

No. 2015-1005

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**IN THE SUPREME COURT OF OHIO**

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On Appeal from The Board of Professional Conduct

Case No. 2014-047

**THE CLEVELAND METROPOLITAN BAR ASSOCIATION,**

**Relator**

v.

**MARK PRYATEL (0019678),**

**Respondent.**

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**ANSWER BRIEF OF RELATOR,**

**THE CLEVELAND METROPOLITAN BAR ASSOCIATION**

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## STATEMENT OF THE CASE

This attorney discipline case arises from Respondent Mark Pryatel's ("Respondent") continuing efforts to engage in the practice of law while under indefinite suspension for serious violations of the Rules of Professional Conduct. Respondent categorically denies the allegations against him, despite audio and video evidence showing him represent a client in open court, and despite the sworn testimony of a Judge, Magistrate, Prosecutor, Bailiff, and other disinterested witnesses who observed his actions.

After two days of evidence taken at hearings in Cleveland and Columbus, The Board of Professional Conduct ("The Board") properly concluded that Relator proved, by clear and convincing evidence, that Respondent violated various Rules of Professional Conduct when he appeared in court and represented Mr. Richard Brazell on three separate occasions while under indefinite suspension. The Board noted that Respondent constantly contradicted himself at the evidentiary hearing (Bd. Recomm., ¶36), and that his actions "defy logic and reason." *Ibid.* After analyzing the relevant aggravating and mitigating factors, the Board properly recommended permanent disbarment of Respondent. The Supreme Court of Ohio should adopt the Board's Recommendation and disbar Respondent from the practice of law.

Respondent's Objections to the Board's Recommendation misconstrue the evidence adduced at the evidentiary hearing, and misstate the law as it applies to attorney discipline cases in Ohio. Rather than concede that he practiced law while under suspension, Respondent impugns the integrity of Judge Brian Hagan and volunteer bar counsel, makes baseless due process arguments, and derisively calls The Board's reasoned Recommendation "schizophrenic." Respondent's Brief at 15. Relator respectfully submits that a review of the evidence and applicable law supports the adoption of the Board's recommendation.

## STATEMENT OF THE FACTS

The Cleveland Metropolitan Bar Association (“Relator”) instituted the underlying action against Respondent Mark Pryatel (“Respondent”) following a report from Judge Brian Hagan of the Rocky River Municipal Court that Respondent appeared and represented a criminal defendant in his courtroom in a plea colloquy on July 9, 2013, after the Supreme Court of Ohio indefinitely suspended Respondent’s law license on April 24, 2013 for serious violations of the Rules of Professional Conduct. *See Cleveland Metro. Bar Assoc. v. Pryatel*, 135 Ohio St. 3d 410, 2013-Ohio-1537, 988 N.E. 2d 541. Respondent conceded at the evidentiary hearing in this matter that he learned of his indefinite suspension the same day it was announced. Tr. p. 267, lines 20-25.

For purposes of this Answer Brief, Relator’s Statement of the Facts and Argument will proceed in the following order: (1) Discussion of Respondent’s previous discipline. (2) Discussion of the July 9, 2013 pre-trial and plea colloquy in the Rocky River Municipal Court that gave rise to the discipline investigation. (3) Discussion of the June 5, 2013 arraignment in the Rocky River Municipal Court. (4) Discussion of the June 3, 2013 probation violation hearing in the Cleveland Municipal Court. (5) Discussion of the Procedural Facts. Relator believes that working backwards in time from the original reported instance of misconduct will provide the best framework to develop the facts and legal analysis for the Justices’ consideration.

### **(1) Discussion of Respondent’s Previous Discipline**

In the underlying case, Relator proved that Respondent misappropriated settlement funds from a disabled, incarcerated client named Richard Troyan. *Id.*, ¶5,6. For his actions in the Troyan grievance, Respondent was indicted for felony theft in the Cuyahoga County Court of Common Pleas. Relator’s Exhibit 12, docket from *State of Ohio v. Pryatel*, Cuy. Cty. Case No. CR-11-

553244-A. Respondent pled guilty to a first degree misdemeanor theft charge as part of a plea agreement in that case. Tr. p. 275, line 10-13. Despite his guilty plea, Respondent maintains that he did not steal money from Mr. Troyan. Tr. at 275, lines 14-16. Respondent further maintains that was not dishonest in the Troyan grievance. Tr. at 273, lines 9-12, despite The Supreme Court of Ohio's finding otherwise in *Cleveland Metro. Bar Assoc. v. Pryatel*, ¶ 6.<sup>1</sup>

**(2) Respondent engaged in the practice of law at Rocky River Municipal Court on July 9, 2013.**

On July 9, 2013, Respondent traveled to the Rocky River Municipal Court to represent Mr. Richard Brazell during a pre-trial and plea colloquy in *State of Ohio, City of Rocky River v. Richard Brazell*, Rocky River Municipal Court Case No. 10 TRD 17986, Relator's Ex 11. Respondent had represented Richard Brazell in various traffic matters in previous years. Tr. p. 278, lines 5-24. Mr. Brazell testified that Respondent never informed him that Respondent's law license had been suspended. Tr. 84, lines 20-22. Mr. Brazell also testified that Respondent never informed him that Respondent would find him alternate counsel. Tr. p. 84, lines 23-25. Mr. Brazell's mother, Rhonda Melton, accompanied Mr. Brazell to court on July 9, 2013. She testified that Respondent never informed her that his license had been suspended. Tr. p. 76, lines 6-8. Nor did Respondent inform her that Respondent would find alternate counsel for Mr. Brazell. Tr. p. 76, lines 9-10.

Judge Hagan testified that Respondent accompanied Mr. Brazell into his courtroom to engage in a plea colloquy.

Q: Did Mark Pryatel come up before the bench in your courtroom, much like I am before the Chairman here?

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<sup>1</sup> Respondent was also found to have violated the Rules of Professional Conduct with regard to his representation of Mr. Louis Martich, Jr. in an expungement proceeding.

- A: When the case was called, yes, he did.
- Q: Was Richard with him?
- A: Mr. Brazell? Yes, he was.
- Q: They were standing together?
- A: Yes, they were.
- Q: Did Mr. Pryatel engage you in your plea colloquy on Mr. Brazell's behalf?
- A: He did at my behest. . .

Tr. p. 214, lines 1-11. Judge Brian Hagan testified that he directed questions to Respondent on Mr. Brazell's behalf, and Respondent answered them. Tr. p. 216, line 25, p. 217, lines 1-9. Judge Hagan asked Respondent whether Mr. Brazell stipulated to a finding of guilt as part of his no contest plea. Respondent answered that Mr. Brazell did. Tr. p. 220, lines 11-18. Judge Hagan further testified that he never asks pro se defendants whether they stipulate to findings of guilt during no contest plea colloquies. He only asks about stipulations to guilt in cases with represented defendants. Tr. p. 218, lines 13-22. After the plea colloquy, Judge Hagan remembered that he had received an email report that Respondent's law license had been suspended, so he asked his Bailiff, Ms. Christine Seedhouse, to check Respondent's license. Ms. Seedhouse confirmed Respondent's suspension. Tr. p. 223, lines 12-25, p. 224, lines 1-8. Judge Hagan then discussed Respondent's license status with Rocky River Assistant Law Director and Prosecutor Michael O'Shea. Tr. p. 224, lines 9-22.

After the plea colloquy with Respondent, Judge Hagan discovered that he had not "de-muted" the Court Smart audio system in his courtroom, which he believed to be "on" and recording during the proceedings. Tr. p. 220, lines 19-25. Judge Hagan then worked with Ms. Seedhouse to prepare a *nunc pro tunc* journal entry to memorialize the plea colloquy with Respondent in the

case. Tr. p. 225, line 4-16. Judge Hagan testified that the Court speaks through its docket, and that an entry prepared by the Court is “on the record.” Tr. p. 225, lines 17-22. The *nunc pro tunc* journal entry signed by Judge Hagan became Relator’s Exhibit 4. In it, the Court notes, in part:

Nunc Pro Tunc, Prosecutor in Court. Defendant in Court with counsel, Mark Pryatel. Pretrial had. All rights explained in open court and on the record.

Relator’s Ex 4. When asked about the plea colloquy by Commissioner Judge Wise, Judge Hagan confirmed that any compilation of the proceedings prepared under App. R. 9(c) would have been “very similar” to Exhibit 4. Tr., at p. 246, line 14-25, p. 247, line 1-9.

Bailiff Christine Seedhouse testified that she saw Respondent enter Judge Hagan’s courtroom on July 9, 2013. Respondent handed her Mr. Brazell’s file. Tr. p. 179, line 21-25, p. 180, lines 1-10. According to Ms. Seedhouse, no lay people handle Rocky River Municipal Court files. Tr. p. 180, lines 19-23. Ms. Seedhouse saw Respondent stand at the podium and engage in a plea colloquy with Judge Hagan. Tr. p. 181, lines 16-21. Prior to the plea colloquy with Judge Hagan, Respondent negotiated a plea agreement for Mr. Brazell with Prosecutor Michael O’Shea, who handed Respondent Mr. Brazell’s file. Tr. p. 108, lines 16-20.

For his part, Mr. Richard Brazell testified that Respondent stood up before the Judge with him, spoke with the Judge, and entered a plea on his behalf. Tr. p. 89, lines 1-14. Mr. Brazell testified that he first learned of Respondent’s license suspension when this Counsel for Relator, Attorney Joseph Dunson, drove to his home on Buhner Ave in Cleveland and told him about it. Tr. at p. 89, lines 15-22. Mr. Brazell’s mother, Mrs. Rhonda Melton, testified that she traveled to court on July 9, 2013, and witnessed Respondent stand in front of the Judge and speak on Mr. Brazell’s behalf. Tr. p. 75, lines 18-25, p. 76, lines 1-5. Mrs. Melton testified that Respondent never told her that his law license had been suspended, and that she learned of the license suspension when this counsel, Attorney Joseph Dunson, contacted her. Tr. p. 76, lines 6-14.

