

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

**In re:**

**Petition for Revocation of Probation**

**BPC Case No. 2002-030**

**Lawrence Edward Winkfield**

**SCO Case No. 2005-1115**

**Respondent**

**REPORT AND  
RECOMMENDATION OF THE  
HEARING PANEL**

**Columbus Bar Association**

**Relator**

**ON RELATOR'S PETITION FOR  
REVOCATION OF PROBATION**

{¶1} In this matter, Relator has filed its petition based on Respondent's alleged failure to comply with the terms of the probation ordered by the Court in its order of reinstatement of June 12, 2014. In its petition, Relator asks for revocation of Respondent's probation, reinstatement of the sanction of indefinite suspension, and a citation for contempt of the Supreme Court.

{¶2} The hearing in this matter took place in Columbus on November 23, 2015 before a panel consisting of Roger S. Gates, Alvin R. Bell, and David E. Tschantz, chair, all of whom are duly qualified members of the Board of Professional Conduct. None of the panel members resides in the same appellate district as Respondent. Geoffrey Oglesby appeared on behalf of Respondent. Relator appeared by and through its counsel, Judith M. McInturff, Lori J. Brown, and A. Alysha Clous.

## OVERVIEW

{¶3} The Supreme Court's June 12, 2014 order of reinstatement in this case contained the requirements that Respondent:

- Serve a period of monitored probation for three years, with a monitor assigned by relator, and that such monitor's principal office be located within the Columbus, Ohio, metropolitan area.
- Fulfill all recommendations of mental health practitioners, including ongoing and routine psychotherapy, counseling and treatment as recommended by Dr. Jerry M. Zober or other licensed psychiatrist.
- Refrain from any further illegal conduct.

{¶4} In light of its findings of fact based on evidence adduced at the hearing, the panel finds, by clear and convincing evidence, that Respondent failed to comply with two of the three requirements set forth in the order of the Court. Upon consideration of the evidence adduced at the hearing and the recommendations of the parties, the panel respectfully recommends that the Court grant Relator's petition in part and cite Respondent for contempt, but allow him to purge himself of said contempt. The panel further respectfully recommends that the Court modify its order of reinstatement as set forth below.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was first disciplined for professional misconduct in 1996. In that case, the Court suspended him from practicing law for one year but conditionally stayed the suspension. *Columbus Bar Assn. v. Winkfield*, 75 Ohio St.3d 527, 1996-Ohio-458.

{¶6} In 2001, Respondent was again disciplined and the Court ordered Respondent's license suspended for two years, but stayed the final year on condition of restitution. *Columbus Bar Assn. v. Winkfield*, 91 Ohio St.3d 364, 2001-Ohio-70.

{¶7} The instant case was originally filed due to the Respondent's continued practice of law in violation of the Court's April 11, 2001 order of suspension in the case set forth in the

preceding paragraph. A hearing was held before a panel of the Board, and on January 11, 2006, the Court adopted the findings of the Board and its recommendation and ordered that Respondent serve an indefinite suspension with additional conditions for reinstatement. *Columbus Bar Assn. v. Winkfield*, 107 Ohio St.3d 360, 2006-Ohio-6.

{¶8} On July 7, 2008, Respondent filed a petition for reinstatement to the practice of law. While the petition was pending before the Board, but prior to the panel hearing on the petition, Respondent was arrested for driving under the influence of alcohol. Board Report, June 18, 2009, p. 3.

{¶9} At the reinstatement hearing, the panel heard testimony from several character witnesses, Respondent's wife, Respondent, and Richard J. Fetter, a licensed counselor, psychotherapist and social worker who has counseled Respondent since at least 1999. Board Report, June 18, 2009, pp. 4-6.

{¶10} After the hearing, Dr. Jerry M. Zober, a psychiatrist who practiced in Columbus evaluated Respondent at the request of the Board and filed a report describing his evaluation, diagnosis, and recommendations. Dr. Zober diagnosed Respondent with depressive disorder, mixed personality disorder, and coronary artery disease. Because of the driving under the influence charge, and because Dr. Zober stated that Respondent's "recovery even in the best of circumstances may be tenuous," the panel was not convinced that Respondent was able to safely resume his practice and recommended denial of the petition. The Board concurred in this recommendation. Board Report, June 18, 2009, pp. 6-7. The Court agreed and denied the petition in its order of September 29, 2009.

{¶11} On October 4, 2013, Respondent filed a second petition for reinstatement to the practice of law and the matter was likewise heard by a panel of the Board. In that hearing, Dr.

