

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

In re:

Complaint against

Case No. 2020-007

**Hon. Michael Robert Goulding
Attorney Reg. No.0066071**

**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 May 4, 2020 before a panel consisting of Thomas M. Green, Hon. Rocky A. Coss, and Peggy J. Schmitz, panel chair. None of the panel members reside in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing and represented by George D. Jonson. Joseph M. Caligiuri and Michelle R. Bowman appeared on behalf of Relator.

{¶3} With the consent of the parties and in accordance with public health orders in effect at the time of the hearing, the hearing proceeded via video teleconference.

{¶4} This case involves improper *ex parte* communications by Respondent with the incarcerated boyfriend of the daughter of friends of Respondent, the creation of an appearance of impropriety, and the abuse of the prestige of judicial office to advance the personal interests of Respondent or others, namely, Respondent's friends and their daughter's boyfriend.

{¶5} 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 suspended from the practice of law for a period of six months, with the suspension stayed on conditions set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶6} Respondent was admitted to the practice of law in Ohio on May 13, 1996. Since August 26, 2013, Respondent has been a judge in the Lucas County Court of Common Pleas. As such, he is subject to the Code of Judicial Conduct and Rules for the Government of the Judiciary of Ohio.

Stipulated Facts

{¶7} On or about February 8, 2019, C.G. was indicted by the Lucas County grand jury on three second-degree felony counts of illegal use of a minor in nudity-oriented performance.¹ The charges involved C.G. and his ex-girlfriend, “Minor 1.” C.G. was arrested and held without bail in the Lucas County jail on Friday, February 15, 2019, and was scheduled to appear before Judge Joseph McNamara on Tuesday, February 19, 2019.

{¶8} On February 17, 2019, Respondent was summoned to the home of some long-time friends who requested his assistance with a personal matter involving their daughter (“Minor 2”) and her boyfriend, C.G. Upon arrival at the friends’ home, Respondent was advised that Minor 2 had locked herself in her room following C.G.’s arrest. Respondent interpreted his friends’ request for his assistance to be a quest for information regarding C.G.’s status and current whereabouts. Hearing Tr. 69.

{¶9} Respondent used his cell phone to call the Lucas County Pretrial Services Department (PTS). He either identified himself or was identified via caller identification by the

¹ At the hearing, ¶ 4 of the parties’ stipulations filed on April 28, 2020 was corrected on the record. Hearing Tr. 12-13.

individual at PTS with whom he spoke. In either event, the recipient of Respondent's telephone call knew Respondent, and knew he was calling in his capacity as a judge in the Lucas County Common Pleas Court. Hearing Tr. 57-58. After confirming with PTS that C.G. was still in custody, Respondent inquired about the nature of the charges against C.G. and was advised that the charges involved several felony counts of illegal use of a minor in nudity-oriented performance.

{¶10} Instead of ending the call after obtaining the information his friends were seeking, Respondent asked PTS if a Public Safety Assessment (PSA) had been prepared. A PSA is a tool designed to assess a defendant's flight risk and the likelihood that the defendant will engage in criminal activity while the charges are pending. A judge may consider a PSA when setting bond.

{¶11} PTS confirmed that a PSA had been prepared, and advised Respondent that the recommendation was to release C.G. "SOR" (Supervised Own Recognizance), and to prohibit him from having contact with the victim, Minor 1. PTS also advised Respondent that C.G. was on probation from Maumee Municipal Court for an aggravated menacing conviction, but that PTS was unable to determine, due to a problem with the municipal court's website, whether the prior conviction was also related to Minor 1.

{¶12} PTS also informed Respondent that the case was assigned to Judge McNamara and that it was scheduled for arraignment on February 19, 2019.

{¶13} Respondent then ordered that C.G.'s bond be set as SOR with a no-contact order, which allowed for C.G.'s immediate release.

{¶14} Respondent learned that Jerry Phillips might be representing C.G.

