

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

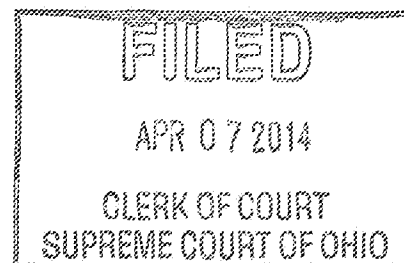
In re:	:	14-0544
Complaint against	:	Case No. 13-022
Magistrate Stephen Edwin Weithman Attorney Reg. No. 0027094	:	Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio
Respondent	:	
Disciplinary Counsel	:	
Relator	:	

OVERVIEW

{¶ 1} This matter was heard on January 24, 2014, in Columbus before a panel consisting of Robert L. Gresham, Robert B. Fitzgerald, and Lawrence R. Elleman, chair. None of the panel members resides in the district from which the complaint arose or served as a member of a probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 6(D)(1).

{¶ 2} Donald M. Scheetz and Joseph M. Caligiuri appeared on behalf of Relator. Respondent was represented by Bradley N. Frick.

{¶ 3} This case involves a sitting magistrate in the Delaware County Court of Common Pleas Domestic Relations Division. The original complaint alleged misconduct, which occurred in a single post-decree matter, for abusive and disrespectful words and actions toward a litigant and her lawyer in 2006 to 2008 (the Davis/Spriggs matter).



{¶ 4} In July 2013, the parties submitted an agreement for discipline by consent as to the Davis/Spriggs matter. The panel chair rejected the discipline by consent for noncompliance with BCGD Proc. Reg. 11 as no affidavit of Respondent was attached.

{¶ 5} In December 2013, Relator filed an amended complaint that repeated the allegations regarding the Davis/Spriggs matter as Count One and added Count Two involving misconduct in a divorce case that occurred in June and July 2013 (the Krawczyk matter). The misconduct in the Krawczyk matter was in some respects similar to the misconduct that occurred five to seven years earlier in the Davis/Spriggs matter.

{¶ 6} On January 14, 2014, the parties filed agreed stipulations and motion to waive evidentiary hearing, which contained factual stipulations, stipulated violations, and an agreed sanction of a one-year suspension, fully stayed on conditions. The parties' joint motion to waive an evidentiary hearing was denied by the panel.

{¶ 7} Respondent was the sole witness at the hearing. Relator offered the agreed stipulations. The stipulations were supplemented by 15 joint exhibits and a composite exhibit containing 11 character letters. The panel adopted the stipulated facts and the bulk of the stipulated violations, and recommends a one-year suspension, fully stayed on conditions.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

{¶ 8} Respondent was admitted to the practice of law in the state of Ohio on November 9, 1974. Respondent is a graduate of the University of Michigan Law School. Respondent is 64 years old. Respondent has been a domestic relations magistrate for 33 years, serving in Crawford and Morrow counties and currently in Delaware County.

{¶ 9} Respondent is subject to the former and the current Code of Judicial Conduct, Code of Professional Responsibility, Rules of Professional Conduct, and Rules for the Government of the Bar of Ohio.

{¶ 10} Respondent manages a busy case docket, including highly contentious and emotional domestic litigation. Respondent estimates that counting divorce trials, post decree matters, civil protection orders, child support enforcement agency matters, and other miscellaneous matters, he conducts approximately 1,000 hearings per year. Respondent prides himself on quick turnaround of his written decisions. Respondent enjoys his work and would like to work one or two more years after he turns 65 this year. Hearing Tr. 47-49, 51-52, 62-63, 73.

{¶ 11} Respondent is a highly motivated public servant. Respondent is a past member of the Board of Trustees for the Ohio Association of Magistrates. Respondent has developed legal forms for use in his court and has developed a unique computerized docket and case management system that he has attempted to convince other Ohio domestic relations magistrates to use in their courts. *Id.* 47-52.

