IN THE SUPREME COURT OF OHIO

ORIGINAL

Cincinnati Bar Association, Relator	:	On Appeal from the Board of Commissioners on Grievance and Discipline
-v.-	:	
William I. Farrell, Respondent	:	Case No. 2010-1951

BRIEF OF RESPONDENT WILLIAM I. FARRELL

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CINCINNATI BAR ASSOCIATION

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STATEMENT OF FACTS

Relator, Cincinnati Bar Association ("Relator"), filed a complaint on February 17, 2009, to which Respondent filed his answer and amended answer on March 11, 2009 and September 10, 2009, respectively (referred to collectively as "Answer"). In his answer, Respondent admitted each and every allegation contained in the complaint and that those allegations violated his Oath of Office and the Ohio Rules of Professional Conduct, as set forth in the Ohio Rules of Professional Conduct Rule 8.4 (b), (c), (d), and (h). Respondent specifically requested the opportunity to present evidence mitigating his admitted misconduct.

Respondent failed to timely file income tax returns or pay the corresponding tax liabilities to the Internal Revenue Service, the Treasurer of the State of Ohio, and the City of Cincinnati on behalf of himself and his now ex-wife, Erika Beth Farrell, for the tax years 2001 through 2005, inclusive.

Respondent failed to timely file his 2006 income tax returns or pay the corresponding tax

liabilities to the Internal Revenue Service, the Treasurer of the State of Ohio, and the City of Cincinnati. Pursuant to his and his ex-wife's divorce decree, they were to file individually for the tax year 2006.

Respondent executed an Affidavit, which was filed on December 20, 2007, in his divorce case in Hamilton County Court of Common Pleas, Domestic Relations Division, to the effect that he had timely submitted the tax returns and paid the tax liability payments, as referenced in paragraph 1, above, when in fact he had not done so. Respondent subsequently filed a pleading with the Hamilton County Court of Common Pleas Domestic Relations Division withdrawing that affidavit, and apologized to the court for filing that false affidavit.

In the amended answer filed by/on behalf of Respondent in this matter, Respondent admitted that his conduct violated Rules 8.4{b}, {c}, {d} and {h} of the Ohio Rules of Professional Conduct.

By letters of January 9, 2008 and January 16, 2008, Respondent self reported his misconduct described in paragraph 3, above, to the General Counsel of the Cincinnati Bar Association.

Respondent's law license was previously suspended by this court for 2 years, with one year suspended, as set forth at *Cincinnati Bar Association v. Farrell*, 119 Ohio St.3d 529, 2008-Ohio-4540, for forging his ex-wife's signature on a power of attorney form in order to obtain an extension on a line of credit on a home equity loan/credit line on their marital residence.

At the hearing held on May 24, 2010, Respondent presented mitigation evidence from a

psychologist, Peter Courlas, diagnosing him with depression that affected him at all times relevant to this cause, and Dr. Courlas testified that Respondent's depression was a contributing factor to his misconduct. Respondent also presented character witnesses who testified favorably on his behalf at the hearing, who included a sitting state senator and a fellow attorney whom Respondent represented in a workers compensation claim that involved a severe spinal injury

Respondent additionally presents the following facts and factors in support of mitigation, which include entering into a contract with the Ohio Lawyer's Assistance Program, who submitted a report indicating that Respondent has been in compliance with his contract with OLAP at all times relevant to this cause. Respondent has cooperated with the discipline process, including undergoing an independent psychological evaluation at the request of Relator.

In addition, none of Respondent's misconduct involved clients, nor did it otherwise involve or arise out of his professional position or his private practice, and Respondent's misconduct occurred during a highly stressful time period in which his nearly 17 year marriage came to an end and during a time period in which he was actively treating for depression with both a psychologist and psychiatrist

The majority opinion from the hearing held May 24, 2010 found that Respondent violated DR 123456 and recommended that Respondent receive an indefinite suspension from the practice of law, with conditions that he resolve his outstanding tax obligations, repay moneys owed to Fifth Third Bank, submit documentation releasing his ex-wife as to any liability to Fifth Third Bank relating to the line of credit from his first grievance, submit evidence that he is current on his child support obligations and submit documentation that he has committed no

additional misconduct.

The Board of Commissioners on Grievances and Discipline instead has recommended that Respondent be permanently disbarred. Respondent has filed a separate response to the show cause order entered November 17, 2010 requesting that this Court impose the lesser sanction of an indefinite suspension, as recommended by the majority opinion of the panel members as described above.

ARGUMENT

Respondent respectfully submits that the recommended sanction from the majority opinion from the panel hearing conducted May 24, 2010 should be adopted by this Court. The majority of cases that are similar ro the facts presented herein would support either an indefinite suspension, or a lesser sanction.

In *Columbus Bar Assn. v. Patterson,* 95 Ohio St.3d 502, 2002-Ohio-2487, the respondent had an arrearage in excess of $45,000 in child support owed, which had not been paid as of the time the Court adjudicated his case. Respondent also had pled guilty to 2 misdemeanor charges of failing to file personal federal tax returns, resulting in a sentence of 3 years federal probation. Respondent further pleaded guilty to a charge of DWI in Muskingum County, Ohio, which resulted in a 10 day jail sentence and a $1,000 fine. Respondent was suspended for 1 year, with credit for time served from an interim suspension imposed upon him. Respondent had a previous discipline claim against him found at *Columbus Bar Association v. Patterson* (1999), 86 Ohio St.3d 23, 711 N.E.2d 221, which had resulted in a 6 month suspension for failure to return an unearned retainer fee and for failing to cooperate with the disciplinary process.

In *Cuyahoga Cty. Bar Assoc. v. Lazzaro*, 98 Ohio St.3d 509, 2003-Ohio-2150, the respondent was charged with accepting cocaine as a legal fee from a client and for failing to file personal tax returns from 1997 to 2001. Respondent was found to have violated DR 1-102(A)(5) and DR 6-101(A)(3), and was suspended for one year with the entire year stayed on multiple conditions.

In *Cleveland Bar Association v. Smith*, 102 Ohio St.3d 10, 2004-Ohio-1582, the respondent was charged with violating multiple disciplinary rules, involving her attempt to limit her liability to a former client for legal malpractice, failing to return an unearned retainer fee and for failing to file personal federal tax returns from 1992 to 2000. Respondent was suspended for 6 months, with all 6 months stayed upon conditions.

In *Toledo Bar Assn. v. Abood*, 104 Ohio St.3d 655, 2004-Ohio-7015, the respondent was found to have commingled clients' funds and had failed to file personal tax returns for 8 separate years, resulting in convictions on two counts of failing to pay income taxes that resulted in two 8 month prison sentences running consecutively, of which Respondent served 14 months. Respondent was found to have violated DR1-102(A)(6) and DR 9-102(A), and was suspended for one year with 6 months stayed.

In *Cuyahoga Cty. Bar Assn. v. Freedman*, 107 Ohio St.3d 25, 2005-Ohio-5831, the respondent had not filed state or federal tax returns from 1993 through 2004 and owed substantial back taxes. Respondent also was found to have failed to perform work entrusted to him by two separate clients. Respondent had submitted evidence that he suffered from depression that affected his behavior and contributed to his misconduct. The Court ultimately suspended Respondent for one year, distinguishing this decision from *Smith* and *Lazzaro*, holding:

> To be sure, we recently imposed stayed suspensions on two lawyers who neglected clients' legal matters and failed to file tax returns. *See Cleveland Bar Assn. v. Smith,* 102 Ohio St.3d 10, 2004-Ohio-1582, 806 N.E.2d 495; *Cuyahoga Cty. Bar Assoc. v. Lazzaro,* 98 Ohio St.3d 509, 2003-Ohio-2150, 787 N.E.2d 1182, Yet in one of those cases, the attorney had already filed the tardy tax returns by the time the disciplinary proceedings were initiated against her, and in the other case, the attorney had filed the tax returns by the time disciplinary proceedings reached this court. *See Smith*, 102 Ohio St.3d 10, 2004-Ohio-1582, 806 N.E.2d 495, ¶6; *Lazzaro,* 98 Ohio St.3d 509, 2003-Ohio-2150, 787 N.E.2d 1182, ¶6.

Freedman, 2005-Ohio-5831, at ¶17.

In *Disciplinary Counsel v. Geer,* 112 Ohio St.3d 124, 2006-Ohio-6516, the respondent was found to have violated DR 1-102(A)(6) for failing to comply with a child support order with an arrearage in excess of $390,000, and for failing to cooperate with the disciplinary investigation, which included avoiding service upon him of the complaint and then failing to answer the complaint. Respondent was suspended for one year, with no credit for time served for an interim suspension period.

In *Cleveland Bar Assn. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, the respondent was found to have violated DR 1-102(A)(4) and DR 7-102(A)(5), for fabricating information purported to be from a municipal traffic court's transcript in a letter to an insurance carrier in a personal injury claim to prove civil liability. Respondent was suspended for 6 months, with mitigating factors cited by the court that included the fact that the event occurred during a particularly stressful period for respondent.

