

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT  
OF THE SUPREME COURT OF OHIO**

<b>In Re:</b>	:	<b>Case No. 2014-030</b>
<b>Complaint against</b>	:	
<b>Aaron James Brockler</b> <b>Attorney Reg. No. 0078205</b>	:	<b>Findings of Fact,</b>
	:	<b>Conclusions of Law, and</b>
<b>Respondent</b>	:	<b>Recommendation of the</b>
	:	<b>Board of Professional Conduct of</b>
<b>Disciplinary Counsel</b>	:	<b>the Supreme Court of Ohio</b>
	:	
<b>Relator</b>	:	

**OVERVIEW**

{¶1} This matter was heard on January 12 and 13, 2015, in Columbus before a panel consisting of Lawrence R. Elleman, Judge William A. Klatt, and Roger S. Gates, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to former Gov. Bar R. V, Section 6(D)(1).<sup>1</sup>

{¶2} Respondent was present at the hearing and was represented by George D. Jonson and Kimberly V. Riley. Donald M. Scheetz appeared on behalf of Relator.

{¶3} The complaint alleges that, while participating as an assistant prosecuting attorney in the prosecution of a defendant on a charge of aggravated murder, Respondent covertly communicated with two witnesses using a fictitious Facebook® identity and making false statements, and that Respondent failed to timely disclose these communications to the defendant's counsel. The complaint also alleges that, following his termination by the Cuyahoga County prosecuting attorney, Respondent made public statements to local news media expressing

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<sup>1</sup> Effective January 1, 2015, the Supreme Court amended Gov. Bar R. V and the Board's Procedural Regulations. This report distinguishes between the former and current versions of Gov. Bar R. V and the Procedural Regulations, as appropriate.

opinions concerning the defendant's guilt and the credibility of witnesses in the same pending criminal case.

{¶4} Based upon the stipulations and the evidence presented at the hearing, the panel concludes that Respondent engaged in misconduct in violation of Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation] and Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]. The panel recommends dismissal of the alleged violation of Prof. Cond. R. 3.6 [Trial Publicity].

{¶5} Based upon the evidence presented in aggravation and mitigation, the panel recommends that Respondent be suspended from the practice of law for a term of one year, with the entire suspension stayed on condition that he engage in no further misconduct during the term of the suspension and that he pay the costs of these proceedings.

{¶6} Based upon the amended agreed stipulations filed January 12, 2015,<sup>2</sup> and the evidence presented during the hearing, the panel makes the following findings of fact and conclusions of law.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶7} Respondent was admitted to the practice of law in the state of Ohio on November 8, 2004 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶8} In the fall 2005, Respondent began working in the Cuyahoga County Prosecutor's Office, and in 2011, Respondent was promoted to the Major Trial Unit where he primarily handled the prosecution of murders and sex offenses. Stipulation ¶¶2, 3.

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<sup>2</sup> The amended agreed stipulations included thirty-four paragraphs and fifteen stipulated exhibits. The parties also made several additional oral stipulations on the record during the hearing. With the exception of stipulated exhibits 13 and 14, which were not offered by the parties, the panel accepted the stipulations and the stipulated exhibits.

{¶9} William Mason, who served as the prosecuting attorney in Cuyahoga County from 1999 until September 30, 2012 testified that, in his experience, the material provided to his office by the police was never complete, and that his office, particularly the assistant prosecutors in the Major Trials Unit, would be required to determine what they still needed and to go out and get the information or witnesses that was needed to try each case. Hearing Tr. 410, 434-435, 438-440.

{¶10} Respondent testified that although his supervisor would tell the lawyers in the Major Trials Unit that they would have to go out and find fifty percent of what they would need for trial, Respondent's estimate was that the material provided by police was more typically only about thirty percent of what he needed for trial. Hearing Tr. 295-296.

{¶11} Although the number of investigators employed by or working with the prosecutor's office has increased since Timothy McGinty was appointed to replace Mason in October 2012 (Hearing Tr. 172), Respondent testified that even under McGinty the investigators' primary task in Cuyahoga County was to serve subpoenas rather than to help assistant prosecutors with investigations. Hearing Tr. 296-297.

{¶12} On November 19, 2012, Damon Dunn was indicted in Cuyahoga County, case number CR-12-568849 for Aggravated Murder, Murder, Kidnapping, Felonious Assault, and Having a Weapon While under Disability in connection with the shooting death of Kenneth "Blue" Adams on May 18, 2012. Respondent had been working on this case since sometime in the fall 2012 and the prosecution of the indictment was assigned to Respondent. Stipulation ¶4; Stipulated Ex. 3, 4; Hearing Tr. 316.

{¶13} During an investigative interview by the Cleveland Police Department conducted after the shooting but prior to his indictment, Dunn denied any involvement in the shooting and

claimed that he was at Edgewater beach at the time of the shooting with his girlfriend Sarah Mossor and Sarah's friend Marquita Lewis. Hearing Tr. 63, 317-318.

{¶14} Although as many as nine people had been identified as being present when Adams was shot and killed, none of these people were able or willing to provide information as to the identity of the shooter. Hearing Tr. 317. Dunn was arrested and indicted only after a federal prisoner provided testimony identifying Dunn as the shooter; this testimony was provided with the expectation that the witness's cooperation would influence the severity of his sentence. Hearing Tr. 62.

{¶15} After his review of material supplied by the Cleveland Police, Respondent believed that Dunn's alibi was not credible. Hearing Tr. 319. Respondent made numerous attempts to contact Mossor and Lewis to interview them concerning Dunn's claimed alibi; however, both repeatedly refused to talk with him when he identified himself as the assistant prosecutor who was assigned to prosecute the charges against Dunn. Stipulation ¶¶6-7; Hearing Tr. 32-33, 341-342, 384.

{¶16} In an effort to obtain additional information concerning Dunn's claimed alibi, Respondent regularly listened to recordings of telephone calls which Dunn made from the Cuyahoga County jail. These recordings were made by the vendor which provides the telephone service for jail inmates and the assistant prosecutors are able to listen to the recordings using software provided by the vendor. Respondent listened to hundreds of such calls in an attempt not only to hear Dunn's communications with Mossor and Lewis, but also to find out who else Dunn was calling. Hearing Tr. 321-324.

