Supreme Court of Ohio Clerk of Court - Filed February 10, 2020 - Case No. 2020-0229

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

In re:

Complaint against

Jason Allan Sarver
Attorney Reg. No. 0082073

Respondent

Disciplinary Counsel

Relator

Case No. 2019-025

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

OVERVIEW

{¶1} This matter was heard on December 3, 2019 before a panel consisting of Peggy J. Schmitz, George Brinkman and Robert B. Fitzgerald, panel chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing with his counsel, Phillip A. King. Karen Osmond and Donald Scheetz represented Relator.

{¶3} This case involves allegations that occurred while Respondent was suspended from the practice of law for two years with 18 months stayed pursuant to a Supreme Court order dated November 28, 2018. *Disciplinary Counsel v. Sarver*, 155 Ohio St.3d 100, 2018-Ohio-4717. (*Sarver I*).

{¶4} Respondent represented Juanita Mustin in a wrongful death claim of her daughter and the handling of the resulting estate. While Respondent was representing Mustin, the Supreme Court issued the suspension order in *Sarver I*. Respondent failed to notify the insurance company with which he was negotiating and the Crime Victim Services section of the Attorney General's

Office of his suspension. More importantly, Respondent failed to notify Mustin, and the Cuyahoga County Probate Court of his suspension.

{¶5} Also after the suspension, Respondent signed his client's name to a settlement check, signed his client's name to a release, and personally notarized that release. With this release and the signatures, he terminated the wrongful death claim with the tortfeasor's insurance carrier, all without notifying either the insurance carrier or his client of his suspension. Thereafter, Respondent paid himself attorney's fees, paid individuals who were not family members of the decedent's family, and disbursed other moneys, all of this without probate court approval. When challenged about the disbursements, the Respondent claimed that a magistrate had suggested to him that he reduce the amount of the estate's proceeds. This, of course, was untrue.

{¶6} Based upon the 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 permanently disbarred.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

{¶7} Much of this case was stipulated to by the parties. All of the exhibits, Joint Ex. 1-39 and 41-45 and Respondent's Ex. A and B were admitted without objection. The panel adopts the agreed stipulations of fact and exhibits and incorporates them as if fully written.

{¶8} Respondent was admitted to the practice of law in the state of Ohio in November 2007 and is subject to the Ohio Rules of Professional Conduct and the Supreme Court Rules for

the Government of the Bar of Ohio.

Respondent's Prior Disciplinary Case

{¶9} On November 28, 2018, the Supreme Court suspended Respondent from the practice of law for two years, with 18 months stayed on the conditions. Respondent's actions in the 2018 case related to Sarver's sexual activity with a court appointed client, committing an illegal act that reflects on the lawyer's honesty or trustworthiness, and engaging in conduct involving dishonesty or fraud. When confronted about his relationship with his client by a judge, Respondent denied that he was involved in an inappropriate relationship with the client. The case at bar also involves Respondent's failure to be truthful to a tribunal.

The Mustin Matter

{¶10} On June 23, 2018, Jessica Mustin was killed when her car collided with a wrong-way driver on a highway in Cleveland. Stipulations ¶5. At the time of her death, Jessica was the mother of a four-year old child, whose father is Jerome A. Watkins, Sr. Stipulations ¶6. Jessica was also in a relationship with Anthony Hodge, who had known Respondent since at least 2002. Stipulations ¶¶7 and 9.

{¶11} Shortly after Jessica's death, Hodge referred Jessica's mother, Juanita Mustin, to Respondent to pursue a wrongful death case. Stipulations ¶9. On or about June 25, 2018, Mustin spoke to Respondent for the first time, and on June 30, 2018, Mustin signed a contingency fee agreement with respondent agreeing to pay him 33 percent if settlement was achieved without the necessity of filing a lawsuit, 38 percent if a lawsuit was filed, and 40 percent if trial was necessary. Stipulations ¶¶9-10, Joint Ex. 9. Later in the representation, Respondent also agreed to represent Mustin with regard to an application for crime victim compensation that either Mustin or Watkins had filed with the Attorney General's Office. Stipulations ¶¶24 and 27. Mustin, however, did

not personally meet Respondent until December 13, 2018. Stipulations ¶10. Between June 25, 2018 and December 13, 2018, all of Mustin's communications with Respondent were over the phone or through Hodge. Stipulations ¶11.

