

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

In re:

Complaint against

Case No. 2017-017

**John Joseph Okuley
Attorney Reg. No. 0076748**

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

Respondent

Columbus Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on August 10 and 11, 2017 before a panel composed of James D. Caruso, William H. Douglass and Peggy J. Schmitz, panel chair, all of whom are duly qualified members of the Board of Professional Conduct. None of the panel members resides in the appellate district in which the complaint arose, and none served on the probable cause panel that certified the matter to the Board.

{¶2} Relator was represented at the hearing by Lori J. Brown and Joanne S. Beasy. Respondent was present at the hearing and represented by Alvin Mathews, Jr.

{¶3} The two-count complaint in this matter stems from an incident on April 9, 2015 (the “Bicycle Incident”) that resulted in Respondent being charged by the city of Columbus and ultimately found guilty of criminal damaging, a misdemeanor of the second degree. Based on his conduct in connection with and after the Bicycle Incident, Respondent was charged in Count One of the complaint with violations of Prof. Cond. R. 8.4(h), Prof. Cond. R. 3.4(a), Prof. Cond. R. 8.4(c), Prof. Cond. R. 3.4(c), and Prof. Cond. R. 8.4(d).

{¶4} Count Two of the complaint (“Investigation of Respondent”) alleges violations of Prof. Cond. R. 3.1, Prof. Cond. R. 3.3(a)(1), Prof. Cond. R. 3.3(a)(3), Prof. Cond. R. 8.1(a); Prof. Cond. R. 8.1(b), Prof. Cond. R. 8.4(c), and Gov. Bar R. V, Section 9(G).

{¶5} The parties filed agreed stipulations of fact and 22 stipulated exhibits. Each of the parties submitted additional exhibits. In addition to the Respondent, five witnesses testified during the hearing on behalf of Relator, and one on behalf of Respondent. At the request of the panel, following the conclusion of the hearing, Respondent filed documents received in response to his public records request to the Columbus city attorney.

{¶6} Based upon the agreed stipulations of fact and the evidence presented at the hearing and subsequent to the hearing at the request of the panel, the panel finds by clear and convincing evidence that Respondent engaged in professional misconduct as set forth below. Upon consideration of the applicable aggravating and mitigating factors and case precedent, the panel recommends that Respondent be suspended from the practice of law for a period of one year, with six months stayed on conditions, and that Respondent be placed upon nonmonitored probation upon his return to the practice of law to ensure compliance with his OLAP contract.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} The panel adopts the parties’ joint stipulations.

{¶8} Respondent was admitted to the practice of law in Ohio on November 10, 2003. He has no prior disciplinary record with the Supreme Court of Ohio.

Count One—Bicycle Incident

Events of April 9, 2015

{¶9} On April 9, 2015, at approximately 9:00 a.m., Respondent was operating his motor vehicle heading eastbound on Kenworth Road in Columbus. Stipulations ¶4. Kenworth Road and

Milton Avenue are residential surface streets that, in part, constitute the small connecting portion of a lengthy bicycle trail that runs along the Olentangy River and is known as the Olentangy Trail. Stipulations ¶5.

{¶10} While Respondent’s vehicle was located on West Kenworth Road, a bicyclist, Eric Hansen, approached Respondent’s car from the rear. Stipulations ¶6. The road was partially blocked by a stationary delivery truck on the right side of the road and a garbage truck on the left side. Hearing Tr. 38. While Respondent’s car was stopped next to the delivery truck and behind several other vehicles, Hansen rode his bike between the truck and Respondent’s car, passing Respondent’s car on the right. Hearing Tr. 39.

