

BEFORE THE SUPREME COURT OF OHIO

LAWRENCE E. WINKFIELD :
(Attorney Reg. No. 0034254) :
336 South High Street :
Columbus, OH 43215 :
RESPONDENT, :

RELATOR'S OBJECTIONS

CASE NO. 2005-1115

COLUMBUS BAR ASSOCIATION :
175 South Third Street, Suite 1100 :
Columbus, OH 43215 :
RELATOR. :

RELATOR'S OBJECTIONS

Lori J. Brown (0040142)
Bar Counsel, Counsel of Record
Columbus Bar Association
175 South Third Street, Suite 1100
Columbus, Ohio 43215-5134
(614) 340-2053/ (614) 221-4850 (fax)
Lori@cbalaw.org

Geoffrey L. Oglesby (0023949)
618 West Washington Street
Sandusky, Ohio 44870
(419) 625-9500
OglesbyLaw@aol.com

Counsel for Respondent

Judith M. McInturff, Esq. (0019809)
175 South Third St., Ste. 1100
Columbus, Ohio 43215
(614) 221-2054
judy@cbalaw.org

Lawrence E. Winkfield (0034254)

Respondent

A. Alysha Clous (0070627)
Assistant Bar Counsel
Columbus Bar Association
175 South Third Street, Suite 1100
Columbus, Ohio 43215-5134
(614) 340-2034/ (614) 221-4850 (fax)
alysha@cbalaw.org

Co-counsel for Relator

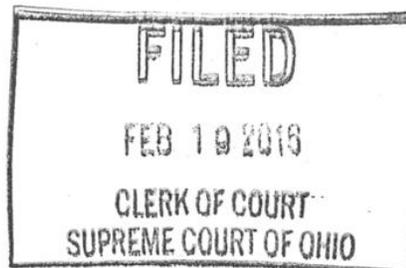


Table of Contents

<u>DESCRIPTION</u>	<u>PAGE NUMBER</u>
Table of Authorities	iii, iv
Introduction	1
Facts	2
Relator's Objections	
1. Respondent Has Violated the Terms of His Probation and His Indefinite Suspension Should Be Reinstated.	4
2. Respondent's monitor is Not to Blame for Respondent's Failure to Comply with the Conditions of Probation.	8
3. The Court Should Not Modify the Conditions Of Respondent's Probation as Recommended By the Panel.	14
Conclusion	17
Certificate of Service	19
Report and Recommendations of the Hearing Panel	Appendix A
Order to Show Cause	Appendix B

TABLE OF AUTHORITIES

<u>CASE LAW</u>	<u>PAGE NUMBER(S)</u>
<i>Columbus Bar Assn. v. Connors</i> , 71 Ohio St.3d 1223, 646 N.E.2d 119 (1995)	5
<i>Columbus Bar Assn. v. King</i> , 95 Ohio St.3d 93, 766 N.E.2d 131 (2002)	5
<i>Columbus Bar Assn. v. Winkfield</i> , 107 Ohio St.3d 360, 2006-Ohio-6, 839 N.E.2d 924	2, 6
<i>Columbus Bar Assn. v. Winkfield</i> , 75 Ohio St.3d 527, 664 N.E.2d 902 (1996)	2
<i>Columbus Bar Assn. v. Winkfield</i> , 91 Ohio St.3d 364, 745 N.E.2d 411 (2001)	2
<i>Disciplinary Counsel v. Freeman</i> , 71 Ohio St.3d 217, 643 N.E.2d 104 (1994)	5
<i>Disciplinary Counsel v. Nicholson</i> , 77 Ohio St.3d 1453, 672 N.E.2d 177 (1996)	5
<i>Disciplinary Counsel v. Oglesby</i> , 90 Ohio St.3d 455, 139 N.E.2d 346 (2000)	5
<i>Disciplinary Counsel v. Phillips</i> , 78 Ohio St.3d 311, 677 N.E.2d 1187 (1997)	5
<i>Toledo Bar Assn. v. Bridgeforth</i> , 53 Ohio St.3d 93, 558 N.E.2d 1182 (1990)	5
<i>Toledo Bar Assn. v. Farah</i> , 134 Ohio St.3d 1479, 2013-Ohio-798, 984 N.E.2d 24	5

OTHER AUTHORITIES**PAGE NUMBER(S)**

Gov. Bar R. V(19)	7
Gov. Bar. R. V(21)	4, 6, 9, 13, 16, 17
Gov. Bar. R. V(21)(A)(3)	16
Gov. Bar. R. V(21)(A)(6)	16, 17
Gov. Bar. R. V(21)(B)	8, 9
Gov. Bar. R. V(21)(B)(3)	15, 16
Gov. Bar. R. V(21)(C)(2)	10
Gov. Bar R. V(21)(E)	1, 3, 4
Gov. Bar R. V(21)(G)(1)	4
Gov. Bar R. V(21)(H)	4
Gov. Bar R. V(21)(I)	4, 6, 7
Gov. Bar R. V(21)(J)	4
Gov. Bar R. V(21)(K)	4
Gov. Bar R. V(25)(A)	7
Prof. Cond. Rule 8.3(a)	15, 16
Prof. Cond. Rule 8.3(b)	15, 16
Prof. Cond. Rule 8.3(c)	15