{¶17} As he listened to these calls, Respondent came to believe that there was a lot of jealousy involved in Dunn and Mossor's relationship. Hearing Tr. 325-329. On the morning of

December 14, 2012, Respondent listened to a recording of a heated phone conversation in which Dunn and Mossor had argued over Dunn's fear that Mossor would not be a reliable witness for him and Mossor's belief that Dunn had not been faithful to her. Mossor seemed to believe that Dunn had a romantic relationship with a woman named "Taisha" and indicated that if this was true she was through with Dunn. Stipulation ¶9; Hearing Tr. 33, 328-329.

{¶18} Based on this phone conversation, Respondent concluded that Dunn and Mossor's relationship was reaching a breaking point. Stipulation ¶¶9, 12. Because he believed that Mossor was not being truthful in supporting Dunn's claimed alibi, Respondent felt that he had a "window of opportunity" to exploit Mossor's feelings of distrust regarding Dunn to get Mossor to talk to him and to recant her support for Dunn. Hearing Tr. 331-332, 401.

{¶19} Desiring to exploit this opportunity, Respondent remembered a Facebook® ruse he had used while working with Rick Bell (who was the Criminal Investigations Division Chief in 2012) in the D'Ambrosio case in 2009 and developed a plan to covertly contact Mossor through the use of a fictitious Facebook® identity for the woman named Taisha whom Mossor had mentioned in the phone conversation. Stipulation ¶¶10-11; Hearing Tr. 304-312, 329.

{¶20} Respondent also was aware that investigators in the Internet Crimes Against Children taskforce ("ICAC") connected with the prosecutor's office often posed as children on the internet in an effort to establish contact with and obtain information from persons attempting to exploit children. Hearing Tr. 51-52.

{¶21} Respondent original thought was to get Det. Art Echols involved with the ruse because he was the lead homicide detective from the Cleveland Police; Respondent tried to contact Echols, but he was not available. Hearing Tr. 329. Respondent's next thought was to ask Mark O'Malley, the chief investigator in the prosecutor's office, to help him get an ICAC

investigator to help him with ruse, but he learned that O'Malley was on vacation. Hearing Tr. 330. Respondent went to the office of the homicide detectives for the Cleveland Police Department to try to get them to use this tactic; however, neither of the detectives he had worked with on the Dunn case was available. Hearing Tr. 398-400.

{¶22} Within an hour after listening to Dunn and Mossor's phone conversation, Respondent decided that his time to exploit the information was slipping away and that, since the investigator and the detectives were not available, he would proceed with the tactic on his own initiative. Hearing Tr. 330, 400. Respondent did not discuss the use of this tactic with either his supervisor or the other assistant prosecutor assigned to the Dunn case. Stipulation ¶11; Hearing Tr. 41.

{¶23} Using the computer at his desk, Respondent created a Facebook® account using the name "Taisha Little." Respondent testified that he used the last name "Little" because he had Greg Little (a player for the Browns) on his fantasy football team. Stipulation ¶11; Hearing Tr. 333, 336-337.

{¶24} In an attempt to make this identity seem credible, Respondent built a Facebook® profile for Little using a photograph of an African-American female he downloaded from the internet and information he had overheard while listening to Dunn's jail calls. Respondent added pictures, group affiliations, and "friends" that he believed would bolster the credibility of the fictitious profile he had created. The "friends" Respondent connected with the Little profile were other people who had been mentioned in Dunn's jail calls, as well as contacts listed on Dunn's Facebook® page. Stipulation ¶¶13-14; Hearing Tr. 38.

{¶25} Posing as Little, Respondent contacted Mossor through a Facebook® chat on the afternoon of December 14, 2012. Stipulation 15. Respondent simultaneously contacted Lewis in a separate chat window using the Taisha Little identity. Hearing Tr. 334.

{¶26} In each of these chats, Respondent falsely represented that “Little” had been involved with Dunn, that she had an eighteen-month old child with Dunn, and that she needed Dunn out of jail so that he could provide child support. Respondent attempted to establish a rapport with the two women by using information he had learned in the course of the criminal investigation. He discussed the alibi with them as if it were false in an attempt to get them to admit that they were lying for Dunn or confirm that they planned on lying about the alibi in the future. During the chat conversations, Respondent used many different approaches to try to get the women to make admissions. Stipulation ¶16; Hearing Tr. 39.

{¶27} While chatting with Lewis, Respondent also made numerous attempts to convince Lewis to meet with Little, to obtain Lewis’ address and phone number, and to convince Lewis that she should talk with the prosecutor. Stipulated Ex. 1; Respondent Ex. 4.

{¶28} After several hours of chatting with Mossor and Lewis, Respondent concluded that they were each suspicious of Little’s claims and he decided to “shut it down.” Hearing Tr. 337-338. Because he was concerned that Mossor and Lewis might learn of the falsity of Little’s profile information if they had time to contact Dunn and other contacts Respondent had included in the profile, Respondent deleted the Little profile/account as soon as he concluded the chats. Stipulation ¶17; Hearing Tr. 339.

{¶29} Respondent testified that before deleting the Little account he printed copies of his chats, placed them in a file in his office, and that he always intended to turn-over these copies to defense counsel. Hearing Tr. 39-40, 339. No copies have been located. Hearing Tr. 86.

{¶30} Sometime later in the evening of December 14<sup>th</sup>, Mossor and Lewis each separately contacted Respondent indicating that she was not going to lie for Dunn and asking if he knew anything about Taisha Little. Hearing Tr. 340-341, 385, 407. Respondent told both Mossor and Lewis that he knew nothing about Little, but that he would look into it. Hearing Tr. 376, 407-408.

{¶31} As of December 14<sup>th</sup>, Respondent realized that he would probably have to be called as a prosecution witness in the Dunn case. Hearing Tr. 376. Respondent testified that he did not tell anyone else, either in the prosecutor's office or the police, about his contacts with Mossor and Lewis because he didn't want to have to make anybody else a witness in the case. Hearing Tr. 41.

{¶32} After his contacts with Mossor and Lewis, Respondent asked the Cleveland Police to contact Mossor and Lewis to get statements from them, but said nothing to them about the Facebook<sup>®</sup> chats. Hearing Tr. 341.

