

IN THE SUPREME COURT OF OHIO

MAHONING COUNTY BAR)
ASSOCIATION,)
114 East Front Street, # 100)
Youngstown, OH 44503)
Relator,)
-vs-)
BRIAN JOHN MACALA,)
Atty. Reg. # 0059224)
117 South Lincoln Avenue)
Salem, OH 44460)
Respondent.)

CASE NO. 2023-1561

On Relator's Objections to the Certified
Report of the Board of Professional Conduct
in Board Case No. 2023-010

**RELATOR'S OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDATION OF THE BOARD OF PROFESSIONAL CONDUCT**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF RELEVANT FACTS	2
III.	ARGUMENT	4
	A. An actual suspension is the “general” sanction for dishonest conduct, although application of this principle is often more nuanced	4
	B. Isolated incidents of dishonest conduct in an otherwise blameless career, where there is no harm to clients and/or abundant mitigation, frequently justify a downward departure to a fully stayed suspension – but not more	5
	C. Cases of dishonest conduct in which the Court has imposed a public reprimand, including those cited by the Board, are distinguishable from the present case	10
	D. Application of the appropriate precedents to this case requires the imposition of a fully stayed twelve-month suspension on the Respondent	16
IV.	CONCLUSION	18
	CERTIFICATE OF SERVICE	20
	BOARD REPORT	Appendix A

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<i>Akron Bar Assn. v. Gibson</i> , 128 Ohio St. 3d 347, 2011-Ohio-628, 944 N.E.2d 228	6, 9, 17, 18
<i>Cincinnati Bar Assn. v. Thomas</i> , 93 Ohio St. 3d 402, 2001-Ohio-1344, 754 N.E.2d 1263	13
<i>Columbus Bar Assn. v. Chodosh</i> , 156 Ohio St. 3d 288, 2019-Ohio-765, 125 N.E.3d 878	9-10, 17, 18
<i>Columbus Bar Assn. v. Craig</i> , 131 Ohio St. 3d 364, 2012-Ohio-1083, 965 N.E.2d 287	2, 13, 15, 17
<i>Columbus Bar Assn. v. Stubbs</i> , 109 Ohio St. 3d 446, 2006-Ohio-2818, 848 N.E.2d 843	8
<i>Dayton Bar Assn. v. Ellison</i> , 118 Ohio St. 3d 128, 2008-Ohio-1808, 886 N.E.2d 836	6
<i>Disciplinary Counsel v. Champion</i> , 147 Ohio St. 3d 425, 2016-Ohio-8023, 66 N.E.3d 737	7-8, 17, 18
<i>Disciplinary Counsel v. Cuckler</i> , 101 Ohio St. 3d 318, 2004-Ohio-784, 804 N.E.2d 966	4, 11-12, 16, 17, 18
<i>Disciplinary Counsel v. Eisenberg</i> , 81 Ohio St. 3d 295, 690 N.E.2d 1282 (1998)	2, 10-11, 17
<i>Disciplinary Counsel v. Flowers</i> , 139 Ohio St. 3d 338, 2014-Ohio-2123, 11 N.E.3d 1174	13-14, 16, 17
<i>Disciplinary Counsel v. Fumich</i> , 116 Ohio St. 3d 257, 2007-Ohio-6040, 878 N.E.2d 6	6
<i>Disciplinary Counsel v. Mezacapa</i> , 101 Ohio St. 3d 156, 2004-Ohio-302, 803 N.E.2d 397	2, 11, 13, 14, 15, 16, 17
<i>Disciplinary Counsel v. Moore</i> , 149 Ohio St. 3d 509, 2017-Ohio-883, 75 N.E.3d 1252	15-16, 17

<i>Disciplinary Counsel v. Niermeyer</i> , 119 Ohio St. 3d 99, 2008-Ohio-3824, 892 N.E.2d 434	5-6, 8, 9, 17, 18
<i>Disciplinary Counsel v. Wilson</i> , 142 Ohio St. 3d 439, 2014-Ohio-5487, 32 N.E.3d 426	2, 14, 15, 16, 17
<i>Mahoning Cty. Bar Assn. v. Cochran</i> , 152 Ohio St. 3d 448, 2018-Ohio-4, 97 N.E.3d 454	8-9, 17
<i>Mahoning Cty. Bar Assn. v. Melnick</i> , 107 Ohio St. 3d 240, 2005-Ohio-6265, 837 N.E.2d 1203	2, 12, 13, 16, 17
<i>Medina Cty. Bar Assn. v. Cameron</i> , 130 Ohio St. 3d 299, 2011-Ohio-5200, 958 N.E.2d 138	4, 7, 8, 17-18
<i>Toledo Bar Assn. v. DeMarco</i> , 144 Ohio St. 3d 248, 2015-Ohio-4549, 41 N.E.3d 1237	9
<i>Warren Cty. Bar Assn. v. Clifton</i> , 147 Ohio St. 3d 399, 2016-Ohio-5587, 66 N.E.3d 713	2, 14-15, 16, 17

AUTHORITIES

PAGE

18 U.S.C. § 401(1)	8
DR 1-102 (A)(4)	5
DR 7-102(A)(6)	5
Ohio Prof. Cond. R. 1.2(a)	9
Ohio Prof. Cond. R. 1.3	1
Ohio Prof. Cond. R. 1.4(a)(3)	1, 9, 13
Ohio Prof. Cond. R. 1.5(c)(2)	9
Ohio Prof. Cond. R. 1.5(e)	9
Ohio Prof. Cond. R. 3.3	7, 8
Ohio Prof. Cond. R. 3.3(a)(1)	1, 14, 15, 16

Ohio Prof. Cond. R. 4.1(a)	13
Ohio Prof. Cond. R. 4.2	7
Ohio Prof. Cond. R. 8.4(b)	1, 8
Ohio Prof. Cond. R. 8.4(c)	1, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15
Ohio Prof. Cond. R. 8.4(d)	10, 11, 13, 14
Ohio Prof. Cond. R. 8.4(h)	10, 11, 13
Ohio Rules of Professional Conduct, Appendix A, Correlation Table	5

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**RELATOR’S OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW,
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I. Introduction

On May 31, 2023, Relator, the Mahoning County Bar Association, filed a one-count complaint against Respondent Brian John Macala. The Complaint alleged that Respondent violated Rules 1.3, 1.4(a)(3), 3.3(a)(1), 8.4(b) and 8.4(c) of the Ohio Rules of Professional Conduct when he filed waivers of partial accounts with the Mahoning County Court of Common Pleas, Probate Division, on which he had forged the signatures of the heirs and fiduciary without their knowledge or consent.

