

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

In re:

Case No. 2014-091

Complaints against

**Sam Patrick Cannata
Attorney Reg. No. 0078621**

**Gerald Wayne Phillips
Attorney Reg. No. 0024804**

**Findings of Fact,
Conclusions of Law, and
Recommendation of the
Board of Professional Conduct
of the Supreme Court of Ohio**

Respondents

Disciplinary Counsel

Relator

OVERVIEW

{¶1} This consolidated case was heard on June 4, 2015 in Columbus before a panel consisting of Judge William A. Klatt, Lisa A. Eliason and Lawrence R. Elleman, chair. None of the panel members resides in the district from which the complaints arose or served as a member of the probable cause panel that reviewed the complaints pursuant to Gov. Bar R. V, Section 11(A).

{¶2} Donald M. Scheetz appeared on behalf of Relator. Respondent, Sam Patrick Cannata, was represented by Kimberly Vanover Riley. Respondent, Gerald Wayne Phillips, was represented by Christopher J. Weber.

{¶3} This case involves two lawyers, Gerald Phillips and Sam Cannata, who cooperated with each other as counsel in connection with two business cases regarding limited liability companies in which Respondent Cannata was a member, resulting in admitted conflict of interest violations by both lawyers. In addition, they acted as co-counsel in certain business matters under

circumstances that created the impression that they were practicing law as a partnership, when they were not.

{¶4} Relator initially filed separate complaints against Respondents. The factual allegations in the two complaints substantially overlapped, and in certain respects were identical. The Board chair *sua sponte* ordered that the two cases be consolidated for the purpose of a hearing. The parties were given the opportunity to object to the consolidation, but no party objected.

{¶5} On April 21, 2015, the parties filed a timely consent to discipline with respect to each Respondent. The panel rejected the agreement in order to obtain clarification of certain issues at a final hearing.

{¶6} Each of the two complaints contained three counts. At the hearing, Relator dismissed Count Two against both Respondents. Hearing Tr. 23.

{¶7} With respect to Counts One and Three, the parties presented comprehensive stipulations of fact, stipulated violations, dismissals of certain alleged violations, and a recommended sanction with respect to each Respondent. In addition, each Respondent testified in support of the stipulations, and was questioned at length by the panel.

{¶8} The parties agreed that pursuant to Count One of the complaints, Respondent Phillips and Respondent Cannata each violated Prof. Cond. R. 7.5(d) [falsely stating or implying that they practiced law as a partnership or firm].¹ In addition, Respondent Phillips agreed that he violated Prof. Cond. R. 1.7(a)(2) [material limitation conflict; accepting representation of a client when there is a substantial risk that the lawyer's ability to represent the client will be materially limited by the lawyer's responsibility to another client, former client, a third person or the lawyer's own personal interest] (emphasis added) pursuant to Counts One and Three of the complaint against him.

¹ A violation of Prof. Cond. R. 7.5(d) was not alleged in the complaint against Respondent Cannata. However, it was agreed on the record that the complaint against Respondent Cannata would be amended to conform to the evidence pursuant to Civil Rule 15(B) to add Prof. Cond. R. 7.5(d) as a claimed violation. Hearing Tr. 7.

Respondent Cannata agreed that he violated Prof. Cond. R. 1.7(a)(2) [material limitation conflict] pursuant to Count One of the complaint against him and Prof. Cond. R. 1.7(c)(1) [continuing representation where prohibited by law] pursuant to Count Three. The parties stipulated to the dismissal of all other claimed violations in the complaints.