Respondent's testimony regarding his efforts to inform Mr. Brazell and Mrs. Melton of his license suspension directly contradicted the testimony offered by the disinterested witnesses. Respondent testified that he told Mr. Brazell about his license suspension on June 5, 2013, and that Mr. Brazell may have been mistaken in his testimony otherwise. Tr. p. 279, lines 4-19. Respondent first testified that he did not speak with Mrs. Melton on July 9, 2013 at the Rocky River Municipal Court. Tr. p. 302, lines 16-18. When confronted with his sworn deposition testimony, Respondent conceded that he did speak with Mrs. Melton that day at the courthouse. Tr. p. 303, lines 20-23. Respondent claims that he told Mrs. Melton that he could not be Mr. Brazell's lawyer. Tr. p. 303, lines 24-25, p. 304, line 1. Respondent maintained that Mrs. Melton was not accurate when she testified that Respondent never told her that he could not be Mr. Brazell's lawyer. Tr. p. 304, lines 7-9. Respondent also maintained that he never engaged in plea negotiations with Prosecutor Michael O'Shea on July 9, 2013. Tr. p. 305, lines 9-13, and that Mr. O'Shea's testimony regarding their plea negotiations was not true. Tr. p. 305, lines 14-22.

Respondent's testimony concerning his activities in Judge Hagan's courtroom on July 9, 2013 is hard to decipher. He admitted that he entered Judge Hagan's courtroom that day. Tr. p. 305, line 23-25. Respondent first claimed that he entered the courtroom to tell Bailiff Christine Seedhouse (f/k/a Christine Ida) that he was waiting for Mr. Brazell's attorney to arrive, but that he did not tell her that Attorney James Vargo would be representing Mr. Brazell. Tr. p. 306, lines 8-20. When confronted with his sworn deposition testimony, Respondent changed his hearing testimony and claimed that he informed Ms. Seedhouse that he was waiting for Attorney James Vargo to come to represent Mr. Brazell. Tr. p. 307, lines 15-22. Ms. Seedhouse testified that Respondent never told her that Mr. Vargo was on his way to represent Mr. Brazell. Tr. p. 181, lines 5-15. Respondent claims that he reached out to Mr. Vargo to come represent Mr. Brazell. Tr.

p. 308, lines 1-11. Respondent did not offer Mr. Vargo as a witness at the evidentiary hearing to corroborate his story.

Respondent then claimed that he left Judge Hagan's courtroom and told Mr. Brazell and Mrs. Melton where to sit in the courtroom. Tr. p. 308, lines 16-20. Respondent testified that he didn't speak to Judge Hagan on July 9, 2013 for any reason. Tr. p. 309, lines 24-25, p. 310, lines 1-3. Just moments later, Respondent testified that he "may have" conversed with Judge Hagan on July 9, 2013.

Q: You heard Judge Hagan testify earlier today, didn't you?

A: I did.

Q: You saw him, heard him say you came into his courtroom with Richard Brazell on July 9, 2013 and you addressed him while he was on the bench, right?

A: I heard him say that, yes.

Q: You heard him say you engaged in a plea colloquy on Mr. Brazell's behalf, correct?

A: I may have answered some questions. I did not engage in a plea colloquy.

Q: You may have answered some questions on July 9, 2013 in Judge Hagan's courtroom?

A: I don't recall. I may have.

Q: You may have. Who posed those questions to you, sir?

A: I remember talking to Chris Ida, went out into the courtroom. I got Mr. Brazell, I had him and his mother sit in the courtroom. I went back into the courtroom at that time.

Q: You agree with me Judge Hagan asked you some questions on July 9th too, wouldn't you?

A: Judge Hagan I believe was on the bench at that time.

Q: Did he ask you any questions?

A: He may have asked me a question. I don't remember.

Q: He may have asked you a question. Did you answer his question, sir?

A: If he asked me, I probably tried to answer. I think it was more along the lines what I was doing, or was I representing him.

Q: It's your sworn testimony now you may have had a conversation with Judge Hagan in his courtroom?

A: I may have. I don't know.

Q: The judge may have asked you questions, you may have answered?

A: He may have.

Q: Do you still maintain the position, sir, you didn't engage in a plea colloquy on behalf of Mr. Brazell?

A: I still maintain I did not engage in the practice of law in Rocky River Municipal Court on July 9th.

Q: Forgive me for my question is a bit of different one. I appreciate your patience.

Sir, you still maintain the position you didn't engaged (sic) in a plea colloquy on Mr. Brazell's behalf on July 9?

A: I maintain that I did not practice law. I did not engage in anything that would encourage

the practice of law.

THE CHAIRMAN: Mr. Pryatel, please answer the question that counsel is posing to you.

A: Would you repeat it?

Q: I can repeat the question.

Sir, do you still maintain the position that you did not engage in a plea colloquy with Judge Hagan on Mr. Brazell's behalf on July 9, 2013?

A: I did not enter a plea on behalf of Mr. Brazell on that day. I did not.

Q: Because Mr. Brazell entered his own plea, right?

A: He did.

Q: You watched him do that?

A: I watched him do that.

Q: You were in court when he entered his plea, right?

A: I believe I may have been. I left the courtroom before Mr. Brazell left the courtroom.

Q: You were in a courtroom, the judge called the case and Richard got up in front of you, correct?

A: I believe I was.

Q: You were standing next to him by the bench, weren't you?

A: I will give you that.

Q: You did have a conversation with Judge Hagan

then, didn't you?

A: I believe I did.

Q: You answered some questions he asked you?

A: I don't recall.

Q: You saw Richard Brazell enter his own plea, correct?

A: Richard Brazell I know entered his own plea.

Q: You know because you were standing next to him when did he that?

A: No, because when I went downstairs, I saw him come downstairs and asked him if his case was continued. He said no, it was over with. I came downstairs after I left the courtroom, before Richard left the courtroom

Tr. p. 310, lines 4-25, p. 311, lines 1-25, p. 312 lines 1-25, p. 313 lines 1-25. Respondent first put himself in Judge Hagan's courtroom to inform Ms. Seedhouse that he was waiting for an unidentified lawyer to represent Mr. Brazell. He then claimed he told her that he tried to reach James Vargo. He first testified that he didn't speak with Judge Hagan. He then admitted that he stood before the bench with Mr. Brazell and spoke with the Judge. He then claimed he left the courtroom before Mr. Brazell entered his plea, and knows that Mr. Brazell entered his own plea, but still asked Mr. Brazell downstairs if his case was continued.

When further pressed on his activities in Judge Hagan's courtroom, Respondent testified that he could not recall whether the Judge asked him any questions in the course of the Brazell colloquy.

Q: Whatever questions you answered for the judge were not part of the plea colloquy, correct?

- A: I don't recall, but yes.
- Q: What do you mean you don't recall but yes?
- A: I'm having a hard time trying to remember all the events that happened on that day. I know I was not part of anything that Richard did to adjudicate this case.
- Q: Is your memory of July 9, 2013 fuzzy?
- A: I don't recall all of it. I do remember my conversations with Chris Ida. My conversation with Prosecutor O'Shea.
- Q: Not so much with Judge Hagan?
- A: Not so much.

Tr. p. 314, lines 18-25, p. 315, lines 1-6.

Contrary to Respondent's confused testimony, Judge Hagan clearly remembered the July 9, 2013 plea colloquy, and believed that Respondent was practicing law in his courtroom.

- Q: Just curious, based on your observations and your experience, did it appear to you Mark Pryatel was practicing law as Mr. Brazell's lawyer during Mr. Brazell's plea colloquy in your courtroom on July 9th?
- A: There is no doubt in my mind.

Tr. p. 227, lines 20-25.

**(3) Respondent engaged in the practice of law on June 5, 2013 at the Rocky River Municipal Court.**

The investigation arising from Judge Hagan's report to Relator revealed that Respondent engaged in the practice of law when he represented Mr. Brazell during his arraignment in the same case discussed, *supra*, in Magistrate Kelly Larrick-Serrat's arraignment room at the Rocky River Municipal Court on June 5, 2013. Chairman Gresham entered the arraignment audio file into

evidence as Relator's Exhibit 2. Relator submits that Relator's Exhibit 2 speaks for itself, and depicts Respondent practicing law by waiving statutory and constitutional rights for his client, Richard Brazell.<sup>2</sup> Respondent admitted at the hearing that he entered Magistrate Larrick-Serrat's courtroom on June 5, 2013, Tr. p. 292, lines 20-22, but initially refused to concede that he spoke on Mr. Brazell's behalf at the arraignment.

Q: You addressed the court on Mr. Brazell's behalf then, did you not?

A: I addressed the court in regard to what Richard told me he wanted to do.

Q: Is it your testimony, sir, you did not address the court on Richard Brazell's behalf on June 5, 2013?

A: I don't understand, on his behalf.

Q: You don't know what it means to represent someone on their behalf?

A: I do.

Q: What does it mean?

A: Means to speak on behalf of them.

Q: Did you?

A: I spoke on behalf of him, yes.

Q: You spoke on his behalf?

A: Once again, I'm hung up on the words. I spoke on his behalf, yes.

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<sup>2</sup> Respondent conceded that the two voices heard on Relator's Exhibit 2 are his and Magistrate Kelly Larrick-Serrat's. Tr. p. 294, lines 8-14.

Tr. p. 292, lines 23-25, p. 293, lines 1-15. Respondent admitted during the Brazell arraignment that he represented Mr. Brazell two days before in Cleveland Municipal Court. Relator's Exhibit 2. After hearing the arraignment audio file, Respondent conceded that he told the Magistrate that he was attorney of record for Mr. Brazell's probation violation. Tr. p. 294, lines 15-18, but he then testified that he was not accurate when he reported that to the Magistrate. Tr. p. 294, lines 19-21. While Respondent clearly told Magistrate Larrick-Serrat that he would file a notice of appearance on Mr. Brazell's behalf in Relator's Ex 2, he first attempted to evade his own words from the audio file at the hearing, and then testified that when he told the Magistrate that he would enter an appearance, he really meant that another lawyer would enter an appearance.

Q: In fact, you told Magistrate Serrat that you would enter an appearance in Richard's driving under suspension case, did you not?

A: I told her an appearance would be entered, yes.

Q: You said the words an appearance would be entered?

A: If that is what I said.

Q: Did you --

A: I heard it.

Q: It is your testimony you said that an appearance would be entered?

A: And I will enter an appearance I believe are the words that were said.

Q: You agree you said you would enter an appearance?

A: I said what I said.

Q: It's your testimony when you told the

Magistrate you were going to enter an appearance, you really meant a different lawyer was going to enter an appearance, correct?

A: I really meant that, yes.

Q: You really meant that maybe James Vargo or Don Tittle would be entering an appearance, correct?

A: Correct.

Q: You knew you couldn't enter an appearance, correct?

A: Correct.