{¶33} During a pre-trial conference in Dunn's case held later in December 2012, Respondent told Myron Watson (one of Dunn's attorneys) that "Dunn's alibi was falling apart and that the situation – the circumstances behind it were somewhat unique; that he would enjoy it; and that I would get him a copy as soon as time allowed." Hearing Tr. 40, 342. Even though Watson indicated that he would "be waiting for that," Respondent never turned it over because Watson never asked for it. Hearing Tr. 41. Respondent also joked that Watson might have to end up calling Respondent as a witness. Respondent said nothing to Watson about the Facebook<sup>®</sup> chats because he wanted to give the police some time to lock-in statements from Mossor and Lewis, and he figured he would give Watson everything at one time. Hearing Tr. 41, 340-342.

{¶34} Subsequent pre-trial conferences were held in Dunn's case on January 17, 2013, February 6, 2013, February 20, 2013, and March 6, 2013. Respondent attended each of these pre-trial conferences and did not disclose the circumstances or content of his conversations with Mossor and Lewis. Stipulation ¶18; Hearing Tr. 342-344.

{¶35} On March 13, 2013, Respondent filed a request with the prosecutor's office for medical leave commencing in mid-April because he needed to have eye surgery, and he expected to return to work after Memorial Day. Hearing Tr. 44, 355.

{¶36} As a result of Respondent's request, Assistant Prosecutor Kevin Filiatraut was assigned in early April to replace Respondent as the lead prosecutor on the Dunn case. Hearing Tr. 59. Respondent provided Filiatraut with access to his file on the Dunn case and gave him an overview concerning the status of the case. Hearing Tr. 60, 62, 348. Although Respondent told Filiatraut that both Mossor and Lewis had told him they would not support Dunn's alibi, but since both were afraid to come forward and say that in court, Filiatraut might have to call Respondent as a witness with regard to that. Hearing Tr. 63, 348. Respondent did not inform Filiatraut of his covert Facebook® conversations with Mossor and Lewis. Stipulation ¶20; Hearing Tr. 46, 61, 352.

{¶37} On April 12, 2013, Dunn's counsel filed a Notice of Alibi under Crim. R. 13. Hearing Tr. 60.

{¶38} On April 15, 2013, Respondent and Filiatraut attended another pre-trial conference with Watson and his co-counsel Brian Fallon.<sup>3</sup> Although the trial in this matter was scheduled to begin one week later, Respondent still did not disclose any information about his

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<sup>3</sup> Although Fallon testified that, prior to the arrival of Filiatraut and Watson, Respondent showed him a transcript of a Facebook® chat between Taisha Little and Marquita Lewis in an attempt to convince Fallon to encourage Dunn to enter a plea agreement. Respondent denied doing so, and the panel is unable to find Relator has met its burden of proof as to this factual issue.

contacts with Mossor and Lewis. Ultimately, the pre-trial was continued for further plea negotiations and another pre-trial was scheduled for two days later. Hearing Tr. 44-45, 61.

{¶39} On April 16, 2013, Respondent began his medical leave.

{¶40} On the morning of April 17, 2013, Cleveland Police Detective Griffin gave Filiatraut the following three documents relating to the Dunn case:

- A written statement Detective Griffin had obtained from Lewis on April 10, 2013;
- A transcript of Lewis' Facebook<sup>®</sup> chat with Taisha Little that Lewis had given to Detective Griffin (Respondent's Ex. 4); and
- An OLEG printout referencing a woman named Taisha Little which Det. Griffin had obtained on April 12, 2013.

Hearing Tr. 66-68.

{¶41} In the statement, Lewis told the police that Dunn's girlfriend contacted her on Facebook and tried to get her to lie for him and support his alibi and she said she wouldn't do it. *Id.* After reviewing these items, Filiatraut immediately scanned them into Justice Matters, a case management system used by the prosecutor's office and made them electronically available to Watson and Fallon. Hearing Tr. 67. At that time, Filiatraut believed Taisha Little was a real person. Hearing Tr. 68.

{¶42} That same day, Filiatraut attended another pre-trial conference and provided Fallon with hard copies of the documents Filiatraut had received that morning from Det. Griffin. *Id.* After defense counsel discussed all this with Dunn, everyone agreed to come back the next day and discuss this some more. *Id.*

{¶43} On April 17, 2013 at 11:42 a.m., Filiatraut sent Respondent a text message, stating:

How did the surgery go? FYI — police talked to Marquita, she said she was never with Dunn at edge water and then gave them printouts of FB messages another

baby mama of Dunn sent her where she explicitly asked her to lie about being at edge water. Good stuff.

Stipulation ¶22.

{¶44} Respondent replied by text on April 17, 2013 at 12:19 p.m., “In some real pain. Nausea. Great news on her. Alibi is out.” Stipulation ¶23. Respondent did not disclose his Facebook® contact with Lewis. Hearing Tr. 48-49.

{¶45} Filiatraut replied on April 17, 2013 at 12:45 p.m., “Sorry to hear about the pain. He did not want to waive time but Myron and Fallon were not too happy about the latest news...” Stipulation ¶24.

{¶46} At the pre-trial held the next day (April 18), Filiatraut had an interest in finding out more about Little because he wanted to know if someone who was trying to get Lewis to support Dunn’s alibi while defense counsel wanted to know who Little was because they thought she was a fake. Hearing Tr. 69-70. Based on an agreement that Filiatraut was going to do everything he could to find out who Little was, defense counsel convinced Dunn to sign a time waiver and the judge agreed to continue the trial date. *Id.*; Stipulation ¶25.

{¶47} Prior to the continuance of the April 22 trial date, Fallon believed he had a good chance of winning at trial because the federal prisoner had identified Dunn as the shooter in hopes of gaining a lighter sentence. Hearing Tr. 217-219.