Zober testified that, as a result of a more recent evaluation of Respondent, his opinion was that Respondent was fit and suitable to practice law. However, Dr. Zober was very clear in his testimony that Respondent needed additional and ongoing psychotherapy and that he had no concerns so long as Respondent continued in treatment. In addition, he specifically recommended “a more set routine with a follow-up date set at the end of each session for the next one.” Mr. Fetter also testified favorably in regard to Respondent’s improvement. Board Report, April 7, 2014, ¶¶21-31; Rel. Ex. 8, 86-87.

{¶12} As a result of that hearing, the Board recommended that Respondent be reinstated to the practice of law in the State of Ohio and, on June 12, 2014, the Court issued an order of reinstatement (“order”). The Court set forth in the order three conditions to reinstatement. Those conditions were that Respondent:

- Serve a period of monitored probation for three years, with a monitor assigned by relator, and that such monitor’s principal office be located within the Columbus, Ohio, metropolitan area.
- Fulfill all recommendations of mental health practitioners, including ongoing and routine psychotherapy, counseling and treatment as recommended by Dr. Jerry M. Zober or other licensed psychiatrist.
- Refrain from any further illegal conduct.

{¶13} Upon receipt of the order, Relator in July of 2014 appointed Jack Gibbs, Jr., of Columbus, as Respondent’s monitoring attorney. Hearing Tr. 38, 79.

{¶14} Gibbs testified that he understood that his job as Respondent’s monitor “was to meet with the respondent on occasion and ask him questions about how things were going, \* \* \* and just give him suggestions about how to make sure that he stayed on the right track and \* \* \* to periodically file a report with the Columbus Bar Association.” Gibbs further testified that, while he never reviewed the order, he understood that Respondent was not to engage in any criminal activity. He was also aware that Respondent was undergoing mental health counseling,

but he assumed that Respondent was doing what he needed to do in compliance with the order. He later testified that, if the order was included in the packet of information provided by Relator to him as the monitor, he must have read it. Hearing Tr. 38-39, 49.

{¶15} Gibbs further testified that he met with Respondent on several occasions, that Respondent provided him with written letters detailing his activities in compliance with the order, and that he made the requisite reports to Relator. Hearing Tr. 39-40; Resp. Ex. A (2-8, 10-20); Resp. Ex. C.

{¶16} Gibbs further testified that he did not involve himself, as the appointed monitor of Respondent, in anything to do with Respondent's compliance with the mental health condition of the order. He testified that he believed that that part of the order was Respondent's sole responsibility and he took Respondent's word for whether or not Respondent was in compliance therewith. However, he also admitted under cross-examination that his duties as a monitor were to "make sure [Respondent] was in compliance with [Conditions] 1, 2 and 3 \* \* \* [of the order]" Hearing Tr. 39, 43-44, 50, 53, 56, 73.

{¶17} On September 9, 2014, Respondent had his only conference with Dr. Zober between the time he was reinstated and the doctor's retirement on December 31, 2014. Hearing Tr. 22; Resp. Ex. B-2.

{¶18} Respondent testified that he did not see Dr. Zober beyond the visit of September 9 because the doctor had advised him during that visit that there was no need for Respondent to be seen on a regular and routine basis and, at most, Respondent needed to be seen by him once a year. Hearing Tr. 23, 98.

{¶19} As additional support for this assertion, Respondent presented a letter that he testified he sent to Dr. Zober in confirmation of the doctor's guidance. Resp. Ex. B-1.

{¶20} No other evidence corroborating Respondent's claims of the doctor's change of guidance was provided to the panel hearing this matter. Respondent also admitted that, upon receiving the recommendation from Dr. Zober referenced supra in ¶19, he made no effort to seek modification of the order. In addition, Respondent has not hired a new psychiatrist. Hearing Tr. 26, 36-37, 101.

{¶21} Respondent, in response to questions from the panel, agreed that it was his responsibility, not that of his monitor, to follow the doctor's recommendations and be in compliance with the order. Hearing Tr. 100.

{¶22} Respondent has received no psychotherapy from Mr. Fetter since his reinstatement, but has received counseling from Mr. Fetter on six occasions since his reinstatement: November 5, 2014, February 11, 2015, July 29, 2015, and three unspecified dates since the July 29 appointment. Hearing Tr. 26-28, 36; Rel. Ex. 4, 48.

{¶23} On October 10, 2014, Respondent was issued a traffic citation for the following offenses: Hearing Tr. 23; Rel. Ex. 9.