In *Disciplinary Counsel v. Large*, 122 Ohio St.3d 35, 2009-Ohio-2022, the respondent was found to have violated DR 1-102(A)(4) and DR1-102(A)(6), for failing to file to timely file state and federal income tax returns for 4 years, resulting in a conviction on 4 felony counts resulting in

a sentence of 4 years federal probation. Respondent was suspended for 1 year.

In some more recent decisions by this Court, an indefinite suspension was ordered in a claim involving an attorney who had three separate grievances assessed against her over a period of several years in *Cincinnati Bar Assn v. Grote*, 127 Ohio St.3d 1, 2010-Ohio-4833. In *Disciplinary Counsel v. Robinson*, 126 Ohio St.3d 371, 2010-Ohio-3829, a 1 year suspension was ordered against an attorney who removed and destroyed documents from his former law and who was found to have made knowingly false statements under oath in a sworn deposition.

In *Toledo Bar Assn v. Stahlbush*, 126 Ohio St.3d 366, 2010-Ohio-3300, this Court ordered a 2 year suspension with one year stayed for an attorney who was found to knowingly billed Lucas County courts for more hours than she worked in providing services for low income clients. In *Disciplinary Counsel v. Bandman*, 125 Ohio St.3d 503, 2010-Ohio-2115, this Court indefinitely suspended an attorney for misappropriating a client's assets in the course of administering a family trust, by falsely dating checks, making false and misleading notations on checks and altering a bank record to conceal his actions.

In addition, the following recent decisions by this imposed either indefinite suspensions, or lesser sanctions, for attorneys who had been convicted of state or federal felonies: *Disciplinary Counsel v. O'Malley*, 126 Ohio St.3d 443, 2010-Ohio-3802; *Disciplinary Counsel v. Kraemer*, 126 Ohio St.3d 163, 2010-Ohio-3300; *Cincinnati Bar Assn v. Kellogg*, 126 Ohio St.3d 360, 2010-Ohio-3285; *Cincinnati Bar Assn v. Gittinger*, 125 Ohio St.3d 467, 2010-Ohio-1830; *Mahoning County Bar Assn. v. Theisler*, 125 Ohio St.3d 144, 2010-Ohio-1472; *Disciplinary Counsel v. Andrews*, 124 Ohio St.3d 523, 2010-Ohio-931 and *Disciplinary Counsel v. Bennett*, 124 Ohio St.3d 314, 2010-Ohio-313.

As a final note, Respondent has repeatedly taken full responsibility for his misconduct, and has expressed remorse for that conduct. The mitigating factors argues by Respondent, including pointing out that his misconduct did not involve or harm any clients or otherwise involve professional conduct, are not, and never have been, an attempt to diminish the severity of his actions, or to avoid responsibility for his misconduct. They are simply mitigating factors that may have some bearing on the sanctions to be imposed.

In addition, Respondent's diagnosis of depression may not have been the sole cause of his misconduct for grievances against him, but the evidence from his treating psychiatrist and/or treating psychologist established that depression played a role in, and had some causal relationship to his actions. Respondent has never been charged with, or convicted of any criminal offenses associated with any of his actions giving rise to either grievance. Neither of these factors excuse in any way Respondent's conduct, but it is respectfully submitted that they factor in any potential mitigation, considering the number of previously cited cases in which attorneys charged with and convicted of serious crimes were given indefinite suspensions, or lesser sanctions.

Respondent has also expressed remorse for his actions and for their impact on his ex-wife, his daughter, his former business partner and the legal profession, and he continues to be deeply regretful for all of the conduct and his actions which have resulted in the two grievances that have been brought against him. Respondent's actions were wrong and they warrant the serious and severe discipline recommended by the panel's majority arising out of the May 24, 2010 hearing, but they do not warrant permanent disbarment. The two member majority opinion from the hearing conducted May 24, 2010 reflect the conclusions of persons present at the hearing, who had the opportunity to view the demeanor and conduct of all of the witnesses, and their ultimate

decision should accordingly be accorded substantial weight.

As stated in the response to the show cause order entered November 17, 2010, Respondent would not object to the sanction recommended by the majority opinion arising out of the May 24, 2010 hearing, that of an indefinite suspension with the conditions enumerated. This sanction constitutes a serious level of discipline that would be consistent with existing case law and proportional to the underlying facts presented in this claim.

CONCLUSION

Based upon the foregoing, Respondent respectfully requests that this Court reduce the sanction to that of an indefinite suspension, with the conditions previously enumerated in the majority opinion arising out of the May 24, 2010 hearing decision, along with any other conditions or requirements this Court deems appropriate.

Respectfully submitted,
William I. Farrell, Respondent

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RESPONDENT

CERTIFICATE OF SERVICE

I certify that a copy of this merit brief was sent by ordinary U.S. mail service to counsel for relator Cincinnati Bar Association, Kevin P. Roberts, Esq., 7373 Beechmont Avenue, Suite 3, Cincinnati, Ohio 45230 and Ernest F. McAdams, Jr., Esq., 801 Plum Street, Room 226, Cincinnati, Ohio 45202 on December 6, 2010.

William I. Farrell, Respondent

APPENDIX

The Supreme Court of Ohio

Cincinnati Bar Association,
Relator,
v.
William Farrell,
Respondent.

Case No. 2010-1951

ORDER TO SHOW CAUSE

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio has filed a final report in the office of the clerk of this court. This final report recommended that pursuant to Rule V(6)(B)(1) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, William Farrell, Attorney Registration Number 0043635, be permanently disbarred from the practice of law. The board further recommends that the costs of these proceedings be taxed to the respondent in any disciplinary order entered, so that execution may issue. Upon consideration thereof,

It is ordered by the court that the respondent show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered.

It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

After a hearing on the objections or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be less severe than said recommendation.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

It is further ordered, sua sponte, 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.

ERIC BROWN
Chief Justice

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re:	:	
Complaint against	:	**Case No. 09-002**
William Farrell **Attorney Reg. No. 0043635**	:	**Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio**
Respondent	:	
Cincinnati Bar Association	:	
Relator	:	

INTRODUCTION

This matter was heard on May 24, 2010, in Columbus, Ohio, before a panel consisting of members Irene Keyse-Walker of Cleveland, David Tschantz of Wooster and Judge Beth Whitmore of Akron, Panel Chair (collectively "the Panel"). None of the Panel members resides in the appellate district from which this matter arose or served as members of the probable cause panel in this case. Relator was represented by Kevin Roberts and Ernest McAdams. William Farrell, Respondent, was represented by John O'Shea. Respondent presently resides in Cincinnati, Ohio.

PROCEDURAL HISTORY

On February 17, 2009, the Cincinnati Bar Association filed a complaint (hereinafter "2009 Proceeding") against Respondent based on multiple tax law violations during tax years 2001-2006 and a false affidavit filed in Respondent's divorce proceeding in December 2007

regarding such violations. That misconduct was discovered in December 2008 by his ex-wife's divorce attorney who indicated she would report the misconduct if Respondent did not do so himself. In January 2008, at the urging of his own attorney, Respondent informed the bar association that Respondent: (1) had failed to file any local, state, or federal income tax returns or pay any corresponding tax liabilities for himself and his then wife for tax years 2001-2005; (2) had filed a false affidavit with the Hamilton County Domestic Relations Court ("the Domestic Relations Court") in December 2007 asserting that he had timely filed the returns and paid the corresponding taxes; (3) had failed to file any local, state, or federal income tax returns or pay any corresponding tax liability for himself in tax year 2006 as ordered by the terms of his decree of divorce.

At the time of Respondent's 2008 report to the Bar Association, there was a disciplinary matter already pending against Respondent (hereinafter "2007 Proceeding") before the Board of Commissioners on Grievance and Discipline ("the Board"). See *Cincinnati Bar Assn. v. Farrell*, 119 Ohio St.3d 529, 2008-Ohio-4540. That case had already been certified by the Board and the complaint could not be amended to include the additional misconduct.

The complaint in this 2009 Proceeding asserts violations of Ohio Rules of Professional Conduct 8.4(b) [commission of an illegal act that reflects adversely on the lawyer's honesty or trustworthiness], 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation], 8.4(d) [conduct that is prejudicial to the administration of justice], and 8.4(h)[conduct that adversely reflects on the lawyer's fitness to practice law]. In March 2009, Respondent answered the complaint admitting the factual allegations while inexplicably denying that his conduct was a violation of the rules as alleged. Respondent later amended his answer to also admit the rule

violations. Because the May 24, 2010 hearing was essentially a hearing on mitigation and aggravation, for ease of presentation, some facts relevant to mitigation and aggravation are included in the section below setting forth findings of fact and conclusions of law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on Respondent's admissions of fact and rule violations and upon the testimony and evidence presented at the hearing, the Panel finds the violations outlined above by clear and convincing evidence.

