

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

<b>In Re:</b>	:	<b>Case No. 2014-027</b>
<b>Complaint against</b>	:	
<b>Edwin Lowe Vardiman, Jr.</b> <b>Attorney Reg. No. 0070574</b>	:	<b>Findings of Fact,</b> <b>Conclusions of Law, and</b> <b>Recommendation of the</b> <b>Board of Professional Conduct of</b> <b>the Supreme Court of Ohio</b>
<b>Respondent</b>	:	
<b>Cincinnati Bar Association</b> <b>Warren County Bar Association</b>	:	
<b>Co-Relators</b>	:	

**OVERVIEW**

{¶1} This matter was heard on February 2, 2015, in Columbus before a panel consisting of Lawrence A. Sutter, McKenzie K. Davis, and Keith A. Sommer, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to former Gov. Bar R. V, Section 6.<sup>1</sup>

{¶2} Respondent was present and represented by William Mann. Michael Foley appeared on behalf of the Cincinnati Bar Association. Bruce A. McGarry and John S. Mengle appeared on behalf of the Warren County Bar Association.

{¶3} On April 7, 2014, a complaint was filed by Warren County Bar Association against Respondent alleging multiple violations of the Ohio Rules of Professional Conduct.

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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.

{¶4} The complaint filed by Warren County Bar Association involved Respondent representing a client in the Warren County Court of Common Pleas, Juvenile Division, to reduce the father's child support order. The mother was unrepresented by counsel.

{¶5} Respondent drafted the initial shared parenting plan (SPP) that was executed by the biological mother and returned to Respondent for filing with the court. The court's compliance officer returned the SPP to Respondent for corrections. Respondent sent the first revised SPP to the mother with additional documents dealing with health insurance and wage/employment issues. Respondent resubmitted the first revised SPP and further submitted an agreed entry, shared parenting plan, a child support computation worksheet, a health insurance information form, information sheet for notice of income provider, and an application for child support services. The biological mother did not sign the first revised SPP, the agreed entry, shared parenting plan, the child support computation worksheet, and the application for child support services.

{¶6} At the pretrial hearing, the magistrate questioned the biological mother as to whether she signed the shared parenting plan to which she stated she did not. Respondent admitted that he signed the mother's signature. In response to a question from the magistrate as to the reason, he stated "it was purely timing Your Honor."

{¶7} Respondent filed admissions of facts to the complaint filed by Warren County Bar Association. The admissions stated that his "misconduct constitutes a violation, or perhaps violations of the Ohio Rules of Professional Conduct as to the Warren County Bar Association complaint" and further admitted that "his conduct was harmful to Ms. Sites, to his client Mr. Hunt, to the court system and to the public."

{¶8} On October 8, 2014, a complaint was filed by Cincinnati Bar Association against Respondent alleging violations of the two disciplinary rules.

{¶9} The complaint filed by Cincinnati Bar Association involved Respondent preparing a will and a power of attorney for a client. Respondent signed as a witness and signed the name of the second witness to both documents.

{¶10} Respondent filed admissions of fact to the complaint and admitted that his “misconduct constitutes a violation, or perhaps violations of the Ohio Rules of Professional Responsibility as to the Cincinnati Bar Association complaint” and further admitted that “his misconduct was harmful to his client, to all people and entities that would be affected by his client’s will, to the public and to the court system.”

{¶11} The panel recommends a sanction of one-year suspension, with six months stayed.

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

{¶12} Respondent was admitted to the practice of law in the state of Ohio on May 17, 1999 and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

#### **Warren County Bar Association Complaint**

{¶13} Respondent was representing a biological father in the Warren County Court of Common Pleas, Juvenile Division, to a shared parenting plan and other legal documents which were filed with the court. At the hearing, the biological mother who was unrepresented stated that the signature setting forth her name was not signed by her. Respondent admitted that he signed the name of the unrepresented biological mother to the documents submitted to the court. Respondent stated the reason he signed the mother’s signature was “purely timing.”

