

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, : **CASE NO. 2015-0293**
Relator, :
vs. :
Orlando Joseph Williams. : **RELATOR'S ANSWER TO**
Respondent. : **RESPONDENT'S OBJECTIONS TO**
: **THE BOARD OF PROFESSIONAL**
: **CONDUCT'S REPORT AND**
: **RECOMMENDATION**

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF
PROFESSIONAL CONDUCT'S REPORT AND RECOMMENDATION**

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STATEMENT OF FACTS

The facts, which have never been in dispute, are cogently set forth in the Board of Professional Conduct's Amended Findings of Fact, Conclusions of Law, and Recommendation ("Report"), which respondent attached as Appendix A to his Objections.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

**I. RESPONDENT'S MISCONDUCT WARRANTS AT LEAST A TWO-YEAR
SUSPENSION FROM THE PRACTICE OF LAW WITH ONE-YEAR
STAYED, BUT NOT AN INDEFINITE SUSPENSION**

Relator joins respondent in requesting that this Court reject the board's recommendation of an indefinite suspension. Relator asks this Court to impose at least a two-year suspension with one-year stayed on condition that respondent maintain compliance with his OLAP contract, make complete restitution before reinstatement, and commit no further misconduct.

Before the hearing on this matter, relator and respondent entered into a comprehensive set of stipulations, which included agreement on the facts, rule violations, exhibits, aggravating and

mitigating factors, and recommended sanction. Given the magnitude of respondent's misconduct, all of which flowed from a tumultuous relationship with A.B., a woman whom respondent first met when she appeared before him as a defendant in an eviction proceeding, the parties recommended a two-year suspension, with one-year stayed, on condition that respondent maintain compliance with his OLAP contract and that he commit no further misconduct. At the time relator made its recommendation, respondent had repaid the principal, but had yet to determine the appropriate amount of interest due the minor heirs of the *Criss* Estate. Citing respondent's failure to make *complete* restitution, the panel adopted the stipulations, but recommended a two-year suspension with no stay. In its report, the board rejected that recommendation and, instead, recommended an indefinite suspension from the practice of law with conditions.

While relator understands and appreciates the seriousness of respondent's misconduct, and the effect it has had—and will continue to have—on the judiciary and the legal profession, an indefinite suspension is contrary to this Court's precedent and unduly harsh. Respondent has engaged in serious misconduct, both as a magistrate and as a lawyer, but several factors weigh in favor of a two-year suspension with one-year stayed, rather than an indefinite suspension.

First, the case law does not support an indefinite suspension. Given that respondent's misconduct first occurred while he served as a magistrate, and continued after he resigned his position, there is no case "on all fours" with the case at bar. But several cases provide instruction on an appropriate sanction. In recommending a two-year suspension with no stay, the panel considered several of the cases cited in the parties' Joint Brief on Sanction, which was submitted before the hearing, along with the stipulations. Particularly, the panel relied most heavily upon *Disciplinary Counsel v. Simon-Seymour*, 131 Ohio. St.3d 161, 2012-Ohio-114, 962 N.E.2d 309.

In *Simon-Seymour*, this Court imposed a two-year suspension with six months stayed after an attorney misappropriated over \$17,000 from an estate over several years, filed false documents in the probate court to conceal the theft, and repeatedly refused her client's requests for proof that estate debts had been paid. *Id.* at ¶ 3, 4. *Simon-Seymour* is similar in nature to respondent's misappropriation in the *Criss* Estate (Count III), and encompassed an element of fraud, akin to respondent's actions in fraudulently obtaining the financing to purchase a used car (Count II). *Simon-Seymour* also contains some distinguishing factors.

First, in its decision, the Court found that Christine Simon-Seymour engaged in a pattern of misconduct based upon her trust account irregularities and, more importantly, upon the fact that her theft from the estate spanned "several years." *Id.* at ¶ 9. In the case at bar, respondent's theft of the minor heirs' funds occurred over a short period of time that coincided with a self-inflicted, yet traumatic, period in respondent's life—i.e. a pending divorce and his relationship with A.B. Respondent first misappropriated the estate funds in November 2012. In May 2013, respondent—on his own accord—replenished \$10,321.31 of the funds from the estate; however, that same month, respondent again misappropriated the funds from the estate. Report at ¶ 20, 21. Six months later, and shortly after respondent learned of relator's investigation, respondent deposited \$10,810 of his personal funds into his IOLTA. *Id.* at ¶ 22 Those funds remained in respondent's IOLTA until the day before the hearing, when respondent transferred the funds to his lawyer's IOLTA for safekeeping. *Id.* at ¶ 27. Complicating the situation was the fact that respondent misappropriated the funds that were supposed to have been used to purchase an annuity for the benefit of the minor heirs of the *Criss* Estate. Although respondent has repaid the principal, upon belief, he has yet to account for the lost interest income.