{¶48} Over the next two and a half weeks, Filiatraut attempted without success to find out information concerning Taisha Little and her relationship, if any, with Dunn. Filiatraut:

- Obtained a search warrant to obtain records from Facebook® for Mossor, Lewis, and Little’s respective profiles;
- Issued a subpoena to gmail for information about the email address used by the person who had set up the Little profile on Facebook®;
- Used an IP address website to try to find out the owner of the IP address of the computer which was used to set up the Little profile and found the owner to be Cuyahoga County information services;

- Asked the IT department at the prosecutor's office to see if the IP address matched up with any computers in their office since Little had indicated that she was trying to get child support from Dunn;
- Asked Det. Griffin to check with Cuyahoga County Children & Family Services to see if anyone who worked there was someone who would have had a baby with Dunn and would have had access to a county computer there;
- Looked at the profiles for the people which were listed as friends in Little's account but found nothing to help him figure out who she was;
- Searched juvenile court records for any information about a child named T'nashia Dunn since Little had used the name T'nashia in referring to the baby she claimed to have had with Dunn;
- Ran the picture of Little which was associated with the Little profile through some facial recognition software but came up empty;
- Checked with security at the Cuyahoga County jail to see if they had any record of Little depositing money for Dunn's commissary account because Little had said that she had done that; and
- Went to the website for a nightclub called Christie's because of statements made by Little about being a stripper at Christie's, but found nothing to help identify Little.

Hearing Tr. 72-73

{¶49} Because he had been unable to locate anything to identify Little, Filiatraut sent a text message to Respondent on May 7, 2013 and asked him:

Hey, how are you feeling? I was wondering if you ever heard of someone on te [sic] Damon Dunn case named Taisha Little? Someone using that name contacted Marquita on Facebook on December 14 trying to get her to confirm the bogus alibi.

Stipulation ¶26; Hearing Tr. 75.

{¶50} Later that day, Respondent called and left a voicemail for Filiatraut. When Filiatraut returned the call, Respondent told Filiatraut that Taisha Little was a persona that he had created on Facebook® in order to covertly contact Mossor and Lewis. Filiatraut immediately reported this information to his superiors in the prosecutor's office. Stipulation ¶27; Hearing Tr.

80.

{¶51} On or about May 21, 2013, the Cuyahoga County prosecutor requested that a special prosecutor be assigned to the Dunn case. The next day, the court appointed the Ohio Attorney General as the special prosecutor for the Dunn case. Stipulation ¶28.

{¶52} At about the same time, Respondent contacted the prosecutor's office and asked for permission to return to work a week early as he was feeling able to return to work. His request was denied. Hearing Tr. 356.

{¶53} When Respondent returned to work on June 3, 2013, he was told to go to his office and wait for someone to come to bring him to a meeting; he was also told not to work on any cases and to not turn on his computer. Hearing Tr. 357. That day, Respondent had a series of meetings with management of the Cuyahoga County Prosecutor's Office. Stipulation ¶29. During one of the meetings, Respondent discussed his covert use of Facebook® to contact Mossor and Lewis and mentioned his use of a similar tactic while working with Rick Bell in a high-profile murder case in 2009. Hearing Tr. 358. At a subsequent meeting, Respondent was required to confront Bell with his description of the use of a fictitious identity on Facebook® in 2009 and Bell denied being involved. Hearing Tr. 360-361. At a later meeting, Respondent met with Tim McGinty, the elected prosecutor, who told him to provide a written memo summarizing of his use of a fictitious identity on Facebook® in 2009 and particularly Bell's involvement in that activity. Hearing Tr. 365.

{¶54} On June 4, 2013, Respondent informed the prosecutor's chief of staff that he would not be submitting the memo requested by McGinty and Respondent was subsequently informed that his employment with the prosecutor's office was terminated. Hearing Tr. 326.

{¶55} The day after his termination, Respondent was approached by reporters from the Cleveland Plain Dealer and the local Fox television affiliate requesting his response to comments

attributed to McGinty indicating that Respondent was fired for his unethical conduct in creating false evidence, lying to witnesses and another prosecutor, and damaging the prosecution's chances in a murder case where a totally innocent man was killed at his work. Stipulation ¶30; Hearing Tr. 366-368.

{¶56} Respondent responded to McGinty's statements and portions of Respondent's statements were printed in the Cleveland Plain Dealer on June 6, 2013 and portions of his taped statements were aired on FOX8 on June 7, 2013. Stipulated Ex. 4, 5. Respondent admits that the article and the taped interview accurately reflect the following statements he made to the reporters:

- Prosecutors have long engaged in the practice of using a ruse to obtain the truth;
- His firing was a massive overreaction because he only did what the Cleveland police detectives should have done before he got the case;
- His firing stems from his use of an investigative ruse to uncover the truth about a fraudulent alibi and to keep a murderer behind bars;
- The public was better off for what he did;
- If he had not broken this guy's alibi, a murderer might be walking the street;
- He had made a promise to the victim's mother that he wasn't going to let a horrible killer walk out of the courthouse so that he could go kill someone else; and
- The prosecutor chose to protect the way business is done in the court and the technical rules of ethics, while Respondent chose to protect the public.

*Id.*

{¶57} On June 12, 2014, Dunn was convicted of Aggravated Murder, Murder, Felonious Assault, and Having Weapons While under Disability. That conviction is currently under appeal. Stipulation ¶31.

**Prof. Cond. R. 8.4(c)--Conduct Involving Dishonesty, Fraud, Deceit, or Misrepresentation**

{¶58} While he admits his conduct in covertly contacting Mossor and Lewis by using a fictitious Facebook® profile is a violation of the literal language of Prof. Cond. R. 8.4(c),

Respondent argues that a “prosecutorial investigation deception” exception should be carved out from the literal application of this rule. Respondent acknowledges that no Ohio decision expressly supports such an exception, but argues that a majority of the other states that have considered this issue “have determined that government attorneys in particular can permissibly engage in deception that is otherwise lawful” when conducting investigations ancillary to the prosecution of criminal charges. Respondent Closing Argument at 9. Respondent also testified that he never lied to witnesses in his “official capacity as a prosecutor” even though he admitted that he “lied to them as part and parcel of an investigative tactic that I employed on the case.” Hearing Tr. 30. Respondent further testified that he has to decide in every case when he is acting as a lawyer and when he is acting as an investigator. Hearing Tr. 30-31. In short, Respondent appears to argue that different rules apply to assistant prosecutors when they assume the mantle of a “law enforcement officer” as opposed to acting as an attorney who is prosecuting a criminal charge.