{¶12} After being retained, Respondent contacted Allstate Insurance—the insurance company for the wrong-way driver—and notified them that he represented Jessica's estate. Stipulations ¶12. On August 21, 2018, Allstate offered a policy-limits settlement of $50,000. Stipulations ¶13. Respondent advised Mustin of the settlement offer and told her that $50,000 was the maximum that Allstate would award. Stipulations ¶14; Hearing Tr. 49 and 78. He also advised her that all proceeds of the settlement, minus his attorney fees and any reimbursement for advanced costs, would go to Jessica's minor child; however, he later revised this statement to state that Mustin would also receive a $500 fiduciary fee. Hearing 49. Finally, Respondent advised Mustin that before any settlement could be distributed, he would have to have her appointed fiduciary of Jessica's estate and obtain probate court approval for the settlement. Stipulations ¶14. Mustin acknowledged all of the above and accepted it willingly because the settlement would ultimately benefit her grandson. Hearing Tr. 50.

{¶13} On September 6, 2018, Respondent accepted the $50,000 settlement on behalf of Mustin. Stipulations ¶17. Around this same time, Respondent also prepared and caused Mustin to sign an Application for Authority to Administer Estate, an Application to Approve Settlement and Distribution of Wrongful Death and Survival Claims, an Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims, a Report of Distribution of Wrongful Death and Survival Claims, and documents necessary for the Ohio Department of Taxation. Stipulations ¶18. Consistent with what Respondent had told Mustin about the settlement, the Report of Distribution of Wrongful Death and Survival Claims indicated that the $50,000 settlement would

be disbursed as follows:

- $500 to Mustin for fiduciary fees;
- $16,665 to Respondent for attorney fees; and
- $32,835 to a trust for the minor child.

Stipulations ¶19.

{¶14} On October 15, 2018, Respondent went to the Cuyahoga County Probate Court to file the documents that he had prepared and that Mustin had signed. Stipulations ¶20. However, he actually only filed the Application for Authority to Administer Estate. Stipulations ¶21. Respondent claimed that it was because he had a conversation with Magistrate Mary McGraw in the Cuyahoga City Probate Court. He claimed that led him to proceed in a different direction with the case. Hearing Tr. 115 and 165. Specifically, he claimed as a result of his conversation with the magistrate, that he was either told or led to believe:

- that he could streamline the probate court process by reducing the distribution amount to Jessica's minor son to less than $25,000;
- that he could and should disburse settlement proceeds to Jessica's cousins or other family members in order to reduce the amount of the distribution to the minor child to less than $25,000; and
- that he could make those distributions at the direction of the fiduciary and without probate court approval.

Stipulations ¶¶ 58 and 60;
Joint Ex. 8 and 27; Hearing Tr. 197.

{¶15} As part of the disciplinary proceeding, McGraw authored an affidavit stating what she would and would not have told Respondent if she spoke to him. In her affidavit, McGraw specifically stated that she did not advise him to disburse funds without probate court approval. Nor did she advise him that settlement funds could be distributed per the fiduciary's directive. She denied advising Respondent to "streamline" the probate court process by reducing the amount

to the minor to less than $25,000. Joint Ex. 43; Hearing Tr. 197.

{¶16} Respondent testified that he did not believe that anything in McGraw's affidavit was false or incorrect. Hearing Tr. 145 and 168. Accordingly, Respondent's decision to file only the Application for Authority to Administer Estate was not because of any conversation with McGraw, but because it was the only document that could be filed.

{¶17} On November 6, 2018, the probate court granted the Application for Authority to Administer Estate on condition that Mustin post bond in the amount of $10,000. Stipulations ¶25. On November 15, 2018, Respondent paid a $100 fee to obtain a $10,000 bond from Western Surety Company for Mustin. Stipulations ¶26. On November 26, 2018, Respondent filed documentation concerning the $10,000 bond with the probate court, and on the same day, Mustin was officially appointed fiduciary of Jessica's estate. Stipulations ¶ 28; Joint Ex. 19 and 23.

{¶18} On November 28, 2018, Respondent was suspended from the practice of law. In light of this suspension, Respondent could no longer represent Mustin or Jessica's estate. However, he failed to notify Mustin or the probate court of his suspension even though he was required to do so by the suspension order. Stipulations ¶31.