- Operating a Motor Vehicle While under the Influence
- Headlight Violation
- Changing Course without Safety
- Failure to Signal

{¶24} Respondent immediately notified his attorney and his monitor and self-reported the charges to Relator. Hearing Tr. 25, 57.

{¶25} On February 17, 2015, Respondent was cited for jaywalking near the Franklin County Courthouse complex. When asked about this charge at the hearing in this matter, Respondent testified that he went into the street against the light for the purpose of conducting a young girl and her mother to the safety of the curb. He does not recall contesting the citation, but

immediately paid the fine associated therewith. He did not report this violation to Relator or his monitor until July 17, 2015. Hearing Tr. 32, 43.

{¶26} On May 28, 2015, Respondent pled guilty to reckless operation, received a one-year suspension of his driver's license with restricted driving privileges and paid a fine; his final payment being made on August 3, 2015. The license suspension is currently in effect. Hearing Tr. 35; Rel. Ex. 9. Relator filed its revocation petition on September 30, 2015.

{¶27} This panel, in order to prepare its recommendation to the Court, focused its attention on the three conditions under which Respondent was granted reinstatement.

{¶28} The panel finds that Respondent is in compliance with Condition One. He is in the process of serving his three-year period of probation, has been assigned a monitor whose office is in Columbus, and regularly meets with and reports to his monitor.

{¶29} The panel finds, by clear and convincing evidence, that Respondent is not in compliance with Condition Two. It is obvious to the panel that this condition was given great weight by the Court in the order and is perhaps the most important of the three conditions in regard to Respondent's ability to safely resume and retain his ability to practice law.

{¶30} Given the importance of this condition, the panel is very troubled by Respondent's unsupported assertions that Dr. Zober advised that regular psychiatric treatment of Respondent was no longer necessary. This advice appears to be a complete reversal of the doctor's earlier counsel to the Board that Respondent must undergo additional and ongoing treatment in order to safely and successfully resume the practice of law. Since Respondent's testimony regarding Dr. Zober's change of guidance was unsupported by any credible corroborating evidence, and in light of the doctor's earlier opinion, the panel affords it almost no weight. Since Respondent cannot demonstrate that he was in compliance with Dr. Zober's

recommendations, or with those of a replacement psychiatrist, the panel must find that he is not in compliance with Condition Two.

{¶31} The panel also notes that the Court was very specific in Condition Two that Respondent “Fulfill all recommendations \* \* \* [of] Dr. Jerry M. Zober *or other licensed psychiatrist.*” (emphasis added) Clearly, the Court expects Respondent’s treatment to be performed, or at the very least overseen, by a licensed psychiatrist. Thus, Respondent’s ongoing failure, as of the date of the hearing in this matter, to find a new psychiatrist to oversee his treatment, in view of Dr. Zober’s announcement of his retirement almost 13 months earlier, is also a failure to comply, in the opinion of the panel, with Condition Two.

{¶32} The panel notes that Respondent has met with Mr. Fetter, but has not received psychotherapy from him. Thus, these visits do not even come close to bringing Respondent back into compliance with Condition Two.

{¶33} Even if the panel assumes that Dr. Zober did in fact reverse his earlier opinion regarding Respondent’s need for ongoing treatment, Respondent took no action to advise Relator of this change of opinion or seek a modification of Condition Two. Therefore, he was still obligated to comply therewith and failed to do so.

{¶34} The panel also finds, by clear and convincing evidence, that Respondent is not in compliance with Condition Three. In its examination of Condition Three, the panel is of the opinion, in light of the guidance provided by Comment [2] to Prof. Cond. R. 8.4(b) that an element of relevancy must be present in order to determine whether or not Respondent is in compliance with this condition. Certainly, the conviction for jaywalking, while admittedly a crime, is not really relevant to Respondent’s ability to safely and competently practice law.

Were they present, convictions for littering, speeding, loitering, or a loud muffler would have the same effect.

{¶35} However, the conviction for reckless operation of a motor vehicle is relevant because of its seriousness, and is made even more relevant because of the original charge of Operating a Motor Vehicle While under the Influence in light of the negative effects of alcohol on Respondent's prior history. Since this conviction is relevant, and in light of the terms of Condition Three, the panel must find that Respondent was not in compliance therewith.

{¶36} In conclusion, the panel agrees with Relator and finds that Respondent was not in compliance with Conditions Two and Three of the reinstatement order issued by the Court.