{¶9} The panel finds that Relator has proven by clear and convincing evidence the admitted violations described above and agrees with the recommended dismissals of all other alleged violations in the complaints. The panel recommends that each Respondent be suspended from the practice of law for six months, all stayed on condition that he commit no further violations, as stipulated by the parties.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Background Facts

{¶10} Respondent Phillips was admitted to the practice of law in the state of Ohio on November 4, 1977. Respondent Cannata was admitted on January 20, 2005. Both are subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶11} Respondent Phillips is a 1977 graduate of the Cleveland Marshall College of Law and is a certified public accountant. He practiced fulltime in a public accounting firm while attending law classes at night. Upon graduation from law school, he worked in the industry for a short period of time before deciding to pursue a practice of both law and accounting. He briefly practiced with a partner, but since 1980 has been a sole practitioner. His legal practice includes business, finance, zoning, and tax. Respondent Phillips is 64 years old. He is married and has four children. He has represented various citizens groups in the Cleveland area, and is active in numerous community organizations, including churches, and youth athletics. He has no prior disciplinary record. *Id.* 23-30.

{¶12} Respondent Cannata is a 1987 graduate of the United States Air Force Academy and holds a masters degree in business administration from Rensselaer Polytechnic Institute. He was on active duty in the Air Force in 1987-1993. He returned to Cleveland in 1993 and went into business, first in the construction business, and then into housing and commercial real estate development. In 1999, he enrolled in the Cleveland Marshall College of Law and graduated in about 2002. Since that time, he has continued his business career. He devotes only 20-30 percent of his professional time to the practice of law as a sole practitioner handling real estate and business matters, and some domestic relations, and class action matters. Respondent Cannata is 52 years old. He is married and has three children. He has been active in coaching youth athletics, his church, and his children's school activities. He has no prior disciplinary record. *Id.* 75-85.

{¶13} Because of his business contacts, Respondent Cannata was able to attract legal business that required more legal experience and expertise than he possessed as a “pretty green attorney.” *Id.* 92. So he began to refer certain matters to Respondent Phillips to act as his co-counsel. Respondent Phillips agreed to co-counsel on several cases because, among other things, he would be able to act as a mentor to Respondent Cannata. In 2009, they entered into a written co-counsel agreement which covered the division of fees on co-counsel cases and provided that each would maintain their separate practices of law in their separate offices and that nothing about the co-counsel relationship shall “establish any kind of any other relationship, including without limitation a partnership, a professional association, or a law firm.” They shared fees in co-counsel cases in 2009, 2010, and 2011, totaling about \$140,000 in fees. *Id.* 40-51, 71, 92-94; Phillips Ex. 5; Cannata Ex. B.

{¶14} During the mid-1990s, Respondent Cannata and David Snider formed several real estate and property management companies together, which owned and operated several parcels of

real estate in Northeast Ohio. During 2008, the real estate market suffered a significant downturn which had a significant negative impact on the business entities owned by Respondent Cannata and/or his wife, and David Snider, and/or his wife. This led to bitter business disputes and ultimately to an impasse between the Cannatas and the Sniders in 2012. Phillips Stipulations 5-10; Cannata Stipulations 5-10.²

{¶15} Respondents' misconduct in this case is set forth in stipulations, which the panel accepts and incorporates into its findings and conclusions to the extent not inconsistent with the findings and conclusions set forth below.

Count One—Vista Way Partners Eviction Matter

{¶16} Count One of the complaints against Respondents contains two parts. The first part relates to the documentation prepared in furtherance of the co-counsel relationship which created the appearance that they were practicing in a partnership or firm when that was not their intention. The second part to Count One relates to Respondents' handling of the Vista Way Partners eviction matter which resulted in conflict of interest violations by both Respondents.

