

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

**In re:**

**Complaint against**

**Case No. 2016-037**

**Lance Timothy Mason  
Attorney Reg. No. 0067346**

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

**Respondent**

**Ohio State Bar Association**

**Relator**

**OVERVIEW**

{¶1} This matter was heard on March 1, 2017 in Columbus before a panel consisting of Peggy J. Schmitz, Robert B. Fitzgerald, and Patricia A. Wise, chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Relator was represented by J. Desiree Blankenship, Eugene P. Whetzel, Kelly E. Heile, and Maura S. Scanlon. Respondent was represented by Richard C. Alkire and Dean Nieding.

{¶3} The case arose out of a complaint alleging violations of Jud. Cond. R. 1.2 and Prof. Cond. R. 8.4(a), Prof. Cond. R. 8.4(b), and Prof. Cond. R. 8.4(h).

{¶4} Based upon its findings of fact, conclusions of law, and the evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct as outlined below. Upon consideration of the applicable aggravating and mitigating factors and case precedent, the panel recommends that Respondent be permanently disbarred.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in Ohio on November 19, 1996 and is subject to the Code of Judicial Conduct, Rules of Professional Conduct, and the Rules for the Government of the Bar of Ohio.

{¶6} The parties entered into stipulations of fact, and exhibits were admitted into evidence at the hearing. For Relator, Officer Steven Young testified at the hearing. In addition to Respondent, Dr. Ernest Fields, Marka Fields, Jalyn Parks, Audrey Petsche Sims, and Dr. Lynn Mason, testified on behalf of Respondent. The panel finds the following facts to have been proven by clear and convincing evidence.

{¶7} Respondent and Aisha Fraser Mason (“Fraser”) were married on October 15, 2005. Stipulations ¶1.

{¶8} There were two children born of this marriage on November 1, 2007 and March 30, 2010, respectively. The first-born child has special needs and has limited verbal abilities. Stipulations ¶2.

{¶9} In March 2014, Respondent and Fraser separated, with Respondent continuing to live in the marital home and Fraser residing in an apartment. During the time of marital separation from March through August 2, 2014, Respondent and Fraser shared equally in the custody and parenting of their two children. Stipulations ¶3.

{¶10} During the separation, from March to August, Fraser and Respondent saw each other regularly, dated, went to church, and shared a car. Stipulations ¶4.

{¶11} During the time of the marital separation, from March through August 2, 2014, Respondent had contact with his two minor children on a daily basis. Stipulations ¶5.

{¶12} On or about August 2, 2014, Respondent, Fraser, and their two minor children attended a funeral service for Respondent's aunt who had recently passed away. Stipulations ¶6.

{¶13} Respondent and Fraser agreed that after the funeral service, Respondent would drop Fraser off at her apartment and Respondent would spend the afternoon with their two children. During the ride to Fraser's apartment, a discussion ensued about their relationship. Stipulations ¶7.

{¶14} As the discussion progressed, Respondent became upset and began assaulting Fraser while Respondent continued to drive their motor vehicle. Respondent struck Fraser repeatedly in the head; hit Fraser's head against the window of the passenger door, armrest, and dashboard of the vehicle; and also bit Fraser on her face. Stipulations ¶8.

{¶15} Respondent and Fraser's two children (ages 6 and 4 at the time) were seated in the back seat of the motor vehicle and witnessed the events. The older of the two children possessed limited verbal abilities and was quiet while the attack was occurring, but the younger child was screaming as she watched the assault. Stipulations ¶9.

{¶16} Fraser attempted to exit the vehicle, but Respondent grabbed her hair to prevent Fraser from escaping the vehicle. The moving vehicle slowed while approaching a red light. As it stopped, Fraser exited the vehicle but fell to the ground as she tried to flee. Stipulations ¶10.

{¶17} Respondent placed the vehicle in park and exited the vehicle in search of Fraser, who had fallen to the ground. The two children remained in the vehicle. Respondent located Fraser and continued to strike her as she lay on the ground. Stipulations ¶11.

{¶18} Respondent then left Fraser on the ground, returned to his vehicle, and drove away with his two children to the marital home. Upon arriving at the house, Respondent called his sister,

Lynn Mason, MD, to come and pick up the two children because he intended to shoot himself with a gun he kept in the marital home. Stipulations ¶12.

{¶19} On or about August 2, 2014, Respondent was arrested by the Shaker Heights Police Department for assaulting Fraser. Stipulations ¶13.

{¶20} As a result of the attack, Fraser sustained severe physical harm to her head, face, and neck, including but not limited to, an orbital blowout fracture under her left eye which required surgery with an implant to repair the damage. Fraser was hospitalized overnight from August 2-3, 2014 following the attack and again from August 8-9, 2014 for surgery. Stipulations ¶14.

