

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

In re:

Complaint against

Case No. 2016-052

**Scott Robert Cochran
Attorney Reg. No. 0065497**

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

Respondent

Mahoning County Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on June 14, 2017, in Columbus, Ohio, before a Panel consisting of Lindsay Ford Ellis, Paul M. De Marco and John W. Wise, 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 John B. Juhasz and Lynn Maro. David C. Comstock, Jr. and J. Michael Thompson appeared on behalf of Relator.

{¶3} Respondent was a defendant in a federal criminal case and charged with five felony counts arising from his representation of a criminal defendant in federal court. Respondent pled not guilty to all charges. The matter went to trial, ending in a mistrial due to juror misconduct. Subsequent to the mistrial, the trial court granted a motion to acquit on two of the five counts, those being Count III—conspiracy to obstruct justice, and Count IV—obstruction of justice. The other three counts remained pending. Following the order granting acquittal, a supplemental information was filed. Prior to retrial, Respondent and the government entered into negotiations which resulted in the court dismissing the remaining three felony counts of the original indictment.

Respondent pled guilty to 18 U.S.C. §401—misbehavior in the presence of the court that is somewhat analogous to contempt in state court. The facts supporting that offense are set forth in great detail in the joint stipulations of the parties. 18 U.S.C. §401 is an unspecified offense, meaning it was neither a felony nor a misdemeanor. The sentencing judge had discretion to sentence Respondent as if the charge was a felony or a misdemeanor offense. The judge treated the offense as a class B misdemeanor (petty offense) and sentenced Respondent to probation for a period of two years and a fine of \$2,500. The fine has been paid.

{¶4} Based upon the conduct described above, Respondent was charged with the following four violations of the Code of Professional Conduct: Prof. Cond. R. 3.3(a)(1) [candor to the tribunal]; Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer’s honesty or trustworthiness]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice].

{¶5} Prior to the hearing, Relator, in the joint stipulations, moved to dismiss all Prof. Cond. R. 8.4 violations. The panel took the motion under advisement. Following the hearing and review of post-hearing briefs, the panel unanimously dismisses the alleged violations of Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(d) and proceeds to consider the alleged violations of Prof. Cond. R. 8.4(b) and Prof. Cond. R. 3.3(a)(1).

{¶6} Based upon the parties’ joint stipulations, which were accepted by the panel, and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct in violation of Prof Cond. R. 8.4(b) and Prof. Cond. R. 3.3(a)(1) as set forth below. Upon consideration of the applicable aggravating and mitigating factors, joint stipulations, and case precedents, the panel recommends that Respondent

be suspended from the practice of law for a period of two years, with all time stayed on condition of good behavior and compliance with all conditions of the federal court imposed probation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent was admitted to the practice of law in the state of Ohio on November 13, 1995 and is subject to the Ohio Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶8} Respondent has no prior disciplinary record.

{¶9} The panel accepts all joint stipulations of fact. Respondent stipulated that he pled guilty to a violation of 18 U.S.C. §401 (misbehavior in the presence of the court), a criminal offense. Respondent, having stipulated to and been found guilty of that offense, is subject to review under the remaining alleged violations of Prof. Cond. R. 8.4(b) and Prof. Cond. R. 3.3(a)(1).

{¶10} The conduct that comprises the basis for the alleged violations is set forth in full in the joint stipulations. The panel will focus its analysis on the “incomplete and misleading” statements made in federal court that comprise the basis for both the criminal charges and the alleged professional conduct violations.

{¶11} There were two alleged misrepresentations to the court. They are set forth in the Stipulations ¶¶49-59.

{¶12} Respondent’s first misrepresentation occurred when responding to questions about a statement he made to the FBI. Respondent told the FBI, “But I know no representations were made, in my mind, representing to a victim, don’t show up or don’t say anything to the court about

asking for a sentence or something like that. That crosses the line for me and that's something that we wouldn't do." Stipulations ¶49.

{¶13} In court, Respondent is then questioned as to why he maintained that was not a false statement. His response was:

Well Moe Rawhneh was not a victim in the federal case, and during the part of the conversation that I had with him, I never asked him not to say anything or do anything. I certainly didn't have any knowledge of any conversation about him taking any particular position on the state case where he was the victim, so I do not believe that was false in that way. And I also was trying to explain to them [i.e., the FBI agents] what my thought process was, you know, that was my mental process of saying, in my mind, I don't think we did this.

Stipulations ¶50.

{¶14} Respondent misled the court by not disclosing that he was present when his law partner, Neal Atway,¹ represented to Rawhneh that if Rawhneh came to the federal sentencing, "hopefully" he would just sit in the back and keep his mouth shut. Stipulations ¶52.

{¶15} Respondent offers that there was no real harm in the statement because it was corrected on cross-examination within twenty minutes, and the complete statement to the FBI had been read in open court in front of the jury several times prior to his testimony. Hearing Tr. 49-52.