Co-counsel Relationship

{¶17} In May 2009, Respondent Phillips and Respondent Cannata executed the co-counsel agreement. Phillips Ex. 5; Cannata Ex. B. At the same time they filed Articles of Organization for a limited liability company called Cannata Phillips, LPA, LLC, which represented that they were a law firm. Phillips Ex. 7; Cannata Ex. C. However, the parties did not intend to operate as a law firm. Instead, according to the testimony of Respondent Phillips, the purpose of filing this document was to somehow provide public notice that he would not be bound by Respondent Cannata's other

² The record in this case includes Respondent Phillips stipulations and stipulated exhibits 1-19 and Respondent Cannata stipulations and stipulated exhibits A-J.

liabilities.³ Thereafter, Respondent Cannata created a website for Cannata Phillips, LPA which appeared to represent that Respondents were members of a law firm. Phillips Ex. 6; Cannata Ex. D. Respondent Cannata's purpose in creating the website was to attract co-counsel clients, the fees from which would be divided according to the co-counsel agreement. Hearing Tr. 93-94. The website is no longer in use and Cannata Phillips, LPA has been dissolved. Phillips Stipulation 11; Cannata Stipulation 11.

{¶18} The filing of the Articles of Organization for Cannata Phillips, LPA and the creation of the website using the Cannata Phillips, LPA firm name constituted a misleading representation that Respondents practiced together in a law firm, when they did not. However, the parties have stipulated that this caused no apparent confusion, damage or harm to any individual or entity. Hearing Tr. 94.

Vista Way Eviction Proceeding

{¶19} Vista Way Partners, LPA (Vista Way) was a limited liability company which by 2012 was indirectly owned on a 50-50 basis by the wives of Respondent Cannata and David Snider. Vista Way was the owner of the real property for the headquarters of various Cannata/Snider businesses. One of the lessees for this property was Snider Cannata Property Management, LLC (SCPM), which was the property manager for various Cannata/Snider enterprises. SCPM was owned by Respondent Cannata and Mr. Snider, each having a 50 percent interest. Phillips Stipulation 7; Cannata Stipulation 7; Hearing Tr. 86-87.

{¶20} By 2012, the Sniders and the Cannatas were involved in a bitter dispute over the control and management of the Cannata/Snider enterprises. As part of the dispute, the Sniders had

³ Respondent Phillips testified as follows: "I was very concerned about the appearance that would create liability for my respective practice, either on an expressed, implied or apparent authority. So I wanted to limit the co-counsel to something we could disclose to the public or to whoever, our joint clients, that this entity only and, you know, my other clients, and my clients, Mr. Cannata does not know who they are, doesn't know what I bill. Never - he doesn't have access to those files. Nothing. So I thought it was prudent, you know." Hearing Tr. 42-43.

unilaterally locked Respondent Cannata out of the premises, had removed the company server and the records from the premises, and allegedly withdrew approximately \$160,000 from various company bank accounts, all without the consent of Respondent Cannata. SCPM had not paid rent to Vista Way for 43 months. Hearing Tr. 52-54; 86-87; 90-92; 102-107; 114.

{¶21} Respondent Cannata felt it was necessary, as co-manager of Vista Way, to evict SCPM from the premises in order to make the rental space available to generate cash. He asked Respondent Phillips to file an eviction case against SCPM. The eviction would have the effect of evicting both Respondent Cannata and Mr. Snider from the premises. Phillips Stipulations 18-19; Cannata Stipulations 18-19.

{¶22} SCPM was never a client of Respondent Phillips, but Respondent Phillips had in the past rendered legal services for Bridgeview Center South, LLC (BCS), 50 percent of which was owned by the Sniders, as well as other entities owned in whole or in part by the Sniders. Respondent Phillips' primary contact with the Cannata/Snider entities had always been Respondent Cannata. Respondent Phillips believed that Respondent Cannata, as co-manager of Vista Way had authority to pursue such relief on behalf of Vista Way. Phillips Stipulations 14, 15, 33; Cannata Stipulation 9.

{¶23} On July 13, 2012 at 8:38 a.m., Respondent Phillips filed a complaint on behalf of Vista Way against SCPM in the Cuyahoga County Court of Common Pleas, alleging breach of the lease agreement between the parties. Simultaneously, with the filing of the complaint, Respondent Cannata filed a waiver of service on behalf of SCPM acknowledging that SCPM had already received a copy of the complaint. Phillips Ex. 9, 10; Cannata Ex. F, G.