Respondent was admitted to the Ohio bar in 1989 and practiced in a Cincinnati law firm where he focused on Workers' Compensation and Social Security disability law. By 1997 he had married, become a partner in the law firm, and adopted a child. In 2004 he began a series of elaborate fabrications involving his employment, income, and equity loans secured by the family residence. Such misconduct included the forgery of his wife's signature on a power-of-attorney and ultimately led to the 2007 Proceeding, to the suspension of Respondent's license to practice law, and to his divorce in 2006. In 2002 - two years before the onset of the misconduct resolved by the 2007 Proceedings - Respondent began the misconduct involving the couple's tax returns which led to the 2009 Proceeding.

When arguing Respondent's appeal of the 2007 Proceeding to the Ohio Supreme Court, his then attorney described Respondent's behavior as "merely a misdemeanor" and as not involving any theft or dishonesty in any court. (Objections filed in the Ohio Supreme Court in Case No. 07-2395 at p. 11. Hereinafter "Objections") Counsel later describe the misconduct as "uncharacteristic," "inexplicable," and "bizarre." (Objections at 13) In that appeal Respondent claimed that the Board's recommended sanction (two year suspension with one year stayed on

conditions) was too severe because the misconduct then at issue was confined to Respondent's personal life and did not impact Respondent's professional life, injure a client, or impact any court proceedings. In response, the Ohio Supreme Court observed that "...contrary to respondent's implication, a course of conduct is hardly made more tolerable because it did not victimize a client or occur in court." *Farrell*, 2008-Ohio-4540, at ¶ 21. Because there is no bright line between the conduct at issue in the 2007 Proceeding and the present matter, we briefly recap all the misconduct that has brought Respondent before the Board.

In mid-2004 (two years after Respondent's tax violations began), Respondent's wife wanted to spend more time with their young child, reduce her work schedule as a senior associate at a law firm, and move to a more modest home to accommodate the upcoming reduction in income. Respondent testified that he felt threatened as a husband and father by his wife's request, believed that the marriage was foundering, and claims that he was panicked into a pattern of deception. (see, e.g., Tr. 158 and Objections at 14). Respondent's brief asserted:

"Because of the increasing tensions in his marriage combined with the fear of loss of his family, Farrell experienced an internal sense of panic. This sense of panic escalated as the tensions in Farrell's marriage increased. This crescendo of panic culminated in Farrell irrationally and inexplicably deciding to try to 'buy' time to deal with what he perceived as the primary source of tension in his marriage, his ex-wife's dissatisfaction with the nature of his law practice and the amount of money he earned from that practice." (Objections at 14)

Rather than face the issue honestly, Respondent deceived his wife, telling her that in order to maintain their present lifestyle he would resign from his law firm and seek more lucrative employment.

However, Respondent did not resign his position nor did he ever look for more lucrative employment. Instead, he fabricated letters from two different phantom employers purporting to have hired him for higher salaries, bigger bonuses, and better benefits. Based on these purported job opportunities, Respondent's wife resigned from her position in 2005. By early 2006, Respondent was unable to sustain the family's financial burdens, so he forged his wife's signature on a power of attorney in order to obtain two different increases in the couple's line of credit totaling $50,000. In doing so, Respondent asked another attorney to notarize the forged signature. When his wife later found documents related to the line of credit increases, Respondent fabricated three different letters from bank executives explaining that the extensions were the result of bank error and apologizing for the mishap on the bank statements. In order to shield his activity from his wife, Respondent then stopped delivery of mail to their house. When his wife expressed concern over the lack of incoming mail, Respondent fabricated a letter from the United States Postal Service confirming that no mail had been withheld from delivery over the past year. Ultimately, Respondent was unable to maintain these charades and informed his wife of his pattern of deceit. In December 2006, the couple divorced.

Respondent has not expressly explained why he began the 2002 deception over tax returns/payments, but when asked in the 2007 Proceeding whether he was living beyond his means, Respondent denied doing so. (Transcript of 2007 Proceedings, November 15, 2007 in Case No. 07-11 at p. 88. Hereinafter "2007 Transcript") He then ruminated that he only wanted to create an impression that he was earning more money and was more successful professionally. Id. That statement may accurately reflect Respondent's motive when he engaged in the misconduct at issue in the 2007 Proceedings. But, it also demonstrates Respondent's inability to

see his misconduct for what it was. In truth, Respondent liked an affluent life style,[1] was living beyond his means, and would do anything to continue to live that illusion.

We now come to the events underlying the 2009 Proceeding. These events started in 2002 when Respondent began his pattern of tax law violations and culminated in the filing of a false affidavit in his 2006 divorce proceedings As the result of a motion for contempt for failure to appear at a hearing regarding the couple's tax filings, Respondent executed an affidavit in which he provided sworn statements to the Domestic Relations Court that he had timely filed all local, state, and federal income taxes from 1989 through 2005, as well as paid any corresponding liability. Additionally he attested to having filed and paid his individual local, state, or federal taxes in 2006 as required by the terms of the parties' divorce decree. Despite signing and filing an affidavit containing these representations, Respondent had not prepared or filed any local, state, or federal taxes for the couple for tax years 2001-2005, nor had he paid any tax liabilities for the same period. Additionally, Respondent had not filed or paid his individual local, state, or federal taxes for 2006 as required by the terms of his divorce decree.

When discussing Respondent's mental state before the Ohio Supreme Court in the 2007 proceeding, Respondent's counsel conceded that Respondent could offer no "cogent, rational explanation" for his conduct. In addition, while Respondent contended that he suffered from Major Depressive Disorder, he acknowledged that such condition did not cause him to fabricate letters or forge his wife's signature on the power-of-attorney. Respondent's Objections provide as follows:

"Farrell is unable to provide this Court or anyone else with a cogent, rational

[1] The Board Report in the 2007 Proceeding noted that Respondent had not paid his monthly OLAP fees, yet admitted that during the relevant time frame he had continued to dine at expensive Cincinnati restaurants. Objections at p 6: Board Report in 2007 Proceeding, p. 4, footnote 6.

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When discussing Respondent's mental state before the Ohio Supreme Court in the 2007 proceeding, Respondent's counsel conceded that Respondent could offer no "cogent, rational explanation" for his conduct. In addition, while Respondent contended that he suffered from Major Depressive Disorder, he acknowledged that such condition did not cause him to fabricate letters or forge his wife's signature on the power-of-attorney. Respondent's Objections provide as follows:

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[1] The Board Report in the 2007 Proceeding noted that Respondent had not paid his monthly OLAP fees, yet admitted that during the relevant time frame he had continued to dine at expensive Cincinnati restaurants. Objections at p 6: Board Report in 2007 Proceeding, p. 4, footnote 6.

> explanation for his conduct. Farrell can only say that inexplicably he engaged in uncharacteristic and bizarre behavior ... Despite suffering with this mental disorder [Major Depressive Disorder], Farrell acknowledges that this condition ***in no way*** caused him to fabricate letters or to forge his ex-wife's signature on the power-of-attorney. Farrell also acknowledges that this condition ***in no way*** made Farrell more susceptible to engage in dishonest or deceptive conduct." Objections at 13 -14, (emphasis added).

In essence, the foregoing statement conceded that Respondent's mental condition did not cause or contribute to his misconduct. Now, however, Respondent contends that his mental state was a contributing cause of the misconduct resolved in the 2007 Proceeding and at issue in the 2009 Proceeding. The record in this 2009 Proceeding contains an independent assessment by psychiatrist, Douglas Beech, M.D., which concludes that Respondent's depressive disorder was in remission when he filed the false affidavit and that his depressive disorder did not play a causal role in Respondent's tax violations or his submission of a false affidavit to the domestic relations court.

Respondent claimed at his assessment with Dr. Beech that he self-reported the forging of his wife's signature in order to obtain the $50,000 line of credit (the forged power-of-attorney) and also the false affidavit regarding tax filings. (Relator's Exhibit E2 at p. 2) The facts reveal otherwise. In December 2006, after discovering the depth of Respondent's deceptions Respondent's ex-wife sued for divorce. Her lawyer discovered the forged power-of-attorney and told Respondent that she had an obligation to report Respondent's misconduct, but that she would give him an opportunity to do so himself. (Objections at 5) In January 2008, Respondent discussed the false Domestic Relations affidavit with his counsel and then reported his misconduct to the Cincinnati Bar Association. However, despite claiming that he "self-reported" to the Bar Association, Respondent again acted only after his ex-wife's domestic relations

attorney had exposed the affidavit and indicated that unless Respondent reported his misconduct that attorney would do so. (Transcript of 2007 Proceeding, November 15, 2007, at p. 82. Hereinafter "2007 Transcript") Faced with that reality, Respondent equivocated and said: "I wouldn't say that's the only reason. But when I was presented with those options, I - - I elected to meet with Mr. Patterson and self-report." Id.