{¶15} Meanwhile, Minor 2 had been speaking with C.G. on her cell phone. Upon learning that Respondent had orchestrated C.G.'s release, Minor 2 handed Respondent the phone. Respondent then spoke directly with C.G. and informed him that he would be released in about an

hour. Respondent instructed C.G. to “sit tight” until his parents arrived. Respondent further advised C.G. that he had to appear before Judge McNamara on February 19, 2019. C.G. replied, “Thank you,” to which Respondent replied, “Do you have any questions?” C.G. stated, “No. Thank you so much.”

{¶16} Respondent then sent a text message to Phillips advising him that he had set an SOR bond for C.G. that included a no-contact order. Phillips responded to the text later that evening, thanking Respondent and confirming that he had been retained to represent C.G.

{¶17} After speaking with Minor 2, C.G. called his father, who was already in route to the jail, having been notified by Minor 2’s mother that C.G. was being released. When C.G. asked his father how he was being released, C.G.’s father stated, “So, I’ll tell you when I get there. But I, uh, um, I don’t know all the details yet, but from what I understand, um, a judge signed a release for ya.” C.G. responded, “Really? You’re coming to get me now, like, I’m just getting released from here?” Toward the end of the conversation, C.G.’s father told C.G., “Don’t tell anybody. Don’t say anything. Just let it happen.” Stipulated Ex. 3.

{¶18} Immediately following the call with his father, C.G. called Minor 2 again. While Minor 2 and C.G. were speaking, Respondent learned more information from Minor 2’s parents about C.G. and the charges against him. Specifically, Respondent learned that Minor 1 was significantly younger than C.G., that Minor 1 had sent nude photographs of herself to C.G., and that C.G. had been kicked out of two schools for bad behavior (*i.e.*, drug use).

{¶19} After obtaining the additional information about C.G. from the parents of Minor 2, Respondent began having second thoughts about setting the SOR bond (Hearing Tr. 43, 71) and tried, unsuccessfully, to access the Maumee Municipal Court website on his smartphone for further

information about C.G.'s aggravated menacing conviction. Hearing Tr. 42.

{¶20} While Minor 2 was still talking with C.G., Respondent took the phone from Minor 2 and spoke directly with C.G. for the second time. Respondent asked C.G. if his aggravated menacing conviction (referenced in ¶ 11, above) involved Minor 1. After receiving assurances from C.G. that the aggravated menacing conviction did not involve Minor 1, Respondent began asking C.G. questions about the current charges, including the name of the victim, whether she was the granddaughter of "J.H.," how old Minor 1 was when C.G. received the nude pictures from her, how many pictures there were, whether C.G. sent the pictures to anyone else, whether he ever sent pictures of himself naked, whether C.G. was in any of the pictures Minor 1 took of herself, and whether anyone from the jail had come to talk to C.G. in the last half hour. Stipulated Ex. 5. C.G. answered each of Respondent's questions.

{¶21} That evening, February 17, 2019, the Lucas County Jail released C.G. on Respondent's SOR bond. Without the involvement of a judge, C.G. would have been held without bail until his arraignment on February 19, 2019.

{¶22} Respondent did not advise the prosecutor's office of his involvement in setting C.G.'s bond, his contacts with C.G. and Phillips, or C.G.'s release. Nor did he advise C.G.'s attorney that he had engaged in *ex parte* conversations with C.G., and may have learned information that was material to the case. Hearing Tr. 68.

{¶23} Two days later, on the day of the arraignment, Respondent left a voicemail message for Judge McNamara advising him that he had set bond in C.G.'s case. Judge McNamara left, intact, the bond that had been set by Respondent.

{¶24} While preparing discovery for the state's case against C.G., assistant prosecutor Frank Spryszak listened to the jail calls between C.G. and Minor 2. While listening to the calls,

Spryszak recognized Respondent's voice and informed his supervisor of Respondent's contact with C.G. Due to Respondent's direct contact and conversations with C.G., Spryszak listed Respondent as one of the state's witnesses.