{¶59} The panel concludes that the decisions cited by Respondent in support of this argument are distinguishable from the facts in the instant case. Most of these authorities support the lawful nature of deceptive investigative tactics when employed by police and other law enforcement personnel, and refuse to find that government attorneys violate ethical standards when the attorneys provide legal oversight and advice concerning such tactics. For example, in its decision in *U.S. v. Parker*, 165 F.Supp.2d 431 (W.D. New York 2001), the district court’s magistrate denied a motion to suppress evidence which the defendant argued was obtained through deceptive tactics employed by police officers who were supervised by the government’s attorneys. The magistrate stated that opinions of state and local bar associations hold the model

rules prohibiting deception “do not apply to prosecuting attorneys who provide supervision and advice to undercover investigations.” *Id.* at 476.

{¶60} The panel agrees with these authorities in regards to lawyers providing supervision and advice concerning covert investigative activity by police and other law enforcement personnel. In fact, Comment [2A] to Prof. Cond. R. 8.4 states:

Division (c) does not prohibit a lawyer from supervising or advising about lawful covert activity in the investigation of criminal activity or violations of constitutional or civil rights when authorized by law.

{¶61} The panel concludes that, although the Supreme Court of Ohio could have adopted an express exception for deceptive investigatory conduct by lawyers, the exception described in Comment [2A] is limited to a lawyer “supervising or advising” nonlawyers about such covert activity.<sup>4</sup>

{¶62} The panel finds two decisions by the Supreme Court of Ohio to be persuasive in considering the facts of the instant case.

{¶63} In its decision in *Columbus Bar Assn. v. King*, 84 Ohio St.3d 174, 1998-Ohio-528, the Court concluded that two lawyers (King and Pope) engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation in violation of DR 1-102(A)(4). King had filed a lawsuit against his client’s former landlord for injuries which the client allegedly suffered in a fall on the landlord’s property. King took the client to Pope’s office, and Pope agreed to telephone the client’s former landlord, to falsely represent that he had received a rental application from the client, and to request a reference in the hopes that the office manager would slander the client. When the office manager made derogatory comments about the client, Pope gave King a tape recording of the call, and King immediately amended his complaint to add a claim for slander.

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<sup>4</sup> The comparison of the Ohio version of Prof. Cond. R. 8.4 to the Model Rules also states that, “Comment [2A] is added to indicate that a lawyer’s involvement in lawful covert activities is not a violation of Prof. Cond. R. 8.4(c).”

The Board concluded that Pope's pose as a prospective landlord was a sham which violated of DR 1-104(A)(4) and (5), among others, and recommended that both King and Pope be indefinitely suspended. The Court adopted the Board's findings of fact and conclusions of law but imposed stayed suspensions for both King and Pope.

{¶64} In its decision in *Cincinnati Bar Assn. v. Statzer*, 101 Ohio St.3d 14, 2003-Ohio-6649, the Court adopted the Board's finding that Statzer had engaged in conduct involving deception in violation of DR 1-102(A)(4) while questioning her former paralegal during a deposition taken in disciplinary proceedings against Statzer. The Board and the Court concluded that during the deposition Statzer intended to mislead the witness by conspicuously placing nine audiocassettes in front of the witness, repeatedly referring to the cassettes during questioning, falsely implying that she had recorded conversations with the witness that could impeach and personally embarrass the witness, and intermittently cautioning the witness to answer truthfully or risk perjuring herself. In rejecting Statzer's argument that she was justified in employing deception in her attempt to obtain truthful testimony from an unreliable witness during the investigatory phase of the proceeding; the Court explained:

Respondent, however, urges us to distinguish trial conduct from "discovery depositions," arguing that the latter require greater freedom of inquiry into matters that may be relevant but inadmissible. *See* Civ. R. 26(B)(1) (inadmissible evidence reasonably calculated to lead to the discovery of admissible evidence is also discoverable). This was particularly the case, respondent insists, in the deposition of the legal assistant. She argues that wide latitude was imperative during that proceeding to draw honest testimony from a theretofore untrustworthy witness and that use of the audio cassette tapes was merely a tactic intended to achieve this legitimate end.

We recognize that the discovery process, particularly the pursuit of information through deposition, cannot be overly restricted if it is to remain effective. We must draw the line, however, when an attorney engages in subterfuge that intimidates a witness. While respondent's primary purpose during the legal assistant's deposition may have been to elicit the truth, her tactic also tricked the legal assistant into thinking that the revelation of embarrassing confidences was at stake.

Throughout these proceedings, respondent has asserted that her “bluff” worked. Regardless, the success of her tactic is not at issue, and respondent cannot, with any degree of certainty, assert that her witness would not have testified truthfully in the absence of her subterfuge. Further, while such deception may induce truthful testimony, it is just as likely to elicit lies if a witness believes that lies will offer security from the false threat. Respondent's deceitful tactic intimidated her witness by creating the false impression that respondent possessed compromising personal information that she could offer as evidence. For these reasons, we agree that respondent violated DR 1-102(A)(4) and DR 7-106(C)(1).

*Id.* at ¶¶15-17.

{¶65} The panel is unwilling to conclude that the plain language of Prof. Cond. R. 8.4(c), the comments to Prof. Cond. R. 8.4, and the authorities cited by Respondent support the application of a different ethical standard to the facts of this case simply because Respondent was an assistant prosecuting attorney involved in investigatory activities at the time of his deceitful conduct. Even though the General Assembly describes an assistant prosecutor as a “law enforcement officer” for some purposes, the regulation of the practice of law is the exclusive province of the Supreme Court. Comment [5] to Prof. Cond. R. 8.4 also states that “lawyers holding public office assume legal responsibilities going beyond those of other citizens.” See also, *Disciplinary Counsel v. Engel*, 132 Ohio St.3d 105, 2012-Ohio-2168, (lawyer’s unintended distribution of confidential information about pending law-enforcement and ethics investigations to those who were not authorized to receive such information - while he served as chief legal counsel for state department of public safety - worked to undermine public trust not only in the legal system, but in state government as a whole). Finally, Comment [1] to Prof. Cond. R. 3.8 states:

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded justice and that guilt is decided upon the basis of sufficient evidence. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Prof. Cond. R. 8.4.