The 2007 Proceeding concluded in September 2008, and Respondent was suspended from the practice of law for two years, the second of which was stayed on the condition that Respondent: (1) comply with the Ohio Lawyer's Assistance Program ("OLAP"); (2) successfully complete a term of probation until his OLAP contract expired; and (3) commit no further violations of the Disciplinary Rules. *Farrell*, 2008-Ohio-4540, at ¶23. As noted previously, Respondent "concede[d] that his depression did not contribute to cause his duplicity." Id. at ¶18. The Supreme Court concluded that because "[R]espondent cannot explain his fabrications and forgery, we have nothing from which to conclude that he will not repeat his wrongdoing." Id. at ¶19.

MITIGATION

The parties did not stipulate to any mitigation. Respondent cooperated in the disciplinary proceedings, timely responded to the complaint, and, after an initial denial of the alleged rule violations, amended his answer to admit the same, and at the insistence of counsel, reported his misconduct to the Cincinnati Bar Association. (BCGD Proc. Reg. 10(B)(2)(c) and (d)). However, the Panel notes again that Respondent acted only after his ex-wife's attorney exposed the false affidavit and issued an ultimatum that Respondent could not ignore. Respondent presented several character witness in mitigation pursuant to BCGD Proc. Reg. 10(B)(2)(e) and

evidence of rehabilitation under BCGD Proc. Reg. 10(B)(2)(h).

Peter Courlas, the licensed social worker who had been treating Respondent, testified that he had treated Respondent with regularly scheduled counseling from 2006 through January 2010. Courlas testified that Respondent suffered from "major depression," but that Respondent took responsibility for his problems and did not see himself as the victim of his condition. According to Courlas, Respondent felt tremendous guilt and shame over his past misconduct, and testified that the misconduct at issue is "not a typical part of [Respondent's] behavior" but represented a lapse in judgment. Courlas did not consider the filing of the false tax affidavit in 2007 as a event separate from the series of lies leading up to the forgery of his ex-wife's name on the power of attorney in 2006. Rather, he saw it as "a continuation of what [Respondent] was going through." (Tr. 27) Courlas testified that he did not think Respondent would reoffend and opined that the misconduct was "a very encapsulated part of his life, and [] it will stay there." (Tr. 28) Courlas further asserted that "[Respondent's] mistakes involved only his personal life not transactions with his client..." Courlas viewed the filing of a false affidavit with the Domestic Relations Court, as misconduct solely relating to his wife and not otherwise involving Respondent's career. Courlas had "no reservations at all" and believed with a reasonable degree of medical certainty that Respondent would be able to return to the ethical practice of law. (Tr. 29 and 57) The Panel did not find Courlas's testimony persuasive.

Dr. J. Stephen Meredith, a psychiatrist who was working in conjunction with Courlas and handling the medication management for Respondent's major depressive disorder, did not testify, but submitted a letter that was introduced into evidence by Relator. Dr. Meredith opined that Respondent was being seen for "periodic checks for his medication, roughly every 2-3

months." The letter indicated that Dr. Meredith felt Respondent "ha[d] shown improvement" since he began treating Respondent in July 2006 and that Respondent's "overall prognosis [was] good." He did not, however, report that Respondent had successfully completed a course of treatment or that Respondent could, at the time of his report, return to the ethical practice of law.

Dr. Douglas Beech, a board certified psychiatrist, testified that he was retained by the Cincinnati Bar Association to conduct an independent medical examination of Respondent in January 2010 to determine whether Respondent's mental health condition contributed to his admitted misconduct and whether a mental health suspension was appropriate. Dr. Beech confirmed that Respondent suffered from a "major depressive disorder single episode in full remission since early 2007" but noted that Respondent did not meet the criteria for mental illness as defined by the Ohio Revised Code. Dr. Beech's report to the Cincinnati Bar Association stated that "the misconduct that occurred in December of 2007 [filing the false affidavit in Domestic Relations Court] is not causally related to his Major Depressive Disorder" and he re-iterated the same at the hearing.

Respondent offered character testimony from Kevin Flynn, Eric Kearney, and Pete Ney, all of whom attended law school at the University of Cincinnati with Respondent. Flynn testified that, after he became a quadriplegic following an automobile accident in 2002, Respondent helped him obtain Workers' Compensation coverage for his injuries and modifications to his home and car so that Flynn and his family could remain where they were presently living and he could return to work. Flynn stated he had referred clients to Respondent in the past, and would continue to do so in the future. Kearney testified that he had referred clients to Respondent in the past and had "only heard good things about his legal abilities" and has "been impressed with

[Respondent]" since he has known him from their first week of law school. (Tr. 97) Kearney stated Respondent was very forthright about admitting what he had done and knew that he would likely face suspension from the bar based on his mistakes. Ney testified he worked with Respondent in relationship to Flynn's accident, and that Respondent did a "very good job" and was unwilling to accept any compensation for his efforts to assist in obtaining Workers' Compensation benefits for Flynn. Ney indicated that, even in light of the misconduct at issue in this grievance action, he would continue to refer clients to Respondent for assistance with Workers' Compensation as he had done in the past. (Tr. 106)

Respondent testified on his own behalf and admitted that when he signed the affidavit, he knew it contained false information. He explained that he had been found in contempt of court based on his failure to attend a hearing to address the issue of tax returns and was conditionally sentenced to 30 days in jail. Respondent stated that, because of the disciplinary proceeding that was pending against him, he did not want to admit that he had not filed his returns, nor did he want to serve 30 days in jail. Respondent indicated "[t]he reason I didn't disclose *** [that] I couldn't sign the affidavit was with this other grievance, I was just so scared that it was going to result in me being disciplined so much worse *** that's why I didn't disclose it . . ." (Tr. 119-120) Respondent stated he "didn't want to derail the issues in the first grievance, which at the time there was an agreed -- a stipulated sanction of a stayed suspension, and [he] was just so terrified of that going off the rails and being vacated or thrown out that [he] compromised [him]self by, . . . engaging in further dishonest behavior." (Tr. 123) From the foregoing testimony the Panel concludes that Respondent acted with a premeditated intent to deceive the Domestic Relations Court, with extraordinary self interest, and in utter disregard for his ethical

obligations as an attorney and officer of the court.

Respondent admitted that he did not initially bring the false affidavit to the attention of his counsel, but once counsel discovered the false affidavit [from opposing counsel] and discussed the matter with Respondent, Respondent directed his attorney to report the matter to the Board. He further testified that since filing the false affidavit in the Domestic Relations Court, he has apologized to the judge presiding over his divorce proceedings, has filed all the requisite tax returns and is in the process of compromising his tax debts with the federal and state government. BCGD Proc. Reg. 10(B)(2)(c). The Panel does not view the fact that Respondent is in the process of "compromising" his tax obligations as mitigation. Anything less that full payment by Respondent would, in the Panel's view, evidence Respondent's willingness to play by his own rules and then avoid full responsibility for his misconduct. Given Respondent's serious misconduct over a six-year time period, his present effort to escape full tax responsibility is unacceptable.

With respect to his tax liabilities, Respondent testified that he first failed to file taxes in the spring of 2002, primarily due to financial difficulties he was experiencing based on increased expenses: his wife had returned to school; the couple had gone through fertility treatment which was followed by an international adoption; and his law practice was suffering. He knew he could not pay the money he would owe, so he chose not to file taxes that year, or any year thereafter, as his financial affairs continued in a downward spiral. Respondent admitted that he filled out "rough drafts" of returns for 2001 through 2006 and had his wife sign those returns. Respondent was asked about his testimony in the 2007 Proceeding, vis-à-vis any tax liabilities. When questioned then about his wife's receipt of a letter from the Internal Revenue Service

about unpaid income taxes Respondent told the 2007 Proceeding Panel: "I'm not aware of anything regarding unpaid taxes." (Tr. 144) Respondent admitted that his statement to the 2007 Panel was dishonest and that he had lied to the panel about the tax arrearages.

Regarding his depression, Respondent testified that his depression, though not a cause, was "a contributing factor" to all of his misconduct. Respondent agreed that his condition was much better in 2007, but was reluctant to consider himself "in remission" as reported by Dr. Beech.

Respondent indicated that the "breakup of [his] marriage, *** the loss of [his] image as a successful attorney and a family man" led to his initial misconduct,[2] but "once the lies and dishonesty came out *** those stressors were then replaced by [his] declining financial position, and *** the pending grievance . . ." (Tr. 159) Upon further questioning by the Panel, Respondent stated he now understands how depression can "immobilize[] you" and prevent one from dealing with problems. He contends this new recognition would lead him to seek therapy with Courlas, should he have similar feelings in the future. However, Respondent's history of pathological lying strongly suggests to the Panel that Respondent lacks the ability to conform his behavior to ethical standards.