The facts of the matter were fully stipulated, in stipulations filed on October 23, 2023. Relator stipulated to the dismissal of the violations of Rules 1.3 and 8.4(b), while Respondent stipulated to his violation of Rule 1.4(a)(3) (communication); Rule 3.3(a)(1) (candor to the tribunal); and 8.4(c) (misconduct involving dishonesty, fraud, deceit or misrepresentation). The matter was heard on October 30, 2023. Board Report, ¶ 1. The panel unanimously accepted the stipulated dismissal of the first two rule violations, and found that Respondent’s conduct violated

the remaining rules. Board Report, ¶¶ 17-18. Relator advocated for the imposition of a fully stayed 12-month suspension, while Respondent sought a public reprimand.

As to aggravating factors, the panel found a dishonest or selfish motive and the commission of multiple offenses. Board Report, ¶ 20. As to mitigating factors, the panel found no prior disciplinary record; full and free disclosure; a cooperative attitude toward the proceedings; and good character and reputation. Board Report, ¶ 21.

The Board adopted the findings of fact, conclusions of law and recommendation of the hearing panel, recommended the imposition of a public reprimand (Board Report, ¶ 24), and cited six cases on which it relied: *Warren Cty. Bar Assn. v. Clifton*, 147 Ohio St. 3d 399, 2016-Ohio-5587, 66 N.E.3d 713; *Disciplinary Counsel v. Wilson*, 142 Ohio St. 3d 439, 2014-Ohio-5487, 32 N.E.3d 426; *Disciplinary Counsel v. Mezacapa*, 101 Ohio St. 3d 156, 2004-Ohio-302, 803 N.E.2d 397; *Disciplinary Counsel v. Eisenberg*, 81 Ohio St. 3d 295, 690 N.E.2d 1282 (1998); *Mahoning Cty. Bar Assn. v. Melnick*, 107 Ohio St. 3d 240, 2005-Ohio-6265, 837 N.E.2d 1203; and *Columbus Bar Assn. v. Craig*, 131 Ohio St. 3d 364, 2012-Ohio-1083, 965 N.E.2d 287.

Relator objects only to the Board's recommended sanction.

II. Statement of Relevant Facts

In early 2020, Sandra Billec hired Respondent to represent the Estates of Marie and Ronald Harris in Mahoning County Probate Court. Stipulations, ¶ 3. At various points over roughly the next two years, the court issued multiple notices of delinquent inventories and/or accounts in the two cases. Stipulations, ¶¶ 4-11. On March 24, 2022, the court issued a Citation to File an Account by April 28, 2022, with respect to the Estate of Ronald Harris, and a Notice of Hearing on Status Report and a Citation to File an Account with respect to the Estate of Marie Harris. Stipulations, ¶¶ 12-13.

On April 29, 2022, the court issued a Notice of Hearing to File a Status Report and Citation Upon the Delinquent Account and Orders to Appear and Show Cause with respect to both estates. Stipulations, ¶ 14. Respondent's motion to continue this hearing was granted, and it was continued to May 20, 2022. Stipulations, ¶ 15. On May 17, 2022, Respondent filed Waivers of Partial Accounts in both cases. Stipulations, ¶ 16. The court then issued a judgment entry withdrawing its Citation to Appear and Show Cause with respect to both estates. Stipulations, ¶ 18.

The Waiver of Partial Account filed with respect to the Estate of Marie Harris was purportedly signed by the executor of the Estate. Stipulations, ¶ 17. The Waiver of Partial Account filed with respect to the Estate of Ronald Harris was purportedly signed by the executor and four beneficiaries of the Estate. *Id.* None of these five people actually signed either of the two documents which Respondent filed with the court. Stipulations, ¶ 19. When the executor terminated Respondent by letter on June 10, 2022, and confronted him with these facts, Respondent expressed an understanding of her decision to terminate him due to the forged signatures. Stipulations, ¶¶ 20-21. On August 1, 2022, in response to a grievance filed with Relator by one of the beneficiaries, Respondent admitted that he signed the documents on behalf of the five signatories without their knowledge or consent, and filed the documents with the forged signatures with the court. Stipulations, ¶ 23.

Respondent's conduct was a misguided effort to placate a court which was becoming impatient. Neither Respondent's acts nor his omissions resulted in any permanent harm or prejudice to the client or the beneficiaries. The central issue in this case, in terms of sanction, is Respondent's course of dishonest conduct toward the client, the beneficiaries and the court.

III. Argument

A. **An actual suspension is the “general” sanction for dishonest conduct, although application of this principle is often more nuanced.**

Under the Code of Professional Responsibility, cases involving dishonesty to a court or involving a client often led to actual suspensions from the practice of law. Application of that general principle to individual cases became more nuanced over time, especially after the adoption of the Rules of Professional Conduct in 2007. “Although an actual suspension from the practice of law is the general sanction when an attorney engages in dishonest conduct, a lesser sanction may be appropriate when the misconduct is an isolated incident in an attorney’s career or when little or no harm resulted from the misconduct.” *Medina Cty. Bar Assn. v. Cameron*, 130 Ohio St. 3d 299, 2011-Ohio-5200, 958 N.E.2d 138, ¶ 17, citing *Disciplinary Counsel v. Cuckler*, 101 Ohio St. 3d 318, 2004-Ohio-784, 804 N.E.2d 966. Over the last two decades, the “general proposition” of an actual suspension seems more often to be the exception than the rule.