{¶66} The panel concludes that Prof. Cond. R. 8.4(c) requires assistant prosecutors to refrain from dishonesty, fraud, deceit, or misrepresentation when personally engaged in investigatory activity and that Relator has proved by clear and convincing evidence that Respondent engaged in misconduct in violation of Prof. Cond. R. 8.4(c).

**Prof. Cond. R. 8.4(d)--Conduct Prejudicial to the Administration of Justice**

{¶67} Respondent argues that his deceptive investigatory tactics protected the public and therefore were not prejudicial to the administration of justice. However, the panel concludes that Respondent's misconduct prejudiced the administration of justice in the Dunn matter in following ways.

{¶68} While Respondent argues that his conduct succeeded in inducing the potential witnesses to come forward and tell the truth, Respondent's view of the success of his deception is irrelevant to the panel's determination of whether his deceit was prejudicial to the administration of justice. *Cincinnati Bar Assn. v. Statzer*, at ¶17. Respondent acknowledged the risk that Dunn's alibi could have been true and that his deception could have induced the witnesses to lie to avoid a perceived threat resulting from his subterfuge. Hearing Tr. 386-390. Respondent was willing to take this "calculated risk," because he was personally convinced the alibi was false. Hearing Tr. 390. Although Respondent was permitted to confront Mossor and Lewis with provable facts to test their credibility, Respondent's use of deception for that purpose was prejudicial to the administration of justice because of its potential to induce false testimony.

{¶69} Lewis' disclosure to Detective Griffin of her interaction with "Taisha Little" on Facebook® and her claim that Little asked her to lie for Dunn resulted in a continuance of the trial date and required Filiatraut to devote a significant amount of time to attempting to identify Little. While the panel lacks sufficient evidence to conclude that the resulting delay actually

harmed Dunn's chances of prevailing at trial as suggested by Fallon, Respondent's misconduct prejudiced the administration of justice by injecting significant new issues into the case shortly before trial and delaying its ultimate resolution.

{¶70} Even though Respondent realized in December 2012, the probability of the prosecution's need to call him as a witness, Respondent failed for almost five months to share that information with Filiatraut, anyone else in the prosecutor's office, or the police. Respondent claims he deliberately refrained from disclosing this information because he didn't want to make anyone else a witness. However, Prof. Cond. R. 3.7(c) requires the prosecuting attorney to analyze whether his office was permitted to continue to prosecute the Dunn case once it became likely that Respondent would be a necessary witness. Following Respondent's confession to Filiatraut that he had created the "Taisha Little" persona and made false representations to Mossor and Lewis concerning Little's motivation for contacting them, Filiatraut reported Respondent's conduct to his supervisors. After reviewing Respondent's conduct, Prosecuting Attorney McGinty decided that his office was required to withdraw from the case. The prosecutor's withdrawal and the court's resulting appointment of the Attorney General as special prosecutor materially delayed the resolution of the Dunn case. Respondent acknowledged that his conduct let down the prosecutor's office and all the people who worked there. Hearing Tr. 382-383.

{¶71} For the foregoing reasons, the panel concludes that Respondent engaged in conduct prejudicial to the administration of justice in violation of Prof. Cond. R. 8.4(d).

### **Prof. Cond. R. 3.6--Trial Publicity**

{¶72} Although there is no dispute that Respondent as a lawyer involved in the litigation of a pending matter made statements that he reasonably knew would be publicly disseminated by

the media, Prof. Cond. R. 3.6(a) requires that Relator prove by clear and convincing evidence that Respondent reasonably should have known that his statements would “have a substantial likelihood of materially prejudicing” the trial in the Dunn case. The phrase “reasonably should know” is defined in Prof. Cond. R. 1.0(k) to mean that “a lawyer of reasonable prudence and competence would ascertain the matter in question.” Therefore, Respondent’s conduct in making these statements must be judged employing an objective standard.

{¶73} While divisions (b) and (c) of Prof. Cond. R. 3.6 narrowly delineate certain types of public statements which a lawyer may make concerning a pending matter, the language of the rule does not provide any specific guidance as to the types of comments which would violate the prohibition contained in Prof. Cond. R. 3.6(a). Rather, several comments to Prof. Cond. R. 3.6 provide guidance in relation to determining the likelihood for material prejudice.

- Comment [1] makes clear that the purpose of the rule is to balance the rights of the public to have knowledge concerning judicial proceedings against the rights of litigants to a fair trial, especially when a trial by jury is involved.
- Comment [5] recognizes the clear potential of certain types of public comments to prejudice the fair trial rights of the litigants, including comments relating to the credibility of a defendant or witness in a criminal matter, comments relating to the expected testimony of witness, and any opinion as to the guilt of a defendant a criminal case.
- Comment [6] expressly indicates that the nature of the proceeding is relevant to determining the likelihood of prejudice, with criminal jury trials being most sensitive to extrajudicial speech.

{¶74} While the panel does not condone Respondent’s statements and believes his statements touch on several of the sensitive subjects described in Comment [5], the panel concludes that Relator must prove more than just that the statements were made. In a different context, the Supreme Court has stated that even “pervasive, adverse publicity” does not inevitably lead to an unfair trial because a defendant’s constitutional right to a fair trial can often be protected by the traditional methods of *voir dire*, continuances, change of venue, jury

instructions, or sequestration of the jury. See, *State ex rel. Vindicator Printing Co. v. Wolff*, 132 Ohio St.3d 481, 2012-Ohio-3328, (trial court erred in issuing an order to seal records in a criminal proceeding in order to protect defendant's right to a fair trial). The Court further stated that, "in the absence of clear and convincing evidence establishing that the defendants' right to a fair trial would be violated, the judge erroneously relied on conclusory, speculative assertions." *Id* at ¶34. Therefore, the panel may not simply presume that Respondent should have known that his extrajudicial statements would have a substantial likelihood of materially prejudicing Dunn's right to a fair trial.

{¶75} Instead, Relator was required to provide clear and convincing evidence as to how and why Respondent should have known that material prejudice was substantially likely. While his conduct must be judged using an objective standard, Respondent must be compared not to all reasonably prudent and competent lawyers, but rather the panel's benchmark should be reasonable lawyers with experience in major criminal trials in a major media market and who are familiar with how the rights of criminal defendants are impacted by pre-trial publicity and the effectiveness of judicial efforts to minimize such impacts.

