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

In re:

Complaint against	**Case No. 2018-010**
Hon. Timothy Solomon Horton **Attorney Reg. No. 0065934**	**Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct**
Respondent	
Disciplinary Counsel	
Relator	

OVERVIEW

{¶1} This matter was heard on July 13, 19, and 20 and September 4 and 6, 2018 before a panel consisting of Hon. Rocky A. Coss; Patricia A. Wise, and Robert B. Fitzgerald, panel chair. None of the panel members reside in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing and represented by Rick L. Brunner and Patrick M. Quinn. Depending upon the day, the Relator was represented by Scott Drexel, Catherine Russo, and Audrey Varwig.

{¶3} Respondent was charged with professional misconduct in a three-count complaint. Count One was based upon Respondent pleading guilty to failing to file accurate campaign statements due to reporting unreasonable and excessive expenses to his campaign treasurer. This resulted in false campaign finance reports being filed with the Ohio Secretary of State. Count Two involved allegations of the Respondent misusing county resources and staff to compile, on county time, donor lists and by permitting his employees to receive campaign checks and donations on

his behalf. Count Three involved Respondent engaging in inappropriate sexual conduct with a former legal intern and sexually harassing his secretary, who later became his bailiff. The complaint charged Respondent with multiple violations of the Ohio Code of Judicial Conduct and Ohio Rules of Professional Conduct.

{¶4} Based upon all of the evidence and the Respondent's answer, this 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 precedence, the panel recommends that Respondent receive a two-year suspension from the practice of law, with one year of that suspension stayed conditioned upon conditions.

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

{¶5} During the course of the five days of hearing, the following individuals were called to testify on behalf of the Relator:

- Respondent;
- Cameo Davis; an employee of the Court of Common Pleas of Franklin County in the Human Resources office;
- Stacy Worthington, an employee of the Court of Common Pleas of Franklin County;
- Emily Vincent; an attorney who worked as Judge Horton's staff attorney in from May of 2012 until September 2014;
- Bridgett Tupes, an employee of a political consulting firm who worked for Judge Horton on his political campaign beginning in January 2014;
- Elise Wyant, who worked as Judge Horton's secretary beginning on October 7, 2013 and as Judge Horton's bailiff beginning in the Fall of 2014 until October 21, 2014;
- MB, now an attorney who, while a law student, interned for Judge Horton in the Summer of 2013 when she was 22 years of age.

{¶6} Additionally, the Relator used 21 exhibits.

{¶7} Respondent, in his case in chief, called the following witnesses:

- Hon. G. Gary Tyack, who appeared pursuant to a subpoena;
- David Pemberton, chairman of the Board and chief executive officer of Suburban Natural Gas Company and a licensed attorney; however, his license to practice is inactive;
- Edward S. Brown, an attorney licensed to practice law in Ohio;
- Charles Saxbe, an attorney and a retired partner from the law firm of Taft, Stettinius & Hollister;
- Matthew Brady, an attorney licensed to practice law in Ohio who served as an intern for Respondent during his second year of law in May, June, and July 2013, the same time MB was an intern;
- Hon. Patrick Sheeran, a retired judge from the Court of Common Pleas of Franklin County;
- Pamela Erdy, an attorney licensed to practice law in Ohio and who served as a magistrate for the Court of Common Pleas of Franklin County;
- Retired Judge John A. Connor (via video);
- Scott Mote, an attorney who is the executive director of the Ohio Lawyers' Assistance Program; and
- Respondent.

{¶8} Respondent, though initially marking an excessive number of exhibits, used and had admitted into evidence 12 exhibits.

Facts Common to All Counts

{¶9} Respondent is married with three children. Hearing Tr. 1173-1174.

{¶10} Respondent was admitted to the practice of law in Ohio on May 13, 1996. Respondent is subject to the Code of Judicial Conduct, the Rules of Professional Conduct the Rules

for the Government of the Bar of Ohio, and the Rules for the Government of the Judiciary of Ohio.

{¶11} After graduation from law school, Respondent worked for the Attorney General's office and the former law firm of Chester, Wilcox and Saxbe. Hearing Tr. 1175-1179. Respondent was first elected to an unexpired term on the Franklin County Court of Common Pleas in November 2006 and elected to a full term in November 2008. Hearing Tr. 32, 35. Thereafter, Respondent was elected to a full term as judge of the Tenth District Court of Appeals in November 2014.

{¶12} When on the common pleas bench, Respondent had a judicial staff that included a secretary, a bailiff, and a staff attorney. Hearing Tr. 21, 173. In the Franklin County Court of Common Pleas, the judicial bailiff, judicial secretary, and staff attorney served at the pleasure of their hiring judge, including Respondent. Hearing Tr. 173. Judicial staff are supervised by their hiring judge. Hearing Tr. 1074.

{¶13} Respondent hired Elise Wyant to serve as judicial secretary in October 2013. Hearing Tr. 71. At this point in time, Wyant was 25-years old and a college graduate.