{¶11} Respondent provided several versions of what transpired on Kenworth Road. Respondent told the investigating officer who responded to a 911 call at the scene that Hansen smacked the side of his vehicle with his hand as he was passing Respondent. Stipulated Ex. 5. Respondent stated in his answer to a civil suit that was filed subsequently against Respondent by a witness, Dr. John Bahling,¹ that Hansen had “intentionally navigated his vehicle into the stationary vehicle operated by [Respondent].” Stipulated Ex. 10, ¶11. In response to cross-examination by Relator during the hearing in this matter, Respondent testified that Hansen intentionally ran into his car (Hearing Tr. 283), and later, during his direct examination, testified that he heard a sound while Hansen was passing him, and didn’t know whether Hansen had slapped the car, hit it with his pedal, or hit it with his bike. Hearing Tr. 382. Hansen denied making any contact with Respondent’s vehicle on Kenworth Road, but testified that, as he was passing Respondent’s vehicle, Respondent turned his wheels toward Hansen, and moved in his direction. Hearing Tr. 39.

¹ *Bahling v. Okuley Smith LLC et al.*, Franklin Co. Common Pleas Court, Case No. 16 CV-3320

{¶12} After passing Respondent's vehicle, Hansen continued east on Kenworth, and turned right to go south on Milton Road. Hearing Tr. 40. Respondent followed Hansen on to Milton, inches from Hansen's back tire (Hearing Tr. 81), with his engine racing, and passed Hansen in the intersection of Milton and North Broadway, then pulled in front of Hansen and unexpectedly, for no apparent reason, slammed on his brakes. Hearing Tr. 41. Hansen testified that it was impossible for him to avoid colliding with Respondent's vehicle, even though he applied his brakes so hard that the rear wheel of his bike lifted off the road. Hansen's bike collided with the rear of Respondent's vehicle, and Hansen fell to the ground. Hearing Tr. 41-42. Hansen's handlebars were bent in the collision and his left brake lever and front brakes were damaged and had to be replaced.² Hearing Tr. 43.

{¶13} The incidents described in ¶12 were observed by John Bahling, a medical doctor who was northbound on Milton, and stopped at the intersection of North Broadway, waiting for the on-coming traffic to clear so he could turn left on North Broadway. Hearing Tr. 80-84. Bahling testified that Respondent appeared to be trying to run Hansen off the road, and appeared to be very angry, leaning forward on his steering wheel, revving his engine, gesturing toward Hansen, and yelling as he followed Hansen into the intersection before speeding around him and then slamming on his brakes directly in front of Hansen, causing Hansen to smash into the rear of Respondent's vehicle. Hearing Tr. 81-82.

{¶14} Following the collision, Respondent exited his car, got close to Hansen's face and began yelling and accusing Hansen of hitting Respondent's car on purpose. Respondent made several reaches toward Hansen's face, as if to grab Hansen's glasses, causing Hansen to believe Respondent was trying to provoke a response. Hearing Tr. 44, 68-69.

² No evidence was presented with regard to the monetary amount of the damage to Hansen's bicycle.

{¶15} Bahling parked and exited his car to check on Hansen, and observed Respondent behaving aggressively toward Hansen. Bahling began video recording Respondent with his cell phone hoping to defuse the situation. Hearing Tr. 86-87. When Respondent noticed that Bahling was recording him, Respondent turned away from Hansen and began moving toward Bahling, striking Bahling and trying to grab his phone. Hearing Tr. 88. Respondent then got back in his car, drove forward a short distance and stopped his vehicle. Bahling's video tape of this series of events was entered into evidence as Stipulated Ex. 4.

{¶16} After moving his car down the road a short distance, Respondent returned on foot to the location where Hansen and Bahling were standing while Hansen was on the phone with a 911 dispatcher. Respondent demanded that Bahling give him the phone "for evidence," and tried to grab the phone from Bahling's hand (Hearing Tr. 46, 90) as Bahling attempted to record Respondent for the second time. Respondent knocked Bahling's sunglasses off and put them in his pocket, saying, "These are mine now." Bahling grabbed Respondent's jacket and demanded that Respondent give him back his sunglasses. Hearing Tr. 91. Hansen described the situation to the 911 dispatcher as it was occurring. The recording of Hansen's 911 call and a transcript of the recording were entered into evidence. Stipulated Ex. 1; Relator's Ex. 5.