{¶19} Instead, Respondent filed a false affidavit with the Supreme Court stating that he had notified Mustin and the probate court of his suspension and that he had maintained a record of steps taken pursuant to the Court's November 28, 2018 order. Stipulations ¶48; Joint Ex. 33.

{¶20} Respondent continued to represent Mustin and the estate despite his suspension. He continued to communicate with Allstate regarding the settlement release and the issuance of the settlement check. He continued to communicate with crime victims services representatives. Stipulations ¶¶ 32-36.

{¶21} Respondent sent a letter dated November 30, 2018 letter on his attorney letterhead

to Shawn Moser, crime victims services representative. The letter stated, "As additional information becomes available to our office, you will be advised. We look forward to working with you on this claim." Joint Ex. 25. On the same day, Respondent also sent Allstate a settlement release on which he had signed his client's name and then notarized the signature. Stipulations ¶34; Joint Ex. 28-29.

{¶22} On December 10, 2018, Respondent received the $50,000 settlement check from Allstate. Stipulations ¶37. Respondent again signed Mustin's name on the back of the check and deposited the check into his IOLTA. Stipulations ¶¶38-39. Thereafter, he immediately began using what he had calculated to be his earned fees to pay personal financial obligations. Stipulations ¶44; Hearing Tr. 28. At the time Respondent began using settlement funds, he had no authority from the probate court to expend any settlement funds. Stipulations ¶45.

{¶23} On December 13, 2018, Respondent personally met Mustin at her house and gave Mustin a check for $4,734. Stipulations ¶42. At the same time, Respondent also announced that he was giving Hodge a $2,000 distribution. Stipulations ¶43. Later, without court authority, Respondent issued a $2,000 check to Earth Temple, a 501(c) corporation registered to Hodge. Stipulations ¶¶43 and 46.

{¶24} On February 5, 2019, Moser called Mustin, having not received a response from his earlier letter to both Respondent and Mustin. Stipulations ¶52; Joint Ex. 20. During this call, Moser advised Mustin that he could no longer work with Respondent because Respondent's license to practice law had been suspended. Hearing Tr. 59. This was the first time Mustin learned of Respondent's suspension. Stipulations ¶52; Hearing Tr. 59. Thereafter, Mustin called Respondent. Respondent advised Mustin that his license had been suspended, but that he would have it back in a few months. Hearing Tr. 59 and 74. Respondent told Mustin nothing more.

Id. He did not tell her to consult with counsel, nor did he return her file to her. Stipulations ¶67.

{¶25} Following his call with Mustin, Moser emailed Respondent on February 21, 2019. Stipulations ¶54. On March 15, 2019, Respondent left Moser a voicemail in response to his email. Stipulations ¶55. In his voicemail, Respondent stated that he was not representing the estate "at this time," but that he "may resume his representation" after he had been reinstated to the practice of law. Joint Ex. 20.

{¶26} In March 2019, Respondent's conduct came to the attention of Relator through Sean Allan, an attorney contacted by Mustin after she learned of Respondent's suspension. Stipulations ¶56. On March 27, 2019, Relator emailed Respondent regarding the information from Allan, and on March 28, 2019, Relator spoke with Respondent. Stipulations ¶57; Joint Ex. 46. It was during this call that Respondent first falsely advised Relator that Magistrate McGraw had told him to reduce the settlement distribution to Jessica's son to less than $25,000 by disbursing it at the direction of the fiduciary. Stipulations ¶58. He later repeated this false claim in two letters to Relator, at his deposition, and during his testimony at the hearing. Joint Ex. 8 and 27; Stipulations ¶60; Hearing Tr. 141 and 197.

{¶27} Although Respondent stipulated to a majority of the facts in this matter, he continued to argue that:

- he had Mustin's verbal permission to sign the settlement release and endorse the settlement check;
- he and Mustin mutually agreed on the $4,734 distribution to her and the $2,000 check to Hodge; and
- following his suspension, he sent, or at least drafted, a letter to Mustin notifying her of his suspension, as well as a motion to withdraw to the probate court.

{¶28} The panel did not find these claims supported by the evidence. They highlight

Respondent's failure to fully acknowledge his misconduct and accept responsibility for his actions.