{¶14} Although not formal staff, Respondent also had two or three legal interns who worked in his chambers while on summer break from law school. In the Summer of 2013, two of Respondent's legal interns were MB and Matthew Brady. Hearing Tr. 119-120.

{¶15} Within the common pleas court as a whole, the individual judges have a degree of flexibility with respect to how they choose to run their chambers and to handle their staff. In the words of former Judge Sheeran, the court is comprised of 17 individual fiefdoms. Hearing Tr. 913.

{¶16} One of Respondent's staff attorneys was Emily Vincent, whom he hired in approximately May 2012. Vincent worked for Respondent until approximately September 5,

2014. Hearing Tr. 64-66, 231.

{¶17} It became apparent early on that Respondent would be unopposed in the 2014 election and would be assuming the seat on the court of appeals. At that time, Respondent discussed future employment prospects with his staff. Hearing Tr. 68. Respondent explained that he was not going to bring any of his then-judicial staff with him when he assumed the new appellate judgeship. Hearing Tr. 1214-1215.

{¶18} In the Summer of 2013, a decision throughout the court was made to treat judicial staff—bailiffs, secretaries, and staff attorneys—as exempt employees for Federal Labor Standards Act purposes. Hearing Tr. 85-86; Tr. 917-923; Respondent's Ex. F. Exempt means that an employee is not entitled to overtime pay. Hearing Tr. 183. It appears that, as a matter of practice, the exempt employees had a degree of flexibility in their schedules and working hours. Hearing Tr. 182, 276-278, 553. There is no established policy on timekeeping requirements for exempt employees like judicial staff. Hearing Tr. 194, 196. Wyant testified, and Respondent did not dispute, that she never worked more than 40 hours in any week. Hearing Tr. 602.

{¶19} According to Wyant's testimony, her work hours were to be 8:30 a.m. to 5:00 p.m. with an hour-and-a-half lunch. This would mean that her ordinary work hours totaled seven hours per day and 35 hours per week. Hearing Tr. 431.

{¶20} During the time period of 2013 and 2014, Respondent often went to happy hour at various bars and frequently invited his staff and summer interns to attend with him. Though Respondent did not explicitly require that all of his staff persons attend these happy hours with him, it would have been difficult to refuse the judge.

{¶21} Initially, Respondent had competition in the 2014 election for the court of appeals. Hearing Tr. 41. However, his opponent withdrew as a candidate in March 2014. Hearing Tr. 42.

The deadline passed for any independent candidates to challenge him in April 2014. As a result. Respondent ran unopposed for election for the Tenth District. Hearing Tr. 42-43.

{¶22} Even though unopposed, Respondent held a number of campaign events and fundraisers in 2014. He explained that he did so because judicial campaigns are restricted by the Code of Judicial Conduct from soliciting contributions other than during distinct periods of time. Respondent's "goal was to raise * * * enough money to stay visible throughout the six years" of the term on the court of appeals. Hearing Tr. 43, 1194-1195.

{¶23} During the 2014 campaign, Respondent raised in the neighborhood of $50,000. This amount was not unreasonably higher or lower than would be expected. Hearing Tr. 376-377.

{¶24} In November 2013, Respondent met with his judicial staff regarding his decision to run for the court of appeals. Hearing Tr. 76, 241, 1204-1207. Respondent testified that his staff was not required to volunteer in connection with his campaign, but that they were welcome to do so. Hearing Tr. 1216-1217. Judicial staff volunteering on the campaigns of their judge is a common practice in the Franklin County Court of Common Pleas. Hearing Tr. 221, 340.

{¶25} Respondent testified that he had his judicial staff attend the Supreme Court's judicial candidate seminar. Hearing Tr. 76-77, 1208-1209. Vincent, Wyant, and McCallum each attended the judicial candidate seminar. Hearing Tr. 77-78; Tr. 439.

{¶26} Respondent testified and argued in his closing that he told his staff that they were not to use Franklin County or government equipment for campaigning. Hearing Tr. 1207-1208. However, what he testified to and what his actual practices were differed.

{¶27} In connection with his 2014 campaign, Respondent engaged a number of professional campaign staff members including Bridgette Tupes. Tupes was hired to serve as a planner/coordinator and fundraiser. Hearing Tr. 78-79, 373-374, 1202-1204.

{¶28} Tupes is a political consultant and campaign advisor with ten years of experience. Hearing Tr. 339. She had worked on about 25 campaigns prior to working on Respondent's 2014 campaign, including two or three prior judicial campaigns. Hearing Tr. 342-343. Tupes' responsibilities on Respondent's campaign were to "be the conduit for campaign contributions, to request contributions since he was unable to do so, to set up events, and then to collect contributions at those events and make sure they were processed." Hearing Tr. 343.

{¶29} Tupes testified that at times she tried to have discussions with the Respondent about his activities. Specifically, she was concerned about appearances. It was clear from her testimony that he was not receptive to such discussions. Hearing Tr. 414-416.