Tr. p. 294, lines 22-25, p. 295, lines 1-25, p. 296, line 1. Respondent also testified that when he told the Magistrate in Relator's Exhibit 2 that Mr. Brazell had covered his bill as of two days before (June 3, 2013) he didn't really mean that Mr. Brazell had been billed for services in Cleveland Municipal Court at his probation violation hearing on June 3, 2013, but he actually meant bills for past services. Tr. p. 296, lines 6-13. Respondent further testified that he appeared in Magistrate Kelly Larrick-Serrat's courtroom for Mr. Brazell on June 5, 2013 as a lay person. Tr. p. 296, lines 17-21. According to Respondent, he entered a not guilty plea for Mr. Brazell as a lay person. Tr. p. 298, line 8-11. Respondent also claims that he waived Mr. Brazell's speedy trial right as a lay person. Tr. p. 298, lines 12-14, and that he waived Mr. Brazell's right to a trial by jury as a lay person. Tr. p. 298, lines 15-17.

Magistrate Kelly Larrick-Serrat had no independent recollection of the events that transpired in her courtroom on June 5, 2013. Tr. p. 143, lines 22-25, p. 144, lines 1-9. According to the Magistrate, there are no circumstances in her courtroom under which lay people waive the rights of criminal defendants during arraignments. Tr. p. 156, lines 18-22. Magistrate Larrick-

Serrat believed that Respondent represented Mr. Brazell “at least through the first half of the hearing.” Tr. p. 158, lines 21-25, p. 159, lines 1-3. Commissioner Judge Wise asked Magistrate Larrick-Serrat whether Respondent’s actions from Exhibit 2 constitute the practice of law.

JUDGE WISE: Whether you know or not. The lawyer is there. They do what was represented on this disk, answer questions, waive rights, waive time, all those things, is that individual practicing law?

THE WITNESS: In my opinion, yes.

Tr. p. 165, lines 20-25.

**(4) Respondent engaged in the practice of law on June 3, 2013 in the Cleveland Municipal Court.**

Respondent’s words from Relator’s Exhibit 2 (June 5, 2013 audio arraignment file), that he represented Mr. Brazell just days before the arraignment in Cleveland Municipal Court, alerted Relator to Respondent’s possible representation of Mr. Brazell in the Cleveland Municipal Court on June 3, 2013. Mr. Brazell’s step father, Mr. James Melton, testified that he met with Respondent and Mr. Brazell’s girlfriend, Sonya Spurlock, at the Melton home on Buhrer Ave in Cleveland in 2013. Tr. p. 37, lines 1-4. During the meeting, Mr. Melton gave Ms. Spurlock money to pay Respondent to represent Mr. Brazell, who was then incarcerated in Cleveland. Tr. p. 37, lines 1-8, lines 15-17. The Receipt furnished by Respondent became Relator’s Exhibit 1. Tr. p. 39, lines 14-22.

The top of Exhibit 1, where Mr. Melton saw Respondent write some words (Tr. p. 52, lines 6-10) reads “\$350 deposit for P.V. 5/22/13 130 15A Adrine”. Relator’s Exhibit 1. Ms. Spurlock testified that she paid Respondent to represent Mr. Brazell in 2013 in the Cleveland Municipal. Tr.

p. 56, lines 8-18, line 24-25, p. 57, lines 1-4. Ms. Spurlock testified clearly about the payment to Respondent depicted by Relator's Exhibit 1.

- Q: Was any part of this for attorney fees?
- A: Yes. The top where it says \$350 for PV, 5-22 that is the explanation for his retainer fee.
- Q: Let me make sure we are very clear. We talked about two payments. We talked about one payment for court costs, right?
- A: Uh-hum.
- Q: Is that a yes?
- A: Yes, sir.
- Q: Sorry, you have to say --
- A: Sorry, I forgot.
- Q: We talked about payment of attorney fees, right?
- A: Yes, sir.
- Q: Is it your sworn testimony the top line here, the 350 is for attorney fees?
- A: Yes, sir.
- Q: Did you see Mark sign this receipt?
- A: Yes, sir.

Tr. p. 58, lines 7-25.

Mr. Brazell's mother, Rhonda Melton, testified that she traveled to the Cleveland Municipal Court on June 3, 2013, and witnessed Respondent stand in front of the Judge with Mr. Brazell at his probation violation hearing. Tr. p. 73, lines 4-25, p. 74, lines 1-3. Richard Brazell also testified that Respondent represented him in the Cleveland Municipal Court on June 3, 2013.

Tr. p. 84, lines 8-19. For his part, Respondent testified that he entered the courtroom of Judge Ronald Adrine on June 3, 2013, but that he did not address the court on Mr. Brazell's behalf at his probation violation.

Q: You maintain that you did not enter the courtroom of Judge Adrian (sic) on that day?

A: I entered the courtroom of Judge Adrian (sic). I did not enter the courtroom as Richard Brazell's counsel.

Q: Is it your testimony you did not address the court on Mr. Brazell's behalf on a probation violation hearing on June 3, 2013, correct?

A: It was my testimony, that is correct.

\* \* \* \* \*

Q: It's also your testimony you didn't enter the courtroom in Cleveland Municipal Court on June 3, 2013, get up and speak on his behalf in front of a judge, correct?

A: Correct.

Tr. p. 281, lines 16-24, p. 283, lines 21-25. The audio and video evidence offered as Relator's Exhibit 13 at the second phase of the evidentiary hearing conclusively disproves the sworn testimony of Respondent. Unfortunately, Respondent elected not to attend the second phase of his own disbarment trial. As such, Relator did not have the opportunity to cross examine him with regard to the audio and video evidence of him representing Mr. Brazell in open court on June 3, 2013 in *State of Ohio / City of Cleveland v. Brazell*, Cleveland Municipal Court Case No. 2008 TRD 026794. Relator received Exhibit 13 after the first phase of the evidentiary hearing, as will be discussed, *infra*. Relator submits that Exhibit 13 speaks for itself, and proves that Respondent

engaged in the practice of law while under indefinite suspension. Exhibit 13 also corroborates the sworn testimony of Mr. Richard Brazell and Ms. Rhonda Melton.

**(5) The Procedural Facts of this case confirm that Respondent received his due process.**

Pursuant to a probable cause finding, the Certified Grievance Committee of the Cleveland Metropolitan Bar Association instituted a One Count Complaint against Respondent, alleging violations of Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.1(a), Prof. Cond. R. 8.3(c), and Prof. Cond. R. 8.4(d) for his efforts to practice law while under indefinite suspension on June 5, 2013, and July 9, 2013 in the Rocky River Municipal Court. Relator and Respondent exchanged discovery requests and responses. Neither side filed a Motion to Compel.

On August 18, 2014, Relator deposed Respondent. During the deposition, Respondent's counsel instructed Respondent not to answer questions regarding Respondent's efforts to practice law while under indefinite suspension in the Cleveland Municipal Court on June 3, 2013. Respondent's counsel claimed no privilege to prevent the inquiry by Relator's counsel. Deposition of Respondent, p. 51, line 9 -p. 54, line 13. On November 17, 2014, Respondent filed a Motion for Summary Judgment. On November 24, 2014, Relator filed a Brief in Opposition to the Motion for Summary Judgment. The Chairman denied the Motion.

On November 4, 2014, one month before the scheduled evidentiary hearing, Relator filed an Amended Complaint to include violations of the Rules of Professional Conduct for Respondent's efforts to practice law while under indefinite suspension on June 3, 2013 in the Cleveland Municipal Court. Relator timely filed the Amended Complaint pursuant to former Gov

Bar R. V, Section 11(D).<sup>3</sup> Respondent filed a Motion to Strike the Amended Complaint on November 25, 2014. Relator filed a Brief in Opposition to the Motion to Strike, and the Chairman denied the Motion. On November 17, 2014, Relator filed its Trial Brief, and identified various cases from The Ohio Supreme Court to assist The Board in making its disbarment recommendation.

The Board conducted the first part of the evidentiary hearing on December 5, 2014 at the “Old Courthouse” located at 1 Lakeside Ave in Cleveland, Ohio. During that hearing, Relator presented its case-in-chief, and offered its Exhibits 1-6, and 9-12. Relator did not yet have Relator’s Exhibit 13, which is the audio and video file depicting Respondent’s efforts to practice law in the Cleveland Municipal Court on June 3, 2013. The Chairman allowed Respondent to reserve his right to conduct discovery and present his case in chief on the June 3, 2013 Cleveland Municipal Court charge (Count One of Relator’s Amended Complaint) at the continuation of the hearing held at the Moyer Judicial Center in Columbus on February 5, 2015. Respondent propounded discovery related to the June 3, 2013 event on December 15, 2014. Respondent made no effort to depose Mr. Richard Brazell, Ms. Sonya Spurlock, Ms. Rhonda Melton, or Mr. James Melton. On December 17, 2014 Relator received Relator’s Exhibit 13 from the Cleveland Municipal Court. That same day, Relator’s counsel emailed Respondent’s counsel and attached the audio and video file depicting Respondent’s actions in the Cleveland Municipal Court on June 3, 2013. Relator then

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<sup>3</sup> As this case was pending before the recent revisions to Gov Bar R. V, Relator respectfully submits that The Supreme Court of Ohio should apply the former rules to this case based on current Gov. Bar R. V Section 27 (C), which reads, in part “[t]o the extent that application of this amended rule to pending proceedings may not be practicable, the regulations in force at the time this amended rule became effective shall continue to apply.

responded to Respondent's Second Set of Interrogatories, Requests for Admission, and Requests for Production of Documents on December 29, 2014.

On January 29, 2015, Relator filed its Motion for Leave to Supplement the Evidentiary Record with Relator's Exhibit 13, which Respondent's counsel had in his possession on December 17, 2014. On January 30, 2015, Respondent filed his Opposition to the Motion for Leave to Supplement the Evidentiary Record. At the evidentiary hearing, The Chairman exercised his discretion to grant Relator Leave to Supplement the Evidentiary Record with Exhibit 13. On February 4, 2015, Respondent's Counsel's office emailed Relators' Counsel authority upon which Respondent intended to rely at the hearing scheduled for the next day. This Counsel first received Respondent's suggested case law as he left the Justice Center in Cleveland to drive to Columbus to prepare for the evidentiary hearing, less than twenty four hours before its commencement.

On February 5, 2015, The Board conducted the second part of the evidentiary hearing in Columbus. Respondent did not attend the hearing. The Chairman allowed Relator to admit Exhibit 13 (Cleveland Municipal Court audio and video file) after Relator examined Ms. Grace Evangelou, the records custodian from the Cleveland Municipal Court to authenticate it. Respondent refused to stipulate to the authenticity of Exhibit 13. After the supplementation of the evidentiary record, Respondent did not offer any additional witnesses or evidence (beyond that which he offered at the December 5, 2014 hearing in Cleveland). The Chairman admitted Respondent's Exhibits A, B, C, D, E, F, G, H, I, J, K, M, N, O, Q, R, and S without objection from Relator.

