

MR. HILOW: Well judge - -

THE COURT: So you and the prosecutor can decide whether or not you need those witnesses present. That's between the two of you.

(Exhibit N Petrucci TR, pp 3-4).

Once again, rather than simply requesting a time for the next pretrial, Mr. Hilow continued to challenge the Court:

MR. HILOW: Your Honor, just for the record I signed in at 8:30 this morning. I watched this courtroom. I watched everything the Court did with the man with mental health issues and I watched this Court handle the other cases and I note now there's only one officer here. And that's the only reason. I'm asking as a courtesy of the Court. I'm not here to insult the Court or bring - -

THE COURT: I think that you are. I think you're out of order. This Court is not going to accept it. These cases were called in order in which this Court deemed appropriate based upon a lot of the information that these bailiffs gave the Court about people that had mental health issue, one what had heart problems.

And, yet again, Mr. Hilow challenged the Court:

MR. HILOW: It was two cases, your Honor.

THE COURT: Excuse me. You are not going to argue with this Court. You are out of order.

MR. HILOW: Your Honor, I'll ask for a 9:00 pretrial then, your Honor, on the 24th.

THE COURT: And you need to watch your conduct in this courtroom. Continued at the defendant's request set for a pretrial and that will be at October 24th at 9:00 a.m.

(Exhibit N Petrucci TR, pp. 4-5).

Despite Relator's assertion that Mr. Hilow "had simply asked whether it was appropriate to request a later appearance time for a future pre-trial", the transcript (and video) establishes that Mr. Hilow made a statement that Judge Stokes did not agree with and then interrupted Judge Stokes when Judge Stokes was explaining how the docket moved that morning. If Mr. Hilow had intended to request a later time for the pre-trial, he simply had to ask for a later time, as Judge Stokes specifically asked him what time he wanted to schedule the pretrial for. Further, Mr. Hilow challenged Judge Stokes' description of the events "[i]t was two cases, your Honor". In short, there was nothing inappropriate with Judge Stokes telling Mr. Hilow that he was "out of order" and that Mr. Hilow needed "to watch [his] conduct in this courtroom".

In *State v. Kilbane* (1980), 61 Ohio St. 201, 400 N.E. 2d 386, this Court held that, with respect to a court's inherent power to punish contemptuous acts:

> Courts, in their sound discretion, have the power to determine the kind and character of conduct which constitutes direct contempt of court. In imposing punishment for acts of direct contempt, courts are not limited by legislation but have the power to impose a penalty reasonably commensurate with the gravity of the offense.
> *Id.*, at Syllabus 1.

In the within matter, Judge Stokes had the inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court" and, further, had the "power to impose a penalty reasonably commensurate with the gravity of the offense".

Here, Judge Stokes was appropriately within her inherent power and sound discretion to warn Mr. Hilow about what kind of conduct was not appropriate

within her courtroom. There is absolutely nothing inappropriate about Jude Stokes' behavior and conduct in this "Specific Example"

15) Relator's Assertion:

- **On October 23, 2013, respondent sentenced a defendant to three days in jail for driving without a legal right to do so. Respondent ordered the defendant to serve her sentence immediately. Assistant Public Defender Gus Rini attempted to inform respondent that the defendant had a four-year old child for whom she needed to make child care arrangements during her incarceration. Respondent refused to listen to Rini's comments or give any consideration to the defendant's circumstances. She then told Rini that he was "out of order" and implied that it was Rini's fault that the docket had continued past 5:00 pm that day.**

WHAT REALLY HAPPENED ON OCTOBER 23, 2013:

On August 25, 2013, Ashley Thomas was charged with Driving Under Suspension (FRA), in violation of Section 435.07 of the Cleveland Codified Ordinances and Failure to Control, in violation of Section 431.34(A) of the Cleveland Codified Ordinances. There was an accident involved in this case.

On September 9, 2013, Ms. Thomas appeared in the Cleveland Municipal Court and entered pleas of Not Guilty to both charges. Her case was assigned to the docket of Judge Stokes.

On October 9, 2013, Ms. Thomas entered a plea of Guilty to the charge of Driving Under Suspension. The charge of Failure to Control was dismissed. The case was passed for sentencing and a pre-sentence investigation report was ordered. The case was scheduled for sentencing on October 23, 2013.

On October 23, 2013, Defendant Ashley Thomas appeared with Assistant Public Defender Gus Rini for sentencing. At that time, Judge Stokes noted that the pre-sentence investigation report indicated that Ms. Thomas reported to the

probation department on October 9, 2013 and was told to contact the probation department the next day to make arrangements to be interviewed. The report further indicated that Ms. Thomas failed to do so (Exhibit O Thomas TR, pg. 4). Thereafter, a probation officer sent a letter to Ms. Thomas' last know address scheduling a pre-sentence investigation appointment for October 16, 2013 at 11:30 a.m. Mr. Thomas failed to appear at that time (Exhibit O Thomas TR, pg. 5). Judge Stokes addressed Ms. Thomas and indicated that this was Ms. Thomas' third DUS conviction (Exhibit O Thomas TR, pg. 12). Thereafter, Judge Stokes imposed sentence of 180 days jail, with 177 days suspended, leaving 3 days to serve. Judge Stokes ordered those days to be served immediately.

Relator alleges in its Motion that Respondent sentenced Defendant Thomas to 3 days of jail time to be served "immediately," and then preventing Attorney Rini from advising the Court of Defendant Thomas' child care needs. Further, Relator alleges that Respondent "refused to listen to Rini's comments or give any consideration to the defendant's circumstances," and implied that it was Attorney Rini's fault for the docket continuing beyond 5pm.

After Respondent imposes her sentence, Attorney Rini states, "I need to address a few things with the court," to which Respondent ultimately replies, "Quickly, I'm not changing my mind . . . [t]here are people—it is 5:25. I will listen to what you have to say." (Exhibit O Thomas TR, pg. 14).

Attorney Rini states, "Judge I'm staying late for you as well, I do that every night to accommodate you" in a heated voice. Frustrated with Attorney Rini's assertion that he stays after hours to accommodate the Respondent as opposed to

his own clients, Respondent states, "You don't accommodate the court, sir. You are out of order. You don't accommodate the court. I will listen to what you have to say." (Exhibit O Thomas TR, pg. 15). Even though Respondent was upset with Attorney Rini for his arguably rude and disrespectful remark, Respondent proceeded to listen to Attorney Rini advocate on behalf of his client.

Attorney Rini informed Respondent that Defendant Thomas had a four-year old child that she has to pick. Unwilling to change her mind regarding Defendant Thomas's sentence, but recognizing the Defendant's unique circumstances, Respondent states, "Then let her make arrangements." (Exhibit O Thomas TR, pg. 15). While Respondent ultimately did not change her mind, she did allow Defendant Thomas to make a phone call and arrange for her child to be picked up from day care. There is nothing inappropriate about ordering a jail sentence to be served forthwith. In this case, Ms. Thomas had failed to contact the probation department to be interviewed for the presentence investigation report and had failed to appear for the October 16, 2013 presentence investigation interview. Additionally, this was Ms. Thomas third DUS conviction and she caused an accident.

With respect to the allegation that Respondent implied that it was Attorney Rini's fault "that the docket had continued beyond 5:00 p.m.", it was Attorney Rini's own mismanagement of his clients and disrespectful and argumentative comments to the court that ultimately prolonged that day's docket. The following exchange is illustrative of Attorney Rini's argumentative tone with the Court:

> MR. RINI: Judge I do this as a courtesy to you because I'm ordered to be out of here at 5:00p.m., but I stay every night as a favor and a courtesy to you.

THE COURT: Well, it's okay to leave. You know what? I stay because you haven't gotten to these people.

MR. RINI: That's not my fault.

THE COURT: And it's not my fault either. I am on this bench—excuse me.

MR. RINI: I wont ask for anything else because I'm leaving.

THE COURT: That's right, because you're being disrespectful and as long as you take on some of these cases. It's outrageous. . . .

(Exhibit O Thomas TR, pp.16-17).

Clearly, Attorney Rini concedes, in a rude and disrespectful way, that he has not had an opportunity to speak with a number of his clients, but asserts that he is staying late, not to consult with his own clients, but instead "as a courtesy" to Respondent. Moreover, throughout the day, it came to Respondent's attention that Attorney Rini was unaware until the late afternoon that a number of defendants present in Respondent's courtroom were, in fact, his clients. *See* Exhibit O-1 Public Defender Gus Rini's Client List for October 23, 2013 (including handwritten notes from Respondent stating "Attn. Rini didn't know these were his clients until late afternoon!"). Relator fails to acknowledge Attorney Rini's apparent unfamiliarity with his own client base as a possible reason for the day's late docket.

In light of Attorney Rini's disrespectful statements and conduct, Respondent's statements that may have implied that Attorney Rini somehow was responsible for the late docket, fell far short of any misconduct.