A cohesive body of case law exists, establishing that a fully stayed suspension is the appropriate sanction for an isolated incident of dishonesty when mitigating factors are present. A long career with no discipline, or a lack of harm to the client, justify the departure downward from an actual suspension to a fully stayed one – but that is the only downward departure which they justify. The Respondent in this case forged the signatures of five people to two court filings, and filed them with the tribunal. These are acts of dishonesty toward his client, toward the beneficiaries and toward the court. While the Respondent need not – and indeed, should not – receive an actual suspension for this course of conduct, the Board’s recommended sanction of a public reprimand is multiple downward departures too far, and therefore Relator objects.

B. Isolated incidents of dishonest conduct in an otherwise blameless career, where there is no harm to clients and/or abundant mitigation, frequently justify a downward departure to a fully stayed suspension – but not more.

The most valuable guidance on sanction is to be found in analogous past cases, which all resulted in fully stayed twelve-month suspensions. Analogous cases include violations of both Rule 8.4(c), concerning dishonest conduct, and Rule 3.3, concerning a lack of candor to a tribunal.

In *Disciplinary Counsel v. Niermeyer*, the respondent withdrew a workers compensation claim which lacked sufficient medical documentation, but then failed to timely refile it. 119 Ohio St. 3d 99, 2008-Ohio-3824, 892 N.E.2d 434, ¶¶ 3-4. In an effort to remedy his neglect, the respondent fabricated a new, purportedly timely-filed document, and filed it with the bureau of workers compensation, hoping that the apparently overwhelmed agency would not notice the fabrication. *Id.* at ¶ 4. Soon thereafter, the respondent was overwhelmed with guilt, and made a full disclosure of the incident to disciplinary counsel. *Id.* at ¶ 5.

The respondent was found to have violated DR 1-102(A)(4), the analogous predecessor to Prof. Cond. R. 8.4(c),¹ as well as DR 7-102(A)(6). The only aggravating factor was a dishonest or selfish motive. *Niermeyer* at ¶ 9. Mitigating factors included the absence of a prior disciplinary record, full cooperation in the proceedings, and evidence of good character and reputation. *Id.* The Board and the Court specifically noted that “respondent had immediately made efforts to rectify the consequences of his misconduct,” and that “respondent self-reported misconduct that might otherwise have gone undiscovered.” *Id.*

In considering the sanction, the Court observed that “[a]n attorney who engages in conduct that violates DR 1-102(A)(4) will ordinarily be suspended from the practice of law ... [but that] a

¹ All references to analogous predecessor rules in this brief are drawn from Rules of Professional Conduct, Appendix A, Correlation Table.

lesser sanction may be warranted depending on the presence of mitigating factors.” *Niermeyer* at ¶ 12. The Court noted respondent’s “willingness to accept responsibility for his mistake, and the fact that this was an isolated incident in an otherwise unblemished legal career rather than a course of conduct.” *Id.* at ¶ 13. The Court imposed a fully stayed twelve-month suspension. *Id.* at ¶ 14.

In *Akron Bar Assn. v. Gibson*, the respondent entered into a business transaction with a client, and then made misrepresentations to an escrow agent and the court while seeking payment for nonlegal services, and in withdrawing her motion for payment without disclosing to the court that she had already been paid.² 128 Ohio St. 3d 347, 2011-Ohio-628, 944 N.E.2d 228, ¶¶ 2-7, 11.

The respondent was found to have violated Prof. Cond. R. 8.4(c), among others. *Gibson* at ¶ 4. The only aggravating factor was the commission of multiple offenses. *Id.* at ¶ 9. Mitigating factors included the lack of a prior disciplinary record; a cooperative attitude toward proceedings; a “reputation for competency, honesty and trustworthiness, apart from the charged misconduct”; substantial *pro bono* work and bar association involvement; and the fact that significant respiratory illnesses were a contributing factor. *Id.*

In considering the sanction, the Court noted that a violation of Rule 8.4(c) “generally requires an actual suspension from the practice of law.” *Gibson* at ¶ 10. The Court cited two cases in which significant mitigating evidence justified a lesser sanction. *Id.*³ The Court noted that there was no evidence of harm to clients, and that in light of this fact and the substantial mitigating factors, a fully stayed twelve-month suspension (with conditions) was appropriate. *Id.* at ¶ 11.

² The facts of the case are somewhat complicated and it includes other rule violations, but the Court’s focus in discussing sanction was the respondent’s dishonest conduct.

³ *Disciplinary Counsel v. Fumich*, 116 Ohio St. 3d 257, 2007-Ohio-6040, 878 N.E.2d 6 (stayed twelve-month suspension based upon mitigating evidence and absence of motive to exploit clients); *Dayton Bar Assn. v. Ellison*, 118 Ohio St. 3d 128, 2008-Ohio-1808, 886 N.E.2d 836 (stayed twelve-month suspension based upon mitigating factors including commitment to and reputation for providing legal services to needy clients).

In *Medina Cty. Bar Assn. v. Cameron*, the respondent made a false representation to a court that a case had been settled. *Cameron*, 130 Ohio St. 3d 299, 2011-Ohio-5200, 958 N.E.2d 138, at ¶ 13. The context of this false representation was complicated. Respondent had been sued for payment of expert witness fees by a witness he had retained, and the false representation was made for the purpose of securing a continuance at the pleading stage of proceedings. *Id.* at ¶¶ 4-8. The respondent's misconduct was reported through a grievance filed by opposing counsel. *Id.* at ¶ 8.

The respondent was found to have violated Prof. Cond. R. 3.3 and Prof. Cond. R. 4.2, relating to communicating directly with a party represented by counsel. *Cameron* at ¶¶ 9-13. Aggravating factors included a dishonest and selfish motive and multiple offenses. *Id.* at ¶¶ 15-16. Mitigating factors included the lack of a prior disciplinary record, as well as good character and reputation. *Id.* at ¶ 14. Relator had sought a one-year actual suspension, and the Board recommended a six-month actual suspension. *Id.* at ¶ 17.