{¶24} On July 13, 2012 at 8:42 a.m., four minutes after the complaint was filed, Respondent Cannata filed an answer, admitting certain allegations in the complaint and denying other

allegations. The answer admitted breach of the lease and that SCPM owed rent to Vista Way. Phillips Ex. 11; Cannata Ex. H.

{¶25} Respondents Phillips and Cannata jointly submitted to the judge a stipulated judgment entry evicting SCPM employees and managers from the leased premises. The proposed judgment entry dealt with only the issue of possession of the property and reserved for later disposition the issues of compensatory damages, costs, and reasonable attorneys' fees. Phillips Ex. 12; Cannata Ex. I.

{¶26} Respondent Cannata filed the SCPM answer and the proposed stipulated judgment entry without the consent of Mr. or Mrs. Snider. The operating agreement of SCPM provided that the members had "equal rights in the management of the business." Phillips Ex. 4; Cannata Ex. A. Respondent Cannata conceded at the hearing that consent was required. Hearing Tr. 105-106.

{¶27} The stipulated judgment entry was never signed by the judge. The Vista Way eviction proceeding was dismissed on July 18, 2012, five days after it was filed, based on a resolution by Mr. Snider and Respondent Cannata concerning the leased premises. Phillips Stipulations 23, 24; Phillips Ex. 13; Cannata Stipulations 23, 24; Cannata Ex. I.

Phillips' Violations in Count One

{¶28} Relator proved by clear and convincing evidence pursuant to Count One of the complaint that Respondent Phillips violated Prof. Cond. R. 7.5(d) and Prof. Cond. R. 1.7(a)(2). Respondent Phillips had represented Cannata/Snider entities in the past, but his primary contact had always been Respondent Cannata. Hearing Tr. 97. Respondent Phillips had in the recent past had a formal co-counsel relationship with Respondent Cannata, indeed he considered himself Respondent Cannata's mentor. Respondent Phillips' personal relationship with Respondent Cannata materially

limited his objectivity toward the Snider family which owned 50 percent of both the plaintiff and the defendant.⁴

{¶29} Relator stipulated to the dismissal of the allegation in Count One that Respondent Phillips violated Prof. Cond. R. 1.10(a) [prohibiting a lawyer from knowingly representing a client when the lawyer knows or reasonably should know that another lawyer in the firm would be prohibited from doing so under Rule 1.7 or 1.9]. The panel agrees that Prof. Cond. R. 1.10(a) does not apply to this case because it was not proven that the two Respondents were members of the same “firm.” Comment [3] to Prof. Cond. R. 1.10(a) states that the rule does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. There is no evidence that Respondents Phillips and Cannata shared any client confidences with each other, except in co-counsel matters, or that they had any particular client loyalty in each other’s clients. The evidence does not demonstrate an intention to create a partnership or firm within the meaning of Prof. Cond. R. 1.10(a). [“Whether two or more lawyers constitute a firm...can depend on the specific facts”]. Prof. Cond. R. 1.10, Comment [1]. The panel therefore recommends dismissal of the allegation that Respondent Phillips violated Prof. Cond. R. 1.10(a) as stipulated by the parties.

{¶30} The parties stipulated to the dismissal of Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice]. The panel agrees that a violation of this rule was not proven. The stipulated judgment was never signed by the judge. The litigation was dismissed after only five days. The panel therefore recommends dismissal of the allegation that Respondent Phillips violated Prof. Cond. R. 8.4(d) as stipulated by the parties.

⁴ Respondent Phillips testified emotionally at the hearing about his feelings for Respondent Cannata and that “I feel bad that I dragged him into” the formation of Cannata Phillips, LPA, LLC. Hearing Tr. 73-74.

