Supreme Court of Ohio Clerk of Court - Filed May 30, 2017 - Case No. 2017-0492

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	
	:	
Relator,	:	Case No. 2017-0492
	:	
v.	:	
	:	On Certified Report by the
Brian Allan Maciak	:	Board of Professional Conduct
	:	
Respondent.	:	

Relator's Objections to the Board of Professional Conduct's Certified Report

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Relator, Disciplinary Counsel, objects to the Board of Professional Conduct's Certified Report. As detailed herein, relator objects to the board's recommendation of a two-year, fully stayed suspension and the panel's legal conclusion that respondent's conduct does not violate Prof.Cond.R. 8.4(c) and (h). The facts surrounding Maciak's misconduct are not in dispute.

Statement of Facts

Brian Allan Maciak, who was admitted to the practice of law in Ohio in 2000, has been disregarding his license requirements for over 10 years. (Report at ¶ 7.) While this matter arises from Maciak's 2011 suspension from the practice of law for failure to comply with his CLE requirements, Maciak was previously suspended in 2007 for failure to timely register. (*Id.* at ¶ 17.) He seemingly complied with the 2007 suspension order and was reinstated six weeks later, in 2008. (*Id.*) At the same time, however, Maciak failed to comply with his CLE requirements for the 2007-2008 reporting year, resulting in the imposition of a fine in 2009. (*Id.*) Yet, Maciak continued to disregard his CLE obligations and was sanctioned again in 2011 for his noncompliance, this time by both fine and actual suspension. (*Id.*) Maciak remained suspended until late 2015, after relator's investigation began. (*Id.*) In fact, Maciak never complied with the 2011 sanction order, despite representing in his November 2015 reinstatement application that he had complied. (*Id.* at ¶ 57.) Relying on Maciak's representations in his reinstatement application, this court reinstated him in November 2015. (*Id.* at ¶ 17; Joint Ex. 22.)

Despite this court's 2011 suspension of his license, Maciak continued practicing law for almost four years. (*Id.* at ¶ 23.) And he engaged in the unauthorized practice of law in Florida for over six years. (*Id.*) Shortly after he was served with notice of the court's 2011 suspension order, Maciak called Attorney Services regarding his suspension. (*Id.* at ¶ 17.) His call is recounted in a February 10, 2012 email between two Attorney Services staff members:

> Attorney Brian Maciak (pronounced may see ak) would like you to return his call. He has just receive [sic] a letter informing him that he is not compliant with his cle requirements and was, until now, unaware that he has been cle suspended and wants to know what he can do to clear this up.

(Joint Ex. 25; Report at ¶ 27.) The call originated from Maciak's telephone extension. (*Id.*)

Then, in February 2015, the Florida Bar learned that Maciak was not authorized to practice law. (Joint Ex. 1.) Maciak persisted in serving as General Counsel of a multi-billion dollar international company even though the Florida Bar *explicitly* told him he could not to do so. (*Id.*; Report at ¶ 28.) And Maciak continued to do nothing to cure his suspension in Ohio even though he knew he was not in good standing after another call with the Office of Attorney Services in March/April 2015. (Hr'g Tr. at 76; Report at ¶ 34.)

Maciak's misconduct seemingly came to a head in October 2015, after a former employee reported it to relator. (Report at ¶ 28.) In his response to relator's initial letter of inquiry, Maciak made the following false statements in response to relator's question "Do you acknowledge that your Ohio law license has been suspended since 2011 for failure to comply with CLE requirements:"

- "[He] was unaware of [his] status until October 26, 2015, when he received [relator's] letter dated October 19, 2015."
- "[He] had received no notification of non-compliance, sanction or suspension from the Commission on Continuing Education or the Ohio Supreme Court."

(Joint Ex. 8 at REL 103.) In the same response, Maciak made the following false statement in response to relator's request that he detail the steps he has taken to respond to the Florida Bar's concerns regarding his unauthorized practice of law:

- "He had no reason to think that there would be any hurdles" in obtaining a letter of good standing from Ohio to submit with an Authorized House Counsel application in Florida.

