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

In re:

Complaint against:

Kenneth R. Donchatz
Attorney Reg. No. 0062221

Respondent

Cleveland Metropolitan Bar Association

Relator

Case No. 2014-085

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

OVERVIEW

{¶1} This matter was heard on October 7 and 8, 2015 in Columbus before a panel consisting of Keith A. Sommer, Roger S. Gates, and Robert B. Fitzgerald, 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, represented by George D. Jonson. Robert J. Hanna and Sarah L. Bunce appeared on behalf of Relator.

{¶3} On October 31, 2014, Relator filed a two-count complaint alleging several violations of the Ohio Rules of Professional Conduct regarding Respondent's misconduct during the Davey Tree litigation when he failed to correct a false statement and personally filed a satisfaction of judgment taken against him even though he had not paid the judgment; the representation of Lin Cracknell by failing to clearly set forth the scope and nature of his representation of the fee agreement and accepting $100,000 loan from the Cracknells. Respondent filed an answer on December 18, 2014.

{¶4} On March 23, 2015, Relator filed an amended four-count complaint against

Respondent alleging misconduct regarding Respondent's misconduct during the Davey Tree litigation; the representation of Lin Cracknell; accepting a $100,000 loan; representation of Carol Hampton when he filed a motion in limine that contained false statements and misrepresentations; and the representation of Michael McKibben and Leader Technologies when he filed an improper "Stipulated Entry and Consent of Judgment" and then refused to withdraw the entry after he had been asked to do so. Respondent filed an answer to the amended complaint on April 10, 2015.

{¶5} The amended complaint alleged violations of the following Rules of Professional Conduct: Prof. Cond. R. 1.5(b); Prof. Cond. R. 1.8(a); Prof. Cond. R. 3.1; Prof. Cond. R. 3.3(a)(1); Prof Cond. R. 3.4(c); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(d).

{¶6} For the reasons set forth below, the panel finds that Respondent engaged in professional misconduct and recommends that Respondent be suspended from the practice of law for two years, with six months stayed on the condition of no further misconduct.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on November 8, 1993 and was admitted to the United States District Court the same year. Respondent is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶8} Respondent attended Rutgers University and Ohio State University. Hearing Tr. 360. After graduation, Respondent obtained a position as an assistant attorney general at the Ohio Attorney General's office and was employed by the Ohio Disciplinary Counsel's office from 1998 to 2001. *Id.* Thereafter, Respondent practiced law with the firm of Fuller & Henry from 2001 to 2004. Respondent then went into private practice. *Id.*

{¶9} Respondent is currently a sole practitioner. Respondent's website indicates that he is a legal ethicist, practicing in the areas of law that include legal ethics, professional responsibility,

and complex commercial litigation. Respondent, at the time of the hearing, practiced out of his own firm referred to as Donchatz Law.

{¶10} For each of the four counts alleged against Respondent, Relator demonstrated at the hearing, through clear and convincing evidence, that Respondent's conduct violated the Rules of Professional Conduct referenced below.

Count One—Davey Tree Litigation

{¶11} The stipulations and hearing testimony of Respondent and Kevin String show that Respondent violated the following rules: Prof. Cond. R. 3.1 [meritorious claims and contentions]; Prof. Cond. R. 3.3(a)(1) [knowingly making a false statement of fact or law to a tribunal or failing to correct a false statement of material fact or law previously made to the tribunal]; Prof. Cond. R. 3.4(c) [knowingly disobeying an obligation under the rules of a tribunal]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]. Respondent committed these violation by: (1) filing an unsupported satisfaction of judgment; (2) failing to withdraw the satisfaction of judgment after confirmation that it was improper; (3) filing a frivolous and unsupported motion to reconsider the default judgment; and (4) failing to pay the default judgment entered against him.

