

THE MILLER BECKER SEMINAR 2021



The Miller Becker Seminar is Sponsored by:



Ohio Board of Professional Conduct

Patricia A. Wise, *Chair*

Richard A. Dove, *Director*



THE UNIVERSITY OF AKRON SCHOOL OF LAW
JOSEPH G. MILLER & WILLIAM C. BECKER
CENTER FOR PROFESSIONAL RESPONSIBILITY

John P. Sahl, Faculty Director

ACKNOWLEDGMENTS

The University of Akron gratefully acknowledges attorney Joseph G. Miller, who established The Joseph G. Miller Center for Professional Responsibility at The University of Akron School of Law in 1993. The Center is a nonprofit national center devoted to serving the legal profession and the judiciary. Joseph Miller's generous support has allowed the Institute to achieve the goals Joseph envisioned when forming the Institute.

Joseph Miller and William Becker were distinguished lawyers, public servants, and community leaders. Both were highly respected in the legal community. Mr. Miller was a litigator specializing in Family Law and Land Use Development Law, and Mr. Becker was General Counsel and Vice President of BFGoodrich Chemical Group and Professor/Associate Dean/Chair of various committees at Akron Law. Their close friendship and shared interest in the growing fields of Professional Responsibility and Ethics led to Mr. Miller asking Mr. Becker to serve as Founding Director of the Institute.

Mr. Miller practiced law in the Akron community for 44 years. He chaired the Akron Bar Association's Committee on Unauthorized Practice of Law, as well as the Ethics and Professional Responsibility Committee. He was active on the Ohio State Bar Association Ethics Committee, and chaired its Opinions and Regional subcommittees. He passed away in 2005.

Mr. Becker had a long career as corporate counsel with BFGoodrich Chemical Group, culminating in his service as general counsel and vice president. He then joined The University of Akron School of Law as a Professor and later served as Associate Dean. He was active for many years on the Ohio State Bar Association's Ethics Committee, serving as vice chair. He also served as bar counsel to the Akron Bar Association. Even before the founding of the Institute, he was a respected and sought after speaker on lawyer ethics subjects. Mr. Becker passed away in 2003.

Upon Mr. Becker's death, Joseph G. Miller sought to recognize the valuable contributions of Mr. Becker and directed that the Center be renamed to include the name of his longtime friend and colleague, leading to its current designation as the Joseph G. Miller and William C. Becker Center for Professional Responsibility. Thanks to their legacy, we have learned much from them and continue to benefit from their many contributions.

**SEMINAR
AGENDA**

MILLER-BECKER SEMINAR AGENDA
Friday, October 29, 2021
Via Zoom Webinar

8:55 – 9:00 a.m.	Welcome and Announcements
9:00 – 10:00 a.m.	Understanding OLAP and its Role in the Disciplinary Process <ul style="list-style-type: none">➤ Joseph M. Caligiuri➤ Scott R. Mote➤ Megan Snyder➤ Lisa M. Zaring➤ Alvin E. Mathews, Jr. (moderator)
10:00 – 10:15 a.m.	Break
10:15 – 11:15 a.m.	“Help Me Help You”—The Highs and Lows of Working with Unrepresented Respondents <ul style="list-style-type: none">➤ Michelle R. Bowman➤ Richard S. Milligan➤ Heather M. Zirke➤ Jack P. Sahl (moderator)
11:15 a.m.—12:15 p.m.	Caslaw Update—Law Office <u>Mis</u>management <ul style="list-style-type: none">➤ D. Allan Asbury➤ Teri R. Daniel➤ Kristi R. McAnaul
12:15 p.m.—1:00 p.m.	Lunch
1:00 p.m.—2:00 p.m.	Appeal-ing Arguments: Effective Ohio Supreme Court Advocacy <ul style="list-style-type: none">➤ Hon. R. Patrick DeWine
2:00 – 2:15 p.m.	Break
2:15 – 3:30 p.m.	Practice Before the Board of Professional Conduct <ul style="list-style-type: none">➤ Hon. Rocky A Coss➤ Robert B. Fitzgerald➤ Patricia A. Wise➤ Richard A. Dove (moderator)
3:30 – 4:30 p.m.	Disciplinary Process Overview (Optional) <ul style="list-style-type: none">➤ Joseph M. Caligiuri➤ Richard A. Dove
4:30 p.m.	Conclusion

CLE Credit—5.25 for the main program; 6.25 for those attending the optional process overview.

**UNDERSTANDING OLAP
AND ITS ROLE IN THE
DISCIPLINARY PROCESS**

Jane Wane Reluctantly Agrees to Work with OLAP after Neglecting Client Matters

Jane Wane is a partner in a mid-sized litigation firm in Anytown, Ohio. Over her 35-year career Jane has noticed that the lawyers she encounters have become less civil toward one another. Because of this, she is growing tired of the stressful practice of law. She would like to retire and open a retail shop. Jane only continues to practice because she has not saved for retirement.

Jane's legal assistant, Mary, notices changes in Jane's mood after Jane's husband dies. Jane often appears sad and does not chat with the other lawyers and staff anymore. Jane used to arrive at the office by 8 a.m., but more recently she arrives at the office as late as 11 a.m. with no explanation. Jane also misses several court conferences. Discovery is late on many cases. During the firm holiday party, the lawyers and staff notice that Jane, who usually nurses one drink, actually gets drunk, but insists on driving herself home anyway.

Clients and opposing counsel start to complain to Mary about Jane not getting back to them. Emails are not being answered timely. Jane's cell phone voicemail is always full. After several weeks, Mary decides to speak with the firm's managing partner, George Strong, about the changes in Jane's mood and her lapses on client matters.

George talks to Jane about getting help through the firm's employee assistance program. George and Jane talk about the Ohio Lawyers Assistance Program ("OLAP"). They decide not to refer Jane to OLAP because they think that OLAP will alert the disciplinary authorities that Jane has problems. Jane's management of her practice gets worse.

Predictably, three clients, with like grievances, complain to the Office of Disciplinary Counsel about Jane's communication lapses and delays on their matters. Based on the two-week deadline she is given by ODC, Jane puts together a quick pro se response to the grievance and asserts that all three clients are wrong. However, after ODC sends Jane follow-up questions challenging her stance in blaming the clients, Jane hires counsel, but continues to think the clients are at fault.

When Jane's counsel recommends an OLAP assessment, Jane initially pushes back. She agrees to the assessment, albeit reluctantly. When OLAP diagnoses Jane with Major Depressive Disorder, and alcohol and prescription drug dependence, Jane finally agrees to accept help, and enters a two-year contract with OLAP, but only partially complies. She likes her therapist, Sigmund Freud, so she attends those weekly counseling sessions to discuss her husband's death. However, she misses required AA meetings and rarely complies with OLAP's daily check-in requirement because she really doesn't think she has a problem. In fact, she has stopped abusing prescription drugs and only drinks a half glass of wine with dinner.

Disciplinary Counsel files a three-count formal complaint against Jane with the Board of Professional Conduct based on Jane's failure to promptly communicate on important client matters, which caused clients financial harm. Jane's lawyer wants to raise Jane's alcohol and mental health conditions as mitigation, but Jane thinks that would be embarrassing.

Jane's lawyer finally convinces Jane to offer the mitigation evidence through her counselor, Freud, and through OLAP, but is concerned that the hearing will not go smoothly, given Jane's noncompliance with the terms of her OLAP contract.



The Ohio Lawyers Assistance Program is a confidential organization dedicated to helping Ohio's judges, attorneys, and law students by providing assessment, referrals, monitoring and support for substance use disorders and mental health issues.

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Cleveland Office: Paul A. Caimi, J.D.,
LCDC-III, CADC, Associate Director

Cincinnati Office: Patrick J. Garry, Esq.,
Associate Director

Dear Ohio Lawyer or Judge:

I write because you are under investigation for a disciplinary matter. I do not know who you are or what the investigation is about. By rule, this form letter is sent to lawyers and judicial officers whose alleged conduct is likely to result in the filing of a formal disciplinary complaint. The goal is to introduce you to the Ohio Lawyers Assistance Program (OLAP) and how we can help.

We know from our nearly 30 years of working with lawyers and judges that professional misconduct can be the result of substance use disorder (alcohol/drugs) and/or mental health issues. We also know that having to respond to allegations of professional misconduct is stressful, and can lead to depression, anxiety, etc.

OLAP is not part of the Ohio Supreme Court, the Office of Disciplinary Counsel, or any Certified Grievance Committee (local bar association ethics committee). OLAP is an independent Ohio non-profit corporation dedicated to helping Ohio's judges, attorneys, and law students obtain treatment for substance use disorders and mental health issues. OLAP is funded by the Attorney Services Fund, the Ohio State Bar Association, and the Ohio Bar Liability Insurance Company.

No one other than OLAP staff knows who is a client, unless the client gives us permission to disclose the relationship. Our work is confidential. See Prof. Cond. R. 8.3(c) and Judicial Cond. R. 2.14(B).

We are not diagnosing you in the dark, nor are we judging you. We are letting you know we are here, we can provide assistance, and we are confidential.

Please see our website for more information (www.ohiolap.org). If you think we may assist you, send me an email (smote@ohiolap.org), or call me at 800-348-4343.

Thanks for your time.

Sincerely,

Scott R. Mote, Esq., Executive Director

1650 Lake Shore Drive, Suite 375, Columbus, OH 43204 / (800) 348-4343

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**OHIO LAWYERS ASSISTANCE PROGRAM, INC.
CHEMICAL DEPENDENCY CONTRACT**

The Parties agree as follows:

I, _____, agree to:

1. Totally refrain from the use of all mood altering substances, including alcohol.
2. Prior to the use of any mood altering/psychoactive prescription medication, I agree to notify the prescribing physician that I am under contract with OLAP, and request that the physician notify OLAP in writing that the physician has knowledge of my chemical dependency, identify the drug or drugs prescribed, and advise of the reason for the prescriptions.
3. Accept _____ as Monitor of my performance under this Contract and I assume the responsibility of making at least one personal or telephone contact per week with my Monitor or as otherwise directed by my Monitor.
4. Provide my Monitor with whatever substantiating documentation the Monitor/OLAP may require to assure compliance with this Contract.
5. Participate in continuing outpatient, aftercare, private and/or group therapy as required/ recommended by a treatment center, qualified health care professional, my Monitor or OLAP. Treatment center:

6. Actively participate in a 12-Step or Self Help Program including, at a minimum, the following:
 - a. Identify an AA/NA/CA/SAA (12-Step) Home Group or other addiction self-help group and attend its weekly meetings, as well as at least _____ other 12-step or addiction self help meetings per week. (Total: _____ per week)
 - b. Identify and enlist the aid of a 12-Step sponsor or addiction self help sponsor within two weeks of the date of this Contract and give my sponsor permission to disclose appropriate information as requested by OLAP.
 - c. Progress satisfactorily through the AA *Big Book* and the AA *12 Steps and 12 Traditions* or the NA *Basic Text*, the NA *It Works: How and Why*, CA *Basic Text*, *Hope &*

Courage or other literature as required per the program you choose.

- d. Prepare for and complete the 12-Step Program or addiction self help program within the time frame recommended by my sponsor.
 - e. Encourage my spouse or significant other to attend Open Discussion, Couples, or Al-Anon or Codependents Anonymous (CODA).
 - f. Encourage my child(ren) to attend Al-Ateen/Al-Anon.
 - g. Attend open meetings with my spouse or significant other, if possible.
 - h. Involve my family in continuing supportive care as recommended by a treatment center, therapist, qualified health care professional.
7. Submit to and pay for random urine drug/alcohol screens as determined by OLAP, pursuant to the OLAP Random Drug Testing Procedure.
 8. Immediately notify OLAP and my Monitor in the event that I use any mind altering substances (alcohol, non-prescribed medication or other drugs).
 9. I agree to pay OLAP \$50.00/ \$100.00/ \$200.00 monthly administration fee and forward payment to OLAP by the fifth day of each month. You may send a check or money order to our address listed on this contract or pay with Visa, MC, Discover, or AExp thru LawPay at <https://secure.lawpay.com/pages/ohiolap/operating>
 10. Keep an accurate record of 12-Step or addiction self help group meetings on the form provided and submit monthly reports to OLAP (copy to Monitor) by the fifth day of the following month.
 11. Make appropriate restitution.
 12. Obtain all required CLE's , and provide evidence of attendance to OLAP.
 13. Provide appropriate release forms for urine/blood screens, treatment center records, therapist/qualified health care professional reports and other written and verbal information required to assure compliance with the terms of this Contract.
 14. Comply with each and every term contained in any Court order or agreement relevant to my program of recovery.
 15. The modification of these Contract terms as required by my Monitor and/or OLAP if dictated by a change in circumstances.
 16. I fully understand the conditions outlined in my Recovery Contract, and realize that non-compliance, as determined by OLAP, will place me on INACTIVE STATUS/TERMINATED . I understand that INACTIVE STATUS/TERMINATED means that OLAP will not provide advocacy for me. If the deficiencies are corrected and OLAP determines that I am in compliance with my Contract, I understand that I may be returned to ACTIVE STATUS.

OLAP agrees to:

1. Provide a suitable Monitor to act as monitor of the performances required by this Contract.
2. Insofar as addiction and/or mental health recovery are concerned, and where applicable, assume an advocacy role before any committee, commission, court, or with any employer or other person to whom the Participant must report or account.
3. Assume the responsibility to hold this Contract and all information acquired in furtherance thereof in strict confidence unless released from such obligation in writing.
4. Assume the responsibility to report compliance or non-compliance with this Contract to the appropriate person(s).

This Contract shall remain in effect for _____ years from the date of execution and may be extended by order of the Ohio Supreme Court, other court, or agreement of the Parties.

Date: _____

Date: _____

**OHIO LAWYERS
ASSISTANCE PROGRAM, INC.**

By: _____

Scott R. Mote, Esq.

Megan R. Snyder, MSW, LISW

Beverly A. Endslow, CDCA

Paul A. Caimi, J.D., LCDC-III, CADC

Patrick J. Garry, Esq.

Participant

Print Name



Ohio Lawyer's Assistance Program

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OHIO LAWYERS ASSISTANCE PROGRAM, INC. MENTAL HEALTH CONTRACT

WHEREAS, _____:

by order of the Supreme Court of Ohio dated _____, participation in the program offered by the Ohio Lawyers Assistance Program, Inc. (OLAP) is required, and/or, is obligated by reason of an agreement with OLAP to participate in the program offered by OLAP, and/or, is currently involved in the Supreme Court of Ohio disciplinary process, and/or, is applying for admission to the Ohio bar, and/or, has been diagnosed as suffering from a mental health or related disorder(s), and desires assistance from and participation in the program offered by OLAP, and

WHEREAS, OLAP is a not-for-profit Ohio corporation organized by the Ohio State Bar Association to provide evaluation, rehabilitation, and assistance to attorneys suffering from mental health or related disorder(s), and to provide monitoring and reporting services in connection therewith.

NOW, THEREFORE, the parties agree as follows:

I, _____ agree to:

1. Report to _____ for an assessment to determine diagnosis, appropriate level of care, and treatment recommendations no later than _____.
2. Renegotiate the terms of this Agreement upon receipt of the above evaluation if required by OLAP.
3. **Totally refrain from the use of all mood altering substances, including alcohol.**
4. Prior to the use of any mood altering/psychoactive prescription medication, I agree to notify the prescribing physician that I am under contract with OLAP, and request that the physician notify OLAP in writing that he/she has knowledge of my chemical dependency (if any), identify the drug or drugs prescribed, and advise of the reason for said prescription.