In closing argument, Relator's Counsel William Norman recounted the mutually exclusive narratives offered by Respondent, on the one hand, and the court officials and other disinterested witnesses, on the other. Relator referenced the clear audio and video evidence from June 3, 2013, and the audio evidence from June 5, 2013. In his closing argument, Respondent's Counsel was

unable to direct The Panel to any specific cases to argue for a sanction less than permanent disbarment, with the exception of *Disciplinary Counsel v. Freeman*, 126 Ohio St. 3d 389, 2010-Ohio-3824, 934 N.E. 2d 328, which Relator's counsel distinguished during his rebuttal closing.

At Relator's Counsel's suggestion, The Chairman set a schedule for post-hearing briefing regarding each side's proposed sanction of Respondent. Relator and Respondent submitted post-hearing briefs.

### ARGUMENT

- A. The Board of Professional Conduct properly concluded that Respondent Mark Pryatel violated the Rules of Professional Conduct by representing Mr. Richard Brazell in a criminal pre-trial and plea colloquy with Prosecutor Michael O'Shea and Judge Brian Hagan on July 9, 2013 while under indefinite suspension for prior discipline.**

Count Three of Relator's Amended Complaint discusses Respondent's efforts to practice law while under indefinite suspension in Judge Brian Hagan's courtroom at the Rocky River Municipal Court on July 9, 2013. Mr. Richard Brazell, Mrs. Rhonda Melton, Bailiff Christine Seedhouse, and Judge Brian Hagan all testified that they witnessed Respondent engage in a plea colloquy on Mr. Brazell's behalf on July 9, 2013. Prosecutor Michael O'Shea testified that Respondent engaged in plea negotiations with him for Mr. Brazell. Respondent himself changed his testimony several times on cross examination. He first testified that he never spoke with Judge Hagan on July 9, 2013. He then admitted that he may have. Then Respondent conceded that he stood with Mr. Brazell before the Court as Mr. Brazell entered his plea. Finally, he claimed that he left the courtroom before Mr. Brazell entered his plea.

Respondent argues that he did not engage in the practice of law on July 9, 2013 in Judge Hagan’s courtroom. Respondent encourages The Supreme Court of Ohio to re-write its well-developed definition of the “practice of law.” He purports to rely on this Court’s decision in *Cleveland Bar Assoc. v. CompManagement, Inc.* 111 Ohio St. 3d 444, 2006-Ohio-6108, 857 N.E. 2d 95 to support his claim that

[t]he “practice of law” requires evidence that one engaged in persuasion, advocacy, cross examine (sic) of witnesses, preparation of papers with legal citations, or the preparation, signing and filing documents in connection with a court proceeding. *Cleveland Bar Assoc. v. CompManagement*, 111 Ohio St. 3d 444, 2006-Ohio-6108, ¶¶ 24-25.

Respondent’s Brief, at 20. As this Court is well aware, it did not define the practice of law in such restrictive and concrete terms in *CompManagement, Inc.* In *CompManagement, Inc.*, this Court “considered whether third-party administrators who assisted employers in workers’ compensation proceedings before the Industrial Commission and the Bureau of Workers’ Compensation pursuant to a commission resolution had engaged in the unauthorized practice of law.” *Cleveland Metro. Bar Assn. v. Davie*, 133 Ohio St. 3d 202, 2012-Ohio-4328, 977 N.E. 2d 606 at ¶41.

The Supreme Court of Ohio did, in fact, address the legal standard for what constitutes the practice of law in *CompManagement, Inc.* This Court’s standard does not comport with Respondent’s new definition.

Gov. Bar R. VII(2)(A) defines the unauthorized practice of law as “the rendering of legal services for another by any person not admitted to practice in Ohio”, and this court retains broad authority to define the practice of law. *See Shimko v. Lobe*, 103 Ohio St. 3d 59, 2004-Ohio-4202, 813 N.E. 2d 669, ¶15; Section 2(B)(1)(g), Article IV of the Ohio Constitution. **Any definition of the practice of law inevitably includes representation before a court**, as well as the preparation of pleadings and other legal documents, the management of legal actions for clients, all advice related to law, and all actions taken on behalf of clients connected with the law. *Land Title Abstract & Trust Co. v. Dworken* (1934), 129 Ohio St. 3d 23, 193 N.E. 650, ¶1 at syllabus.

*Cleveland Bar Assoc. v. CompManagement, Inc.*, 111 Ohio St. 3d 444, ¶22 [emphasis added]. In *Disciplinary Counsel v. Harris*, 137 Ohio St. 3d 1, 2013-Ohio-4026, 996 N.E. 2d 921, The Supreme Court of Ohio cited its decision in *CompManagement, Inc.*, and reaffirmed that the “practice of law” includes representation before a court.

We have explained that “[a]ny definition of the practice of law inevitably includes representation before a court, as well as the preparation of pleadings and other legal documents, the management of legal actions for clients, all advice related to law, and all actions taken on behalf of clients connected with the law.” *Cleveland Bar Assn. v. CompManagement, Inc.*, 111 Ohio St.3d 444, 2006-Ohio-6108, 857 N.E.2d 95, ¶ 22.

*Disciplinary Counsel v. Harris*, 137 Ohio St. 3d. 1, 2013-Ohio-4026, 996 N.E. 2d 921, ¶7.

Respondent misapplies *CompManagement, Inc.*, as briefed, *supra*, and also contorts this Court’s holding in *Disciplinary Counsel v. Bukstein*, 139 Ohio St. 3d 230, 2014-Ohio-1884, 11 N.E. 3d 237, ¶10-12 to argue that The Supreme Court of Ohio has restricted the practice of law to “requir[e] the existence of legal arguments, or advising and advocating for another on issues of law.” Respondent’s Brief, at p. 20. Respondent draws the Court’s attention to Paragraphs 10-12 of its opinion in *Bukstein*. Those cited paragraphs do not include this Court’s holding or definition of the practice of law. Paragraph 4 of *Bukstein* does, however.

The practice of law “embraces the preparation of pleadings and other papers incident to actions and special proceedings **and the management of such actions and proceedings on behalf of clients before judges and courts**, and in general all advice to clients and all action taken for them in matters connected with the law.” *Land Title Abstract & Trust Co. v. Dworken*, 129 Ohio St. 23, 193 N.E. 650 (1934), paragraph one of the syllabus.

*Disciplinary Counsel v. Bukstein*, 139 Ohio St. 3d 230, 2014-Ohio-1884, 11 N.E. 3d 237, ¶4 [emphasis added]. Just as with *CompManagement, Inc.*, Respondent draws the Court to a case in

which it defined the practice of law, but then misconstrues this Court's own definition of the practice of law to exclude representation of clients before judges and courts. The Supreme Court of Ohio's definition of the practice of law is well developed, and contrary to Respondent's suggestion otherwise, it includes the representation of clients in front of judicial officers in open court.

Just as with *CompManagement, Inc.*, and *Bukstein*, Respondent contorts The Supreme Court of Ohio's holding in *Cleveland Bar Ass'n. v. Pearlman*, 106 Ohio App. 3d 136, 2005-Ohio-4107, 832 N.E. 2d 1193. Respondent claims this Court held in *Pearlman* that "a layperson engages in the practice of law when they engage in cross-examination, argument or other acts of advocacy." Respondent's Brief, at 20. Respondent's unduly restrictive definition of the practice of law does not appear in *Pearlman*. Rather, The *Pearlman* Court held that

a layperson who presents a claim or defense and appears in small claims court on behalf of a limited liability company as a company officer does not engage in the unauthorized practice of law, provided that the layperson does not engage in cross-examination, argument, or other acts of advocacy.

*Cleveland Bar Ass'n. v. Pearlman*, 106 Ohio App. 3d 136, 2005-Ohio-4107, 832 N.E. 2d 1193, ¶27. The Supreme Court of Ohio in *Pearlman* discussed its decisions in *CompManagement, Inc.*, and *Henize v. Giles*, 22 Ohio St. 3d 213, 490 N.E. 2d 585 (1986) which allow non-lawyers to appear on behalf of incorporated entities in administrative hearings for workers compensation and unemployment benefits, respectively. Consistent with that policy determination, The *Pearlman* Court allowed non-lawyers to appear in small claims matters, subject to the above referenced limitations, on behalf of incorporated entities.

The Supreme Court of Ohio has never allowed suspended lawyers, or non-lawyers, to appear before judicial officers in probation violation hearings, arraignments, and / or plea colloquies on behalf of clients. This Court's decisions in *CompManagement, Inc.*, *Henize*, and

*Pearlman* do not support such a restrictive interpretation of the definition of the practice of law. Nor does Respondent's new definition for the practice of law further the same policy interests discussed by this Court in its decisions regarding administrative (workers compensation and unemployment benefits) and small claims matters. This Court would have to re-write the law on "unauthorized practice", and break dramatically from decades of its jurisprudence to accept Respondent's new definition of the "practice of law."

Respondent further argues that "[t]here is no untainted record evidence that Respondent engaged in the "practice of law", even accepting as completely true and accurate Judge Hagan's hearing testimony." Respondent's Brief, at 21. Again, Respondent bases his argument on the fatally flawed premise that the practice of law does not include representing clients in front of judges in open court.

Judge Hagan has no distinct recollection of Respondent engaging in any advocacy, argument, persuasion, interpretation, analysis, or reference to legal citations when Judge Hagan entertained Brazell's *nolo contendere* plea to a single minor misdemeanor, zero point driving without displayed plates citation on July 9, 2013. (Tr. 214-215).

*Id.*, at 20-21. In reality, the transcript pages to which Respondent directs this Court's attention provide clear and convincing evidence that Respondent practiced law on July 9, 2013.

Q: Did Mark Pryatel come up before the bench in your courtroom, much like I am before the Chairman here?

A: When the case was called, yes, he did.

Q: Was Richard with him?

A: Mr. Brazell? Yes, he was.

Q: They were standing together?

A: Yes, they were.

Q: Did Mr. Pryatel engage you in your plea colloquy on Mr. Brazell's behalf?

A: He did at my behest. . .

Tr. p. 214, lines 1-11. Under *CompManagement, Inc., Davie, and Bukstein, supra*, the very act of standing at the bench in Judge Hagan's courtroom and engaging him in a plea colloquy on Mr. Brazell's behalf constitutes the practice of law, regardless of whether Respondent cited legal authority or persuaded the Judge to agree to accept the plea that Respondent negotiated with Prosecutor O'Shea.