BEFORE THE SUPREME COURT OF OHIO

LAWRENCE E. WINKFIELD :
(0034254) :
336 South High Street :
Columbus, OH 43215 :
RESPONDENT, :

: **RELATOR’S OBJECTIONS**

: **CASE NO. 2005-1115**

COLUMBUS BAR ASSOCIATION :
175 South Third Street, Suite 1100 :
Columbus, OH 43215 :
RELATOR. :

RELATOR’S OBJECTIONS

INTRODUCTION

This matter is before this court as a result of a petition filed by relator, Columbus Bar Association, asking that respondent’s, Lawrence E. Winkfield’s, probation be revoked, that his indefinite suspension be reinstated, and that he be cited for contempt. Relator filed its petition pursuant to Gov.Bar R. V(21)(E) and a hearing in this matter took place on November 23, 2015.

Following the hearing, the panel determined that relator proved by clear and convincing evidence that respondent failed to comply with two of the three conditions of his probation. Appendix A. In its report, filed with this court on January 27, 2016, the panel recommended that this court grant relator’s petition in part and that it cite respondent for contempt. *Id.* The panel further recommended that the court permit respondent to “purge himself of said contempt,” and,

that the court modify its 2014 order of reinstatement to comply with the terms set forth in the panel's report.

This court issued an order to show cause on February 1, 2016, directing the parties to "show cause why the recommendation of the panel of the board should not be confirmed by the court and the disciplinary order so entered." Appendix B. Now comes relator and pursuant to the show cause order hereby submits the following objections to the panel's recommendations.

FACTS

In large part, relator adopts the findings of fact set forth in the panel's report. As stated in the report, respondent has been disciplined by this court three times. On the third occasion, December 11, 2006, respondent was indefinitely suspended from the practice of law. *Columbus Bar Assn. v. Winkfield*, 107 Ohio St.3d 360, 839 N.E.2d 924, 2006-Ohio-6.¹

On October 4, 2013, respondent filed a second petition for reinstatement to the practice of law following his indefinite suspension.² On June 12, 2014, the court reinstated respondent to the practice of law. Paragraph two of the court's reinstatement order states:

[R]espondent, Lawrence Edward Winkfield, last known address in Westerville, Ohio is reinstated [to the practice of law] upon the conditions that respondent (1) 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, (2) fulfill all recommendations of mental health practitioners, including ongoing and routine psychotherapy, counsel (sic) and treatment as recommended by Dr.

¹ In his first disciplinary case, respondent was suspended from the practice of law for one year with the entire suspension stayed upon conditions. *Columbus Bar Assn. v. Winkfield*, 75 Ohio St.3d 527, 664 N.E.2d 902 (1996). In the second case, respondent was suspended from the practice of law for two years with the final year stayed on the condition that respondent pay restitution. *Columbus Bar Assn. v. Winkfield*, 91 Ohio St.3d 364, 745 N.E.2d 411 (2001).

² Respondent's first effort to be reinstated following his 2006 indefinite suspension was not successful.

Jerry M. Zober or other licensed psychiatrist, and (3) refrain from any illegal conduct.

Appendix B.

On September 30, 2015 and after investigating a report that respondent had violated the conditions of his probation, relator filed a petition, pursuant to Gov.Bar R. V(21)(E), seeking revocation of respondent's probation. As alleged in relator's petition and as determined by the panel, respondent violated two of the three terms of his probation. Report at ¶36. To wit, respondent has violated the court's order by failing to engage in "ongoing and routine psychotherapy, counsel[ing] and treatment" and by failing to refrain from illegal conduct.

Notwithstanding its finding that respondent violated the court's order, the panel rejected relator's argument that respondent's indefinite suspension should be reinstated. The panel concluded that it was "sympathetic" to some of respondent's arguments and recommended that respondent "be given another chance." *Id.* at ¶¶41, 44.

The panel also recommended that the mental health treatment portion of the conditions be modified, and, that after the conditions are modified, respondent be allowed 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." *Id.* at ¶44. The panel further asked this court to "clarify in its order that any failure to comply or remain in compliance" with the new conditions "may result, upon the petition of Relator, in the reinstatement of [respondent's] original indefinite suspension." *Id.* at ¶45.

Now comes relator and hereby objects to a portion of the panel's recommendations including but not limited to its recommendation that respondent be permitted to continue to practice law given his violation of this court's order.

RELATOR'S OBJECTIONS

OBJECTION I.