In considering the sanction, the Court articulated the principles quoted in the introduction to this brief, which bear repeating. *Cameron* at ¶ 17. "Although an actual suspension from the practice of law is the general sanction when an attorney engages in dishonest conduct, a lesser sanction may be appropriate when the misconduct is an isolated incident in an attorney's career or when little or no harm resulted from the misconduct." *Id.* Therefore, "given [respondent's] misconduct as it relates to this single matter, the length of his career, and the limited harm attributable to the misconduct," the Court overruled relator and the Board, and imposed a fully stayed twelve-month suspension. *Id.*

In *Disciplinary Counsel v. Champion*, the respondent had been sued by the City of Akron for non-payment of municipal income taxes. 147 Ohio St. 3d 425, 2016-Ohio-8023, 66 N.E.3d 737, ¶ 4. In response, the respondent repeatedly made false statements that he had paid the taxes,

and submitted to the city a fraudulent copy of a canceled check that purported to show partial payment of the taxes he owed. *Id.* When confronted, the respondent acknowledged the altered check and paid the taxes. *Id.* at ¶ 5. After the respondent failed to self-report the misconduct, the city's attorney filed a grievance against him. *Id.*

The respondent was found to have violated Prof. Cond. R. 8.4(c). *Champion* at ¶ 6. The only aggravating factor was a selfish and dishonest motive. *Id.* at ¶ 8. Mitigating factors included the lack of a prior disciplinary record; full and free disclosure; and evidence of good character and reputation. *Id.* The Court acknowledged that an actual suspension is the typical sanction for dishonest conduct, but imposed a fully stayed twelve-month suspension, citing to *Cameron, Stubbs* and *Niermeyer*.⁴

In *Mahoning Cty. Bar Assn. v. Cochran*, the respondent pled guilty to one misdemeanor count of misbehavior in the presence of the court, in violation of 18 U.S.C. § 401(1). 152 Ohio St. 3d 448, 2018-Ohio-4, 97 N.E.3d 454, ¶ 7. Specifically, the respondent admitted that he made two incomplete and misleading statements during his trial on other charges. *Id.* The judge presiding over the case found that the respondent did not give the incomplete responses with an intent to obstruct justice. *Id.* at ¶ 8.

The respondent was found to have violated Prof. Cond. R. 3.3 and Prof. Cond. R. 8.4(b). *Cochran* at ¶ 9. No aggravating factors were present. *Id.* at ¶ 11. Mitigating factors included the lack of a prior disciplinary record; genuine remorse; good character and reputation; a cooperative attitude toward the proceedings; that criminal sanctions had been imposed; and that the respondent

⁴ In *Columbus Bar Assn. v. Stubbs*, the Court imposed a stayed six-month suspension for violations of the Code of Professional Responsibility on a respondent who was cited for a traffic offense while driving without automobile insurance, and then falsified a document in an attempt to convince the Bureau of Motor Vehicles that she had been insured when she was not. 109 Ohio St. 3d 446, 2006-Ohio-2818, 848 N.E.2d 843.

“lacked a dishonest or selfish motive in that his incomplete statements were not made with an intent to obstruct the proceedings.” *Id.*

In considering the sanction, the Court compared and contrasted *Niermeyer* with *Toledo Bar Assn. v. DeMarco*, a case involving a series of false statements to a court. *Cochran* at ¶ 13; *see also DeMarco*, 144 Ohio St. 3d 248, 2015-Ohio-4549, 41 N.E.3d 1237. The Court held that the respondent’s actions were not as egregious as the repeated misrepresentations in *DeMarco*, but were “more similar to the isolated incident of misconduct in *Niermeyer*.” *Cochran* at ¶ 16. Therefore, the Court imposed a fully stayed twelve-month suspension, rather than the partially stayed suspension imposed in *DeMarco*. *Id.* at ¶ 17.

In *Columbus Bar Assn. v. Chodosh*, the respondent engaged in misconduct which included, among other violations: signing his client’s name to two checks; signing her name to a release with her knowledge; signing his own name as a witness to her signature; and directing his secretary to notarize the signature.⁵ 156 Ohio St. 3d 288, 2019-Ohio-765, 125 N.E.3d 878, ¶ 9. He also engaged in other misconduct which is less analogous to this case. *Id.* at ¶¶ 4-11, 13-16.

The respondent was found to have violated Rule 8.4(c), among others. *Chodosh* at ¶ 12. The sole aggravating factor was the commission of multiple offenses. *Id.* at ¶ 19. Mitigating factors included the lack of a prior disciplinary record; the absence of a dishonest or selfish motive; full and free disclosure; a cooperative attitude toward the proceedings; some character evidence; acknowledgement of the wrongfulness of his conduct; and genuine remorse. *Id.* In considering the sanction, the Court cited to and discussed *Gibson* and *Niermeyer*, recognized its practice of

⁵ The respondent was found to have violated a number of rules beyond those dealing with dishonesty, including Prof. Cond. Rules 1.2(a), 1.4(a)(3), 1.5(c)(2), and 1.5(e). *Id.* at ¶¶ 12, 17. However, the violation of Rule 8.4(c) was one of the two rules the Court focused on in its reasoning about sanction. *Id.* at ¶¶ 21-22.

imposing “fully stayed suspensions in cases involving isolated incidents of dishonesty and an abundance of mitigating evidence,” and imposed a fully stayed twelve-month suspension. *Id.* at ¶¶ 21, 25-26.

C. Cases of dishonest conduct in which the Court has imposed a public reprimand, including those cited by the Board, are distinguishable from the present case.

Cases of dishonest conduct do exist in which the Court has imposed a public reprimand. A review of these cases reveals that they each include exceptional characteristics not present in this case, which render them inappropriate as precedent here. Each of these cases include something *more* than the mitigating facts present here, which justifies the multiple downward departures from an actual suspension to the public reprimand imposed.

In *Disciplinary Counsel v. Eisenberg* (cited by the Board), the respondent had his secretary trace the signatures of the beneficiaries on an estate inventory and certain receipt vouchers without their knowledge or authorization, and filed the documents with the probate court. 81 Ohio St. 3d 295, 1998-Ohio-472, 690 N.E.2d 1282 (1998). The respondent was found to have violated the analogous predecessor rules to Prof. Cond. Rules 8.4(c), 8.4(d) and 8.4(h). *Eisenberg* at 295.

No aggravating factors are referenced in the Court’s opinion. *Eisenberg, generally.* Mitigating factors also are not formally enumerated, although there is a reference to character letters received by the Board in mitigation. *Id.* at 295. The Court imposed a public reprimand, based on the following findings:

... that respondent’s action was an isolated incident in his career, that no party suffered financial loss as a result of respondent’s actions, that the inventory was not challenged as inaccurate, that respondent had the signatures signed as a convenience to the parties, that he had no intent to defraud, and that the signatures were not under oath.

