

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

**In re:**

**Complaint against**

**Case No. 2015-069**

**Judge Edward Joseph Elum  
Attorney Reg. No. 0010772**

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

**Respondent**

**Disciplinary Counsel**

**Relator**

**OVERVIEW**

{¶1} This matter was heard on May 6, 2016 in Columbus by a panel consisting of Judge William A. Klatt, James D. Caruso, and David E. Tschantz, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing and represented by George D. Jonson and Brian M. Spiess. Kevin L. Williams and Audrey E. Varwig appeared on behalf of Relator

{¶3} Respondent was charged in the complaint with the following violations:

- Jud. Cond. R. 1.2 [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety];
- Jud. Cond. R. 2.4(B) [a judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment];
- Jud. Cond. R. 2.4(C) [a judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge];

- Jud. Cond. R. 2.6(B) [a judge shall not act in a manner that coerces any party into settlement];
- Jud. Cond. R. 3.1(C) [a judge shall not participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality];
- Jud. Cond. R. 3.1(D) [a judge shall not engage in conduct that would appear to a reasonable person to be coercive];
- Jud. Cond. R. 3.10 [a judge shall not practice law]; and
- Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice].

{¶4} At the hearing in this matter, Relator withdrew the allegations of violations of Jud. Cond. R. 2.4(B), Jud. Cond. R. 2.4(C), Jud. Cond. R. 2.6(B), and Jud. Cond. R. 3.10, and the panel dismissed these allegations by separate entry on the same date.

{¶5} Respondent stipulated that his conduct violated the remaining rules as charged. Stipulation p. 4. Therefore, the panel concludes that Relator proved violations of these rules by clear and convincing evidence.

{¶6} Based on the above conclusions of law, the stipulations of the parties concerning matters in mitigation and aggravation, case precedent established by the Supreme Court of Ohio, and the recommendation of the parties, the panel recommends the imposition of a one-year suspension, all stayed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶7} Respondent has been licensed to practice law in the state of Ohio since May 6, 1977. He is a sitting judge in the Massillon Municipal Court, having served as a judge since 1996. Stipulation 1. He is subject to the Code of Judicial Conduct, the Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶8} On December 18, 2012, Respondent was suspended from the practice of law for six months, with the entire suspension stayed, by order of the Supreme Court based on conduct that violated six provisions of the Code of Judicial Conduct and two Rules of Professional Conduct. Respondent's conduct involved injecting himself into an administrative investigation, using vulgar and intemperate language, and behaving in an undignified and discourteous manner toward litigants in his courtroom. *Disciplinary Counsel v. Elum*, 2012-Ohio-4700 (*Elum I*).

{¶9} Respondent has stipulated in the instant case to one Code of Judicial Conduct violation and one Rule of Professional Conduct violation also found in *Elum I*.

{¶10} The specific conduct in which Respondent engaged is detailed in the stipulations that are incorporated herein by reference.

{¶11} Based on the stipulated conduct, and the violations stipulated by the parties, the panel finds, by clear and convincing evidence, that Respondent violated Jud. Cond. R. 1.2, Jud. Cond. R. 3.1(C), Jud. Cond. R. 3.1(D), and Prof. Cond. R. 8.4(d).

### **AGGRAVATION, MITIGATION, AND SANCTION**

{¶12} With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in Gov. Bar R. V, Section 13(B), the parties stipulated, and the panel finds, by clear and convincing evidence, that Respondent has a prior disciplinary offense.

{¶13} With regard to the factors in mitigation that may be considered in favor of a less severe sanction for professional misconduct listed in Gov. Bar R. V, Section 13(C), the parties stipulated and the panel finds, by clear and convincing evidence, that Respondent demonstrated the absence of a dishonest or selfish motive, cooperated with Relator's investigation and the

subsequent disciplinary proceedings against him, and submitted a great deal of evidence of good character and reputation.

{¶14} The panel reviewed the parties' jointly recommended sanction of a six-month stayed suspension in light of the findings of fact, conclusions of law, factors in mitigation and aggravation, and precedent established by the Supreme Court of Ohio.

{¶15} With regard to precedent established by the Supreme Court of Ohio, the panel reviewed several cases involving judicial misconduct.

{¶16} In the first case reviewed by the panel, *Disciplinary Counsel v. Hoague*, 2000-Ohio-340, the Court imposed a stayed six-month suspension on a judge who misused the authority of his office to summon, intimidate, and reprimand two persons who he believed had recklessly and erratically driven an automobile in his presence. In that case, the respondent had no prior discipline.

{¶17} In the second case reviewed by the panel, *Disciplinary Counsel v. Gaul*, 2010-Ohio-4831, the Court imposed a stayed six-month suspension on a judge for making highly prejudicial and unnecessary remarks against a defendant and getting the media involved in a case by advising the media that he was going to issue an Amber Alert to locate a witness even though he knew he probably did not have the authority to issue such an alert. Like *Hoague*, the Court found the misconduct to be an isolated case and the respondent had had no prior discipline. *Disciplinary Counsel v. Gaul* at ¶¶ 76-80.