5. Provide OLAP with the name, address and telephone number of each physician and other mental health professional(s) treating me, and I authorize OLAP to obtain any information desired from said professionals.

6. I have selected as my primary physician, _____, located at _____, with telephone number _____

7. I agree to obtain treatment from my primary physician and mental health professional(s), and to provide free and unlimited release of all information concerning my health and participation in treatment to OLAP.

8. I understand the need for and have requested that my primary physician, as well as any other treating professional(s), notify OLAP immediately of the following:

- a. failure to comply with or progress in treatment;
- b. any change of medication;
- c. discontinuation of therapy;
- d. change of treating professional(s);
- e. failure to appear for appointments, continue prescribed medications or cooperate in the therapeutic process.

9. Accept _____ as Monitor of my performance under this contract and I assume the responsibility of making at least one personal contact per week with my Monitor, in addition to other therapy sessions recommended by my Monitor, treating physician and/or mental health professional(s).

10. Provide my OLAP Monitor with whatever substantiating documentation the monitor may require to assure compliance with this contract.

11. Provide OLAP with notification of any changes in my physical or mental health, address, phone number, or employment.

12. If available and endorsed by my Monitor, actively participate in a facilitated support group for recovering professionals.

13. If therapeutically indicated, submit to and pay for random urine drug/alcohol screens at the direction of OLAP.

14. Provide appropriate signed release forms for urine/blood laboratory results, treatment center records, psychiatric or mental health records, physician or therapist reports and other written and verbal information required to assure compliance with the terms of this Agreement.

15. Participate in continuing private and/or group therapy as required by OLAP, treating physician, mental health professional(s) or Monitor.

16. Immediately notify OLAP as well as my monitor in the event I use any mind or mood altering substances without a prescription from the physician above or any new physicians that may not be aware of my condition(s).

17. Agree to pay OLAP \$50/\$100/\$200 per month monitoring fee for each month under contract. You may send a check or money to the address listed on this contract or pay with Visa, MC, Discover, or AExp thru LawPay at <https://secure.lawpay.com/pages/ohiolap/operating>

18. Involve my family in continuing supportive care as suggested by OLAP, my Monitor, my physician and my mental health professional(s).

19. Make appropriate restitution, if applicable.

20. To perform in accordance with each and every term contained in any court order and this agreement.

21. To the modification of these Contract terms as required by my monitor and dictated by a change in circumstances.

OLAP agrees to:

1. Provide a trained and/or certified individual to monitor the performance required by this Contract.
2. Insofar as treatment and ability to practice law is concerned, and where applicable, assume an advocacy role before any Commission, Court, Agency or with any Employer or other person to whom Participant must report or account.
3. Assume the responsibility to hold this Contract and all information acquired in furtherance thereof in strict confidence unless released from such obligation in writing.
4. Assume the responsibility to report compliance or non-compliance with this Contract to the appropriate person (this report may also be made by the Monitor).

This Contract shall remain in effect for _____ (____) years from the date of execution and may be extended by order of the Court or agreement of the parties.

Date: _____

Date: _____

**OHIO LAWYERS ASSISTANCE
PROGRAM, INC.**

By: _____

Scott R. Mote, Esq.
Megan R. Snyder, MSW, LSW
Paul A. Caimi, J.D., LCDC-III, ICADC
Patrick J. Garry, Esq.
Beverly A. Endslow, CDCA

Participant

Print Name

**HELP ME HELP YOU--
THE HIGHS AND LOWS
OF WORKING WITH
UNREPRESENTED
RESPONDENTS**

FILED

APR 13 2021

The Supreme Court of Ohio

CLERK OF COURT

Case No. 2021-0209 SUPREME COURT OF OHIO

Disciplinary Counsel,
Relator,
v.
Katharina Eileen Devanney,
Respondent.

ON CERTIFIED REPORT BY THE
BOARD OF PROFESSIONAL
CONDUCT OF THE SUPREME COURT

ORDER

The Board of Professional Conduct filed a final report in the office of the clerk of this court pursuant to Gov.Bar R. V(16), in which it accepted the agreement entered into by relator, disciplinary counsel, and respondent, Katharina Eileen Devanney. The agreement set forth the misconduct and the agreed, recommended sanction of a one-year suspension from the practice of law, with the entire suspension stayed on conditions. The board recommended that the agreement be accepted. The court issued an order waiving the issuance of a show cause order and this matter was submitted to the court on the report and record filed by the board.

On consideration thereof, it is ordered and adjudged by this court that pursuant to Gov.Bar R. V(12)(A)(3), respondent, Katharina Eileen Devanney, Attorney Registration No. 0070197, last known business address in Medina, Ohio, is suspended from the practice of law for a period of one year, with the entire suspension stayed on the conditions that respondent: (1) submit to an Ohio Lawyers Assistance Program evaluation and comply with any treatment or counseling recommendations resulting from the evaluation; (2) complete a one-year term of monitored probation pursuant to Gov.Bar R. V(21), with monitoring to focus on law practice management; and (3) refrain from further misconduct. It is further ordered that if respondent fails to comply with the conditions of the stay, the stay will be lifted and she will serve the full one-year suspension.

It is further ordered that the Office of Attorney Services shall not issue a certificate of good standing to respondent during any period of suspension, including any stayed period of suspension.

It is further ordered that on or before 30 days from the date of this order, relator shall file the name of an attorney who will monitor respondent during the probation. It is further ordered that at the end of the probationary period, relator shall file a report with this court indicating whether respondent has complied with the terms of probation including monitoring.

It is further ordered by the court that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded against respondent by the Lawyers' Fund for Client Protection pursuant to Gov.Bar R. VIII(7)(F). It is further ordered by the court that if after the date of this order the Lawyers' Fund for Client Protection awards any amount against respondent pursuant to Gov.Bar R. VIII(7)(F), respondent shall reimburse that amount to the Lawyers' Fund for Client Protection within 90 days of the notice of such award.

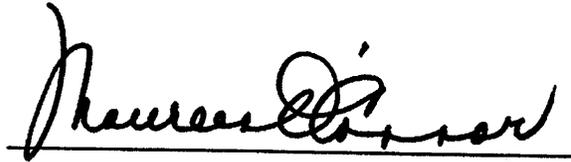
It is further ordered that at the end of the probationary period respondent may apply for termination of probation. It is further ordered that respondent's probation will not be terminated until (1) respondent files an application for termination of probation in accordance with Gov.Bar

R. V(21)(D), (2) relator files a report with the clerk of the Supreme Court indicating that respondent has complied with the terms and conditions of probation during the probationary period, (3) respondent complies with this order and all other orders issued by this court, (4) respondent complies with the Rules for the Government of the Bar of Ohio, and (5) this court issues an order terminating respondent's probation.

It is further ordered that respondent shall keep the clerk and disciplinary counsel advised of any change of address where respondent may receive communications.

It is further ordered that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.

It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(17)(E)(1) and that publication be made as provided for in Gov.Bar R. V(17)(E)(2).

A handwritten signature in black ink, appearing to read "Maureen O'Connor", written over a horizontal line.

Maureen O'Connor
Chief Justice

[Cite as *Disciplinary Counsel v. Ford*, 159 Ohio St.3d 558, 2020-Ohio-998.]

DISCIPLINARY COUNSEL v. FORD.

[Cite as *Disciplinary Counsel v. Ford*, 159 Ohio St.3d 558, 2020-Ohio-998.]

Attorneys—Misconduct—Violations of the Rules of Professional Conduct and the Rules for the Government of the Bar—Indefinite suspension.

(No. 2019-1367—Submitted November 13, 2019—Decided March 19, 2020.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2018-066.

Per Curiam.

{¶ 1} Respondent, Elizabeth Lorraine Ford, of Cincinnati, Ohio, Attorney Registration No. 0068502, was admitted to the practice of law in Ohio in 1997. Based on her failure to register as an attorney for the 2005/2007 biennium, we suspended her from the practice of law from December 2, 2005, until January 17, 2007. *See In re Attorney Registration Suspension of Ford*, 107 Ohio St.3d 1431, 2005-Ohio-6408, 838 N.E.2d 671; *In re Reinstatement of Ford*, 113 Ohio St.3d 1425, 2007-Ohio-1313, 863 N.E.2d 644. On November 1, 2019, we suspended Ford for her failure to register for the 2019/2021 biennium; that suspension remains in effect. *See In re Attorney Registration Suspension of Ford*, 157 Ohio St.3d 1472, 2019-Ohio-4529, 134 N.E.3d 183.

{¶ 2} In a formal complaint filed with the Board of Professional Conduct on November 30, 2018, relator, disciplinary counsel, charged Ford with committing professional misconduct in her representation of four separate clients. Relator primarily alleged that Ford failed to comply as soon as practicable with her clients' reasonable requests for information, failed to deposit unearned fees into a client trust account separate from her own property, engaged in dishonesty, fraud, deceit,

or misrepresentation, and failed to cooperate in the ensuing disciplinary investigations.

{¶ 3} The parties entered into stipulations of fact, misconduct, and aggravating and mitigating factors and submitted 37 stipulated exhibits. Following Ford's testimony at a hearing before a panel of the board, both parties submitted additional evidence on the issue of restitution. The board issued a report finding that Ford committed the stipulated misconduct and engaged in dishonest conduct during the disciplinary proceeding and recommending that we indefinitely suspend her from the practice of law in Ohio. No objections have been filed.

{¶ 4} We adopt the board's findings of misconduct and agree that an indefinite suspension is the appropriate sanction for Ford's misconduct.

Misconduct

The Hingsbergen Matter

{¶ 5} In March 2016, Ford agreed to represent Shelly Hingsbergen in her divorce. Hingsbergen paid \$2,000 of the agreed \$3,000 flat fee, and Ford cashed the check the same day. Since at least 2014, Ford had not maintained a client trust account and had been depositing her clients' advanced fees and expenses into her husband's personal checking account.

{¶ 6} Ford drafted a separation agreement and shared-parenting plan for Hingsbergen. She purportedly sent Hingsbergen the documents in August 2016, but Hingsbergen did not receive them until October. In April 2017, having had little or no further contact from Ford, Hingsbergen sent a certified letter requesting a refund. Ford did not respond, and Hingsbergen filed a grievance with relator in July 2017.

{¶ 7} Ford responded to relator's letter of inquiry in August 2017, claiming that she had reached out to Hingsbergen to try to "rectify the situation." Hingsbergen denied that Ford had made any such attempt. Several months later, Ford gave relator a copy of a letter that she purportedly sent to Hingsbergen on

August 14, but she eventually conceded that Hingsbergen had never received it. Although relator subpoenaed Ford for deposition, she did not appear and had no further contact with relator until she answered the complaint in February 2019.

{¶ 8} In May 2018, more than a year after Hingsbergen requested a refund, Ford gave her \$1,700 in cash and a \$300 check issued from Ford's husband's personal account. Ford asked Hingsbergen to wait one day to deposit the check to make sure that there would be sufficient funds in the account. Hingsbergen complied, but the check was nevertheless returned for insufficient funds.

{¶ 9} At the panel hearing, Ford testified that she had recently mailed a \$329 *cashier's check* to Hingsbergen. Two weeks after the hearing, Ford filed a notice of restitution with the board, attaching a screenshot of a text-message exchange she had had with Hingsbergen. In the exchange, Ford claimed that a *money order* she had mailed to Hingsbergen had been returned unclaimed and she asked whether she could drop off a payment at Hingsbergen's home. Relator submitted additional evidence showing that Ford paid Hingsbergen's restitution in cash and failed to comply with Hingsbergen's request that she leave the returned envelope so that Hingsbergen could investigate the failed money-order delivery.

{¶ 10} Approximately three weeks after the hearing, the panel chair conducted a telephone status conference. The board reports that at that time, Ford reiterated her testimony regarding restitution and claimed that she was unable to find the returned envelope containing the money order or the tracking number for the mailing. According to the board, although the panel chair ordered Ford to file a written response to relator's reply, including proof of restitution, Ford failed to comply. Relator's evidence of Ford's deceit and misrepresentation regarding the timing of her restitution payment therefore remained uncontroverted.

{¶ 11} The parties stipulated and the board found that Ford's conduct violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4(a)(4) (requiring a lawyer to comply as soon as practicable

with reasonable requests for information from a client), 1.15(c) (requiring a lawyer to deposit into a client trust account legal fees and expenses that have been paid in advance), 8.1(b) (prohibiting a lawyer from failing to disclose a material fact in response to a demand for information from a disciplinary authority), and 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and Gov.Bar R. V(9)(G) (prohibiting a lawyer from neglecting or refusing to assist in a disciplinary investigation). We adopt these findings of misconduct.

The Craine Matter

{¶ 12} In December 2016, Ford orally agreed to represent Michelle Craine in a postdecree domestic-relations matter for a flat fee. Craine made an initial payment of \$1,650, followed by a \$2,260 payment on March 17, 2017.

{¶ 13} In January 2017, Ford filed a motion for contempt on Craine’s behalf and paid the filing fee with a check issued from her husband’s personal checking account. In June 2017, Craine and her former husband settled their dispute and the court ordered Craine’s former husband to pay \$1,500 of her legal fees. Craine’s former husband sent a check to Ford, who deposited it into her husband’s personal checking account on June 20. But by July 7, that account was overdrawn.

{¶ 14} On July 10, Ford sent Craine an e-mail falsely stating that she had “finally” received the check, that she had ordered Craine’s reimbursement check from escrow (though she did not have such an account), and that Craine would have the reimbursement check by the end of the week. Thereafter, Craine did not receive a reimbursement check, so she sent Ford several e-mails inquiring about the status of her payment between July 19 and August 15. On August 30, Ford sent Craine an e-mail asking whether Craine had received a cashier’s check and falsely stating, “I traced it through my escrow and the information for delivery was all correct.” Ford did not respond to further inquiries from Craine or remit the funds to her.

{¶ 15} Ford received but did not respond to relator's letters of inquiry regarding Craine's grievance. Ford also failed to appear for a scheduled deposition. She finally made full restitution to Craine in April 2019, after answering relator's complaint.

{¶ 16} The parties stipulated and the board found that Ford's conduct violated Prof.Cond.R. 1.4(a)(4), 1.15(a) (requiring a lawyer to hold the property of clients in an interest-bearing client trust account, separate from the lawyer's own property), 1.15(c), 8.1(b), and 8.4(c) and Gov.Bar R. V(9)(G). We adopt these findings of misconduct.

The Vidourek Matter

{¶ 17} On June 13, 2018, Ford appeared at a pretrial hearing on behalf of Sheri Vidourek, whom she had been representing for several years. Despite Vidourek's repeated calls, texts, and e-mails in the weeks after the pretrial hearing, Ford waited two months to respond. Relator's first letter of inquiry, sent to the business address Ford had registered with the Office of Attorney Services, was returned marked undeliverable and unable to be forwarded. Ford received additional letters that relator sent to her registered residential address and her e-mail address, but she did not respond to relator's inquiries. The parties stipulated and the board found that Ford's conduct violated Prof.Cond.R. 1.4(a)(4) and 8.1(b) and Gov.Bar R. V(9)(G).

The Zink Matter

{¶ 18} Ford represented Shana Zink in a divorce proceeding and agreed to continue representing her in postdecree child- and spousal-support matters. Zink paid \$1,725 in advance fees, but Ford did not deposit the fees into a client trust account.