{¶12} This matter involved a judgment that was personally taken against Respondent for unpaid invoices from Davey Tree. Respondent represented himself in the matter. Davey Tree had obtained default judgment against Respondent. Sometime later, Respondent filed a notice of satisfaction of judgment without authority or proper notice to Davey Tree. More importantly, he had failed to pay the judgment. Davey Tree, through its attorney, alerted Respondent that the notice was improper. Upon receipt of that notice, Respondent failed to correct the false statement with the court. Davey Tree was forced to file a motion to have the satisfaction of judgment vacated.

The court did vacate the satisfaction notice and reinstated the judgment. At that time, Respondent still failed to pay the judgment. Instead, he filed a Civil Rule 60(B) motion to reconsider the default judgment that had been entered three years earlier, on January 25, 2010. The trial court denied the motion to set aside the default judgment and awarded Davey Tree sanctions. Not until after that, did Respondent decide to pay the judgment.

{¶13} Respondent never confirmed that the default judgment entered against him in 2010 had been paid before filing a satisfaction of judgment in February 2012. Still, he filed it. Hearing Tr. 52-53.

{¶14} Respondent claims to have written a personal check "wrapped" it in a garnishment notice, and mailed it to counsel for Davey Tree. However, he never confirmed that it was received or cashed before filing the satisfaction of judgment. *Id.* 42-43; 48-51.

{¶15} Following the filing of the satisfaction of judgment, Kevin String, counsel for Davey Tree, contacted Respondent regarding the improper filing of the satisfaction of judgment. String (and the panel) found it troubling that a lawyer would have filed, as the defendant, a satisfaction of judgment when it was the plaintiff's judgment. *Id.* 174-176; Joint Ex. 4.

{¶16} When confronted by String regarding the impropriety of filing the satisfaction of judgment, Respondent went on the offensive indicating that he had considered filing sanctions against String for his use of Cleveland Municipal Court for the garnishment action, an entirely proper course of action for String to have taken. *Id.* 167, 182; Joint Ex. 3.

{¶17} Only after the satisfaction of judgment had been filed, did Respondent confirm that the judgment had not been paid. *Id.* 58. Respondent did not withdraw the satisfaction of judgment *Id.* 58-59. String had to file a motion to vacate to have the improperly filed satisfaction of judgment withdrawn. *Id.* 184; Joint Ex. 5. After the court granted the motion to vacate and reinstated the

judgment, Respondent still did not pay the judgment. *Id.* 61. More than three years after the default judgment had been entered, and more than 18 months after the judgment had been reinstated, Respondent filed a motion to reconsider the default judgment. *Id.* 70-72; Joint Ex. 6.

{¶18} Davey Tree, through String, was forced to respond to yet another inappropriate filing from Respondent. *Id.* 74, 189-190; Joint Ex. 7. The court denied the motion to reconsider and awarded sanctions to Davey Tree. The trial court held that the filing of the motion had been frivolous and without merit. *Id.* 192; Joint Ex. 8. Due to his actions, the trial court ordered Respondent to pay Davey Tree and to pay String's attorney fees.

Count Two—Representation of Lin Cracknell and Acceptance of Loan

{¶19} The admitted exhibits and testimony of record from Respondent and Lin Cracknell demonstrate that Respondent violated the following rules: Prof. Cond. R. 1.5(b) [fees and expenses for which the client will be responsible shall be communicated to the client, preferably in writing]; and Prof. Cond. R. 1.8(a) [a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client]. Respondent violated these rules by: (1) failing to clearly set forth the scope and nature of his representation or the fee arrangement to Cracknell; and (2) accepting a $100,000 loan from Cracknell, but failing to satisfy the requirements of business transactions between attorneys and clients.

{¶20} Respondent was in a firm that had broken up. As a result, there were some taxes that had to be paid, and he needed to obtain a loan from a financial institution to pay the taxes. Respondent had inquired of his clients, the Cracknells about a banker. They offered to loan him the money. In fact, they did loan him $100,000. At the time, Respondent was representing Cracknell. With respect to the fee arrangement for Respondent's representation of Cracknell, the

testimony revealed that Respondent had said that he was going to provide the representation for free.