{¶29} Respondent claims that sometime around November 26, 2018, he obtained Mustin's verbal permission to sign her name on the settlement release, as well as endorse the settlement check. Hearing Tr. 132. Mustin's testimony on this issue was clear. She never gave Respondent permission to sign her name on the settlement release or the check. Hearing Tr. 52, 54, and 66-67. She never had any conversations with Respondent regarding the check or release. Hearing Tr. 52, 54, and 65. And she never even knew that she had to sign a settlement release or a check. Hearing Tr. 66. Moreover, Respondent provided no evidence in support of his alleged claim such as phone records, correspondence, or notes confirming that he requested or received Mustin's permission to sign her name. Hearing Tr. 155 and 185.

{¶30} In addition, Respondent's explanation for allegedly obtaining Mustin's verbal permission was confusing and irreconcilable. During the hearing, Respondent testified that he offered to send the settlement release to Mustin for her to sign, but she did not want the release sent to her because it would take too long. Hearing Tr. 132. However, a few minutes later, Respondent testified that although he had sent every other document that Mustin signed through Hodge, he would not have sent the settlement release because it "was supposed to be notarized." Hearing Tr. 154.

{¶31} It appeared to the panel that Respondent tried to duplicate Mustin's signature on the settlement release and the back of the check. Notably, on both documents, Respondent intentionally altered the signature from his own handwriting, including the use of a large, loopy "J" in Juanita and a tail on the "M" in Mustin. Hearing Tr. 134; *cf.* Joint Ex. 29 and 30, p. 14 to Joint Ex.15, 17, and 18. If Respondent had Mustin's permission to sign her name, there would have been no need to duplicate Mustin's signature. He simply could have signed it and put "with

permission" or a similar notation next to the signature. The fact he did not do so indicates he had no such authority.

{¶32} Respondent claims that he and Mustin mutually agreed on the $4,734 distribution to Mustin, as well as the $2,000 distribution to Hodge. Hearing Tr. 112, 126, and 159. However, Mustin's testimony on this issue was clear. Mustin never asked Respondent for money from the settlement because she knew the money was going to her grandson and she was "fine with that." Hearing Tr. 51. The only information that Mustin received from Respondent regarding the $4,734 check was that it was an "early Christmas present" and that it was related to taxes. Hearing Tr. 58.

{¶33} With regard to the $2,000 check to Hodge, Mustin testified that after Respondent gave her the check for $4,734, he "just said he had another additional $2,000 for Tony Hodges (sic), and - - and he felt that he should get that because he and my daughter were dating." Hearing Tr. 56. There was no negotiation over the amount of the check to Hodge—the only dispute was whether Hodge should receive any money at all. Hearing Tr. 81.

{¶34} In addition, Respondent's own testimony regarding his in-person conversation with Mustin is inconsistent. Respondent testified that after he and Mustin allegedly agreed on the $4,734 distribution to Mustin and the $2,000 distribution to Hodge, he told her that "there's some more money that could be released at some point" through either him or another attorney, but that he was going to hold the money in trust until either he returned to practice or Mustin directed him to transfer the money to another attorney. Hearing Tr. 129. However, Respondent never told Mustin that she had authority over the remainder of the settlement money. Hearing Tr. 58-59.

{¶35} Despite his stipulation that he failed to notify Mustin or the probate court of his suspension, Respondent argued that he "believed" he had sent a letter to Mustin, as well as a

motion to withdraw to the probate court, notifying them of his suspension. Hearing Tr. 186. For the following reasons, Respondent's claim is baseless.

{¶36} First, neither Mustin nor the court received notice from Respondent of his suspension. Hearing Tr. 60; Joint Ex. 43, ¶17. Second, Respondent failed to produce a copy of the letter that he allegedly sent to Mustin or a copy of the certified mail receipt indicating that he sent it. Hearing Tr. 148-149. Third, Respondent failed to notify Mustin of his suspension in any other way. He did not call her, text her, or personally advise her of his suspension when he was at her house on December 13, 2018. Hearing Tr. 150-151. Fourth, Respondent never reviewed the court's docket to determine whether the court docketed his motion to withdraw even though he was allegedly at the court on December 13, 2018 to check on the status of his withdrawal. Stipulations ¶31; text messages in Joint Ex. 8; Joint Ex. 26-27, #7; Hearing Tr. 153. Fifth, Respondent did not notify Allstate or the Victims of Crime section of his suspension. The panel believes that Respondent never drafted or sent a letter to Mustin or a motion to withdraw to the court. Instead, without the knowledge or consent of Mustin, he decided to "wait out" his suspension, so that he could secure and use settlement funds during his suspension and then resume his representation after his suspension was over with no one being the wiser.