Count One—Criminal Conviction

{¶30} On February 2, 2017, a bill of information was filed in the Franklin County Court of Common Pleas in State v. Timothy S. Horton, Case No. 17-CR-0670. The information charged Respondent with three counts of violating R.C. 3517.13(B), which were first-degree misdemeanors pursuant to R.C. 3599.40:

- Count One: Leading up to March, 2014, Horton anticipated facing an opponent in his campaign for a seat on the Tenth District Court of Appeals. In March, 2014, Horton learned that his opponent was withdrawing his candidacy. Since the filing deadline had already passed, Horton would therefore be unopposed for the appeals court seat. On March 24, 2014, Horton held a private campaign event celebrating the withdrawal of his opponent, and Horton invited several supporters to attend. This event consisted of a dinner at Hyde Park restaurant in downtown Columbus, and Horton used the funds of the campaign committee to pay for the food and beverages of all who attended. The expense totaled $1,014.09. The expenditure was unreasonable and excessive in amount, based upon the particular facts in this case. As such, Horton's willful reporting of this expenditure to his campaign treasurer while knowing that it was unreasonable and excessive in amount caused an inaccurate campaign finance report to be filed with the Ohio Secretary of State, in violation of R.C. 3517.13(B), which is a misdemeanor of the first degree pursuant to R.C. 3599.40.

- Count Two: Leading up to March 2014, Horton anticipated facing an opponent in his campaign for a seat on the Tenth District Court of Appeals. On or about

March 4, 2014, Horton held a campaign fundraiser at Due Amici. The expenses totaled $978.75. The expenditure was unreasonable and excessive in amount because only one person, aside from Horton and his campaign staff, were present at this event. Respondent reported this expenditure to his campaign treasurer while knowing that it was excessive and unreasonable in amount and thus caused an inaccurate campaign finance report to be filed with the Ohio Secretary of State, in violation of R.C. 3517.13(B), which is a misdemeanor of the first degree pursuant to R.C. 3599.40.

- Count Three: By July 2014, Horton was unopposed in his campaign for a seat on the Tenth District Court of Appeals. On or about July 23, 2014, Horton purchased cigars which were intended to be made available to campaign supporters during campaign functions. This expenditure totaled $173.29. The expenditure was unreasonable and excessive in amount, based upon the particular facts in this case, because at the time it was made, Horton's candidacy was unopposed. As such, the amount expended was unreasonable. Horton's willful reporting of this expenditure to his campaign treasurer, while knowing that it was excessive and reasonable and amount, caused an inaccurate Pre-General campaign finance report to be filed with the Ohio Secretary of State in violation of R.C. 3517.13(B), which is a stipulated misdemeanor of the first degree pursuant to R.C. 3599.40.

Relator's Ex. 2.

{¶31} Respondent pled guilty to these three first-degree misdemeanor violations on March 16, 2017. Relator's Ex. 3. The court accepted Respondent's guilty pleas on March 16, 2017.

{¶32} Respondent was criminally convicted for three instances of willfully reporting expenditures to his campaign treasurer that he knew were excessive and unreasonable in amount, thereby causing inaccurate finance reports to be filed.

{¶33} The trial court sentenced Respondent to serve six months on each count. However, the court suspended execution of the entire jail sentence and ordered Respondent to probation conditions, which included requirements that he: serve 10 consecutive days in the Franklin County Corrections Center; undergo a drug/alcohol assessment and complete any follow up treatment; pay restitution in the amount of $2,065.00; and complete 100 hours of community service. The court

further ordered Respondent to attend at least one AA meeting per week and that he stay involved in the Ohio Lawyers Assistance Program (OLAP). Relator's Ex. 4.

{¶34} In entering his guilty pleas, Respondent waived his right to appeal. Relator's Ex. 3; see also, Relator's Ex. 5, at pp. 1-4, 1-7. Notwithstanding the waiver, Respondent appealed his conviction and sentence in a proceeding entitled *State v. Timothy S. Horton*, Tenth Dist. Ct. of Appeals Case No. 17AP-266. Relator's Ex. 5.

{¶35} In the appeal, Respondent argued that he was not challenging a guilty plea but rather challenging the propriety of the Trial court's sentence related to its order. *Id.* at ¶¶7-8, 13.

{¶36} The court of appeals ultimately ruled against Respondent concluding that he had waived his right to appeal his sentence. The court further held that the sentence was not an abuse of discretion or plain error. As a result, the court of appeals affirmed the judgment of the trial court in all respects. *Id.* at ¶¶28, 61.

{¶37} Respondent, in his answer and in his opening statement, admitted that his criminal conduct violated Jud. Cond. R. 1.2 [promoting public confidence in the judiciary and avoiding impropriety and the appearance of impropriety]. However, he denied that the conduct violated either Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on trustworthiness or fitness] or Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]. This panel, though doubting much of Respondent's testimony, finds that Relator failed to prove by clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(c). Therefore, the violation of Prof. Cond. R. 8.4(c) is dismissed. However, we find, by clear and convincing evidence, that that Respondent violated Jud. Cond. R. 1.2 and Prof. Cond. R. 8.4(b).