{¶21} Cracknell never received anything in writing from Respondent regarding the terms of such a fee arrangement for his representation. Cracknell Depo. 11.

{¶22} Respondent began representing the Cracknell's in early 2007. Hearing Tr. 127. However, there was no written agreement for the representation. Apparently, there was also no discussion at the beginning of the attorney-client relationship regarding what the payments to Respondent would be. When Cracknell would ask Respondent about payment, he would respond, "Don't worry about it." Cracknell Depo. 10-12.

{¶23} Respondent claimed that he told Cracknell that the representation would be pro bono, but in May 2013, he suggested that she file a claim in fee arbitration because he had asked her "before how the legal fees were going to be handled" and he did not want to be left "holding the bag on legal fees." Hearing Tr. 144-146; Relator's Ex. 26.

{¶24} On September 17, 2009, Respondent borrowed $100,000 from Cracknell. Cracknell Depo. 29-30. At the time, there was an attorney-client relationship with Cracknell. Hearing Tr. 127. During his representation of Cracknell, the Cracknell's gifted Respondent with an antique desk. Respondent refurbished and restored that desk.

{¶25} According to Cracknell, Respondent never put in writing for her that: (1) there were special rules governing transactions between a lawyer and a client; (2) there were potential conflicts of interest between a lawyer and a client; or (3) she should seek independent counsel before making the loan. Cracknell Depo. 22-23. Additionally, Respondent never provided Cracknell with a promissory note setting forth the terms of the loan. *Id.* 40.

{¶26} Respondent admitted that he accepted the check from Cracknell without having the

writings required by Prof. Cond. R 1.8(a). Hearing Tr. 138, 374-375. Upon questioning from the panel, Respondent admitted that "the minute he took the loan" from Cracknell he had violated Prof. Cond. R. 1.8(a). *Id.* 391. Ultimately, Respondent only repaid the Cracknell's $57,000. Additionally, Respondent did return the restored antique desk to the Cracknell's. Hearing Tr. 150-152; Joint Ex. 13.

Count Three—Representation of Carol Hampton

{¶27} The stipulations and hearing testimony of Respondent and Karen Osmond establish that Respondent violated the following rules: Prof. Cond. R. 3.1; Prof. Cond. R. 3.3(a)(1); Prof. Cond. R. 3.4(c); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(d) in filing a motion in limine that contained false statements and misrepresentations. Later, Respondent stood by those statements when questioned about them after his representation of Hampton had ended. The evidence introduced showed that Respondent represented attorney Carol Hampton in a disciplinary proceeding. Hearing Tr. 103.

{¶28} During the course of discovery of the Hampton disciplinary proceeding, Carol Hampton and her son, Chris Destocki, testified to tape-recorded conversations with Attorney J.T. Holt regarding Hampton. *Id.* 110, 258-259.

{¶29} Following the depositions, at Respondent's request, Karen Osmond, Assistant Disciplinary Counsel assigned to the Hampton matter, provided Respondent copies of two tape recordings, but informed him that she did not have a tape recording for a third meeting. *Id.* 260-262; Joint Ex. 14.

{¶30} After Respondent requested, for a second time, a copy of the third recording, Osmond contacted Holt and confirmed there was no recording of the third meeting. *Id.* 266. Osmond told Respondent that Holt had not recorded the third meeting and provided him with

Holt's phone number, inviting Respondent to speak directly with Holt to verify the information. *Id.* 265; Joint Ex. 15.

{¶31} The day after being informed that a tape of the third meeting did not exist, Respondent filed a motion in limine which stated, in part:

> However, despite two requests to do so, Relator has not produced this recording, instead taking the position that because Relator does not possess it, Relator does not have to produce it. But this response implicates Relator's basic duties as a prosecutor and calls into question the fundamental fairness of pursuing charges against Respondent when the prosecutor is fully aware that exculpatory evidence exists. Respondent now knows without a doubt that a recording exists that contains statement that exonerate the Respondent * * *. Yet, Relator hides behind a discovery rule rather than making sure that justice is fulfilled in this case.
>
> *Id.* 272; Joint Ex. 16.