(*Id.*) In his next response to relator, Maciak made the following false statements:

- "[H]e had every expectation that he was in good standing and that he had complied with all licensure requirements including CLE [based on] the absence of materials from the Supreme Court of Ohio to the contrary."
- "Further, while Mr. Maciak bears the responsibility to be aware of his actual status, he was simply unaware of that status."

(Joint Ex. 12 at REL 127, 131.)

Of course, the records of the court establish not only that Maciak was served with notice of the 2011 Suspension and Sanction Order – as well as *five* previous notices of his noncompliance – but that Maciak called Attorney Services shortly after the 2011 notice was delivered and inquired how to cure his suspension. (Report at ¶ 27.) Confronted with this evidence, Maciak changed his story. At his deposition and during the hearing, Maciak testified that he did not remember receiving such notices or calling Attorney Services. (Report at ¶ 45.)

Furthermore, Maciak continued, outside of relator's investigation, to ignore this court's orders and the instruction from Florida Bar. (Joint Exs. 1-7; Report at ¶¶ 12-13.) Although he removed his General Counsel title from his email signature block and the company's website, Maciak admitted in his testimony during the hearing that he did not actually alter his performance in his position. (Joint Exs. 6-7; Report at ¶¶ 14; 23.) Most flagrantly, however, Maciak signed and submitted his application for reinstatement to this court, even though he had not even seen the court's sanction order, let alone complied with it. (Hr'g Tr. at 94-95, 97-98; Joint Ex. 23 at REL 329; *see also* Report at ¶ 57.) Relying on Maciak's false affirmation that he had complied with the court's 2011 Suspension and Sanction Order, the court reinstated Maciak to the practice of law on November 23, 2015. (Joint Ex. 22.)

Relator's Objections

I. Maciak's Practice Under Suspension and Unauthorized Practice of Law Warrants an Actual Suspension.

In light of the seriousness of Maciak's misconduct, the aggravating factors, and the lack of mitigation, a fully stayed suspension diverges from this court's well-established precedent. Based on this court's prior sanctions, Maciak's misconduct of practicing law under suspension alone warrants an actual suspension from the practice of law. The court has previously stated that "[t]he normal penalty for continuing to practice law while under suspension is disbarment" and has routinely imposed indefinite suspensions on attorneys who have continued to practice law while under suspension for CLE and registration violations. (Citations omitted.) *Disciplinary Counsel v. Koury*, 77 Ohio St.3d 433, 436, 1997-Ohio-91, 674 N.E.2d 1371; *see, e.g., Disciplinary Counsel v. Freeman*, 126 Ohio St.3d 389, 2010-Ohio 3824, 884 N.E.2d 1070, ¶ 14. As detailed below, although this court has adopted a lesser sanction in some cases, it has only done so in cases in which there was substantial mitigation.

Here, the panel considered three cases in support of its recommendation of a one-year suspension with six months stayed, stating "[i]t is difficult to reconcile the Supreme Court of Ohio's sanction in *Troller* with those imposed in *Simmons* and *Good*." (Report at ¶ 74.) In doing so, the panel overlooked the specific facts that influenced the ultimate sanction in each case. Then, without providing any justification, the board reduced the panel's recommended sanction to a two-year suspension, stayed in its entirety. However, both the panel and the board's recommendation are contrary to this court's sanctions for similar conduct and are disproportionate in light of the circumstances surrounding Maciak's conduct.

Unlike Maciak, Simmons' suspension was short. *Disciplinary Counsel v. Simmons*, 120 Ohio St.3d 304, 2008-Ohio-6142, 898 N.E.2d 943. Through his own fault, he did not receive

notice of it; he fully cooperated with the disciplinary process, even stipulating to a sanction; he did not have a prior record of discipline; and most notably, he did not continue to defy the court's suspension order after relator's investigation commenced. *Id.* Simmons was suspended in late 2005 for failure to timely register.[1] *Id.* at ¶ 1. He did not receive actual notice of his suspension because he had failed to update his address with the court. *Id.* at ¶ 2 (adopting Agreed Stipulations, at ¶ 3). During a two-month period, Simmons filed pleadings and appeared in court in Michigan, where he was not licensed, on behalf of two clients. Simmons was reinstated to the practice of law in Ohio in June 2006. *Id.* at ¶¶ 3-8. The disciplinary matter was submitted on full stipulations and without a hearing. *Id.* at ¶ 1. The board and the court accepted the parties' stipulated sanction of a one-year suspension with six months stayed. *Id.* at ¶ 2.