Accordingly, nothing that Judge Stokes did on March 21, 2013 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

<u>16) Relator's Assertion:</u>

- **On September 24, 2008, respondent repeatedly criticized a Court Psychiatric Clinic employee, Dr. Arcangela Wood, in open court. Among other things, respondent stated that a risk assessment performed by Dr. Wood was "flawed" and "unbalanced." Respondent made her public comments even after she had privately discussed her concerns at sidebar and directly with Dr. Wood and her supervisor.**

<u>WHAT REALLY HAPPENED ON SEPTEMBER 24, 2008:</u>

Relator alleges that on September 24, 2008, Respondent "repeatedly criticized" Dr. Arcangela Wood, a Court Psychiatric Clinic employee, in open court for a risk assessment that Dr. Wood performed in relation to Defendant Darren Penson's motion to mitigate his sentence. Specifically, Relator alleges that Respondent referred to Dr. Wood's Risk Assessment as being "flawed" and "unbalanced." Further, relator alleges that Respondent made these comments in open court and this, somehow, violates various ethical codes constituting unprofessional misconduct. This "Specific Example" occurred in the case of *City of Cleveland v. Darren J. Penson, Cleveland Municipal Court Case No. 2008 CRB 007538.*

In that case, on July 10, 2008, Defendant Darren Penson, with counsel Edward LaRue, appeared before Respondent and entered a plea of No Contest to one count of Assault, a Misdemeanor of the 1st Degree. Respondent appropriately entered a finding of guilty based on that plea, passed the case for sentencing, and

ordered a pre-sentence investigation report to be conducted. *See* Exhibit P Electronic Docket, Case No.: 2008 CRB 007538, p. 6.

On August 21, 2008, Defendant Penson appeared before Respondent for purposes of sentencing. Respondent sentenced Defendant Penson to serve 180 days in jail, to serve 2 years of active probation, to pay a $1,000.00 fine, with $700.00 suspended, and gave Defendant Penson credit for 3 days of time served. Respondent further ordered Mr. Penson to serve 177 days in the Cleveland House of Corrections. The Court also ordered the Probation Department to conduct a Risk Assessment of Defendant, *See Id*. at p.5, and continued the matter *sua sponte*, until September 24, 2008 for a Mitigation Hearing. Respondent specifically requested that the victims of Defendant Penson's offense be interviewed and that said victim's interviews be incorporated into the Risk Assessment, which Respondent would use during Defendant's mitigation hearing.

On September 24, 2008, prior to Defendant's Mitigation Hearing going forward, Respondent received the Risk Assessment performed by Dr. Wood and realized that contrary to the Court's request, the victims of Mr. Penson's offense had not been interviewed. In chambers, and off the record, Respondent expressed her displeasure regarding Dr. Wood's failure to interview the victims. (Exhibit P -1 Penson TR, pg. 3).

When Respondent went on the record, she explained to Mr. Penson and his Attorney, Edward Larue, why the Court was unwilling to proceed with Defendant's Mitigation Hearing as scheduled. Respondent first stated that she specifically asked that the probation department interview the victims, but that Dr. Wood "exercised

her clinical, professional judgment and elected not to give those victims a voice in this courtroom for the risk assessment, which the Court has a serious problem about." (Exhibit P -1 Penson TR, pp. 2-3). Respondent in fact does go on to say that she believes that the risk assessment is "flawed" and "imbalanced [sic]," because Dr. Wood chose only to interview the Defendant using "collateral information from three different families, who believe that they have been terrorized by Mr. Penson."

Judge Stokes elaborated:

> THE COURT: And I understand your concerns, Attorney Larue, but it's unfair to these victims. They have been victimized as far as this Court is concerned, again, by the Cleveland Municipal Court Psychiatric Clinic and probation report, where they feel that they are not worthy to be even interviewed personally. I can't even understand.
>
> But Mr. - - and the Risk Assessment was not asked prior to sentencing, because so much information that came out at the time of sentencing, was the basis for the referral with the request from the City Prosecutor and the Court for a Risk Assessment.
>
> It serves to help, not only the defendant, but the victims, and the Court in making a decision as to whether he be released. Why they would interview him and not the three different families, I can't understand.
>
> You need to subpoena the witnesses to be present on the next court date. They have to advise the Court in this courtroom if they have any objections to Mr. Penson being released, or if I release him on electronic monitoring, house-arrest, or whatever is the most appropriate way. He also needs intensive out-patient treatment.
>
> * * *
>
> MR. LARUE: I, respectfully, I understand the Court's stance. For the record, through, I feel compelled. I do see that the Court had gotten a transcript of the previous hearing at the time of his sentence.
>
> THE COURT: But I only ordered that when I found out that Dr. Arcangela Wood refused to order the victims, to interview the victims, not even pick up a telephone and talk to three different sets of victims.

MR. LARUE: Your Honor, my only - - my only point was that the victims were, in fact, here when the Court announced the next Court date of the 24th, that being today's date.

THE COURT: I also told them, sir, that they would be contacted by the Court Psychiatry Clinic, that they would be interviewed.

MR. LARUE: Very good, Judge.

(Exhibit P -1 Penson TR, pp. 5-6).

Respondent's statements were highly accurate and supported by the evidence. Given the lack of the victims' input into the Risk Assessment, the Risk Assessment was wholly unbalanced. Respondent's use of the term "flawed" to describe the Risk Assessment was also accurate in that the Risk Assessment was missing something—statements from the victims.

Given the circumstances, Respondent's displeasure with the probation department and Dr. Wood is completely understandable and justified. Not only had the three individuals involved in Mr. Penson's case been the victimized by Mr. Penson, when they are faced with the possibility of finally having their voices heard, Dr. Wood disregarded the Court's wishes and chose not to interview them. As the victims had not been subpoenaed to be present at Defendant Penson's mitigation hearing, Respondent understandably could not make a determination about whether to mitigate Defendant Penson's sentence.

Throughout the September 24, 2008 proceeding, Respondent reiterated the importance of having input from the victims in making her decision regarding mitigating Defendant Penson's sentence. Respondent stated that the interviews with the victims, "serve[] to help not only the defendant, but the victims, and the Court in

making a decision as to whether he be released." (Exhibit P -1 Penson TR, pg. 4). Additionally, the Respondent states that at the August 21, 2008 sentencing hearing, the Court gave the victims the assurance that the probation department would interview them. Thus, Respondent's desire to make clear that the victim's inability to have their voices heard was no fault of the Court's, was understandable given the circumstances.

Respondent respectfully asserts that were a probation department employee to directly disregard an order of the court, resulting in an additional needless continuance of a post conviction matter, *any judge* would have their respective frustrations regarding the incident. Furthermore, for purposes of the record and to combat any possible subsequent claims of needless continuances, it was important for Respondent to make her statements on the record that 1) the Risk Assessment was "flawed" and "unbalanced," 2) because it did not include interviews with the victims that the Court requested, 3) that it was no fault of the Court's for the failure of the victims to be interviewed, and 4) that Respondent's decision regarding the mitigation of the Defendant's sentence relied on the victims' statements and opinions about whether the Defendant should be released.

Accordingly, nothing that Judge Stokes did on September 24, 2008 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

17) Relator's Assertion:

- **On November 17, 2012, respondent publicly berated a pro-se defendant for not understanding court procedures and the flow of cases. The defendant filed a motion to dismiss but the prosecutor had not yet responded. Although it was the prosecution that required extra time, respondent continued the matter "at the defendant's request." When the defendant attempted to address some other outstanding issues, respondent yelled at him: "That's why you need to hire an attorney because you don't have a clue as to what you are doing in a courtroom." Respondent ordered him escorted out of the courtroom and threatened him with time in jail if he said "another word."**

WHAT REALLY HAPPENED IN THE KENNETH TAYLOR MATTER:

Despite the date alleged by Relator, the context of Relator's "Specific Example" refers to the case of *City of Cleveland v. Kenneth Taylor*, Cleveland Municipal Court Case No. 2012 CRB 038736.

Mr. Taylor's case was set for a bench trial on November 19, 2012 at 9:00 a.m. On November 19, 2012, Mr. Taylor at 8:46 am., filed a Motion to Dismiss, Lack of Evidence and during the hearing, Mr. Taylor requested not to go forward with his trial, but rather to have a hearing on his Motion to Dismiss. (See Exhibit Q Taylor 12-14-12 TR (Explaining procedural posture of Mr. Taylor's Case)). Being that Mr. Taylor requested a hearing on the Motion, Respondent, rightfully, felt an obligation to allow the City of Cleveland an opportunity to respond. Additionally, Mr. Taylor did not want the matter to be continued and set for trial, but rather a pre-trial. Thus, Respondent continued the matter, at the defendant's request, and scheduled the case for a pre-trial hearing on November 27, 2012.

On November 20, 2012, Mr. Taylor proceeded to file, what he referred to as "Defendant's Motion Opposing Marginal Denial of Defendant's Motion to Dismiss Should Be Reversed or Vacated."

Thus, on November 27, 2012, this Motion was still pending and the City of Cleveland had not been given the opportunity to respond. Respondent, when asked by the City of Cleveland for time to respond, granted the City's request. See Exhibit Q-1 Taylor 11-27-12 TR, pg. 2).