{¶ 19} On March 9, 2018, Ford filed a motion to modify spousal support on Zink's behalf. The court denied Zink's motion on July 2, 2018. On July 12, Ford filed a motion for leave to request findings of fact and conclusions of law and

attempted to file a separate motion to set aside child support. Although the motion for leave did not require a filing fee, the clerk rejected the child-support motion because Ford had failed to pay the \$125 fee required to file that motion. The following week, Ford sent Zink an e-mail informing her that the court had scheduled a hearing on the motions and requesting an additional \$250 for filing fees. Zink paid Ford the \$250, and Ford deposited the payment into her husband's personal checking account. A few days later, Ford sent Zink another e-mail, claiming that the hearing order had been vacated and that the court would rule on the motions later that week. But the court did not rule on the motions, and Ford did not respond to Zink's subsequent telephone calls, e-mails, or texts.

{¶ 20} On August 10, Ford filed the child-support motion and paid the \$125 filing fee, but she ultimately converted the remainder of Zink's \$250 deposit to her own use. Ford did not respond to Zink's e-mail terminating the representation and requesting a copy of her case file. Ford also failed to respond to relator's letter of inquiry regarding Zink's grievance.

{¶ 21} At Ford's disciplinary hearing on Monday, June 17, 2019, Ford testified that she issued a \$125 Venmo¹ payment to Zink the previous Friday and that it "processed sometime over the weekend." But after the hearing, relator submitted documentation showing that Ford made the payment less than one hour before the hearing commenced.

{¶ 22} The parties stipulated and the board found that Ford's conduct violated Prof.Cond.R. 1.4(a)(4), 1.15(c), 1.16(d) (requiring a lawyer to promptly deliver client papers and property as part of the termination of representation), 8.1(b), and 8.4(c) and Gov.Bar R. V(9)(G). We adopt these findings of misconduct.

1. Venmo is a money-transfer service that allows users to transfer funds electronically through the Internet.

Sanction

{¶ 23} When imposing sanctions for attorney misconduct, we consider all relevant factors, including the ethical duties that the lawyer violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases.

{¶ 24} The parties stipulated that five aggravating factors are present: Ford has a prior disciplinary record, acted with a dishonest or selfish motive, engaged in a pattern of misconduct, committed multiple offenses, and demonstrated a lack of cooperation in the disciplinary investigations. *See* Gov.Bar R. V(13)(B)(1) through (5). In addition to these aggravating factors, the board found that Ford engaged in deceptive practices during the disciplinary process by providing false testimony and misleading evidence regarding her payment of restitution to Hingsbergen and Zink.

{¶ 25} The board found that no mitigating factors are present. Although Ford testified that she had been suffering from anxiety and panic attacks for approximately three years and had been treated for those conditions by a psychiatrist and therapist, she did not offer any additional evidence to establish those conditions as mitigating disorders under Gov.Bar R. V(13)(C)(7).

{¶ 26} Ford did not comply with the panel chair's order that the parties submit posthearing briefs regarding the appropriate sanction for her misconduct. Relator recommended that Ford be suspended from the practice of law for two years and that prior to reinstatement, she be required to submit to an evaluation by the Ohio Lawyers Assistance Program ("OLAP"), comply with any treatment recommendations arising from that evaluation, and submit proof that she is capable of returning to the competent, ethical, and professional practice of law. The board agrees with the mental-health aspects of relator's recommended sanction but recommends that Ford be indefinitely suspended from the practice of law for her misconduct.

{¶ 27} We have long recognized that “ ‘a lawyer’s neglect of legal matters and failure to cooperate in the ensuing disciplinary investigation generally warrant an indefinite suspension from the practice of law in Ohio.’ ” *E.g., Disciplinary Counsel v. Hoff*, 124 Ohio St.3d 269, 2010-Ohio-136, 921 N.E.2d 636, ¶ 10, quoting *Disciplinary Counsel v. Mathewson*, 113 Ohio St.3d 365, 2007-Ohio-2076, 865 N.E.2d 891, ¶ 19. “Moreover, when these infractions are coupled with dishonesty in any form, an indefinite suspension is all but guaranteed.” *Disciplinary Counsel v. Golden*, 97 Ohio St.3d 230, 2002-Ohio-5934, 778 N.E.2d 564, ¶ 23.

{¶ 28} Given that Ford has neglected at least one client’s legal matter, failed to reasonably communicate with four clients, failed to deposit and hold client funds in a client trust account, failed to cooperate in the ensuing disciplinary investigations, and engaged in dishonesty—both while representing clients and throughout the course of these disciplinary proceedings—we agree that an indefinite suspension is the appropriate sanction in this case.

{¶ 29} Accordingly, Elizabeth Lorraine Ford is indefinitely suspended from the practice of law in Ohio. In addition to the requirements of Gov.Bar R. V(25), her reinstatement shall be subject to the requirements that she (1) complete an evaluation through OLAP, (2) comply with any treatment or counseling recommendations resulting from that evaluation, (3) demonstrate a sustained period of successful treatment or counseling if it is recommended, and (4) provide a prognosis from a qualified healthcare professional that she is capable of returning to the competent, ethical, and professional practice of law. Costs are taxed to Ford.

Judgment accordingly.

O’CONNOR, C.J., and FRENCH, FISCHER, DEWINE, DONNELLY, and STEWART, JJ., concur.

KENNEDY, J., concurs in part and dissents in part and would not impose the additional conditions for reinstatement.

January Term, 2020

Joseph M. Caligiuri, Disciplinary Counsel, and Michelle R. Bowman,
Assistant Disciplinary Counsel, for relator.

Elizabeth L. Ford, pro se.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Ford*, Slip Opinion No. 2021-Ohio-3661.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2021-OHIO-3661

DISCIPLINARY COUNSEL v. FORD.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Disciplinary Counsel v. Ford*, Slip Opinion No. 2021-Ohio-3661.]

Attorneys—Misconduct—Indefinite suspension imposed to run concurrently with prior indefinite suspension on attorney who continued to practice law and committed multiple violations of the Rules of Professional Conduct while under a disciplinary suspension—Conditions on reinstatement.

(No. 2021-0441—Submitted June 16, 2021—Decided October 20, 2021.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2020-058.

Per Curiam.

{¶ 1} Respondent, Elizabeth Lorraine Ford, of Cincinnati, Ohio, Attorney Registration No. 0068502, was admitted to the practice of law in Ohio in 1997.

SUPREME COURT OF OHIO

{¶ 2} On December 2, 2005, we suspended Ford’s license for about 13 months after she failed to register as an attorney for the 2005-2007 biennium. *See In re Attorney Registration Suspension of Ford*, 107 Ohio St.3d 1431, 2005-Ohio-6408, 838 N.E.2d 671; *In re Reinstatement of Ford*, 113 Ohio St.3d 1425, 2007-Ohio-1313, 863 N.E.2d 644. On November 1, 2019, we suspended her for failing to register for the 2019-2021 biennium. *See In re Attorney Registration Suspension of Ford*, 157 Ohio St.3d 1472, 2019-Ohio-4529, 134 N.E.3d 183. And on March 19, 2020, we indefinitely suspended her for professional misconduct that included dishonesty, failing to reasonably communicate with clients in four matters, failing to deposit unearned fees into a client trust account, and failing to cooperate in the ensuing disciplinary investigations. *See Disciplinary Counsel v. Ford*, 159 Ohio St.3d 558, 2020-Ohio-998, 152 N.E.3d 256. Ford’s November 2019 and March 2020 suspensions remain in effect.

{¶ 3} In a September 2020 complaint, relator, disciplinary counsel, alleged that both before and after Ford’s November 2019 attorney-registration suspension, she committed professional misconduct in three other client matters. Ford stipulated to all but one of the charges, which the parties agreed to dismiss, and the parties jointly recommended that Ford serve another indefinite suspension to run concurrently with her March 2020 indefinite suspension. After a hearing before a three-member panel of the Board of Professional Conduct, the board issued a report finding that Ford had engaged in the stipulated misconduct and recommending that we impose an indefinite suspension to run consecutively to the suspension we imposed in March 2020 and that we impose conditions on her reinstatement.

{¶ 4} Based on our independent review of the record, we adopt the board’s findings of misconduct and recommended sanction, but as initially recommended by the parties, we conclude that Ford’s second indefinite suspension shall run concurrently with her first.

Misconduct

The Goldfuss matter

{¶ 5} On July 26, 2019, Mary April Goldfuss retained Ford to file an emergency custody action. Ford did not have a client trust account and therefore did not deposit any portion of Goldfuss’s advanced fee into a trust account. After Goldfuss sent Ford two unanswered text messages seeking information about her case, Ford sent Goldfuss a text message on August 20, implying that she had filed the custody action. Specifically, Ford’s message stated that she would “follow-up on our hearing date” while she was at the courthouse, that service may take longer because of the circumstances in the matter, and that she was “trying to get it set on the expedited docket.” Ford, however, had not filed anything on Goldfuss’s behalf.

{¶ 6} Over the next month, Goldfuss sent Ford multiple text messages seeking an update and expressing frustrations with Ford’s failure to communicate. But those messages went unanswered. Goldfuss then sent a letter by certified mail and an email to Ford seeking a refund. The letter was returned as “unclaimed,” and Ford did not reply to Goldfuss’s email. Nor did Ford ever file anything on Goldfuss’s behalf. Goldfuss filed a grievance, and although Ford initially requested an extension of time to respond to the grievance, she ultimately failed to submit a written response to relator. Ford also failed to appear for a February 2020 deposition in the disciplinary matter. In April 2020, about eight months after Goldfuss had terminated Ford’s representation, Ford refunded Goldfuss’s money.

{¶ 7} Based on this conduct, the parties stipulated and the board found that Ford violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4(a)(3) (requiring a lawyer to keep a client reasonably informed about the status of a matter), 1.4(a)(4) (requiring a lawyer to comply as soon as practicable with reasonable requests for information from a client), 1.15(c) (requiring a lawyer to deposit advanced legal fees and expenses into a client trust account), 1.16(e) (requiring a lawyer to promptly refund any unearned fee upon the

lawyer's withdrawal from employment), 8.1(b) (prohibiting a lawyer from knowingly failing to respond to a demand for information by a disciplinary authority during an investigation), and 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

The Streckfuss matter

{¶ 8} In 2018, Jeffrey Streckfuss retained Ford to assist him in reinstating his parenting time, which had been suspended after he failed to comply with a court order requiring him to complete medical and mental-health assessments. In July 2019, Ford filed the motion to reinstate Streckfuss's parenting time; the motion stated that Streckfuss had obtained the requisite health assessments. Ford, however, failed to otherwise prosecute the motion.

{¶ 9} The court scheduled a hearing for December 5, 2019, on Streckfuss's motion and on a motion for contempt filed by Streckfuss's ex-wife. Although we had imposed Ford's attorney-registration suspension on November 1, 2019, she failed to notify the court of her suspension or withdraw as Streckfuss's counsel. The night before the hearing, Ford sent Streckfuss a text message informing him of her suspension and that she was out of state due to a death in her family. In the text message, Ford advised Streckfuss to attend the hearing on his own and on how to request reinstatement of his parenting time. Ford further informed Streckfuss that obtaining a new judge was no longer possible so if the judge requested to interview his children, he should agree to it. With respect to the contempt motion, Ford advised Streckfuss to request more time in order to secure counsel and obtain more information and discovery, and she suggested that he "blame" Ford by indicating that she was out of state due to a family emergency and would no longer be involved in the case. Ford further stated that she and Streckfuss could strategize when she returned.

{¶ 10} As instructed by Ford, Streckfuss appeared for the December 5 hearing and informed a magistrate that Ford was out of state due to a death in her

family. The magistrate continued the hearing on the contempt motion but denied Streckfuss's motion to reinstate his parenting time; neither Ford nor Streckfuss had submitted evidence indicating that Streckfuss had completed the necessary health assessments. Streckfuss thereafter sent Ford several messages seeking copies of his assessments, but she did not respond to his messages.

{¶ 11} After discovering that Ford's license was suspended, the magistrate filed a grievance. Relator requested that Ford submit a written response to the grievance, but she failed to do so. She also failed to appear for a deposition.

{¶ 12} Based on this conduct, the parties stipulated and the board found that Ford violated Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.16(a)(1) (requiring a lawyer to withdraw from representation if the representation will result in a violation of the Rules of Professional Conduct), 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction), and 8.1(b).

The Monroe matter

{¶ 13} In May 2019, Walter Monroe retained Ford to represent him in a divorce proceeding and provided her with his original paperwork relevant to the matter. Ford did not deposit any portion of Monroe's advanced \$3,000 fee into a client trust account. Monroe and Ford thereafter agreed to hold off filing the divorce complaint.

{¶ 14} In early December 2019, Monroe sent Ford text messages requesting that she file the complaint. Ford failed to respond, and Monroe discovered that we had suspended her license and that she had a disciplinary matter already pending against her. He thereafter sent her multiple messages requesting a refund of his \$3,000 and that she return his paperwork. Ford did not respond; nor did she refund his money or return his documents. Monroe filed a grievance, and Ford again failed to respond to relator's inquiries.

{¶ 15} Based on this conduct, the parties stipulated and the board found that Ford violated Prof.Cond.R. 1.3, 1.4(a)(4), 1.15(c), 1.16(d) (requiring a lawyer to promptly deliver client papers and property upon termination of representation), 1.16(e), and 8.1(b). Ford also stipulated that she owes Monroe \$3,000 in restitution.

{¶ 16} We agree with the board's findings of misconduct.

Sanction

{¶ 17} When imposing sanctions for attorney misconduct, we consider all relevant factors, including the ethical duties that the lawyer violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases.

{¶ 18} As for aggravating factors, the board found that Ford has a prior disciplinary record and had a dishonest or selfish motive, engaged in a pattern of misconduct, committed multiple offenses, failed to initially cooperate in the disciplinary investigations, and failed to make restitution. *See* Gov.Bar R. V(13)(B)(1) through (5) and (9). The board found only one mitigating factor: after the filing of relator's formal complaint, Ford made full and free disclosures and had a cooperative attitude toward the disciplinary proceedings. *See* Gov.Bar R. V(13)(C)(4). Although Ford testified about her mental-health struggles and submitted information from her treating medical professionals, the board found—and we agree—that she failed to submit sufficient evidence establishing the existence of a qualifying mental disorder under Gov.Bar R. V(13)(C)(7).

{¶ 19} In crafting a recommended sanction, the board noted that Ford's misconduct here was similar to the misconduct that resulted in her March 2020 indefinite suspension and had occurred during the same approximate time period—except that in this matter, Ford also violated Prof.Cond.R. 5.5(a). The board acknowledged that disbarment is the presumed sanction for an attorney who continued to practice while suspended, but it concluded that Ford's particular misconduct here was not so egregious as to warrant the ultimate sanction of

permanent disbarment. The board therefore recommended that we issue another indefinite suspension to run consecutively with her prior indefinite suspension and impose conditions on her reinstatement.

{¶ 20} We agree that an indefinite suspension is appropriate. Although we have held that the presumptive sanction for continuing to practice law while suspended is disbarment, we have also “clarified that an indefinite suspension is more appropriate for attorneys who continued to practice law after we had suspended their licenses for continuing-legal-education and registration violations.” *Disciplinary Counsel v. Sarver*, 163 Ohio St.3d 371, 2020-Ohio-5478, 170 N.E.3d 799, ¶ 45; *see also Disciplinary Counsel v. Freeman*, 126 Ohio St.3d 389, 2010-Ohio-3824, 934 N.E.2d 328, ¶ 14 (“we have routinely imposed indefinite suspensions for attorneys who continued to practice law after we have suspended their licenses for [continuing-legal-education] and registration violations”). Here, Ford admitted that she violated Prof.Cond.R. 5.5(a) by giving legal advice to Streckfuss after her November 1, 2019 attorney-registration suspension.