Cannata's Violations in Count One

{¶31} Relator proved by clear and convincing evidence pursuant to Count One of the complaint that Respondent Cannata violated Prof. Cond. R. 7.5(d) and Prof. Cond. R. 1.7(a)(2). Respondent Cannata's actions in unilaterally filing an answer and a stipulated judgment entry against his client clearly conflicted with his fiduciary duty to the Sniders.

{¶32} Relator agreed to dismiss the allegation in Count One that Respondent Cannata violated Prof. Cond. R. 8.4(h) [conduct that adversely reflects on a lawyer's fitness to practice law]. According to the recent holding in *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, a violation of Prof. Cond. R. 8.4(h) occurs if there is proof that the conduct giving rise to a specific rule violation is so egregious as to warrant an additional finding that it adversely reflects on the lawyer's fitness to practice law. In this case, Respondent Cannata had a clear conflict of interest in his representation of SCPM which warrants a finding of a violation of Prof. Cond. R. 1.7(a)(2). Pursuant to that representation, Respondent Cannata also attempted to consent to a judgment evicting his own client without the consent of Snider, but the judgment entry was never signed. Instead, the parties settled four days after the complaint was filed. Respondent's motive was to protect the interests of Vista Way by making the property available to other tenants for cash, given that Snider had unilaterally locked Respondent Cannata out of the premises, seized the company records, and allegedly took \$160,000 from the Cannata/Snider entities. In view of these extenuating circumstances, the panel accepts the parties' stipulation of dismissal of Prof. Cond. R. 8.4(h) and recommends its dismissal.

{¶33} The parties also stipulated to the dismissal of Prof. Cond. R. 1.10(a) and Prof. Cond. R. 8.4(d). The panel recommends dismissal of these claimed violations for the reasons described in ¶¶29 and 30 above with respect to Respondent Phillips.

Count Two—BCS Mortgage Assignment

{¶34} Relator dismissed Count Two of the complaints against both Respondents.

Count Three—96th Street Foreclosure and BCS Dissolution

96th Street Foreclosure

{¶35} In March 2009, Respondent Cannata and Mr. Snider retained Respondent Phillips to represent 96th Street Development, LLC (96th Street), a company in which they both had ownership interests, in connection with an anticipated foreclosure filing by Bank America against 96th Street. As part of that representation, Respondent Phillips was to prepare certain mortgages for money owed on intercompany accounts by 96th Street to other related entities, one of which was Snider Interests, LLC owned by the Sniders. Pursuant to that representation, Respondent Phillips prepared and recorded the mortgages, defended 96th Street in the foreclosure action, and filed cross-claims based on the mortgages that he had drafted. Phillips Stipulations 23-30; Phillips Ex. 14; Hearing Tr. 35-37, 61-63.

{¶36} In 2010, the mortgage obligations by 96th Street based on the intercompany accounts were either written off or fully satisfied and paid. However, Respondent Phillips remained as counsel of record for 96th Street and the cross-claimants (including Snider Interest, LLC), until late 2012. Phillips Stipulations 36-42.

The BCS Corporate Dissolution

{¶37} On June 27, 2012, Respondent Phillips filed a complaint on behalf of Cannata Infinity, LLC to statutorily dissolve Bridgeview Center South, LLC (BCS), (an Ohio limited liability company owned by Snider Interests, LLC and Cannata-Infinity, LLC) on the basis of a management deadlock. Pursuant to applicable statute, Respondent Phillips named Snider Interests, LLC as a defendant. Phillips Stipulations 43-45; Cannata Stipulations 27-29; Hearing Tr. 38-39.

{¶38} As of June 27, 2012, Respondent Phillips was still counsel of record in the 96th Street foreclosure case (owned in part by David Snider) and the cross claimants including BCS and Snider Interests, LLC. Respondent Phillips has stipulated “that put me in a conflict.” Phillips Stipulation 46; Hearing Tr. 38-39.