Even more dissimilar is the *Good* matter, which involved only the unauthorized practice of law in another state. There is no commonality between the instant matter and one involving only UPL in another state. Indeed, Good's misconduct consisted of six incidents of UPL for which he had already been sanctioned in Florida. *Ohio State Bar Assn. v. Good*, 114 Ohio St.3d 204, 2007-Ohio-3602, 871 N.E.2d 542, ¶ 3. In addition, the matter was submitted via a consent-to-discipline agreement and the parties' stipulated sanction was accepted by the board and the court. *Id.* at ¶ 4. Unlike the instant matter, the court never suspended Good from the practice of law, nor did Good have previous discipline; however, Good still received an actual suspension of six months. *Id.*

As the panel correctly noted, *Disciplinary Counsel v. Troller* is the only Ohio case involving an in-house counsel practicing under a CLE suspension. 138 Ohio St.3d 307, 2014-Ohio-60, 6 N.E.3d 1138. The court suspended Troller for two years with six months stayed. *Id.*

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[1] Relator submits that Maciak's CLE suspension is more serious than Simmons' registration suspension because attorneys have two years to comply with CLE obligations.

at ¶ 17. Troller was chief legal officer at Clopay Corporation from 2002-2012; however, he was suspended in 2005 for failing to register and in 2006 for failing to complete his CLE requirements. *Id.* at ¶¶ 4-5. Like Maciak, Troller continued to practice law for a significant period of time after his suspension (seven years for Troller and four years for Maciak); and during that time, the nature of each attorney's practice of law was the same: holding himself out as an attorney, working with outside counsel on pending litigation, negotiating contracts on behalf of the company, and advising human resources personnel regarding the termination of employees. *Id.* at ¶¶ 6-8. Finally, like Maciak, Troller was reluctant to acknowledge that these activities constituted the practice of law, but ultimately stipulated that they did. *Id.* at ¶ 6. The similarities end there.

Unlike Maciak, once relator initiated its investigation, Troller complied with the court's suspension order by ceasing to give legal advice or engaging in any other acts constituting the practice of law. *Id.* at ¶ 11. Troller was still under suspension when the court issued its decision in 2014, acknowledging that he was ineligible for reinstatement due to his initial noncompliance with the court's suspension order. *Id.* at ¶¶ 1, 5. Maciak, conversely, never made any attempt to comply with the court's 2011 suspension order. At the hearing, Maciak confirmed that he had not read the suspension order before representing on his reinstatement application that he had complied with it. (Hr'g Tr. at 95.) In addition, Maciak's continuing dishonest and selfish course of conduct demonstrates an utter disrespect for this court.

In the only case in which the court has imposed a fully stayed suspension for practicing law under suspension, *Disciplinary Counsel v. Meehan*, the court found significant mitigation due to a qualifying mental disorder. 133 Ohio St.3d 51, 2012-Ohio-3894, 975 N.E.2d 972. In 2009, Meehan was suspended for failure to timely register. *Id.* at ¶ 3. Although the court properly served him with notice of his suspension, Meehan did not open any his mail at the time because he was

experiencing a major depressive episode. *Id.* For seven months thereafter, Meehan continued to practice law by representing a client in eight eviction actions. *Id.* Meehan discovered his suspension when he accessed his registration records, and was reinstated shortly thereafter. *Id.* at ¶ 4. Unlike Maciak, Meehan immediately ceased practicing law upon learning of his suspension. *Id.* Also, unlike Maciak, Meehan demonstrated the following additional mitigation: he did not have a record of prior misconduct, he lacked any selfish or dishonest motive, and he provided full and free disclosure during disciplinary counsel's investigation.[2] *Id.* at ¶ 8. Furthermore and most significantly, Meehan's debilitating depression directly contributed to his misconduct. *Id.* The court's reasoning for a fully stayed suspension in *Meehan* is not present here.