### RECOMMENDATION

{¶37} Counsel for Relator, in her closing argument, highlighted the problem faced by the panel and the Court herein: Hearing Tr. 109.

\* \* \* what we have here, your Honor, is a chicken and egg problem. Did Mr. Winkfield's illegal conduct occur because he was not in counseling and psychotherapy per the Court's Order? Or, was he not in counseling and psychotherapy because he did not understand the Court's order because he was not intent on complying with it or did not believe he needed to comply?

{¶38} In its closing, Relator renewed the prayers in its petition, and recommended that the panel recommend to the Court that Respondent's probation be revoked, that his indefinite suspension be reinstated, and that he be cited for contempt of the Court.

{¶39} In its closing, Respondent asked that the panel recommend to the Court that his probation simply be continued, but was amenable to a suggestion from the panel that the Ohio Lawyers Assistance Program be involved in the future.

{¶40} While everyone agrees that the responsibility for compliance with the order rests squarely on Respondent, the panel notes that in Condition One, Relator was tasked with the

obligation of assigning an effective monitor. While the panel is convinced that Attorney Gibbs is a good lawyer, and has an unquestioned and sincere desire to be of whatever assistance he can be to Respondent, it believes that he was out of his depth and unable to be of much real assistance to Respondent in overseeing compliance with the most critical element of the order: Condition Two. This belief is supported by Gibbs' admission that he had not reviewed the Court's reinstatement order and was thus not familiar with the requirements that had been imposed upon Respondent by the Court. The fact that Gibbs assumed no role at all in regard to Condition Two, even though required to do so by Gov. Bar R. V, Section 21(B), left it entirely up to Respondent to self-monitor his compliance with that condition. While the panel understands that this responsibility does rest with Respondent, it also is of the opinion that if a knowledgeable and engaged monitor had pointed out that Respondent really needed to have Dr. Zober's new guidance (assuming it was given as testified by Respondent) in writing, or hire a new psychiatrist or seek a modification of the order, he would have complied.

{¶41} The panel is also somewhat sympathetic to Respondent's argument that as long as the monitor was advising him and Relator that he was in compliance, Respondent was reasonable in his belief that he was doing all that he needed to do.

{¶42} In the opinion of the panel, Respondent should be given another chance, but Condition Two, given its importance in this matter, should be modified to provide Respondent with more appropriate and focused monitoring, and Relator with direct reports.

{¶43} Based on the foregoing, the panel respectfully recommends that the Court deny Relator's petition in part and reaffirm the order, but modify its conditions as follows:

- Respondent shall undergo an evaluation by the Ohio Lawyers Assistance Program within 60 days from the date of the Court's order.
- The Ohio Lawyers Assistance Program shall assume the duty of monitoring Respondent and reporting Respondent's compliance with the Court's order to Relator.

- Respondent's probation shall continue for the previously-ordered period, plus an additional two years from the date of the Court's order, and he shall promptly and fully comply with all recommendations made by the above program in regard to treatment for both his mental health and the use of alcohol.
- Respondent shall refrain from any further illegal conduct.

{¶44} The panel further respectfully recommends that the Court grant Relator's petition in part and cite Respondent for contempt due to his violations of Conditions Two and Three, but allow him to petition the Court to be purged of said contempt upon providing proof that he has brought himself into current compliance with Condition Two, as modified.

{¶45} As a final matter, the panel further respectfully recommends that the Court clarify in its order that any failure to comply or remain in compliance by Respondent may result, upon the petition of Relator, in the reinstatement of the original indefinite suspension. Gov. Bar R. V, Section 21(I) refers to "reinstatement of a stayed suspension" as a penalty for violating the terms and conditions of probation. Although Relator seeks reinstatement of the indefinite suspension previously ordered by the Court and served by Respondent, the panel could find no authority in the rule for recommending the reinstatement of a suspension that has been served in its entirety. The panel, based on its recommendation that Respondent be found in contempt, considered recommending the imposition of a suspension to be served until such time as Respondent purges himself of his contempt. However, we conclude that a suspension is unnecessary, provided Respondent purges himself of said contempt as set forth above.

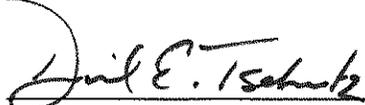
{¶46} The panel further recommends that Respondent be ordered to pay the costs of this proceeding.

  
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Roger S. Gates

 per authorization

  
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Alvin R. Bell

 per authorization

  
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David E. Tschantz, Chair

 per authorization