Id. at 295-6. In passing, the Court acknowledged that this was a departure from the general rule requiring an actual suspension for dishonest conduct, because “respondent’s action was an isolated incident in an otherwise unblemished legal career and not a course of conduct.” *Id.* at 296.

In *Disciplinary Counsel v. Mezacapa* (cited by the Board), the respondent signed a client’s name to an affidavit in a child support proceeding with her permission, but did not note that fact when notarizing it, and filed it with a court. 101 Ohio St. 3d 156, 2004-Ohio-302, 803 N.E.2d 397, ¶ 2. Pursuant to a consent-to-discipline agreement, the respondent was found to have violated the analogous predecessor rules to Prof. Cond. R. 8.4(c) and (d). *Id.* at ¶ 3.

No aggravated factors are mentioned. *Mezacapa, generally.* Mitigating factors included the lack of a prior disciplinary record; lack of selfish motive; full and free disclosure; good faith efforts to rectify the misconduct; and evidence of good character and reputation. *Id.* at ¶ 4. Without much further explanation, the Court imposed a public reprimand. *Id.* at ¶ 5.

In *Disciplinary Counsel v. Cuckler*, the respondent held the position of deputy chief legal counsel to the Speaker of the Ohio House, but he failed the bar exam twice while so employed before passing on the third attempt. 101 Ohio St. 3d 318, 2004-Ohio-784, 804 N.E.2d 966, at ¶¶ 2-5. Although his actual duties did not constitute the unauthorized practice of law, it was acknowledged that on business cards and in other communications, the respondent’s description of himself as legal counsel misrepresented his status as a licensed attorney. *Id.* at ¶¶ 2-7.

In a consent-to-discipline agreement adopted by the Court, the respondent was found to have violated the analogous predecessors to Rule 8.4(c) and 8.4(h). *Cuckler* at ¶ 7. Aggravating factors were not present. *Id., generally.* Mitigating factors included the lack of a prior disciplinary record; full cooperation in the proceedings, and that respondent had “distinguished himself in his educational pursuits and by his public service.” *Id.* at ¶ 7. Mitigating effect was also given to his

youth when he began working for the Ohio House, to the fact that he “expressed his remorse and contrition with conviction,” and to evidence of his good character and reputation. *Id.* at ¶ 14.

In considering the sanction, the Court acknowledged that dishonest conduct ordinarily requires an actual suspension, but noted that “some violations of this [rule] are more egregious than others ...” *Cuckler* at ¶ 10. The respondent’s violation was referring to himself as “counsel” for his employment purposes, without giving appropriate notice of any jurisdictional limitations. *Id.* at ¶ 11. The Court repeatedly observed that no one had acted in reliance on any of the respondent’s representations. *Id.* at ¶¶ 12, 13. Based on the mitigating evidence and the limited harm caused by the respondent’s misconduct, the Court imposed a public reprimand. *Id.* at ¶ 15.

In *Mahoning Cty. Bar Assn. v. Melnick* (cited by the Board), the respondent notarized three affidavit signatures which he had not witnessed, in reliance on the assurances of a third party that the signatures were genuine. 107 Ohio St. 3d 240, 2005-Ohio-6265, 837 N.E.2d 1203, ¶ 6. The respondent later spoke with each affiant in person to confirm that the signatures were authentic, before filing them with a court. *Id.* at ¶ 7. When this was later discussed in a deposition, opposing counsel filed a grievance against the respondent. *Id.* at ¶ 9.

The respondent was found to have violated the analogous predecessor rule to Prof. Cond. R. 8.4(c). *Melnick* at ¶ 10. The opinion states that aggravating factors were considered, but none are enumerated. *Id.* at ¶ 11. Mitigating factors included the lack of a prior disciplinary record; a cooperative attitude toward the proceedings; evidence of good character and reputation; that the respondent had not acted in self-interest; and that he “had tried to rectify his wrongdoing by obtaining confirmation that the affiants’ signatures were genuine.” *Id.* at ¶ 13. Noting that the respondent “committed this infraction several times, but ... also tried to promptly right each of the wrongs he committed,” the Court imposed a public reprimand. *Id.* at ¶¶ 16-17.

In *Columbus Bar Assn. v. Craig* (cited by the Board), the respondent forged a client's signature on an affidavit of transfer on death, notarized it, and then recorded the document. 131 Ohio St. 3d 364, 2012-Ohio-1083, 965 N.E.2d 287, ¶ 1. The case proceeded on a consent-to-discipline, and no further factual details are available in the Court's opinion. *Id.*, generally.

The respondent was found to have violated Prof. Cond. Rules 1.4(a)(3), 4.1(a) and 8.4(c). *Craig* at ¶ 3. No aggravating factors were present. *Id.* at 4. Mitigating factors included the lack of a prior disciplinary record; lack of a selfish motive; good faith efforts to rectify the consequences of the misconduct; full and free disclosure; a cooperative attitude toward the proceedings; and evidence of good character and reputation. *Id.* Without further explanation or a fuller description of the mitigating evidence, the Court adopted the recommendations of the parties and the Board, and publicly reprimanded the respondent. *Id.* at ¶¶ 5-6.

In *Disciplinary Counsel v. Flowers*, the respondent signed her client's name to five affidavits on two separate occasions, with the client's permission, and then improperly notarized the affidavits. 139 Ohio St. 3d 338, 2014-Ohio-2123, 11 N.E.3d 1174, ¶ 1. The case proceeded on a consent-to-discipline, and it was stipulated and found that this conduct violated Prof. Cond. Rules 8.4(d) and 8.4(h). *Id.* at ¶ 3.

No aggravating factors were present. *Flowers* at ¶ 4. Mitigating factors included the lack of a prior disciplinary record and a cooperative attitude toward the proceedings. *Id.* The Court relied upon *Mezacapa*, *Melnick*, and one other case, *Cincinnati Bar Assn. v. Thomas*.⁶ Two of these cases involved improper notarization of authorized signatures; as already discussed, *Melnick* involved improper notarization of actual, true signatures signed outside the respondent's presence.