Additionally, unlike Troller, Maciak maintains that he was unaware of his suspension. *Troller*, *supra*, at ¶¶ 11, 16. While Maciak claims that his purported mistake should have a mitigating effect, relator submits that his proclaimed ignorance, at the very least, should be given no weight and actually aggravates his misconduct. In *Disciplinary Counsel v. Carson*, the respondent practiced for seven years while under suspension for failure to comply with CLE requirements. 93 Ohio St.3d 137, 2001-Ohio-1300, 753 N.E.2d 172. Carson had mistakenly assumed that paying his fines was all he needed to do to comply with the court's suspension order. *Id.* While the court accepted Carson's conduct as a genuine mistake, it imposed a two-year suspension with the second year stayed. *Id.* In mitigation, the court found that most of Carson's misconduct occurred during a period when he was struggling with alcoholism. *Id.* Furthermore,

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[2] The panel correctly found Maciak did have a record of prior discipline. (Report at ¶ 64.) The panel also did not give mitigation credit for full and free disclosure. (*Id.* at ¶ 66.) Additionally, as detailed below in section II, the panel's conclusion that Maciak did not have a selfish or dishonest motive is belied by its own factual findings. (*Id.* at ¶ 64.)

unlike Maciak, Carson did not have a record of prior discipline and ultimately ceased practicing law during relator's investigation and the ensuing disciplinary proceeding. *Id.*

Here, it is difficult to ascertain how the board arrived at its recommendation. The board found that Maciak's practice of law during his suspension is essentially the same as Troller's; yet it recommended a considerably less severe sanction: a fully stayed two-year suspension for Maciak while Troller received a two-year suspension with six months stayed (i.e. an 18-month actual suspension). (Report at ¶¶ 70-71.) On one hand, the board seemingly discounted Maciak's mistake defense as it found: "[Maciak's] telephone inquiry to the Office of Attorney Services on February 10, 2012 about 'his suspension' establishes that at least as of that date, he was aware that he was under a CLE suspension. It is also clear that he failed to do anything about it." (*Id.* at ¶ 34.) On the other hand, the board gave little weight to the fact that Maciak practiced under suspension for four years, directly contradicting all precedent; and the board did not give aggravating effect to the fact that Maciak failed to stop practicing law at any time and misrepresented his compliance with the court's suspension order in order to get reinstated. (*Id.* at ¶¶ 64-65.)

Accordingly, relator submits the board's reliance on *Simmons* and *Good*, as well it's reading of *Troller*, is misplaced. While the board recognized that Maciak's conduct is comparable to *Troller*, it also involves aggravating circumstances: the failure to cease practicing law after relator's investigation commenced and dishonest conduct in obtaining reinstatement. Furthermore, as detailed below in section II, Maciak engaged in dishonesty and misrepresentation at the outset of relator's investigation. After consideration of the record and the sanctions it has imposed for comparable misconduct, Maciak should be suspended from practice of law for two years with no more than six months stayed.

II. Ignorance Does Not Excuse Maciak's Violation of Prof.Cond.R. 8.4(c) and (h).

The panel erred in evaluating only the truthfulness of Maciak's statements regarding his recall and overlooking Maciak's unequivocally false statements to relator regarding his awareness of his license status and suspension. In the panel's view, whether Maciak's conduct violates Prof.Cond.R. 8.4(c) turns on "whether we believe [Maciak] when he says he does not remember." (Report at ¶ 48.) The panel then evaluated Maciak's credibility and found that his misrepresentations to relator were not "knowingly made" in violation of Prof.Cond.R. 8.4(c) because he *does not recall* receiving notice of his suspension, accessing the attorney portal, nor speaking with Attorney Services about his suspension. (*Id.* at ¶ 55.) Thereafter, the panel summarily found that Maciak's conduct was not sufficiently egregious to warrant finding a Prof.Cond.R. 8.4(h) violation. In doing so, the panel failed to infer Maciak's willful violation of Prof.Cond.R. 8.4(c), and the panel erred in concluding that Maciak's conduct was not pervasive enough to constitute a violation of Prof.Cond.R. 8.4(h).

a. This court may review a panel's legal conclusions.