Respondent Has Violated the Terms of His Probation and His Indefinite Suspension Should be Reinstated

The panel found that relator proved by clear and convincing evidence that respondent violated two of the three probation conditions set forth in the court's June 12, 2014 order of reinstatement. Report at ¶4. Notwithstanding its determination that respondent violated this court's order, the panel rejected relator's argument that respondent's indefinite suspension should be reinstated. Instead, the panel recommended to this court that respondent be held in contempt; that he be permitted to purge that contempt; and, that this court modify its order of reinstatement. In conjunction with its recommendation, the panel also asked the court to clarify Gov.Bar R. V(21)(I) and assess its applicability to cases such as this one.

It is undisputed that every respondent who is placed on probation by this court comes under the auspices of Gov.Bar R. V(21), Probation Procedures. If a violation of probation is reported, "[t]he relator immediately shall investigate[.]" Gov.Bar R. V(21)(E). After said investigation and if warranted, the relator "shall file a petition for the revocation of probation, reinstatement of any stayed suspension, and citation for contempt[.]" In this case, respondent's reinstatement order following his indefinite suspension did not include "any stayed suspension;" therefore, when it filed its petition, relator did not ask the panel to recommend the "reinstatement" of a "stayed suspension."

After relator's petition was filed and pursuant to Gov.Bar R. V(21)(G)(1), an expedited hearing was held. The panel's report was certified to this court under Gov.Bar R. V(21)(H), an order to show cause was issued pursuant to Gov.Bar R. V(21)(J), and, objections have been filed. Pursuant to Gov.Bar R. V(21)(K) and after a hearing on the objections, this court "shall enter an

order as it finds proper in accordance with Section 17 of this rule.” Accordingly and for the following reasons, this court can and should reinstate respondent’s indefinite suspension.

In previously decided probation violation cases, this court’s final order matches or increases the sanction found in the original disciplinary order. To wit: *Toledo Bar Assn. v. Bridgeforth*, 53 Ohio St.3d 93, 558 N.E.2d 1182 (1990) (one year suspended suspension required to be served in full after probation violation); *Disciplinary Counsel v. Freeman*, 71 Ohio St.3d 217, 643 N.E.2d 104 (1994) (six-month suspended suspension required to be served in full after probation violation); *Columbus Bar Assn. v. Connors*, 71 Ohio St.3d 1223, 646 N.E.2d 1119 (1995) (one year suspended suspension required to be served in full after probation violation); *Disciplinary Counsel v. Nicholson*, 77 Ohio St.3d 1453, 672 N.E.2d 177 (1996) (six-month suspended suspension required to be served in full after probation violation); *Disciplinary Counsel v. Phillips*, 78 Ohio St.3d 311, 677 N.E.2d 1187 (1997) (one year suspended suspension required to be served in full after probation violation); *Disciplinary Counsel v. Oglesby*, 90 Ohio St.3d 455, 739 N.E.2d 346 (2000) (one year suspension with six months suspended increased to indefinite suspension after probation violation, plus additional violations); *Columbus Bar Assn. v. King*, 95 Ohio St.3d 93, 766 N.E.2d 131 (2000) (one year suspended suspension required to be served in full after probation violation); and, *Toledo Bar Assn. v. Farah*, 134 Ohio St. 3d 1479, 2013-Ohio-798, 984 N.E.2d 24 (one year suspended suspension required to be served in full after probation violation). The reinstatement of respondent’s indefinite suspension would be consistent with this court’s prior decisions.

An indefinite suspension is also appropriate given the gravity of respondent’s disciplinary history. When respondent was indefinitely suspended in 2006, this court was inclined to disbar

him, but did not based upon mitigating factors relating to his mental health. *Winkfield*, 2006-Ohio-6. It is clear that respondent has made little headway against his mental health issues.

Recognizing the importance of the mental health component of respondent's probation, this panel found itself "very troubled" by respondent's unsupported claims that Dr. Zober had allegedly changed his previous recommendation regarding counseling. Report at ¶30. The panel gave respondent's claims "almost no weight" and instead concluded that respondent was not "even close" to being in compliance with Condition Two.

The panel further found that respondent's conviction for reckless operation of a motor vehicle was "made even more relevant because of the original charge of Operating a Motor Vehicle While under the Influence" given "the negative effects of alcohol [use] on Respondent's prior history." *Id.* at ¶35. The panel stated that "in light of the terms of Condition Three," respondent was "not in compliance therewith." *Id.*

More importantly, respondent's 2014 reinstatement was conditional. This court did not simply "reinstate" respondent thereby returning him to the practice of law unencumbered by supplemental requirements. It reinstated him with conditions and placed him on probation for three years. Pursuant to this court's June 12, 2014 order, respondent is subject to a three-year period of heightened disciplinary oversight and the accelerated procedures of Gov.Bar R. V(21). This is precisely the situation that calls for this court to reinstitute the indefinite suspension from which respondent was conditionally reinstated.