{¶76} Relator cites the Court's decision in *Disciplinary Counsel v. Gaul*, 127 Ohio St.3d 16, 2010-Ohio-4831 to support its charged violation of Prof. Cond. R. 3.6(a). The panel concludes that this decision is distinguishable from the facts of the instant case. The respondent in that decision was a judge who violated former Canon 2 of the Code of Judicial Conduct by making statements from the bench, both on and off the record, asserting his belief that the defendant in a pending criminal case had engaged in criminal conduct by preventing the victim from appearing at trial. *Id.* at ¶¶52-57. The judge's comments about the defendant were based on the judge's speculation and supposition, not upon any evidence actually presented to the

judge. *Id.* The Court concluded that the judge's comments did not promote public confidence in his integrity and impartiality. *Id.* at ¶53. The panel concludes that the judge's obligations under Canon 2 were materially different than the restrictions imposed on Respondent by Prof. Cond. R. 3.6(a).

{¶77} The evidence in the instant matter proves no more than that Respondent made extrajudicial public statements to the media concerning the Dunn matter. Therefore, the panel concludes that Relator has failed to meet its burden to prove by clear and convincing evidence that Respondent violated Prof. Cond. R. 3.6(a) and the panel recommends that this charge be dismissed.

#### **AGGRAVATION, MITIGATION, AND SANCTION**

{¶78} When recommending sanctions for attorney misconduct, the panel must consider all relevant factors, including the ethical duties Respondent violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743. The panel must also weigh evidence of the aggravating and mitigating factors listed in Gov. Bar R. V, Section 13(B). *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251. However, because each disciplinary case is unique, the panel is not limited to the factors specified in the rule but may consider any factor relevant to determination of the sanction to be imposed. *Disciplinary Counsel v. Zapor*, 127 Ohio St.3d 372, 2010-Ohio-5769.

#### **Aggravating Factors**

{¶79} *Multiple offenses:* The panel concludes that Respondent's deception and misrepresentation in his contacts with Mossor and Lewis resulted in multiple violations of the Rules of Professional Conduct. However, the panel views these multiple violations as resulting

from a single course of misconduct rather than multiple instances of misconduct or a pattern of abusing legal procedures.

{¶80} *Respondent's extrajudicial statements:* Even though the panel concluded that Relator had failed to meet its burden of proof as to the charged violation of Prof. Cond. R. 3.6, the panel regards Respondent's extrajudicial statements to the media following his termination as an aggravating factor. Not only did Respondent make comments impugning the credibility of Mossor and Lewis and referring to Dunn as a horrible killer, Respondent criticized the Cleveland police for failing to do what was necessary to protect the public from a horrible killer, and impugned the prosecutor for choosing "to protect the way business is done in the court and the technical rules of ethics" instead of protecting the public. In short, Respondent defended his misconduct by blaming other public officials. Even if these comments cannot be presumed to have prejudiced Dunn's right to a fair trial, the panel concludes that they undermine the public's confidence in the criminal justice process.

{¶81} Relator argues that Respondent's failure to timely disclose his deceitful conduct to Dunn's counsel should be considered as an aggravating factor. However, in its decision in *Disciplinary Counsel v. Kellogg-Martin*, 124 Ohio St.3d 415, 2010-Ohio-282, the Court held that a prosecutor's obligation under former DR 7-103(B) [now Prof. Cond. R. 3.8(d)] to disclose evidence in a criminal proceeding is no broader than the scope of his obligations under Crim. R. 16. *Id.* at ¶22. The Court further held that Crim. R. 16 does not require a prosecutor to disclose "material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Id.* at ¶25; accord, *State v. Ketterer*, 126 Ohio St.3d 448, 2010-Ohio-3831.

{¶82} While Relator argues in its post-hearing brief that Mossor or Lewis might have been called as a witness by the prosecution in Dunn's case, Relator presented no evidence that

Respondent had such an intention while he was assigned to prosecute the case. A reasonable inference from the evidence is that Respondent's attempts to contact Mossor and Lewis were designed either to persuade them to recant any support for Dunn's alibi so that they would never be called to testify or to obtain information from them which he could use to impeach any testimony they might provide in support of the alibi. In either situation, Respondent would not have had an obligation under Crim. R. 16 to disclose evidence of his contacts with Mossor and Lewis unless it became apparent that Respondent would need to testify as a witness to rebut testimony supporting Dunn's alibi. Even if Respondent became obligated to disclose his conduct once Dunn's counsel filed a notice of alibi and identified Mossor and/or Lewis as alibi witnesses, Filiatraut disclosed the Little/Lewis chat to defense counsel within a week after the notice of alibi was filed, and the panel is unable to conclude that this was a material delay which should be viewed as an aggravating factor.<sup>5</sup>

### **Mitigating Factors**

{¶83} *Absence of a prior disciplinary record.* Stipulation ¶32.

{¶84} *Cooperation during the disciplinary process.* Stipulation ¶33.

{¶85} *Full and free disclosure:* Within two weeks after the termination of his employment by the prosecuting attorney, Respondent self-reported his alleged violation. In his report to Relator, Respondent acknowledged that "there is a considerable grey area in terms of actual investigative limits of prosecutors." Stipulated Ex. 7, p. 2. Respondent went on to state:

The purpose of this document is to self-report an investigative tactic that I employed on a recent case that implicates all of the above-referenced questions. I respectfully request that you review this tactic and determine whether its use

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<sup>5</sup> See, also, *State v. Pickens*, 2014-Ohio-5445 (defendant in a criminal matter has a duty to prove that a prosecutor's failure to timely disclose exculpatory evidence or other discovery deprived the defendant of due process), citing, *State v. Iacona*, 93 Ohio St.3d 83, 2001-Ohio-1292 ("even where information may be exculpatory, no due process violation occurs as long as *Brady* material is disclosed to a defendant in time for its effective use at trial.")

constituted an ethical violation. If you find a violation, I fully accept your findings.