{¶39} On July 9, 2012, the Sniders filed a statutory dissolution proceeding of their own to dissolve various Cannata/Snider entities including BCS, Vista Way, and SCPM based on the existence of a management deadlock. On July 16, 2012, the two cases were consolidated. All parties acknowledged that there was a management deadlock, thus mandating a statutory dissolution. On August 6, 2012, the court ordered the appointment of a receiver for BCS for the windup of the affairs of the company. Phillips Stipulations 47-50; Cannata Stipulations 30-33.

{¶40} While freely admitting that his representation in the 96th Street and BCS dissolution cases created a conflict of interest, Respondent Phillips explained at the hearing that his thinking at the time was that his representation of Snider Interests, LLC in the 96th Street litigation was a limited engagement that did not include receiving any confidential information. Moreover, he considered his representation in the BCS dissolution case to be nonadversarial because all parties were in agreement that there was a management deadlock, thus mandating a statutory dissolution.⁵ Hearing Tr. 65-68.

{¶41} On October 3, 2012, the court in the statutory dissolution cases granted Snider Interests, LLC’s motion to disqualify Respondents Phillips and Cannata as counsel, holding, “The Court finds the motion to disqualify counsel to be well taken and it is hereby granted. Gerald Phillips and Sam Cannata are disqualified as counsel and shall not represent any party in the above-

⁵ Respondent Phillips testified that he did not represent either Respondent Cannata or Mr. Snider with respect to the accounting issues regarding the windup and that they were each represented by separate lawyers. Hearing Tr. 52-53.

captioned consolidated matters. (Sam Cannata is a party to the case and is permitted to represent himself pro se.)” Cannata Stipulation 34.

{¶42} After the court’s October 3, 2012 order, Respondent Cannata continued filing pleadings on his own behalf or on behalf of Cannata-Infinity, LLC. Respondent believed these filings were germane to his role as a party, or were occurring on a *pro se* basis on behalf of his individual membership in Cannata-Infinity, LLC (relying on *Union Sav. Ass’n v. Home Owners Aid, Inc.*, (1970) 23 Ohio St.2d 60) (“a corporation cannot maintain litigation in *propria persona*, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law”). Respondent Cannata did not regard this conduct as inconsistent or otherwise in violation of the court’s order until receiving a show cause motion, at which time Respondent Cannata ceased filing documents on behalf of Cannata-Infinity. Cannata Stipulation 35; Hearing Tr. 95-97, 112-113.

Phillips’ Violations in Count Three

{¶43} Relator proved by clear and convincing evidence pursuant to Count Three that Respondent Phillips violated Prof. Cond. R. 1.7(a)(2).

{¶44} Relator stipulates to the dismissal of the allegation in Count Three that Respondent Phillips violated Prof. Cond. R. 1.7(a)(1). The panel accepts this stipulation because, while Respondent Phillips was still counsel of record for Snider Interests, LLC, the mortgage for Snider Interests, LLC for an intercompany debt of 96th Street had been written off and charged as a capital contribution prior to Respondent Phillips filing the BCS corporate dissolution case on June 27, 2012. The panel recommends dismissal of this claimed violation as stipulated by the parties.

Cannata's Violations in Count Three

{¶45} Relator proved by clear and convincing evidence pursuant to Count Three that Respondent Cannata violated Prof. Cond. R. 1.7(c)(1) by continuing to represent Cannata-Infinity, LLC after the court had disqualified him from representing any party except for representation of himself *pro se*, as stipulated. There is no requirement that Relator prove that this violation was committed knowingly.

{¶46} Relator stipulates to the dismissal of the allegation in Count Three that Respondent Cannata violated Prof. Cond. R. 3.4(c) [knowingly disobeying an obligation under the rules of a tribunal]. Respondent did not act knowingly. Therefore the panel recommends dismissal of this claimed violation as stipulated by the parties.