{¶25} When Spryszak notified Respondent that he had been listed as a witness in the case against C.G., Respondent contacted counsel, and then self-reported his misconduct to Relator on or about April 15, 2019. Hearing Tr. 51.

{¶26} Respondent later waived probable cause in this matter.

{¶27} On or around May 31, 2019, C.G. pled guilty to four first-degree misdemeanors: disseminating matter harmful to juveniles, criminal mischief, telecommunication harassment, and theft. In return for C.G.'s plea, the state dismissed the three second-degree felony counts of illegal use of a minor in nudity-oriented performance. Respondent's contact with C.G. did not impact the final disposition of the case.

Rule Violations

{¶28} The parties stipulated that Respondent violated 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. 2.9(A) [a judge shall not initiate, receive, permit, or consider *ex parte* communications].

{¶29} On the grounds that the two stipulated rule violations adequately addressed Respondent's misconduct, the parties agreed to dismiss the allegation that Respondent had also violated Jud. Cond. R. 1.3 [a judge shall not abuse the prestige of judicial office to advance the personal or economic interest of the judge or others]. The panel unanimously disagrees with the parties' conclusion, and finds, by clear and convincing evidence based on the testimony,

stipulations and exhibits, that Respondent's conduct violates not only Prof. Cond. R. 1.2 and 2.9(A), but also Prof. Cond. R. 1.3. Were it not for Respondent's personal intervention in the matter on behalf of his friends, C.G. would not have been released from jail two days prior to his scheduled arraignment. Respondent's conduct represents an obvious abuse of his judicial office to the benefit of C.G. and falls squarely within the conduct prohibited by Jud. Cond. R. 1.3.

AGGRAVATION, MITIGATION, AND SANCTION

{¶30} When recommending sanctions for judicial misconduct, the panel must consider all relevant factors, including the ethical duties violated by Respondent, precedent established by the Supreme Court, and the existence of aggravating and mitigating factors. Gov. Bar R. V, Section 13(A).

Aggravating Factors

{¶31} Although the parties stipulated to a lack of aggravating factors, the panel finds that two aggravating factors are present.

{¶32} Respondent has committed multiple rule violations. In addition to the three violations of Jud. Cond. R. 1.2, 1.3 and 2.9(A), the panel notes that Respondent's conduct in questioning C.G. about the facts in his pending case and attempting to investigate the facts of his prior conviction appears to have violated Jud. Cond. R. 2.9(C) [a judge shall not investigate facts in a matter independently], and his involvement in securing C.G.'s early release from jail appears to have violated Jud. Cond. R. 2.4(B) [a judge shall not permit family, social, political, financial or other interests or relationships to influence the judge's judicial conduct or judgment].

{¶33} Although Respondent stipulated to two of the three charged rule violations, he displayed an attitude of denial of any wrong-doing, down-played the offenses, and failed to offer any plausible explanations for knowingly and voluntarily violating the *ex parte* communications

rule. When asked why he went above and beyond obtaining and transmitting the publicly available information about C.G.'s status as requested by his friends, Respondent said he "guessed" he had acted out of habit by taking it upon himself to interfere in another judge's case by proceeding to set bail and secure C.G.'s release from jail prior to arraignment. Hearing R.t 69-70. Despite a lack of evidence that the jail was currently overcrowded, he insisted that the release benefitted the jail by freeing up a bed. Hearing Tr. 63-64. He acknowledged that he knew he was about to violate the *ex parte* communication rule but went ahead and did it anyway, arguing that the first *ex parte* communication was "simply ministerial" (Hearing Tr. 70), "de minimis and inconsequential" (Hearing Tr. 74), that he engaged in the second *ex parte* communication only because of his concern that setting the SOR bond might have been ill-advised (Hearing Tr. 70-71), and that he did not initiate either of the *ex parte* communications (Hearing Tr. 39, 40, and 43), even though he stipulated that he "took the phone" from Minor 2 to inquire about C.G.'s aggravated menacing conviction, and then proceeded to question him about the current charges (Stipulations, ¶¶ 20-21). He did not self-report his violations until April 15, 2019, and then only because the prosecutor's office had discovered the recorded *ex parte* conversations with C.G., and notified Respondent that he had been listed as a witness in C.G.'s pending case. Had that not occurred, it is clear that the Respondent would not have self-reported at all. In summary, the panel was not convinced that Respondent appreciated the gravity and inappropriateness of his conduct.