{¶14} In addition to his admissions of fact, Respondent admitted during his cross-examination that he had omitted from his written admissions filed with the Board that he had also forged Ms. Chamberlain's signature on the child support computation worksheet (Relator's Ex. 4a), which Respondent agreed he had also forged and filed with the court. Respondent further admitted that he forged Ms. Chamberlain's signature on the SPP (Relator's Ex. 1a) along with the other documents (Relator's Ex. 2a, 3a, and 4a) in January 2013 without authority and in direct contradiction to what he stated to the magistrate as evidenced by the transcript of the May 7 pretrial conference. Relator's Ex. 6a. Respondent admitted upon cross-examination that his client notified him at least one day before the May 7 pretrial conference that Ms. Chamberlain had discovered the forgeries, yet Respondent did not self-report his misconduct to the court or anyone else, nor did he attempt to correct it prior to the May 7 pretrial conference. Respondent further admitted upon cross-examination that his motive was selfish, in that his client was anxious and pressuring him to get the child support order reduced as soon as possible.

{¶15} Respondent also agreed upon cross-examination that he was contacted in August 2013 by the Warren County Bar Association regarding a complaint arising out of the Warren County matter, and that he responded in writing explaining his actions in a letter dated September 11, 2013. Relator's Ex. 5a.

{¶16} The panel finds Warren County Bar Association proved by clear and convincing evidence that Respondent violated the following rules: Prof. Cond. R. 4.3 [dealing with an unrepresented person]; Prof. Cond. R. 3.3(a)(1) [a lawyer shall not knowingly make a false statement of fact or law to a tribunal]; Prof. Cond. R. 3.3(a)(3) [a lawyer shall not offer evidence that the lawyer knows to be false]; Prof. Cond. R. 8.4(b) [conduct that reflects adversely on the lawyer's honesty or trustworthiness]; 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]. Relator did not prove by clear and convincing evidence that Respondent's conduct violated Prof. Cond. R. 8.4(h).

### **Cincinnati Bar Association Complaint**

{¶17} Respondent admitted that he was retained to prepare a will and power of attorney which were signed by his client October 18, 2013.

{¶18} Both documents bore the signature of Respondent as a witness and a second witness by the name of Sandra J. Sink.

{¶19} Respondent signed Sink's name without authority to both documents.

{¶20} Respondent admitted that his misconduct constitutes a violation of the Ohio Rules of Professional Conduct and that his conduct was harmful to the public and to his client.

{¶21} The panel finds Cincinnati Bar Association proved by clear and convincing evidence that Respondent violated of the following: Prof. Cond. R. 8.4(b) and Prof. Cond. R. 8.4(c).

### **Respondent's Testimony**

{¶22} Respondent sought the help of Dr. Walker as a result of a complaint brought by the Warren County Bar Association.

{¶23} Respondent first saw Dr. Walker on May 30, 2014.

{¶24} The misconduct that Respondent reported to Dr. Walker concerned the Warren County Bar Association's complaint. Respondent failed to report his misconduct concerning a client's will to Dr. Walker until after the complaint was filed by the Cincinnati Bar Association.

{¶25} Respondent was unable to explain why he did not disclose his misconduct concerning his client's legal documents other than to respond by saying that Dr. Walker never inquired about it in the initial consultations.

{¶26} Respondent further admitted upon cross-examination that the will forged on October 18, 2013 was filed with the probate court. Relator-Cincinnati Bar Association Ex. 3b.

{¶27} Respondent testified that he has not been admitted to practice in the state of Kentucky for several years. Respondent obtained a letter from the Kentucky Bar Association dated February 12, 2015 stating that he was suspended for CLE non-compliance January 31, 2008. Respondent's Exhibit O is a letter dated September 11, 2013 which is Respondent's response letter to the Warren County Bar Association. Respondent's letterhead set forth "Admitted in Kentucky."

#### **Todd Walker, Psy.D., Testimony**

{¶28} Respondent was evaluated by the Ohio Lawyers Assistance Program (OLAP) in 2014, and he entered into an OLAP contract at that time. As part of the contract, Respondent was required to see a licensed mental health professional. On May 30, 2014, Respondent began seeing Dr. Walker, a clinical psychologist who is also on the faculty of Wright State University's Clinical Psychology Graduate School Program.