⁶ *Thomas*, 93 Ohio St. 3d 402, 2001-Ohio-1344, 754 N.E.2d 1263.

In reliance on these cases, the Court adopted the consent-to-discipline and publicly reprimanded the respondent. *Flowers* at ¶¶ 5-6.

In *Disciplinary Counsel v. Wilson* (cited by the Board), the respondent signed a person's name to an affidavit with their authorization, notarized it without noting that fact, and filed it in a guardianship proceeding. 142 Ohio St. 3d 439, 2014-Ohio-5487, 32 N.E.3d 426, ¶¶ 2, 5-9. The respondent was found to have violated Prof. Cond. R. 3.3(a)(1), 8.4(c) and 8.4(d). *Id.* at ¶ 11.⁷ The only aggravating factor was a dishonest or selfish motive. *Id.* at ¶ 13. Mitigating factors included the lack of a prior disciplinary record; a cooperative attitude toward the proceedings; and evidence of good character and reputation. *Id.*⁸

In considering the sanction, the Court engaged in a detailed analysis of the relative severity of different types of false signatures. *Wilson* at ¶¶ 14-19. Relator argued for a stayed six-month suspension, because the falsely notarized but authorized signature was not the only wrongful act. *Id.* at ¶ 15. The Court found a material distinction between notarizing signatures which were “unauthorized and fraudulent” and the respondent's conduct when she signed “with authorization but failed to indicate that on the document itself.” *Id.* at ¶ 19. Thus, because the respondent's conduct “[did] not rise to the level of an attempt to fraudulently pass off an unauthorized signature as genuine,” and relying on *Mezacapa*, the Court imposed a public reprimand. *Id.*

In *Warren Cty. Bar Assn. v. Clifton* (cited by the Board), the respondent mistakenly left one name out of the list of a client's children on the first page of a will. 147 Ohio St. 3d 399, 2016-

⁷ The reference to Rule “8.1(c)” is clearly a typographical error in the *Wilson* Court's opinion, given the context and the fact that no such rule exists.

⁸ *Wilson* may also be somewhat ambiguous as precedent outside its own context. The guardianship proceeding related to the respondent's own grandchild. *Id.* at ¶ 2. The Court recognized that respondent's actions were driven by concern for her grandchild's welfare, and that this may have clouded her judgment. *Id.* at ¶¶ 14, 18. It is unclear whether the Court found this to be aggravating or mitigating or neither. As a result, *Wilson* may be *sui generis*, at least as to sanction.

Ohio-5587, 66 N.E.3d 713, ¶ 5. The omission had no effect on any of the distributive or appointive provisions, because the client intended to leave his entire estate to another child, and the client signed the will without noticing the omission. *Id.* at ¶¶ 5-6. The respondent first noticed the omission after the client's death, and before filing the will with the probate court, he altered it to include the missing name. *Id.* at ¶ 6. When a beneficiary noticed the alteration, the respondent withdrew from representing the estate and self-reported his misconduct. *Id.* at ¶ 7.

The respondent was found to have violated Prof. Cond. R. 3.3(a)(1), relating to candor to a tribunal, and Prof. Cond. R. 8.4(c), relating to dishonesty. *Clifton* at ¶ 9. No aggravating factors were present. *Id.* at ¶ 11. Mitigating factors included the lack of a prior disciplinary record; a good faith effort to rectify the consequences of misconduct by withdrawing and self-reporting; full and free disclosure; and good character and reputation. *Id.*⁹

In considering the sanction, the Court noted that the alteration to the will was a single misrepresentation to a court and that it did not change the outcome. *Clifton* at ¶ 12. It also found the case to be most closely aligned with cases in which attorneys had improperly signed other persons' names to written instruments and had then falsely notarized and used the documents for recording or in court. *Id.*¹⁰ Therefore, the respondent was publicly reprimanded. *Id.* at ¶¶ 13-14.

In *Disciplinary Counsel v. Moore*, the respondent signed a client's name to an affidavit in a child custody matter with the client's permission, and notarized it without indicating that fact, and also affirming that it was sworn and subscribed in front of her. 149 Ohio St. 3d 509, 2017-

⁹ The Board also rejected a stipulation that the respondent acted without a selfish motive, given his candid testimony that he acted with one – but nonetheless the Board found no aggravating factors, including selfish motive. *Id.*

¹⁰ The cases cited were *Mezacapa*, *Craig*, and *Wilson*. As has already been discussed above, in two of these three cases, the respondent's client was aware of and had authorized the false signatures, which is a material distinction from this case. Respondent here deceived his client and the beneficiaries, as well as the court.

Ohio-883, 75 N.E.3d 1252, ¶ 4. The parties stipulated and the Board found that the client had concerns about the child's safety, and that the respondent believed the situation the client described was serious and urgent. *Id.*

The respondent was found to have violated Prof. Cond. R. 3.3(a)(1). *Moore* at ¶ 4. No aggravating factors were present. *Id.* at ¶ 6. Mitigating factors included the lack of a prior disciplinary record; the absence of a dishonest or selfish motive; full and free disclosure; acknowledgment of the wrongfulness of the misconduct; a cooperative attitude toward the proceedings; and evidence of good character and reputation. *Id.* Relying on *Mezacapa*, *Flowers*, and *Wilson*, and noting that in each case the respondent had the signer's permission to sign the documents in question, the Court publicly reprimanded the respondent. *Id.* at ¶¶ 7-8.

D. Application of the appropriate precedents to this case requires the imposition of a fully stayed twelve-month suspension on the Respondent.

Relator objects to the Board's recommended sanction, because the Board's reasoning places this case among the second group of public reprimand cases, when it clearly belongs in the first group, in which the Court imposed fully stayed twelve-month suspensions. There is a meaningful difference between forging five signatures without the client's or beneficiaries' knowledge or permission, and improperly notarizing *authorized* signatures – as in *Mezacapa*, *Flowers*, *Wilson*, and *Moore*. There is a meaningful difference between forgery and the improper notarization of actual, true signatures, as in *Melnick*. There is a meaningful difference between this Respondent's misconduct and the job title inflation and/or puffery described in *Cuckler*. And there is no worthwhile analogy between this case and the alteration of a clerical error in a signed will in order to achieve a deceased client's estate objectives with less confusion, as in *Clifton*.