{¶ 21} We also conclude that, as jointly recommended by the parties, Ford’s indefinite suspension shall run concurrently with the indefinite suspension that we imposed in March 2020. Although each disciplinary case is an independent action, “relatively contemporaneous ethical infractions prosecuted separately do not necessarily justify a harsher sanction.” *Dayton Bar Assn. v. Scaccia*, 143 Ohio St.3d 144, 2015-Ohio-2487, 34 N.E.3d 919, ¶ 17. Therefore, when appropriate, we have imposed a suspension to run concurrently with a prior sanction if the misconduct in both cases occurred over essentially the same time period. *See, e.g., id.; Cuyahoga Cty. Bar Assn. v. Scott-Chestang*, 113 Ohio St.3d 310, 2007-Ohio-1956, 865 N.E.2d 48. As acknowledged by the board, Ford’s misconduct here and in her prior case was cumulative, having occurred over a continuation of the same general period of time.

{¶ 22} Further, to support the imposition of a consecutive indefinite suspension, the board mostly cited cases in which the attorneys failed to participate in the second disciplinary matter, resulting in default proceedings. *See, e.g., Cuyahoga Cty. Bar Assn. v. King*, 109 Ohio St.3d 95, 2006-Ohio-1932, 846 N.E.2d 37; *Dayton Bar Assn. v. Siehl*, 135 Ohio St.3d 261, 2013-Ohio-735, 985 N.E.2d 1274; *Cuyahoga Cty. Bar Assn. v. Church*, 116 Ohio St.3d 563, 2008-Ohio-81, 880 N.E.2d 917. But here, after the filing of relator’s formal complaint, Ford cooperated in the disciplinary process, and the matter resulted in a fully stipulated case.

Conclusion

{¶ 23} For the reasons explained above, Elizabeth Lorraine Ford is indefinitely suspended from the practice of law in Ohio. The suspension shall run concurrently with the indefinite suspension imposed on March 19, 2020, in *Disciplinary Counsel v. Ford*, 159 Ohio St.3d 558, 2020-Ohio-998, 152 N.E.3d 256. In addition to the requirements of Gov.Bar R. V(25), Ford’s reinstatement shall be conditioned on submission of proof that she has (1) made restitution to Walter Monroe in the amount of \$3,000, (2) undergone an evaluation by the Ohio Lawyers Assistance Program and complied with any treatment or counseling recommendations resulting from the evaluation, and (3) obtained a written opinion from a qualified healthcare professional that she is capable of returning to the competent, ethical, and professional practice of law. Costs are taxed to Ford.

Judgment accordingly.

KENNEDY, DEWINE, DONNELLY, STEWART, and BRUNNER, JJ., concur.

O’CONNOR, C.J., concurs in part and dissents in part and would impose a permanent disbarment.

FISCHER, J., concurs in part and dissents in part, with an opinion.

FISCHER, J., concurring in part and dissenting in part.

{¶ 24} I agree with the majority opinion’s adoption of the Board of Professional Conduct’s findings of misconduct committed by respondent, Elizabeth Lorraine Ford, and I concur in the decision to indefinitely suspend her from the practice of law. I disagree, however, with the majority opinion’s conclusion that an indefinite suspension to run concurrently with Ford’s prior indefinite suspension is warranted in this case. Rather, I agree with the board that Ford’s sanction for her misconduct should be an indefinite suspension that would run, in effect, consecutively to the indefinite suspension that we imposed on March 19, 2020, with her second indefinite suspension beginning on the date of this opinion. Therefore, I must respectfully concur in part and dissent in part.

An indefinite suspension to run consecutively to Ford’s previous indefinite suspension is the appropriate sanction for her misconduct

{¶ 25} Based on Ford’s cumulative misconduct—practicing law while under suspension after failing to register for the 2019-2021 biennium and numerous violations of the Rules of Professional Conduct—the board determined that Ford should be indefinitely suspended from the practice of law, with conditions, and that the suspension should run consecutively to the indefinite suspension that this court imposed on March 19, 2020. While this court is the ultimate arbiter of attorney discipline and we are always free to exercise our independent judgment as to evidentiary weight and applicable law, *see Disciplinary Counsel v. Kelly*, 121 Ohio St.3d 39, 2009-Ohio-317, 901 N.E.2d 798, ¶ 11, I believe this court should adopt the board’s recommended sanction in this case.

{¶ 26} “The primary purpose of the disciplinary process is to protect the public from lawyers who are unworthy of the trust and confidence essential to the attorney-client relationship and to allow us to ascertain the lawyer’s fitness to practice law.” *Disciplinary Counsel v. Sabroff*, 123 Ohio St.3d 182, 2009-Ohio-4205, 915 N.E.2d 307, ¶ 20. The court considers all relevant factors, including the ethical duties violated, the aggravating and mitigating factors listed in Gov.Bar R.

V(13), and the sanctions adopted in similar cases when deciding the appropriate sanction for attorney misconduct. *Disciplinary Counsel v. Sarver*, 163 Ohio St.3d 371, 2020-Ohio-5478, 170 N.E.3d 799, ¶ 27; *Dayton Bar Assn. v. Sullivan*, 158 Ohio St.3d 423, 2020-Ohio-124, 144 N.E.3d 401, ¶ 28.

{¶ 27} The presumptive sanction for continuing to practice law while under suspension is disbarment. *Sarver* at ¶ 28; *Disciplinary Counsel v. Hoskins*, 150 Ohio St.3d 41, 2017-Ohio-2924, 78 N.E.3d 845, ¶ 27. However, “an indefinite suspension is more appropriate for attorneys who continued to practice law after we had suspended their licenses for continuing-legal-education and registration violations as well as for those who continued to practice law during suspensions for less egregious forms of misconduct.” *Sarver* at ¶ 45.

{¶ 28} Indefinite suspension, at the very least, is an appropriate sanction in this case because Ford practiced law while under suspension for failing to register for the 2019-2021 biennium, *see Disciplinary Counsel v. Ford*, 159 Ohio St.3d 558, 2020-Ohio-998, 152 N.E.3d 256, ¶ 1. However, we must determine whether Ford’s indefinite suspension in this case should run consecutively with or concurrently to the indefinite suspension that we imposed in March 2020.

{¶ 29} While “relatively contemporaneous ethical infractions prosecuted separately do not necessarily justify a harsher sanction,” *Dayton Bar Assn. v. Scaccia*, 143 Ohio St.3d 144, 2015-Ohio-2487, 34 N.E.3d 919, ¶ 17, sometimes consecutive sanctions can be necessary “ ‘to ensure a lawyer’s rehabilitation and thereby protect the public from additional misconduct,’ ” *id.*, quoting *Disciplinary Counsel v. Young*, 113 Ohio St.3d 36, 2007-Ohio-975, 862 N.E.2d 504, ¶ 32. When considering whether to impose an indefinite suspension concurrently with or consecutively to a previously imposed indefinite suspension, this court has looked at several factors, including the time frame of the violations, the attorney’s cooperation in the disciplinary process, and the seriousness of the misconduct. *See Cuyahoga Cty. Bar Assn. v. King*, 109 Ohio St.3d 95, 2006-Ohio-1932, 846 N.E.2d

37, ¶ 9 (a consecutive indefinite suspension was appropriate when the attorney failed to cooperate in the disciplinary process and committed serious violations of the Rules of Professional Conduct); *Young* at ¶ 31-34 (a consecutive indefinite suspension was appropriate when the combination of the attorney's abandonment of his duties to his incompetent ward and his prior disciplinary record outweighed evidence of good character and cooperation in the disciplinary process); *Cuyahoga Cty. Bar Assn. v. Scott-Chestang*, 113 Ohio St.3d 310, 2007-Ohio-1956, 865 N.E.2d 48, ¶ 4, 9-10 ("*Scott-Chestang II*") (a concurrent indefinite suspension was imposed on an attorney whose misconduct occurred within the same time frame as the misconduct that resulted in a prior indefinite suspension). Given the serious violations that Ford committed prior to the temporary suspension imposed in November 2019 and during the temporary suspension, all while disciplinary matters were pending, I believe the indefinite suspensions should run consecutively.

{¶ 30} In Ford's most recent disciplinary case, decided in March 2020, this court found that, between 2016 and 2018, Ford violated Prof.Cond.R. 1.4(a)(4), 1.15(c), 1.16(d), 8.1(b), and 8.4(c), and Gov.Bar R. V(9)(G). *Ford* at ¶ 5, 12, 17, 19, 22. As a result of Ford's misconduct, we determined that an indefinite suspension was the appropriate sanction to protect the public. *Ford* at ¶ 29.

{¶ 31} In this matter, we find that Ford committed similar violations relating to client matters. She violated Prof.Cond.R. 1.3, 1.4(a)(3), 1.4(a)(4), 1.15(c), 1.16(e), and 8.1(b) on more than one occasion and also violated Prof.Cond.R. 1.16(a), 1.16(d), 5.5(a), and 8.4(c), all between 2018 and 2020. Though Ford's actions demonstrate a long pattern of misconduct, I do not believe we can reasonably find that these violations were committed contemporaneously with her other violations. In *Scott-Chestang II*, the court determined that a concurrent indefinite suspension was appropriate because new violations in 2003 occurred during the same time frame as the attorney's previous violations, which

had occurred between 2000 and 2003. *Scott-Chestang II*, at ¶ 4, 9-10; *see also Cuyahoga Cty. Bar Assn. v. Scott-Chestang*, 109 Ohio St.3d 405, 2006-Ohio-2711, 848 N.E.2d 507, ¶ 3-26. In contrast, the time frames in Ford's two disciplinary cases do not demonstrate contemporaneous violations but rather a continuing pattern of client neglect, a failure to communicate, and dishonest behavior, with the instances in this case occurring over a two-year time frame *subsequent* to the time frame in the first case. Therefore, concurrent indefinite suspensions are not supported, because these violations did not occur within the same time frame.

{¶ 32} Furthermore, while Ford somewhat cooperated in the disciplinary process, her misconduct was very serious—she ignored her clients who had time-sensitive cases, like emergency-custody actions and motions for parenting time, and she lied to those clients about the status of their cases, all while wrongfully keeping some funds paid for services that she never rendered. Ford's violations occurred in matters relating to family law, and Ford was entrusted by one client to aid in asserting one of the most fundamental liberty interests—the right to parent one's child. *See In re Murray*, 52 Ohio St.3d 155, 157, 556 N.E.2d 1169 (1990) (parents have a fundamental liberty interest in the care, custody, and management of their child, and the right to raise one's child is an essential and basic civil right). Ford abandoned her vulnerable clients in their times of need, displayed a dishonest and selfish motive, and added insult to injury to one client when she failed to make restitution. While Ford's misconduct is not as egregious as that in *Young*, the misconduct is serious enough to warrant a consecutive indefinite suspension to protect the public.

{¶ 33} A consecutive indefinite suspension will certainly help better protect the public; the additional time may also help Ford get the support that she needs. While unable to consider Ford's mental health as a mitigating factor due to her failure to provide sufficient evidence of her condition, the record does indicate that Ford's mental-health concerns and serious stressors may have contributed to her

misconduct. The board recommended and this court adopted as a condition of its sanction that Ford undergo an evaluation by the Ohio Lawyers Assistance Program and comply with any treatment or counseling recommendations resulting from that evaluation. Additional time away from the practice of law could be beneficial and an incentive for Ford to get the assistance and support that she needs before she can be considered for reinstatement.

{¶ 34} Finally and notably, neither party objected to the board's recommendation of a consecutive indefinite suspension. After reviewing the record, the applicable law, and the board's report and recommendation, I believe a consecutive indefinite suspension is appropriate in this case.

Conclusion

{¶ 35} I would find that a consecutive indefinite suspension with the conditions recommended by the board is the appropriate sanction for Ford's serious violations of the Rules of Professional Conduct in this case and would conclude that this suspension begins as of the date of this opinion. A consecutive indefinite suspension, a sanction that neither party objected to, is supported by law and is the best solution to protect the public and to help Ford get the assistance that she needs. Because the majority opinion reaches a different conclusion as to when the indefinite suspension in this case should begin, I must respectfully concur in part and dissent in part.

Joseph M. Caligiuri, Disciplinary Counsel, and Michelle R. Bowman and
Martha S. Asseff, Assistant Disciplinary Counsel, for relator.

Elizabeth L. Ford, pro se.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Stark Cty. Bar Assn. v. Kelley*, Slip Opinion No. 2021-Ohio-770.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2021-OHIO-770

STARK COUNTY BAR ASSOCIATION v. KELLEY.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Stark Cty. Bar Assn. v. Kelley*, Slip Opinion No. 2021-Ohio-770.]

Attorneys—Misconduct—Violations of the Rules of Professional Conduct, including failure to act with reasonable diligence in representing a client and withdrawing from representation of a client despite material adverse effects on the interests of the client—Several mitigating factors, including the absence of a prior disciplinary record and other interim rehabilitation—Conditionally stayed two-year suspension.

(No. 2020-0970—Submitted January 13, 2021—Decided March 16, 2021.)

ON CERTIFIED REPORT by the Board of Professional Conduct
of the Supreme Court, No. 2019-056.

Per Curiam.

{¶ 1} Respondent, Paul Michael Kelley, of Uniontown, Ohio, Attorney Registration No. 0088148, was admitted to the practice of law in Ohio in 2011.

{¶ 2} In a November 4, 2019 complaint, relator, Stark County Bar Association, alleged that among other things, Kelley neglected 15 separate clients, failed to reasonably communicate with those clients, and ultimately abandoned their representation without obtaining required court approval or making reasonable efforts to protect their legal interests.

{¶ 3} The parties entered into stipulations of fact and Kelley admitted to most of the charged misconduct. A three-member panel of the Board of Professional Conduct conducted a hearing during which it heard testimony from Kelley and two other witnesses. The panel largely accepted the parties' stipulations of fact and misconduct but unanimously dismissed a few of the charges against Kelley based on relator's recommendation or upon finding that they were not proven by clear and convincing evidence. Based on Kelley's misconduct and the relevant aggravating and mitigating factors, the panel recommended that we adopt the parties' stipulated sanction of a two-year conditionally stayed suspension. The board adopted the panel's findings of fact, conclusions of law, and recommendation.

{¶ 4} We adopt the board's findings of misconduct and agree that a conditionally stayed two-year suspension is the appropriate sanction for Kelley's misconduct.

Facts and Misconduct

{¶ 5} During a 24-hour period in early March 2018, emergency medical personnel twice transported Kelley to a local hospital for psychiatric evaluation. The first time, Kelley was medically cleared and discharged, but the second time, he was taken from the hospital to an inpatient mental-health-and-chemical-dependency facility after acknowledging that he was suffering from suicidal ideations and had recently abused several substances, including cocaine and Adderall.

{¶ 6} After he was admitted to the rehabilitation center, Kelley had his girlfriend place the following message on his office-telephone answering machine:

This is on behalf of Attorney Paul Kelley. He is no longer able to take on any new cases or continue with any cases that he currently has due to health reasons. He is immediately out of commission and any cases that are currently active will need to be reassigned to a new lawyer. If you have a current active case please contact the county bar association in which your case resides. If it is Stark County the phone number is 330-453-0685 and if not then please contact the prosecutor's office to get new counsel.