{¶29} Dr. Walker's role in this case was to determine what, if any, mental disability Respondent had, and then to treat any such disability that existed. Walker Deposition 81.

{¶30} Dr. Walker diagnosed Respondent as follows:

The initial diagnosis was adjustment disorder with anxiety and depression. And the second diagnosis was attention deficit hyperactivity disorder, combined type.

Walker Deposition 16.

{¶31} Dr. Walker testified that he cured the adjustment disorder with anxiety and depression, and only the ADHD remains. Walker Deposition 36.

{¶32} Dr. Walker testified that he is very familiar with ADHD and that he has probably diagnosed and treated patients with that particular mental disability over 1,000 times during his career. Walker Deposition 38. Dr. Walker said that Respondent's ADHD was not diagnosed until he did so in 2014. Walker Deposition 31-32. Dr. Walker said that Respondent's high intellectual functioning gave him the ability to put forth a fully competent non-ADHD facade, and that is why his ADHD was not previously diagnosed. Walker Deposition 29.

{¶33} Dr. Walker testified that all of his findings and opinions, in his direct examination, were supported by clear and convincing evidence. Walker Deposition 5-6. Dr. Walker said that Respondent had a history of oversights, distractibility, impulsivity in terms of trying to take short cuts and speed things up, and sometimes doing things too fast and having a hard time trying to calm down and be less intense. Walker Deposition 14.

{¶34} Based on the history he obtained and his examinations of his patient, Dr. Walker, as indicated above, diagnosed Respondent as having ADHD. Dr. Walker at page 20 of his deposition, said that Respondent had these types of ADHD problems: inattention; careless mistakes; trouble maintaining concentration; trouble with wrapping things up; fidgeting; squirminess; restlessness; and difficulty relaxing.

{¶35} Dr. Walker testified that Respondent's ADHD made him feel compelled to act "as if driven by a motor." Walker Deposition 21. Dr. Walker explained that Respondent's impulsivity disorder is not caused by a lack of morals, such as a lack of self-discipline, but by "an inborn neurological problem." Walker Deposition 24. It is this "inborn neurological problem" which Dr. Walker also described as a "bio neurological disorder that requires

medication,” that Dr. Walker testified caused Respondent to have problems controlling his behavior. Walker Deposition 29.

{¶36} Dr. Walker testified that Respondent’s mental health disability was the primary cause of Respondent’s ethical misconduct (improperly signing other people’s names to documents without proper authority to do so and filing those documents with the courts). Walker Deposition 22-23. Dr. Walker also wrote the same thing in both of the reports he authored in this case and which are attached as exhibits to Dr. Walker’s deposition.

{¶37} Dr. Walker testified that Respondent was a “very compliant” and a “highly motivated” patient. Walker Deposition 23.

{¶38} Respondent is still taking his ADHD medication (Wellbutrin), Walker Deposition 64, and he will need to follow up with Dr. Walker in the future. Walker Deposition 94.

{¶39} Dr. Walker testified that so long as Respondent continues to get proper medical and mental health treatment, he can practice law as a competent and ethical lawyer, and this prognosis is excellent. Walker Deposition 23, 27. Dr. Walker also wrote in his two reports which are attached as exhibits to his deposition. Specifically, Dr. Walker said:

The above noted transformations in his [Mr. Vardiman’s] daily functioning and his experience of himself has all but alleviated his depression and anxiety that was a secondary fact [to Mr. Vardiman’s ADHD], as I said before. He’s no longer walking around feeling fatally flawed but rather is excited and optimistic about his current and future life. While subject to the same situational ups and downs experienced by all attorneys, *he absolutely does not have any current psychopathology that would interfere in his current professional or personal functioning.* (Emphasis added).

Walker Deposition 27.