While Relator alleges that Respondent "berated" Mr. Taylor because he proceeded pro se, this is clearly not true. Mr. Taylor had a right to proceed pro se and was actively doing so. However, when Mr. Taylor again moved to dismiss his case, stating, "This is the third time I'm here with no officer," Mr. Taylor failed to understand that due to his own actions (filing the November 20th Motion), the Court rightfully had to allow the City of Cleveland time to respond.

This is what occurred:

THE DEFENDANT: There is some other issues surrounding this case.

THE COURT: So it is set for a motion hearing.

THE DEFENDANT: Well, I mean - -

THE COURT: So it is set for a motion hearing, and that can be done on December 14th. The City needs time to respond to your Motion to Dismiss.

THE DEFENDANT: But I would like to motion the Court to dismiss the case again today. This is the third time I'm here with no officer.

THE COURT: Sir. Let me tell you something. That's what you don't understand. You need to hire an attorney because you don't have a clue what you are doing in a courtroom.

You filed the motion and the City has a right to respond to that motion. She just got the motion, and she's going to respond.

And it's set for a hearing, December 14th, at 2 p.m.

Is there anything else?

THE DEFENDANT: Yes. I also filed a motion opposing the dismissal and denial of the motion to dismiss the case.

THE COURT: It's on the docket. December 14th.

Escort him to the elevator, please. Give him a reminder slip. December 14th at 2 p.m.

THE BAILIFF: Yes.

THE COURT: Anything out of line, Flanagan, bring him back to go to the Workhouse. If he says another word.

(Exhibit Q-1 Taylor 11-27-12 TR, pp. 4-5).

In general, officers are not subpoenaed for a scheduled pre-trial, such as the matter scheduled for November 27, 2012. As such, on that date, the officer did not need to be present. Even if the officer was present, however, Mr. Taylor's decision to file the Motion on November 20th entitled the City of Cleveland to respond, and Respondent acted accordingly.

Judge Stokes did not "berate" Mr. Taylor, but was explaining to Mr. Taylor that he did not understand the process. Further, based on her observations, Respondent instructed her bailiff to escort Mr. Taylor to the elevator to maintain order in her courtroom. Her directives to the bailiff were well within her inherent power and sound discretion to "determine the kind and character of conduct which constitutes direct contempt of court".

Accordingly, nothing that Judge Stokes did on November 27, 2012 could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

18) Relator's Assertion:

> **- On August 9, 2013 at 5:25 pm, Carl Collins appeared before respondent on a driving under the influence charge. Collins had previously stated that he would retain counsel, but ultimately decided that he wanted to represent himself. Since the prosecutor had already left for the day, the matter was continued. . . . On October 23, 2013 at 5:58 pm, Collins appeared before respondent again. Collins requested a jury trial because he had been unable to reach any type of resolution with the prosecutor. Respondent again questioned Collins' decision to represent himself and continued the matter until November 7, 2013. . . . When Collins appeared on November 7, 2013, he was unrepresented. Since Collins did not reach a resolution of his case with the prosecutor, he requested a jury trial. Respondent immediately requested that the parties approach sidebar. At sidebar, respondent again questioned Collins' decision to represent himself and ordered Collins to undergo a psychiatric evaluation for the purpose of determining whether he was competent to represent himself. . . . Ultimately, Collins was declared competent to represent himself; however, due to the number of appearances before respondent, the prosecutor was forced to dismiss the charges on speedy trial grounds.**

WHAT REALLY HAPPENED IN THE CARL COLLINS CASE:

On July 11, 2013, a Complaint was filed in the Cleveland Municipal Court charging Carl Collins with, among other charges, Driving Under the Influence of Alcohol.

On July 30, 2013, Mr. Collins appeared before the assigned judge, Judge Stokes, for purposes of a pretrial and, at that time, Mr. Collins was advised of his right to an attorney by Judge Stokes. Judge Stokes stated, in part:

> THE COURT: So please seek your legal counsel. They could always make a motion on your behalf [for driving privileges]. If you cannot afford to hire an attorney, you can go to the Public Defender's Office. They will give

you free legal representation, or you could hire an attorney if you have the financial means to do so; do you understand?

THE DEFENDANT: Yes, can I ask one more question? What is the time frame for requesting a jury trial?

THE COURT: Are you going to be representing yourself?

THE DEFENDANT: Probably.

THE COURT: Well, why don't you seek legal counsel, sir. And they could answer all of your questions, okay?

THE DEFENDANT: Thank you.

THE COURT: Why don't you just go and at least talk to them. At least talk to them.

THE DEFENDANT: Yeah, thank you, your Honor.

A pretrial was scheduled for August 9, 2013.

On August 9, 2013, Carl Collins appeared before Judge Stokes for purposes of a pre-trial conference. At this pretrial, Judge Stokes inquired of Mr. Collins whether he made a decision regarding legal representation. The following exchange occurred:

THE COURT: 2013TRC039690 for Mr. Carl Collins.

Mr. Collins, did you - - what did you decide about your legal representation? Did you make a decision about that, sir?

THE DEFENDANT: Yes, ma'am, I am still planning on going pro se, myself.

THE COURT: Okay. And your case is set for a pretrial today, so - -

MS. LYNN: Your Honor, when Mr. Collins first came in, he handed me a copy of discovery and the file. I need the copy back so - - (inaudible) - - get a copy so - -

THE COURT: Okay.

MS. LYNN: And I think, previously, I need to subpoena information from the troopers to hand it over so I could get him copies of discovery and proceed from there.

THE COURT: That's fine. What I'm thinking about is at what point should we have him sign a waiver of attorney form because he's speaking to you about his case. We just want to be careful.

THE DEFENDANT: Yes, ma'am.

THE COURT: You know.

THE DEFENDANT: Yes, ma'am.

THE COURT: It's fine if you would like to represent yourself, but I think this is a point where he should sign the waiver of attorney form, okay?

And I just have to go over this with you. Let's see, he has to be sworn in for this, if you don't mind.

* * *

THE COURT: And the Court has to advise you that if you want legal representation, I mean you have a right to it. And if you are indigent, you cannot afford to hire an attorney, then all you have to do is go to the Public Defender's Office. I think that I told you that. This will be the third time.

And then, if you decline, that's okay. But all of that has to be on this form that you sign.

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. And then because you could always have a continuance to hire an attorney if you have the financial means to do so, and that you are declining to do so, correct?

So I'll go over this really quickly with you. I think that I told you everything. And I can't give you any legal counsel. I have an - - I'm obligated to tell you that you have a right to legal counsel.

THE DEFENDANT: Yes, ma'am, I understand that.

THE COURT: So this is the waiver of attorney form. The under-signed defendant swears that you are able to read this form or this form has been read to you.

THE DEFENDANT: I could read the form.

* * *

THE COURT: And you just have to sign and date this. A bailiff will sign and date it. At any time that you decide you want to change your mind about legal representation, could you always withdraw the waiver of attorney form, okay?

But this is to protect you, protect the Prosecutor, and to protect the Court, okay?

THE DEFENDANT: Yes.

THE COURT: Because you are going to be representing yourself, you're going to be engaging in discussions with the Prosecutor. Keeping in mind that she's here to prosecute the case, she's not here to give you any legal counsel, or any legal advice?

THE DEFENDANT: Yes, ma'am, I understand.

THE COURT: Okay. Now, I'm going to get to this in just a moment, and I know that these bailiffs have to leave in five minutes.

What is the next - - what is the next court date that the parties, the attorneys, would like to have - - I mean the Prosecutor Lynn and Mr. - - oh, my gosh - - Collins - -

THE DEFENDANT: Collins.

THE COURT: - - would like to have? He's getting someone to time stamp his discovery request?

THE DEFENDANT: Yes.

THE COURT: Okay. And then, the City needs time to respond, then you just have to let me know do you want a pretrial date to review that discovery once it's the prosecutor's response to your discovery request? Or your next court date, shall we set it for a pretrial - -

THE DEFENDANT: Yes.

THE COURT: - - as opposed to a trial?

THE DEFENDANT: Yes, pretrial, please.

Thereafter, the case was scheduled for a pretrial on September 17, 2013. At that pretrial, the Prosecuting Attorney informed the Court that she had "all my documents" and "I did give him a copy of the video". Judge Stokes inquired of Mr. Collins whether he wished a continuance at his request to review the discovery. Mr. Collins stated that he did so request and Judge Stokes scheduled another pretrial for October 8, 2013 at 2:00 p.m.

On October 8, 2013, Mr. Collins discussed the case with the new Prosecuting Attorney Aric Kinast. Mr. Collins stated that he would like to have a jury trial. Judge Stokes asked Mr. Collins "why don't you have an attorney help you?" Thereafter, Judge Stokes engaged in a colloquy with Mr. Collins regarding why Mr. Collins did not wish to have an attorney represent him. During this discussion, Judge Stokes inquired about the status of discovery:

THE COURT: He has received discovery from the prosecutor's office?

THE DEFENDANT: Yes.

MR. KINAST: I have not received any from him, though.

THE COURT: Was there a demand by the city?

THE DEFENDANT: There was no demand.

THE COURT: Has the city made a request? Would the city like to make a request? Does there need to be a request? I don't know.

MR. KINAST: Yeah. There's a - - there's a demand by the city[5].

THE COURT: There is - - okay. So have you responded to the city's demand for discovery?