{¶32} The motion did not mention that: (1) Osmond had performed an investigation regarding a third tape recording; (2) she had informed Respondent that the tape did not exist; and (3) Respondent had been given the opportunity to investigate for himself whether the tape existed. *Id.* 274.

{¶33} Osmond viewed the statements about her conduct in the motion as "just false." *Id.* 272, 281. Based upon that, Scott Drexel wrote a letter to Respondent seeking clarification of the statement he had made in the motion in limine. In response, Respondent defended the statements he had made in the motion even though they were not true. *Id.* 111-124; Relator's Ex. 19.

Count Four—Representation of Michael McKibben and Leader Technologies

{¶34} The stipulations and hearing testimony of Respondent and Robert Storey demonstrate that Respondent violated the following rules: Prof. Cond. R. 3.1; Prof. Cond. R. 3.3(a)(1); Prof. Cond. R. 3.4(c); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(d) in filing an improper "Stipulated Entry and Consent of Judgment" in the *Recovery Funding, LLC v. Leader Technologies* matter and then failing to withdraw it after being asked to.

{¶35} In the McKibben/Leader Technologies matter, the evidence showed that Respondent represented Recovery Funding, LLC in a matter adverse to McKibben and Leader Technologies. Hearing Tr. 78.

{¶36} At the time the lawsuit was filed, there was no dispute regarding the amount of attorney fees owed by McKibben and Leader Technologies. *Id.* 79, 210-211.

{¶37} The parties engaged in mediation discussions with Magistrate Harilstadt serving as mediator, but were unable to resolve all issues. *Id.* 81-82.

{¶38} In early April 2012, Respondent circulated a draft "Stipulated Entry and Consent Judgment" that he testified was requested by the mediator—the magistrate. *Id.* 85-86; Joint Ex. 18.

{¶39} Robert Storey, counsel for Leader Technologies, testified that the magistrate had not requested a consent judgment be drafted; instead the magistrate had simply asked Respondent to "put [his proposal] in writing." *Id.* 214. Defendants did not consent to the draft consent judgment. *Id.* 216.

{¶40} However, without the consent of the parties and without direction from the magistrate to do so, Respondent submitted the "Stipulated Entry and Consent Judgment" to the court. *Id.* 87-89.

{¶41} The parties had no notice that Respondent had submitted the stipulated entry. The "Stipulated Entry and Consent Judgment" did not indicate that it was a draft or proposed judgment. Nor did it mention that there were unresolved issues still pending. *Id.* 216; Joint Ex. 19.

{¶42} Following the filing of the entry, McKibben and Storey contacted Respondent informing him that the filed judgment was not proper and requested that he withdraw it. *Id.* 94-96, 217.

{¶43} Storey wrote to that if Respondent did not withdraw the judgment, he would be left with "no recourse but to institute disciplinary action," because of the dishonesty involved in Respondent's conduct. *Id.* 224-225. In response, Respondent threatened Storey with an action for frivolous conduct and alleged that Storey had "commit[ted] fraud upon the court" and had defam[ed] opposing counsel." Relator's Ex. 4.

{¶44} Respondent did not withdraw the "Stipulated Entry and Consent Judgment," arguing instead that the judgment was proper under Local Rule 25.01. *Id.* 95, 101. Local Rule 25:01; however, applies only to those cases in which "a decision, order, decree, or judgment is rendered." *Id.* 222; Joint Ex. 24.

{¶45} McKibben filed an objection to the "Stipulated Entry and Consent Judgment," asking that it be withdrawn. Respondent filed an opposition arguing the "Stipulated Entry and Consent Judgment" was proper. *Id.* 96; Joint Ex. 22.