Regardless whether the court reinstitutes respondent's indefinite suspension, relator echoes the panel's request and asks this court to clarify the applicability of Gov.Bar R. V(21)(I). This rule states:

On the filing of the final certified report by the panel, the Supreme Court may issue to the respondent an order reinstating any period

of suspension previously stayed by the Supreme Court, pending the entry of a final order by the Supreme Court. Notice of an order reinstating any period of suspension previously stayed shall be served personally or by certified mail by the clerk of the Supreme Court on the respondent and all counsel of record.

As written, this section appears to be entirely inapplicable to cases such as the instant matter. Although Gov.Bar R. V offers other avenues to seek a suspension pending the entry of a final order, *e.g.* Gov.Bar R. V(19), Interim Remedial Suspension, it stands to reason that the possibility of a suspension “pending the entry of a final order” should apply to every probationary respondent, with or without “any period of suspension previously stayed.” When applied to cases like this one, a literal reading of Gov.Bar R. V(21)(I) means that this rule cannot be relied upon to reinstate any suspension other than a “stayed suspension” pending the final order.

Relator asks this court to close the gap between the apparent application of Gov.Bar R. V(21)(I) and those respondents who are reinstated and placed on probation after either a term suspension (with no portion of the suspension stayed) or an indefinite suspension. Relator also asks for clarification regarding the practical application of the rule, *i.e.* whether an immediate order of suspension that is issued under Gov.Bar R. V(21)(I) results from a hearing panel recommendation, from a request made by relator, and/or, is it the result of this court’s *sua sponte* determination that a respondent’s probation should be revoked.

In consideration of the seriousness of respondent’s probation violations, respondent’s previous discipline, and his inability to accept responsibility for his actions, relator asks that upon its final order, this court reinstate respondent’s indefinite suspension.³

³ Pursuant to Gov. Bar R.V(25)(A), respondent would be permitted to petition this court for reinstatement after a period of two years beginning on the date of his indefinite suspension.

OBJECTION II.

Respondent's Monitor is Not to Blame for Respondent's Failure to Comply with the Conditions of Probation.

In defense of relator's petition for revocation of his probation, respondent devoted a portion of his efforts toward blaming others for his noncompliance. For example, in the trial brief that he filed four days before the hearing, respondent unabashedly directed the blame for his predicament toward his monitor, Jack G. Gibbs, Jr. Unfortunately, the panel accepted at least part of respondent's efforts and recommended that this court direct the blame away from respondent and onto the monitor.

Although the panel report states, "everyone agrees that the responsibility for compliance with the order rests squarely on Respondent," the panel inexplicably determined that respondent's monitor was somehow at least partially responsible for respondent's probation violations. Specifically, the panel concluded:

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.

Report at ¶40.

Not only are the panel's conclusions unsupported by Gov.Bar R. V(21)(B), there is no evidence that respondent would have actually complied with such advice from Gibbs had it been given. Respondent is an attorney and at all relevant times, respondent has been represented by counsel. Gibbs repeatedly advised respondent to consult with counsel about criminal and ethical matters. Tr. at 166:7.

The evidence establishes that even without input from Gibbs, respondent already knew that he needed to “have Dr. Zober’s new guidance” in writing. On September 14, 2014, more than a year before the revocation petition was filed, respondent wrote Dr. Zober a letter. Relator’s Exb. 4 at page 46. The letter is a recitation of respondent’s view of his September 9, 2014 meeting with Dr. Zober and states, “Further, you agreed to draft a brief letter to my Supreme Court appointed monitor stating your recommendation and opinion. ... Please send me a copy of the letter you send to him for my records and files. In the meantime, I will contact my insurance company to ascertain which local doctors are in my network. I will let you and Attorney Gibbs know who they are.” *Id.*⁴

It is also clear that respondent was well aware that he needed to “hire a new psychiatrist.” According to respondent, the need to hire a new psychiatrist was initially based upon respondent’s desire to have a locally-based doctor. *See, e.g., id.* at 11. Second, when Dr. Zober announced his retirement, the necessity for respondent to find a new psychiatrist became more pronounced. *See, e.g., id.* at 26.

The evidence establishes that Gibbs was acting in accordance with all of the monitoring requirements of Gov.Bar R. V(21). Pursuant to Gov.Bar R. V(21)(B), Gibbs was required to do all of the following:

- (1) Monitor compliance by the respondent with the conditions of probation imposed by the Supreme Court;
- (2) File with the relator, a least quarterly or as otherwise determined by relator, written, certified reports regarding the status of the respondent and compliance with the conditions of probation;
- (3) Immediately report to the relator any violations by the respondent of the conditions of probation.

⁴ The September 9, 2014 meeting with Dr. Zober was and is respondent’s sole interaction with his psychiatrist since his June 12, 2014 reinstatement.