In the board's report, the panel and board rejected the parties' stipulation that respondent made "a timely and good-faith effort to make restitution," noting that "[r]estitution has not been completed as ordered by the probate magistrate, and interest that would have accrued on the principal has been lost." *Id.* at ¶ 29. While true, respondent still made a timely and good faith *effort* to make restitution by repaying the principal balance, and the board should have given such mitigation the appropriate weight. Respondent's failure to make full restitution during the pendency of this disciplinary action warrants this Court's concern and provides some justification for the panel's recommendation of a two-year suspension with no stay.

Another factor that distinguishes *Simon-Seymour* from the case at bar is that the lawyer in *Simon-Seymour* falsified, then filed, documents in the probate court in order to conceal the years'-long theft from the probate estate in violation of Prof. Cond. R. 3.3(a)(1). *Simon-Seymour*, at ¶ 6. Here, respondent's deception on the loan application resulted in the repossession of the vehicle, but his fraudulent actions were personal in nature, separate and apart from the *Criss* estate, and outside of the court system.

On the other hand, unlike *Simon-Seymour*, respondent engaged in additional misconduct while serving as a magistrate. Respondent's year-long ethical lapse coincided greatly with his ill-conceived and tumultuous relationship with A.B. At the hearing, respondent presented his contract with the Ohio Lawyers' Assistance Program (OLAP) and advised the panel that an OLAP counselor had diagnosed respondent with post-traumatic stress disorder resulting from the abusive relationship with A.B. Tr., p. 69. Respondent, however, failed to present sufficient evidence under Gov. Bar R. V(13)(C)(7) for this information to qualify as a mitigating factor. But there is no disputing that respondent's relationship with A.B. precipitated his downward spiral. Notwithstanding, respondent bears the responsibility of entering into the intimate

relationship with A.B., especially since the relationship commenced while respondent presided over A.B.'s eviction case as a magistrate in the Akron Municipal Court. Report at ¶ 9.

Respondent's decision to enter into the relationship, along with his delay in disqualifying himself from A.B.'s case, tarnished the reputation of the judiciary and—standing alone—warrants discipline. The question is whether respondent's misconduct while serving as a magistrate, when considered in conjunction with his additional misconduct, warrants an indefinite suspension; relator asserts that it does not.

Before the hearing in this matter, the parties submitted two judicial disciplinary cases for the panel's consideration, both of which resulted in public reprimands, but neither of which contained additional acts of misconduct. In *Disciplinary Counsel v. Oldfield*, 140 Ohio St.3d 123, 2014-Ohio-2693, 16 N.E.3d 581, this Court reprimanded Judge Joy Oldfield after she failed to recuse herself from 53 of the public defender's cases, despite having been present with the public defender when she was arrested for failure to control, allowed the public defender to stay in the judge's home for three days, and drove the public defender to and from work. *Id.* at ¶ 8. In its report, the board distinguished *Oldfield*, stating, "[t]he violation of respondent in *Oldfield* does not compare with the violation of Count One against respondent in that respondent engaged in the additional misconduct set forth in Counts Two and Three that are discussed above." Report at ¶ 33. But the parties submitted *Oldfield* simply to illustrate that respondent's conduct while presiding over A.B.'s eviction case—in and of itself—was not likely to result in an actual suspension. Similarly, the parties submitted *Ohio State Bar Assn. v. Vukelic*, 102 Ohio St.3d 421, 2004-Ohio-3651, 811 N.E.2d 1127, to illustrate that a public reprimand was the appropriate sanction for a part-time magistrate who presided over his client's criminal case before disqualifying himself from the proceedings.

Respondent's multiple acts of misconduct after he resigned his position as a magistrate far exceeded the misconduct in *Oldfield* and *Vukelic*; however, respondent's transgressions as a magistrate do not justify the jump to an indefinite suspension, particularly in light of respondent's otherwise unblemished 29-year career, his reputation, and his cooperation in the disciplinary process.