With the approval of the Supreme Court, Respondent is currently working full time as a document coder at a law firm earning $12.50 per hour. He had been current in child support payments throughout 2009, but at the time of the hearing, he was $3,200 in arrears based on the nearly $1,200 per month he is ordered to pay.

AGGRAVATION

[2] We note that the tax violations began in 2002, well before the breakup of his marriage and in advance of the plethora of lies that poisoned his marriage and led to the divorce.

The parties did not stipulate to any aggravation in this case. As noted, Respondent has a prior disciplinary record and was engaged in that disciplinary process when the events underlying this complaint occurred. BCGD Proc. Reg. 10(B)(1)(a). Respondent's behavior clearly demonstrates a pattern of misconduct. BCGD Proc. Reg. 10(B)(1)(c). Respondent admitted that he lied to the panel in his first proceeding as to whether he had any outstanding tax liabilities, in addition to filing a false affidavit with the Domestic Relations Court. BCGD Proc. Reg. 10(B)(1)(f). Moreover, his characterization of this disciplinary proceeding as having been initiated based on him "self-reporting" his misconduct is completely disingenuous. He failed to report his misconduct until after his ex-wife's divorce attorney issued her ultimatum to his attorney. Clearly Respondent knew when he filed the affidavit that it was false – and yet he let time pass on the theory that he did not want to upset the apple cart in the 2007 Proceeding. BCGD Proc. Reg. 10(B)(1)(g).

Finally, Respondent's instinct for self preservation at substantial cost to others goes back to extraordinary historical events. He knew it was unlawful to violate income tax law, yet every year he did it again, risking his wife's personal reputation and her legal career. He knew it was unlawful to forge his ex-wife's name on a power-of-attorney, yet he did it anyway – imperiling her reputation and credit and also implicating an attorney friend who was subsequently disciplined for notarizing the document. And all of this occurred without Respondent seeking confidential treatment or counseling, privately or through OLAP. The unpleasant truth is that Respondent only sought professional help after his ex-wife discovered his betrayals and filed for divorce; and even then, he lied to the divorce court and to the 2007 Panel.

RECOMMENDED SANCTION

Relator asks that Respondent be permanently disbarred. Respondent, attributing his misconduct to a dysfunctional marriage and bitter divorce (Respondent's Hearing Brief at 9), claims not to seek or expect anything short of a severe sanction. He asks for mercy and claims that he is deserving of it. Id. at 10. Respondent suggests that a two year suspension with supervision by OLAP and his treating psychiatrist and psychologist is more appropriate.

Respondent offered several cases in support of its recommendation, two of which this Panel considers most applicable to this case. In *Toledo Bar Assn. v. Abood*, 104 Ohio St.3d 655, 2004-Ohio-7015, the respondent was found in violation of DR 1-102(A)(6) and 9-102(A) (substantively comparable to Prof. Cond. R. 8.4) for failing to file income tax returns for a period of eight years. Respondent had no prior disciplinary record and had served 14 months of incarceration for his offenses. The *Abood* panel recommended a public reprimand, in part because "respondent had no problems with his clients, lawyers, or judges and that his problems were of a financial nature, and dealt exclusively with the IRS, not with his practice, or his capacity as an attorney." (Internal quotations omitted). *Abood* at ¶ 10. The Board, however, determined that an actual suspension was warranted given the respondent's criminal conviction and the length of time for which respondent had failed to pay his income taxes. The Supreme Court agreed and ordered a one year suspension, with six months conditionally stayed.

In *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, the respondent was found in violation of DR 1-102(A)(4) and DR 7-102(A)(5) for fabricating a letter to defendant's insurance carrier stating that defendant had admitted liability for the underlying car collision at a recent hearing. Respondent's letter to the insurance carrier included fabricated testimony between defendant and the trial court in which defendant admitted she was at fault for

the collision, when defendant had not even appeared at the hearing. The Supreme Court noted that respondent had been practicing for thirty years with no prior discipline, but given his "deliberate effort to deceive," the Court concluded that an actual suspension was warranted and sanctioned respondent to a six month license suspension.

Respondent argues that his past disciplinary action and deceit in the Domestic Relations Court warrant a more severe sanction than that ordered in the foregoing cases, but notes that the misconduct admitted to in this case did not result in any harm to any client or another third party. We note that such reasoning has already been discredited by the Ohio Supreme Court's decision in *Cincinnati Bar Assn. v. Farrell*, 119 Ohio St. 3d 529, 2008-Ohio-4540, ¶ 21. We view the filing of a false affidavit in court and then lying about it to the Panel in the 2007 Proceeding as legally contemptuous and morally contemptible.

Relator's hearing brief recommends Respondent be disbarred. Relator relies primarily on two cases to support its recommendation. In *Disciplinary Counsel v. Bowman*, 110 Ohio St.3d 480, 2006-Ohio-4333, respondent was found to have violated over twenty one disciplinary rules, including DR 1-102, based on his mishandling of three different client matters. Relevant to this case, in one of the matters, Bowman had forged the signatures of his clients and their former attorney on a settlement agreement, then filed a motion to dismiss his client's case with prejudice. In another matter, Bowman misrepresented and falsified documents related to the terms of a settlement agreement for one of his clients. The panel had recommended respondent be suspended from practice for two years with one year conditionally stayed, while the relator recommended indefinite suspension given the multitude of violations and the severity of the misconduct. The Supreme Court considered an indefinite suspension, but rejected that sanction

because respondent suffered from major depression and general anxiety disorders. Instead, respondent was suspended from practice for two years.

In *Cincinnati Bar Assn. v. Shabazz* (1995), 74 Ohio St.3d 24, the respondent was the subject of multiple disciplinary proceedings. First, in 1993, respondent had been sanctioned to a two year suspension, one year stayed, for neglecting legal matters, commingling funds, and failing to complete his attorney registration in violation of DR 6-101(A)(3), DR 9-102(A), 9-102(B)(3) and Gov. Bar R. VI. His second year of suspension was revoked based on further violations of DR 6-101(A)(3) and DR 9-102(B)(3). Based on that violation, respondent was suspended for an additional six months, to run consecutive to his first suspension. Next, in August 1994, respondent was alleged to have violated DR 1-102(A)(4) and (6), DR 3-101(B), and Gov. Bar R. V(6)(A)(1). Respondent did not answer the complaint, but in the course of the relator's investigation, respondent acknowledged he had prepared legal documents while his license was under suspension and forged the name of another attorney on those documents, accepted fees for the document preparation, and later prepared and filed a complaint for a client. The Board recommended an indefinite suspension, but the Supreme Court permanently disbarred respondent "because he had a significant history of professional misconduct and had ignored our previous order of suspension." *Shabazz*, 74 Ohio St.3d at 25.

In *Disciplinary Counsel v. Kafantaris*, 99 Ohio St.3d 94, 2003-Ohio-2477, a former employee of the respondent had filed a complaint against him alleging sexual harassment, intentional infliction of emotional distress, and battery. Initially, respondent filed an answer, testified at a deposition, and filed an affidavit with the court, in which he denied ever having any sexual contact with the plaintiff. Later during the trial, however, respondent admitted that he had

a consensual relationship with the plaintiff and that his earlier denials were untrue. Respondent stipulated to three violations of DR 1-102 (substantively comparable to Prof. Cond. R. 8.4). No prior discipline was noted, and the panel heard testimony and received numerous letters in support of respondent's otherwise good character. The Court explained that "[r]espondent lied in his answer to the complaint filed against him, in his deposition, and in an affidavit submitted to the trial court about his relationships with his employees" and concluded that such conduct warranted an actual suspension. *Kafantaris* at ¶14. Accordingly, the Court suspended respondent from the practice for one year, with six months conditionally stayed. Compare, *Disciplinary Counsel v. Trumbo* (1996), 76 Ohio St.3d 369 (ordering indefinite suspension for attorney's neglect in multiple legal matters, continually lying to her clients, lying to the court, and lying to Disciplinary Counsel in its attempt to investigate her actions). See also, *Disciplinary Counsel v. Insley*, 104 Ohio St.3d 424, 2004-Ohio-6564 (ordering indefinite suspension for an attorney who had fabricated a petition for the temporary custody of a minor, forged the signatures of a judge and magistrate on a falsified court order, and then lied to school officials).

Respondent's multiple lies, beginning with the charade regarding his "new" employment, the ensuing efforts to conceal the forgery of his ex-wife's signature on a power of attorney, and his willingness to file a false affidavit in court and lie to the disciplinary panel on that matter, illustrate a six-year pattern of deceptive and misleading conduct. Moreover, we note that, despite denying in his first disciplinary proceeding that depression had caused the web of deceit he had engaged in at that time, Respondent now considers his depression as "contributing" to both his prior and present disciplinary actions. It is evident to the Panel that while claiming self-

knowledge and remorse, Respondent remains in denial.