Before addressing the substance of relator's objection to the panel's dismissal of Prof.Cond.R. 8.4(c) and (h), it is necessary to distinguish the foundation of relator's objection from an objection to a unanimous dismissal for insufficient evidence, which the court deems unreviewable. Gov.Bar R. V(12)(G) expressly authorizes a unanimous hearing panel to dismiss a complaint or a count of a complaint if it finds that there is insufficient evidence to support it. *Cincinnati Bar Assn. v. Wiest*, 148 Ohio St.3d 683, 2016-Ohio-8166, 72 N.E.3d 621, ¶ 19, quoting *Disciplinary Counsel v. Hale*, 141 Ohio St.3d 518, 2014-Ohio-5053, 26 N.E.3d 785, ¶ 22. In *Hale*, the court distinguished a panel *recommendation* of dismissal, of which the court will consider objections, from a panel *order* of dismissal. *Hale*, at ¶¶ 22-23.

However, nothing in these prior decisions or in Gov.Bar R. V limits the court's ability to review the legal conclusions of the panel or the board. That is, as noted in *Hale* and *Wiest*, the plain language of former Gov.Bar R. V(6)(G) and current Gov.Bar R. V(12)(G) authorize the panel only to dismiss a complaint or individual counts of a complaint based on the *insufficiency of evidence.*[3] Although the panel's dismissal may be insulated from the court's review based on the sufficiency of the evidence, the dismissal is not insulated from further review by this court on other grounds.

As detailed below, relator is not asking the court to reweigh the evidence or to second-guess the panel's credibility determinations. Relator accepts the panel's factual findings. Instead, relator respectfully requests that the court reject the panel's legal conclusions regarding Prof.Cond.R. 8.4(c) and (h).

b. Maciak's willful violation of Prof.Cond.R. 8.4(c) is inferred.

The crux of Maciak's excuse for his false statements to relator is that he does not remember anything. (Report at ¶ 28.) As detailed below, the court has rejected this "ignorance" or "honest belief" defense to Prof.Cond.R. 8.4(c) on multiple occasions. Relator submits that the panel erred in not rejecting Maciak's excuse here for two reasons. First, as a licensed attorney in Ohio, Maciak is charged with knowing the status of his license at all times. His supposed ignorance cannot excuse his professional misconduct. Second, the panel's findings of fact reflect ample evidence from which Maciak's willful violation of the Rules can be inferred.

In his written responses to relator, Maciak falsely stated that he:

(1) "was unaware of [his] status until October 26, 2015;"

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[3] The amendments to the rules effective January 1, 2015 modified only the procedures for providing notice of dismissals and did not modify the authority of the panel or the board regarding dismissals, or the court's review of such dismissals.

(2) "had received no notification of non-compliance, sanction or suspension;"

(3) "had no reason to think that there would be any hurdles" in obtaining a certificate of good standing;

(4) "had every expectation that he was in good standing and that he had complied with all licensure requirements including CLE [based on] the absence of materials from the Supreme Court of Ohio to contrary;" and

(5) "was simply unaware of [his CLE] status."

However, the panel also found that "[Maciak]'s telephone inquiry to the Office of Attorney Services on February 10, 2012 about 'his suspension' establishes that, at least as of that date, he *was aware* that he was under CLE suspension and failed to do anything about it." (Report at ¶ 34.) (Emphasis added.) The basis for its finding is a February 10, 2012 email between two staff members of Attorney Services that reads:

> Attorney Brian Maciak (pronounced may see ak) would like you to return his call. He has just receive [sic] a letter informing him that he is not compliant with his cle requirements and was, until now, unaware that he has been cle suspended and wants to know what he can do to clear this up.

(Joint Ex. 25; *see also* Report at ¶ 27.) As the board noted, the call originated from Maciak's telephone extension. (*Id.*)

As a preliminary matter, this court recognizes that supposed ignorance of the law does not excuse an attorney's dishonesty and misrepresentation. *Disciplinary Counsel v. Harmon*, 143 Ohio St. 3d 1, 2014-Ohio-4598, 34 N.E.3d 55. Harmon had failed to disclose assets on his own bankruptcy petition, and the bankruptcy court ultimately found that Harmon had knowingly made false statements of material fact under oath either with fraudulent intent or reckless disregard for the truth. *Id.* at ¶¶ 11-13. In his disciplinary matter, Harmon stipulated that did not read the petition before signing it, trusting his attorney had properly completed the forms. *Id.* at ¶ 12. Like Maciak, Harmon then maintained that he had not lied but had made "mistakes" in answering some of the questions. *Id.* at ¶¶ 13-14. The court held not only that Harmon's conduct violated

Prof.Conf.R. 8.4(c), but also that it was sufficiently egregious in violation of Prod.Cond.R. 8.4(h). *Id.* at ¶¶ 16-17.