{¶21} Following the attack, Fraser arranged for her two children to begin counseling. As a result of what they witnessed on August 2, 2014, [they] continue to this date with counseling. Stipulations ¶15.

{¶22} On or about August 26, 2014, Respondent was indicted on an eight-count indictment of felonious assault, domestic violence, kidnapping, and endangering children in the Cuyahoga County Common Pleas Court, Case No. 588061-14-CR. Stipulations ¶16.

{¶23} On August 26, 2014, the Supreme Court of Ohio, *sua sponte*, issued an order disqualifying Respondent from acting as a judge in the Cuyahoga County Common Pleas Court. See *In re Disqualification of Mason*, 140 Ohio St.3d 1405, 2014-Ohio-3703. Stipulations ¶17.

{¶24} On or about July 29, 2015, Fraser filed a personal injury action against Respondent for the severe physical harm she sustained in the assault of August 2, 2014. Cuyahoga County Common Pleas Court, Case No. CV 15 848967. Stipulations ¶18.

{¶25} On September 1, 2015, the Board of Professional Conduct provided notice to the Supreme Court of Ohio of the felony conviction of Respondent in Cuyahoga County Case No. 588061-14-CR. On September 3, 2015, the Supreme Court of Ohio issued an interim felony

suspension of Respondent's law license. See *In re Mason*, 143 Ohio St.3d 1295, 2015-Ohio-3579. Stipulations ¶¶19-20.

{¶26} On September 16, 2015, Judge Patricia A. Cosgrove entered a sentencing order accepting Respondent's guilty plea to attempted felonious assault and domestic violence. The court nolleed Counts 2, 3, 4, 5, 7, and 8 of the indictment. Respondent was sentenced to 24 months in prison at the Lorain Correctional Institution and six months in county jail, with the sentences to run concurrently and with additional conditions. Stipulations ¶21.

{¶27} On June 27, 2016, the court granted Respondent's motion for judicial release. Stipulations ¶22.

{¶28} There has been no prior discipline brought against Respondent other than the instant complaint. Stipulation ¶24.

{¶29} Respondent went to the Cleveland Clinic Emergency Department on Thursday, July 31, 2014 with complaints of chest pain. Stipulation ¶25.

{¶30} The marital residence flooded twice during the separation, May 14, 2014 and June 25, 2014. Stipulation ¶26.

{¶31} Respondent immediately sought and received counseling after August 2, 2014 from Michael Misja, Ph.D. psychologist Joseph H. Baskin, MD, psychiatrist Ruth Wilson, social worker, and Dr. Ernest Fields, clergy, all within August 2014. Respondent continues counseling with Drs. Misja and Baskin to the present. Stipulation ¶27.

{¶32} The panel concludes, by clear and convincing evidence, based upon the stipulations, exhibits, and the testimony presented at the hearing, that Respondent's conduct violated the following rules as alleged in Relator's complaint: 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 shall avoid impropriety and the appearance of impropriety], Prof. Cond. R. 8.4(a) [violate or attempt to violate the Ohio Rules of Professional Conduct], Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness], and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

{¶33} The panel finds that Respondent's conduct was so egregious, as described further below, that it constitutes a separate violation of Prof. Cond. R. 8.4(h). *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998. As to the egregious nature of the conduct, this matter is disturbingly similar to *Disciplinary Counsel v. Whitfield*, 132 Ohio St.3d 284, 2012-Ohio-2708. Whitfield was convicted of aggravated assault after hitting a man in the head with a glass bottle. The victim suffered serious injuries including two facial lacerations and a piece of glass lodged in his eye. *Whitfield* at ¶5. The Court upheld the Board's finding of a Prof. Cond. R. 8.4(h) violation.

### **MITIGATION, AGGRAVATION, AND SANCTION**

#### **Mitigating Factors**

{¶34} The parties stipulated to, and the panel unanimously finds, the following mitigating factors: (a) Respondent has no prior disciplinary record; and (b) Respondent cooperated during Relator's investigation.

{¶35} In mitigation, the panel also unanimously finds that as a result of his conviction, Respondent was removed from his position as a judge, was incarcerated for his conduct, and also owes his former wife \$150,000 from the settlement of a civil case she filed against him. Hearing Tr. 253. Respondent also requested and was granted the opportunity to apologize in open court to his wife at the conclusion of the civil case. Hearing Tr. 254-257; Ex. O. Respondent presented 37 character reference letters. Respondent's Ex. A1-A37; Hearing Tr. 269-280.