Gibbs was not required to give respondent legal advice. Gibbs was not required to tell respondent that he should obtain Dr. Zober's "new guidance" "in writing." The fact that respondent did not follow-up and actually obtain a letter from Dr. Zober is certainly not Gibbs' fault. The fact that no other evidence corroborating respondent's claims of Dr. Zober's new guidance was provided to the panel is also not Gibbs' fault. Moreover, Gibbs was definitely not required to evaluate the status of respondent's mental health treatment and possibly advise him to "seek a modification of the order" of reinstatement and the terms of his probation.

The panel also found itself "sympathetic" to respondent's argument that because Gibbs was reporting to relator that respondent was in compliance with the conditions of probation, it was "reasonable" for respondent to believe that he was. Report at ¶41. Whether it was "reasonable" for respondent to believe he was in compliance with the terms of his probation is another symptom of the "chicken and egg" problem inherent to this case.

Gibbs' knowledge about respondent's level of compliance with the mental health provision of his probation was controlled by respondent. Respondent did not submit any evidence that he provided Gibbs with "a written release or waiver, on a form approved by the Board, for use in verifying compliance regarding medical, psychological, or other treatment" so that Gibbs could have independently verified the information provided by respondent. Gov.Bar R. V(21)(C)(2). In the absence of such a waiver, Gibbs was constrained to consider only the information provided by respondent.

Based upon evidence adduced at the hearing, it is obvious that respondent was regularly providing Gibbs with in-person dialogue and lengthy written reports regarding his law practice, his outside activities, and his mental health. Relator's Exb. 4. *See also* Tr. at 195:7 to 197:9.

Clearly, it was entirely reasonable for Gibbs to conclude that respondent fully understood the mental health condition of his probation. *See, e.g.*, Tr. at 197:1.

In the written material that respondent provided to Gibbs to facilitate discussions at their meetings, respondent included the following information:

- Letter from respondent to Gibbs dated October 13, 2014:
 - This letter is to memorialize items we discussed during our above referenced September monthly monitoring meeting: * * *
 - **Dr. Jerry Zober:** Per the June 12, 2014 OS Ct decision in my case, I am to fulfill all recommendations “ ... Dr. Zober or another licensed psychiatrist with respect to ongoing and routine counseling and treatment ... “ (sic) In an hour long (sic) conference with Dr. Zober on September 9, 2014, Dr. Zober indicated that he did not believe I on going (sic) or routine (i.e. weekly or mnthly (sic)) counseling and treatment. We further discussed that from a logistic (2 ½ hr trip) and from an economic point of view, it would be better for me to consult an insurance in-network physician in the Franklin County area; as opposed to him in Pepper Pike (Cleveland area). With respect to economics, co-pay through my insurance is \$20.00 per visit rather than his \$150.00 consultation fee. Accordingly, I am in the process of identifying a local Dr. to consult. I hope to have him or her identified before our next October 20, 2014 meeting.

Id. at 11.

- Letter from respondent to Gibbs dated October 21, 2014:
 - **MENTAL HEALTH COUNSELING:** I have spent several hours consulting with my insurance company to identify in network mental health doctors and/or counselor (sic) in this area. I have identified the names, addresses, and telephone numbers of nine (9) practitioners and I am in the process of calling to see which ones are the best fits for me. I will show you the list I have; although I have not decided who to go with.

Id. at 15.

- Letter from respondent to Gibbs dated November 24, 2014:
 - **MENTAL HEALTH COUNSELING:** Mr. Richard Fetter, MSW-S: I met with Mr. Fetter on Wednesday November 5, 2014 for one hour. I gave him a copy of all correspondence I had shared with you during our monitoring meetings; but I forgot to copy your quarterly report and the emails between you and Mr. Campbell concerning my Westerville case. I indicated that I would email those to him prior to my next appointment with him. I indicted to Mr. Fetter that I feel the need and would like to meet with him on a monthly basis for the near future.

Although he is out of network, he agreed to reduce his fee to \$100.00 per session. I am going to try to schedule appointments with him prior to our monthly meetings; so I can let you know what we cover. * * * * I have not yet identified a doctor to consult. I recently received notice from my insurance company saying that my coverage has been discontinued for non-payment. My wife and I know that is not true and I am in the process of checking my bank statement for September and October before contacting them with the proof of payment. As soon as I get that straightened out, I will resume my search for a doctor to consult.

Id. at 20.

- Letter from respondent to Gibbs dated December 22, 2014:
 - **MENTAL HEALTH COUNSELING: Mr. Richard Fetter, MSW-S:** My next appointment with Mr. Fetter is February 5, 2015. Subsequent to the announcement by Dr. Zober that he is retiring, I spoke to him about getting a letter to me and Mr. Fetter that my continued or resumed counseling is medical (sic) necessary. My insurance company will not pay even the out of network without a letter saying that counseling is medically necessary. * * * * I still have not yet identified a doctor to consult, due to the insurance mix-up I described above. I believe I will have that in order by the next time we meet.

Id. at 26.