The Supreme Court has indicated that "in imposing a sanction, we will consider not only the duty violated, but the lawyer's mental state, the actual injury caused, and whether mitigating factors exist." *Cuyahoga Cty. Bar Assn. v. Boychuk* (1997), 79 Ohio St.3d 93, 97.

Regarding Respondent's mental state, the panel is not impressed by the testimony of Peter Courlas or the report of Dr. Meredith. We find the testimony of Dr. Beech, an independent, non-treating expert, to be more instructive. Dr. Beech found that Respondent experienced a major depressive episode, "precipitated in large part by the discovery of his forgery of his wife's signature in 2006." We agree with Dr. Beech and find that the most significant stressor triggering Respondent's depression was not forging a document, but getting caught doing so. Dr. Beech also noted that the timing of Respondent's presentment for treatment and the course of his recovery preclude the major depressive episode from being a primary factor in Respondent's late 2007 misconduct. Moreover, according to Dr. Beech, Respondent's condition was in remission at the time of the December 2007 misconduct at issue in this proceeding. Dr. Beech writes as follows: "Though he had some symptoms prior to his presentation for treatment (for as long as two years according to Mr. Courlas' intake form), it was not until the discovery of the forgery [of his ex-wife's signature] that his symptoms worsened, and intensified to such a level of severity as to warrant the diagnosis of a major depressive disorder. More applicable to the misconduct that occurred in December of 2007, his condition was very clearly in remission for several months prior to that incident, and this remission is reported both by Mr Farrell and is supported by the documentation of his treating physician." (Beech report, Relator's Exhibit E2 at 5) And, while Respondent attempted in his

first disciplinary matter to attribute his misconduct to a "crescendo of panic" and apparently also argues now that his filing of the false affidavit in his divorce proceedings was born out of similar panic over the potential loss of a lenient sanction in the 2007 Proceeding, we find his mental state to be nothing less than a carefully crafted effort to deceive.

We look next at the injury caused. Respondent contends that his misconduct was confined to his personal life and that he hurt no client. The Supreme Court has already rejected that reasoning and we do also. Respondent submitted a knowingly false affidavit to the Domestic Relations Court in an effort to salvage a lenient sanction in the 2007 Proceeding. He compounded that misconduct by testifying in the 2007 Proceeding that he had no knowledge of any unpaid taxes. The collateral damage cause by Respondent includes more than the injury to his ex-wife and child, it extends to and diminishes the public perception of the judicial system and the Bar.

Finally, we look for mitigating factors. Respondent has sought to persuade this Panel that he self reported his forgery of his ex-wife's signature on a power of attorney and the filing of his false affidavit in the divorce proceedings. In each instance, however, there was no self reporting. Respondent acted only after discovery of his misdeeds. Respondent sought to establish his depressive disorder as a mitigating factor. As noted above the Panel rejects that claim. Respondent presented three witnesses who testified to his good character and who, despite two disciplinary proceedings and the associated misconduct, asserted they would none the less refer clients to Respondent because of the quality of his services in his specialty and because Respondent was selfless in his efforts to assist a friend through the devastating affects of becoming a quadriplegic. We acknowledge Respondent's generous efforts on behalf of his

friend, but note, that while providing gratis legal advice to his friend, Respondent began his pattern of tax law violations. Though Respondent admitted and eventually stipulated to the underlying misconduct, his answer initially denied that such misconduct was a violation of the rules as alleged in the complaint. Finally, Respondent sought to put a mitigating "fire wall" between what he views as private misconduct and his public professional ethical responsibilities. The tragedy is that Respondent's linguistic splitting of hairs demonstrates he is still in denial and that, even with supervision by OLAP and his health care professionals, he remains at high risk to reoffend.

Notwithstanding our view that Respondent's conduct was reprehensible, given existing case law we are reluctant to permanently disbar Respondent from the practice of law, nor are we able to confidently establish a timeframe within which we believe Respondent could return to the ethical practice of law. Therefore, based on the seriousness of the offenses and the frequency of their occurrence, we recommend that Respondent be indefinitely suspended from the practice of law in Ohio after serving the full two year suspension for his 2007 disciplinary proceeding. In addition before making application to return to the practice of law Respondent shall: 1) submit evidence that he has paid the $50,000 obtained by the forged power-of-attorney or submit a document that releases his ex-wife from all obligation to repay that debt. A hold harmless agreement will not satisfy this condition; 2) submit evidence that he is current on all liabilities to Federal, State and local taxing authorities; 3) submit evidence that he is fully compliant with, and has paid all child support arrearages; and 4) submit evidence that he has committed no additional misconduct and satisfies all prerequisites for admission to practice law in Ohio.

DISSENT WRITTEN BY PANEL MEMBER KEYSE-WALKER

I have nothing to add to Judge Whitmore's thorough and thoughtful report, and I fully understand the rationale for the majority's recommended sanction. Unique factors, however, in my opinion, tip the balance in favor of the permanent disbarment recommended by Relator.

The case law presents a spectrum of appropriate sanctions for misconduct involving the failure to file tax returns, which varies based on the number of years involved, whether the omission was accompanied by deceit, and other factors. See, e.g.:

- *Cuyahoga Cty. Bar Assn. v. Freedman*, 107 Ohio St.3d 25, 2005-Ohio-5831 (one year suspension for attorney who neglected the affairs of two clients and failed to file tax returns for ten years, but presented evidence of a mitigating mental disability that had contributed to cause his misconduct);

- *Dayton Bar Assn. v. Lewis* (1999), 84 Ohio St.3d 517 (indefinite suspension for attorney who failed to pay income taxes for five years, misrepresented to a bankruptcy court that he had received extensions for filing the returns, acted dishonestly in a fee dispute, violated IOLTA rules, and had a prior disciplinary violation);

- *Dayton Bar Assn. v. Schram*, 122 Ohio St.3d 8, 2009-Ohio-1931 (permanent disbarment for attorney who had a prior public reprimand and who was convicted of a federal tax crime after failing to file federal, state, and municipal income taxes for over 20 years, and, for much of that time, failing to pay federal withholding for employees, notwithstanding numerous letters commending her professional competence, dedication to her clients, and philanthropic contributions, and her cooperation in disciplinary proceedings).

Although the facts in this case are somewhat similar to those in *Lewis*, I believe that the number and scope of deceptions involved – including playing fast and loose with the very system created to ensure the fitness of those who practice law in Ohio – distinguish this case from *Lewis* and warrant a more severe sanction.

As recited in *Cincinnati Bar Assn. v. Farrell*, 119 Ohio St.3d 529, 2008-Ohio-4540 (attached) ("*Farrell I*"), Respondent committed an elaborate series of deceptions and forgeries between December 2004 and December 2006 in order to create the appearance of a legal practice

that was even more successful than the six-figure income he earned in 2006. The following events lead me to conclude that Respondent thereafter systematically manipulated the disciplinary process to avoid the consequences of his misconduct:

- After the fraudulent scheme came to light in Respondent's divorce proceedings, and after his wife's divorce attorney threatened to report Respondent's misconduct if Respondent did not (11/15/07 Tr., p. 82), Respondent "self-reported" his fraudulent scheme to the Cincinnati Bar Association, but only that portion of the scheme revealed in the divorce proceeding.

- Respondent proceeded to execute an OLAP contract relating to treatment for his "episodic" depression and work out a consent agreement with Relator that proposed a sanction with no suspension of time.

- As Relator explained in filings and in the Supreme Court of Ohio at the oral argument of *Farrell I* (Oral Argument, 3/26/08), Relator withdrew its agreement to the proposed sanction when it learned that: 1) Respondent did not argue at the panel hearing that his depression contributed to cause his misconduct; and 2) Respondent was not making the $200-a-month payments required under his OLAP contract due to alleged financial strains even though his gross earnings reported on his 2006 K-1 return were around $102,000. Relator indicated Respondent continued his lavish life style by showing that he had continued to dine at expensive restaurants.

- At the November 2007 panel hearing in *Farrell I*, Respondent was questioned about a letter that his former wife (also an attorney) had received from the IRS regarding unpaid taxes. Respondent answered, under oath, "I'm not aware of anything regarding unpaid taxes." (Tr. (11/15/07), at 88.)

- About a month after the disciplinary hearing, on December 10, 2007, Respondent signed and filed an affidavit in the Hamilton County Domestic Relations Court in which he not only falsely swore that he had filed and paid joint tax returns for himself and his wife for federal, state, and local taxes from 1989 through 2005, but also attached documents purporting to be "identical to the documents that relate to the returns that were timely mailed to the appropriate taxing authorities."

- Upon the urging of his divorce attorney, who apparently discovered the falsity of the affidavit about a month after it was filed, Respondent "self-reported" the false affidavit, as well as the failure to file tax returns that had been left out of his earlier "self-reporting" to the Cincinnati Bar Association.

- Two months later, Respondent's defense attorney in *Farrell I* (different from his divorce attorney and different from the attorney representing him in *Farrell II)* argued to the Ohio Supreme Court that the Board's recommended sanction was too harsh because the proven misconduct related solely to Respondent's private life, did not involve court documents, and constituted "aberrant bizarre behavior" that would not be repeated.