AGGRAVATION, MITIGATION, AND SANCTION

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

{¶48} The misconduct of neither Respondent was committed knowingly, and no person or entity was damaged as a result of their violations. The conflict of interest violations were limited to two cases. The formation of Cannata Phillips, LPA was not intended to mislead. The violation of Prof. Cond. R. 7.5(d) caused no apparent confusion, damage, or harm to any individual or entity.

{¶49} The panel finds as an aggravating factor that each Respondent committed multiple violations.

{¶50} With respect to Respondent Phillips, the parties stipulated as mitigating factors, the absence of a prior disciplinary record, the full and free disclosure to the disciplinary Board and a cooperative attitude, and his good character and reputation. Respondent Phillips submitted 21 character letters from clients, friends, and colleagues attesting to his character and reputation for honesty, trustworthiness, and professional skills. Phillips Ex. 19. The panel finds as further mitigating factors the absence of a dishonest motive, and that Respondent Phillips acknowledges the wrongful nature of his misconduct. Hearing Tr. 16-18, 32-34, 38-39, 57-58, 73-74.

{¶51} With respect to Respondent Cannata, the parties stipulated to the same mitigating factors; *i.e.*, no prior disciplinary record, full and free disclosure and a cooperative attitude, and his good character and reputation. Respondent Cannata submitted a letter from a colleague that discussed his character. Cannata Ex. J. The panel accepts the parties' stipulated mitigating factors for Respondent Cannata. The panel finds as further mitigating factors the absence of a dishonest motive, and that Respondent Cannata acknowledges the wrongful nature of his misconduct. Hearing Tr. 21-22, 90, 93-94, 97.

{¶52} The Court has repeatedly held that the primary purpose of the sanctions imposed in attorney discipline matters is not to punish the offender, but to protect the public, see *e.g.*, *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. Despite that this was a fully stipulated case, the panel extensively questioned each of Respondents in order to better understand their misconduct and motives. The panel is convinced by the testimony that neither Respondent poses a risk of committing further misconduct.

{¶53} In order to assess the sanctions imposed by the Supreme Court in similar cases, the panel has reviewed case law regarding conflicts of interest under Prof. Cond. R. 1.7 and its predecessors in the former Code of Professional Responsibility, as well as cases involving client

representation without the consent of the client. The panel has also reviewed cases involving violations of Prof. Cond. R. 7.5(d) and its predecessor under the former Code.

{¶54} There are numerous conflict cases in which the Court has issued a public reprimand. See e.g., *Ohio State Bar Assn. v. Wick*, 116 Ohio St.3d 193, 2007-Ohio-6042; *Mahoning Cty. Bar Assn. v. Reid*, 102 Ohio St.3d 402, 2004-Ohio-3121; *Toledo Bar Assn. v. Tolliver* (1992), 62 Ohio St.3d 462; and *Stark Cty. Bar Assn. v. Phillips* (1989), 45 Ohio St.3d 286.

{¶55} Where conflict of interest has been combined with other violations, the Court has entered fully stayed suspensions. See e.g., *Disciplinary Counsel v. Cowden*, 131 Ohio St.3d 272, 2012-Ohio-877. The *Cowden* case involved two lawyers, one of whom received a one-year stayed suspension for violation of DR 1-102(A)(6) [conduct adversely reflecting on a lawyer's fitness to practice]; DR 5-101(A)(1) [accepting employment if a lawyer's professional judgment may be affected by the lawyer's personal interest]; DR 5-104 [prohibiting a business transaction with client if they have differing interest unless the client consents after full disclosure]; and DR 5-105(A) [failure to disclose potential conflicts of interest]. The second lawyer received a six-month stayed suspension for violation of DR 1-102(A)(6), DR 5-105(A), and DR 4-101(B)(2) [using a client confidence to the disadvantage of the client].