#### **Aggravating Factors**

{¶36} The panel unanimously finds the following aggravating factors.

*Vulnerability of and resulting harm to the victims of Respondent's acts*

{¶37} Respondent's former wife, who was threatened, brutally attacked and who sustained severe physical injuries, including an orbital blowout fracture under her left eye which required two hospitalizations. Respondent admitted that during his "violent" and "terrible" attack on his wife, he "repeatedly hit her;" hit her head on the passenger door, the arm rest, and the dashboard, and bit her on the cheek. Hearing Tr. 313-314, 328. And he hit her again and bit her again after she escaped from the car. Hearing Tr. 328.

{¶38} Respondent's own children are traumatized to an inexcusable degree. Respondent described his six-year-old daughter as "really screaming" during the assault, and the girls remain in counseling to this day. Hearing Tr. 221, 293.

{¶39} Respondent's sister, who was called by Respondent to rescue the girls after the attack, was also a victim. She described the situation as "awful," when he came to the door with a gun in his hand and she was afraid. Hearing Tr. 153-154. Respondent threatened suicide in front of his sister and his daughters. Hearing Tr. 223, 315-316. Respondent himself admits that he "failed" and "betrayed [his] mom, [his] sisters, [his] daughters" when he assaulted his wife. Hearing Tr. 211, 220, 262.

*Respondent has failed to adequately explain the conduct that is the basis for the violation*

{¶40} All Respondent could say was that he was "agitated" and "frustrated" that day prior to the assault and that he was "enraged" during the attack. Hearing Tr. 219, 221. He admits that his former wife suggested that he needed anger management counseling immediately prior to the assault. Hearing Tr. 307-308. He himself stated that he is "not a guy who would bite anyone [and] that doesn't even make sense to [him]," and that assaulting his wife in front of his kids was "the craziest thing I ever – I can't even imagine it." Hearing Tr. 222, 230-231, 281. Respondent further

admitted that he could not speculate as to “what [he or anyone] would do in a circumstance they never thought they would be in.” Hearing Tr. 332.

*Respondent has failed to ensure or to provide assurances that the conduct will not happen again*

{¶41} Respondent admitted that in addition to hitting her, he bit his wife inside the car, and bit her again after his wife jumped out of the moving car. Although he denied being a threat to his wife, children or the public, he recognized that he had been verbally abusive to his wife for two years prior to the assault. Hearing Tr. 283, 340-341. While the panel draws no conclusion from her failure to testify, the panel does not accept Respondent’s inference that she believes that Respondent “poses no further threat” because she “simply refused to testify.” Respondent’s April 14, 2017 Reply Brief at p. 9. In fact, she stated in Respondent’s own Exhibit K that “I made my position very clear that I did not want to testify, it makes me relive that horrific day.”

*Respondent has not fully engaged in the redemptive process*

{¶42} Respondent counseled with Dr. Fields after he got out of jail, but Dr. Fields testified that it was “short-lived.” Hearing Tr. 46, 226, 297. He met with social worker, Ruth Wilson, for 11 sessions (Hearing Tr. 226, 230) and saw Dr. Michael Misja following the incidents, but only three times since his release from prison. Hearing Tr. 226, 232. Respondent met with psychiatrist, Dr. Bashim, weekly before he went to prison and resumed treatment with him after his release, approximately once every two weeks. Hearing Tr. 226, 236-238. He has talked with his cousin Ernie for one to two hours weekly, but since his release from prison, even though he finds Ernie to be “helpful” from a religious standpoint, he has “not continued to counsel with him.” Hearing Tr. 226, 236. He also belongs to a “men’s group at church” that he believes has helped him “quite a bit.” Hearing Tr. 240. However, none of these individuals from whom Respondent has sought counseling testified at the hearing of this matter. Hearing Tr. 318-319.



{¶43} Even though Respondent repeatedly says it is his “life’s work” to write to his daughters, talking about how he “was wrong,” he has managed only a few letters to each daughter. Hearing Tr. 246, 248. Nor could Respondent even say with certainty that the letters had been delivered to his daughters. Hearing Tr. 249-250.

### **Recommended Sanction**

{¶44} The panel reviewed the parties’ recommendations for sanctions in light of the findings of fact, conclusions of law, factors in mitigation and aggravation, and precedent established by the Supreme Court of Ohio. Important to the consideration of this matter is the fact that Respondent was a judge at all times relevant to this matter. Answer ¶2.