Count Two—Misuse of County Resources and Staff

{¶38} In Count Two of the complaint, Respondent is charged with violations of Jud.

Cond. R. 1.2 and 4.4(B) [a judicial candidate shall prohibit public employees subject to his direction or control from soliciting or receiving campaign contributions]. Respondent is alleged to have violated these rules by compelling his judicial staff to work on his judicial campaign during work hours, at public expense, using county resources in his judicial campaign, and directing his judicial staff to be involved in the solicitation, receipt, handling, and delivery of campaign contributions and funds.

{¶39} The evidence adduced in this proceeding clearly and convincingly establishes Respondent violated Jud. Cond. R. 1.2 and 4.4(B).

{¶40} Emily Vincent worked as Respondent's staff attorney from May 2012 through September 2014. Hearing Tr. 231. Vincent testified that she attended a meeting in November 2013 where Respondent made it clear to Vincent and her co-workers that he expected his staff to work on his campaign as he ran for the court of appeals. Hearing Tr. 241-242. Respondent further told Vincent that she needed to attend all the fundraisers, obtain signatures, and attend meetings to make connections in the legal community to further his campaign. Hearing Tr. 237-238, 242-243, 246-247. On multiple occasions, Respondent instructed Vincent to complete campaign-related tasks. Hearing Tr. 249-250, 252-253, 255.

{¶41} Respondent instructed Vincent to compile a list of cases in which he had ruled in favor of the city of Columbus for an upcoming meeting with then-Mayor Michael Coleman in which he was seek the Mayor's endorsement. Hearing Tr. 250, 252; Relator's Ex. 7. He also directed her to provide him with contact information for attorneys who were involved in Ohio casino and "racino" cases over which he had presided (and that were, at that time, pending before the court of appeals) so that he could seek donations, telling Vincent that the attorneys and their firms "should hedge their bets" by donating to his campaign because their cases could come back

after appeal. Hearing Tr. 249-250, 254-255; Relator's Ex. 8, p. 1 & 3.

{¶42} Vincent complied with all of Respondent's requests relating to his judicial election campaign.

{¶43} Vincent was not the only employee whom Respondent had working on his campaign on county time. Respondent hired Elise Wyant as his judicial secretary in October 2013 and subsequently promoted her to bailiff in September 2014. Hearing Tr. 430, 433. Respondent made it clear to Wyant that part of her job duties entailed working on his campaign and attending campaign-related functions. Hearing Tr. 435-437, 442, 466-467. He further instructed Wyant to send letters and make phone calls on behalf of his campaign, activities that she completed during work hours using the county computer and telephone because those were the only tools she had to complete those tasks. Hearing Tr. 437-438, 440, 444-453, 481; Relator's Ex. 10, at pp. 64, 90, 108, 112, 114, 156; Relator's Ex. 11.

{¶44} One of the campaign tasks that Wyant completed was to prepare a form letter that could be sent to organizations seeking to have Respondent screen before them. Hearing Tr. 100; Relator Ex. 11. Since Respondent was unopposed, he wanted a form letter that would decline invitations to screen before organizations. Hearing Tr. 100, 103-104. Once the form was drafted, it could then be cut and pasted as various requests for screening were received, a task Respondent occasionally asked Wyant to perform. Hearing Tr. 101; Relator Ex. 10 at 90, 108.

{¶45} When Respondent asked Wyant to prepare the form letter and send it out to organizations, he may have expected her to do so as a volunteer on his campaign but it occurred while working for him as secretary or at the courthouse. Hearing Tr. 101·102; 1327-1328; Relator Ex. 10 at 156 (email on Monday, September 29, 2014 at 10:03 a.m.: "Elise... read letter... then draft thank you letter on your spare time...let's send out by Wednesday."

{¶46} On one occasion, Respondent observed Wyant working on a campaign-related letter in the courthouse on her Franklin County computer. Respondent told Wyant not to work on campaign letters in the courthouse or on county equipment. Other than one occasion, Respondent did not observe Wyant using county equipment to work on campaign letters. Hearing Tr. 1327-1328; 1343-1344.

{¶47} Wyant acknowledged that she could have completed any of the letters in Relator's Ex. 11 during her lunch time or after hours, but she chose not to do so. Hearing Tr. 542-544.

{¶48} Respondent testified that he told Wyant to quit working on the letter and not to do it on the county equipment. Respondent further testified that he did not observe Wyant or anyone else using county equipment at any other time. Hearing Tr. 1327-1328; 1343-1344. However, the panel did not find his testimony convincing on this issue. For example, Respondent asked Wyant to pick up campaign checks for several different organizations. Hearing Tr. 1220-1223. Each of these checks were from already received campaign funds and represented expenditures made by this campaign committee. Hearing Tr. 1220-1223. Further, Wyant attended a number of golf outings with the Respondent in the Spring and Summer of 2014. Again, this was at the Respondent's request. Hearing Tr. 113-115. Though the Respondent would have the panel believe that the time spent at these outings totaled less than 40 hours, it still occurred on county time.