{¶56} Other cases that have imposed a fully stayed suspension for conflict of interest violations include *Disciplinary Counsel v. Dettinger*, 121 Ohio St.3d 400, 2009-Ohio-1429 (six-month stayed suspension for violation of DR 5-101(A)(1) and DR 5-104(A) [business transaction with a client if they have differing interests unless the client consents after full disclosure]); and *Disciplinary Counsel v. McNamee*, 119 Ohio St.3d 269, 2008-Ohio-3883 (one-year stayed suspension for violation of DR 2-103(A) [recommendation of himself as counsel], DR 5-101(A)(1),

DR 5-104(A), and DR 5-101(B) [accepting employment when lawyer knows or it is obvious that the lawyer ought to be called as a witness]).

{¶57} Where the misconduct has included representation of a client without the client's consent, the Court has imposed a public reprimand. *Disciplinary Counsel v. Ita*, 117 Ohio St.3d 477, 2008-Ohio-1508 (including a loss of consortium claim of the client's wife without obtaining the wife's consent); *Cincinnati Bar Assn. v. Mangan*, 123 Ohio St.3d 250, 2009-Ohio-5287 (representation of a client, the client's son, and the client's daughter-in-law without consent of the son and daughter-in-law based on the father's assurance of their agreement). In *Disciplinary Counsel v. Mamich*, 125 Ohio St.3d 369, 2010-Ohio-1044, the Court imposed a six months stayed suspension for representing a client's daughter without her consent based on the father's assurances. The Court discussed *Mangan* and *Ita* but departed from a public reprimand based on the damage suffered by the daughter. *Id.* ¶ 20. In the instant case, no one suffered damages. The stipulated judgment was never signed by the judge and the litigation was dismissed after only five days.

{¶58} The panel has located no case in which a lawyer was sanctioned for violating Prof. Cond. R. 7.5(d) or DR 2-102(C) unaccompanied by other serious violations in the same case. In *Disciplinary Counsel v. Henderson*, 95 Ohio St.3d 129, 2002-Ohio-1756, the attorney was found to have violated DR 2-102(C) along with numerous other code sections generally relating to the amount of fees and expense reimbursements received in a bankruptcy case. The Court's opinion contains almost no mention of DR 2-102(C). The Court imposed a six-month stayed suspension. Other cases have imposed stayed suspensions even though accompanied by other violations. See *Disciplinary Counsel v. Conese*, 102 Ohio St.3d 439, 2004-Ohio-3888 and *Cleveland Metro. Bar Assn. v. Schiff*, 139 Ohio St.3d 456, 2014-Ohio-2573.

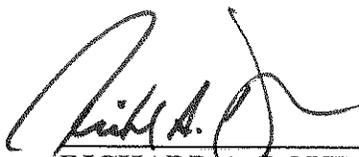
{¶59} Relator and each Respondent have stipulated to recommended sanctions of six-month suspensions from the practice of law, fully stayed on the condition that Respondents engage in no further misconduct. The panel agrees. While the case law indicates a public reprimand may have been the appropriate sanction for any of the individual violations, the cumulative effect of multiple violations suggests that a stayed suspension is more appropriate. However, the panel is especially impressed that the mitigating factors predominate over the aggravating factors and that neither Respondent is likely to commit further misconduct. The panel therefore recommends a six-month stayed suspension for each Respondent.

{¶60} After consideration of the ethical duties violated, the lack of injuries caused by the misconduct, the aggravating and mitigating factors, the necessity to protect the public, and the sanctions imposed by the Supreme Court in similar cases, the panel recommends that Respondents Phillips and Cannata each be suspended from the practice of law for six months, fully stayed on condition that he engage in no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on August 7, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondents, Gerald Wayne Phillips and Sam Patrick Cannata, each be suspended from the practice of law for six months, with the suspensions stayed in their entirety on the condition that each Respondent commits no further misconduct, and ordered to pay the costs of these proceedings.

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

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

RICHARD A. DOVE, Director