THE DEFENDANT: I have no other documents other than what the city - -

[5] The Court docket reflects that the City of Cleveland submitted its demand for discovery on September 5, 2013.

> THE COURT: Sir, you have to submit something in writing to the prosecutor's office. See, that's what I'm talking about. You don't know what you're doing in this courtroom. Oh my goodness.

Thereafter, the Court inquired as to whether Mr. Collins needed time to respond to the City's request for discovery and Mr. Collins indicated that he could respond "by next week". (Exhibit R, Collins 10-8-2013 TR, pg. 7). Judge Stokes then scheduled the case for a final pretrial on October 23, 2013. (Exhibit R, Collins 10-8-2013TR, pg. 9).

On October 23, 2013, Mr. Collins informed Judge Stokes that he could not reach a resolution and requested a jury trial. Judge Stokes again inquired as to whether Mr. Collins wished to have an attorney represent him. During this discussion, Mr. Collins stated:

> THE DEFENDANT: You know what, your Honor - - you know what, your Honor, I think as many times as you told me that I should at least talk to a lawyer and possibly get one. I think maybe I should do that. (10-23-13 TR, pg. 8).

Judge Stokes then asked Mr. Collins if he would like time to just explore talking to an attorney and Mr. Collins stated "Yes". (Exhibit R-1 Collins 10-23-13 TR, pg. 8). Judge Stokes then scheduled another pretrial for November 7, 2013.

On November 7, 2013 Judge Stokes asked Mr. Collins about what his plan was for legal representation at which point Mr. Collins stated that he was not going to retain counsel (Exhibit R-2 Collins 11-7-13 TR, pg. 2). Judge Stokes then told Mr. Collins to discuss the case with the prosecutor. During a subsequent sidebar conference, Mr. Collins was again asked why he did not want a lawyer to represent him, to which Mr. Collins responded:

THE DEFENDANT: - - when the officer stopped me, he didn't stop me for just cause. And everything that generated out of that is something that is not necessarily a valid reason to stop me.

(Exhibit R-2 Collins 11-7-13 TR, pg. 6).

Judge Stokes then explained to Mr. Collins why he should have legal representation:

THE COURT: That's why you need to seek legal counsel. (Inaudible) - -

* * *

THE COURT: Absolutely right - - (inaudible) - - and there are appropriate motions, legal motions, that should be brought on your behalf. You're foregoing all of that because you don't know what in the world you're doing. This is why - -

MR. KINAST: Sounds like you have suppression issues.

THE DEFENDANT: Yes.

MR. KINAST: So, why do you want to play lawyer before a jury?

THE COURT: (Inaudible) And, you have the financial means to hire an attorney.

THE DEFENDANT: Yes, I do.

THE COURT: So, why don't' you get an attorney to help you? This has been going on since July, and you can get an attorney to help you on this matter.

(Exhibit R-2 Collins 11-7-13 TR, pp. 6-7).

Judge Stokes then became concerned about Mr. Collins competence:

THE COURT: And, I'm, making - - I'm exercising part of what I do in the courtroom, and I'm making a referral, because I'm not certain that you're competent to stand trial or to represent yourself on these serious charges. That is exactly what I'm going to do, because I want to make a hundred percent certain that you are competent to stand trial - -

* * *

THE COURT: That's right and that's what the Court is concerned about. We want to make sure that your rights are protected all along the way. And, that's important to the Court to know that.

I don't believe we can have a fruitful pretrial, because he doesn't understand. This has been going on since July, any attorney would have filed [a Motion to Suppress] way before that.

MR. KINAST: Right.

THE COURT: He's even probably beyond the time to even do it?

Do you understand? There are certain dates by which - - (inaudible) - - you are foregoing all of this because you won't let an attorney help you. And, you can't give me a reason why you won't let someone help you.

We're trying to protect your rights.

(Exhibit R-2 Collins 11-7-13 TR, pp. 9-11).

Thereafter, Mr. Collins stated that the last time he had an attorney, "I got sent to Orient". Judge Stokes then ordered a psychiatric referral to make sure that Mr. Collins was competent to stand trial and represent himself:

THE COURT: . . . I believe, based upon observing you in these matters, since July 30th, that it would be appropriate for the Court to make a referral to the Court Psychiatric Clinic.

This referral to the Court Psychiatric Clinic is going to be - - because it's at the pretrial stage - - competency to stand trial. This will allow you to remain in the community. I'm not going take you into - - under custody.

THE DEFENDANT: Yes, ma'am.

THE COURT: My main concern is about the paranoia, of the suspiciousness, and that you are so hesitant to hire an attorney.

You have a right to represent yourself, but the Court needs to make certain that you are competent, that you can do that, and I'm not convinced that you are. These are my concerns, and then I'll let you say anything, and then I'll let Prosecutor Kinast say anything he would like to place on the record.

Also, you're not able to have fruitful pretrial conversations with the prosecutor. When I say fruitful, that doesn't mean that you have to change your plea; do you understand?

THE DEFENDANT: Yes.

THE COURT: It's just that you haven't been able to communicate where it just makes sense to the both of you, and from my observations, the pretrial conversations - - the both of you - - what you have stated - - there is something going on where I don't think you fully understand.

You have the financial means to hire an attorney, but you refuse to do so, and a lot of that is based upon the fact that you had one experience some time - - what year did you tell me?

THE DEFENDANT: In 1987.

THE COURT: Right, and according to you, it wasn't a positive experience, and you ended up going to - - did you say Ori - -

THE DEFENDANT: I had to file an appeal myself and ended up - - the Judge threw the case out on my appeal motion. My lawyer didn't do what I felt was a very good job for me.

THE COURT: Right. I understand, but on this case, I just have to be perfectly frank. You are beyond the time frame for like filing a Motion to Suppress, and maybe you need to be able to file a Motion to Suppress, but I have talked to you about counsel every time this case has been on the docket, July 30th, October 8th, October 23rd, and then again today, and I'm not allowed to give you any legal advice, but just from your discussions with Prosecutor Kinast at sidebar today, you have some reasons why you think maybe the charges should be dismissed.

THE DEFENDANT: Yes, ma'am.

THE COURT: You think maybe some of these - - you may not have known the word suppression, but the prosecutor, he let you know that word.

THE DEFENDANT: Yes.

THE COURT: But, if you're missing these dates - - do you understand my concern?

THE DEFENDANT: Yes.

THE COURT: What if I let you go forward and you don't have legal counsel, you miss these dates, if there is a conviction - - how can a judge do that? I can't do that in good conscious.

There might be some judges that say have at it. Do the best you can, but - - I even think if you sat down for jury trial in this matter, you might have to have counsel just to sit there and help you, even if you didn't want them to represent you, but someone to help you, but I don't even think you would allow that.

THE DEFENDANT: I just talked to my wife just - - not too long ago, and she said that she was going to ensure that I had somebody, if nothing more, to advise me in the legal steps that I need to take.

THE COURT: Is she here today?

THE DEFENDANT: No, she is not here. I called her on the phone.

THE COURT: Maybe she ought to come some time. This has been going on since July.

* * *

THE COURT: Well, what are we going to do to protect your rights here, sir? There has to be an attorney that you could maybe trust to help you, but you won't sit down and talk to one locally.

THE DEFENDANT: I have one. I've just gotten something from the war department who told me that I will talk to somebody.

THE COURT: Your wife?

THE DEFENDANT: Yes.

THE COURT: Because, this is what I think that - - I think that if you have grounds for a Motion to Suppress, that you should not forego that opportunity. Do you understand?

THE DEFENDANT: Yes.

* * *

THE DEFENDANT: Well, she is - - I am getting ready to talk to Mr. Gambino, Joe Gambino - - Thompson. She knows him, and she is gonna have me go and talk to them. My wife is the boss.

THE COURT: Well, what do you think we should do, because this has been going on since July?

THE DEFENDANT: I should have talked to her a long time before this.

THE COURT: So, what are you telling me?

THE DEFENDANT: That I am probably going speak to either Mr. Gambino or Mr. Thompson to see about the possibility of assisting me, or if there are grounds for some other things that they could handle for me.

THE COURT: What do you mean hire an attorney to help you?

THE DEFENDANT: Yes, to handle it for me.

THE COURT: Yes, because - - I don't know, Mr. Kinast, I think I have legitimate reasons for making the referral, I don't know if I should or if I should wait to see if he comes back with counsel. I'm not sure. I want to do the right thing here.

THE DEFENDANT: Your Honor, is making the referral - -

THE COURT: I want to make certain that you understand.

THE DEFENDANT: And, I understand you will.

THE COURT: That you're competent to represent yourself and that you can assist yourself in defense of this case.

From what I've seen so far, I don't think so. You are missing vital deadlines.

THE DEFENDANT: Yes.

THE COURT: I don't want you to be in that position because you're just ignorant of the law, and like you said - - hubris, prideful?

THE DEFENDANT: Yes.

THE COURT: This is too serious.

* * *

THE COURT: This is what I'm going to do, because of the time limits, I'm going to make this referral, but I can always withdraw this referral if you hire counsel, and I know you're okay, that you have proof - - I'll be happy to

withdraw it, but I don't think I can delay submitting it, but I can always withdraw it.