In the CLE suspension context, the court has held that an attorney who presented herself as licensed and claimed she did not have notice of her suspension, reasonably knew her status and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation even though there was no evidence in the record that notice of her suspension was served at her new address. *Disciplinary Counsel v. Avirov Stemper*, 103 Ohio St.3d 104, 2004-Ohio-4656, 814 N.E.2d 811. More specifically, the court rejected Stemper's "professed obliviousness" to the suspension order because "even if respondent did not receive actual notice of the suspension order, she clearly knew that her license was in jeopardy." *Id.* at ¶ 19. The court found the fact that Stemper had attempted to pay fines prior to her suspension establishes that "respondent reasonably knew that an order suspending her license was imminent." *Id.* The court then deemed Stemper's claim that she did not have notice of her suspension dishonest in violation of the Code of Professional Responsibility. *Id.* at ¶ 20.

In addition, the court has rejected the contention that false statements to relator at the onset of its investigation were not knowingly dishonest or misleading because the respondent believed those statements to be true when he made them. *Cleveland Metro. Bar Assn. v. Gruttadaurio*, 136 Ohio St.3d 283, 2013-Ohio-3662, 995 N.E.2d 190, ¶¶ 29-39. It is striking how similar the facts in this matter are to those in *Gruttadaurio,* for which the court disagreed with the board's recommended dismissal of Prof.Cond. R. 8.1(a) and 8.4(c).[4] *Id.* at ¶¶ 29-39. Like the court found

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[4] In *Gruttadaurio*, the court, without objections before it, reversed the board's findings regarding Gruttadaurio's credibility in rejecting the board's dismissal of Prof.Cond.R. 8.4(c). Relator respectfully submits that the plain language of Gov.Bar R. V(12)(G) does not preclude such review and that any such preclusion usurps the court's de novo review of a disciplinary matter certified to it by the board. *See Gruttadaurio*, at ¶ 31, citing *Disciplinary Counsel v. Furth*, 93 Ohio St.3d 173,

in *Gruttadaurio*, relator submits that Maciak's testimony that he does not recall his February 2012 phone call with Attorney Services regarding his suspension is "not plausible" because "[o]ne would reasonably expect an attorney with no cognitive defects to recall details of his rare interactions with this court..." *Id.* at ¶ 39.

Likewise, the court has explicitly held that a violation of Prof.Cond.R. 8.4(c) may be inferred from respondent's actions and the circumstances surrounding those actions. *Disciplinary Counsel v. Robinson*, 126 Ohio St.3d 371, 2010-Ohio-3829, 933 N.E.2d 1095, ¶ 18. Like Robinson, Maciak's statements to relator are also contradicted by documentary evidence, including the six aforementioned notices from the court and the Attorney Services email. *Id.* at ¶ 19. Unlike Gruttadaurio, Maciak never acknowledged that his initial statements to relator were false. *Gruttadaurio*, at ¶ 34. Like the respondents in *Gruttadaurio*, *Stemper*, and *Robinson*, Maciak's recall became conveniently unclear only after he was confronted with evidence contradicting his false statements. *Gruttadaurio*, at ¶ 37; Stemper, at ¶ 20; *Robinson*, at ¶ 17.

Thus, at some point, Maciak made at least two intentional choices: (1) to ignore his license status; and (2) to ignore his suspension. As the panel found, Maciak "failed to do anything about [his suspension]" in the many months after his February 2012 call to Attorney Services regarding his suspension; and he "failed to do anything about [his suspension]" after Attorney Services advised him in March/April 2015 that he was not in good standing. (Report at ¶ 34.) Subsequently, Maciak consciously chose to make false statements to relator. In fact, Maciak's false statements were unsolicited as they were not responsive to relator's specific inquiry. The conclusion that Maciak chose to ignore his suspension is supported by the panel's finding that "Respondent's

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181, 754 N.E.2d 219 (2001) ("The Supreme Court is not bound by the conclusion of either the panel or the board regarding the facts or law when determining the propriety of an attorney's conduct and the appropriate sanction.")

assertion that he recalls *none* of the four notices of CLE deficiency that the Supreme Court sent to the addresses he provided strains credulity, as do his claims that he does not recall accessing his attorney portal prior to November 2015 or speaking with the Office of Attorney Services about his suspension." (Report at ¶ 55.) (Emphasis in original.)