{¶ 12} The eleven character letters are from attorneys from Franklin and Delaware Counties who practice domestic relations law before Respondent attest that he is a highly respected judicial officer. These letters describe him as hardworking, fair, impartial, efficient, expeditious, intelligent, and a legal scholar. Ex. 16A - 16K.

{¶ 13} Certain of the character letters also mention other aspects of Respondent's character that are somewhat consistent with Respondent's behavior in the Davis/Spriggs and the Krawczyk matters. Specifically, some of the letters describe Respondent as quick-tempered.

Respondent is also described as having a quirky or unusual sense of humor that he sometimes uses to break the tension. See Ex. 16A, 16C, 16D, 16F, 16G, 16K, 16H.

{¶ 14} Respondent testified at the hearing that he experiences emotional highs and lows that he believes have led to some of his misconduct. Respondent acknowledged that he has a “very, very quick temper. I mean, we can be talking and you’ll say something and I’ll get really mad really quick; and that is really inappropriate.” Hearing Tr. 20. As to his sense of humor, Respondent acknowledges that “in a domestic setting, there is a lot of tension. \* \* \* And sometimes a little sense of humor lightens the tension. Sometimes it turns into disaster. So I’m going to not use it.” Hearing Tr. 23.

#### **Count One-Davis/Spriggs**

{¶ 15} The misconduct regarding the Davis/Spriggs matter is set forth in detail in paragraphs 3-38 of the agreed stipulations, which the panel adopts and incorporates into its findings of fact and summarizes below.

{¶ 16} The Davis/Spriggs matter involved a former wife’s motion to hold her former husband in contempt of court for distributing nude pictures over the internet of the former wife in violation of the divorce decree. The litigation lasted over two years resulting in numerous discovery disputes and a five-day trial on the merits. Respondent’s misconduct consisted of several isolated incidents occurring at various times during this bitterly contested litigation.

{¶ 17} On several occasions during status conferences and motion hearings, Respondent conducted himself in an unprofessional and undignified manner and treated the wife and her lawyer with extreme disrespect. During a status conference regarding the logistics of the wife’s expert examining the husband’s computers, Respondent mockingly imitated the voice of the wife’s attorney over the telephone in her presence. After that hearing, Respondent walked into

the hallway where the wife was seated and “slowly ogled” the wife “from head to toe in a demeaning and degrading fashion.” Respondent later told the wife’s attorney that she would need to provide Respondent with a CD containing intimate photos of Davis’ then current girlfriend. At the hearing, Respondent explained that the photos of the girlfriend were relevant to the proceeding, but he acknowledged that in asking for them. “I probably said some wise thing.” Stipulation 20, 23, 26; Hearing Tr. 29-36.

{¶ 18} Respondent acknowledged that all of the above comments were inappropriate. Respondent admitted that he was “being a wise ass, and not thinking before you talk.” Respondent acknowledged that his looking at the wife in a manner that she perceived to be degrading was “stupid” on his part. *Id.* 21, 32.

{¶ 19} During a discovery motion hearing regarding the lawyers’ having withheld requested discovery, Respondent lost his temper stating: “This is so goddamn simple. If you give the discovery and don’t do all this bullshit, I don’t have to sit here for hours and listen to this crap. So everybody’s excused. Goddamn it. Comply with the discovery and shut up once in a while. You make 17 hairline things, we’ll do 8 of them but not these 9. Stupid. All Franklin County attorneys are stupid.” Stipulation 29; Ex. 5.

{¶ 20} While the wife’s attorney was addressing Respondent in a pretrial conference regarding recently filed motions, Respondent allowed the husband’s attorney to repeatedly throw paperclips at Respondent’s head with one or more striking Respondent on the forehead. Respondent took no action to stop the lawyer from creating this disruption. Stipulation 31.

{¶ 21} Later during the trial, and just before the wife was to take the stand for cross-examination, Respondent jokingly told the husband’s attorney that Respondent would give the husband’s attorney a dollar if he could make the wife cry during her cross-examination. At the

same time, Respondent removed a dollar bill from his wallet and placed it on the bench.