{¶40} Respondent was evaluated and participated in one diagnostic assessment and five counseling sessions with Dr. Walker between May 30, 2014 and August 20, 2014 (Walker Deposition 66; Walker Deposition Ex. 2), whereupon Dr. Walker issued a report that opined “I

cannot imagine Mr. Vardiman having any further ethical issues.” Walker Deposition Ex. 2. Thereafter, Respondent participated in four more counseling sessions (Walker Deposition 73), whereupon Dr. Walker issued a second report that opined that “I cannot imagine Mr. Vardiman having any further ethical issues.” Walker Deposition Ex. 3.

{¶41} Respondent’s exhibits included several character letters, including letters from magistrates and attorneys. Respondent’s Exhibit O is a letter dated September 11, 2013, which is Respondent’s response letter to the Warren County Bar Association. Respondent’s letterhead set forth “Admitted in Kentucky.”

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

#### **Mitigation**

{¶42} The panel finds the following mitigating factors: full and free disclosure to the disciplinary board; absence of a prior disciplinary record, except for a 25-day attorney registration suspension due to oversight [*In re Attorney Registration Suspension of Vardiman*, 2007-Ohio-6463]; diagnosed mental health disability plus causation; and positive character evidence.

{¶43} The panel does not accept Respondent’s mitigating factors of no intentional dishonest or intentional selfish motive and timely good-faith effort to rectify consequences of misconduct.

{¶44} The testimony of Dr. Walker satisfies the requirements of Gov. Bar R. V, Section 13(C)(7) of a diagnosed mental disorder which are: a determination that the mental disorder contributed to cause the misconduct; in the event of mental disorder, a sustained period of successful treatment; and a prognosis from a qualified health care professional that the attorney will be able to return to competent, ethical professional practice under specified conditions.

## **Aggravation**

{¶45} The panel finds an aggravating factor following the first violation with Warren County Bar Association. Respondent retained the services of Dr. Walker and failed to advise Dr. Walker that he had a second violation resulting from the forgery of a signature of a witness to the will and power of attorney.

{¶46} A second aggravating factor involved Respondent not seeking assistance from a qualified health care professional for any mental health condition until after his misconduct was discovered and the Warren County Bar Association's complaint was served upon him.

## **Sanction**

{¶47} Warren County Bar Association cited similar cases for support of a sanction.

{¶48} In *Disciplinary Counsel v. Bogdanski*, 135 Ohio St.3d 235, 2013-Ohio-398, wherein respondent forged his client's signature and then notarized a signature on an affidavit and forged the verification on responses to discovery. Respondent was also charged with incompetent representation. Respondent violated Prof. Cond. R. 3.3(a)(3) [prohibiting a lawyer from knowingly offering evidence the lawyer knows to be false]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct adversely reflecting on the lawyer's fitness to practice law]. The Board adopted the panel's recommendation of an indefinite suspension. The Court stated "dishonesty in any form guarantees indefinite suspension."

{¶49} In *Cincinnati Bar Assn. v. Farrell*, 119 Ohio St.3d 529, 2008-Ohio-4540, the facts involved respondent forging his wife's signature who was also an attorney on a power of attorney and had another attorney notarize the signature. Respondent then used the power of

attorney to obtain a line of credit from a bank. He wrote letters to convince his wife he had high-paying legal employment opportunities and other matters. Respondent violated rules prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation and illegal conduct involving moral turpitude. The panel recommended two-year suspension, with one year stayed which was adopted by the Board. The Court imposed two-year suspension, with one year stayed on conditions.

{¶50} In *Disciplinary Counsel v. Shaffer*, 98 Ohio St.3d 342, 2003-Ohio-1008, Respondent obtained a title abstract that revealed his client's grandmother who had become incapacitated granted a power of attorney to his client which expressly prohibited transferring grandmother's property. Respondent prepared a new power of attorney that back dated his client's grandmother's incapacitation, which the power of attorney granted his client authority to transfer the grandmother's real estate. Respondent advised the client to forge his grandmother's signature, which the client did. Respondent then notarized the signature and signed as a witness and instructed his secretary to sign as a witness, which she did. Respondent was charged with conduct involving dishonesty, fraud, deceit, or misrepresentation and assisting a client to conduct a fraudulent or illegal act. The panel recommended a one-year suspension, with six months stayed which was adopted by the Board. The Court imposed a one-year suspension, with six months stayed.