Respondent's gross indiscretion in becoming romantically involved with a litigant cast the judiciary in a negative light, as did his untimely recusal. Without question, respondent should have immediately recused himself from A.B.'s case; however, his failure to do so in a timely manner had little to no impact on any cases, including A.B.'s. Given the bifurcated nature of the eviction proceeding, respondent's rulings occurred before the sexual relationship began. Report at ¶ 9. And he recused himself—albeit in an untimely manner—before the damages portion of the eviction proceeding occurred. Tr., p. 22. Respondent stipulated to violating Jud. Cond. R. 1.2 [a judge shall act at all times in a manner that promotes public confidence in the integrity, impartiality, and independence of the judiciary and shall avoid impropriety and the appearance of impropriety] and Jud. Cond. R. 2.11(A) [a judge shall disqualify himself from any proceeding in which the judge's impartiality might reasonably be questioned including where the judge has a personal bias concerning a party or personal knowledge of the facts that are in dispute in the proceeding]. Even when considered with the fraudulent loan application in Count Two and the misappropriation in Count Three, respondent's actions do not warrant an indefinite suspension.

In the past, this Court has indefinitely suspended a magistrate for embezzling over \$40,000 while simultaneously serving as the elected treasurer of an organization for whom she also provided legal services. *Disciplinary Counsel v. Kelly*, 121 Ohio St.3d 39, 2009-Ohio-317,

901 N.E.2d 798. However, former Magistrate Kelly's testimony at the disciplinary hearing led the Court to question whether she fully recognized the seriousness of her transgressions. *Id.* at ¶ 19. Further, Kelly's misappropriation spanned a two-year period, during which time she prepared 11 false reports in an effort to conceal the theft. *Id.* at ¶ 5. In this case, respondent's misappropriations occurred over a shorter period of time, and, despite his transgressions, respondent never attempted to conceal his misdeeds. At the disciplinary hearing, respondent accepted complete responsibility for his actions, despite A.B.'s involvement, particularly as it related to the fraudulent loan application. Tr., p. 53.

Former Judge Bridget McCafferty was indefinitely suspended after she was tried and convicted of ten felony counts of making false statements to federal law enforcement officers in the midst of a county-wide corruption scandal. *Ohio State Bar Assn. v. McCafferty*, 140 Ohio St.3d 229, 2014-Ohio-3075, 17 N.E.3d 521. In ruling out a term suspension, this Court noted that it was "troubled by the contradiction between McCafferty's assertion that she accepts full responsibility for her actions and her statement that she believes she had answered the agents' questions as truthfully as she could." *Id.* at ¶25. In the case at bar, respondent accepted complete responsibility for his transgressions.

As the board noted,

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

Report at ¶ 31.

Under Gov. Bar. R. V(25)(D)(1), an indefinite suspension requires a respondent to establish by clear and convincing evidence that he or she possess all the mental, educational, and moral qualifications that were required as an applicant and that the petitioner is a proper person

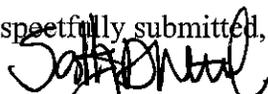
to be readmitted. In the case at bar, such stringent requirements would border on the punitive, given that respondent has already resigned his position as magistrate, extricated himself from the violent relationship with A.B., made significant restitution, and, upon belief, maintained compliance with his OLAP contract.

This Court should impose, at a minimum, a two-year suspension with one-year stayed on condition that respondent remain in compliance with his OLAP contract, make full restitution before reinstatement, and commit no further misconduct. Although there is some justification for the panel's recommendation of a two-year suspension with no stay, an indefinite suspension is unduly harsh and unwarranted.

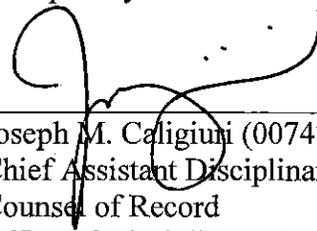
CONCLUSION

Respondent's misconduct warrants a significant sanction, but an indefinite suspension is inconsistent with this Court's precedent and is unduly harsh. Relator urges this Court to suspend respondent for at least two years with one-year stayed on condition that he maintain compliance with his OLAP contract, make full restitution before reinstatement, and commit no further misconduct.

Respectfully submitted,



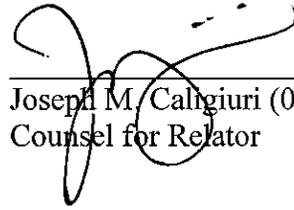
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Answer to Respondent's Objections to the Board of Professional Conduct's Report and Recommendations was served via electronic mail, upon respondent's counsel, George Demetrios Jonson, Esq., at gjonson@mrjlaw.com; and upon Richard A. Dove, Secretary, Board of Professional Conduct, this 12th day of May, 2015.



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