Under Respondent's new definition of the practice of law, suspended attorneys or non-lawyers may negotiate plea agreements with prosecutors for clients and engage in plea colloquies in open court with judges. The Supreme Court of Ohio has already defined the practice of law, and should follow its precedent and accept The Board's Findings of Fact and Conclusions of Law regarding Respondent's efforts to practice in Judge Hagan's courtroom on July 9, 2013.

**B. The Board of Professional Conduct properly concluded that Respondent Mark Pryatel violated the Rules of Professional Conduct by representing Mr. Richard Brazell in a criminal arraignment in Magistrate Kelly Larrick-Serrat's Courtroom on June 5, 2013 while under indefinite suspension for prior discipline.**

Count Two of Relator's Amended Complaint discusses Respondent's efforts to practice law while under indefinite suspension in Magistrate Kelly Larrick-Serrat's courtroom in the Rocky River Municipal Court on June 5, 2013. Relator's Exhibit 2 is the audio file from the Brazell arraignment. Respondent admitted that he spoke on the audio file with the Magistrate. On Relator's Exhibit 2, Respondent can be heard waiving Mr. Brazell's constitutional and statutory rights to a trial by jury, speedy trial, and the reading of the charges against him. Respondent entered a "not

guilty” plea for Mr. Brazell. The audio recording and hearing testimony support The Board’s Findings of Fact and Conclusions of Law on Count Two of Relator’s Amended Complaint by clear and convincing evidence.

Remarkably, Respondent claims:

Those present at the June 5, 2013 Brazell Rocky River Court traffic arraignment understood perfectly well that Respondent Pryatel was *not* serving as Brazell’s legal counsel, and instead that Brazell *was* appearing *pro se*.

Respondent’s Brief, at 22. Respondent’s argument ignores the sworn testimony of Mr. Richard Brazell, and Magistrate Kelly Larrick-Serrat. On this point, Respondent misleads the Court. Respondent also ignores the audio file from Relator’s Exhibit 2, in which Respondent engages in the practice of law by appearing in open court, waiving Mr. Brazell’s statutory and constitutional rights, and informing the Court that he’ll file a notice of appearance in the case.

As The Board concluded: “Respondent appeared with Brazell again before Magistrate Serrat and entered a not guilty plea on behalf of Brazell, referenced his representation of Brazell on June 3, 2013 in Cleveland Municipal Court, and waived Brazell’s right to a trial by jury.” Board Recom., at ¶17. Further, The Board found “Respondent represented to Magistrate Serrat that he “would probably enter an appearance” but Brazell was *pro se* for the time being.” *Id.*, at ¶18.

Respondent’s characterization of Mr. Brazell as “*pro se* for now” in Relator’s Exhibit 2 does not excuse or cure his efforts to practice law during the arraignment. Respondent’s discussion of Mr. Brazell’s “*pro se*” status is immaterial to this Court’s analysis. Under Respondent’s logic, a suspended lawyer may stand before a judicial officer in open court and (1) make legal decisions for a client, (2) waive rights for a client, (3) enter a plea for a client, and (4) inform the Court that he will formally appear in the case, all without violating the Rules of Professional Conduct, so long as he then tells the judicial officer that the client is “*pro se* for now”.

The Supreme Court of Ohio's definition of the "practice of law" from *CompManagement, Inc.* and *Davie, supra*, clearly includes representation of a client before a court. Here, Respondent represented Mr. Brazell before Magistrate Kelly Larrick-Serrat on June 5, 2013. Mr. Brazell believed that Respondent was his lawyer. Magistrate Larrick-Serrat testified that Respondent's actions constituted the practice of law.

JUDGE WISE: Whether you know or not. The lawyer is there. They do what was represented on this disk, answer questions, waive rights, waive time, all those things, is that individual practicing law?

THE WITNESS: In my opinion, yes.

Tr., p. 165, lines 20-25. There is no doubt, given The Supreme Court of Ohio's definition of the "practice of law", and its application to the evidence adduced at the hearing, that Respondent violated the Rules of Professional Conduct on June 5, 2013.

**C. The Board of Professional Conduct properly concluded that Respondent Mark Pryatel violated the Rules of Professional Conduct by representing Mr. Richard Brazell in a Probation Violation hearing in Judge Ronald Adrine's Courtroom on June 3, 2013 while under indefinite suspension for prior discipline.**

Relator's Exhibit 13 depicts Respondent standing in front of Judge Adrine in the Cleveland Municipal Court on June 3, 2013 with Mr. Richard Brazell, and advocating for Mr. Brazell at his probation violation hearing. Exhibit 13 corroborates the clear testimony of Mr. Brazell and his mother, Mrs. Rhonda Melton, who were present in the courtroom that day. Exhibit 13 also conclusively disproves the sworn testimony of Respondent, who claimed that he did not stand up and speak in court for Mr. Brazell on June 3, 2013. The Board concluded that "[o]n June 3, 2013,

Respondent appeared in the Cleveland Municipal Court to represent Brazell in a traffic related offense in Cleveland Municipal Court, Case No. 2008 TRD 026794.” Board Recomm. at ¶13. The testimony of Mr. Brazell and Mrs. Melton, along with the audio and video evidence from Relator’s Exhibit 13, support The Board’s Finding of Fact and Conclusion of Law on Count One of the Amended Complaint by clear and convincing evidence.

**D. The Cleveland Metropolitan Bar Association did not violate Respondent Mark Pryatel’s due process rights.**

Lawyers accused of violating the Rules of Professional Conduct have due process rights under Ohio law. The Board of Professional Conduct and Relator provided due process to Respondent in this case. In *Disciplinary Counsel v. Heiland*, 116 Ohio St. 3d 521, 2008-Ohio-91, 880 N.E. 2d 467, this Court instructed:

The standards of due process in a disciplinary proceeding are not equal to those in a criminal matter. A disciplinary proceeding is instituted to safeguard the courts and to protect the public from the misconduct of those who are licensed to practice law, and is neither a criminal nor a civil proceeding.” *In re Judicial Campaign Complaint Against Carr* (1996), 76 Ohio St.3d 320, 322, 667 N.E.2d 956. Nevertheless, because of the severity of the sanctions available for violations of the Disciplinary Rules, a respondent's due process rights must be carefully balanced against the importance of the public interest in expeditiously resolving complaints of misconduct. See, generally, *id.*

*Disciplinary Counsel v. Heiland*, 116 Ohio St. 3d 521, 2008-Ohio-91, 880 N.E. 2d 467, ¶32.

In this case, Respondent’s due process rights have been carefully balanced against the importance of the public interest in expeditiously resolving this complaint of misconduct under *Heiland*. The Certified Grievance Committee of the Cleveland Metropolitan Bar Association certified the initial Complaint. Respondent engaged in two total rounds of written discovery. Relator answered both. Respondent’s counsel received subpoena power, which he used for the evidentiary hearing in this matter. When Relator’s Counsel (both William Norman and Joseph

Dunson) learned that Magistrate Larrick-Serrat might challenge service of Respondent's hearing subpoena, they intervened and convinced her to appear at the evidentiary hearing as Respondent's witness. Relator also took depositions of fact witnesses after Relator's Counsel intervened to work to accommodate the court officials' schedules. Respondent filed a Motion for Summary Judgment that the Chairman denied.

Relator filed its Amended Complaint in compliance with former BCGD Proc. Reg. 9(D). Respondent filed a Motion to Strike the Amended Complaint. The Chairman denied it. The Board appointed a panel of three Commissioners from the Board of Professional Conduct who reside in different judicial districts from Respondent to hold an evidentiary hearing and make a recommendation to the full Board of Professional Conduct, which in turn voted on its disbarment recommendation before submitting it to this Court. The Panel Chairman, Robert Gresham, gave Respondent two months from the date of the first phase of the evidentiary hearing held on December 5, 2014 to conduct further discovery regarding the June 3, 2013 charge from Judge Adrine's courtroom. Respondent propounded additional discovery requests (the second set), which Relator answered. Respondent had the ability to call and cross examine witnesses at two different hearing dates. At the suggestion of Relator's Counsel, the parties engaged in post-hearing briefing on sanctions to present their relative positions to The Panel. There is no doubt in this case that Respondent received the due process required under Ohio law.

Despite the process he received, Respondent claims that his due process rights were violated in this case for three reasons:

- (1) Magistrate Kelly Larrick-Serrat testified that she saw a transcript of the proceedings that were not recorded in the July 9, 2013 Brazell plea in Judge Hagan's courtroom.

- (2) Judge Hagan did not preserve the video tapes from his courtroom following the July 9, 2013 Brazell plea.
- (3) Judge Hagan accidentally failed to “de-mute” the Court Smart audio system during the July 9, 2013 Brazell plea.

Respondent’s Objections, at 18.

In support of his argument for due process violations, Respondent cites criminal cases from the United States Supreme Court, including *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194 (1963) and *Strickler v. Greene*, 527 U.S. 263, 119 S. Ct. 1936 (1999). Respondent’s argument fails for several reasons. First, this is not a criminal prosecution, *see Heiland, supra*, and Judge Brian Hagan is not a detective. As such, criminal cases do not inform this Court’s analysis. Secondly, cases involving suppressed “impeachment” and “exculpatory” evidence necessarily depend on both (1) the existence of the subject evidence, and (2) its suppression.

Here, Relator does not possess a “mysterious transcript” of any proceedings from Judge Hagan’s courtroom on July 9, 2013. Nor has Relator even seen such a transcript, or heard of reference to its existence outside of Magistrate Larrick-Serrat’s testimony. Relator’s Counsel, Joseph Dunson, does not believe that such a document exists.

Further, Relator never had possession of the court surveillance tapes from Judge Brian Hagan’s courtroom on July 9, 2013. It neither destroyed nor suppressed those videotapes. As Judge Brian Hagan is simply a witness in this case, he was under no legal obligation to preserve the video evidence. While Respondent failed to make any evidentiary record regarding the alleged destruction of video evidence at the hearing in this matter, Respondent’s counsel did inquire about the security cameras during Judge Hagan’s deposition.

Q: Did you make any effort to obtain the video recordings of security cameras with respect to the Brazell matter?

A: I did not. I will tell you the truth, I didn't even think about it.

Judge Hagan Depo., p. 48, line 19-23.

It is somewhat puzzling that Respondent claims a violation of his due process rights based on the lack of videotape evidence from the Brazell plea on July 9, 2013, especially in light of his own testimony from the hearing that he stood before Judge Hagan with Mr. Brazell. It is hard to conceive of how the video evidence would exculpate Respondent, who placed himself in front of the Judge's bench with a client, and admitted that he had a conversation with the Judge in open court.

Q: You were in a courtroom, the judge called the case and Richard got up in front of you, correct?

A: I believe I was.