{¶17} A second witness, Daniel Walker, arrived on the scene and watched as the encounter over the phone between Respondent and Bahling escalated. Hearing Tr. 200. As the intensity of the encounter increased and became more physical, Walker tried unsuccessfully to separate Respondent and Bahling by walking between them and placing his hands on their chests. During the scuffle, Bahling's phone fell to the street. Respondent then went over to the phone and stomped on it, intentionally smashing it with his foot as hard as he could. Hearing Tr. 202, 210. Respondent grabbed the phone and took it with him to the porch of a nearby home (Hearing Tr.

93, 216), yelling, “You don’t have any [expletive] evidence now.” Hearing Tr. 93. Since the second video recording of Respondent’s actions was still in process when the phone was destroyed, the video did not upload and could not be retrieved.

{¶18} Two police officers arrived and interviewed Hansen, Bahling, Walker, and Respondent. When one of the officers told Respondent he could not take another person’s possessions without proper justification, Respondent told the officer, “I’m pretty sure you’re wrong officer * * * I’m allowed to collect evidence.” Stipulated Ex. 5.

{¶19} Like his several descriptions of what occurred on Kenworth Road, Respondent’s several versions of the events on Milton Road also differed materially from those of all of the other witnesses. Respondent told the investigating officers that Hansen purposefully ran into the back of Respondent’s vehicle, and that the damage to Bahling’s phone was the result of the phone falling to the ground when Bahling tried to prevent Respondent from taking the phone. Stipulated Ex. 5. Respondent’s testimony was belied by Respondent’s former assistant, who testified that when Respondent got to the office following the incident he told her that he had swatted the phone out of Bahling’s hand and it “went flying.” Hearing Tr. 470. Respondent also testified under oath, both at his deposition and before the panel, that he was 50 yards in front of Hansen when he stopped his car on Milton, and that Hansen intentionally ran into the back of his vehicle. Hearing Tr. 283, 287-288. He denied stomping on the phone (Hearing Tr. 226), and testified during his deposition that he had no recollection of causing any damage to the phone. He called 911 from the scene and told the dispatcher that he was being harassed and had been “hit by two guys” (Relator’s Ex. 6); and claimed in two *pro se* court filings that Bahling assaulted him, and that Bahling “was at all times the aggressor,” and had attacked him from behind without provocation. Stipulated Ex. 6 and 10.

Subsequent Criminal Proceedings

{¶20} On or about April 14, 2015, a complaint was filed against Respondent in Franklin County Municipal Court charging him with criminal damaging in violation of Columbus City Code 2309.06, a second degree misdemeanor. *City of Columbus v. Okuley*, Case No. 2015 CRB 008217. Stipulations ¶10.

{¶21} A summons for Respondent's appearance was issued with the complaint ordering Respondent to appear in court for arraignment on May 13, 2015. Stipulations ¶11.

{¶22} Respondent appeared on May 13, 2015 and the arraignment was continued to June 16, 2015. Stipulations ¶12.

{¶23} Respondent did not appear on June 16, 2015 and a warrant was issued for his arrest. Stipulations ¶13. In Respondent's *pro se* motion to dismiss the criminal charge, he claimed that he had been given "mistaken information" about the new appearance date by the clerk of courts not once, but twice. Stipulated Ex. 6.

{¶24} Respondent was arraigned on June 22, 2016, entered a plea of not guilty, and was released on his own recognizance. Stipulations ¶14.

{¶25} Trial was scheduled for July 15, 2015, for which the prosecutor was granted a continuance to August 10, 2015. Stipulations ¶16.