{¶49} Respondent continued to fundraise even after learning he was unopposed because of the limited window in which judicial campaigns are permitted to fundraise and because he viewed raising a certain amount as necessary in order to stay visible in the community for the next six years. Hearing Tr. 358-359, 386, 1224-1226.

{¶50} On two occasions, while she was in the judicial secretary position, Wyant received checks consisting of contributions to Respondent's campaign committee. Hearing Tr. 469-470.

On these occasions, Tupes met Wyant on the street outside of the courthouse and picked them up. Hearing Tr. 359-361, 387.

{¶51} Tupes acknowledged that she collected campaign contributions from Wyant at the courthouse on two occasions. Again, during normal business hours. Hearing Tr. 356, 360-361.

{¶52} Wyant testified that she handled campaign money at the direction and with the knowledge of Respondent. Hearing Tr. 469-472. Wyant further testified that, on two occasions, attorneys dropped off checks as campaign donations to her in Respondent's chambers. On each occasion, Wyant notified Respondent that an attorney had dropped off a check and, instead of telling her that she was not permitted to accept the checks, Respondent asked her the amount of the checks:

> Q: On each occasion that you got these checks, did Judge Horton know that a check had been dropped off to you?
>
> A: I had told—I had told him.
>
> Q: What did you tell him?
>
> A: I told him who dropped off the check and he asked how much it was.
>
> Q: Did he ever tell you that you shouldn't have accepted the check?
>
> A: No.
>
> Hearing Tr. 470-471.

{¶53} Wyant testified that she accepted money at the Respondent's campaign fundraiser at Zanzibar after Respondent's campaign coordinator, Bridgette Tupes, left the event. Hearing Tr. 354-356, 471-472. Additionally, Tupes testified that she ultimately collected the campaign donations from the Zanzibar fundraiser from Emily Vincent, after Wyant asked Vincent to deliver the envelope with funds in it (because Wyant was at lunch with the Respondent). Hearing Tr. 359-

360, 471-472.

{¶54} Wyant testified that Respondent instructed her, on numerous occasions, to solicit, retrieve, or deliver checks on behalf of his campaign. She testified that these requests were often made and completed during the workday. Hearing Tr. 472-477; Relator's Ex. 9, 10. Even though Respondent maintained in this proceeding that some of the checks were not contributions, they were all reported as "contributions" on his campaign finance reports. Hearing Tr. 1221-1224; Relator's Ex. 6. Respondent testified that he did not authorize his employees to do this but regardless, it occurred during the work day at the Franklin County Courthouse.

{¶55} In contrast to Respondent's testimony that he told his staff not to work on his campaign during working hours and that no one was required to work on his campaign, both Vincent and Wyant both testified that they were not provided any guidance on when to work on the campaign and completed tasks when they were asked of them because that was the expectation. Hearing Tr. 253-254, 436, 481, 1205-1208, 1330-1332.

{¶56} As mentioned, Wyant attended numerous golf outings with Respondent that occurred during the workday. Respondent specifically told Wyant that she did not need to take leave for her time away from the office while she was campaigning with him on the golf course. Hearing Tr. 483-485; Relator's Ex. 12.)

{¶57} Respondent argues that there were no set rules requiring the number of hours an employee was to work. Respondent provided testimony that his employees were exempt and therefore eligible for flex time. Further, Respondent argued that his judicial staff—his staff attorney, secretary and bailiff—were exempt employees and had no defined hours except 8:30 a.m. to 5:00 p.m. Monday through Friday, with an hour and a half off for lunch. Thus when they worked on the campaign for Respondent, it was on their "own time" not county time. However, Wyant

testified that she never worked more than 40 hours for the county.

{¶58} Respondent had an affirmative duty to make certain that his staff was not violating the rules when they were working on his campaign. He knowingly requested checks be obtained and delivered. He requested his staff members to attend golf outings. All while on county time. His actions were intentional when he permitted employees to work on his campaign. Thus, Relator proved by clear and convincing evidence that Respondent violated Jud. Cond. R. 1.2 and 4.4(B).

Count Three—Inappropriate Sexual Conduct

{¶59} In Count Three, Respondent is charged with an ongoing pattern of inappropriate sexual comments and conduct with at least two members of his judicial staff, Wyant and MB. This occurred both in the workplace and outside of work. Relator argued that Respondent's misconduct was egregious and constituted violations of the Ohio Rules of Judicial Conduct and the Ohio Rules of Professional Conduct, including Jud. Cond. R. 1.2, Jud. Cond. R. 1.3, Jud. Cond. R. 2.3(B), and Prof. Cond. R. 8.4(h).