Q: You were standing next to him by the bench, weren't you?

A: I will give you that.

Q: You did have a conversation with Judge Hagan then, didn't you?

A: I believe I did.

Tr. p. 313, lines 4-13. Based on Respondent's own testimony, any video evidence from the Brazell hearing would corroborate the hearing testimony of Judge Hagan, Bailiff Christine Seedhouse, Mr. Richard Brazell, and Mrs. Rhonda Melton.

Lastly, it is undisputed that Judge Hagan accidentally forgot to "de-mute" the Court Smart audio system in his courtroom on July 9, 2013. No audio evidence exists of the Brazell arraignment. Consequently, no "impeachment" or "exculpatory" evidence existed, or could have

been suppressed. Respondent focuses much discussion on the Rocky River Municipal Court's Local Rules, and specifically the requirement that judicial officers record events involving criminal charges more severe than minor misdemeanors. By making this argument, Respondent suggests to The Supreme Court of Ohio that a suspended lawyer may not be held to account for violating the Rules of Professional Conduct unless he is recorded doing so, and that the Rocky River Municipal Court Local Rules benefit suspended attorneys accused of practicing law without a law license. The Supreme Court of Ohio should reject Respondent's position.

In a strange turn of phrase, Respondent argues that evidence was "effectively destroyed" when it wasn't created by Judge Hagan.

Furthermore, both impeachment and exculpatory evidence was effectively destroyed when Judge Hagan failed to create it as required and mandated by the Rocky River Municipal Court Rules.

Respondent's Brief, at 18. Here, Respondent argues that he cannot be charged with violations of the Rules of Professional Conduct for engaging in a plea colloquy with a Judge for a client in open court while under indefinite suspension because the Judge forgot to de-mute the audio system. Relator respectfully submits that The Supreme Court of Ohio should reject Respondent's invitation to create a new evidentiary doctrine of "effective destruction through non-creation".

To further his argument for due process violations, Respondent impugns the integrity of Relator, and suggests to this highest court in the State of Ohio that the Cleveland Metropolitan Bar Association falsified an attorney discipline case against him by destroying evidence to construct a "credibility war" between Respondent and Judge Brian Hagan.

Relator constructed its disciplinary prosecution of Attorney Pryatel by hoping to set up and then prevail in a credibility war, wherein a distinguished robed judge sitting on a local court will presumably testify that at Brazell's plea hearing, Respondent engaged in the proscribed practice of law.

Respondent's Brief, at 19. Respondent makes very serious ethical allegations, without any good faith basis rooted in law or fact under Civ R. 11, against volunteer trial counsel who handle attorney discipline cases out a sense of duty to the public, and who take considerable time away from their small firm private practices, at great personal expense, to uphold the principles upon which our profession is based. Respondent's Counsel made his feelings about the disciplinary process and volunteer trial counsel quite clear during his closing argument at the evidentiary hearing in this matter.

KEITH PRYATEL:

And, again, I think -- I'm not a -- I'll be honest with you. I'm not disciplinary counsel. I'm not a disciplinary -- I practice law for a living.

COMMISSIONER GRESHAM: As do they.

Tr. Part 2, p. 62, lines 21-24, p. 63, line 1. This Counsel trusts that the Justices of The Supreme Court of Ohio will see such allegations for what they truly are: a desperate attempt to cast aspersions on anyone other than Respondent to draw this Court's attention away from the issues germane to the adjudication of this disbarment case.

**E. The Board of Professional Conduct properly evaluated the evidence presented at the evidentiary hearing to conclude that Respondent Mark Pryatel violated The Rules of Professional Conduct.**

Respondent claims that Relator "sandbagged" him at several points in this case. First, Respondent characterizes Relator's attempt to depose Respondent regarding the then-uncharged June 3, 2013 events in Cleveland Municipal Court as "sandbagging."

The "sandbagging" occurred early on in this case when counsel for Relator grilled

Attorney Pryatel at his deposition about non-plead matters purportedly occurring in the Cleveland Municipal Court, even though none of it was alleged in any complaint.

Respondent's Brief, at 22. As this Court is well aware, Civ. R. 26 provides for wide latitude into the discovery of non-privileged information.

In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, electronically stored information, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Civ R. 26(B)(1). Relator disputes the premise that it may not inquire about a suspended lawyer's efforts to practice law while under indefinite suspension during a discipline case brought against that lawyer for practicing law while under suspension. Civ. R. 26(B)(1) does not limit the scope of inquiry to the four corners of the Complaint. Rather, counsel may attempt to elicit information that "appears reasonably calculated to lead to the discovery of admissible evidence." Respondent's Counsel instructed Respondent not to answer questions from Relator's Counsel that fell directly within the scope of Civ R. 26(B)(1). Relator's Counsel asked whether Respondent's Counsel claimed any privilege to prevent the discovery. Respondent's Counsel conceded that he did not. Notwithstanding, Respondent's Counsel instructed his client not to answer fair and appropriate questions during his deposition.

The second claim of "sandbagging" by Relator concerns the filing of Relator's Amended Complaint. Relator amended its Complaint pursuant to former BCGD Proc. Reg. 9(D). The Secretary of the Board of Professional Conduct accepted that Complaint as timely filed. The Chairman denied Respondent's Motion to Strike it. According to Respondent:

The “sandbagging” continued with Relator’s counsel holding in-check their First Amended Complaint to include the newly-announced Cleveland Municipal Court matter until the eve of the first day of the disciplinary hearing, which concerned only those events occurring in the Rocky River, Ohio Municipal Court.

Respondent’s Brief, at 22. The facts belie Respondent’s argument. Relator filed its Amended Complaint on November 4, 2014. The first day of the evidentiary hearing took place on December 5, 2014. Rather than file it on “the eve of the first day of the disciplinary hearing” Relator filed its Amended Complaint a month before the hearing, and in compliance with former BCGD Proc. Reg. 9(D). As such, the simple facts of the case conclusively disprove Respondent’s argument for “sandbagging.”

Third, Respondent claims that Relator “sandbagged” by producing the video and audio file of Respondent representing Richard Brazell in the Cleveland Municipal Court on June 3, 2013 after Relator rested its case-in-chief at the conclusion of the December 5, 2014 phase of the evidentiary hearing. According to Respondent:

Even when the disciplinary panel allowed the amended complaint, with the caveat that Relator put on its full case on the first day of hearing, this Solomon-like approach was renegeed upon when, *after resting its case-in-chief*, counsel for Relator sought (and was permitted) to introduce a videotape of proceedings in the Cleveland Municipal Court. **Neither the video, nor the witness that Relator summoned to authenticate and verify that video was disclosed or named in any pre-hearing discovery responses, or in the panel ordered witness and exhibit lists.**

Respondent’s Brief, at 22 [emphasis added]. Again, the facts belie Respondent’s claims. This Counsel for Relator fully acknowledged that he requested and received the audio and video file (Relator’s Exhibit 13) after Relator rested its case-in-chief. However, Relator furnished Respondent with Exhibit 13 the day he received it, on December 17, 2014, almost two months before the second hearing date on February 5, 2015. Relator also referenced Exhibit 13 throughout Relator’s responses to Respondent’s second set of discovery requests, which Relator served on

Respondent on December 29, 2014. Respondent's claims otherwise are simply false. Relator concedes that it did not disclose a records custodian for Exhibit 13, as Relator believed that Respondent would stipulate to its authenticity, much like the parties stipulated to the authenticity of the other's evidence in the normal course of trial preparation for the first part of the evidentiary hearing.

As Relator argued in its Motion for Leave to Supplement the Evidentiary Record to include Exhibit 13:

The Board instructed Relator to present its case in chief on each of the three charges in the first part of the hearing on December 5, 2014. Relator presented its case-in-chief, and offered its exhibits into evidence. Relator rested its case, subject to a supplement of the evidence as deemed fit by The Board.

MR. DUNSON: At this point, Relator will rest its case pending the admission of its exhibits into evidence and also while reserving the right to supplement evidence as the Chairman sees fit at the continuation of this trial next year.

THE CHAIRMAN: With regard to the Cleveland Municipal Court actions?

MR. DUNSON: That's correct, Mr. Chairman.

Tr. p. 346, lines 13-22.

The Chairman exercised his discretion to allow Relator to supplement the evidentiary record with Exhibit 13, and to call Cleveland Municipal Court Records Custodian Grace Evangelou to trial when Respondent refused to stipulate to the authenticity of Relator's Exhibit 13.

Respondent claims that "the introduction of a new theory that has not been disclosed prior to trial smacks of ambush." Respondent's Brief, at 22. It is difficult to understand how Respondent

was ambushed by the introduction of a video that shows his own conduct in Judge Adrine's courtroom, after he possessed the video for almost two months before the hearing in question.

Respondents' arguments regarding "sandbagging" simply have no merit. Relator answered Respondent's discovery requests, in full, and in a timely manner. Respondent did not file a Motion to Compel discovery for either his first or second set of requests, and was not prejudiced by the Chairman's sound exercise of his discretion to admit the video that shows Respondent representing Mr. Brazell in Judge Adrine's courtroom.

**F. The Board of Professional Conduct properly recommended permanent disbarment for Respondent Mark Pryatel's continuing efforts to engage in the practice of law after his indefinite suspension.**

The normal penalty for practicing law while under suspension is permanent disbarment. *Disciplinary Counsel v. Sabroff*, 123 Ohio St. 3d 182, 2009-Ohio-4205, 915 N.E. 2d 307, ¶21, citing *Disciplinary Counsel v. Frazier*, 110 Ohio St. 2d 288, 2006-Ohio-4481, 853 N.E. 2d 295, ¶54, quoting *Disciplinary Counsel v. Allison*, 98 Ohio St. 3d 322, 2003-Ohio-776, 784 N.E. 2d 695, ¶12, and *Disciplinary Counsel v. Mbakpuo*, 98 Ohio St. 3d 177, 2002-Ohio-7087, 781 N.E. 2d 208. See also *Medina Cty. Bar Assn. v. Wootton*, 110 Ohio St. 3d 179, 2006-Ohio-4094, 852 N.E. 2d 175, ¶10.

In *Disciplinary Counsel v. Caywood*, 74 Ohio St. 3d 596, 660 N.E. 2d 1148 (1996), this Court disbarred a respondent attorney who made a pretrial appearance before a referee in the Willoughby Municipal Court while under indefinite suspension. *Caywood*, 74 Ohio St. 3d at 597. The Panel in *Caywood* recommended a continuation of the indefinite suspension, with an eighteen month extension of the respondent's eligibility date for reinstatement. *Ibid.* The parties stipulated that the respondent attorney appeared only once in court since his suspension commenced, and

that he cooperated with disciplinary authorities in the case. *Id.*, at 598. The Supreme Court of Ohio accepted the Board's findings of fact and conclusions of law, but rejected its recommended sanction and disbarred Mr. Caywood.