In addition, all of the public reprimand cases cited by the Board, with one exception, share a notable trait in common. With the exception of *Wilson*, there are no aggravating factors found

in any of them. See *Eisenberg, generally*; *Mezacapa, generally*; *Cuckler, generally*; *Melnick* at ¶ 11; *Craig* at ¶ 4; *Flowers* at ¶ 4; *Clifton* at ¶ 11; *Moore* at ¶ 6. The only aggravating factor in *Wilson* was a dishonest and selfish motive, in a case where the client authorized the signature and it was simply notarized improperly. *Wilson* at ¶ 13-19.

These cases each tell a story where the justification for imposing a public reprimand is something *more* than is present here. Only two of them – *Eisenberg* and *Craig* – seem more analogous, but the opinions do not contain enough factual detail to determine whether they are true parallels. They may be outlier cases which truly do support the Board’s recommendation, or they may not. The common principles seem clear, though. A complete absence of aggravating factor may justify a public reprimand. The lack of any deception toward the client or the signer of the documents may justify a public reprimand. Special circumstances may justify a public reprimand. But there are no cases which contain the same combination of facts and factors as this one, to justify a public reprimand here.

Much clearer are the parallels to the first group of cases, in which fully stayed twelve-month suspensions were imposed. Like the Respondent here, the respondent in *Niermeyer* falsified a document to cover his own neglect, and filed that falsified document with a tribunal. The respondent in *Champion* also created a fraudulent document, but only submitted it to a government agency, rather than a tribunal. Like the Respondent here, the respondent in *Chodosh* signed a client’s name to documents without her knowledge or permission, along with other misconduct less analogous. And like the Respondent here, the respondents in *Gibson*, *Cameron*, and *Cochran* made false representations to a court.

It is these cases which articulate the principles which ought to guide the Court to the proper sanction in this case. “Although an actual suspension from the practice of law is the general

sanction when an attorney engages in dishonest conduct, a lesser sanction may be appropriate when the misconduct is an isolated incident in an attorney's career or when little or no harm resulted from the misconduct." *Cameron* at ¶ 17, citing *Cuckler*. See also *Niermeyer* at ¶ 12; *Gibson* at ¶ 10; "[A]n abundance of mitigating evidence may justify the imposition of a lesser sanction." *Gibson* at ¶ 10 (citing two cases involving fully stayed twelve-month suspensions). The Court itself has recognized the sequence of cases "in which we imposed fully stayed suspensions for misconduct involving dishonesty, fraud, deceit or misrepresentation ..."
Champion at ¶ 9. In another context, the Court noted that "we have imposed fully stayed suspensions in cases involving isolated incidents of dishonesty and an abundance of mitigating evidence." *Chodosh* at ¶ 21.

That is what is present here – a case which belongs in the line of cases proceeding from *Niermeyer* to the present, in which a lawyer who has not harmed a client and has an otherwise unblemished record receives a fully stayed suspension instead of an actual suspension, for an isolated course of dishonest conduct. The Respondent forged the signatures of five people and filed the forged documents with a court. That does not mean that he should lose the ability to practice law. It also does not mean that he should receive merely a public reprimand.

IV. Conclusion

For all the reasons stated more fully above, the Board's recommendation is several downward departures too far from the appropriate sanction in this case. Sanction analysis for dishonest conduct of this nature – both the forgery and filing he forgeries with the court – starts from the premise of an actual suspension, however infrequently those may actually be imposed. The isolated incident in an unblemished career, and the lack of harm to clients, are what *gets* the Respondent to a fully stayed twelve-month suspension – not further. Therefore, Relator, the

Mahoning County Bar Association, respectfully objects to the Board's Findings of Fact, Conclusions of Law and Recommendation as to sanction only, and respectfully requests that the Court impose a fully stayed twelve-month suspension in this case.

Date: January 18, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by email this 18th day of January, 2024, upon Atty. John B. Juhasz, counsel for Respondent, at jbjuhasz@gmail.com, and upon Atty. David C. Comstock, Jr., co-counsel for Relator, at dcomstock@bspplaw.com.

/s/ J. Michael Thompson
Counsel of Record/Bar Counsel

APPENDIX A

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

In re:

Complaint against

Case No. 2023-010

**Brian John Macala
Attorney Reg. No. 0059224**

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

Respondent

Mahoning County Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on October 30, 2023 before a panel consisting of Dr. John Carle, Hon. D. Chris Cook, and Matthew T. Kemp, 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 and represented by John B. Juhasz. Michael Thompson appeared on behalf of Relator.

{¶3} This case involves Respondent's forgery of clients' signatures on a document submitted to probate court. The misconduct did not affect the outcome of the probate case and did not result in any harm to the clients or third parties.

{¶4} 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.

APPENDIX A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in Ohio on November 9, 1992 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶6} In early 2020, Sandra Billec hired Respondent to represent the estates of Marie E. Harris (Mahoning County Probate Case No. 2020 ES 9) and Ronald J. Harris (Mahoning County Probate Case No. 2020 ES 10). Stip. ¶3. The estates were relatively complex, and Respondent did substantial work over the next two years to identify relevant assets.

{¶7} On April 29, 2022, a probate court magistrate issued a notice of hearing to file a status report and citation upon the delinquent account and orders to appear and show cause with respect to both estates. Respondent filed a motion to continue that was granted. The hearing on the accounts was continued to May 20, 2022. Stip. ¶¶14-15.

{¶8} On May 17, 2022, Respondent filed waivers of partial accounts in both cases.

{¶9} In the Estate of Marie E. Harris (Case No 2020 ES 9), the waiver of partial account filed by Respondent was purportedly signed by Sandra Billec as executor of the estate. Stip. ¶17. In fact, Respondent had forged Sandra Billec's signature on the document, without her knowledge or authorization. The signature was not notarized.