Mitigating Factors

{¶34} The following mitigating factors were stipulated by the parties and found by the panel:

- Respondent has no prior disciplinary record;
- Respondent has evidenced a cooperative attitude toward these proceedings;
- As evidenced by more than 20 character letters, Respondent is of good character and has a positive reputation in his community (Stipulated Ex. 8).

{¶35} The panel finds the motive for Respondent's actions to be unclear, and therefore declines to accept the parties' stipulation to the mitigating factor of acting without a dishonest or selfish motive.

Sanction

{¶36} 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. As the Court repeatedly has recognized, the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public. *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, ¶53.

{¶37} The parties submitted a joint brief in support of their recommendation that Respondent be publicly reprimanded. The panel reviewed the six cases cited in the parties' joint brief, in addition to other cases involving similar conduct violations by members of the judiciary.

{¶38} The panel found the following cases to be the most analogous to this case based on the violations and the aggravating and mitigating factors present in the cases.

{¶39} *Disciplinary Counsel v. Stuard*, 121 Ohio St.3d 29, 2009-Ohio-261. In this case, Stuard engaged in *ex parte* communications with an assistant prosecuting attorney whom he asked to prepare a sentencing order in a death penalty case. The Court found that respondent violated Ohio Code Jud. Conduct Canon 2 (the predecessor to Jud. Cond. R. 1.2), and 3(B)(7) (the predecessor to Jud. Con. R. 2.9). The Court found no aggravating factors to be present, and found

mitigating factors of no prior disciplinary record, cooperative attitude toward the proceedings, and good character and reputation. The resulting sanction was a public reprimand.

{¶40} In *Disciplinary Counsel v. Hoague*, 88 Ohio St.3d 321, 2000-Ohio-340, the judge was found to have failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary and to have misused the authority of judicial office to achieve the respondent's personal goal of reprimanding the owner of a vehicle that respondent observed being operated recklessly. Instead of filing charges, Hoague tracked the owner of the vehicle through its license plate, and sent a threatening letter on court letterhead demanding that the owner appear before him, "if you wish to avoid possible further legal action being taken against you." In the courtroom, Hoague questioned and berated the vehicle owner and the driver, both of whom appeared in response to the respondent's letter. As a result of his conduct, Hoague was convicted of the misdemeanor of coercion. The Board recommended a sanction of public reprimand since the incident was an isolated occurrence in an otherwise unblemished career, but the Court found Hoague's conduct warranted a more severe sanction and ordered a six-month suspension, stayed on condition of no further misconduct.

{¶41} More recently, the Court imposed a six-month stayed suspension in *Disciplinary Counsel v. Porzio*, Slip Opinion No. 2020-Ohio-1569. In this case, following a hearing on counter-petitions for civil stalking orders, a magistrate excused one of the pro se parties, and then engaged in a lengthy conversation with the other pro se party and his witnesses, during which she criticized the party who had been excused, and commented on his credibility and his religion. She also discussed the evidence with the remaining party and indicated how she intended to rule, stating that neither party had proved its case. Subsequently, she issued a decision granting a civil protective order to the party with whom she had the inappropriate *ex parte* communication, and

denying a civil protection order to the other party. Violations included Jud. Cond. Rules 1.2, 2.9(A) and 2.11(A) [failure to disqualify]. No aggravating factors were found. Mitigating factors included no prior discipline in over 40 years of practice, a cooperative attitude toward the proceedings, other penalties (termination from her position), good character and reputation, and expressed remorse for her conduct.