{¶46} The court vacated the "Stipulated Entry and Consent Judgment," holding that there had been no settlement agreement between the parties. *Id.* 98; Joint Ex. 23.

{¶47} All of Respondent's exhibits were admitted into evidence. Additionally, all of the Relator's exhibits, except for Ex. 36, 37, and 39 were accepted and admitted into evidence. It is clear that based upon the testimony of Respondent, Attorney Kevin L. String, Attorney Robert

Storey, Attorney Karen Osmond, and Attorney Rick Brunner, Relator has proven by clear and convincing evidence that Respondent has violated the following Rules of Professional Conduct: Prof. Cond. R. 1.5(b); Prof. Cond. R. 1.8(a); Prof. Cond. R. 3.1; Prof. Cond. R. 3.3(a)(1); Prof. Cond. R. 3.4(c); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(d).

MITIGATION, AGGRAVATION, AND SANCTION

Mitigating Factors

{¶48} Respondent had not been previously disciplined. The panel also noted that the Franklin County Municipal Court did sanction Respondent by ordering to pay attorney fees to Davey Tree's attorney.

Aggravating Factors

{¶49} This panel notes that Respondent never conceded any wrongdoing. His counsel, during closing arguments, conceded several rule violations. Hearing Tr. 446, *et seq.* The failure on the part of Respondent, personally, to admit any wrongdoing underscored his refusal to accept any responsibility. Further, the evidence, through stipulations and in the hearing showed that Respondent repeatedly and intentionally failed to remove filings that were designed to gain him personal advantage. As a result, the panel finds a selfish motive on the part of Respondent as well as the commission of multiple offenses.

Recommended Sanction

{¶50} "The primary purpose of the disciplinary process is to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship and to allow [the Supreme Court] to ascertain the lawyer's fitness to practice law." *Disciplinary Counsel v. Sabroff,* 123 Ohio St.3d 182, 2009-Ohio-4205. Based upon the evidence in the record, the panel concludes that Respondent's repeated pattern of misconduct calls into question whether

Respondent is worthy of the public's trust and confidence that is essential to the attorney-client relationship and his fitness to practice.

{¶51} Relator and Respondent entered into agreements regarding many of the exhibits as well as acknowledging the mitigating and aggravating factors. They did not agree on an appropriate sanction. Relator requested that Respondent be suspended indefinitely. Respondent requested that any sanction be stayed on the condition of no further violations. There is no question that Respondent engaged in misconduct in several different scenarios that resulted in damage to his clients and to his profession.

{¶52} The Supreme Court of Ohio has held that it "will not allow attorneys who lie to courts to continue to practicing law without interruption." *Cleveland Bar Assn. v. Herzog,* 87 Ohio St.3d 215, 217, 1999-Ohio-30, citing *Toledo Bar Assn. v. Batt,* 78 Ohio St.3d 189, 192, 1997-Ohio-222. As the Supreme Court stated in *Disciplinary Counsel v. Fowerbaugh,* 74 Ohio St.3d 187, 190, 1995-Ohio-261:

> A lawyer who engages in a material misrepresentation to a court * * * violates, at a minimum, the lawyer's oath of office that he or she will not 'knowingly, employ * * * any deception, falsehood, fraud.' Such conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer. We cannot expect citizens to trust that lawyers are honest if we have not sanctioned those who are not.

{¶53} When an attorney engages in conduct that is determined to violate a rule prohibiting dishonesty, fraud, deceit, or misrepresentation, the attorney will be "actually suspended from the practice of law for an appropriate period of time." *Id.* at 190.

{¶54} The Supreme Court has indefinitely suspended attorneys for violations similar to those of Respondent. For example, in *Disciplinary Counsel v. Frost,* 122 Ohio St.3d 219, 2009-Ohio-2870, ¶37 the Court found indefinite suspension an appropriate sanction where the respondent "committed acts of dishonesty, engaged in a pattern of misconduct, committed multiple

offenses, and * * * failed to acknowledge the wrongfulness of [the] conduct." See also *Columbus Bar Assn. v. Squeo,* 133 Ohio St.3d 536, 2012-Ohio-5004, ¶17 (indefinite suspension for engaging in a pattern of dishonest conduct with selfish or dishonest motives).