{¶26} On August 10, 2015, Respondent appeared for the trial at municipal court. When the trial did not go forward at the scheduled time, Respondent left the courthouse. Stipulations ¶17. Respondent led the prosecuting attorney to believe that he was waiting for his attorney to arrive, but then disappeared. Hearing Tr. 231-232; 253. The witnesses for the city had been subpoenaed and were present for the trial, and the prosecution was prepared to try the case that day. Stipulated Ex. 7; Hearing Tr. 254-256.

{¶27} On August 11, 2015, a warrant was issued for Respondent's arrest. Stipulations ¶18.

{¶28} The August 11 warrant was cancelled after Respondent was arrested and posted bond in the amount of \$5,000 on October 9, 2015. Stipulations ¶19; Stipulated Ex. 7.

{¶29} Respondent filed a motion to dismiss *City v. Okuley* on November 2, 2015 on grounds that the city had failed to timely try the case. Stipulations ¶20; Stipulated Ex. 6.

{¶30} On November 3, 2015, a new jury trial date was scheduled for December 7, 2015. Stipulated Ex. 7. Witnesses were again subpoenaed and appeared for trial on December 7. Respondent appeared without counsel and requested a continuance to hire counsel. The court granted a continuance until February 8, 2016, over the objection of the prosecutor. Hearing Tr. 243.

{¶31} On February 4, 2016, Respondent appeared in court and changed his plea from not guilty to no contest. He was found guilty of criminal damaging and sentenced to 90 days in jail, all suspended, ordered to make restitution to Dr. Bahling in the amount of \$950, fined \$100, and placed on community control until he made restitution and paid the fine and court costs. Respondent paid the restitution, fine and costs on or before March 4, 2016. Stipulations ¶¶23-25.

Rule violations

{¶32} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law] by deliberately causing Hansen to collide with Respondent's vehicle, by provoking a physical confrontation with Dr. Bahling in an effort to seize his cell phone, by deliberately crushing the cell phone after it fell to the ground, and by providing false and misleading statements about the incidents to law enforcement personnel and the courts. The panel finds that Respondent's conduct

was sufficiently egregious to merit a separate finding of the Prof. Cond. R. 8.4(h) violation. See *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, ¶21.

{¶33} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 3.4(a) [obstructing another party’s access to evidence] by destroying Dr. Bahling’s cell phone and rendering the second video tape unrecoverable.

{¶34} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit or misrepresentation] by providing false information to the investigating police officers, the prosecuting attorney, and the court.

{¶35} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 3.4(c) [knowingly disobeying an obligation under the rules of a tribunal] and Prof. Cond. R. 8.4(d) [conduct prejudicial to the administration of justice] by leaving the courthouse on August 10, 2015, when the criminal damaging case was scheduled for trial.

Count Two—Investigation of Respondent

Relator’s Letters of Inquiry

{¶36} Relator mailed a “PERSONAL AND CONFIDENTIAL” letter dated March 9, 2016, to Respondent at his office address, asking Respondent to provide information regarding his criminal conviction within ten days. Stipulations ¶26; Stipulated Ex. 11. Respondent did not respond to Relator’s request (Stipulations ¶27), and testified that he does not remember seeing the letter, although he almost always opens all of the office mail, and believes that it might have been thrown away as junk mail. Hearing Tr. 356.

{¶37} Relator sent a second letter, dated March 25, 2016 to Respondent by certified mail. Stipulations ¶28; Stipulated Ex. 12. The letter was received at Respondent’s office on or about March 28, 2016. Stipulations ¶31.

{¶38} Respondent was driving a vehicle that was involved in a multiple vehicle crash on the Ohio Turnpike on March 27, 2016. Stipulations ¶29. Respondent was injured and hospitalized until March 29, 2016 as a result of the crash. Stipulations ¶30.

{¶39} On April 13, 2016, Respondent telephoned Relator's office and asked for another copy of the March 25, 2016 letter and for additional time to respond. Stipulations ¶32. At Respondent's request, he was provided with another copy of the letter and was granted additional time, until May 6, 2016, to respond. Stipulations ¶33; Stipulated Ex. 13; Hearing Tr. 331.