- A year later, in March 2009, Respondent filed an Answer in *Farrell II* admitting to the facts of the Complaint (which tracked his second "self-reporting") but denying that those facts violated the attorney's Oath of Office or the Ohio Rules of Professional Conduct. (Answer, 3/11/09.) It was not until six months later that Respondent filed an Amended Answer (9/10/09) admitting the violations.

- At the hearing of *Farrell II*, more facts came to light on the elaborate deceptions required to hide his failure to pay taxes, including having his attorney spouse sign "draft" tax returns, and Respondent continued to manufacture excuses at the same time he admitted the misconduct (i.e., his testimony that he did not file the tax returns his wife signed because he believed you "couldn't" file the return if you didn't have the money in the bank to pay the taxes). In a similar vein, Respondent attempted to revive his treatment for episodic depression as a mitigating factor, notwithstanding his abandonment of that claim in *Farrell I*. When confronted with the Supreme Court's unequivocal statement in *Farrell I* that "Respondent concedes that the depression did not contribute to cause his duplicity" (attached, ¶18), Respondent indicated he did not wish to "quibble" about "semantics," but believed that depression "contributed" to his multitudinous deceits. And he claimed that he had not been untruthful in his prior disciplinary hearing on the issue of unpaid taxes, because he believed from the "context" of the question being asked that counsel was inquiring about a client matter.

Respondent showed remorse at the hearing in *Farrell II*, but it is not clear how much of that remorse arose from his loss of prestige and financial security that accompanied a once lucrative law practice, as compared to remorse for repeatedly violating his Oath of Office and the Ohio Disciplinary Rules. As Dr. Beech observed, the biggest stressor triggering Respondent's episodic depression was not forging documents, but "getting caught" forging documents. The same might be said for his expressions of remorse.

In determining the proper sanction to recommend, I also considered the number and nature of the incidents of misconduct in toto. In *Farrell I*, the Supreme Court imposed a two-

year suspension with one year stayed for Respondent's use of forged letterhead from banks, corporations, and the United States Postal Service to fabricate letters, and forgery of a power of attorney (notarized by a too-trusting attorney who was publicly reprimanded as a result), to obtain a $50,000 loan. That sanction was based in part on representations that Respondent's deceptions "only" involved his private life, "only" spanned a two-year period, and constituted a single, bizarre and inexplicable aberration. What we now know is that this "web of deception" (*Farrell I*, ¶17) began at least two years earlier and continued after the November 2007 panel hearing in *Farrell I*; and included the filing of a false affidavit in a court of law, and the failure to file federal, state, and local taxes from 2002 through 2006 while misrepresenting to his attorney spouse, divorce counsel, and the domestic relations court that the joint returns had been filed and the taxes paid.

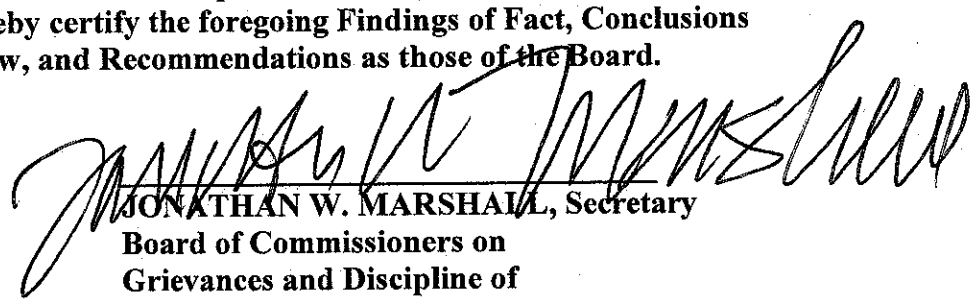
If *Farrell I* had considered those additional acts of misconduct spanning 2002 through January 2008 (when he "self-reported" the false affidavit and failure to file tax returns), it might well have resulted in an indefinite suspension. When Respondent's self-serving manipulations of the Cincinnati Bar Association's grievance committee, OLAP, two panels of this Board and the Ohio Supreme Court are superimposed onto his numerous violations of disciplinary rules over the span of six years, it is understandable why Relator recommends permanent disbarment. I agree.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on October 7, 2010. The Board adopted the Findings of Fact and Conclusions of Law of the Panel. The Board, however,

recommends based on the factors enumerated in the Panel's dissent, that Respondent, William Farrell, be permanently disbarred in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

CINCINNATI BAR ASSOCIATION *v.* FARRELL.

[Cite as *Cincinnati Bar Assn. v. Farrell*, 119 Ohio St.3d 529, 2008-Ohio-4540.]

Attorneys at law — Misconduct — Two-year suspension with partial stay on conditions.

(No. 2007-2395 — Submitted March 26, 2008 — Decided September 16, 2008.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 07-011.

Per Curiam.

{¶ 1} Respondent, William I. Farrell of Cincinnati, Ohio, Attorney Registration No. 0043635, was admitted to the practice of law in Ohio in 1989. The Board of Commissioners on Grievances and Discipline recommends that we suspend respondent's license to practice for two years, staying the last year of the suspension on conditions, based on findings that he fabricated documents and also forged a signature to obtain a loan. We agree that respondent violated the Code of Professional Responsibility as found by the board and that the recommended sanction is appropriate.

{¶ 2} Relator, Cincinnati Bar Association, filed a complaint charging respondent with violations of DR 1-102(A)(3) (prohibiting a lawyer from engaging in illegal conduct involving moral turpitude) and 1-102(A)(4) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). A panel of three board members heard the case and considered the evidence, including the parties' stipulations of fact and misconduct and joint proposal for a one-year suspension, stayed on the condition of respondent's continued mental-health treatment. The panel found the cited

Disciplinary Rule violations, but recommended a two-year suspension with one year stayed on conditions, including continued mental-health treatment and probation. The board adopted the panel's findings of misconduct and its recommendation.

{¶ 3} Respondent has objected to the board's recommendation, arguing that his ethical breaches do not warrant such a severe sanction. He claims that whatever length of suspension is imposed, the sanction should be completely stayed in accordance with the proposed sanction of the parties, precedent, and the strength of the mitigating evidence. On review, we overrule the objection, adopt the board's findings of misconduct, and accept the recommendation for a two-year suspension with one year stayed on the remedial conditions.

Misconduct

{¶ 4} Since his admission to practice, respondent has worked in a small law firm, developing expertise in workers' compensation and Social Security disability law. In early 1997, respondent became a partner in the firm, which continued in practice as Finkelmeier and Farrell. As of the panel hearing, respondent was still practicing with his firm.

{¶ 5} Though content in his practice at Finkelmeier and Farrell, respondent and his wife realized that his income from the firm alone would not sustain their affluent lifestyle. His wife, also a practicing lawyer, mentioned sometime during 2004 her desire to cut back her work schedule to spend more time with their young daughter, and she suggested that the family move to smaller quarters. Respondent promised instead to obtain more lucrative employment. But rather than actually quit his law firm, respondent merely pretended to have found another job.

{¶ 6} To that end, respondent fabricated a letter dated December 10, 2004, purporting to be a job offer from the chief operating officer of Sheakley Uniservice, Inc. The letter, written on what appeared to be the corporation's

letterhead, specified a job title of assistant general counsel, a $150,000 annual salary, an incentive-pay package, and various health insurance and other benefits. Respondent presented the fabricated letter to his wife to show that he had another job.

{¶ 7} Respondent fabricated another letter, dated June 13, 2005, purporting to be a job offer from the director of risk management for the Kroger Company. The letter specified a job title of assistant director of risk management, a $168,000 annual salary, an incentive-pay package, and various health-insurance and other benefits. Respondent also presented this letter to his wife, and because of it, she resigned her position as a senior associate in a law firm, leaving a job that paid an annual salary of about $100,000.

{¶ 8} Respondent had hoped to increase the income from his practice enough to sustain his family, but by March 2006, he needed money. Respondent forged his wife's signature on a power of attorney, intending to use the document to obtain a $50,000 increase in their line of credit. Then, to secure the necessary notarization on the power of attorney, respondent lied about the authenticity of the forged signature to the attorney he asked to notarize it. That lawyer notarized the false signature.[1]

{¶ 9} With the forged power of attorney, respondent borrowed an additional $50,000 on a line of credit, secured by his family's home, from Fifth Third Bank. His wife later happened upon a bank statement and questioned him about the extension of credit. To quell her suspicions, respondent fabricated three more letters, all dated May 5, 2006, and purporting to be written on Fifth Third letterhead.