{¶45} Of six recent cases involving judges and felony convictions (and in one case an indictment), five resulted in disbarment. *Disciplinary Counsel v. Terry*, 147 Ohio St.3d 169, 2016-Ohio-563; *Disciplinary Counsel v. McAuliffe*, 121 Ohio St.3d 315, 2009-Ohio-1151; *Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194; *Office of Disciplinary Counsel v. Gallagher*, 82 Ohio St.3d 51, 1998-Ohio-592; and *Disciplinary Counsel v. Mosely*, 69 Ohio St.3d 401, 1994-Ohio-119. One of the five was a case where the judge had not even been convicted of any criminal offense, but was still disbarred. *Disciplinary Counsel v. Hoskins*, 2008-Ohio-3194 (multiple violations involving serious deceit and misrepresentation.) The sole case resulting in an indefinite suspension is distinguishable from this matter. In *Ohio State Bar Assn. v. McCafferty*, 140 Ohio St.3d 229, 2014-Ohio-3075, the Court noted in a 4-3 decision that McCafferty’s “rule violations occurred during a single impromptu conversation” [*Id.* at ¶24], and her conduct involved no physical violence.

{¶46} With regard to case precedent, the panel was particularly mindful of *Disciplinary Counsel v. Gallagher*, 82 Ohio St.3d 51, 1998-Ohio-592 for three reasons. First, the *Gallagher*

court cited numerous cases for the principle that permanent disbarment is an appropriate sanction for conduct that violates DR 1-102 [the predecessor to Rules 8.4 (a), (b) and (h), the alleged violations of the Rules of Professional Conduct here] and results in a felony conviction. “Disbarment is not uncommon where DR 1-102(A)(3) [now Rule 8.4 (b)] and 1-102(A)(6) [now Rule 8.4 (h)] violations stem from felony convictions.” Citing *Disciplinary Counsel v. Williams* (1997), 80 Ohio St.3d 539, (respondent disbarred after pleading guilty to the felonies of theft and receiving stolen property); *Disciplinary Counsel v. Osthimer* (1995), 72 Ohio St.3d 304 (respondent disbarred following felony convictions for forgery and attempted felonious sexual penetration); and *Disciplinary Counsel v. Mosely* (1994), 69 Ohio St.3d 401 (judge disbarred upon felony conviction for extortion).

{¶47} Second, *Gallagher* is instructive in its statement that “permanent disbarment is even more advised here because respondent held judicial office at the time of his arrest. Judges are subject to the highest standard of ethical conduct.” *Gallagher* at 53. In determining which cases are relevant, the panel must acknowledge that the Court holds judges to the highest possible standards of ethical conduct.

{¶48} In *Disciplinary Counsel v. Terry, supra*, the Court considered the case of Steven James Terry, a Cuyahoga County Common Pleas judge. Terry was convicted of felony offenses arising from actions taken in his official capacity as a judge—including soliciting and accepting payments and other things of value in exchange for favorable judicial action. As mitigating factors, the Court accepted that Terry had no prior disciplinary history, had fully cooperated in the disciplinary process, had a good character and reputation in the community, and had had other penalties or sanctions imposed for his misconduct. The parties stipulated to only one aggravating

factor—that Terry acted with a dishonest or selfish motive—but the panel and Board also found that his actions were premeditated. The Court permanently disbarred Terry.

{¶49} In *Disciplinary Counsel v. McAuliffe*, 2009-Ohio-1151, a Fairfield County Municipal Court judge burnt down his home in order to defraud an insurance company. Finding violations of DR 1-102(A)(3) [illegal conduct involving moral turpitude] and DR 1-102(A)(6) [conduct adversely reflecting on a lawyer’s fitness to practice law], and Canon 2 and Canon 4 of the Code of Judicial Conduct [judges shall comply with the law at all times, among other violations], the Court permanently disbarred McAuliffe.


{¶50} Third, the Court in *Gallagher* stated that “mitigating factors have little relevance \* \* \* when judges engage in illegal conduct involving moral turpitude. \* \* \* Mitigating factors relevant to this individual attorney pale when he is viewed in his institutional role as a judge.” *Gallagher* at 53. That is surely the case here, and in addition to the panel’s misgivings about Respondent’s dubious explanation for the behavior, failure to provide assurances that the behavior will not occur again, and less than heartfelt engagement in the redemptive process, the panel believes that permanent disbarment is appropriate.

{¶51} The panel, having considered the case law cited, the rule violations, and the aggravating factors versus the mitigating factors, recommends that Respondent be permanently disbarred.

**BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on June 9, 2017. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that Respondent, Lance Timothy Mason, be permanently disbarred from the practice of law in Ohio and ordered to pay the costs of these proceedings.

**Pursuant to the order of the Ohio Board of Professional Conduct, 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, Director