{¶40} Respondent failed to respond to the request on or before the extended deadline of May 6, 2016, and failed to contact Relator to request additional time to respond. Stipulations ¶34; Hearing Tr. 333-334. Respondent testified that he did not respond because he was unable to work fulltime following his March 27, 2016 automobile accident due to a concussion sustained in the accident. Respondent was treated by Joseph Rosenthal, M.D., MPH, a specialist in physical medicine rehabilitation, and a subspecialty in traumatic brain injury, who confirmed that Respondent was only able to work for an hour or two at a time for several months after the March 27, 2016 accident. Stipulated Ex. 17, pp. 11-13.

Respondent's Deposition

{¶41} Relator's investigator contacted Respondent in mid-July 2016 and offered to allow Respondent to submit to a deposition in lieu of filing a written response to Relator's inquiry about Respondent's conviction for criminal damaging. Hearing Tr. 334. Respondent submitted to a deposition on August 9, 2016, in which he testified that Hansen came up from behind him on Kenworth Road and ran into Respondent's car, then ran into Respondent's car again while Respondent was getting out of the car on Milton Avenue. Stipulated Ex. 15, at 15. Respondent also testified that he was walking back to his car when Bahling jumped him from behind (*Id.* at

18), and that he didn't steal Bahling's phone, but was just trying to keep Bahling from erasing the video tape of the assault (*Id.* at 22). Respondent's deposition testimony was clearly false and contradicted by the testimony of all of the witnesses at the scene, as well as the video recording (Stipulated Ex. 4) and the recording of Hansen's 911 call (Stipulated Ex. 1).

Bahling's Civil Lawsuit

{¶42} On April 6, 2016, Bahling filed a civil lawsuit against Respondent for negligence, punitive damages, and conversion, *Bahling v. Okuley et al.*, Franklin County Court of Common Pleas, Case No. 16 CV 003320. Stipulations ¶35).

{¶43} On May 5, 2016, acting *pro se*, Respondent filed a motion for extension of time in *Bahling v. Okuley*. Stipulations ¶36. On June 21, 2016, filed a *pro se* answer and counterclaim in that case, alleging, that Hansen had twice, intentionally, collided with his vehicle; that, after the second collision, Respondent attempted to assist Hansen; that Bahling, without provocation, grabbed Respondent from behind and attempted to throw him to the ground; that Respondent attempted to prevent Bahling from destroying evidence; that Respondent suffered injuries, including clawing injuries to his hands and neck, and that the injuries "drew blood;" that Bahling destroyed evidence that documented his unprovoked assault on Respondent; and that Bahling proffered evidence to the Columbus Police and the Franklin County Municipal Court that had been altered intentionally by Bahling. Stipulated Ex. 10. The panel finds all of these allegations to be untruthful.

{¶44} Respondent and Bahling entered into a settlement agreement and mutual release of all claims in July 2017, the terms of which included a payment of \$5,000 to Bahling by Respondent's insurance company, and a dismissal of the pending claims of both parties in *Bahling v. Okuley*. Respondent's Ex. F.

{¶45} On July 10, 2017, Respondent entered into a three-year contract with the Ohio Lawyer's Assistance Program (OLAP) under which he agreed to continue treating with his rehabilitation psychologist to address symptoms of depression that were exacerbated by the injuries he sustained in the March 26, 2017 vehicular accident, and difficulty dealing with stress, time management, and adjusting to his injuries. Stipulated Ex. 20.

Rule Violations and Dismissals

{¶46} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 3.1 [bringing or defending a proceeding, or asserting or controverting an issue in a proceeding (without) a basis in law and fact for doing so that is not frivolous]; 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 by the lawyer]; and Prof. Cond. R. 8.4(c). These findings are based upon the false allegations that formed the basis of the counterclaim, and by making numerous false assertions in Respondent's answer to the civil lawsuit and to the prosecuting attorney in the criminal damaging case.