THE DEFENDANT: Okay.

THE COURT: Okay, and then, I'm just going to put competency to stand trial. I put on here there is a bit of paranoia here because of what happened to you - - what year was that 19 - -

THE DEFENDANT: '87.

THE COURT: - - 1987, so that must have been a pretty traumatic experience.

What was that for?

THE DEFENDANT: It was burglary.

THE COURT: But, it's okay.

Anyway, you felt that you had ineffective assistance of counsel.

THE DEFENDANT: Initially.

THE COURT: You went to a state prison. Then you got released because of the ineffective assistance of counsel, but just know, even if you had a bad experience, that shouldn't stop you from having legal representation now if you need it; do you understand?

THE DEFENDANT: Yes.

(Exhibit R-2 Collins 11-7-13 TR, pp. 14-27).

Mr. Collins later informed the Court that he is a veteran and had been in a POW Camp:

THE DEFENDANT: Although, I was in a POW Camp for a while. That would have made my paranoid.

(Exhibit R-2 Collins 11-7-13 TR, PG. 29).

Judge Stokes then scheduled the next hearing for November 20, 2013 at 3:00 p.m.

On November 20, 2013, Judge Stokes informed Mr. Collins that his psychiatric evaluation was scheduled for November 25, 2013. Judge Stokes then re-scheduled the pretrial for December 3, 2013 (Exhibit R-2 Collins 11-7-13 TR, pp. 2-4). On that same date, Mr. Collins filed a Jury Demand and a Motion to Suppress.

On December 3, 2013, Judge Stokes addressed the psychiatric evaluation which found Mr. Collins competent. Judge Stokes then scheduled the case for a suppression hearing on December 30, 2013 at 2:00 p.m. (Exhibit R-3 Collins 12-3-13 TR, pp. 2-6).

The suppression hearing proceeded on December 30, 2013 and, following presentation of evidence, Judge Stokes took the matter under advisement and continued the matter for a pretrial on January 9, 2014 at 2:00 p.m.

On January 9, 2014 Judge Stokes indicated that the written opinion as to the motion to suppress was not ready yet. Mr. Collins expressed his gratitude to Judge Stokes at this hearing:

> THE DEFENDANT: And can I say something, your Honor whatever they pay you, it's not nearly enough. It's not nearly enough.
>
> (Exhibit R-4 Collins 1-9-14 TR, pg. 3).

The case was continued to January 22, 2014 at 2:00 p.m. to enable Judge Stokes sufficient time to rule on and issue a written opinion on the motion to suppress. A jury trial date of January 30, 2014 at 9:00 a.m. was also scheduled at that hearing. (Exhibit R-4 Collins 1-9-14 TR, pg. 11).

On January 22, 2014 Judge Stokes stated that the written opinion on the motion to suppress was not yet complete and the January 30, 2014 trial date would not work, because the courthouse was closed on January 7, 2014 due to cold

temperatures and the majority of the January 7, 2014 cases were continued to January 30, 2014. While discussing a new potential trial date, Mr. Collins stated that a later date "would give me a little more time to prepare" (Exhibit R-5 Collins 1-22-14 TR, pg. 3). The case was scheduled for jury trial on February 28, 2014 at 8:30 a.m. (Exhibit R-5 Collins 1-22-14 TR, pg. 10).

Trial did not proceed on February 28, 2014. Ultimately, this case was re-assigned by Administrative Judge Adrine and was dismissed by the City of Cleveland. Respondent takes exception to the assertion that the City was "forced" to dismiss the charges on speedy trial grounds.

Based on the foregoing, nothing that Judge Stokes did in this matter could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

19) Relator's Assertion:

- **On November 26, 2013, Cynthia George appeared before respondent on four different traffic charges – a license required to operate charge, a max speed/assured clear distance charge, a driver seatbelt charge, and a passenger seatbelt required charge. George had previously pled not guilty to the charges because she had a valid license on the date of the offense, but did not have it with her at the time of the offense. . . . Although George's case was scheduled for 8:30 am, respondent did not call George's case for the first time until approximately 1:45 pm. . . . At that time, George stated that she wanted to represent herself. Respondent informed George that she needed to speak to the prosecutor about her case when he returned from lunch in about 25 minutes. Respondent did not recall George's case until 3:42 p.m. . . . When respondent recalled George's case, George stated that she wanted the matter set for trial. Respondent questioned George's decision to represent herself and again made George wait while she handled other cases. . . . At 4:04 pm, respondent recalled George's case for the third time and George reiterated that she wanted to represent herself. . . . After berating George**

for her decision, respondent directed a public defender to assist her.

WHAT REALLY HAPPENED IN THE CYNTHIA GEORGE CASE:

On or about October 18, 2013, Cynthia George was charged with four traffic related offenses in the case captioned *City of Cleveland v. Cynthia George, Cleveland Municipal Court Case No. 2013 TRD 061612*:

1. License Required to Operate, in violation of Section 435.01 of the Cleveland Codified Ordinances, a First Degree Misdemeanor;

2. Max Speed/Assured Clear Distance, in violation of Section 433.03 of the Cleveland Codified Ordinances, a Minor Misdemeanor;

3. Driver Seatbelt Required, in violation of Section 437.27(B)(1) of the Cleveland Codified Ordinances, a Minor Misdemeanor; and

4. Passenger Seatbelt Required, in violation of Section 437.37(B)(2) of the Cleveland Codified Ordinances, a Minor Misdemeanor.

On October 24, 2013 Ms. George appeared in the Cleveland Municipal Court arraignment room and entered pleas of Not Guilty as to all charges. Her case was assigned to Judge Stokes. Ms. George's case was scheduled for a pretrial on November 26, 2013 at 8:30 a.m.

When Ms. George's case is initially called on that day, in relevant part the following occurred:

> THE COURT: This is docket 32. Miss George, the License Required to Operate charge is a first-degree misdemeanor. If convicted of this charge, it does carry a maximum fine of $1,000 and up to six months or up to 180 days in jail. You have a right to be represented by an attorney if you would like legal representation.
>
> If you are indigent and you cannot afford to hire an attorney, you can certainly go to the Public Defender's Office for free legal representation. Or you can have a continuance to hire an attorney if you have the financial means to do so. Or you can represent yourself. Those are your three options.

What would you like to do?

THE DEFENDANT: Represent myself.

THE COURT: Thank you. Here's a copy of your Driver's License History Form. When the prosecutor comes back, you can discuss your case with Mr. Kinast. If you decide to change your plea to the first-degree misdemeanor, you will have to sign a Waiver of Attorney Form because it does carry jail time.

Do you understand.

THE DEFENDANT: Umm, no. I have a driver's license.

THE COURT: Excuse me. What would you like to do? I don't know. Everyone in this courtroom has said not guilty. That's why you're case is on the docket for a pretrial. The question before you is, if you want to have legal representation.

THE DEFENDANT: I'm sorry.

THE COURT: Count one is actually Refusal to Display a License charge. I'm sorry. Count one on yours - - it says Driver's License not on person. So it might be a refusal to display a license. Nevertheless, it carries a maximum fine of $1,000 and up to six months or up to 180 days in jail if convicted on that charge. So you'll need to determine if you want legal representation or how you want to proceed.

What would you like to do?

THE DEFENDANT: I would like to proceed.

THE COURT: Then you need to talk to the prosecutor about your case when he comes back from lunch. He'll be back in about 25 minutes and you can discuss your charges with him. If you decide to change your plea to that first-degree misdemeanor, you will have to sign a Waiver of Attorney Form because it does carry jail time.

Do you understand?

THE DEFENDANT: Yes, but when I was in - -

THE COURT: Excuse me. Do you want to talk to the prosecutor about your case? There's no point in talking to me about it. You can talk to the prosecutor and decide what you want to do when you talk to Prosecutor Kinast if you don't want legal representation.

THE DEFENDANT: Okay. I'll wait to speak to him.

(Exhibit S George 11-26-13 TR, pp. 2-4).

When the case is re-called, in relevant part the following occurred:

THE COURT: . . . Did you reach a resolution, Mr. Kinast?

MR. KINAST: No, your Honor.

THE COURT: What would you like to do?

THE DEFENDANT: Set it for trial. I'm pleading not guilty.

THE COURT: Excuse me. You are so out of order. You previously pled not guilt, which is why your case is on the docket. You can't plead not guilty again. You've already done that. So what do you want to do about your legal representation? Do you want an attorney to help you on this matter since you don't obviously know what you're doing in this matter in the courtroom. If you're indigent, all you have to do is go to the Public Defender's Office. They will assist you in this matter. If you have the financial means to do so, you can hire an attorney to assist you. But you entered not guilty pleas in October 24th. You can't enter not guilty pleas again. You've already done that. You think about it.

THE DEFENDANT: I don't have - -

THE COURT: Excuse me, excuse me.

THE DEFENDANT: I just don't - -

THE COURT: Excuse me.

THE COURT: I just don't - -

THE COURT: Excuse me.

THE DEFENDANT: I don't understand what you're saying, and you're not letting me - -

THE COURT: That's why you're going to have a seat to your right and I will explain it to you again because I tried all day long. Have a seat to your right.