{¶51} In *Disciplinary Counsel v. Herman*, 99 Ohio St.3d 362, 2003-Ohio-3932, Respondent received two qualified domestic relations orders (QDRO) from opposing counsel, signed by opposing counsel and his client, with instructions to have respondent and his client sign, then file with the court, and send to the plan administrator; respondent's client to get \$5,113 of a 401k but respondent changed to \$10,111, and the second QDRO provided for respondent's

client to get 45 percent but respondent changed to 50 percent and did not notify opposing counsel of the changes or obtain consent to do so. Opposing counsel filed charges with the sheriff, and respondent was indicted for felony forgery. Respondent pled to tampering with evidence, a misdemeanor, and was sentenced to two years community control and 300 hours of community service. After the two forged QDROs were discovered, the respondent never notified his client or communicated in any way what had occurred. The panel recommended a one-year suspension, with entire suspension stayed. The Board adopted the one-year suspension, with only six months stayed. The Court imposed a one-year suspension, with six months conditionally stayed.

{¶52} In *Lake Cty. Bar Assn. v. Speros*, 73 Ohio St.3d 101, 1995-Ohio-205, Respondent prepared an affidavit to reinstate an appeal of his client's case. The client was a judge. Respondent signed the affidavit as affiant but forged the notary with his secretary's signature without her authority. Respondent was charged with violating the rule concerning conduct involving dishonesty, fraud, deceit, or misrepresentation and knowingly making a false statement of law or fact representing a client. The Board adopted the panel's recommendation of a six-month suspension. The Court imposed the six-month suspension. The Court noted that many cases involve public reprimand cases but distinguish them and rationalize that this was a serious matter that warranted more than a public reprimand.

### **Sanction**

{¶53} Among the factors considered by the panel in making its recommended sanction are the ethical duties violated, the injuries caused by the misconduct, the mental state of Respondent at the time of the misconduct, the aggravating and mitigating factors, the necessity to protect the public, and the sanctions imposed by the Supreme Court in similar cases.

{¶54} Respondent recommends a sanction of a one-year suspension, with the entire suspension stayed on conditions as follows: continuing to comply with the terms of his OLAP contract; continuing to get appropriate medical treatment as needed; continuing to get appropriate psychological treatment as needed; filing quarterly reports with a monitoring attorney, selected by Relators, documenting that Respondent is fulfilling the foregoing obligations; and avoiding future ethical misconduct.

{¶55} Cincinnati Bar Association recommends a sanction of a one-year suspension.

{¶56} Warren County Bar Association did not recommend a specific sanction but cited the above cases.

{¶57} Based on the rule violations, Respondent's admissions, Respondent's testimony, testimony of Dr. Walker, testimony of character witnesses and character letters, mitigating and aggravating factors, the panel recommends a sanction of a one-year suspension, with six months stayed on conditions as follows:

- Continuing to comply with the terms of his OLAP contract;
- Continuing to get appropriate medical treatment;
- Continuing to get appropriate psychological treatment;
- Filing quarterly reports with a monitoring attorney, selected by Relators, documenting that Respondent is fulfilling the foregoing obligations; and
- Avoiding future ethical misconduct.

### **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 April 10, 2015. The Board amended the findings of fact and conclusions of law to add a finding that Respondent's conduct in relation to the Warren County matter was egregious and merits a separate finding of a violation of Prof. Cond. R. 8.4(h). See *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, ¶21. The Board's finding of egregiousness is based on Respondent's dishonesty and submission of

documents containing forged signatures to a tribunal. The Board adopted the findings of fact and conclusions of law, as amended. The Board further adopted the sanction recommendation of the panel and recommends that Respondent, Edwin Lowe Vardiman, Jr., be suspended from the practice of law for one year with six months stayed on conditions contained in ¶57 of this report and ordered to 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.**

  
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RICHARD A. DOVE, Director