{¶47} The panel finds, by clear and convincing evidence, that Respondent violated Prof. Cond. R. 3.3(a)(3) [knowingly offering evidence that the lawyer knows to be false], and Prof. Cond. R. 8.1(a) [in connection with a disciplinary matter, knowingly making a false statement of material fact], by virtue of his untruthful testimony in the August 9, 2016 deposition.

{¶48} The complaint also charges Respondent with violating Prof. Cond. R. 8.1(b) [in response to a demand for information from a disciplinary authority, failing to disclose a material fact or knowingly failing to respond]; and Gov. Bar R. V, Section 9(G) [neglecting or refusing to assist in an investigation]. The panel finds that a violation of these rules was not demonstrated by clear and convincing evidence. The panel therefore dismisses these charges.

AGGRAVATION, MITIGATION, AND SANCTION

{¶49} The panel finds the following aggravating factors:

- Respondent displayed a *selfish or dishonest motive* by claiming that Respondent took the cell phone from Bahling to prevent Bahling from destroying evidence, after Respondent, himself, stomped on the phone, destroying it and the evidence it contained with regard to Respondent's conduct at the scene of the Bicycle Incident on April 9, 2015; and the filing of a frivolous counterclaim based on false allegations Bahling's civil lawsuit;
- Respondent engaged in a *pattern of misconduct* by making multiple misrepresentations to law enforcement personnel, the courts, and Relator; and
- Respondent submitted *false evidence or false statements during the disciplinary process* by providing untruthful deposition testimony.

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

- *Absence of a prior disciplinary record;*
- *Evidence of good character or reputation* in the form of charitable work and good character [Respondent's Exhibits A, B and G³; and
- *Imposition of other penalties or sanctions* by payment of the fine and restitution for damage to Dr. Bahling's cell phone in the criminal damaging case and payment of the agreed settlement in Bahling's civil action.

{¶51} Evidence of a disorder was not considered a mitigating factor since there was no evidence of a determination that a disorder contributed to cause the misconduct found by the panel.

{¶52} In recommending a sanction, the panel considered the ethical duties that Respondent violated, and the sanctions imposed in similar cases. See, *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St. 3d 424, 2002 Ohio-4743, ¶16. The panel also considered the aggravating and mitigating factors set forth above.

³ Respondent's Ex. A is his *curriculum vitae*; Respondent's Ex. B is a newspaper article describing Respondent's efforts to assist victims of Hurricane Katrina; and Respondent's Ex. G includes nine letters describing various charitable and civic endeavors of Respondent and several client testimonials. Respondent's Ex. G was admitted into evidence over Relator's objection on the basis of the timeliness of the submission of the exhibit, the inclusion of opinions in some of the letters regarding Respondent's veracity, and the fact that there was no evidence regarding the authors' unavailability to testify at the hearing. The panel considered the letters solely for the evidence they contained regarding Respondent's general character and reputation, and did not credit any statements contained in Respondent's Ex. G letters that purport to provide evidence of Respondent's veracity or any other disputed issues in this matter.

{¶53} The panel is mindful of the fact that the violations committed by Respondent did not involve a client-attorney relationship. The panel is concerned, nonetheless, with the harm to the public that was created in this situation by Respondent's conduct, including the danger he created on the roadway for Hansen, the violence caused by Respondent's efforts to prevent Bahling from recording Respondent's aggressive and inappropriate behavior toward Hansen, and the exacerbation of the misconduct created by Respondent's deceitfulness in dealing with law enforcement personnel, the judicial system, and Relator. Additionally, based on Respondent's testimony before the panel, it is clear that Respondent has not acknowledged the wrongful nature of his conduct. It is these factors that weigh in favor of a suspension from the practice of law.