- Letter from respondent to Gibbs dated December 22, 2014:
 - **MENTAL HEALTH COUNSELING: Mr. Richard Fetter, MSW-S:** My medical insurance was cancelled by United Health Care. Although I did not believe they were correct, I was in the process of reapplying, when I got to another person on the phone who happened to be of a higher decision making capacity than the first lady I was working with and talking to. She was able to reactivate my health care insurance (going back to September) at a cost of \$608.00. Now that this has been accomplished, I will resume my contact with Mr. Fetter, where a portion of his fee will be paid on an out of network basis. Subsequent to the announcement by Dr. Zober that he is retiring, I spoke to him about getting a letter to me and Mr. Fetter that my continued or resumed counseling is medical (sic) necessary. My insurance company will not pay even the out of network. As I mentioned before, I would like to see Mr. Fetter on a monthly basis for the near future. He has agreed to reduce his fee to \$100.00 per session. However, I cannot afford that at this point without an increase in income. As a licensed profession (sic) within my age bracket, who has run and operated his own small business, and as one who understands the rigors/challenges/dynamics of so doing, it is good to consult Mr. Fetter. * * * * I still have not yet identified a doctor to consult, due to the insurance mix-up I described above. I believe I will have that in order by the next time we meet.

Id. at 30.

In addition to his letters and the monthly monitoring sessions with Gibbs, respondent sent Gibbs a letter shortly after his October 10, 2014 arrest for driving under the influence of alcohol. In conjunction with reporting his arrest, respondent indicated that his attorney was “very confident of a favorable outcome in this case[.]” Respondent also asked that Gibbs “not be overly concerned about this matter at this point.” *Id.* at 16.

Whether it was reasonable for respondent to believe he was in compliance with the court’s order because Gibbs said he was in compliance is a more complicated question. As an individual who had recently convinced the board and this court that he possessed “all of the mental, education, and moral qualifications” required of an applicant for admission to the practice of law and that he was a “proper person to be readmitted to the practice of law,” respondent knew or should have known whether the information he was providing to Gibbs was accurate and truthful. For example, respondent repeatedly told Gibbs that he was going to hire a new psychiatrist but he never did.⁵ Respondent repeatedly told Gibbs that he intended to meet with Mr. Fetter on a monthly basis but he never did that either.⁶ Frankly, the letters to Gibbs are respondent’s “cut and paste” efforts to convince Gibbs that he was in compliance with the court’s order. Respondent told Gibbs what he wanted Gibbs to know and, as a result, Gibbs’ ongoing, positive assessment of respondent’s compliance is now respondent’s albatross to bear.

In sum, the evidence establishes that Gibbs did everything that he was required to do under Gov.Bar R. V(21). Gibbs appropriately viewed his role as one of protecting the public. Tr. at 170:18. Gibbs is not accountable for the fact that respondent did not engage in counseling

⁵ As of the hearing on November 23, 2015, respondent still had not hired a new psychiatrist.

⁶ Between his reinstatement and when the motion to revoke his probation was filed, respondent participated in only three sessions with Fetter. All of those sessions occurred after his arrest for driving under the influence: November 5, 2014, February 11, 2015, and July 29, 2015.

to the extent ordered by this court. Gibbs is not accountable for the fact that if he needed help with any part of his probation, respondent did not ask for it and in fact, asked Gibbs not to be “overly concerned.” Responsibility for respondent’s probation violations rests entirely with respondent.

OBJECTION III

This Court Should Not Modify the Conditions of Respondent’s Probation as Recommended by the Panel

Should this court agree with the panel’s recommendation that respondent be given “another chance,” relator agrees that the conditions of respondent’s probation should be modified but not entirely in the manner recommended by the panel. The modifications and “new conditions” proposed by the panel are as follows:

- Respondent is to undergo an evaluation by the Ohio Lawyers Assistance Program (OLAP) within 60 days from the date of the court’s order.
- OLAP “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 original two-year period plus an additional two years from the date of the court’s order and respondent shall promptly and fully comply with all OLAP recommendations in regard to his mental health and alcohol use.
- Respondent shall refrain from any further illegal conduct.

Report at ¶43.

Relator is wholeheartedly in favor of the panel’s recommendation that respondent undergo an OLAP evaluation, that he develop a relationship with OLAP, and that he “promptly and fully comply with all OLAP recommendations” regarding his mental health treatment and

his alcohol use. Relator also agrees that respondent should continue to be required to “refrain” from illegal conduct. Nevertheless, and for the following reasons, relator objects to the proposed condition that OLAP “assume the duty of monitoring Respondent and reporting Respondent’s compliance” to relator.

A nonprofit corporation originally established by the Ohio State Bar Association, OLAP’s mission is “to educate the [legal] profession about substance abuse/chemical dependency and mental illness, provide advice about treatment alternatives, perform interventions, and provide support and monitor recovery.” <http://www.ohiolap.org/aboutus.htm>. OLAP is undeniably pursuing its mission; however, for at least the following reasons, the organization is not tasked, staffed, or equipped to monitor respondent as recommended by the panel.