{¶42} In *Disciplinary Counsel v. Hale*, 141 Oho St.3d 518, 2014-Ohio-5053, the Court found violations of Jud. Cond. R. 1.2, 1.3 and 2.9, and Prof. Cond. R. 8.4(c), 8.4(d) and 8.4(h) based on Hale's completion of a judgment entry in which he falsely stated that the prosecutor was dismissing the speeding ticket issued to Hale's personal attorney. Hale then tried to cover his tracks via additional misconduct, including *ex parte* communications. After initially rejecting the parties' consent-to-discipline agreement, and remanding the case to the Board for consideration of a harsher penalty, the Court ultimately approved the original sanction of a six-month suspension from the practice of law in Ohio, based on the factors that (1) Hale had practiced law for approximately 30 years without incident, (2) his misconduct was limited to a single case to which he had a personal connection, (3) justice was ultimately served in that matter, (4) no litigant's suffered permanent harm as a result of the Hale's misconduct, and (5) Hale acknowledged that his actions were not appropriate and voluntarily resigned from the bench within one month of the complaint being certified to the board.

{¶43} In *Disciplinary Counsel v. Marshall*, 156 Ohio St.3d 263, 2019-Ohio-670, a judge was found to have violated Jud. Cond. R. 1.2, 1.3 and 2.9(A), as well as Jud. Cond. R. 2.2, 2.3(A) and Prof. Cond. R. 8.4(d) for conduct that included repeatedly interjecting himself inappropriately in a speeding ticket case filed against his daughter, communicating with the trial court involved in the matter outside the presence of the parties, insisting on being included in nonpublic hearings,

interrupting testimony, and making disparaging remarks about law enforcement involved in the case. Aggravating factors included prior discipline and multiple offenses. Mitigating factors included cooperative attitude, good character and reputation, and the judge's resignation from the bench. Marshall received a six-month suspension.

{¶44} Although Respondent's misconduct is perhaps most closely aligned with the misconduct in *Stuard*, the panel believes that the aggravating circumstances present in this case warrant a more severe sanction than a public reprimand. Respondent admitted that he knew his first *ex parte* conversation with C.G. was a violation, but went ahead anyway. Then, after having second thoughts about setting the bond, he decided to have a second *ex parte* conversation with C.G., during which he asked C.G. questions which could have been considered as incriminating to his case, even though he was aware that C.G. was represented by counsel. Furthermore, C.G. obtained his release two days early because his girlfriend's parents had a friend who is a judge. This is exactly the type of conduct that creates the appearance of impropriety and undermines public confidence in the judiciary.

{¶45} The panel finds the decisions and reasoning in *Hoague*, *Porzio* and *Hale*, in particular, to be applicable, but finds the *Marshall* and *Hale* cases, both of which resulted in six-month suspensions with no stays, to be distinguishable. The conduct in *Hale* was arguably more egregious than the conduct in the instant case because it included dishonesty, and *Marshall* involved a judge with prior discipline.

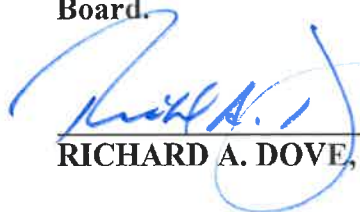
{¶46} Accordingly, the panel recommends that Respondent be suspended from the practice of law for six months, with the entire suspension stayed on the conditions that (1) within six months of the Court's disciplinary order, he complete two hours of CLE in the area of judicial

ethics, in addition to the other requirements of Gov. Jud. R. IV; and (2) he commit no further misconduct.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on June 12, 2020. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Hon. Michael Robert Goulding, be suspended for six months, with the suspension stayed in its entirety on the conditions that he (1) within six months of the final disciplinary order in this case, completes two hours of continuing education in the area of judicial ethics, in addition to the requirements of Gov. Jud. R. IV, and (2) refrains from further misconduct. The Board further recommends that Respondent be 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