{¶ 7} At that time, Kelley represented at least 15 clients in domestic-relations and criminal matters that were pending in Stark, Wayne, Trumbull, and Mahoning counties. He missed at least one hearing and made no arrangements to communicate with his clients, to continue representing them, or to withdraw as counsel in their pending court proceedings.

{¶ 8} Patrick Cusma, a member of the Stark County Bar Association who had recently confronted Kelley with suspicions of Kelley's substance abuse, heard rumors that Kelley was in trouble and called to check on him. Cusma heard the outgoing message on Kelley's answering machine and left a message offering to help. Cusma arranged to obtain client files from Kelley's girlfriend and transfer them to himself and other attorneys, all of whom had agreed to represent Kelley's affected clients pro bono. Kelley did not assist Cusma in that effort.

{¶ 9} In December 2018, Kelley suffered a relapse of his addiction and was again hospitalized. At that time, Kelley's girlfriend discovered

approximately 20 client files that Kelley had left in the trunk of her car (which he had abandoned at a gas station in Akron) and delivered them to relator's counsel.

{¶ 10} Kelley admitted that he abandoned 15 clients as a result of his substance-abuse and mental-health issues. He also stipulated, and the board found, that his conduct with respect to those clients violated five Rules of Professional Conduct, namely Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of the matter), 1.16(b)(1) (permitting a lawyer to withdraw from the representation of a client if the withdrawal can be accomplished without material adverse effect on the interests of the client), 1.16(c) (prohibiting a lawyer from withdrawing from representation in a proceeding without leave of court if the rules of the tribunal so require), and 1.16(d)(3) (requiring a lawyer withdrawing from representation to take steps that are reasonably practicable to protect a client's interest). The board also found that Kelley violated Prof.Cond.R. 1.4(a)(2) (requiring a lawyer to reasonably consult with the client about the means by which the client's objectives are to be accomplished) and 1.4(a)(4) (requiring a lawyer to comply as soon as practicable with reasonable requests for information from a client) with respect to each of the 15 affected clients. However, we find that those violations were charged only with respect to one of the affected clients and therefore, we limit our findings accordingly. Additionally, the board found that Kelley's abandonment of client files in his girlfriend's car violated Prof.Cond.R. 1.15(a) (requiring a lawyer to properly hold and safeguard property of clients that is in a lawyer's possession in connection with a representation) and 1.6(c) (requiring a lawyer to make reasonable efforts to prevent the inadvertent or unauthorized disclosure or unauthorized access to information related to the representation of a client).

{¶ 11} We adopt these amended findings of misconduct.

Stipulated Sanction

{¶ 12} When imposing sanctions for attorney misconduct, we consider all relevant factors, including the ethical duties that the lawyer violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases.

{¶ 13} The parties stipulated and the board found that one aggravating factor is present: Kelley committed multiple rule violations that involved multiple clients. *See* Gov.Bar R. V(13)(B)(4). As for mitigating factors, the board adopted the parties' stipulations that Kelley had no prior discipline, had no dishonest or selfish motive, had made full and free disclosure to the board and demonstrated a cooperative attitude toward the disciplinary proceedings, and had other interim rehabilitation—namely, treatment for his addiction. *See* Gov.Bar R. V(13)(C)(1), (2), (4), and (8).

{¶ 14} Kelley became addicted to stimulant medication that had been prescribed to treat a disorder first diagnosed during his childhood. At his disciplinary hearing, Saraha Martincak, a licensed chemical-dependency counselor, testified that she had diagnosed Kelley with moderate opioid-use disorder, moderate sedative- and hypnotic-use disorder, and severe amphetamine-type-use disorder associated with a cycle of using stimulants to get high and opioids or sedatives to come down from that high. The evidence shows that Kelley's addiction and subsequent admission to a drug-treatment facility in March 2018 contributed to cause his misconduct. Although Kelley did not present certification that he had successfully completed an approved treatment program, *see* Gov.Bar R. V(13)(C)(7)(c), Martincak reported that Kelley had completed 11 weeks of a 12-week outpatient treatment program during the summer of 2018. And according to a May 14, 2020 report from Paul A. Caimi, associate director of the Ohio Lawyers Assistance Program ("OLAP"), Kelley has followed Martincak's treatment recommendations and is in compliance with the terms of a

three-year OLAP contract he entered into in January 2018, although he suffered several relapses. That contract required him to participate in an outpatient treatment program consisting of individual and group therapy, to attend multiple 12-step meetings (e.g., Alcoholics Anonymous or Narcotics Anonymous) per week, and to submit to random drug screenings. In addition, Caimi reported that Kelley had abstained from all mind-altering drugs, including alcohol, for 11 months. Martincak testified that with one year of sobriety, Kelley would achieve sustained remission. She also opined that he could safely practice law, provided that he continued to abide by her existing treatment recommendations and remained in compliance with the conditions of his OLAP contract. On these facts, we find that although Kelley has not established his substance-use disorder as a mitigating factor pursuant to Gov.Bar R. V(13)(C)(7), his interim rehabilitation nonetheless warrants mitigating effect. *See* Gov.Bar R. V(13)(C)(8).

{¶ 15} The board recommends that we adopt the parties’ stipulated sanction of a two-year suspension, stayed in its entirety on conditions designed to preserve Kelley’s sobriety and develop his law-office-management skills. The board notes that we have imposed comparable sanctions on attorneys who have engaged in similar acts of misconduct fueled by a qualifying substance-use or mental-health disorder. In *Columbus Bar Assn. v. Allerdin*, 123 Ohio St.3d 382, 2009-Ohio-5589, 916 N.E.2d 808, an attorney neglected two legal matters for approximately one year, failed to competently represent one of those clients, failed to promptly deliver funds or property that his clients were entitled to receive, and initially failed to cooperate in one of the ensuing disciplinary investigations. Like Kelley, Allerdin had committed multiple offenses and had no prior disciplinary record or selfish or dishonest motive, though he also had a mitigating substance-use disorder. We suspended Allerdin from the practice of

law for two years, but stayed the entire suspension on conditions designed to ensure the continued treatment and management of his alcoholism.

{¶ 16} In *Columbus Bar Assn. v. Bulson*, 160 Ohio St.3d 208, 2020-Ohio-3001, 155 N.E.3d 843, we imposed a conditionally stayed 18-month suspension on an attorney who neglected three client matters, failed to reasonably communicate with those clients, improperly managed his client trust account, failed to promptly return unearned fees and property to his clients, and failed to cooperate in the ensuing disciplinary investigations. Although Bulson had a prior attorney-registration suspension, engaged in a pattern of misconduct, committed multiple offenses, did not initially cooperate in the disciplinary process, and harmed vulnerable clients, he did not act with a selfish motive, cooperated in the disciplinary process once an amended complaint was filed, submitted evidence of his good character and reputation, and established the existence of a qualifying mitigating mental disorder.

{¶ 17} Although Kelley's misconduct involved a greater number of clients than the misconduct in *Allerding* and *Bulson*, it appears that his abandonment of those clients was relatively short lived—thanks to the quick action of Cusma and his colleagues in the Stark County Bar Association. The record shows that Kelley is committed to his sobriety and mental health; in fact, he recognized that he had a problem and entered into his OLAP contract approximately six weeks before his March 2018 hospitalization. He also testified that he resumed the practice of law in the summer of 2019 and that he has hired two paralegals to assist him with his practice. Moreover, Kelley testified that he had voluntarily paid the attorneys who assisted his clients a total of \$4,900, and intended to pay them a total of \$12,750, the fair-market value of their services. Cusma confirmed that Kelley began making those payments several months before his disciplinary hearing.

{¶ 18} After independently reviewing the record and relevant precedent, we agree that a two-year suspension, stayed in its entirety on the conditions recommended by the board is the appropriate sanction in this case.

Conclusion

{¶ 19} Accordingly, Paul Michael Kelley is suspended from the practice of law for two years, with the entire suspension stayed on the conditions that he (1) remains in compliance with the terms of his January 27, 2018 OLAP contract and enters into an additional two-year contract upon the issuance of the final order in this case, (2) completes three hours of continuing legal education focused on law-office management, in addition to the requirements of Gov.Bar R. X, (3) serves a two-year period of monitored probation in accordance with Gov.Bar R. V(21), with monitoring focused on law-office management and compliance with his OLAP contract, and (4) engages in no further misconduct. If Kelley fails to comply with any condition of the stay, the stay will be lifted and he will serve the entire two-year suspension. Costs are taxed to Kelley.

Judgment accordingly.

O’CONNOR, C.J., and FISCHER, DEWINE, DONNELLY, STEWART, and BRUNNER, JJ., concur.

KENNEDY, J., concurs in judgment only.

Richard S. Milligan, Bar Counsel, and Anthony E. Brown, for relator.

Paul Michael Kelley, pro se.

CLEVELAND METROPOLITAN BAR ASSOCIATION v. AUSTIN.

**[Cite as *Cleveland Metro. Bar Assn. v. Austin*, 157 Ohio St.3d 184,
2019-Ohio-3325.]**

*Attorneys—Misconduct—Violations of the Rules of Professional Conduct and the
Rules for the Government of the Bar—Indefinite suspension.*

(No. 2018-0159—Submitted May 21, 2019—Decided August 21, 2019.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme
Court, No. 2017-067.

Per Curiam.

{¶ 1} Respondent, Rebecca Jo Austin, of Lakewood, Ohio, Attorney Registration No. 0088694, was admitted to the practice of law in Ohio in 2012.

{¶ 2} On November 30, 2017, relator, Cleveland Metropolitan Bar Association, charged Austin with neglecting two client matters, failing to cooperate in a disciplinary investigation, and other professional misconduct. Austin failed to answer the complaint, and on February 23, 2018, we imposed an interim default suspension pursuant to Gov.Bar R. V(14)(B)(1). 152 Ohio St.3d 1253, 2018-Ohio-656, 96 N.E.3d 290. On May 4, 2018, we found her in contempt because she had not timely complied with our default-suspension order. 152 Ohio St.3d 1459, 2018-Ohio-1710, 97 N.E.3d 497. On August 22, 2018, Austin moved for leave to answer relator’s complaint, and on October 1, 2018, we granted her motion and remanded the case to the Board of Professional Conduct, although we kept her interim default suspension in place. 153 Ohio St.3d 1489, 2018-Ohio-3955, 108 N.E.3d 86.

{¶ 3} On remand, relator amended its complaint to include additional alleged misconduct, including that Austin continued to practice law during her interim default suspension. Austin stipulated to most of the factual allegations in

the amended complaint but not to any ethical-rule violations. After a hearing before a panel of the board, the board issued a report finding that Austin had engaged in most of the charged misconduct¹ and recommending that we indefinitely suspend her from the practice of law, grant her credit for the time she has served under her interim default suspension, order her to pay restitution to a former client, and impose conditions on her reinstatement. Neither party filed objections to the board's report.

{¶ 4} Upon our review of the record, we adopt the board's findings of misconduct and recommended sanction. However, we conclude that Austin shall not receive any credit for the nearly three-month period that she continued to practice law during her interim suspension. Therefore, Austin shall receive credit beginning May 16, 2018.

Misconduct

Count I—the Long matter

{¶ 5} On February 24, 2017, Joseph Long paid Austin a retainer to assist him with a postdecree filing in his divorce case. Long thereafter attempted to contact Austin by phone, e-mail, and text, but she failed to respond to his messages. Long also sent Austin a narrative about his legal matter, but she failed to file anything on his behalf. About two months after retaining Austin, Long sent her an e-mail requesting a refund of his retainer. Austin again failed to reply.

{¶ 6} On May 10, 2017, Austin sent Long an e-mail apologizing for “recent communications issues,” which she claimed were caused by technological problems with her e-mail and phone and exacerbated by personal issues. Later the same day, Long sent Austin an e-mail terminating her services and again requesting a refund of his retainer. Austin, however, failed to return the unearned portion of Long's retainer until more than ten months later.

1. Relator withdrew Count V of its amended complaint, and the panel later dismissed that count.

{¶ 7} Based on this conduct, the board found that Austin violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a matter), and 1.4(a)(4) (requiring a lawyer to comply as soon as practicable with reasonable requests for information from the client). We agree with the board’s findings of misconduct.

Count II—the employment-discrimination case

{¶ 8} In 2017, Austin represented the defendants in an employment-discrimination case. The parties settled the matter, and Austin was to finalize a settlement entry with the plaintiff’s counsel. The settlement, however, was not finalized, and the court scheduled a show-cause hearing against Austin for October 2, 2017. Austin failed to appear for the hearing, and the court found her in contempt. Austin also failed to appear for a hearing on the plaintiff’s supplemental motion to enforce the settlement and for attorney fees. At her disciplinary hearing, Austin testified that she had not received electronic notice of the hearings but she also acknowledged that the docket for the case was available online and that any problems she experienced with her e-mail did not absolve her of the duty to attend court hearings.

{¶ 9} Based on this conduct, the board found that Austin committed another violation of Prof.Cond.R. 1.3. We agree with the board’s finding of misconduct.

Count III—the Rogers matter

{¶ 10} On February 19, 2018, Ashley Rogers retained Austin to represent her in a domestic-violence action against Rogers’s husband. Austin advised Rogers how to obtain an ex parte temporary protection order, which Rogers later secured on her own. Four days later, on February 23, we issued Austin’s interim default suspension.

{¶ 11} On February 27, 2018, Austin met with Rogers and collected \$1,000 in cash and a \$400 check for the representation. Austin failed to inform Rogers

about the suspension. One day later, Austin advised Rogers that Rogers did not need to attend the hearing on her petition for a protection order that was scheduled for the next day. Instead, Austin appeared for the hearing—although she declined to enter a notice of appearance—and signed an agreed entry continuing the matter as “Pro Se, Attorney for Petitioner.” After the hearing, Austin notified Rogers of the new hearing date but again failed to mention her suspension.

{¶ 12} On March 5, 2018, Rogers sent Austin a text message stating that the court had contacted her because Austin had not entered an appearance on Rogers’s behalf. Rogers asked Austin whether she should hire a new attorney. Austin falsely responded, “I’m representing you and I’ll clear it up.” On March 12, Rogers sent Austin another text expressing similar concerns. Austin replied, “Don’t be worried * * *. Sit tight and give me a few days, I’ll have info for you then.” By March 14, Rogers had learned of Austin’s suspension and sent her a text message requesting a refund. In response, Austin stated that she was “addressing the situation” and that she anticipated that her suspension would be “very temporary.”

{¶ 13} A few days later, Austin sent Rogers an invoice charging Rogers for services that Austin had performed during her suspension. At her disciplinary hearing, Austin attempted to characterize those services as nonlegal. But the board found that Austin’s actions were “the essence of legal representation.” Austin later returned Rogers’s \$400 check but never refunded her \$1,000 cash payment.

{¶ 14} Based on this conduct, the board found that Austin violated Prof.Cond.R. 1.5(a) (prohibiting a lawyer from charging or collecting an illegal or clearly excessive fee), 1.15(d) (requiring a lawyer to promptly deliver funds or other property that the client is entitled to receive), 5.5(a) (prohibiting a lawyer from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction), 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d)

(prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice). We agree with the board’s findings of misconduct.

Count IV—misconduct during Austin’s interim default suspension

{¶ 15} Count IV of relator’s amended complaint involved three instances of Austin engaging in misconduct after we issued her February 23, 2018 interim default suspension.