{¶10} In the Estate of Ronald J. Harris (Case No. 2020 ES 10), the waiver of partial account filed by Respondent was purportedly signed by Sandra Billec as fiduciary and by Austin McClellan, John McClellan, Brett Billec, and Chad Billec as beneficiaries. Stip. ¶17. In fact, Respondent had forged all five signatures on the document, without the knowledge or authorization of any of the purported signatories. The signatures were not notarized.

APPENDIX A

{¶11} On May 17, 2022, the probate court issued a judgment entry withdrawing its citation to appear and show cause with respect to both estates. Stip. ¶18.

{¶12} Sometime in May or June, 2022, Sandra Billec sent a letter to Respondent terminating his services due to the forgeries that Ms. Billec had discovered. On or around June 13, 2022, Respondent called Ms. Billec to apologize for his actions and expressed an understanding of Ms. Billec's decision to terminate him due to the forgeries. Stip. ¶21.

{¶13} Respondent cooperated in transitioning the estates to successor counsel. There is no indication that Respondent's conduct affected the administration or outcome of either estate proceeding or prejudiced the interests the estates or their beneficiaries. Respondent did not receive any fee for his services to either estate.

{¶14} At the time of his misconduct, Respondent was the elected law director for the city of Campbell. The misconduct did not involve Respondent's public office.

{¶15} Chad Billec filed a grievance with Relator regarding the forgeries. The grievance was completed on June 19, 2022 and was received by Relator on July 12, 2022. Stip. ¶22.

{¶16} On August 1, 2022, Respondent provided a written response to the allegations stated in the complaint and admitted to the wrongdoing—that Respondent signed the waivers on behalf of the heirs and the fiduciary without their knowledge or consent and filed the documents with the forged signatures in the probate court.

{¶17} Based on the foregoing facts, the panel finds by clear and convincing evidence that Respondent's conduct violated:

- *Prof. Cond. R. 1.4(a)(3)* [communication], in that he failed to communicate to the estate fiduciaries and beneficiaries that he had filed falsified waivers;
- *Prof. Cond. R. 3.3(a)(1)* [candor towards the tribunal], in that Respondent made a false statement of fact or law to the tribunal;

APPENDIX A

- *Prof. Cond. R. 8.4(c)* [conduct involving fraud, dishonesty, deceit, or misrepresentation], in that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation.

{¶18} The parties stipulated to the dismissal of charged violations of Prof. Cond. R.1.3 (diligence) and 8.4(b) (conduct involving an illegal act reflecting adversely on the lawyer's honesty or trustworthiness). In an order entered October 30, 2023, the panel unanimously accepted the stipulated dismissal of these charges.

AGGRAVATION, MITIGATION, AND SANCTION

{¶19} 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

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

- A dishonest or selfish motive; and
- Multiple offenses.

Mitigating Factors

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

- No prior disciplinary record;
- Full and free disclosure to the bar investigator, to Relator, and to the Board, and a cooperative attitude toward the proceedings; and
- Good character and reputation.

Sanction

{¶22} The Prof. Cond. R. 8.4(c) violation found in this case carries a presumption of an actual suspension unless mitigating factors warrant a stay. *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261. "Attorneys who engage in a course of conduct involving

APPENDIX A

dishonest, fraud, deceit, or misrepresentation will be actually suspended from the practice of law for an appropriate period of time.” *Id.* However, [w]hen an attorney's violation of a Disciplinary Rule involves forgery or falsification, we have * * * tempered our disposition according to whether the case presents an isolated incident in an otherwise unblemished legal career or the more egregious course of conduct.” *Disciplinary Counsel v. Shaffer*, 98 Ohio St.3d 342, 2003-Ohio-1008, ¶1. The Supreme Court has “typically imposed lesser sanctions of public reprimands or six-month fully stayed suspensions for isolated notary offenses * * * .” *Akron Bar Assn. v. Binger*, 139 Ohio St.3d 186, 2014-Ohio-2114, ¶22.

{¶23} The panel believes that the misconduct at issue in this case are comparable to other document falsification cases in which the Supreme Court has approved a public reprimand as an appropriate sanction. These cases include *Warren Cty. Bar Assn. v. Clifton*, 147 Ohio St.3d 399, 2016-Ohio-5587 (Clifton altered a will to include the name of a decedent’s child that had previously been omitted; mitigating factors included no prior discipline, effort to rectify consequences, cooperation, and good character; no aggravating factors); *Disciplinary Counsel v. Wilson*, 142 Ohio St.3d 439, 2014-Ohio-5487 (Wilson signed the name of her granddaughter’s mother to an affidavit, notarized the document, and filed it in a guardianship proceeding; mitigating factors included no prior discipline, cooperation, evidence of good character and reputation; aggravating factor of dishonest/selfish motive); *Disciplinary Counsel v. Mezacapa*, 101 Ohio St.3d 156, 2004-Ohio-302 (Mezacapa signed a client’s name to an affidavit with authorization, but then falsely notarized the signature; mitigating factors included no prior discipline, no dishonest or selfish motive, attempt to rectify the consequences, and good character; no aggravating factors); *Disciplinary Counsel v. Eisenberg*, 81 Ohio St.3d 295, 1998-Ohio-472 (Eisenberg directed his secretary to trace and copy signatures on estate documents; Court noted

APPENDIX A

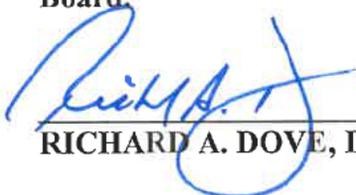
that misconduct was an isolated incident in otherwise unblemished legal career); *Mahoning Cty. Bar Assn. v. Melnich*, 107 Ohio St.3d 240, 2005-Ohio-6265 (Melnich falsely notarized signatures on affidavits without affiants present); *Columbus Bar Assn. v. Craig*, 131 Ohio St.3d 364, 2012-Ohio-1083 (Craig forged his client's signatures to an affidavit of transfer of death, notarized the signature, and filed the document with the recorder's office; no aggravating factors; mitigating factors included absence of prior discipline, no selfish motive, effort to rectify consequences, cooperation, and good character).

{¶24} Based upon the foregoing, the panel recommends that Respondent be publicly reprimanded.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on December 8, 2023. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Brian John Macala, 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