(Exhibit S George 11-26-13 TR, pp. 5-7).

When the case was called again, in relevant part the following occurred:

THE COURT: . . . Prosecutor Kinast, you said that you tried to - - you pretried this matter, but you were not able to reach a resolution, correct?

MR. KINAST: Correct, your Honor. She - - she doesn't have a bad license, so I offered her to plead to the speed or the display. She just didn't have it on her at the time.

THE COURT: That's the refusal to display?

MR. KINAST: Correct. She's contesting all the charges.

THE COURT: So what do you want to do, Miss George? What do you want to do about your legal representation?

THE DEFENDANT: I can't afford legal representation.

THE COURT: So if you're indigent and cannot afford to hire an attorney, you can go to the Public Defender's Office. They'll give you free legal representation. It's up to you.

THE DEFENDANT: I'd like - - you had asked me before if I wanted to represent myself.

THE COURT: Right, but you obviously don't know what you're doing. So, why don't' you seek legal counsel form the Public Defender's Office so they can give you free legal representation to help on this matter. But it's up to you.

THE DEFENDANT: I - - I'd just still like to represent myself.

THE COURT: Are you an attorney?

THE DEFENDANT: No, ma'am.

THE COURT: I mean, you're trying to enter not guilty pleas when you previously entered not guilty pleas. Why won't you seek legal counsel from an attorney who can help you on this case, to explain to you what you're doing? Why won't you get help?

THE DEFENDANT: Because I have two kids and I don't have the time. My daughter has cerebral palsy and - -

(Exhibit S George 11-26-13 TR, pp. 7-9).

Knowing that Ms. George's concern was not having time due to her daughters, Judge Stokes explained that the case was not scheduled for trial that day, and would be set for trial on another day:

> THE COURT: Well, what are you going to do? You're not going to have a trial today. You're going to have to come back if you want a trial. Or maybe Mr. London, would be kind enough to try to help you now on this case.
>
> Mr. London. My gracious. Mr. London, count one really should be refusal to display.
>
> (Exhibit S George 11-26-13 TR, pg. 9).

Shortly thereafter, attorney London reported to the Court that the case had been worked out. The case was appropriately resolved by a plea to an amended charge of Failure to Display, in violation of Section 435.06 of the Cleveland Codified Ordinances (as Ms. George had a driver's license, but failed to display her license), and the remaining charges were dismissed.

During the sentencing portion of the hearing, Mr. Kinast reported from Ms. George's LEADS that she had eighteen (18) prior convictions. The case was resolved without a moving traffic offense conviction (the speed charge). Judge Stokes imposed a fine of $1,000.00 and suspended $900.00 of the fine and 180 days in jail, with all 180 days suspended. No probation was ordered.

A review of the George case reveals that Judge Stokes made several attempts to explain Ms. George's constitutional right to representation by counsel. Ms. George clearly did not understand Court procedure and indicated a concern that she did not have time to meet with the public defender. Judge Stokes graciously asked Mr.

London to step in and, as a result, the case was resolved in a manner beneficial to Ms. George.

Based on the foregoing, nothing that Judge Stokes did in this matter could be construed as a violation of anything in the Ohio Code of Judicial Conduct, the Ohio Code of Professional Responsibility, or the Ohio Rules of Professional Conduct.

In summary, the Respondent has now addressed all nineteen (19) "Specific Examples of Misconduct" and has refuted each and every one, thereby establishing that Relator's argument that Judge Stokes' conduct "has caused serious public harm and poses a substantial additional and continuing threat of serious harm to the public and the administration of justice" had no merit and that Respondent no longer poses a substantial threat of serious harm to the public because she never posed such a threat.

B. RESPONDENT NO LONGER POSES, AND NEVER POSED, A SUBSTANTIAL THREAT OF SERIOUS HARM TO THE PUBLIC BECAUSE RESPONDENT NEVER POSED SUCH A THREAT AND BECAUSE BY RELATOR'S OWN ADMISSION, THERE HAVE BEEN "NO NEW COMPLAINTS . . . RECEIVED EXCEPT FOR ONE INSTANCE IN WHICH RESPONDENT SOUGHT A PSYCHOLOGICAL ASSESSMENT OF A CIVIL LITIGANT" SINCE MARCH 24, 2014.

In Section 3 of Relator's November 4, 2014 Motion for an Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a), the Relator argues that Judge Ronald B. Adrine, the current administrative and presiding judge of the Cleveland Municipal, and Judge Larry A. Jones, the preceding administrative and presiding judge, "have attempted to address respondent's conduct since at least 2004."

However, since the Respondent has now refuted the nineteen (19) best "Specific Examples of Misconduct" that the Relator set forth, the alleged curative efforts of Judge Adrine and Judge Jones are moot.

The Complaint against Respondent was initially filed in October, 2013. Disciplinary Counsel at that time did not feel the need and/or did not feel like it had the grounds to file a Motion for Immediate Interim Suspension. In addition, Judge Adrine did not take any action to remove Judge Stokes, at that time, from her criminal case docket. However, on March 24, 2014, Judge Adrine removed the criminal docket from Judge Stokes (albeit Respondent alleges that this was done illegally and without due process, and the Relator filed its Amended Complaint on April 25, 2014. Once again, at that time, the Relator did not file for an Immediate Interim Suspension.

Disciplinary Counsel premised the filing of its Motion for an Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a), on that allegation that substantial harm to the public is likely to occur *now*, only if "Respondent is permitted to resume presiding over criminal cases." See Relator's Memo at 12.

Relator speculated in its motion that "it appears that Respondent's criminal docket might soon be restored." This assertion by Relator was allegedly based upon this Honorable Court's Order granting the Respondent's Writ of Prohibition. However, soon thereafter, Judge Adrine filed a Motion for Clarification, which was treated by this Honorable Court as a Motion to Reconsider, which this Honorable Court ultimately Granted with this Honorable Court's Order of November 19, 2014 dismissing Respondent's Writ of Prohibition concerning the restoration of her

criminal docket. Presently pending before this Honorable Court is the Respondent's Motion to Reconsider the dismissal of the Writ of Prohibition. Nevertheless, right now, even if this Interim Suspension was not in place, Judge Stokes has not been restored to her criminal docket.

Moreover, even Judge Adrine in his Affidavit claims that he has "seen major improvement in morale and productively across all platforms at the Court since criminal caseload responsibilities were temporarily transferred from Judge Stokes, pending the outcome of this Disciplinary Complaint against her. See, Affidavit of Judge Adrine, paragraph 36.

Judge Adrine also asserts that "Since Judge Stokes criminal docket was temporarily transferred, no additional complaints have been levied against Judge Stokes' (sic) arising from the disposition of her civil case load except one incident in which it was reported that she sought to have a civil litigant evaluated by the Court's Psychiatric Clinic. See Affidavit of Judge Adrine, paragraph 32.

Thus, if anything, evidence supplied by the Relator in his Motion for Interim Remedial Suspension shows that given the circumstances at the time of this Honorable Court's Order, as of December 18, 2014, Judge Stokes' alleged conduct preceding her removal from criminal docket responsibilities in no way posed a substantial threat of serious harm to the public.

In fact, between March 24, 2014 and December 18, 2014, Judge Stokes handled her civil docket responsibilities in a very competent and diligent manner, without incident (except one raised by Judge Adrine in his Affidavit, which will be addressed below). The statistics show that from March 24, 2014 until December 12,

2014, Judge Stokes performed 288 marriage ceremonies, reviewed 4,011 Session One Civil Cases and signed 3,963 Judgment Entries for Session One Civil Cases. These Session One cases, that Judge Stokes handled during this time period, were in addition to the increased personal civil docket that she handled because she was placed on an increased civil draw by Judge Adrine. (See Exhibit U Judge Stokes' Affidavit Attached).

The one "incident" cited by Relator and/or Judge Adrine where they alleged that Judge Stokes "sought to have a civil litigant evaluated by the Court's Psychiatric Clinic involved the case of *Cash LLC v. Donells Davis*, Cleveland Municipal Court Case Number 2014 CVF 001342. In that civil contract case, which was assigned to Judge Stokes' personal docket on April 14, 2014, a pretrial was held on May 5, 2014 before Judge Stokes. (Please See Exhibit T, Electronic Docket Case No.: 2014 CVF 001342).

At the May 5, 2014 pretrial, the Plaintiff was represented by attorney Lawrence J. Roach, and the Defendant appeared without counsel. Judge Stokes immediately noticed that the Defendant, Donells Davis, had mental health issues, when he handed Judge Stokes a handwritten note which made no sense but talked about his purchase of a battery at Sears that he unsuccessfully tried to return. Mr. Davis' letter asserted that due to Sears' alleged discrimination against him, he should be excused from his Sears credit card debt that was unrelated to the battery purchased with cash. (Please See Exhibit T-1, Hand-written Note of Mr. Davis).