{¶37} Respondent stipulated to violating six Rules of Professional Conduct in this case. The evidence supports that stipulation. It was proven, by clear and convincing evidence, that the Respondent violated the following rules:

- Prof. Cond. R. 1.16(b) by failing to return all file materials to Mustin upon his suspension from the practice of law, which essentially terminated his representation;
- Prof. Cond. R. 3.4(c), by failing to notify Mustin of his suspension in accordance with the Supreme Court's November 28, 2018 order and for personally paying himself attorney's fees in a wrongful death settlement without probate court approval, in violation of the local rule of court;

- Prof. Cond. R. 5.5(a), which prohibits a lawyer practicing law in violation of a regulation of the legal profession, by continuing to act on behalf of Mustin in the settlement of a wrongful death case and with an administrative agency after his suspension;

- Prof. Cond. R. 8.1(a), which prohibits a lawyer from knowingly making a false statement of fact in connection with a disciplinary investigation, by advising Relator that a magistrate had told him that he could disburse from the wrongful death settlement prior to probate court approval and that he should try and make disbursements to a child in an amount less than $25,000;

- Prof. Cond. R. 8.4(c), which prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, by misrepresenting that his client had personally appeared before him when he notarized a release by forging a client's signature on the back of a settlement check, by forging his client's signature on a settlement release, and by advising the Supreme Court in an affidavit of compliance that he had notified all courts and all clients of his suspension; and

- Prof. Cond. R. 8.4(d) which prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice, by failing to take appropriate action upon his suspension from the practice of law, thus delaying the administration of the probate estate by at least six months.

{¶38} There was one alleged violation contested by the parties. Respondent disputed that he violated Prof. Cond. R. 1.4(a)(1). That rule requires a lawyer to promptly inform a client of any decision or circumstance with respect to which the client's informed consent is required. Respondent claims that this rule was "wrongfully charged" because Mustin's informed consent was not needed to terminate his representation and that it is "duplicative" because the conduct is covered by the Prof. Cond. R. 3.4(c) violation to which he has stipulated.

{¶39} Respondent is correct that Mustin's informed consent was not necessary to terminate his representation—that was automatic by virtue of Respondent's suspension. However, that is not the basis of the Prof. Cond. R. 1.4(a)(1) violation.

{¶40} This panel finds that Respondent has a unique and separate duty, not only to comply with a court order per Prof. Cond. R. 3.4(c), but to also comply with Prof. Cond. R. 1.4(a) that

requires a lawyer to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. In this case, Mustin needed to know that Respondent had been suspended from the practice of law so that she could either obtain new counsel or to plan for the delay in the settlement of a wrongful death case and the administration of the estate. Furthermore, Respondent, by disbursing moneys and paying moneys out without probate court approval, jeopardized Mustin by a potential breach of her fiduciary duties. The alleged violation of Prof. Cond. R. 1.4(a)(1) is proven by clear and convincing evidence based upon the exhibits, the stipulations, and the evidence produced.

AGGRAVATION, MITIGATION AND SANCTIONS

{¶41} When recommending sanctions for attorney 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

{¶42} The parties stipulated to, and the panel found, the following aggravating factors:

- A prior disciplinary offense;
- A dishonest or selfish motive;
- Multiple offenses; and
- Harm to the estate of Jessica Mustin.

{¶43} The panel also finds that Respondent conducted himself in a fashion in this case consistent with his actions in his prior disciplinary case. In that case, Respondent lied to a member of the judiciary regarding the sexual relationship he had with a client. Here, the panel finds that Respondent lied to the Supreme Court when he filed his notification of compliance with the

November 28, 2018 order, lied to Relator in his response to the letter of inquiry (Joint Ex. 27), and lied in his deposition taken by Relator regarding questions related to "the advice" that he had received from Magistrate McGraw. Finally, the panel finds Respondent's lack of candor and his failure to acknowledge the wrongdoing in this case as additional aggravating factors.