Stipulation 33; Ex. 6.

{¶ 22} After the trial concluded, Respondent issued a written decision finding in favor of the husband because the wife was unable to establish that the husband published the photographs after the date of the divorce decree. This decision was upheld by the common pleas judge and by the Fifth Appellate District Court of Appeals. Stipulation 34, 36, 37; Ex. 3, 8, 9.

{¶ 23} Respondent believes he was totally impartial, in a subjective sense, in handling the Davis/Spriggs matter. Hearing Tr. 27-28. However, Respondent's words and deeds, considered in the aggregate, would create, in the mind of a reasonable objective observer, an appearance of bias against the wife and her attorney.

{¶ 24} The panel unanimously concludes that Relator has proven by clear and convincing evidence that Respondent violated the following:

- Canon 2 of the former Code of Judicial Conduct [a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary]. "The test for compliance with Canon 2 appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." Commentary to Canon 2. Respondent's disrespectful treatment of the wife and her attorneys created an appearance of bias against them.
- Canon 3(B)(3) [a judge shall require order and decorum] and Canon 3(B)(4) [a judge shall be patient, dignified, and courteous to litigants, witnesses and lawyers], both of the former Code of Judicial Conduct. Respondent allowed excessive familiarity toward Respondent by the husband's attorney and was impatient, disrespectful, and discourteous to the wife and her attorney.
- DR-1-102(A)(5) [conduct that is prejudicial to the administration of justice] as to conduct prior to February 1, 2007, and Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice] as to conduct subsequent to February 1, 2007.

## Count Two- Krawczyk

{¶ 25} The misconduct regarding the Krawczyk matter is set forth in detail in paragraphs 39-55 of the agreed stipulations, which the panel adopts and incorporates into its findings of fact and summarizes below.

{¶ 26} The misconduct arose in connection with a divorce case which was scheduled for a combined divorce trial and Civ. R. 75 motion hearing on July 30, 2013. The Civ. R. 75 motion had been filed by the husband to modify the previously filed temporary orders regarding custody of the couple's children pending the final divorce decree.<sup>1</sup> Hearing Tr. 43; Ex. 11.

{¶ 27} In a June 18, 2013 conference with counsel, the husband's lawyer questioned whether the July 30 hearing date would allow sufficient time for Respondent to make a decision prior to the start of the school year. Respondent angrily and in vulgar and intemperate language berated the attorney and reiterated that the Civ. R. 75 motion hearing would occur on July 30 and that the trial would occur on September 10 to 12, 2013. Stipulation 41-44.

{¶ 28} On July 30, 2013, a particularly busy and stressful day for Respondent, the parties and their attorneys appeared at the courthouse and began to engage in settlement negotiations while Respondent was conducting other business. At one point during the day, the husband's attorney reported to Respondent that the parties were not in agreement on child support issues for the interim period. Respondent stated "let's just start the hearing." Respondent then began yelling, "I don't know what it is with the Franklin County attorneys, and these Franklin County Attorneys, but they all have to have these Rule 75 hearings in every case, Rule 75 hearings all the time. I'll give you your Rule 75 hearing, but you won't get a decision on this until the

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<sup>1</sup> Rule 75 of the Ohio Rules of Civil Procedure relates to divorce, annulment and legal separation actions, and among other things, sets forth procedures for certain temporary orders including spousal support, child support, and custody pendent site.

divorce is tried and I'll continue this divorce for two more years." Stipulation 45-48; Hearing Tr. 43-46.

{¶ 29} While in the courtroom and in the presence of the parties and witnesses, Respondent repeated his threat to continue the divorce for two years. As Respondent left the courtroom, he began shouting, "He (the husband) makes \$150,000 per year and he's trying to get out of paying six weeks of support." There was no rational or legal basis for threatening to continue the divorce case for two years out of spite, or for Respondent to angrily prejudge the merits of husband's Civ. R. 75 motion. Stipulation 50-51.