{¶16} The second statement that formed a basis of the misconduct in the presence of the court occurred when Respondent testified at trial that he was not aware of a deadline with Muth's federal drug case or if anything was going to be done to transfer the building located on Dresden Street to try to settle the civil claim. Stipulations ¶53.

{¶17} The statement was misleading because, while there was no deadline established by Rawhneh in regards to the Dresden building, Respondent's trial testimony failed to note that

¹ Atway is the respondent in *Mahoning Cty. Bar Assn. v. Neal Ghaleb Atway*, Board Case No. 2016-064.

Respondent himself had told Muth to let him know by the following Tuesday if Muth wanted to proceed with the settlement involving transfer of the building. That date was just days prior to Muth's sentencing hearing. That response was accurate as to what the FBI had asked in their interview. However, the question at trial did not limit the issue of a deadline being set by Rawhneh, and therefore Respondent's failure to disclose that he, the Respondent, had set a deadline, misled the court. Stipulations ¶¶55-59.

{¶18} With reference to both statements, the federal court found that although the statements were misleading and incomplete, they were not made with an intent to obstruct. Stipulations ¶61.

{¶19} The trial judge determined that Respondent's offense was a Class B misdemeanor (petty offense) and sentenced Respondent to probation for a period of two years and fined him \$2,500. Although a misdemeanor is an illegal act, the sentencing judge noted that the misrepresentations were not made with the intent to obstruct justice. Stipulations ¶¶54, 61.

{¶20} The panel finds by clear and convincing evidence that Respondent violated Prof. Cond. R. 3.3(a)(1) by pleading guilty to and being found guilty of 18 U.S.C. §401. Specifically, the making of misleading and incomplete answers by Respondent in his testimony before the federal court shows a lack of candor toward the tribunal.

{¶21} The panel finds by clear and convincing evidence the Respondent violated Prof. Cond. R. 8.4(b) by pleading guilty to and being found guilty of 18 U.S.C. §401. Respondent's misleading and incomplete answers in his testimony before the federal court reflects adversely on his honesty and trustworthiness.

{¶22} As stated above, the panel unanimously dismisses the alleged violations of Prof. Cond. R. 8.4(c) and Prof. Cond. R. 8.4(d).

MITIGATION, AGGRAVATION, AND SANCTION

{¶23} The panel finds no aggravating circumstances in this case. Although there are multiple violations, both violations arise out of the exact same conduct and resulted in one misdemeanor conviction. Therefore, the panel determines this is not an aggravating factor.

{¶24} The panel finds the following mitigating factors:

- Respondent has no prior disciplinary record.
- There is an absence of a dishonest or selfish motive. Although the statements comprising the violations were made by Respondent in his own defense at trial, the panel finds, as did the federal judge, that the statements were not made to obstruct the proceedings. For that reason, we find no selfish or dishonest motive.
- Respondent made a full and free disclosure to the Board and had a cooperative attitude toward the proceedings. Respondent self-reported the misdemeanor criminal conviction to the bar counsel and to Relator.
- Respondent has already been sanctioned by the United States District Court and, thus far, is in compliance with the imposed sanction.

{¶25} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties violated by Respondent and the sanctions imposed in similar cases. In this matter, the panel will also consider the federal court's treatment of Respondent. Because it is Respondent's conviction of the unspecified federal criminal offense that provides the basis for Respondent's violations of the Rules of Professional Conduct, we consider closely what the federal court judge did and said in regards to Respondent's conduct. The judge was a direct observer of Respondent's conduct in court. He was in the best position to determine the intent of Respondent when testifying. Further, the judge had the opportunity to review presentence reports, arguments of counsel, and apply the law accordingly. The judge had the authority to treat Respondent's conduct on his conviction of the unspecified offense, as either a felony or a misdemeanor. The judge determined that while the responses of Respondent may have been incomplete and misleading, they were not made with intent to obstruct. The court

sentenced Respondent as if the offense were a Class B misdemeanor (petty offense). This is a clear indication the judge found that Respondent did not intend to affect or obstruct the judicial proceedings. However, the court did find that Respondent made misrepresentations to the court sufficient to support the charge of the unspecified offense (misrepresentation to the court).

{¶26} The judge sentenced Respondent to probation for a period of two years and imposed a fine of \$2,500. Respondent has paid the fine. Joint Ex. 8.

{¶27} The panel finds the period of probation imposed to be significant in determining the appropriate sanction to be recommended for Respondent's violations of the rules; specifically, the necessity for suspension, length of suspension, and whether any or all of the suspension time should be stayed.

{¶28} Here, the judge indicated his areas of consideration in sentencing Respondent:

I have to impose a sentence, a sentence that reflects the seriousness of the offense, that promotes respect for the law and provides just punishment, and the sentence is to afford adequate deterrence for criminal conduct, protect the public from further crimes by you, and to the extent possible, to provide you with needed educational and vocational training, medical care, and other treatment in the most effective manner.

Joint Ex. 6 at 18.