{¶60} At the time Respondent met Elise Wyant during the Summer of 2013, she was working as a part-time hostess at T. Murray's Bar and Grill in Columbus, an establishment that Respondent patronized on an occasional basis. Hearing Tr. 424-425. On one occasion, at Respondent's request, Wyant agreed to have a drink with him after she finished her shift. According to Wyant, when they sat down, the following exchange occurred:

> A. So we sat down at the bar once I was done and I had - we had a drink together. And that's when I learned that he was a judge. And he said- he started commenting about my appearance, and he said that I was so sexy, and he said that- he said -these are his words – "I want to fuck you in the ass."
>
> Q. And what was your response to that?

A. Well, I mean, I was kind of shocked, you know, that- you know, this individual would say something so forward to somebody he doesn't even know. And so he had asked me for another drink, and I said, "No. I'm going home."

Hearing Tr. 425.

{¶61} Wyant testified that, later in September 2013, she got a telephone call from Respondent while she was at work in which he told her that he wanted to talk to her about a job opportunity. When Wyant met with him at a Starbuck's down the street from T. Murray's Bar & Grill, Respondent told her that a position as his secretary was open. Hearing Tr. 426-427.

{¶62} Wyant accepted the secretarial job he offered because she believed it would be in a professional environment. This job also carried a substantial pay increase from the two part-time jobs she was working at the time. Hearing Tr. 429-430. However, Wyant was mistaken in her expectation that Respondent would act professionally.

{¶63} From the beginning of her employment with Respondent, he made it clear to her that she was expected to be at his beck and call. Hearing Tr. 435. That meant working on his campaign, going to happy hours, being an attractive companion to entertain his friends, and enduring his constant sexual harassment. Hearing Tr. 435, 465-467, 497, 503-504. Respondent instructed Wyant to bring her friends to event. At times, he made inappropriate sexual comments to them as well. Hearing Tr. 502-503, 513-518; Relator's Ex. 14, p. 3. Respondent also sent Wyant inappropriate text messages. Respondent later instructed her to delete them because he didn't want anyone to see them. Hearing Tr. 514; see also Hearing Tr. 1297-1298; Relator's Ex. 14.

{¶64} Wyant testified that Respondent's comments and text messages made her uncomfortable and objectified, stating:

Q. How did it make you feel when he sent you text messages like this or spoke to you the way he spoke to you at work when he said that you were sexy?

A. It made me feel objectified, and I—I later came to understand that he—I couldn't see it from the start, but he—he made me feel that I—that women and me, in particular, you know, I was there because of how I looked and how I dressed, and that's what mattered to him. And I wasn't there because of the job I was performing or how good I was going, it was because of my appearance and- and that's what he was interested in.

He wanted—if—if I ever wore something he didn't like, he would tell me. Like pantyhose, he didn't want me to wear pantyhose, or he didn't—He said, "I don't- Those aren't attractive, pantyhose."

So it just made me feel like—It just made me feel like I was used, and it was- it was so awkward and uncomfortable. You know, it was uncomfortable when other people were around and they would hear him say it.

Hearing Tr. 500-501.

{¶65} Wyant also recounted how Respondent grabbed her by the waist at a happy hour event at T. Murray's. Respondent kept saying over and over "I want to fuck you. I want to fuck you." Wyant eventually left the bar and went home. Hearing Tr. 501.

{¶66} Wyant testified that, on a daily basis while at work, Respondent commented on her appearance, often calling her "sexy," telling her that she was "hot," and that he wanted to have sex with her. Hearing Tr. 500, 503-504. Not only did Respondent make sexual comments to Wyant about her own appearance, he also made sexually explicit comments to Wyant about his staff attorney, Emily Vincent, and his bailiff, Fayth McCallum. Hearing Tr. 505-507.

{¶67} Wyant testified that she stopped going to happy hour with Respondent in June 2014. Hearing Tr. 488-489. She was not disciplined or chastised for doing so. She would receive a promotion to bailiff several months later.

{¶68} Magistrate Pamela Erdy has been a magistrate with the Court of Common Pleas for 11 years. Hearing Tr. 963. For about five years of that time, she shared chambers with Respondent on the third floor of the courthouse. Hearing Tr. 963, 969. She, however, never was in chambers

or at "happy hour" with Respondent. During the time period in which the two shared chambers, Erdy neither witnessed any inappropriate conduct that occurred in Respondent's chambers, nor did anyone complain about any such conduct to her. Hearing Tr. 963-964.

{¶69} Another female, MB, was a summer intern for Respondent from May 2013 through the beginning of August 2013. She had completed her first year of law school and was 22 years of age at the beginning of the internship.

{¶70} MB testified about the sexual harassment to which she was subjected by Respondent. Hearing Tr. 625. During MB's internship, Respondent slowly started commenting on her appearance, initially telling MB that she looked good in the pants she was wearing. However, Respondent quickly progressed to telling MB that she was "sexy," that he wanted to have sex with her, and that he wanted "to fuck her in the ass." Hearing Tr. 626-627, 630, 636, 650.