{¶ 16} First, as noted above, Austin appeared for the March 1, 2018 hearing on Rogers’s petition for a domestic-violence protection order. After a magistrate raised the issue of Austin’s suspension, Austin replied that she was “filing a petition,” that her “boss” would take over her cases, and that she hoped by “next week” the issue would be resolved. When she made those statements, however, Austin was a solo practitioner without a boss to take over her cases. In addition, Austin had not filed a petition for reinstatement and would not file anything in this disciplinary matter until more than five months later. At her disciplinary hearing, Austin acknowledged that her statements to the magistrate were not true.

{¶ 17} Second, on March 5, 2018—more than a week after Austin’s suspension—she attended an attorney conference in a juvenile-court case in which she was serving as the guardian ad litem for three minor children. Austin failed to inform the court that her license had been suspended. After one of the parties in the case filed a motion to remove Austin because of her suspension, Austin filed a document stating that she had been “petitioning” this court to reinstate her license and “working diligently to comply with the Supreme Court.” But two weeks before she filed the document, we had issued an order to show cause why she should not be held in contempt for failing to comply with our default-suspension order, and she never filed a response to that show-cause order.

{¶ 18} Third, on May 15, 2018—almost three months after we issued Austin’s interim default suspension—she sent a letter to the guardian ad litem for two children in a divorce proceeding. Austin’s letter referred to the father in the

divorce case as “my client” in a related criminal matter. The letterhead stated “Austin Law LLC” and included a website address of “www.clelawfirm.com.” The letter referred to Austin’s suspension only indirectly, by stating, “Regardless of the status of my professional license, I pride myself on being a hard-working, ethical, and astute *guardian ad litem*.” (Italics sic.)

{¶ 19} Based on this conduct, the board found that Austin violated Prof.Cond.R. 3.3(a)(1) (prohibiting a lawyer from knowingly making a false statement of fact or law to a tribunal) and 5.5(a). We agree with the board’s findings of misconduct.

Counts VI and VII—additional rule violations and failure to cooperate

{¶ 20} In October 2017, Austin’s malpractice insurance lapsed, and she thereafter failed to properly notify clients in writing that she lacked insurance. In addition, at the time of her misconduct, her law practice had no permanent physical address. Rather than use her home address or a post-office box as her business address, she used the address of a UPS store, which she later acknowledged was facially misleading. In addition, Austin failed to pay her attorney-registration fees for the period of September 15 through October 31, 2017. And she failed to cooperate in relator’s disciplinary investigation between May 2017 and June 2018. She also failed to appear for a scheduled deposition.

{¶ 21} Based on this conduct, the board found that Austin violated Prof.Cond.R. 1.4(c) (requiring a lawyer to inform the client if the lawyer does not maintain professional-liability insurance and obtain a signed acknowledgment of that notice from the client), Prof.Cond.R. 7.1 (prohibiting a lawyer from using a false, misleading, or nonverifiable communication about the lawyer or the lawyer’s services), Gov.Bar R. VI (requiring an attorney to register with the Supreme Court on or before the first day of September in each odd-numbered year), and Prof.Cond.R. 8.1(b) and Gov.Bar R. V(9)(G) (both requiring an attorney to

cooperate with a disciplinary investigation). We agree with the board’s findings of misconduct.

Sanction

{¶ 22} When imposing sanctions for attorney misconduct, we consider all relevant factors, including the ethical duties that the lawyer violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases.

{¶ 23} As aggravating factors, the board found that Austin had engaged in a pattern of misconduct, committed multiple offenses, and initially failed to cooperate in relator’s disciplinary investigation. *See* Gov.Bar R. V(13)(B)(3), (4), and (5). The board also concluded that Austin’s misconduct had harmed a vulnerable client—Ashley Rogers—and that Austin had failed to make restitution to Rogers. *See* Gov.Bar R. V(13)(B)(8) and (9).

{¶ 24} In mitigation, the board noted that Austin has a clean disciplinary record and lacked a dishonest or selfish motive. *See* Gov.Bar R. V(13)(C)(1) and (2). Specifically, the panel members had the impression that Austin “was never trying to take advantage of any client and that she was genuinely trying to help her clients while keeping all of her spinning plates in the air. Her plates crashed. She is picking up the pieces.” The board also noted that Austin had made full and free disclosures during her disciplinary hearing. *See* Gov.Bar R. V(13)(C)(4). The evidence did not establish the existence of a mental disorder that would qualify as a mitigating factor under Gov.Bar R. V(13)(C)(7) (permitting the existence of a disorder to be considered a mitigating factor only if certain conditions are met). However, the board noted Austin’s testimony that at the time of her misconduct, she was operating in “crisis mode” due to various stressors in her personal life and had been receiving treatment from a mental-health professional.

{¶ 25} To support its recommended sanction, the board cited several decisions imposing indefinite suspensions for comparable misconduct. For

example, in *Toledo Bar Assn. v. Woodley*, 132 Ohio St.3d 120, 2012-Ohio-2458, 969 N.E.2d 1192, we indefinitely suspended an attorney who neglected three client matters, failed to return those clients’ unearned fees, continued practicing law during his attorney-registration suspension, requested additional fees from a client without advising the client that he was suspended, and failed to cooperate in the disciplinary investigation. Similarly, in *Disciplinary Counsel v. Higgins*, 117 Ohio St.3d 473, 2008-Ohio-1509, 884 N.E.2d 1070, we indefinitely suspended an attorney who continued to practice law during his continuing-legal-education suspension, accepted fees from a client after his suspension, failed to disclose to the client that he was suspended, neglected the client’s matter, and failed to cooperate in the ensuing disciplinary investigation. And in *Disciplinary Counsel v. Mitchell*, 124 Ohio St.3d 266, 2010-Ohio-135, 921 N.E.2d 634, we indefinitely suspended an attorney who practiced law during his attorney-registration suspension and intentionally attempted to deceive a court as to his identity and the status of his law license.

{¶ 26} Here, Austin neglected two client matters, practiced law after the imposition of her interim default suspension, collected legal fees from a client while she was suspended, failed to fully refund those fees, made misrepresentations to a client and courts about her suspension, and failed to cooperate in relator’s disciplinary investigation. The board expressly opposes disbarment, concluding that Austin “likely has the ability to establish that she is a proper person to be readmitted to the bar of Ohio in the future.” Considering the aggravating and mitigating factors and the sanctions imposed in comparable cases, we adopt the board’s recommended sanction. An indefinite suspension will serve to protect the public while also leaving open the possibility that Austin might be able to return to the competent, ethical, and professional practice of law.

Conclusion

{¶ 27} For the reasons explained above, Rebecca Jo Austin is indefinitely suspended from the practice of law in Ohio, with credit from May 16, 2018, for the time she has served under the February 23, 2018 interim default suspension. Within 90 days of our disciplinary order, Austin shall make restitution in the amount of \$1,000 to Ashley Rogers or reimburse the Lawyers' Fund for Client Protection for any payments made to Rogers. In addition to the requirements set forth in Gov.Bar R. V(25)(D)(1), Austin's reinstatement shall be conditioned upon proof that she has (1) undergone an assessment by the Ohio Lawyers Assistance Program and (2) fully complied with the recommendations resulting from that assessment, including the receipt of any mental-health services in the Cleveland area. Costs are taxed to Austin.

Judgment accordingly.

KENNEDY, FRENCH, DEWINE, DONNELLY, and STEWART, JJ., concur.

O'CONNOR, C.J., and FISCHER, J., would not award credit for time served under the interim default suspension.

Thompson Hine, L.L.P., and Karen E. Rubin; and Heather M. Zirke and Kari L. Burns, Bar Counsel, for relator.

Rebecca Jo Austin, pro se.

**CASE LAW UPDATE:
LAW OFFICE
MISMANAGEMENT**

Miller Becker
Case Law Update Panel
Office *Mismanagement*

D. Allan Asbury (Board Senior Counsel), Teri R. Daniel (Lake County Prosecutor's Office, Appellate Division Supervising Attorney), and Kristi R. McAnaul (Board Counsel).

Case Law Update

I. IOLTA, Fees and Supervision Issues

[Cincinnati Bar Assn. v. Kathman, Slip Opinion No. 2021-Ohio-2189](#)
Sanction: One-year, six months stayed.

Respondent discovered that his paralegal had issued a check payable to herself and terminated her employment. The paralegal pleaded guilty to one count of theft and one count of forgery. Prior to termination, the paralegal had witnessed an accident and recommended an injured party retain Respondent. Respondent stipulated that the paralegal invited the client to her house, discussed settlement, and later forged the Respondent's signature to the back of the settlement check. In an unrelated count, Respondent had provided improper financial assistance to clients on five occasions ranging from \$200 to \$4,500 and reimbursed himself from settlement proceeds. Related to the IOLTA violations, Respondent did not create a separate record for each account indicating the date, amount, and client for each debit and credit, kept more than a minimal amount of his personal funds in his IOLTA, including a three-month period when he kept at least \$150,00 of his own funds in the account, provided checks to payees from his IOLTA and allowing them to cash and secure funds from the IOLTA before his bank had received payment on deposits, failed to create a ledger for some transactions, and had inadvertently allowed third parties access to his IOLTA from his PayPal account when he permitted a client to pay him through the PayPal account.

[Columbus Bar Assn. Sabol, Slip Opinion 2021-Ohio-2059](#)
Sanction: Six-month stayed suspension.

Between 1983 and 2019, Respondent failed to comply with conduct rules regulating the safekeeping of her client funds and client trust accounts. She routinely deposited and held client retainers in her operating account and

paid personal expenses from the account, sometimes before fees were earned. Despite her failing to properly deposit funds in her IOLTA, she did maintain an accounting of her operating account with running balances and services rendered against each client's retainer. Consequently, she was able to refund clients any unused retainers.

[Lorain County Bar Assn. v. Berta, Slip. Opinion 2021-Ohio-1264](#)

Sanction: Public reprimand

Respondent was retained by a client seeking to terminate her marriage. He did not present the client with a written fee agreement and wrote "\$2,500 flat" on his business card. The client paid \$200 for the initial consultation and another \$1,500 a month later. Respondent filed a complaint for divorce and the client paid the balance of the quoted fee plus a \$280 filing fee. Over a 13-month period, Respondent's employer sent the client monthly billing statements itemizing the time that Respondent and his secretary had spent on the case. The statements provided that the case was a flat fee dissolution plus court costs and showed that no balance was due. As part of the pending divorce, the proceeds of the sale of the marital residence were deposited in the law firm trust account. The court awarded the client a portion of the proceeds and the client inquired as to the distribution of the funds. The distribution statement deducted \$7,730 from the client's share for additional attorney fees. The client replied with an e-mail raising several errors or issues with the distribution. The panel heard conflicting testimony about whether Respondent had informed the client that he would charge a different fee if her case proceeded as a divorce rather than a dissolution. Respondent admitted at the hearing that he never informed the client in writing that he would charge an hourly fee if the case proceeded as a divorce.

[Cleveland Metro. Bar Assn. v. Heller, Slip Opinion 2021-Ohio-2211](#)

Sanction: One-year suspension, six months stayed.

Respondent hired a nonlawyer to assist in his office. The assistant met with clients, prepared bankruptcy petitions under supervision, and accepted client payments. The assistant rented a room in Respondent's home. In December 2016, Respondent discovered that the assistant was collecting cash payments from clients but not keeping records or remitting all funds to Respondent. After a period of time and an internal investigation, Respondent estimated that the assistant stole \$19,000 from the firm. The assistant admitted to local

police that he stole some funds. No charges were brought against the assistant. In another count, Respondent was hired to represent a client in a Chapter 7 bankruptcy. Respondent filed the petition without giving the client an opportunity to review it. A subsequent property scheduled listed the client's vehicle at less than the full market value she had paid and did not list the seller as a secured creditor. The client's signature on the inventory was purportedly forged. Before a meeting of creditors, Respondent learned that a sum of \$3,000 was used as a down payment on a vehicle. Respondent became angry and suggested they skip the creditor's meeting and allow the court to dismiss her case. After Respondent failed to attend a third creditor's meeting, the court dismissed the case for failure to pay the filing fee. Respondent offered to refile the petition but indicated the client would need to pay the outstanding filing fee plus a new filing fee. The client later requested a refund which Respondent paid. At hearing, an expert testified that Respondent's bankruptcy filings contained numerous deficiencies and errors.

II. Trial / Court Issues

[Cleveland Metro. Bar Assn. v. Baker, Case No. 2021-0437](#)

Sanction: Public reprimand

Respondent represented a client on charges of felonious assault and domestic violence. Respondent later filed a notice related to his client's intent to rely on a claim of self-defense in relation to the criminal charges. The state filed a motion in limine pertaining to the use of evidence in the self-defense claim. At trial the judge denied Respondent's request for a self-defense jury instruction. Respondent reacted to the judge's ruling by repeatedly attempting to stop the trial and threatening to sit in the back of the courtroom. While the judge was instructing the jury, Respondent left the defense table and stood behind a television stand to show that he was not participating. The judge stopped instructing the jury and dismissed it for a lunch break. The trial resumed and guilty verdicts were returned by the jury. The judge documented the events relating to Respondent on the record, held him in contempt, ordered him to pay a \$500 fine, and ordered him to handwrite sections of the Rules of Professional Conduct 25 times.

[Disciplinary Counsel v. Sarver, 163 Ohio St.3d 371, 2020-Ohio-5478](#)

Sanction: Disbarment

Respondent was retained to pursue a wrongful-death claim and Ohio Victims of Crime Compensation claim on behalf of the decedent's mother. For the first five months he only communicated with his client by telephone or through an intermediary. Respondent subsequently settled the wrongful-death claim with the insurer for \$50,000. During the investigation and disciplinary proceeding, Respondent falsely claimed that he only filed an application for authority to administer the estate, and no other required documents, because he was told by a magistrate that an early distribution of the estate funds would streamline the probate process. The magistrate did not recall having spoken with Respondent. After a suspension was imposed against Respondent by the Supreme Court in 2018, Respondent continued to represent his client, now the estate's appointed fiduciary. In December 2018, Respondent filed a false affidavit of compliance stating that he had complied with the suspension order including notifying clients and courts about his suspension. After receiving the settlement check from the insurer, Respondent signed his client's name to it and deposited it into his IOLTA. He immediately began to distribute the settlement proceeds and pay personal financial obligations without probate court approval. Testimony from the decedent's mother at the hearing revealed that he had signed the settlement release and check without her permission. Later, a representative of the Ohio Victims of Crime Compensation fund contacted Respondent's client to inform her that Respondent could no longer represent her because his law license had been suspended. When confronted, Respondent did not advise his client to consult with other counsel nor return her file.

[Cleveland Metro. Bar Assn. v. Barbera, Slip Opinion No. 2021-Ohio-2209](#)

Sanction: Eighteen-month suspension, six months stayed

Respondent was retained to represent a client in a pending child-support and custody proceeding. An amended hearing notice set an initial hearing for July 20, 2017. However, Respondent took six weeks to file a notice of appearance and consequently neither Respondent nor his client appeared at the hearing. Five days later, a capias was issued for the clients' arrest. In an attempt to resolve the matter, Respondent took his client to the courthouse where he was taken into custody. At a later date, Respondent's motion to modify child support was dismissed for failure to appear and prosecute the motion. Respondent filed an objection, and a hearing was set for August 1, 2018.