Moreover, Judge Stokes observed what appeared to be psychotic behaviors of Mr. Davis during the pretrial, which she made notes regarding, including the following: (1) "Mr. Davis believes Judge Stokes' Father is Edward Fitzgerald, the

Cuyahoga County Executive"; (2) "Mr. Davis appeared to exhibit psychotic behavior and could not understand Plaintiff's attorney's settlement offers, Consent Judgment Entry concept, or counteroffers"; (3) "In addition, Mr. Davis could not understand that an unrelated battery issue purchased by cash at Sears has nothing to do with his credit card debt from Sears. This is a civil case regarding credit card debt set for a pre-trial" "See Defendant's pleading & correspondence re: unrelated battery issue"; (4) per Mr. Davis, his diagnosis is Schizophrenia and his medication is Haldol which he last took 2 weeks ago because he felt that he does not need his medications. However, Mr. Davis' mother recently died & he has taken it quite hard per Defendant's brother"; (5) "Mr. Davis goes to Psychiatric Hospitals for his care such as St. Vincent Charity"; (6) "Mr. Davis kept repeating the name Ariel Castro" (a convicted Cleveland killer); (7) "With respect to the Behavioral Checklist issue of Hallucinations, Mr. Davis stated that he was not having hallucination at the time ("not now"), but that he heard voices 6 months ago"; (8) "With respect to the Behavioral Checklist issue of "Paranoid/Suspicious", Mr. Davis stated that he was "paranoid""; (9) "With respect to the Behavioral Checklist issue "Suicidal", Mr. Davis stated that he was "suicidal in the past", and he "knows to go to a hospital if feeling suicidal"; (10) "Rita Haynes spoke to Defendant's brother to gather some pertinent information regarding Defendant"; and (11) "Mr. Davis is willing to go & will go to St. Vincent Charity Hospital today now". (Please See Exhibit T-2, The Cleveland Municipal Court Psychiatric Clinic, Psychiatric Clinic Referral form that was filled out by Judge Stokes).

At the pre-trial, Plaintiff's Attorney, Lawrence J. Roach, could obviously see the difficulties that Mr. Davis was having and informed the Court that if Mr. Davis could get Attorney Roach proof that Mr. Davis was on social security disability, the Attorney Roach thought that he could convince his client to dismiss the case, because he would tell his client that Mr. Davis was uncollectible. Sure enough, before Mr. Davis even had his interview with the psychiatric clinic, Plaintiff, through Attorney Roach, filed a Notice of Voluntary Dismissal on May 15, 2014. (Please See Exhibit T-3, Notice of Voluntary Dismissal and please also see Exhibit T, Attached Docket).

Therefore, the record reflects that Judge Stokes acted completely appropriately by expressing concern about Mr. Davis and getting the Court Psychiatric Clinic involved. Moreover, Judge Stokes' and Attorney Roach's recognition of the mental health issues of Mr. Davis led to the dismissal of the Civil Case against Mr. Davis. Judge Stokes was simply acting to protect Mr. Davis, who was unrepresented and clearly had mental health issues and to make sure that the Court process was fair and met the interests of justice. Hence, there is no misconduct here.

Moreover, since this is the only alleged "incident" which occurred during the almost nine (9) months that Judge Stokes was handling exclusively civil cases, it demonstrates that allowing Judge Stokes to continue to handle civil cases poses no threat of serious harm to the public and the administration of justice (although Respondent respectfully asserts that she never caused any harm in the first place with respect to civil and criminal cases).

2. THIS COURT'S DECEMBER 18, 2014 ORDER VIOLATES RESPONDENT'S DUE PROCESS AND EQUAL PROTECTION RIGHTS AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

"A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 238, 77 S. Ct. 752, 1 L.Ed.2d 796 (1957). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to appraise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Armstrong v. Manzo*, 380 U.S. 545, 550, 85 S. Ct. 1187, 14 L.Ed.2d (1965). "It is an opportunity which must be granted at a meaningful time and in a meaningful manner." *Id*. at 552.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution "commands that no state shall deny to any person within its jurisdiction the equal protection of the laws." *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶82. "Simply stated, the Equal Protection Clause requires that individuals be treated in a manner similar to others in like circumstances." *Burnett v. Motorists Mut. Ins. Co.*, 118 Ohio St.3d 493, 2008-Ohio-2751, 890 N.E.2d 307, ¶30.

A. THE DECEMBER 18, 2014 ORDER PLACING AN IMMEDIATE INTERIM REMEDIAL SUSPENSION ON THE RESPONDENT'S LAW LICENSE VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

Rule V of the Supreme Court Rules for the Government of the Bar of Ohio violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution as it does not provide a date certain by which a post-suspension hearing must be held and/or a date certain by which a final order adjudicating the alleged misconduct must be made.

In *Barry v. Barchi* , 443 U.S. 55, 68, 99 S. Ct. 2642, 61 L.Ed.2d 365 (1979), the United States Supreme Court held that a state statute authorizing a summary suspension of a professional license violated the Due Process Clause of the Fourteenth Amendment when the statute failed to assure a sufficiently timely post-suspension hearing. The United States Supreme Court in *Barchi* stated that an individual has a property interest in his/her professional license sufficient to invoke the protection of the Due Process Clause of the Fourteenth Amendment and that even a temporary suspension of a professional license can be severe. *Id*. at 64-66.

The statute in *Barchi* permitted the New York State Racing and Wagering Board to summarily suspend a horse trainer's license if a post-race test revealed a drug in the system of the trainer's horse. *Id*. at 57-59. The statute at issue in *Barchi* afforded the Racing and Wagering Board as long as thirty (30) days after the conclusion of a post-suspension hearing to issue a final order adjudicating the case, but failed to specify a time in which a post-suspension hearing must be held. *Id*. at 61. The United States Supreme Court in *Barchi* found that the provision for an administrative hearing in the statute failed to assure a prompt proceeding and a prompt disposition of the outstanding issues between the trainer and the State. *Id.* at 66. Accordingly, the United States Supreme Court held that the trainer's

suspension was constitutionally infirm under the Due Process Clause of the Fourteenth Amendment. *Id*.

In the present matter, Rule V of the Supreme Court Rules for the Government of the Bar of Ohio does not provide a date certain by which a post-suspension hearing must be held after an attorney's and/or judge's license to practice law is placed under an interim remedial suspension. In addition, Rule V of the Supreme Court Rules for the Government of the Bar of Ohio also fails to specify a date certain by which a final order adjudicating the alleged misconduct must be made. Thus, because Rule V of the Supreme Court Rules for the Government of the Bar of Ohio fails to assure the Respondent a sufficiently timely hearing and a final decision regarding her suspension and the allegations of misconduct, Rule V of the Supreme Court Rules for the Government of the Bar of Ohio is constitutionally infirm under the Due Process Clause of the Fourteenth Amendment. As such, the Respondent's interim remedial suspension should be null and void.

B. THE DECEMBER 18, 2014 ORDER PLACING AN IMMEDIATE INTERIM REMEDIAL SUSPENSION ON THE RESPONDENT'S LAW LICENSE VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

The Ohio Supreme Court and/or Disciplinary Counsel have violated the Respondent's constitutional rights to equal protection of the laws in seeking and imposing an interim remedial suspension as they have not treated her in a manner similar to other judges in like circumstances. The Respondent respectfully asserts that she is unaware of any prior case in which Disciplinary Counsel has sought and in which the Ohio Supreme Court has imposed an interim remedial suspension

against a judge who has been accused of non-criminal conduct that allegedly violates the Ohio Rules of Professional Conduct, the Ohio Code of Professional Responsibility, and the Ohio Code of Judicial Conduct.

In *Disciplinary Counsel v. Elum*, 133 Ohio St.3d 500, 2012-Ohio-4700, 979 N.E.2d 289 a white male judge was found to committed six (6) violations of the Code of Judicial Conduct and two (2) violations of the Rules of Professional Conduct. *Id*. at ¶21. Disciplinary counsel did not seek and the Ohio Supreme Court did not impose an interim remedial suspension of Judge Elum's license during the pendency of the disciplinary proceedings.

Judge Elum's misconduct included, but was not limited to: 1) telling a probationer who had failed to timely pay his court costs and fines to "quit fucking up", that he had a "bad case of D.H. dickheaditis", and that he "can't keep continuing to screw off or you'll be like the rest of the dickheads in at the Stark County Jail" and 2) falsely accusing the police department of attempting to cover-up an officer's misconduct, stepping outside his role as a judge placing himself in the middle of an administrative investigation into the officer's conduct, threatening contempt proceedings in inappropriate circumstances in the case, and making statements to the local newspaper alleging ineffective leadership at the police department. *Id*. at ¶6, and ¶10-18.