{¶71} According to MB, Respondent repeatedly talked about the importance of "loyalty", especially in the legal field, and explained that was how individuals got jobs, *i.e.*, by being loyal to people and by knowing people. Hearing Tr. 636-637. In particular, MB testified as follows:

> Judge Horton would take a lot of credit and responsibility for getting other attorneys jobs and, you know, it wasn't about their merits, it was about who you know, and he was a judge, and so if he put in a word for you, you would get the job or not get the job that he did it.
>
> And so attorneys that had gotten jobs, you know, perhaps with a letter of recommendation from Judge Horton and didn't give him enough credit for it, that was just- just totally disloyal in his- in his view and he would make disparaging remarks about them.
>
> Hearing Tr. 637-638.

{¶72} After her internship ended, Respondent told MB to keep in touch, so she did. Hearing Tr. 642. MB checked in periodically and met Respondent for lunch, and sometimes for

happy hour. Hearing Tr. 643-646, 653. Like Wyant and Vincent, MB believed that she needed to go to the happy hours when he invited her, particularly because Respondent constantly reminded her about loyalty and the power he possessed. Hearing Tr. 258, 491, 637, 640-641, 687, 700. Respondent often told MB about how he had the ability to affect people's careers and how he got people jobs because he was a judge. Hearing Tr. 637, 641.

{¶73} MB testified about how she felt Respondent was "grooming me to go along with-with what he wanted me to do." Hearing Tr. 640-641. On one occasion after her internship ended, MB engaged in reciprocal oral sex with Respondent. She testified that she consented, but didn't want to. She participated because she knew Respondent wanted her to do so. Hearing Tr. 647-648.

{¶74} MB also recounted how, on three separate occasions, Respondent told his friends to touch her bottom and her bare breasts. Despite her protestations, she was groped at Respondent's insistence. Hearing Tr. 649, 654-656. MB also testified about the harm she has suffered because of this conduct. She stated she has had to undergo counseling and that she developed an eating disorder. In that regard, MB testified as follows:

> Q. Did your experience working with Judge Horton or your experience with Judge Horton after your internship ended have any impact on you or your career?
>
> A. It did. So it's been hard. A lot of counseling, as I mentioned. My third year of law school, I developed an eating disorder as well, I think, to make me regain some of that control.
>
> Going into the internship with Judge Horton, I wanted to actually go into prosecution. And after, I had no interest in being anywhere near a—a courthouse again, because if this was the way things worked, then I didn't want to be a part of it.
>
> Hearing Tr. 660-661.

{¶75} Respondent's sexual comments was not limited to Wyant and MB. He told his staff

attorney, Emily Vincent, that her tights were "sexy" and stated he would get in trouble for telling her how he wanted to make her over. Hearing Tr. 263-264. Wyant and Vincent both testified that his sexual comments made them uncomfortable. Hearing Tr. 264, 500-502, 507. Vincent stated that she did not tell anyone about the harassment because Respondent was a sitting judge and there was a power imbalance. Wyant testified that she remained silent because of fear of retaliation. Hearing Tr. 264, 466, 521-522.

{¶76} Respondent wants this panel and the Board to believe that he did not create a culture of sexual harassment and that his "rude, obnoxious behavior" occurred only after 5:00 p.m. when he started drinking. Hearing Tr. 1301, 1333-1334. However, by all accounts, including his own, Respondent did not drink during the workday. Nevertheless, Wyant and MB testified that Respondent told them they were sexy on multiple occasions while at work. Hearing Tr. 497, 507, 630.

{¶77} Ms. Wyant, MB, and Vincent were highly credible witnesses. None of them had any motivation to lie or falsely accuse Respondent of conduct that he did not commit. Moreover, Respondent's own admissions about his conduct with his staff outside of the courthouse corroborate Wyant, MB, and Vincent's versions of events.

{¶78} Althought Respondent has refused in this proceeding to acknowledge his misconduct or to accept responsibility for it, his awareness of the impropriety of his conduct is demonstrated by the fact he asked MB, on numerous occasions, if she was wearing "a wire," because the things he was saying to her could get him "in a lot of trouble." Hearing Tr. 638-639. After a sentencing hearing at which he sentenced a defendant who was a teacher and had been in a position of authority over students, Respondent apologized to MB for how he had treated her during the internship. Hearing Tr. 639-640. After Wyant filed a complaint against him with the

court's human resources office, Respondent told MB, in a closed-door meeting in his chambers, that it was "going to be bad." Hearing Tr. 657-658.

{¶79} Wyant's job duties as judicial secretary involved greeting attorneys and checking them in, tracking and managing Respondent's calendar, electronic filing of court documents, and assisting with trial. Hearing Tr. 430-431. Wyant's duties regarding scheduling necessarily required her to know and keep track of Respondent's schedule, even for matters related to his campaign or personal matters. Hearing Tr. 544-545.