OLAP’s ability to function depends in part upon the steel curtain between it and the entities that comprise the parties known as “relators” in Ohio’s disciplinary cases. Prof. Cond. Rule 8.3(c) states:

Any information obtained by a member of a committee or subcommittee of a bar association or by a member, employee, or agent of a nonprofit corporation established by a bar association, designed to assist lawyers with substance abuse or mental health problems, provided the information was obtained while the member, employee, or agent was performing duties as a member, employee, or agent of the committee, subcommittee, or nonprofit corporation, shall be privileged for all purposes under this rule.

In accordance with the foregoing, OLAP is exempt from the misconduct reporting requirements imposed upon Ohio’s lawyers and judges and set forth in Rules 8.3(a) and (b). *See, id.* and Comment [5] thereto. In addition, Gov.Bar R. V(21)(B)(3), requires all court-appointed monitors to “[i]mmediately report to the relator any violations by the respondent of the conditions of probation.” Clearly, the privilege extended to OLAP under Rule 8.3(c) is

irreconcilable with the reporting requirements of Rules 8.3(a) and (b) as well as Gov.Bar R. V(21)(B)(3); therefore, neither OLAP nor any member of its staff can be asked to “assume the duty of monitoring Respondent and reporting Respondent’s compliance” as recommended by the panel.

Gov.Bar R. V(21) also provides that the person appointed to be a monitor be an attorney who is admitted to practice law in Ohio, in good standing, and not a member of a certified grievance committee or counsel for relator. A review of the OLAP staff identified on the website indicates that although it lists three Ohio attorneys as staff members, only one of those attorneys is Columbus-based.

Further, given its dedicated involvement in the attorney discipline process, this court is uniquely qualified to assess the vast level of participation that OLAP already has in the disciplinary process. It almost goes without saying that OLAP is too busy doing the things it is obliged to do without adding Gov.Bar R. V(21)’s monitoring requirements to that list.

In short, should this court reject relator’s request for the reinstatement of respondent’s indefinite suspension, relator asks this court to deny the panel’s recommendation that the order provide that OLAP “assume the duty of monitoring Respondent and reporting Respondent’s compliance with the Court’s order to Relator.” As a compromise, relator asks this court to modify the June 12, 2014 order to specifically indicate that respondent’s “probation involves recovery from a disorder.” As such and pursuant to Gov.Bar R. V(21)(A)(6), relator would “select as one of [respondent’s] monitoring attorneys a person designated by a committee or subcommittee of a bar association, or by a non-profit corporation established by a bar association, designed to assist lawyers with disorders, which person shall satisfy the requirements of division (A)(3) of this section and who shall monitor compliance with only that

portion of the term of probation involving recovery from a disorder.” Under the terms of Gov.Bar R. V(21)(A)(6), at relator’s request, OLAP would be permitted to assist relator with the selection of a monitor who will work with respondent exclusively in the area of his mental health treatment and recovery.

CONCLUSION

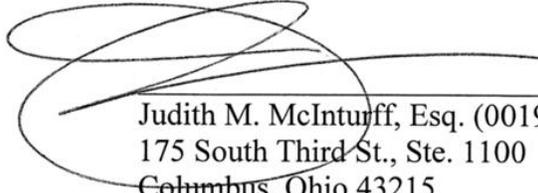
The panel found that relator proved by clear and convincing evidence that respondent violated two of the probation conditions set forth in this court’s order of reinstatement. In consideration of the seriousness of respondent’s probation violations, respondent’s previous discipline, and his continuing inability to accept responsibility for his actions, relator asks this court to reinstitute respondent’s indefinite suspension.

Should this court reject relator’s request for the reinstatement of respondent’s indefinite suspension, relator asks that the court deny the panel’s recommendation that the order provide that OLAP “shall assume the duty of monitoring Respondent and reporting Respondent’s compliance with the Court’s order to Relator.” In the alternative, relator asks this court to modify the June 12, 2014 order to specifically indicate that respondent’s “probation involves recovery from a disorder” and that a monitor for the mental health aspect of his probation be appointed pursuant to Gov.Bar R. V(21)(A)(6).

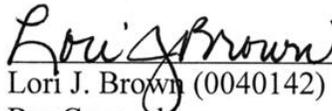
Further, relator asks that this court reaffirm the role of monitors like Jack Gibbs, Jr. who are appointed pursuant to Gov.Bar R. V(21). No monitor should be expected to accept responsibility for the probationer’s compliance with the terms and conditions of probation. No monitor should be required to assure that a probationary attorney will follow the terms and conditions of probation. A monitor is not responsible for giving legal advice to a probationary

attorney regarding compliance with the terms of probation. A monitor is precisely just that, a “monitor,” an observer, and an overseer – just like Jack G. Gibbs, Jr.

