

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

In re:

Complaint against

Case No. 2019-024

**Hon. Rebecca L. Doherty
Attorney Reg. No. 0058416**

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

Respondent

Disciplinary Counsel

Relator

OVERVIEW

{¶1} This matter was heard on October 22, 2019 before a panel consisting of Hon. William A. Klatt, Robert B. Fitzgerald, and Thomas M. Green, panel chair. None of the panel members resides in the district from which the complaint arose.

{¶2} Respondent was present at the hearing, represented by Peter T. Cahoon. Joseph M. Caligiuri appeared on behalf of Relator.

{¶3} This case involves Respondent having operated a motor vehicle while under the influence of alcohol. Based upon the parties' stipulations and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors, and case precedents, the panel recommends that Respondent be publicly reprimanded.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Respondent was admitted to the practice of law in Ohio in 1992 and is a sitting judge in the Portage County Common Pleas Court. Stipulations ¶¶1-2. Respondent is subject to the Rules of Professional Conduct, the Rules for the Government of the Bar of Ohio, the Code of

Judicial Conduct, and Rules for the Government of the Judiciary of Ohio. Respondent has no prior discipline record.

{¶5} On February 10, 2019, at approximately 9:00 p.m., in snowy conditions, Respondent drove her motor vehicle off of I-76 into a ditch. Stipulations ¶3; Hearing Tr. 13; Stipulated Exhibits 1-2. Respondent had been drinking alcohol before the accident. Stipulations ¶5; Hearing Tr. 34-35. The responding police officer observed vomit and a strong odor of alcohol inside Respondent's car. Stipulations ¶5. In response to the officer's questions, Respondent stated that she had driven her vehicle off the side of the road and that she had been drinking. *Id.* When asked to identify herself, Respondent replied with her name and stated several times that she is a Portage County Common Pleas judge. Stipulations ¶¶7, 10, 11, 13; 14; Hearing Tr. 13-14. While walking up the embankment to the side of the road, Respondent was unsteady and almost fell four times. Stipulations ¶9. While in the back of the cruiser, Respondent exclaimed "I am so intoxicated." Stipulations ¶14. At the station, Respondent partially performed only one field sobriety test and refused the breathalyzer test. Stipulations ¶16. Respondent asked to be taken home and when the officers did not comply she repeatedly demanded that they call a friend of hers, a local sheriff's deputy. Stipulations ¶¶20-22; Hearing Tr. 20-21. Respondent was arrested and charged with driving under the influence of alcohol, R.C. 4511.19(A)(1), a first-degree misdemeanor. Stipulations ¶24; Hearing Tr. 22; Stipulated Ex. 7.

{¶6} On February 15, 2019, at her first appearance, Respondent pled guilty to one count of driving under the influence. *State v. Doherty*, 2019 TRC 600k. Stipulations ¶25; Hearing Tr. 22; Stipulated Ex. 8. At the hearing, Respondent apologized to the court and to the public for her conduct. Respondent further made a public statement to the news media acknowledging her poor

judgment and apologizing for the negative reflection on the judiciary. Stipulated Ex. 12.

{¶7} The court accepted Respondent's plea and sentenced her to 180 days in jail with 177 days suspended, a one-year suspension of her driver's license, and a fine of \$1,075 with \$700 suspended, on condition that Respondent remain free of any drug or alcohol conviction for two years and complete a driver intervention program. Stipulations ¶26; Hearing Tr. 23. Respondent was credited three days of jail time in exchange for completing the driver intervention program and paid her fine. Stipulations ¶27; Hearing Tr. 24.

{¶8} The panel finds, by clear and convincing evidence, that Respondent's conduct violated the 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.] and Jud. Cond. R. 1.3 [a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge.]

AGGRAVATION, MITIGATION, AND SANCTION

{¶9} There are no applicable aggravating factors.

{¶10} Mitigating factors include the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, a timely good-faith effort to rectify the misconduct by pleading guilty and by publicly apologizing, cooperation with the disciplinary process, the imposition of other penalties and sanctions, evidence of good character and reputation based on the submission of thirteen character letters, Respondent's Exhibits A - L, N, O, plus the testimony of two character witnesses, Rachel Kearns and Kelly Galvin. Further, Respondent submitted both the report of Anderson R. Hawes, LPCC, LSW, LICDC, retained by Respondent's counsel to assess whether Respondent had any substance abuse or psychological impairment [Stipulated Ex. 13] and a report of Scott R. Mote from OLAP [Stipulated Ex. 14]. Dr. Hawes concluded that Respondent was not

affected by a substance abuse, emotional, or psychological disorder, and that she was appropriately remorseful about her decision to drive after drinking. No treatment or counseling was recommended. Mote adopted the findings of Dr. Hawes, concluding there is no reason for Respondent to have a contract with OLAP at this time.

{¶11} 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.

{¶12} There are two cases directly on point within the past 15 years—*Disciplinary Counsel v. Marshall*, 143 Ohio St.3d 62, 2015-Ohio-1187 and *In re Complaint Against Resnick* (2005), 108 Ohio St.3d 160. Both cases involved sitting jurists who erred by drinking alcohol and then driving an automobile, resulting in a charge of driving while under the influence. Both judges were free of aggravating circumstances and presented mitigating factors similar to those of Respondent. Both decisions imposed a public reprimand. Operating a vehicle while intoxicated imperils public confidence in the integrity of the judiciary. Repeated nonresponsive statements about being a judge, even though borne of the lip-loosening effects of alcohol, is an abuse of the prestige of the office. *Disciplinary Counsel v. Williams*, 152 Ohio St.3d 57, 2017-Ohio-9100.

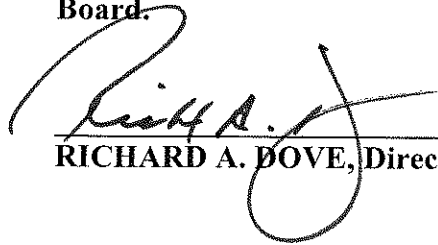
{¶13} Based upon the foregoing, the panel recommends that Respondent be publicly reprimanded for violating Jud. Cond. R. 1.2 and Jud. Cond. R. 1.3 by operating a motor vehicle under the influence of alcohol and abusing the prestige of her judicial office.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on December 13, 2019. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Hon. Rebecca L. Doherty,

be publicly reprimanded and ordered to pay the costs of these proceedings.

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



RICHARD A. DOVE, Director