{¶ 30} Later in the day on July 30, Respondent made additional disparaging remarks about the husband and again berated the husband's attorney in language laced with profanity for filing a Civ. R. 75 motion six weeks before trial. Respondent later apologized to the parties for his shouting as "poor form" and "bad sportsmanship." Stipulation 52, 54-55.

{¶ 31} Respondent did not recuse himself from the case despite having yelled at husband's counsel in abusive and vulgar language on June 18 and on several occasions on July 30 and having angrily expressed an apparent opinion with regard to the merits of what he believed to be the subject of the Civ. R. 75 motion before having heard the motion.

{¶ 32} On August 2, 2013, the husband's lawyer filed a motion to remove Respondent from the case, submitted an affidavit of that date describing the details of Respondent's misconduct on June 18 and July 30, and swore to his belief that Respondent cannot "fairly and impartially decide this case or any other case involving me or any member of his [sic] firm and ask that the Magistrate be removed from this case or that the Magistrate recuse himself from this case and all cases involving this counsel for his firm." Respondent was promptly removed from



the case and from another case in which the husband's attorney was involved. Ex. 11-12; Hearing Tr. 52-53.

{¶ 33} The panel unanimously concludes that Relator has proven by clear and convincing evidence that Respondent violated the following:

- Jud. Cond. R. 1.2 [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary] and Jud. Cond. R. 2.11 [a judge shall disqualify himself in any proceeding in which the judge's impartiality might be questioned]. The standard for violation of Jud. Cond. R. 1.2 and Jud. Cond. R. 2.11 is an objective one. *Disciplinary Counsel v. Medley*, 93 Ohio St.3d 474, 475, 2001-Ohio-1592, citing *In re Complaint against Harper*, (1996) 77 Ohio St.3d 211. Respondent's angry and vulgar outbursts at husband's counsel, his disparaging remarks about the husband, and his apparent prejudgment of the husband's Civ. R. 75 motion merely because the husband made \$150,000 per year created an appearance of bias against the husband.
- Jud. Cond. R. 2.2 [a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially]. Respondent's threat to delay the divorce hearing out of spite for the husband having filed a Civ. R. 75 motion and Respondent's apparent bias against the husband and his lawyer constitute a violation of this rule.
- Jud. Cond. R. 2.8(B) [a judge shall be patient, dignified and courteous to litigants, witnesses, and lawyers]. Respondent's angry outbursts against the husband and his lawyer in the presence of parties and witnesses constitute a violation of this rule.
- Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice].

{¶ 34} The parties stipulated that Respondent violated Canon 1 of the current Code of Judicial Conduct [a judge shall uphold and promote the independence, integrity and impartiality of the judiciary]. The panel declines to find such a violation because under the current code, the canons provide guidance in interpreting and applying in the code, but a judge may be disciplined only for violation of a specific rule. Code of Judicial Conduct, Scope [2].

## AGGRAVATION, MITIGATION, AND SANCTION

{¶ 35} The parties have stipulated, as an aggravating factor, and the panel agrees that Respondent has committed multiple offenses.

{¶ 36} The parties have stipulated as mitigating factors, and the panel agrees, that Respondent has no previous discipline, that Respondent did not act with a dishonest or selfish motive, that Respondent has a good reputation and character, that Respondent has provided full and free disclosure, and he was cooperative throughout this disciplinary proceeding.

{¶ 37} The panel finds as an additional mitigating factor that Respondent has expressed remorse and a clear understanding as to the deleterious effect that his misconduct has had on the judicial process. Respondent recognizes the importance of impartiality: He testified: “So if they have the feeling that it’s partial, that you’re prejudiced against them, they have no alternative. They have no way to address that.” And further that “they need to have faith that I’m impartial.” As to the inappropriate use of humor in a disrespectful manner, Respondent testified: “Well, people have certain expectations of the judiciary; and if you go in and just start joking, that isn’t what they expect.... You expect a Magistrate to be solemn and not be joking about their personal problems.” He further testified: “Well, it’s like the day of the dollar bill on the bench. I could see the hurt in Claudia’s Spriggs’ eyes. This is not what she trained for. This is not how she anticipated a court session would go; and, you know, I don’t want to cause that. I want litigants to feel that they’ve had a fair shake.” Hearing Tr. 24-27, 80.