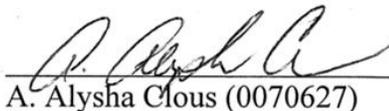
Respectfully submitted,



Judith M. McInturff, Esq. (0019809)
175 South Third St., Ste. 1100
Columbus, Ohio 43215
(614) 221-2054
judy@cbalaw.org



Lori J. Brown (0040142)
Bar Counsel
Columbus Bar Association
175 South Third Street, Suite 1100
Columbus, Ohio 43215-5134
(614) 340-2053/ (614) 221-4850 (fax)
Lori@cbalaw.org

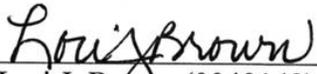


A. Alysha Clous (0070627)
Assistant Bar Counsel
Columbus Bar Association
175 South Third Street, Suite 1100
Columbus, Ohio 43215-5134
(614) 340-2034/ (614) 221-4850 (fax)
alysha@cbalaw.org

Co-counsel for Relator

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Objections was served via U.S. Mail and hand delivery, respectfully, on this 19th day of February 2016 upon respondent's counsel, Geoffrey Oglesby, Esq., 618 West Washington Street, Sandusky, OH 44870, and upon Richard A. Dove, Esq., Director, Board of Professional Conduct, Supreme Court of Ohio, 65 S. Front Street, 5th Floor, Columbus, OH 43215.


Lori J. Brown (0040142)

**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:

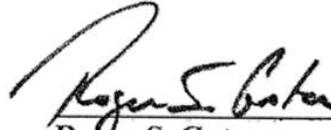
- Respondent shall undergo an evaluation by the Ohio Lawyers Assistance Program within 60 days from the date of the Court's order.
- The Ohio Lawyers Assistance Program shall assume the duty of monitoring Respondent and reporting Respondent's compliance with the Court's order to Relator.

- 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.

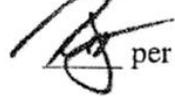
{¶44} The panel further respectfully recommends that the Court grant Relator's petition in part and cite Respondent for contempt due to his violations of Conditions Two and Three, but allow him to petition the Court to be purged of said contempt upon providing proof that he has brought himself into current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

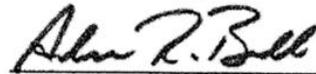
{¶45} As a final matter, the panel further respectfully recommends that the Court clarify in its order that any failure to comply or remain in compliance by Respondent may result, upon the petition of Relator, in the reinstatement of the original indefinite suspension. Gov. Bar R. V, Section 21(I) refers 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.



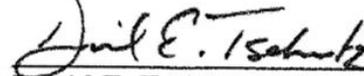
Roger S. Gates

 per authorization



Alvin R. Bell

 per authorization



David E. Tschantz, Chair

 per authorization

The Supreme Court of Ohio

FILED

FEB -1 2016

Columbus Bar Association,
Relator,
v.
Lawrence Edward Winkfield,
Respondent.



Case No. 2005-1115
CLERK OF COURT
SUPREME COURT OF OHIO
ORDER TO SHOW CAUSE

The Board of Professional Conduct of the Supreme Court of Ohio filed a report in the office of the clerk of this court. In this report a panel of the board recommends that, pursuant to Rule V(21)(H) of the Supreme Court Rules for the Government of the Bar of Ohio, the court modify the conditions of its June 12, 2014 reinstatement order as follows: (1) respondent, Lawrence Edward Winkfield, Attorney Registration No. 0034254, shall undergo an evaluation by the Ohio Lawyers Assistance Program ("OLAP") within 60 days from the date of the court's order, (2) OLAP shall assume the duty of monitoring respondent and reporting respondent's compliance with the court's order to relator, (3) respondent's probation shall continue for the previously-ordered period, plus an additional two years from the date of the court's order, and respondent shall promptly and fully comply with all recommendations made by OLAP in regard to treatment for both his mental health and the use of alcohol, and (4) respondent shall refrain from further illegal conduct. The panel further recommends that the court find respondent in contempt for his violations of conditions two and three of the June 12, 2014 reinstatement order but permit respondent to be purged of contempt by providing proof that he has brought himself into compliance with the modified conditions.

On consideration thereof, it is ordered by the court that the parties show cause why the recommendation of the panel of the board should not be confirmed by the court and the disciplinary order so entered.

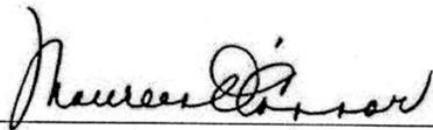
It is further ordered that any objections to the findings of fact and recommendation of the panel of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

After a hearing on the objections, or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the panel of the board or which may be more severe or less severe than said recommendation.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings.

All documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.

A handwritten signature in black ink, appearing to read "Maureen O'Connor", written over a horizontal line.

Maureen O'Connor
Chief Justice