Moreover, Maciak's false statements were deliberately provided as additional information, offered for the sole purpose of deterring relator from further investigation. Maciak made an intentional choice, on multiple occasions, over a period exceeding three years, to profess ignorance. Maciak's self-serving statements and his ensuing lack of memory are simply a calculated attempt to avoid the consequences for his misconduct. The court should infer Maciak's willful violation of Prof.Cond.R. 8.4(c) from these circumstances. To do otherwise would render meaningless this court's licensing obligations and diminish the integrity of our profession.

c. Maciak's conduct is sufficiently egregious to warrant a finding that he willfully violated Prof.Cond.R. 8.4(h).

Had relator taken Maciak's word for it, we would not be here. Had Attorney Services *not* taken Maciak's word for it, he would *still* be suspended. As detailed above, Maciak persisted in claiming that he remained ignorant of his status, his licensing obligations, the court's suspension order, and the court's reinstatement requirements. These obligations are the most basic of the legal profession. Maciak's purported utter lack of diligence regarding such rudimentary guidelines coupled with his continuing refusal to recognize and respect the rules of this court, undoubtedly reflects on his fitness to practice law.[5] Accordingly, Maciak's conduct is sufficiently egregious to

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[5] In *In re Application of Swendiman*, the court found an applicant, who had been admitted to practice law in three other jurisdictions, did not possess the requisite character and fitness to practice law as result of his unauthorized practice of law in Ohio and in waiting six months to apply for admission. 146 Ohio St.3d 444, 2016-Ohio-2813, 57 N.E.3d 1155.

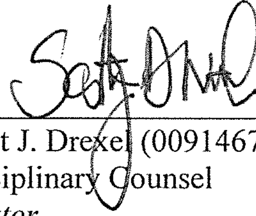
warrant an additional finding of misconduct here. *See Cincinnati Bar. Assn. v. Ball*, 146 Ohio St.3d 382, 2016-Ohio-785, 57 N.E.3d 1101, ¶¶ 5-9; *Harmon, supra*, at ¶¶ 16-17.

Conclusion

If this court were to adopt the board's recommended sanction, Maciak would receive a far less severe sanction – despite more pervasive misconduct – than an applicant to the bar (*Swendiman*) or a lay person who has engaged in the unauthorized practice of law in Ohio. Moreover, this court's adoption of the board's recommendation would effectively reward those attorneys who choose to remain ignorant of their license status and who simply proclaim ignorance or a poor memory when confronted with evidence contradicting the misrepresentations they have made during the course of a disciplinary investigation.

Respondent Maciak received notice of his CLE suspension. He nevertheless brazenly continued to engage in the practice of law for more than four years, failing to take any action in Ohio to resolve his suspension and ignored the directions of the Florida Bar to stop practicing law in Florida without obtaining Authorized House Counsel status. Relator respectfully urges this court to sustain its objections to the board report in this matter. Respondent Maciak's conduct warrants the imposition of two-year suspension with no more than six months of the suspension stayed.

Respectfully submitted,



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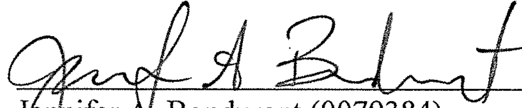

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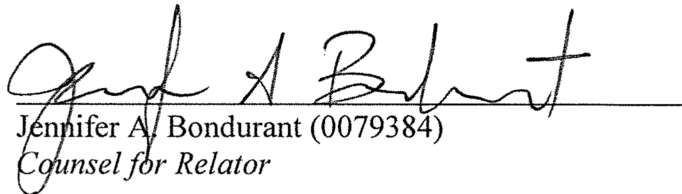
Certificate of Service

A copy of the foregoing Relator's Objections to the Board of Professional Conduct's Certified Report was emailed to Jonathan E. Coughlan, Esq. (jcoughlan@keglerbrown.com), this 30th day of May 2017.



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