{¶55} The Supreme Court also found an indefinite suspension appropriate in *Columbus Bar Assn. v. Cooke,* 111 Ohio St.3d 290, 2006-Ohio-5709, where "[t]he board cited respondent's dishonesty as the most troubling aspect of the case." *Id.* at ¶28. In *Cooke*, the Board had noted the respondent lacked "the basic ability to distinguish the truth, especially when it does not serve his personal interests." *Id.* In imposing an indefinite suspension, the Supreme Court emphasized "[t]here is simply no place in the legal profession for those who are unwilling or unable to be honest with clients, the courts, and their colleagues. *Id.* at ¶32.

{¶56} Likewise, in *Cleveland Metro. Bar Assn. v. Wrentmore*, 138 Ohio St.3d 16, 2013-Ohio-5041, the Supreme Court adopted an indefinite suspension as an appropriate sanction where the respondent's "explanation lacks credibility, and his self-serving statements and misrepresentations are indicative of a calculated attempt to avoid accepting responsibility for his misconduct." *Id.* at ¶23.

{¶57} In response to each of the four grievances, Respondent offered explanations that lacked credibility. Of greater concern, his responses call into question his character and integrity as a lawyer.

{¶58} In the Davey Tree matter, Respondent claims to have written a personal check and "wrapped" it in the garnishment notice to pay the judgment in the Davey Tree matter, but never informed counsel for Davey Tree that he had done so.

{¶59} Respondent offered three explanations as to why the Davey Tree judgment was satisfied: (1) he wrote a personal check wrapped in the garnishment notice and delivered to counsel

for Davey Tree; (2) the docket showed a garnishment of over $4,000; and (3) the insurance company for the drywall company said it would pay.

{¶60} In the Cracknell matter, Respondent claims to have communicated that his representation was pro bono, but later suggested Cracknell should take their fee dispute to fee arbitration, so that a third party could tell her it was pro bono, because he did not want to be left "holding the bag" on the legal fees.

{¶61} Also in Cracknell, Respondent claims to have sent Cracknell an email explaining to her the "special rules" related to loan transactions with clients, but his answer to Relator's amended complaint admits there was no writing. Nor did his prior attorney, Mr. Alkire ever make mention of this email about special rules in his response to the grievance.

{¶62} In the McKibben matter, Respondent claims that a judgment entry terminating the case was not the outcome that he had wanted. However, he never informed the court of this. Instead, Respondent opposed McKibben's attempt to have the judgment set aside.

{¶63} Respondent claims that he could not modify the "Stipulated Entry and Consent Judgment" without recirculating it for defendants' consideration, yet the version circulated to defendants did not include "submitted for approval" as it did in the version filed with the court.

{¶64} In each case, Respondent had an easy explanation for his conduct. Such responses were an attempt to avoid accepting responsibility for his misconduct.

{¶65} The panel finds two cases, particularly appropriate for review.

{¶66} In *Disciplinary Counsel v. Shaw*, 126 Ohio St.3d 494, 2010-Ohio-4412, the Supreme Court imposed a two-year suspension, with one year stayed. In representing an elderly client, Shaw committed several violations of the Rules of Professional Conduct. First, Shaw named his own children as the beneficiaries of the client's revocable living trust, even though the

client was not related to him by blood and he had not advised his client of the inherent conflict of interest created by this provision. Moreover, he never suggested that the client obtain advice from a disinterested person or have another attorney prepare the trust documents. Shaw violated DR 1-102(A)(5), DR 1-102(A)(6), DR 5-101(A)(1), and DR 5-101(A)(2).