{¶29} This standard closely reflects the duties of this panel when determining an appropriate sanction in a disciplinary matter.

{¶30} The panel also looks to the comments to Prof. Cond. R. 8.4 to provide useful guidance regarding criminal convictions and recognizing that not all criminal conduct should result in disciplinary action.

Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal

morality, such as adultery and comparable offenses that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. * * *

Prof. Cond. R. 8.4, Comment [2].

{¶31} Here, although there were misleading statements, they were not such as to interfere with the administration of justice as found by the federal court judge in his sentencing.

{¶32} The panel now looks to case precedent for guidance on sanctions. The panel's review does not reveal any cases with similar facts alleging the same violations. The following cases provide some guidance despite their differences.

{¶33} *Disciplinary Counsel v. Martinez*, 146 Ohio St.3d 212, 2016-Ohio-2709. The Supreme Court found that a stayed six-month suspension was warranted for a lawyer who pled no contest to obstructing official business for his participation in a scheme to bribe a client to write favorable letter to the sentencing judge in defendant's criminal case in exchange for settling client's civil case against defendant. The lawyer was contrite and truly remorseful for his misconduct, and the lawyer's demeanor and testimony indicated that he had learned necessary lessons from the experience. The Court found the lawyer violated Prof. Cond. R. 8.4(b), (c), and (d), the similarity of the offense being akin to obstructing justice and there being a Prof. Cond. R. 8.4(b) violation, along with others, which provides some guidance.

{¶34} *Disciplinary Counsel v. Niermeyer*, 119 Ohio St.3d 99, 2008-Ohio-3824. The Supreme Court found a one-year suspension from practice of law, stayed on condition of good behavior, was appropriate sanction for a lawyer who violated former DR 1-102(A)(4) and (6), the predecessors to Prof. Cond. R. 8.4(c) and (h), regarding dishonest conduct and creation of false evidence in handling a client's time-barred workers' compensation claim. Mitigating evidence

included the lawyer's lack of a disciplinary record, his full cooperation in the disciplinary process, including reporting his own misconduct, and his good character and reputation apart from the incident in question. The similarity of misconduct in front of the court by providing false or misleading evidence is significant.

{¶35} *Toledo Bar Assn. v. DeMarco*, 144 Ohio St.3d 248, 2015-Ohio-4549. A one-year suspension, with six months stayed, was warranted for a lawyer's conduct of engaging in a series of misrepresentations directly to the court that lawyer did not possess a disc containing potentially confidential information from opposing party, threatening to take his own expert "outside" after the expert truthfully testified about giving the disc to the lawyer, and failure to admit that he had made misrepresentations until the expert played a voicemail in which the lawyer stated that he possessed the disc. Mitigation included that the lawyer had no prior discipline, he displayed a cooperative attitude during the disciplinary process, and he provided letters from judges and lawyers attesting to his good character and reputation. DeMarco was found to have violated Prof. Cond. R. 3.3(a)(1) and (3) and Prof. Cond. R. 8.4(c). The comparison is the misrepresentations to the court. In *DeMarco* the misrepresentations to the court were more egregious than the Respondent's conduct in this matter in that DeMarco's misrepresentations were not corrected quickly through his own testimony, as Respondent's did. Respondent's conduct was found not to have been done with intent to obstruct justice, based on the judge's statements in this matter.

{¶36} Our review of prior cases that have found the proper sanction for violations of Prof. Cond. R. 3.3(a)(1) and Prof. Cond. R. 8.4(b) to be a two-year suspension, all stayed, have included additional violations and an underlying alcohol or drug problem requiring participation in OLAP

for the stayed period of suspension. Those facts are not applicable here but are set forth to compare with our recommended sanction.

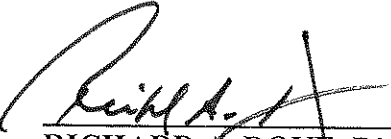
{¶37} The panel places great consideration of the actions taken by the federal court when sanctioning Respondent both as to lack of jail time and the length of probation. In addition, the panel places emphasis on the lack of aggravating circumstances and Respondent's genuine remorse as well as his compliance with his sanction by the federal court thus far.

{¶38} The panel recommends Respondent be suspended from the practice of law for a period of two years, all time stayed on condition of good behavior and compliance with all conditions of the Federal court imposed probation.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on August 4, 2017. The Board adopted the findings of fact and conclusions of law of the panel. After discussion, the Board voted to modify the sanction recommended by the panel and recommends that Respondent, Scott Robert Cochran, be suspended from the practice of law in Ohio for one year, with the suspension stayed in its entirety on the conditions of (1) compliance with all conditions of his federal court-ordered probation, and (2) no further misconduct. The Board further recommends that Respondent be ordered to pay the costs of these proceedings.

Pursuant to the order of the Ohio Board of Professional Conduct, I hereby certify the foregoing findings of fact, conclusions of law, and recommendation as those of the Board.



RICHARD A. DOVE, Director