{¶54} Relator recommends that Respondent be suspended from the practice of law for a period of one year with six months stayed, and placed on nonmonitored probation upon reinstatement, conditioned upon compliance with all of the terms of his 2017 OLAP contract. Respondent recommends that any suspension should be stayed in its entirety, subject to probation and compliance with the OLAP contract.

{¶55} A review of cases involving similar violations and aggravating and mitigating circumstances reveals sanctions ranging from public reprimand to indefinite suspension.

- In *Cincinnati Bar Assn. v. Ball*, 146 Ohio St.3d 382, 2016-Ohio-785, Ball, like Respondent herein, was found to have violated Prof. Cond. Rules 8.1(a), 8.4(d), and 8.4(h), in addition to two other rule violations. Ball's violations involved multiple encounters with law enforcement as a result of his alcohol use. Ball received an indefinite suspension.
- In *Disciplinary Counsel v. Thomas*, 146 Ohio St.3d 429, 2016-Ohio-1582, Thomas also received an indefinite suspension. Like Respondent, Thomas's violations included Prof. Cond. Rules 3.3(a)(1), 3.3(a)(3), 8.4(c) and 8.4(d). Thomas's violations occurred in connection with a felony conviction arising from the theft of funds from four individuals for whom he served as a court-appointed guardian, and his attempts to conceal the thefts by filing false inventories with the probate court.

{¶56} Lesser sanctions were imposed in cases involving fewer violations, fewer aggravating factors and/or mitigating factors that were not present in this case, including a cooperative attitude toward the disciplinary proceedings, full and free disclosure, and an acknowledgment of the wrongful nature of the conduct.

- In *Disciplinary Counsel v. Champion*, 147 Ohio St.3d 425, 2016-Ohio-8023, Champion received a one-year stayed suspension for conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Prof. Cond. R. 8.4(c) as a result of false statements he made in response to a civil action filed against him by the city of Akron for the collection of delinquent municipal income taxes.
- In *Disciplinary Counsel v. Hillis*, 139 Ohio St.3d 319, 2014-Ohio-2113, Hillis received a six-month stayed suspension based on his conviction of the misdemeanor offenses of solicitation and criminal trespass. The case involved a consent to discipline for the violation of Prof. Cond. R. 8.4(h).
- In *Disciplinary Counsel v. Hillman*, 145 Ohio St.3d 489, 2016-Ohio-1172, Hillman was given a one-year stayed suspension for engaging in conduct that adversely reflected on his fitness to practice law in violation of Prof. Cond. R. 8.4(h) based on his willful failure to file federal income tax returns.
- In *Disciplinary Counsel v. Salters*, 146 Ohio St.3d 1, 2016-Ohio-1505, Salters received a one year stayed suspension for a violation of Prof. Cond. R. 8.4(h) in a consent to discipline case stemming from his convictions for a felony violation of trespass in a habitation, operating a vehicle while intoxicated, and child endangerment. Salters had no aggravating circumstances, and several mitigating circumstances, including no prior discipline, no dishonest or selfish motive, full and free disclosure, other penalties and other rehabilitation.
- In *Disciplinary Counsel v. Martinez*, 146 Ohio St.3d 212, 2016-Ohio-2709, Martinez received a six-month stayed suspension for violations of Prof. Cond. Rules 8.4(b), 8.4(c) and 8.4(d) following his plea of no contest and conviction for obstructing official business, a second degree misdemeanor, for his part in the attempted bribery of a client. Martinez stipulated to the rule violations. No aggravating factors were found. Mitigating factors included, among others, a cooperative attitude toward the disciplinary proceedings. The panel also found Martinez to be contrite and truly remorseful, based on his demeanor and his testimony that demonstrated he had learned the necessary lessons from his experience.
- In *Disciplinary Counsel v. Mecklenborg*, 139 Ohio St.3d 411, 2014-Ohio-1908, Mecklenborg was publicly reprimanded for a violation of Prof. Cond. R. 8.4(h) based on a conviction for making false declarations in connection with his driver's license renewal about the pendency of a charge of operating a vehicle under the influence. The Board concluded, and the Supreme Court agreed, that the false declarations were not intentional.