*Id.*

{¶86} After providing a lengthy description of what he did and why he did it,

Respondent further stated:

I am self-reporting this conduct because I would like a ruling on my conduct. I fully admit that I engaged in an investigatory ruse. I fully admit that the ruse involved deception. However, there is some confusion regarding the investigation limits for prosecutors. I truly believe in the sanctity of the court, but I placed more emphasis on exposing the truth, protecting the public, and stopping the defendant from perpetrating a fraudulent alibi. Based on past and current practices and the urgency of the situation, I honestly did not believe that I was committing an ethical violation.

*Id.* at p. 7.

{¶87} *Lack of a selfish motive:* From the evidence presented, the panel concludes that

Respondent truly believed that he had an obligation as an assistant prosecutor to pursue every avenue to find the truth and protect the public. Former Prosecuting Attorney William Mason testified that he expected his assistant prosecutors to do what was necessary to get their cases ready for trial and that this would require the assistants to do the investigation which had not necessarily been performed by the police. As a person familiar with how the public was using social media, Respondent saw his covert use of Facebook<sup>®</sup> as being as effective and acceptable as the use of more traditional tactics such as staged drug-buys and the use of undercover informants.

{¶88} Under his view of an assistant prosecutor's role, Respondent believed that his actions were consistent with what his superiors and the public expected him to do. Considering Mason's testimony concerning his expectations for his assistants in contrast to McGinty's reaction to Respondent's conduct, the panel also infers that McGinty's appointment following Mason's resignation may have resulted in certain attitude shifts in the administration of the

prosecutor's office which may not have been clearly communicated to Respondent prior to this incident.

{¶89} Although the panel has concluded that Respondent's use of deception violated a core ethical value, the panel does not conclude that Respondent was motivated by self-interest.

{¶90} *Character or reputation:* Although Relator stipulated that Respondent has a good character and reputation (Stipulation ¶34), Respondent also submitted forty-one letters from lawyers with whom he worked as an assistant prosecutor, lawyers who opposed him as defense counsel, lawyers who have come to know him since he left the prosecutor's office, judges, relatives of victims in cases he prosecuted, friends, and family members. These letters consistently attest to Respondent's integrity, honesty, fairness, legal knowledge, skill as a trial attorney, and commitment to obtaining justice for both defendants and victims in the criminal matters in which he has been involved. The authors of these letters portray Respondent as an ethical and moral individual who loves practicing law. Various letters attest to his willingness to listen to the positions of his opponents and to question the accuracy and completeness of information presented to him by law enforcement. They also show him as an individual who is both a hard-worker committed to representing his clients and a devoted husband and father.

{¶91} *Imposition of other penalties or sanctions:* Although not a penalty or sanction in the traditional sense, the panel accepts the profound impact on Respondent's from his loss of employment as an assistant prosecutor. Respondent viewed the prosecutor's position as his "dream job" and believes that he is unlikely to obtain a similar position in the future because of his termination.

## Sanction

{¶92} Relator recommends an actual suspension without recommending a specific duration of the suspension. Despite arguing for a public policy exemption for deceptive prosecutorial investigatory tactics, Respondent admits that his conduct violates the plain language of Prof. Cond. R. 8.4(c) and recommends a six-month stayed suspension.

{¶93} Misconduct involving dishonesty, fraud, deceit, or misrepresentation generally warrants an actual suspension from the practice of law. *Akron Bar Assn. v. Binger*, 139 Ohio St.3d 186, 2014-Ohio-2114, ¶22, citing, *Disciplinary Counsel v. Karris*, 129 Ohio St.3d 499, 2011-Ohio-4243, ¶16, *Disciplinary Counsel v. Kraemer*, 126 Ohio St.3d 163, 2010-Ohio-3300, ¶13, and *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261, syllabus. However, where the evidence establishes that an attorney's misconduct involves a single, isolated incident in an otherwise unblemished legal career and an abundance of mitigating factors, the Court has imposed partially or fully stayed terms of suspension in some disciplinary cases involving dishonest, deceitful, or fraudulent conduct. *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909, citing, *Cincinnati Bar Assn. v. Reisenfeld*, 84 Ohio St.3d 30, 1998-Ohio-307 (six-month stayed suspension); *Disciplinary Counsel v. Fumich*, 116 Ohio St.3d 257, 2007-Ohio-6040 (twelve-month stayed suspension); *Disciplinary Counsel v. Niermeyer*, 119 Ohio St.3d 99, 2008-Ohio-3824 (twelve-month stayed suspension); and *Disciplinary Counsel v. Potter*, 126 Ohio St.3d 50, 2010-Ohio-2521 (twelve-month stayed suspension).

{¶94} In its decision in *Columbus Bar Assn. v. King*, *supra*, the Court adopted the Board's conclusions that King violated DR 1-102(A)(4), (5), and (6), as well as DR 7-102(A)(1) and (3) and DR 7-104(A)(1). With little explanation, the Court rejected the Board's

recommendation of an indefinite suspension and instead concurred in the relator's recommendation of a one-year stayed suspension.

{¶95} In its decision in *Cincinnati Bar Assn. v. Statzer, supra*, the Court held that Statzer violated DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit, or misrepresentation] and DR 7-106(C)(1) [a lawyer shall not state or allude to any matter that will not be supported by admissible evidence]. The Court imposed a six-month stayed suspension based upon the mitigating evidence of no prior discipline, cooperation in the disciplinary process, and a history of dutiful service to clients, including representing in a difficult and contentious divorce the client whose case file the lawyer lost resulting in the disciplinary proceeding.

{¶96} Based on the foregoing precedent, the panel concludes that Respondent's misconduct was an isolated incident in an otherwise notable legal career and that Respondent is unlikely to engage in similar misconduct in the future. Based on the substantial mitigating evidence, the panel concludes that a fully stayed suspension will be adequate to protect the public. However, the panel must consider the seriousness of Respondent's misconduct and the aggravating circumstances described above. Therefore, the panel recommends that Respondent be suspended for a term of one year, with the suspension fully stayed on the conditions that Respondent engage in no further misconduct and that he pay the costs of these proceedings.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on February 13, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Aaron James Brockler, be suspended from the practice of law for a period of one year, with the suspension stayed in its entirety on the conditions that Respondent engage in no

further misconduct and pay the costs of these proceedings.

**Pursuant to the order of the Board of Professional Conduct of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.**

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

**RICHARD A. DOVE, Director**