Because he had a hearing in another county, Respondent did not arrive at the courthouse until after the hearing had ended. The client represented herself at the hearing and the objection was overruled. Respondent later appealed the judgment but failed to file an appellate brief. The appeal was later dismissed, but Respondent never informed the client. The client testified that she attempted to communicate with Respondent on numerous occasions but did not receive any calls or text messages. When the client went to the courthouse, she learned that the appeal had been dismissed two months earlier. Before the appeal, the trial court had found the client in contempt for failing to timely pay her child-support obligation. Neither Respondent nor the client appeared at a later contempt hearing. When the client retained new counsel, she asked Respondent to provide a copy of the file which he did not provide. Respondent failed to respond to two letters of inquiry from relator.

III. **Miscellaneous Mismanagement**

[Disciplinary Counsel v. Simpson, Case No. 2021-0439](#)

Sanction: Six-month, stayed suspension

Respondent was employed by one law firm before he resigned and accepted a new position at a different law firm. After he left the firm, a former client contacted the firm to obtain a copy of his case file. A partner accessed Respondent's e-mail account to locate client communications between and among the client, Respondent, and opposing counsel. The partner found several e-mail communications between Respondent and his wife who is not a lawyer and was never employed by the firm. The partner determined that Respondent shared his e-mail account and calendar with his wife. The wife accessed the e-mail account to review messages, client correspondence, and the calendar and had possession of the account username, password, and domain information. She was also able to access files located on the law firm's server. A review of e-mails between Respondent and his wife revealed they discussed confidential client information. The wife also used her access to perform substantive work on Respondent's legal matters, including completing a dissolution form, editing client correspondence, and reviewing other work product. In one instance a client was billed for work performed by Respondent's wife. Respondent's wife kept law firm documents on her work and personal computer including information concerning law firm salaries, income, bonuses, and performance evaluations. Respondent acknowledged in an e-mail to his wife the impropriety of providing his wife access to the law

firm e-mail and server accounts. Respondent continued to provide his wife access to his e-mail and calendar at his new law firm.

[Columbus Bar Assn. v. Okuley, Slip. Opinion No. 2021-Ohio-3225](#)

Sanction: Disbarment

Respondent was a member of the law firm Mueller, Smith & Okuley. The firm occupied a building owned by two corporation, one of which was owned by Respondent and his wife. Lawyer Mueller left the firm and later filed a lawsuit against Smith, Respondent, the corporations, and other entities. During the litigation, Respondent appeared as legal counsel for the two corporations, himself, and another entity. The litigation was settled, but disputes arose regarding the enforcement. Prior to the settlement, Respondent was authorized to serve as one of the corporation's chief operating officer and permitted to use funds to perform necessary repairs and maintenance on the law building. At the same time, the Okuley Smith law firm was behind on rent payments. Respondent then prepared, executed, and recorded a \$354,000 mortgage on behalf of the corporations while he represented both in the underlying litigation with Mueller. He later arranged for the corporation to borrow funds to satisfy money owed in the settlement from a company owned by his wife, sister, and sister-in-law. A professor of law testified at the hearing that Respondent represented multiple clients on opposite sides of the mortgage transaction and when he had an ownership interest in at least party. During the Mueller litigation Respondent recognized that there could be conflicting interests and sent a letter to several addressees to waive conflicts that was never signed.

IV. Miscellaneous

[Disciplinary Counsel v. Polizzi, Slip Opinion No. 2021-Ohio-1136](#)

Sanction: Disbarment

Respondent was employed as a high school history teacher from 2006 to 2010 when he was terminated after someone reported seeing him arrive at the school with a student. He was confronted by the school superintendent and admitted he had met with one student but was not honest about his sexual relationships with his students. He was indicted in 2017 with several counts involving gross sexual imposition and sexual battery. He later pleaded guilty to one count of gross sexual imposition and three counts of sexual battery with respect to each of the two victims, was sentenced to 33 years in prison, and

was designated a Tier III sex offender. On appeal, he was resentenced to 29 years, 10 months in prison. The underlying conduct occurred before Respondent was admitted to the Ohio bar in 2013. Although he admitted his termination on his bar application, he did not disclose that he had engaged in sexual conduct with his students. Respondent testified at the disciplinary hearing that he had communicated with the victims, in one case several years later, after he was terminated from the school.

[Disciplinary Counsel v. Thomas, 162 Ohio St.3d 678, 2020-Ohio-5582](#)

Sanction: Public reprimand

Respondent represented a wife in a divorce case from late 2016 through 2018. During the case, Respondent learned that the husband's girlfriend planned to adopt a minor child. Respondent had a negative opinion of the girlfriend. After learning of the potential adoption, Respondent researched the court's records and discovered the girlfriend had moved to intervene in another couple's dissolution proceeding to obtain custody of their child. The parents of the child agreed to transfer custody to the girlfriend. Respondent had significant concerns about the child living with the girlfriend and believed that the presiding judge, Judge Glass, needed to be alerted that an investigation should be conducted. Respondent later attended a brown bag luncheon hosted by Judge Glass, and proposed a hypothetical to the audience based on the facts of the adoption case. Based on her hypothetical, attendees agreed it would be inappropriate to directly contact the judge presiding over the case. Respondent testified that Judge Glass then stated that if the matter was before her, she would want a detailed letter sent to her staff attorney. If the staff attorney believed that additional action was necessary, the letter would be shared with the litigants. Respondent further testified that at the end of the luncheon, Judge Glass patted her on the back and stated, "Now you get that letter out." Judge Glass and her staff attorney disputed at the disciplinary hearing that the judge had invited or suggested sending a letter to her staff attorney in response to Respondent's hypothetical. Respondent later sent a four-page letter to the judge's chambers addressed to her staff attorney stating, "I am sending this correspondence to you since it is ex parte communication and I do not wish to expose the Judge to a situation wherein she feels the need to recuse herself in this matter." Upon receiving the letter, the judge scheduled a hearing in the matter. The matter was referred to family court services for an investigation and inspection of the girlfriend's home.

[Lorain Cty. Bar Assn. v. Lindon, Slip Opinion No. 2021-Ohio-804](#)

Sanction: Indefinite suspension

Respondent was observed while working as a pharmacist at Cleveland Clinic stealing prescription medication. He was found guilty of theft, drug possession, and tampering with evidence. He was ordered to serve two years of community control and pay a fine of \$750. As a result of his convictions, his pharmacist license was permanently revoked. While the matter was pending before the Supreme Court, Relator discovered evidence that Respondent had been suspended on an interim basis and ultimately disbarred in Michigan as a result of his felony convictions. Relator filed an emergency motion seeking a stay in the case and a remand to the Board for further proceedings. On remand, the panel determined that Respondent had been aware of his Michigan interim suspension and disbarment order and a pending USPTO proceeding before a deposition was taken in August 2018. During the deposition he testified that his Michigan law license was “just no longer active” and denied the existence of any other disciplinary proceedings in his capacity as a lawyer.

**APPEAL-ING ARGUMENTS:
EFFECTIVE SUPREME
COURT ADVOCACY**

**PRACTICE BEFORE THE
BOARD OF PROFESSIONAL
CONDUCT**

BPC PROCEDURAL REGULATIONS

Reg. 8. Time Guidelines for Pending Cases.

(A) Pre-hearing Conference. Within forty days of the appointment of a hearing panel, the panel chair shall conduct a pre-hearing conference with the parties and counsel of record. At the discretion of the panel chair, a pre-hearing conference may be held by telephone, and may be continued from day-to-day. The pre-hearing conference shall be conducted to accomplish the following objectives:

- (1) Simplification of the issues;
- (2) Determine the necessity for any amendment to the pleadings;
- (3) Establish a discovery timetable;
- (4) Identify anticipated witnesses and the exchange of reports of anticipated expert witnesses;
- (5) Identify and arrange for the exchange of copies of anticipated exhibits;
- (6) Discuss the possibility of a consent to discipline agreement, obtaining stipulations of fact, and obtaining stipulations regarding the admissibility of exhibits;
- (7) Establish a final hearing date;
- (8) Discuss any other matters that may expedite the resolution of the case.

(B) Prehearing Scheduling Order.

(1) Following the prehearing conference, the panel chair shall issue an order as appropriate in the case. Except as otherwise provided in this regulation, an order that establishes a hearing date shall contain deadlines for the completion of prehearing activities and the filing of documents in accordance with the following schedule:

Prehearing activity or filing:

Standard deadline:

Exchange and file witness lists	56 days prior to hearing date
Completion of depositions and other discovery	28 days prior to hearing date
Exchange proposed exhibit lists and exhibits	21 days prior to hearing date
Objections to proposed exhibits	14 days prior to hearing date
Response to objections to proposed exhibits	7 days prior to hearing date
File hearing exhibits, witness lists, and stipulations	7 days prior to hearing date

(2) The panel chair may modify the standard deadlines set forth in division (B)(1) of this regulation.

(3) The panel chair may modify the prehearing order *sua sponte* or upon motion of a party for good cause shown.

(C) Hearing Date. The panel chair shall establish a hearing date in consultation with the parties and other panel members. The hearing date shall be no more than one hundred fifty days following the appointment of the panel. Continuances of the hearing date shall not thereafter be granted due to counsel's or respondent's scheduled appearance before any state court or public agency, except the Supreme Court of Ohio or this Board as set forth in Rule 41(B)(2) of the Rules of Superintendence for the Courts of Ohio.

* * *



Ohio Board of Professional Conduct

STIPULATIONS COLLOQUY¹

NOTE: This document is offered as a resource to panel chairs for use in cases where the parties have entered into stipulations. The document may be particularly useful in situations where the panel chair believes that the relator will conduct only a cursory examination of the respondent under oath or that the respondent is unclear as to the scope or effect of stipulations. Some questions may be omitted based on the content of the parties' stipulations.

After the parties' opening statements, if any, take notice that they have entered into stipulations. Call Respondent to the stand and have him/her sworn.

1. Please state your name for the record.
2. Are these the stipulations filed with the Board on _____?
3. Is that your signature/e-signature at the end of the document?
4. Did you read the stipulations before you signed them?
5. Have you entered into these stipulations voluntarily?
6. Did you do so because the facts contained in the stipulations are true to the best of your knowledge, understanding, and belief?
7. Other than what is set forth in the stipulations, has anyone promised you anything or threatened you in any manner to cause you to enter into these stipulations?
8. You have included stipulations involving aggravating and mitigating factors. Do you understand that, because the existence of aggravating and mitigating factors bears directly on any sanction the panel will recommend, the panel is not bound by such stipulations?
9. Do you understand that the panel will make findings regarding aggravating and mitigating factors based on the totality of the record, including any further evidence presented at this hearing?
10. With regard the stipulated facts and stipulated rule violations, do you understand that any evidence presented at this hearing that contradicts a stipulation of fact or a stipulated rule violation will not be considered by the panel, unless you have timely

¹ Based on a stipulation questions developed by Commissioner John Willamowski in 2019.

- moved to withdraw the stipulation for good cause, you seek and are granted leave to present additional evidence, or the panel *sua sponte* rejects a factual stipulation?
11. Based upon the facts and violations contained in the stipulations, this panel could recommend discipline against you in the form of a public reprimand, or in the form of a 6, 12, 18 or 24-month suspension of your license to practice law in Ohio (some or all of which could be stayed), or could recommend discipline against you in the form of an indefinite suspension of your license to practice law in Ohio (which means you could not petition to have your license reinstated until two years have elapsed), or finally, we could recommend that you be disbarred. Do you understand the potential penalties that could flow from the content of these stipulations?
 12. Do you understand that, by entering into these stipulations, you will be giving up your right and opportunity to confront the witnesses that Relator would otherwise bring into this hearing in order to prove Relator's case against you?
 13. Do you understand that, by entering into these stipulations, the panel will likely make a finding of the facts and rule violations to which you have stipulated?
 14. Do you understand that, whether by stipulations or by calling witnesses and presenting evidence, Relator must prove its case against you by clear and convincing evidence?
 15. You are represented in this matter by counsel, whose signature also appears on the stipulations. Did you authorize counsel to enter into and to sign the stipulations? Are you satisfied with the representation counsel has provided to you in this matter?
 16. After having heard all I have told you and asked you, are you satisfied with the stipulations you have signed?
 17. Advise the parties that, "Based upon Respondent's answers to these questions, the stipulations, along with stipulated exhibits, will be admitted into evidence."
 18. Turn the witness over to Relator for further presentation of its case.

**DISCIPLINARY
PROCESS OVERVIEW**
(Optional)

DISCIPLINARY PROCESS OVERVIEW

Richard A. Dove
Director
Board of Professional Conduct

Joseph M. Caligiuri
Disciplinary Counsel



1

GOV. BAR R. V

Three-tiered process:

- **Investigation**—grievance investigated by by Office of Disciplinary Counsel (ODC) or certified grievance committees (CGCs)
- **Adjudication**—formal complaint heard before Board of Professional Conduct (BPC)
- **Review and imposition of discipline**—Supreme Court



2

STATISTICS

- 2,994 grievances filed in 2020; 2,067 with ODC (69%), 927 with CGCs
- 22% dismissed on intake (DOI); 78% opened for investigation
- 72 formal complaints filed with the Board



3

GRIEVANCE PROCESS

- Letter of Inquiry (LOI)
- Investigation—response to LOI, subpoenas, witness interviews, depositions
- Letter of Dismissal or Notice of Intent



4

LETTER OF INQUIRY

- Includes copy of grievance
- Written response within 2 weeks (may extend)
- Failure to respond—not a good idea
- Duty to cooperate



5

INVESTIGATION

- Response from attorney/judge
- Response may be provided to grievant
- Investigators @ ODC
- Subpoena power
- Witness interviews



6

FORMAL COMPLAINT

- Notice of intent
- Response from attorney/judge
- File with Board:
 - Complaint
 - Response, if any
 - Summary of investigation
 - Exhibits
- Waiver of probable cause



7

PROBABLE CAUSE

- Two, three-member panels, with alternates
- One panel meets each month
- Review materials submitted by relator
- Standard—substantial, credible evidence
- Options—certify, dismiss, certify in part/dismiss in part
- Appeal from dismissal



8

CERTIFICATION OF COMPLAINT

- If probable cause is found:
 - Complaint is certified to Board and served on Respondent
 - Respondent has 20 days to answer
 - Default proceedings, if no answer
- Complaint is public once certified—on-line docket



9

BOARD PROCEEDINGS

- Answer filed—case assigned to 3-commissioner panel
- Prehearing telephone conference with parties
- Time guidelines for Board proceedings:
 - 40 days—initial prehearing conference
 - 150 days—hearing scheduled
 - 40 days—after submission of case to panel, report prepared for submission to full Board



10

BOARD PROCEEDINGS

- Amended complaint—motion for leave to amend (absent Respondent’s consent); no separate probable cause determination
- Stipulations—strongly encouraged, especially as to facts
- Joint exhibits—strongly encouraged
- Consent to discipline



11

DEFAULT PROCEEDINGS

- No answer to formal complaint:
 - Certify respondent’s default to Supreme Court
 - Court issues show cause order
 - No reply, interim default suspension imposed
 - Relator or respondent can seek remand to Board
 - If no remand, second show cause order issued three months after interim default suspension is imposed
 - No reply, indefinite suspension
 - Relator or respondent can seek remand



12

HEARING PROCEDURES

- Formal hearing
- Rules of Evidence and Civil Rules apply
- Relator—BOP by clear and convincing evidence
- CGCs—bar counsel responsible for serving as lead counsel and litigating case to the panel
- Primary issues: (1) facts; (2) rule violations; (3) aggravating & mitigating factors; and (4) sanction



13

PANEL AND BOARD

- Panel questions Respondent
- Panel findings/dismissals
- Panel prepares written report to full Board
- Full Board deliberates and votes
- Approve/modify findings of fact, conclusions of law, aggravating/mitigating factors, and recommended sanction



14

SUPREME COURT OF OHIO

- Board report and record filed with Supreme Court
- Court issues show cause order (except consent to discipline); parties have 20 days to object
- No objections—Court considers on report and record
- Objections—oral argument (except reinstatement)
- Supreme Court is NOT bound by Board recommendation, even where no objections



15

WHAT INFLUENCES SANCTION?