{¶ 38} The panel finds as a further mitigating factor that Respondent seems committed to a course of psychological and psychiatric treatment designed to control his anger, stress, and anxieties. Immediately following his misconduct in the Krawczyk matter, Respondent, on the advice of his attorney, consulted with Dr. Tuck Saul, a Ph.D. psychologist. Respondent has seen

Dr. Saul six times since September 17, 2013. Dr. Saul has issued a written opinion that Respondent has “been forthcoming, and has worked hard to correct the ways in which he shows his anger. He has been successful in uncovering what the major triggers have been and have [sic] practiced ways to interrupt this pattern.” Respondent is now working on a treatment plan. Respondent “has made significant improvement, reporting only one incident of acting out of his frustration/anger since October through the end of the year.” Dr. Saul further opines that Respondent’s prognosis is “very good if he remains on the medication and receives and continues with follow up counseling.” Ex. 13; *Id.* 56.

{¶ 39} Upon the recommendation of Dr. Saul, Respondent has also consulted with Dr. Maureen Stark, a psychiatrist who has seen Respondent six times since September 25, 2013. Dr. Stark has made a diagnosis of “probable Cyclothymic Disorder.”<sup>2</sup> The treatment plan with Dr. Stark includes both pharmacotherapy and psychotherapy. Dr. Stark’s written opinion states that “it appears that Mr. Weithman has made considerable progress since I first saw him. He has felt much less irritable and his mood has been pretty stable. Furthermore, his anxiety has abated significantly and he is feeling much less stressed. He has found some positive outlets and coping strategies. Thus at this time his prognosis seems to be good.” Ex. 14

{¶ 40} Respondent appears to be committed to the recommended treatment plans developed with his doctors. Upon receipt of the opinion letters from Drs. Saul and Stark in early January 2014, Respondent entered into a four-year contract with OLAP dated January 9, 2014. The OLAP plan calls for Respondent to telephone OLAP at least once a month and to confirm the progress of his counseling. Ex. 15; *Id.* 56-62.

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<sup>2</sup> The panel takes judicial notice of the Mayo Clinic website for a description of this disorder. See <http://www.mayoclinic.org/diseases-conditions/cyclothymia/basics/definition/con-20028763> (last checked March 31, 2014). Cyclothymia Disorder is a mood disorder that causes emotional ups and downs, but they are not as extreme as in bipolar disorder.

{¶ 41} The panel does not find, and the parties have not contended, the existence of a mitigating factor pursuant to BCGD Proc. Reg. 10(B)(2)(g). The evidence does not clearly establish that the diagnosed mental condition contributed to the cause of all the misconduct. Respondent has not yet completed a sustained period of successful treatment and his doctors have not made the required prognosis that he can practice law in a competent, ethical, and professional manner. However, the panel is persuaded that Respondent has a clear recognition of the problems caused to the legal system by his misconduct, and appears committed to change and to a treatment plan designed to reduce the likelihood of reoccurrence.

{¶ 42} Relator and Respondent jointly recommend that Respondent receive a one-year suspension, fully stayed on condition that Respondent maintains compliance with his OLAP contract and commits no further misconduct. In support of their recommendation, the parties rely upon *Disciplinary Counsel v. McCormack*, 133 Ohio St.3d 192, 2012-Ohio-4309 and *Disciplinary Counsel v. Elum*, 133 Ohio St.3d 500, 2012-Ohio-4700. The panel has reviewed the cases cited by the parties and other relevant case law and agrees with the recommended sanction.

{¶ 43} The most comparable case in Ohio is *McCormack, supra*. That case also involved impatient, intemperate, and irrational behavior by a magistrate in a domestic relations case. The violations of the former and the current Codes of Judicial Conduct were almost identical to those involved in this case.