{¶57} Relator suggests, and the panel agrees, that the cases that are most similar to this case are *Cleveland Metro. Bar Assn. v. Azman*, 147 Ohio St.3d 379, 2016-Ohio-3393, and *Warren Co. Bar Assn. and Cincinnati Bar Assn. v. Vardiman*, 146 Ohio St.3d 23, 2016-Ohio-352.

{¶58} Azman, like Respondent, violated Prof. Cond. Rules 3.4(a), 8.1(a), 8.4(c) and 8.4(d), for which he received a one-year suspension with six months stayed on the condition that he commit no further violations. Azman, without authorization, accessed the email accounts of his former employer (by whom he had been fired for poor performance), for the purpose of deleting emails he had sent to the employer, including an email in which he requested a letter of recommendation in exchange for which Azman offered to refrain from contacting clients of the firm “for the purpose of bad-mouthing [the firm], to try to steal them away or to convince them to terminate the services of the [firm].” Azman then lied during his deposition about deleting the emails. Like the Respondent in the instant case, Azman had a selfish motive, engaged in a pattern of wrongful conduct and knowingly made false statements during the disciplinary proceeding. Also like Respondent herein, Azman had no prior discipline and his misconduct did not involve the provision of legal services or otherwise negatively impact a client’s case. Unlike Respondent, Azman acknowledged the wrongful nature of his conduct.

{¶59} Vardiman also received a one-year suspension with six months stayed, for violating Prof. Cond. Rules 3.3(a)(3), 8.4(c), 8.4(d) and 8.4(h), based on his improper actions in signing the name of an opposing party to documents, without authorization, and filing the documents with the juvenile court; and falsely signing the name of a witness to a will and power of attorney. Vardiman, like Respondent, had no prior disciplinary record, presented positive character evidence, and agreed to participate in a three-year OLAP mental health contract. Unlike Respondent, Vardiman made a free and full disclosure to the board.

{¶60} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for a period of one year, with six months stayed on the conditions that Respondent (1) maintain compliance with his OLAP contract and (2) engage in no further misconduct. As a condition of reinstatement, Respondent shall demonstrate compliance with his OLAP contract and any extension of that contract. Upon reinstatement, Respondent shall maintain compliance with his OLAP contract and any extension of that contract.

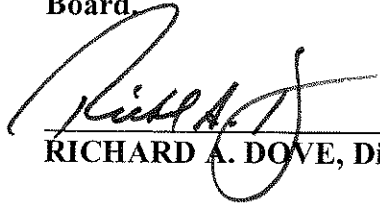
BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on October 6, 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 hearing panel and recommends that Respondent, John Joseph Okuley, be suspended from the practice of law for a period of two years, with one year stayed on the conditions that Respondent: (1) maintain compliance with his OLAP contract; and (2) engage in no further misconduct. The Board's recommendation to increase the sanction is based on the panel's findings that Respondent: (1) engaged in deceit from the outset of the altercation that gave rise to this case, throughout the ensuing criminal and civil proceedings, and during Relator's investigation of the grievance [¶53, *supra*]; (2) provided inconsistent, evasive, and untruthful testimony during his deposition and at the disciplinary hearing [¶¶11, 19, 47, and 49, *supra*]; and (3) failed to acknowledge the wrongful nature of his conduct or express any remorse for his actions [¶53, *supra*]. The Board believes these factors warrant a more severe sanction than imposed in *Azman* and *Vardiman*.

The Board recommends that, as a condition of reinstatement, Respondent shall demonstrate compliance with his OLAP contract and any extension of that contract and demonstrate that he has sought counseling for anger management and complied with recommendations arising from that

counseling. The Board further recommends that, upon reinstatement, Respondent be required to maintain compliance with his OLAP contract and any extension of that contract. Lastly, the Board 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