We concur in the board's findings of fact and conclusions of law. However, respondent's repeated violations of the Disciplinary Rules over a relatively short period of time merit a more severe penalty than that recommended by the board. Respondent's most recent violations took place approximately one month after his suspension was announced by this court in *Cuyahoga Cty. Bar Assn. v. Caywood*, 71 Ohio St.3d 164, 642 N.E.2d 625. In defiance of our ordered suspension, respondent continued to practice law by appearing in court as an attorney, even though he knew that it was clearly improper for him to do so. In light of respondent's current violations and history of professional misconduct, respondent is hereby ordered permanently disbarred from the practice of law in Ohio.

*Id.*, at 598. This case goes beyond *Caywood* for several reasons. First, Respondent appeared in court and practiced law three times, rather than once, within months of this Court's order indefinitely suspending his law license. Second, Respondent did not cooperate with disciplinary authorities. Rather, The Board found that Respondent demonstrated a lack of cooperation in the disciplinary process, submitted false evidence, submitted false statements, and refused to accept the wrongful nature of his conduct. Board Recomm. ¶ 30. Not only did Respondent defy the indefinite suspension order of The Supreme Court of Ohio, but he also flouted the jurisdiction of The Board of Professional Conduct by submitting false evidence and statements during the case. For these reasons, The Supreme Court of Ohio should follow *Caywood* and permanently disbar Respondent.

In *Sabroff*, The Supreme Court of Ohio permanently disbarred a respondent attorney who continued to practice law during his interim felony suspension.

Notwithstanding his suspension from the practice of law, less than a month later, respondent sent a letter to the Cleveland Heights Municipal Court on behalf of his son, who had been charged with a traffic violation. Respondent used letterhead referring to himself as "Attorney and Counselor at Law," and in the letter, he

entered a plea of not guilty, waived all statutory time requirements, and sought the scheduling of a pretrial hearing. After relator apparently contacted respondent inquiring whether he had practiced law with a suspended license, respondent sent a letter to the municipal court explaining that he had “decided to withdraw as counsel” for his son because of “a plethora of physical problems.” We accept the board’s finding that respondent violated Prof.Cond.R. 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction) and Gov.Bar R. V(8)(E) (requiring a lawyer to notify opposing counsel and the court of his disqualification to practice law).

*Sabroff*, ¶14, 15.

Here, Respondent did not simply send a letter to a court on behalf of a client. Rather, he went further than Mr. Sabroff by appearing in open court on three different occasions to represent a client while under indefinite suspension. During the June 5, 2013 arraignment of Mr. Brazell, Respondent entered a not guilty plea, waived statutory trial time, and waived Mr. Brazell’s right to a trial by jury, which goes beyond the legal representation provided in *Sabroff*. Just as with *Caywood*, this Court should follow its decision in *Sabroff* to permanently disbar Respondent.

Beyond *Caywood* and *Sabroff*, *supra*, this Court has consistently held that lawyers who choose to continue to practice law while under indefinite suspension for substantive violations (other than for failure to register or complete CLE) risk permanent disbarment. *See, e.g. Akron Bar Assn v. Thorpe*, 40 Ohio St. 3d 174, 532 N.E. 2d 752 (1988); *Cincinnati Bar Assn v. Rothermel*, 112 Ohio St. 3d 443, 2007-Ohio-258, 860 N.E. 2d 754; *Cleveland Bar Assn. v. Rubino*, 115 Ohio St. 3d 199, 2007-Ohio-4797, 847 N.E. 2d 519; *Cleveland Metro. Bar Assn. v. Cicirella*, 133 Ohio St. 3d 448, 2012-Ohio-4300, 979 N.E. 2d 244; *Cleveland Metro Bar Assn. v. Davis*, 133 Ohio St. 3d 327, 2012-Ohio-4546, 978 N.E. 2d 178; *Disciplinary Counsel v. Frazier*, 110 Ohio St. 3d 288, 2006-Ohio-4481, 853 N.E. 2d 295; *Disciplinary Counsel v. Henderson*, 108 Ohio St. 3d 447, 2006-Ohio-1336, 844 N.E. 2d 348; *Disciplinary Counsel v. Chavers*, 80 Ohio St. 3d 441, 687 N.E. 2d 415 (1997).

Respondent mischaracterizes The Board's Recommended Sanction by claiming that The Board operated under a "Successively-Higher Sanction Doctrine", and "felt constrained" such that it recommended permanent disbarment in this case. Respondent's Brief, at 24. First, there is no "successively-higher sanction doctrine" in the State of Ohio. Respondent created it, much like he created a new definition for what constitutes the practice of law. Neither The Board nor Relator has advocated for any "doctrine" in this case. Second, a cursory review of The Board's recommendation and the hearing transcript reveals no "constraint" of the Panel. The Panel that heard this case was engaged, attentive, and interacted with the witnesses and counsel. Chairman Gresham, Commissioner Judge Wise, and Commissioner Davis each asked clarifying questions of witnesses, and clearly sought to understand Respondent's claimed narrative at the conclusion of his testimony. Tr. p. 327-356. Chairman Gresham asked Respondent about his testimony concerning his activities in Judge Hagan's courtroom on July 9, 2013:

THE CHAIRMAN: The horse is probably far beyond dead today, I have to ask the question. You heard his testimony. We heard your testimony. Quite frankly I heard it change a number of times while you were on the stand. Is it your contention that Judge Hagan's testimony is false or inaccurate?

THE WITNESS: I would describe Judge Hagan's testimony as false and inaccurate. I think Judge Hagan realized at a later point in time he had not done something he needed to do. I think he attempted to use the journal entry to correct that. I think if he would have done the journal entry originally, it would have said appeared without counsel.

Tr. p. 330, lines 15-25, p. 331, lines 1-5.

Respondent further criticizes The Board by claiming that

[t]he Findings of Fact, Conclusions of Law, and Permanent Disbarment Recommendation by the Board of Professional Conduct of the Supreme Court of Ohio failed to address all of the material defenses and challenges raised by Respondent before the hearing, amidst the hearing, and after the hearing.”

Respondent’s Brief, at 14.

Here, Respondent confuses The Board’s silence for a failure to consider evidence, rather than The Board’s proper rejection of Respondent’s narrative, and really complains that The Board did not accept his facts. This Court has considered and rejected the argument made by Respondent. In *Cleveland Bar Assn. v. Cleary*, 93 Ohio St. 3d 191, 754 N.E. 2d 235 (2001) the Supreme Court of Ohio instructed that The Board may reject a disciplinary respondent’s facts, just as The Board did in this case.

Cleary's argument here appears to be that the panel and board should have believed her side of the story rather than the version told by the relator's witnesses. As this court has previously noted, however, “it is of no consequence that the board's findings of fact are in contravention of the respondent's or any other witness's testimony. ‘Where the evidence is in conflict, the trier of facts may determine what should be accepted as the truth and what should be rejected as false.’” *Disciplinary Counsel v. Zingarelli* (2000), 89 Ohio St.3d 210, 217, 729 N.E.2d 1167, 1174, quoting *Cross*, 161 Ohio St. at 478, 53 O.O. at 365, 120 N.E.2d at 123-124. While this court is not bound by the findings of fact of the board and panel, see *Reid* at paragraph one of the syllabus, we give them some deference in light of the reality that the panel observed the witnesses firsthand. See *Zingarelli*, 89 Ohio St.3d at 218, 729 N.E.2d at 1174. Although we will disregard the panel's findings when the record weighs heavily against them, see *Findlay/Hancock Cty. Bar Assn. v. Filkins* (2000), 90 Ohio St.3d 1, 734 N.E.2d 764, this is not such a case.

*Cleary*, 93 Ohio St. 3d 191 at 198. Consequently, Respondent’s argument that The Board erred by not agreeing with his narrative has no legal import, even despite his shameful characterization of The Board’s reasoned Recommendation as “schizophrenic.” Respondent’s Brief, at 15.

The Board notes in its Recommendation that Respondent has not advocated for a specific sanction less than disbarment. “Respondent has not offered a specific sanction, but rather loosely

argued that the panel should consider “other interim rehabilitation” or “other penalties or sanctions” besides disbarment.” Board Recomm. at ¶32.

Respondent urges this Court to find the following mitigating factors: (a) Absence of Dishonest / Selfish Motive. Respondent’s Brief, at 25, (b) Efforts to Make Restitution to Rectify Consequences of Misconduct. *Id.*, at 26. (c) Full Disclosures to the Board and Positive Attitude *Id.*, at 27. (d) Character and Reputation. *Id.*, at 28.

Respondent claims that the evidence adduced during the hearing does not support The Board’s conclusion that Respondent acted with a dishonest or selfish motive. *Id.*, at 25. Respondent characterizes the \$200.00 in unpaid invoices for past legal services (pre-suspension work) as a “loan” from him to Mr. Brazell. Here, Respondent ignores Exhibit 1, which represents a retainer paid to him to represent Mr. Brazell in Judge Adrine’s courtroom on June 3, 2013. Respondent also ignores the sworn testimony that his counsel elicited on cross examination from Ms. Spurlock, who testified that she paid Respondent to represent Mr. Brazell in the Rocky River Municipal Court at the June 5, 2013 arraignment. Tr. p. 67, lines 4-9. Respondent next attempts to distinguish *Sabroff* and *Caywood* from this case by arguing that *Sabroff* and *Caywood* involved respondents who “absconded with client funds or neglected legal matters.” Respondent’s Brief at 25-26. Unfortunately, Respondent forgets that he was indefinitely suspended for stealing money from Mr. Troyan and neglecting Mr. Martich’s case. *CMBA v. Pryatel*, 2013-Ohio-1537, at ¶6,7,8.

Respondent seems to argue that the absence of a restitution order in the case somehow constitutes a mitigating factor. Respondent cites no authority to support this argument, and again misleads this Court by claiming that he did not charge Mr. Brazell for his services. According to Respondent, “[i]n point of undisputed fact, it all went to pay off Brazell’s court fines and costs.” Respondent’s Brief, at 26. Respondent again ignores the testimony of Mr. Brazell and Ms.

Spurlock, as well as the documentary evidence from Exhibit 1. Irrespective, the absence of restitution does not constitute a mitigating factor under former BCGD Proc. Reg. 10.