{¶ 44} The misconduct in *McCormack* was limited to just one domestic relations case while Respondent's misconduct related to two cases, albeit two cases five to seven years apart from each other. However, Magistrate McCormack's misconduct was arguably more egregious than Respondent's misconduct in either the Davis/Spriggs matter or the Krawczyk matter. At

four of the six hearings that McCormack conducted in post-decree matters, he conducted himself in an impatient, undignified, and discourteous manner. *Id.* ¶4. His misconduct was so egregious that the common pleas court had to declare a mistrial in one of the post-decree matters.

Moreover, the common pleas judge found that McCormack had improperly conducted a hearing on a matter when there was no motion pending on that issue and when the parties had no notice of the nature of the hearing. *Id.* ¶13. The misconduct in *McCormack* caused harm to the litigants who bore the time commitment and expense of multiple hearings. In contrast, Respondent's misconduct in the Davis/Spriggs and the Krawczyk matters did not cause quantifiable damage to the litigants.

{¶ 45} In *McCormack*, the parties had stipulated, and the Board had recommended a six-month, fully stayed suspension on condition that the respondent engaged in no further misconduct. The Board's recommendation was based in part on an agreed finding that Magistrate McCormack had been diagnosed with a mental disability by a qualified healthcare professional and received treatment from a psychiatrist who had opined that the mental disability contributed to the cause of the misconduct and that he can presently practice law in a competent, ethical, and professional manner without restraint. However, the Supreme Court was concerned that Magistrate McCormack had not shown a sustained period of successful treatment; his mental health treatment was for only a few months immediately before the parties agreed to the stipulations. The Supreme Court therefore rejected the Board's recommendation and instead imposed a one-year suspension, all stayed. The Supreme Court also imposed additional conditions to the stay requiring McCormack to submit to a mental evaluation conducted by OLAP, if OLAP determined it necessary to enter into a contract with OLAP, to follow the recommendations of OLAP, and for a one-year monitored probation.

{¶ 46} Similarly, in this case, Respondent has had only four months of treatment. Respondent's prognosis is considered good, but only if he remains on medication and continues his treatment. A one-year suspension, all stayed is therefore appropriate so as to allow for a more sustained period of treatment.<sup>3</sup>

{¶ 47} After considering the ethical provisions violated, the sanctions imposed in similar cases, and the aggravating and mitigating factors, the panel recommends that Respondent be suspended from the practice of law for one year, with the entire suspension stayed on the conditions that Respondent maintains compliance with his OLAP contract and commits no further misconduct.

#### **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 4, 2014. The Board adopted the findings of fact and conclusions of law of the panel. However, the Board modified the panel's recommendation of a one-year, fully stayed suspension, and recommends that Respondent, Stephen Edwin Weithman, be suspended from the practice of law in Ohio for one year, with the final six months stayed on the conditions set forth in ¶47 of this report. As a basis for its recommendation, the Board references the fact that Respondent engaged in a pattern of displaying a demeaning attitude toward counsel and litigants in the Davis/Spriggs and Krawczyk matters and, in each case, made disparaging remarks regarding the intellect and trial tactics of counsel based on the county in which they practiced. The Board views these comments as contrary to the core principles of demeanor, integrity, impartiality, and fairness and thus wholly inappropriate for a judicial officer. See Code of Judicial Conduct, Preamble [1] and [2].

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<sup>3</sup> The panel has considered, but rejected recommending the appointment of a monitor as the Court ordered in *McCormack*. The panel believes that the appointment of a monitor in this case is not required because Respondent has already entered into a four year contract with OLAP by which OLAP will monitor his treatment.

Moreover, the nature of Respondent's conduct toward Ms. Spriggs and her lawyer constitutes more than a lack of courtesy and decorum and reflects an element of sexual harassment that is antithetical to promoting public confidence in a fair and impartial judiciary. The Board further recommends that the costs 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 Recommendation as those of the Board.**

  
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RICHARD A. DOVE, Secretary