{¶ 10} The first letter purported to be from the bank's executive vice-president of retail banking operations; the second purported to be from the bank's

1. We publicly reprimanded the lawyer in *Cincinnati Bar Assn. v. Gottesman*, 115 Ohio St.3d 222, 2007-Ohio-4791, 874 N.E.2d 778.

general counsel, executive vice-president, and corporate secretary; and the third purported to be from the bank's president and chief executive. Respondent addressed each letter to himself and his wife, and in each supposedly redressed some issue with one or another of the couple's bank accounts. The letters, all at least one page long, specified in great detail how the $75,000 credit limit had resulted from a "counterfeit" equity line of credit and how the discrepancies had been or were being remedied. None of these elaborate explanations was true.

{¶ 11} The bank letters temporarily allayed respondent's wife's concerns about the increase in their credit line. To keep her in the dark, respondent next stopped mail delivery to their home. His wife soon noticed that they were not getting mail, and respondent fabricated another letter, this one purporting to be from the United States Postal Service on post office letterhead. With this letter, dated May 19, 2006, an assistant director of internal investigations supposedly assured the couple that their mail had not been held or diverted in the last year.

{¶ 12} Respondent eventually revealed his duplicity to his wife, and in December 2006, the couple divorced. Respondent's divorce decree requires that respondent repay the $75,000 line of credit from his funds or from the sale of the former couple's home. As of the oral argument in this case, the debt remained outstanding.

{¶ 13} At the urging of his wife's attorney, respondent reported his fabrications and forgery to relator. He has stipulated that he acted illegally in procuring a loan based on false information, see R.C. 2921.13(A)(8) (providing false information to obtain a loan is a misdemeanor of the first degree), and thereby violated DR 1-102(A)(3). He also stipulated that he had acted deceitfully, in violation of DR 1-102(A)(4). We accept these stipulations and the board's findings as to this misconduct.

Sanction

{¶ 14} "When imposing sanctions for attorney misconduct, we consider the duties violated, the actual or potential injury caused, the attorney's mental state, and sanctions imposed in similar cases." *Cleveland Bar Assn. v. Norton*, 116 Ohio St.3d 226, 2007-Ohio-6038, 877 N.E.2d 964, ¶ 18. Before making a final determination, we also weigh evidence of the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."). *Cleveland Bar Assn. v. Glatki* (2000), 88 Ohio St.3d 381, 384, 726 N.E.2d 993; *Disciplinary Counsel v. Broeren*, 115 Ohio St.3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21. Because each disciplinary case involves "unique facts and circumstances," BCGD Proc.Reg. 10(A), we are not limited to the factors specified in the rule and may take into account "all relevant factors" in determining which sanction to impose. BCGD Proc.Reg. 10(B).

A. Duties Violated, Injury, Mental State, and Case Law

{¶ 15} With his illegal act in violation of DR 1-102(A)(3), respondent breached his duty to the public, the legal profession, and the judicial system to obey the law. This breach "lessens public confidence in the legal profession because obedience to the law exemplifies respect for the law." *Cleveland Bar Assn. v. Stein* (1972), 29 Ohio St.2d 77, 81, 58 O.O.2d 151, 278 N.E.2d 670. With his fabrications, respondent violated his duty to act with the integrity that a member of the legal profession must exhibit. Indeed, when a lawyer tried to persuade an insurance company to settle by inventing portions of a nonexistent court transcript in which a tortfeasor supposedly admitted fault for an auto accident, we said:

{¶ 16} "Lawyers who choose to engage in fabrication of evidence, deceit, misrepresentation of facts, and distortion of truth do so at their peril. They are admonished that the practice of law is not a right, and our code of professional

responsibility demands far more of those in our profession." *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, 872 N.E.2d 261, ¶ 29.

{¶ 17} Respondent's misconduct also caused much harm. Over a period of 18 months, respondent wove a web of deception, fictitiously composing in meticulous detail two letters about job offers from actual companies, a supposedly official letter assuring the recipients of proper mail service, and three letters about a bank's efforts to remedy credit "fraud" that in fact respondent had perpetrated through a forged power of attorney. By doing so, respondent not only deceived his spouse, he also played upon the trust of the attorney who falsely notarized the power of attorney, drawing that attorney into the disciplinary process. Respondent then used the forgery to dupe a bank into lending him $50,000, a loan that is now at risk for his inability to repay it.

{¶ 18} As to his mental state, respondent admitted having intentionally forged his wife's signature and fabricated the six letters in evidence. He has no explanation for what he describes as his bizarre and uncharacteristic behavior, except to say that he had lied to avoid losing his wife and their daughter. The parties do not dispute that respondent suffered from a depressive disorder during the months in which he committed his ethical breaches; however, respondent concedes that the depression did not contribute to cause his duplicity. Absent this evidence, we can only conclude from the facts before us that respondent engaged in a "deliberate effort to deceive" others with his fabrications and forgery. *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510, 858 N.E.2d 368, ¶ 13.

{¶ 19} Respondent acknowledges our statement in *Columbus Bar Assn. v. Stubbs*, 109 Ohio St.3d 446, 2006-Ohio-2818, 848 N.E.2d 843, ¶ 11, that "[i]llegal and dishonest conduct on the part of an attorney is always troubling and usually warrants an actual suspension from the practice of law." Yet as respondent observes, *Stubbs* is an exception to that rule. There, we issued a six-

month stayed suspension to a lawyer who, after receiving a traffic citation, falsified a document to show the Bureau of Motor Vehicles that she had automobile insurance. She also failed to appear for trial when charged with falsification and to pay fines after pleading guilty. Id. at ¶ 4.

{¶ 20} The lawyer in *Stubbs* engaged in but a single dishonest act in violation of DR 1-102(A)(4). The misconduct in that case thus bears little resemblance to this situation, in which respondent has engaged in multiple acts of duplicity. Moreover, with her lack of any prior disciplinary record, remorse, cooperation throughout the disciplinary process, and other mitigating attributes, including a depressive condition as defined by BCGD Proc.Reg. 10(B)(2)(g) that did contribute to cause her misconduct, the lawyer in *Stubbs* convinced us that she would not commit a similar ethical infraction again. In contrast, respondent cannot explain his fabrications and forgery, so we have nothing from which to conclude that he will not repeat his wrongdoing.

{¶ 21} When a lawyer plans and administers "a multistep process to defraud" those entitled to rely on the validity of documents, the violation of DR 1-102(A)(4) warrants an actual suspension from the practice of law. *Disciplinary Counsel v. Shaffer*, 98 Ohio St.3d 342, 2003-Ohio-1008, 785 N.E.2d 429, ¶ 13. A lawyer's "[r]epeated or continuous attempts to mislead" fall into the same category. *Disciplinary Counsel v. DeLong*, 98 Ohio St.3d 470, 2003-Ohio-1743, 786 N.E.2d 1280, ¶ 8. And contrary to respondent's implication, a course of deceitful conduct is hardly made more tolerable because it did not victimize a client or occur in court. *Cleveland Bar Assn. v. McMahon*, 114 Ohio St.3d 331, 2007-Ohio-3673, 872 N.E.2d 261, ¶ 23. Thus, for respondent's "continuing course of deceit and misrepresentation designed to cover up" wrongdoing, a period of actual suspension is appropriate. *Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St.3d 187, 190, 658 N.E.2d 237.

B. Aggravating and Mitigating Factors

{¶ 22} The mitigating effect of respondent's having no prior disciplinary record, his cooperation during the disciplinary proceedings, see BCGD Proc.Reg. 10(B)(2)(a) and (e), and the remorse he insists he has shown are not enough to warrant leniency. Self-interest motivated respondent's fabrications and forgery, he engaged in a pattern of misconduct and committed multiple offenses, and he has not made restitution by paying off the unauthorized extension of credit. See BCGD Proc.Reg. 10(B)(1)(b), (c), (d), and (i). Moreover, respondent did not present evidence of his good character and reputation, a mitigating factor under BCGD Proc.Reg. 10(B)(2)(e), nor did he prove that his mental disability contributed to cause his misconduct, documentation that BCGD Proc.Reg. 10(B)(2)(g) requires for mitigating effect.

C. Conclusion

{¶ 23} Having found that respondent violated DR 1-102(A)(3) and (4), that an actual suspension is warranted for this misconduct, and that the balance of mitigating and aggravating factors does not weigh in his favor, we accept the sanction recommended by the board. We hereby suspend respondent from the practice of law in Ohio for two years. The second year of the suspension period will be stayed on the conditions that respondent (1) comply with the terms of the Ohio Lawyer's Assistance Program ("OLAP") he entered on February 26, 2007, (2) successfully complete a term of probation pursuant to Gov.Bar R. V(9), effective until the expiration of his OLAP contract, and (3) commit no further violations of the Disciplinary Rules. If respondent violates the terms of the stay or probation, the stay will be lifted, and respondent shall serve the entire two-year suspension.

{¶ 24} Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, and CUPP, JJ., concur.

LANZINGER, J., concurs in judgment only.

Ernest F. McAdams Jr. and Kevin P. Roberts, for relator.

John J. Mueller, L.L.C., and John J. Mueller, for respondent.