Respondent next claims that he made full disclosure to The Board and showed a positive attitude during the proceedings. In support of his argument, Respondent argues that Relator did not charge him with violations of DR 7-106(A), DR 7-102(A)(5) or Gov. Bar R. V Section 9(G) Duty to Cooperate. Respondent's Brief, at 27-28. The Rules of Professional Conduct became effective by Order of this Court on February 1, 2007. Consequently, the former Code of Professional Responsibility has no bearing on this case. Further, The Board exercised its sound judgment to determine that Respondent did not cooperate in the disciplinary process as he changed his sworn testimony on critical issues throughout the hearing, failed to appear for the second phase of the hearing, and testified that he never appeared in Judge Adrine's courtroom (despite a video and audio of him in Judge Adrine's courtroom). Exhibit 13.

Respondent failed to produce any character or reputation evidence during the evidentiary hearing. He purports to rely on the evidence he submitted in his previous case to argue for mitigation based on good character or reputation in this case. The Board exercised its sound judgment when it did not find any mitigation for good character or reputation.

While not included in his alleged mitigation analysis, Respondent references his involvement in the Ohio Lawyers Assistance Program to argue for a sanction less than disbarment. As this Court found in Respondent's previous discipline case, former BCGD Proc. Reg. 10(B)(2)(g)(ii) required Respondent to demonstrate that his mental-disorder diagnosis contributed to his misconduct, and that he could return to competent, ethical, and professional practice under former BCGD Proc. Reg. 10(B)(2)(g)(iv). *CMBA v. Pryatel*, 2013-Ohio-1537 at ¶17. Respondent

failed to satisfy the mitigation requirements from the rule in this case, just as he so failed in his previous disciplinary case.

In support of his argument for a sanction less than disbarment (Respondent's Brief, at 29-31), Respondent directs this Court to inapposite cases which do not mirror the facts or legal analysis applicable here. Respondent cites the following cases: *Dayton Bar Assoc. v. Siehl*, 135 Ohio St. 3d 261, 2013-Ohio-735, 985 N.E. 2d 1274; *Col. Bar Assn v. Gill*, 137 Ohio St. 3d 377, 2013-Ohio-4619, 998 N.E. 2d 1141; *Disciplinary Counsel v. Anthony*, 138 Ohio St. 3d 129, 2013-Ohio-5502, 4 N.E. 3d 1006; *Toledo Bar Assn. v. Farah*, 136 Ohio St. 3d 295, 2013-Ohio-3680, 995 N.E. 2d 201; *Cincinnati Bar Assn v. Alsfelder*, 138 Ohio St. 3d 333, 2014-Ohio-870, 6 N.E. 3d 1162.

In *Siehl*, 2013-Ohio-735, this Court continued the indefinite suspension of a respondent attorney who failed to respond to a grievance filed against him after The Board appointed a master commissioner at the default judgment posture. *Siehl*, 2013-Ohio-735 at ¶3-6. The *Siehl* noted that that The Board recommended indefinite suspension, rather than disbarment. *Id.*, at ¶5. Because there was no evidentiary hearing, The Board in *Siehl* could not address the same issues as The Board did in this case, such as Respondent's submission of false evidence and false statements. As such, *Siehl* does not inform this Court's analysis.

In *Gill*, 2013-Ohio-4619, the respondent attorney was reinstated following two suspensions. First, the respondent was indefinitely suspended for converting client funds for his personal use and signing a client's name to a check. *Gill*, 2013-Ohio-4619 at ¶1. He was reinstated and practiced for seventeen years before The Supreme Court of Ohio suspended him for failing to comply with this Court's CLE requirements. *Ibid.* That suspension lasted two months, at which point the respondent was again reinstated. *Ibid.* The respondent relapsed with alcohol and

committed various violations of the Rules of Professional Conduct, to which he stipulated. *Id.*, at ¶2. This Court in *Gill* found significant mitigation, *Id.*, at ¶19, and suspended Mr. Gill for two years, with one year stayed, conditioned on his compliance with alcohol treatment and monitoring. *Id.*, at ¶ 28, 29. *Gill* is distinguishable from this case in three critical respects. First, Mr. Gill was not charged with practicing law while under suspension, like Respondent is here. Second, Mr. Gill stipulated to many of the charges against him, while Respondent has categorically denied liability, despite audio and video evidence depicting him practicing law while under suspension. Third, Mr. Gill presented proper mitigation evidence of his impairment due to alcohol. Respondent did not.

In *Anthony*, 2013-Ohio-5502, this Court indefinitely suspended a respondent attorney for embezzling funds from the church for which he worked. *Anthony*, 2013-Ohio-5502 at ¶1-3. The respondent in *Anthony* had been suspended for failing to register and failing to comply with this Court's CLE requirement. *Id.*, at ¶1. This Court also imposed an interim felony suspension arising out of his theft of church funds. *Ibid.* Unlike Respondent in this case, the respondent attorney in *Anthony* was not charged with practicing law while under suspension. Also, unlike Respondent, the respondent attorney in *Anthony* successfully argued for mitigation based on his gambling addiction. *Id.*, at 13, as well as his cooperation during the disciplinary investigation. *Ibid.* This Court should reject Respondent's reliance on *Anthony*, which is clearly distinguishable from this case.

In *Farah*, 2013-Ohio-3680, this Court indefinitely suspended a respondent attorney following the appointment of a master commissioner at the default judgment posture for neglecting a client matter and failing to cooperate during the disciplinary process. *Farah*, 2013-Ohio-3680, at ¶4,5,10. The respondent in *Farah* was previously suspended for one year (stayed), and was again suspended for failing to register. *Id.*, at ¶2. *Farah* does not inform this Court's analysis, as the

respondent was not charged with practicing law while under suspension. In short, *Farah* simply has nothing to do with this case.

In *Alsfelder*, 2014-Ohio-870, this Court indefinitely suspended a respondent attorney who was previously suspended out of a contempt order related to the disciplinary proceedings discussed in 2014-Ohio-870. *Cincinnati Bar Assn v. Alsfelder*, 130 Ohio St. 3d 1201, 2011-Ohio-5514, 6 N.E. 3d 1162. Respondent would have this Court believe that the respondent attorney in *Alsfelder* was disciplined for practicing law while under suspension. Respondent's Brief, at 29. He was not. Rather, this Court suspended Mr. Alsfelder when he failed to comply with this Court's order to participate in his disciplinary case after he was charged with violating the Rules of Professional Conduct. *Alsfelder*, 2014-Ohio-870. Because *Alsfelder* does not concern a suspended lawyer who continued to practice during his suspension, it does not inform this Court's analysis.

Respondent further relies on *Disciplinary Counsel v. Seabrook*, 133 Ohio St. 3d 97, 2012-Ohio-3933, 975 N.E. 2d 1013 to claim that he should not be disbarred for his efforts to practice law while under suspension. *Seabrook* is plainly distinguishable from this case. In *Seabrook*, the respondent attorney had been suspended for failing to register, *Seabrook*, 2012-Ohio-3933 at ¶1, rather than for misappropriating client funds and neglecting client matters. Further, unlike Respondent, The Board in *Seabrook* concluded that the respondent did not act with a dishonest or selfish motive. *Id.*, at 9. Also, unlike Respondent, the respondent attorney in *Seabrook* admitted his misconduct. *Ibid.*

Relator concedes that Mr. Brazell did not experience an adverse outcome by virtue of Respondent's efforts to represent him while under indefinite suspension. However, that fact does not bear upon this Court's analysis. There was no finding in *Caywood* that the respondent attorney harmed the client whom he represented while under suspension, and this Court still disbarred him.

Respondent complains that The Board did not cite or distinguish the case law he furnished in a string citation in Respondent's Brief, at 30. As previously discussed, Respondent confuses The Board's silence for a failure to consider his position, rather than The Board's proper rejection of his position. *See Cleary*, 93 Ohio St. 3d 191, 2001-Ohio-1326.

Respondent's cases from his string citation (Respondent's Brief, at 30) are all distinguishable from this case. Most involve respondent attorneys who continued to practice law after suspensions for failing to register or failing to comply with this Court's CLE requirement, rather than "substantive" suspensions for misappropriating client funds and neglecting client matters. *Disciplinary Counsel v. Troller*, 138 Ohio St. 3d 307, 2014-Ohio-60, 6 N.E. 3d 1138; *Disciplinary Counsel v. Bancsi*, 79 Ohio St. 3d 392, 683 N.E. 2d 1072 (1997); *Disciplinary Counsel v. Blackwell*, 79 Ohio St. 3d 395, 683 N.E. 2d 1074 (1997), *Disciplinary Counsel v. Carson*, 93 Ohio St. 3d 137, 753 N.E. 2d 172 (2001); *Disciplinary Counsel v. Higgins*, 117 Ohio St. 3d 473, 2008-Ohio-1509, 884 N.E. 2d 1070; *Akron Bar Assn v. Barron*, 85 Ohio St. 3d 167, 707 N.E. 2d 850 (1999); *Disciplinary Counsel v. Mitchell*, 124 Ohio St. 3d 266, 2010-Ohio-135, 921 N.E. 2d 634.

The remaining cases involve respondents who were suspended when they failed to pay costs associated with a disciplinary case that resulted in a public reprimand, *Disciplinary Counsel v. Koury*, 77 Ohio St. 3d 433, 674 N.E. 2d 1371 (1997), who stipulated to their misconduct *Disciplinary Counsel v. Jackson*, 86 Ohio St. 3d 104, 712 N.E. 2d 122 (1999), or for whom Relator advocated for indefinite suspension rather than disbarment. *Columbus Bar Assn v. Winkfield*, 107 Ohio St. 3d 360, 2006-Ohio-6, 839 N.E. 2d 924; *Disciplinary Counsel v. Freeman*, 126 Ohio St. 3d 389, 2010-Ohio-3824, 934 N.E. 2d 328. As such, none of the cases cited by Respondent inform

this Court's analysis, as the Court did not respond to the same inquiry posed by this case when it indefinitely suspended the respondent attorneys in Respondent's cases.

### **CONCLUSION**

The Board thoughtfully evaluated all of the evidence adduced at the evidentiary hearing in this matter, and provided Respondent with proper due process under the law. It properly concluded, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 5.5(a), Prof. Cond. R. 8.1(a), Prof. Cond. R. 8.4(c), and Prof. Cond. R. 8.4(d) during Respondent's "multiple representations" of Mr. Richard Brazell. Board Recomm., ¶29. The Supreme Court of Ohio should accept The Board's Recommendation, and permanently disbar Respondent, Mark Pryatel, from the practice of law in Ohio.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that Relator's Answer Brief was served on the following via email only, pursuant S.Ct. Prac. R. 3.11 this 23<sup>rd</sup> day of July, 2015.

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