{¶44} Ms. Mustin, though she had a 12th grade education, was not as sophisticated or well educated as Respondent. She testified that she relied upon Respondent for his expertise. Based upon that, she trusted him with this matter, all while grieving the death of her daughter. Unfortunately, her trust and reliance upon Respondent was misplaced.

Mitigating Factors

{¶45} The parties did not stipulate to any mitigating factors. Respondent produced no evidence of any mitigating factors, nor did the panel find any suggestion of mitigating factors in the testimony of the Respondent. In fact, the exact opposite was found in the testimony of the Respondent.

Sanction

{¶46} As the Supreme Court of Ohio has instructed, the primary purpose of the disciplinary sanction is not to punish the offender but rather to protect the public. *Ohio State Bar Assn. v. Resnick,* 128 Ohio St. 3d 56, 2010-Ohio-6147 and *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704. In their post-hearing briefs, Relator and Respondent suggest that the appropriate sanction in this matter is an indefinite suspension.

{¶47} In its brief, Relator states that "the Supreme Court of Ohio has held that the presumptive sanction for an attorney who practices law while under suspension is an indefinite suspension. Citing *Disciplinary Counsel v. Jackson*, 86 Ohio St.3d 104, 1999-Ohio-87; *Columbus Bar Assn. v. Magana*, 94 Ohio St.3d 327, 2002-Ohio-888; *Disciplinary Counsel v.*

Mitchell, 124 Ohio St.3d 266, 2010-Ohio-135; *Disciplinary Counsel v. Freeman*, 126 Ohio St.3d 389, 2010-Ohio-3824 and *Disciplinary Counsel v. Meyer*, 142 Ohio St.3d 448, 2015-Ohio-493. Respondent also relied on *Meyer*.

{¶48} However, this panel believes that reliance upon the *Meyer* case is not warranted in this matter. When imposing sanctions for attorney misconduct, we consider relevant factors, including ethical duties that the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli*, 96 Ohio St.3d 424, 2002-Ohio-4743. Making a final determination, the panel must also weigh evidence on the aggravating and mitigating factors listed in Gov. Bar R. V, Section 13. As aggravating factors, the parties stipulated, and this panel agreed, that Respondent had a prior disciplinary offense and failed to respond truthfully to questions during the disciplinary process. Relator also directed our attention to *Cincinnati Bar Assn. v. Robertson*, 145 Ohio St.3d 302, 2016-Ohio-654; *Disciplinary Counsel v. Nicks*, 124 Ohio St. 3d 460, 2010-Ohio-600; *Disciplinary Counsel v. Rohrer*, 124 Ohio St. 3d 65, 2009-Ohio-5930 and *Lake Cty. Bar Assn. v. Speros*, 73 Ohio St. 3d 101, 1995-Ohio-205.

{¶49} Respondent directed our attention to *Disciplinary Counsel v. Hoskins*, 150 Ohio St.3d 41, 2017-Ohio-2924 and *Cleveland Metro. Bar Assn. v. Pryatel*, 145 Ohio St.3d 398, 2016-Ohio-865, both of which involved the sanction of disbarment. Pryatel violated Prof. Cond. R. 5.5(a); 8.1(a); 8.4(c) and 8.4(d). In this case, Respondent violated Prof. Cond. R. 1.4(a)(1); 1.16(d); 3.4(c); 5.5(a); 8.1(a); 8.4(c) and 8.4(d).

{¶50} In *Disciplinary Counsel v. Fletcher*, 135 Ohio St. 3d 404, 2013-Ohio-1510, the Supreme Court, in finding a violation of Prof. Cond. R. 5.5(a), stated that the presumptive sanction for continuing to practice law while under suspension was disbarment. "[O]ur precedent provides that disbarment is the presumptive sanction for an attorney who continues to practice law while

under suspension." *Pryatel* at ¶21, citing *Cleveland Metro Bar Association v. Brown*, 143 Ohio St. 3d 333, 2015-Ohio-2344. In addition, "[a]bsent any mitigating circumstances, the penalty for ignoring orders of the Court and continuing to practice law while under suspension, is disbarment." *Cincinnati Bar Assn. v. Rothermel*, 112 Ohio St. 3d 443, 2007-Ohio-258, ¶14. Nor is a sanction of disbarment based on the finding of practicing law under suspension dependent upon the number of instances of prior discipline. See *Pryatel, supra.*

{¶51} This case and *Pryatel* are similar. Both involve instances of prior discipline related to serious misconduct. Pryatel's first suspension came in 2013 for misconduct that included misappropriating settlement funds of a client, making a false statement to a court, misusing his trust account, charging an excessive fee and neglecting a client's matter.