- Aggravating factors:
 - Prior discipline (what is or is not?)
 - Dishonest or selfish motive
 - Pattern of misconduct
 - Noncooperation
 - Failure to make restitution
 - Failure to acknowledge wrongdoing



16

WHAT INFLUENCES SANCTION?

- Mitigating factors:
 - No prior discipline
 - Absence of a dishonest or selfish motive
 - Full and free disclosure
 - Acknowledge wrongdoing
 - Character and reputation
 - Restitution



17

WHAT INFLUENCES SANCTION?

- Disorder—defined in Section 35
- Four requirements for a disorder to be considered in mitigation:
 - Diagnosis*—qualified health care professional
 - Prognosis*—opinion that attorney can engage in competent and ethical professional practice of law
 - Treatment/counseling*—sustained period of successful treatment (mental disorder) or completion of approved treatment program (substance use disorder)
 - Causation*—disorder caused or contributed to misconduct



18

DISPOSITION TIMES

- ODC/CGCs—up to one year to investigate
- Board—6-8 months from filing to disposition
- Supreme Court—8-10 months; faster if consent-to-discipline or no objections to Board report



19

QUESTIONS



20

**PRESENTERS'
BIOS**

PRESENTERS' BIOGRAPHICAL INFORMATION

D. ALLAN ASBURY joined the Ohio Board of Professional Conduct in 2014 as senior counsel. Before joining the Board, Mr. Asbury served as Administrative Counsel for the Supreme Court and Secretary of the Board on the Unauthorized Practice of Law. His primary duties for the Board include researching and drafting advisory opinions, providing ethics advice to Ohio lawyers, judges and judicial candidates, and assisting in the Board's ethics outreach and education efforts. Mr. Asbury received his undergraduate and law degrees from Capital University. He is admitted to practice in Ohio, United States District Court for the Southern District of Ohio, and the U.S. Supreme Court. He is a faculty member of the Ohio Judicial College and recently completed the certified court management program with the National Center for State Courts.

MICHELLE R. BOWMAN has served as an Assistant Disciplinary Counsel with the Office of Disciplinary Counsel for the Supreme Court of Ohio since July 2013. She is responsible for investigating and prosecuting judges and lawyers accused of ethical misconduct and allegations involving the unauthorized practice of law. Michelle is a member of the National Organization of Bar Counsel's (NOBC) current developments team assisting with case law research and summaries for NOBC's annual meetings and the Association of Judicial Disciplinary Counsel's (AJDC) newsletter committee. Before joining the Office of Disciplinary Counsel, Michelle served for ten years as a staff attorney and law clerk supervisor with the Franklin County Public Defender's Office/Juvenile Unit representing indigent clients in the areas of criminal, domestic relations, and civil litigation. Prior to the Public Defender's Office, Michelle served as a staff attorney with the Capital University Family Advocacy Clinic, representing domestic violence victims in civil protection orders, housing, and contested custody divorce. She earned a B.S. in Sociology from Ohio University and is a 2001 graduate of Capital University Law School. In a previous chapter, Michelle was also a licensed social worker, which skills continue to serve her well.

JOSEPH M. CALIGIURI Joe is the Disciplinary Counsel in the Office of Disciplinary Counsel, where he has worked since 2002. He is responsible for investigating and prosecuting lawyers and judges accused of ethical misconduct. Joe is a frequent lecturer for the Ohio Judicial College, Ohio State Bar Association, and the Association of Judicial Disciplinary Counsel. Joe is also an adjunct professor of law at The Ohio State University, where he teaches Professional Responsibility. Joe was a former prosecutor in Buffalo, NY, and is a graduate of New England Law and the Clemson University MBA Program.

ROCKY A. COSS graduated from The Ohio State University College of Law in 1975 and has served as Judge of the Highland County Court of Common Pleas, General and Domestic Relations Divisions since August of 2008. Judge Coss served six terms as the Highland County Prosecuting Attorney from 1977-2001 and was also appointed as a Special Prosecutor in 22 other counties. He has been admitted to practice in the Southern District of the United States District Court, the U.S. Court of Appeals for the Sixth Circuit and the United States Supreme Court. From 1976-2008, he also maintained a private law practice which included general civil litigation, personal injury, domestic relations, real

estate, corporation law, and probate matters. While serving as prosecuting attorney, he was an instructor for the Ohio Prosecuting Attorneys Association on several topics including cross-examination. He has been a presenter for the Ohio Judicial Conference including trainings for new judges on case management and ethics training for court staff. He served nine years as a member of the Supreme Court's Advisory Committee on Case Management and currently serves on its Task Force on Conviction Integrity as well as serving as Chair of the iCourt Task Force created by the Supreme Court in September of 2020. Judge Coss has served on the Board of Professional Conduct since June of 2016.

TERI R. DANIEL is an assistant prosecuting attorney and the appellate division supervisor at the Lake County Prosecutor's Office. She is also an instructor for the bar passage program at Cleveland-Marshall College of Law. Teri has served as a commissioner on the Board of Professional Conduct since the spring of 2018 and has been a member of the advisory opinion and probable cause committees. She graduated magna cum laude from Cleveland-Marshall College of Law and was the research editor of the Cleveland State Law Review. Teri earned an MBA from Cleveland State University and her undergraduate degree from Washington and Jefferson College.

HON. PAT DEWINE has been a member of the Ohio Supreme Court since January 2017. Prior to his election to the Supreme Court, Justice DeWine served for four years on the First District Court of Appeals, and prior to that, for four years on the Hamilton County Common Pleas Court. Justice DeWine is an adjunct professor at the University of Cincinnati College of Law where he teaches Appellate Practice and Procedure. In addition, he has taught undergraduate courses at the University of Cincinnati in Ohio Government & Politics and American Courts. Justice DeWine graduated from the University of Michigan Law School in the top ten percent of his class with Order of the Coif honors. He received his undergraduate education at Miami University, where he earned summa cum laude honors. He was also a member of the Varsity Track and Cross-Country teams. After law school, he clerked for the Honorable David A. Nelson on the United States Court of Appeals for the Sixth Circuit. Justice DeWine later practiced law for 13 years in Cincinnati with Keating, Muething & Klekamp, where he handled a diverse range of litigation matters, including appellate litigation, mass tort bankruptcies, and constitutional issues. Prior to becoming a judge, Justice DeWine served as a Hamilton County Commissioner and a member of Cincinnati City Council. He was a founder of the Build Cincinnati reform group that successfully passed a charter amendment to allow Cincinnati voters to directly elect the Mayor.

RICHARD A. DOVE is the Director of the Board of Professional Conduct, and serves as the Board's chief legal and administrative officer. Prior to his appointment as in 2011, Mr. Dove served for more than 22 years on the staff of the Supreme Court of Ohio, the last four of which as Assistant Administrative Director. He is past president of the National Council of Lawyer Disciplinary Boards and in 2019 was recognized as Distinguished Alumnus of the Year by Capital University Law School. Rick is a graduate of Wittenberg University and Capital University Law School and is admitted to practice in Ohio, before the United States District Court for the Southern District of Ohio, and before the Supreme Court of the United States.

ROBERT B. FITZGERALD graduated from Ohio Northern University Petit College of Law in 1982. Bob is licensed to practice law in the United States District Court; the U.S. Sixth Circuit Court of Appeals; and the U.S. Supreme Court. Bob practiced law in Mansfield, Ohio for approximately three years before joining the firm that became Baran, Piper, Tarkowsky & Fitzgerald in 1985. Currently he is the managing member of The Law Firm of Fitzgerald, Reese & Elliott in Lima, Ohio. He concentrates his practice in insurance defense and civil litigation. He practices in those fields throughout the State of Ohio. Over the years Bob has been a member of the Defense Research Institute, the Ohio Association Civil Trial Attorneys and the Ohio State Bar Association Insurance Law Committee. He was previously named as one of Ohio's Super Lawyers. He has served as an adjunct professor of law at Ohio Northern University. He has also served as the grievance counsel for the Allen County Certified Grievance Committee. Since 2013, by appointment of the Ohio Supreme Court, he has served as a commissioner on the Board of Professional Conduct.

ALVIN E. MATHEWS, JR. is a lawyer in the litigation group at Ulmer & Berne, LLP, with Ohio offices in Columbus, Cleveland and Cincinnati. From 1991 to 1997, he served as an Assistant Disciplinary Counsel. He has since devoted a significant part of his practice to helping lawyers. Alvin has been asked to provide representation on hundreds of legal ethics advisory opinions and lawyer discipline case investigations, including nearly 100 lawyer discipline trials and more than 20 oral arguments before the Supreme Court of Ohio. He is a litigator with experience in complex business and professional liability matters. He is also relied upon by other litigators to serve as an expert witness on lawyer conduct questions. Alvin has presented more than 200 continuing legal education seminars and published many articles on lawyers' ethical responsibilities. He has been recognized by Ohio Super Lawyers every year since 2011 and named to *The Best Lawyers in America*® for Administrative & Regulatory Law. He received his bachelor's degree from Miami University, and his law degree from Ohio Northern University College of Law.

KRISTI R. MCANAUL joined the Ohio Board of Professional Conduct in 2018 as counsel. Her primary duties for the Board include researching and drafting advisory opinions, providing ethics advice to Ohio lawyers, and assisting in the Board's ethics outreach and education efforts. Prior to joining the Board, Ms. McAnaul served as a Staff Attorney at the Ohio Department of Education in the Office of Professional Conduct. She also worked in private practice for over nine years with a primary focus on juvenile and domestic law. Ms. McAnaul graduated magna cum laude from Capital University Law School and was a member and Research Editor of the Capital University Law Review. She received her undergraduate degree from Oakland University in Rochester, Michigan.

SCOTT R. MOTE is Mr. Mote is Executive Director of the Ohio Lawyers Assistance Program, Inc. (OLAP). Prior to making OLAP a fulltime endeavor in 2007, he practiced law in Columbus for 30 years, the last 18 as a founding partner of Harris, McClellan, Binau & Cox PLL.

RICHARD S. MILLIGAN is a trial lawyer who regularly defends hospitals, physicians, nurses and other medical providers in medical malpractice lawsuits. In addition, for more than twenty-five years he has been involved in Ohio's attorney discipline system. He has

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JACK P. SAHL is the Joseph G. Miller Professor of Law and Faculty Director of the Miller-Becker Center for Professional Responsibility at the University of Akron School of Law. He teaches professional responsibility, evidence, and entertainment and sports law among other subjects. He also teaches a film and legal ethics seminar as well as a U.S. Legal System course offered to international lawyers and students each summer at Yale University. In the past, he has taught a contracts and commercial law seminar at the CEIDA Institute in Rome, Italy.

MEGAN R. SNYDER, MSW, LISW, B.A. Psychology, State University of New York at Albany, 1995; Master of Social Work, New York University, 2000. Professional Experience: Medical Social Worker at Beth Abraham Health Services, specialized in psychosocial assessments and discharge planning, Bronx, New York; Social Worker and Regional Social Work Mentor at VistaCare Hospice, developed and conducted company-wide trainings surrounding issues of death and dying, Columbus, Ohio; Development Associate at the Columbus Jewish Federation, assisted with the annual campaign, Columbus, Ohio. Nationwide Children's Hospital, Emergency Room Social Worker, The Ohio State University Wexner Medical Center, Psychiatric Emergency Services, Social Worker. Currently, Megan is the Clinical Director at the Ohio Lawyers Assistance Program, Inc, and maintains a small private practice in Grandview Ohio.

PATRICIA A. WISE is a nationally known practitioner in the area of labor and employment law. She has been interviewed by NPR, quoted in the Wall Street Journal and the Economist magazine, and has contributed to publications from San Francisco to Atlanta. She has testified before a Congressional subcommittee, before the EEOC, and for the California State Legislature. Patty was appointed by former EEOC Chair Jenny Yang to the EEOC Select Task Force on Workplace Harassment, and she is a past member of the SHRM Labor Relations Special Expertise Panel, which she co-chaired in 2014-2015. She has trained thousands in this area of law, including state banking associations throughout the country; and has been a part-time professor for the University of Toledo College of Law for more than 20 years. Patty is a member of the faculty of the Graduate School of Banking at the University of Wisconsin in Madison. She has published books on harassment and retaliation, most recently the 3rd edition of her book, *Understanding and Preventing Workplace Retaliation*, published by the Thompson Publishing Group, Inc. Patty is certified by the Ohio State Bar Association as a specialist in the area of labor and employment law. She represents diverse clients of all sizes and from all industries. In 2014, the Ohio Supreme Court appointed her to serve as a member of the Board of Professional Conduct where she is currently the Chair of the Board. For more than ten years, Patty has held Martindale-Hubbell's AV Preeminent rating, the highest possible rating in both legal ability and ethical standards. She is a member of the College of Labor and Employment Lawyers, and is a certified Title IX investigator.

LISA M. ZARING is a partner with the Cincinnati Office of Montgomery Jonson LLP. She devotes her practice to representing professionals in a variety of legal and disciplinary matters. Ms. Zaring regularly advises judges and lawyers on ethics matters, and defends judges and lawyers in cases before the Supreme Court of Ohio's Board of Professional Conduct. She has advocated for law students and out-of-state attorneys seeking admission to the state bar in proceedings before the Board of Commissioners on Character and Fitness. She has also guided a number of professionals charged with unauthorized practice of law, including real estate agents, accountants, debt collectors, and interpreters, through proceedings before the Board on the Unauthorized Practice of Law. In addition, Ms. Zaring's practice includes defending professional liability claims asserted against a variety of professionals, including insurance agents and brokers, lawyers, and financial advisors. She also represents a variety of employers, both public and private, in employment litigation.

HEATHER M. ZIRKE is general counsel for the Cleveland Metropolitan Bar Association. During her 15 years with the CMBA, Heather has worked closely with the public and CMBA members to uphold the high standards of lawyer ethics and to help protect the public from the dishonest acts of a few lawyers. Heather is counsel to the CMBA's Certified Grievance, Unauthorized Practice of Law, Ethics & Professionalism and Bar Admissions Committees. She also works with members of the CMBA's Lawyer-Client Fee Dispute Resolution Committee which assists clients in resolving fee disputes with their lawyers, and the Division of Fees Mediation and Arbitration Committee which is a service to lawyers who need help dividing a shared fee. Heather speaks regularly on the topics of ethics and professionalism and Ohio's disciplinary system. She also presented at the American Bar Association's 2017 Unauthorized Practice of Law School in Chicago. Prior to joining the CMBA in 2005, Ms. Zirke spent 3 years as an Assistant Prosecutor for the City of Cleveland where she worked closely with law enforcement and victims of crime. Heather has a B.A. in English and religion from Baldwin-Wallace University and a J.D. from the Cleveland-Marshall College of Law.