For Judge Elum's violations, Disciplinary Counsel recommended a public reprimand. *Id.* at ¶3. The Board of Commissioners and Grievances recommended that Judge Elum receive a sixth (6) month stayed license suspension. *Id*. The Ohio Supreme Court adopted the Board's recommendation. *Id*. at ¶27. In determining

the appropriate sanction for Judge Elum's misconduct, one of the factors that the Ohio Supreme Court looked at was prior precedent. *Id*. at ¶20. The Supreme Court cited to six (6) different prior disciplinary cases in which judges who violated various provisions of the Code of Judicial Conduct and Disciplinary Rules were sanctioned to penalties that ranged from public reprimands, stayed suspensions, and/or partial stayed suspensions. *Id*. at ¶24-26. See *Ohio State Bar Association v. Goldie*, 119 Ohio St.3d 428, 2008-Ohio-4606, 894 N.E.2d 1226; *Disciplinary Counsel v. Runyan*, 108 Ohio St.3d 43, 2006-Ohio-80, 840 N.E.2d 623; *Disciplinary Counsel v. Hoague*, 88 Ohio St.3d 321, 725 N.E.2d 1108 (2000); *Disciplinary Counsel v. Gaul*, 127 Ohio St.3d 16, 2010-Ohio-4831, 936 N.E.2d 28; *Disciplinary Counsel v. Campbell* 126 Ohio St.3d 150, 2010-Ohio-3265, 931 N.E.2d 558; and *Disciplinary Counsel v. Ferreri*, 85 Ohio St.3d 649, 710 N.E.2d 1107 (1999).

All six of the prior disciplinary cases referenced in *Elum*, supra, involved white judges and with the exception of Judge Goldie, all of the judges were males. The misconduct of the various judges referenced in the Elum decision, included but was not limited to: 1) violating litigants' constitutional rights to due process; 2) attempting to broker a "deal" with a prosecutor; 3) writing letters on court letterhead to individuals the judge observed driving recklessly and requiring them to appear in court; 4) making highly prejudicial and unnecessary remarks against a defendant; 5) improper investigation of a defendant; 6) using undignified language toward counsel; 7) improperly placing a defendant in a holding cell; 8) failing to appoint counsel for a defendant; and 9) using the position of judge to obtain access to a prosecutor's file. Despite these allegations of misconduct, Disciplinary Counsel

did not seek and the Ohio Supreme Court did not impose an interim remedial license suspension on any of the judges involved.

Similarly, in *Cleveland Bar Association v. Cleary*, 93 Ohio St.3d 191, 754 N.E.2d 235 (2001), it does not appear that Disciplinary Counsel sought and/or that the Ohio Supreme Court imposed an interim remedial suspension on a white female judge who kept a defendant incarcerated to prevent the defendant from having an abortion. The transcript from the defendant's sentencing hearing reflected that Judge Cleary imposed a prison sentence on the defendant after the defendant refused to agree to complete her pregnancy and give her baby up for adoption if she was sentenced to probation. *Id*. at 191-194.

Not even the alleged judicial misconduct by Judge Deborah P. O'Neill in *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 286 caused Disciplinary Counsel to seek and/or the Ohio Supreme Court to impose an interim remedial suspension. The allegations again Judge O'Neill included, but were not limited to: 1) using coercive tactics to force pleas from defendants by threatening to revoke and/or revoking their bonds is they refused to accept a plea offer and elected to exercise their constitutional right to a trial; 2) refusing to comply with a court of appeals mandate; 3) refusing to accept pleas of no contest on the day of trial; 4) refusing a request for a presentence investigation that might have justified a community-control sanction instead of prison; 5) retaliating against a defendant who appeared late to court due to transportation issues by sentencing the defendant, rather than continue his bond pending a presentence investigation as she had previously agreed to due, because the defendant's late arrival to court

interfered with her ability to leave at 11:00 a.m. that day; 6) refusing to allow attorneys to go on the record to preserve their objections to her rulings; 7) making misrepresentations in interactions with judges, litigants, attorneys, and court personnel; 8) acting in an unbecoming, unprofessional, and discourteous fashion towards her staff, other court personnel, attorneys, probation officers, and member of the public; 9) committing a pattern of rude, undignified, and unprofessional conduct that included abusive verbal outbursts, unjustified expulsions from the courtroom, berating or humiliating persons in the presence of others, and lodging numerous verbal and written complaints about court or court-affiliated personnel that were not factually accurate; and 10) personally soliciting campaign contributions from her staff attorney, her staff attorney's future employer, and her staff attorney's husband, and stating that the law firm her staff attorney's husband worked for "owed her" for a favorable verdict. *Id*. at ¶4-42.

In *O'Neill*, the Ohio Supreme Court stated "this is an extraordinary case that is complex and hotley contested and unprecedented." *Id*. at ¶49. The Supreme Court noted in *O'Neill* that "there is no Ohio case similar in size and scope to the charges against the Respondent." *Id*. at ¶50. The sanction that the Ohio Supreme Court imposed on Judge O'Neill for her pattern of misconduct was a two (2) year suspension with the second year of the suspension stayed on certain conditions.

As stated above, the Respondent respectfully asserts that there is no misconduct on her part. Assuming arguendo that this Honorable Court believes that there is misconduct, her alleged misconduct does not support a finding that she poses a substantial threat of serious harm to the public. Moreover, when comparing

the Respondent's alleged misconduct to the misconduct of other white judges set forth above that is arguably as egregious, if not more egregious than hers (although Respondent respectfully asserts that her conduct was not egregious), but did not warrant an interim remedial suspension, it appears that the Respondent who is an African-American female, has not been treated in a manner similar to white judges in like circumstances. In fact, it would appear that if this interim suspension remains in place until there is a final adjudication of the merits in this matter, that the Respondent will have served the longest license suspension in Ohio for a judge who was never charged or convicted of a criminal offense, but was alleged to have engaged in a pattern of conduct that violated the Code of Judicial Conduct and/or the Disciplinary Rules. Thus, the Respondent has been denied equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment.

3. THE DECEMBER 18, 2014 ORDER PLACING AN IMMEDIATE INTERIM REMEDIAL SUSPENSION ON THE RESPONDENT'S LAW LICENSE IS NOT VALID SINCE IT FAILS TO CONTAIN ANY FINDINGS OF FACT AND/OR CONCLUSIONS OF LAW

Section 19 of Rule V of the Supreme Court Rules for the Government of the Bar of Ohio requires that a motion for an interim remedial suspension contain "proposed findings of fact, proposed conclusions of law, and other information in support of the order." The fact that the Rule requires the submission of "proposed findings of fact" and "proposed conclusions of law" by the party moving for the interim remedial suspension leads to the rational inference that the Supreme Court must make findings of fact and conclusions of law in granting a motion for a remedial suspension, which this Honorable Court did not do.

Meaningful due process was not provided to the Respondent, as she was not given a hearing with regard to the Relator's motion which was based upon unsupported and undocumented assertions from Judge Adrine and Robert Tobik that have been completely refuted in this Motion, as well as based upon the Exhibits, including transcripts.

In *Zingale v. Ohio Casino Control Commission*, 8th Dist., 2014-Ohio-4937, the Eighth District Court of Appeals reversed the Casino Commission's decision to revoke a casino worker's gaming license on the ground that the Commission failed to state its reasons modifying the hearing examiner's recommendations and revoking the worker's gaming license. *Id*. at ¶70-71, and ¶86. In support of its decision, the Eighth District Court of Appeals noted that R.C. 119.09 required the Casino Commission to include in the record of its proceedings the reasons for a modification or disapproval of the hearing examiner's recommendations. *Id*. at ¶62. As neither the order revoking the casino worker's gaming license nor the Casino Commission's meeting minutes contained a single reason why the Commission chose to revoke the worker's license, the Eighth District Court of Appeals ruled that said decision was contrary to law. *Id*. at ¶71.

In the present matter, the Supreme Court failed to make any findings of fact and/or conclusions of law in entering a remedial suspension against the Respondent's law license. The Supreme Court's failures to make any findings of fact and/or conclusions of law in entering said suspension should result in said suspension being declared null and void as it is contrary to law.

The Harm:

Respondent has been deeply harmed by proceedings that have taken place. To date, based upon the unsupported allegations, without documentation, Respondent has been first stripped of her criminal docket, and then placed upon an Interim Remedial Suspension so that she cannot earn a living and pay her bills. Moreover, she must wait until at least June, 2015 for the Trial in her matter to be resolved, and possibly longer for a decision to be rendered. The Relator speaks extensively about the alleged harms that Respondent has caused. Yet, the real harm that has been caused, has been upon Judge Stokes.

CONCLUSION:

Based on all of the foregoing, Respondent respectfully submits that she has established that Respondent no longer poses a substantial threat of serious harm to the public, because Respondent never posed such a threat. Accordingly, Respondent respectfully moves this Honorable Court for an Order dissolving the December 18, 2014 Order imposing an interim remedial suspension against Respondent Angela Rochelle Stokes. In the alternative, based on the foregoing, Respondent respectfully moves this Court for an Order modifying the December 18, 2014 Order imposing an interim remedial suspension against Respondent Angela Rochelle Stokes by reinstating her law license, with pay, and permitting her to preside over the Cleveland Municipal Court civil docket pending the final disposition of disciplinary proceedings.

Respectfully submitted,

/s/ Larry W. Zukerman, Esq.
LARRY W. ZUKERMAN, Esq.
PAUL B. DAIKER, Esq.
S. MICHAEL LEAR, Esq.

CERTIFICATE OF SERVICE

A copy of the foregoing RESPONDENT'S MOTION FOR DISSOLUTION OR MODIFICATION OF ORDER OF SUSPENSION UNDER GOV. BAR R. V(5a)(C)(1) has been filed via e-filing with the Supreme Court of Ohio and a service copy emailed this 20th day of January, 2015 to the following:

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