{¶18} In the third case reviewed by the panel, *Disciplinary Counsel v. Karto*, 2002-Ohio-61, the Court imposed a six-month suspension on a judge who abused his contempt power; acted improperly by conducting juvenile detention hearings in the absence of the juveniles' attorneys and demonstrated bias in the courtroom. The Court found several mitigating factors, including no

prior discipline, excellent character references, full cooperation with disciplinary investigation, unblemished record as a sitting judge, and much community involvement. However, the Court found the behavior in this case to be more serious than the isolated incident involved in *Hoague*.

{¶19} In the fourth case reviewed by the panel, *Disciplinary Counsel v. McCormack*, 2012-Ohio-4309, the Court imposed a one-year suspension, stayed on conditions including OLAP evaluation and contract, for a magistrate's misconduct in a single case, including acting in a discourteous and undignified manner, treating litigants with disdain, terminating hearings before the parties had presented all of their evidence, and failing to timely resolve the matter. The Court found that this magistrate's conduct was not as egregious as that of *Karto*, or as extreme or pervasive as the conduct of *Parker* or *O'Neill*, *infra*, but was more serious than the single incident of misconduct at issue in *Hoague*. McCormack had no prior discipline, but the Court noted significantly that the aggravating factor of harm to vulnerable victims was present. *Disciplinary Counsel v. McCormack* at ¶¶ 21-23, 24, 29.

{¶20} In the fifth case reviewed by the panel, *Ohio State Bar Assn. v. Evans*, 2013-Ohio-4992, the Court issued a one-year stayed suspension to a judge who failed to disqualify himself despite a conflict with, and actual personal bias against, a lawyer representing indigent defendants in his courtroom. To cure the conflict, the judge removed the lawyer as counsel in 64 court-appointed cases instead of disqualifying himself from hearing them. Although the Court found the misconduct comparable to that in *Gaul* and *Elum I*, it found a significant aggravating factor present that was absent in those cases; *i.e.*, harm to vulnerable victims. The Court also noted that this respondent had had no prior discipline. *Ohio State Bar Assn. v. Evans* at ¶¶ 16-19.

{¶21} In the sixth case reviewed by the panel, *Disciplinary Counsel v. Parker*, 2007-Ohio-5635, *reinstatement granted*, 2009-Ohio-2695, the Court imposed an 18-month suspension, six

months stayed with conditions, for a judge who committed misconduct through acts of bias, coercion, intemperance, and dishonesty in and out of the courtroom; coercing pleas from criminal defendants and humiliating litigants; harassing victims of domestic violence; and acting inappropriately toward court personnel, law enforcement, counsel, and a gallery spectator. The Court found that the judge's narcissistic personality disorder did not qualify as a mitigating factor. The Court also noted that this respondent had had no prior discipline.

{¶22} In the last case reviewed by the panel, *Disciplinary Counsel v. O'Neill*, 2004-Ohio-4704, the Court imposed a two-year suspension, with one year stayed on conditions, for a judge who, over a period of more than five years, engaged in coercive tactics to improperly influence disposition of criminal cases and engaged in a pattern of misrepresentation and rude, undignified, and unprofessional conduct that included abusive verbal outbursts, unjustified expulsions from the courtroom, and berating or humiliating persons in the presence of others. The aggravating factors included “selfish motive, pattern of misconduct, multiple offenses, submission of false statements in disciplinary process, refusal to acknowledge wrongful nature of her conduct, and harm to vulnerable persons.” Mitigation included absence of prior discipline, and involvement in educating middle school and high school students about the legal system. The Court acknowledged that this case was “extraordinary” and “unprecedented” in size and scope. *Disciplinary Counsel v. O'Neill*, ¶ 50.

{¶23} The panel, after reviewing all of the evidence presented in the stipulations and at the hearing, believes that this case at first blush is most similar to *Hoague* and *Gaul*, as it arose out of one incident. However, in the opinion of the panel, a more serious sanction than those awarded in the above two cases is merited due to Respondent's prior discipline based on the fact that some

of the same misconduct that occurred in *Elum I* was repeated in the conduct which gave rise to this case.

{¶24} In light of the Court's rulings in the above cases, and the evidence presented in the stipulations and at the hearing, the panel unanimously recommends that the Board accept and recommend to the Court the sanction of a one-year suspension, all stayed on the condition that Respondent 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 June 3, 2016. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Judge Edward Joseph Elum, be suspended from the practice of law in Ohio for one year, with the suspension stayed in its entirety on the condition that he commit 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.**



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**RICHARD A. DOVE, Director**