{¶52} In his prior disciplinary case, Respondent engaged in sexual activity with a court-appointed client. When confronted by a judge about this relationship with his client, Sarver denied that he was involved in an inappropriate relationship with a client, thus, lying to the court.

{¶53} Similarly, Respondent in the matter before us, lied to the Supreme Court when he filed false affidavits. He also forged a client's signature and blamed Magistrate McGraw for things that were not told to him. Both *Pryatel* and this case lack any mitigating factors. Three other cases also come into play in the analysis in this matter.

{¶54} In *Disciplinary Counsel v. Shaw*, 138 Ohio St.3d 522, 2014-Ohio-1025, Shaw had been suspended for naming his children as beneficiaries in a will he drafted for his client, for taking and failing to repay a loan from a client without advising the client of the inherent conflict of interest, and for accepting attorney's fees from a guardianship without obtaining prior probate court approval.

{¶55} Shaw was never properly reinstated to the practice of law. However, while under

suspension, he continued to accept clients and draft legal documents such as quit-claim deeds and performed estate planning. In at least two probate matters, Shaw took attorney's fees from an estate prior to approval by the probate court.

{¶56} Shaw violated Prof. Cond. R. 3.4(c), 5.5(a), 8.4(d), and 8.4(h) as well as former DR 1-102(A)(5), 1-102(A)(6) and 7.106(A); and former Gov. Bar R. V, Section(8)(E). The aggravating factors were a prior disciplinary offense, a pattern of misconduct, harm to multiple clients, dishonest of selfish motive, multiple offenses and failure to make restitution. Unlike Respondent, Shaw did have the mitigating factor of cooperation with Relator's investigation in subsequent disciplinary proceedings. Shaw was disbarred.

{¶57} In *Disciplinary Counsel v. Frazier*, 110 Ohio St.3d 288, 2006-Ohio-8481, Frazier had been indefinitely suspended for his personal use of entrusted client funds. He was subsequently found in contempt for his failure to comply with former Gov. Bar R. V, Section (8)(E), regarding notification to the appropriate parties for the return of client files. In his subsequent complaint, Frazier was charged with failing to properly represent numerous clients prior to his suspension, failing to notify clients of his suspension, failing to return fees to clients and continuing to represent two clients after his suspension. In *Frazier*, there was a history of professional misconduct, a commission of multiple offenses with a discernable pattern, a failure to cooperate in the disciplinary process, harm to numerous clients, failure to comply with CLE requirements, little or no restitution to clients and knowing engagements in the practice of law while his license was under suspension. As in this matter, there were no mitigating factors. The Supreme Court disbarred Frazier.

{¶58} In *Disciplinary Counsel v. Mbakpuo*, 98 Ohio St. 3d 177, 2002-Ohio-7087, Mbakpuo was disbarred as a result of practicing law while his license was suspended.

Additionally, he was representing clients in a jurisdiction where he was not licensed, was representing that he was a partner in a firm that did not exist, used the names of other attorneys without their permission, and failed to cooperate in the disciplinary investigation. There were aggravating factors that included Mbakpuo experiencing financial difficulty that contributed to this misconduct and no mitigating factors.

{¶59} Other cases reviewed were *Cincinnati Bar Assn. v. Rothermel*, 112 Ohio St. 3d 443, 2007-Ohio-258; *Disciplinary Counsel v. Henderson*, 108 Ohio St. 3d 447, 2006-Ohio-1336 and *Disciplinary Counsel v. Bellew*, 152 Ohio St. 3d 430, 2017-Ohio-9203, all of which resulted in the disbarment of the attorneys for continuing to practice law while under Court's suspension.

{¶60} Based upon Respondent's serious misconduct while under suspension, the fact that Respondent failed to fully acknowledge his misconduct, the lack of any mitigation and presence of multiple aggravating factors, this Panel recommends that Respondent be permanently disbarred.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on February 7, 2020. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Jason Allan Sarver, be permanently disbarred from the practice of law in Ohio 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