{¶67} Second, Shaw obtained a loan from the same client to be used as a down payment for a building to house his law practice. Shaw did not advise the client to seek independent advice before making the loan, did not advise her of the risk in making an unsecured loan, and did not discuss the inherent conflict of interest in the loan arrangement. Shaw failed to repay the loan as agreed. Shaw's conduct was found to violate DR 1-102(A)(5), DR 1-102(A)(6), DR 5-101(A)(l), and DR 5-104(A).

{¶68} In an unrelated matter, Shaw obtained fees from his clients in a guardianship case without first obtaining the probate court's approval, and then sought additional fees from the probate court. After the probate court discovered he had already been paid by the client, the court ordered Shaw to reimburse the money paid in excess of the fees approved by the court. Shaw failed to comply with this order, thereby violating Prof. Cond. R. 3.4(c), Prof. Cond. R. 8.4(d), and Prof. Cond. R. 8.4(h).

{¶69} Shaw was found to have engaged in a pattern of misconduct with multiple offenses with resulting harm to vulnerable clients, and that he failed to make restitution. In mitigation, the Board found only that Shaw had no prior disciplinary record in 30 years of practice. Shaw received a two-year suspension, with one year stayed.

{¶70} In *Disciplinary Counsel v. Dettinger*, 121 Ohio St.3d 400, 2009-Ohio-1429, the respondent had borrowed $25,000 from a long time client and friend. Unlike Respondent in this case, Dettinger paid off of the loan principal to the executor, but long after it was due and without

any interest. Dettinger received a six-month suspension all stayed.

{¶71} In the present case, Respondent characterizes himself as an expert in ethics. In fact, he has used the moniker "the ethics monster." Relator's Ex. 41. Respondent's counsel urged the panel not to hold Respondent to a higher standard because he was a former Assistant Disciplinary Counsel. However, in light of the fact that Respondent uses his prior employment for marketing suggests that Respondent wants to have it both ways.

{¶72} In this case, Respondent twice filed false documents in court and refused to voluntarily withdraw them when confronted by opposing counsel. Respondent lied about his fee arrangements with Cracknell and was not forthcoming in his testimony about the loan. Finally, Respondent made (and then defended) disparaging comments about opposing counsel's performance of her duties "without a reasonable factual basis for making the statements." See, *Disciplinary Counsel v. Marshall*, 142 Ohio St.3d 1, 13, 2014-Ohio-4815, ¶59 (false statements concerning the integrity of a judicial officer).

{¶73} The panel also found helpful the Supreme Court's following statement explaining its imposition of an indefinite suspension in its decision in *Columbus Bar Assn. v. Cooke*, 111 Ohio St.3d 290, 295-96, 2006-Ohio-5709, ¶32:

> Many of respondent's ethical lapses are very serious in and of themselves. Collectively, they justify the sanction that the board has recommended. There is simply no place in the legal profession for those who are unwilling or unable to be honest with clients, the courts, and their colleagues. Respondent's misrepresentations to the bankruptcy court, to his client, to relator during the disciplinary investigation, and to the panel during the hearing compel an actual suspension from the practice of law. His assertion at the hearing that he is "proud" of his "aggressive" work on Ragland's behalf shows his lack of integrity. The one mitigating factor in this case pales in comparison to the many aggravating factors, and an indefinite suspension is appropriate in light of respondent's dishonesty, his mismanagement of his client trust account, and his attempt to charge an excessive fee to his client.

{¶74} However in spite of the above-cited instructions, the panel believes that the fact

Respondent has never previously been disciplined weighs against the imposition of an indefinite suspension. Therefore, after reviewing and consideration all of the exhibits, the testimony, and relevant case law, the panel concludes that Respondent should be sanctioned with a two-year suspension from the practice of law, with six months stayed provided that he has no further violations. Furthermore, all costs of these proceedings should be taxed to the Respondent.

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, Kenneth Ronald Donchatz, be suspended from the practice of law in Ohio for two years, with six months stayed on the condition that Respondent engages in 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.

RICHARD A. DOVE, Director