{¶80} On October 7, 2013, Wyant began working as Respondent's secretary. Respondent began sexually harassing Wyant soon after she began working with him. During Wyant's employment, Respondent repeatedly told Wyant that she "looked sexy" and that he wanted "to fuck her." Respondent sexually harassed Wyant multiple times a week until she resigned from her employment on October 20, 2014.

{¶81} Finally, Respondent claims that any inappropriate sexual conduct or statements that he made to Wyant, MB, or Vincent occurred outside the workplace. Even if that were true, that does not exonerate him of his conduct.

{¶82} Respondent also made comments about employees and Wyant's friends in front of both Tupes and Wyant. At times, he described his sexual activities to Wyant. Respondent also told Wyant, and Tupes overheard, that he wanted to have sex with other members of his staff. Hearing Tr. 405-406.

{¶83} On May 15, 2014, while at T. Murray's, Respondent grabbed Wyant by the waist and stated, "I want to fuck you." Wyant told him to stop a number of times, and ultimately left the restaurant because of his behavior.

{¶84} On August 7, 2014, Respondent and Wyant went to M restaurant for a drink. While

waiting for the elevator, Respondent pulled the waistband of Wyant's skirt back approximately six inches away from her body. Then he let go of the skirt and smiled at Wyant.

{¶85} Wyant acknowledged engaging in frank sexual conversations with Respondent and speaking to him in the same manner in which he spoke to her. Hearing Tr. 529-530. In Respondent's own words, "I made the mistake of treating and keeping her like a good buddy, [a] friend." Hearing Tr. 154, 159-160, 1246-1247. However, one wonders what type of "good buddy" Respondent was when he makes such blatant and vulgar suggestions such as "I want to fuck you in the ass" to such "buddies."

{¶86} On or about late August 2014, Respondent hired Wyant as his bailiff. Hearing Tr. 433. The move to bailiff is considered a promotion, insofar as it entails more responsibility and also consists of a substantial raise in pay. Hearing Tr. 1258-1259, 171-172. It also entails a substantial amount of time working closely with the judge. Hearing Tr. 565. Wyant never complained, prior to October 2014, to anyone about the Respondent. In fact, she had a personal relationship with Atiba Jones, then the court administrator. Hearing Tr. 1101-1105.

{¶87} During this time frame, Jones, Wyant, and Respondent socialized together on a number of occasions, typically at bars. Hearing Tr. 1086-1087. Jones described Respondent as an "obnoxious drunk" who is "one of those people who drinks and has to be in your close proximity * * * [and] could be a little bit annoying." Hearing Tr. 1088-1089. However, Jones never observed Respondent touch Wyant in a sexual manner. Hearing Tr. 1089-1090.

{¶88} The tone and tenor of communications between Respondent and Wyant was often sexual or explicit in nature. Hearing Tr. 1251-1255, 1335-1336.

{¶89} Respondent and Wyant did not have a traditional employer-employee relationship. Hearing Tr. 1086-1087, 1116-1117. Respondent and Wyant appeared to be "really tight, like they

were close, not just at work, but * * * socially * * * they seemed like really good friends". The two often socialized together outside of the courthouse, frequently at bars. Witnesses described the two of them as being "like two peas in a pod." Hearing Tr. 219-220. Respondent and Wyant "joked around and were—seemed friendlier," the joking was mutual by each of them, and Wyant would bring up subjects or topics that others (Vincent, for example) would never discuss with their boss. Hearing Tr. 270-272. The tenor of the comments between Respondent and Wyant were frequently derogatory in both directions, she of him and he of her. Hearing Tr. 397-398. The two were flirtatious with one another. Hearing Tr. 398.

{¶90} On one occasion, Respondent and Wyant went together to M, a restaurant in Columbus, and had several drinks together. While in the elevator together to leave, Respondent reached out and grabbed Wyant at the waist to prevent her from getting off on the wrong floor. According to Respondent, his contact was not sexual in nature. Hearing Tr. 160-161, 1256. However, they both had been drinking, and Wyant testified that Respondent, at this time, was sexually suggestive.

{¶91} Prior to assuming the bailiff position, Wyant received training from Fayth McCallum, Respondent's prior bailiff, as well as Stacey Worthington, the director of court services who herself had formerly served as a bailiff to another judge on the court. Hearing Tr. 216. Wyant never complained about the Respondent to Worthington or McCallum.

{¶92} Respondent had no real complaints about Wyant when she was his judicial secretary. Hearing Tr. 1257. After she stopped socializing with the Respondent, things changed. Respondent found Wyant's performance as bailiff subpar. Respondent found fault with Wyant because of the difficulties she experienced in preparing monthly statistical reports for the Supreme Court. Hearing Tr. 1264-1266, 568-570. However, considering she had been working as a hostess

at a bar and had never, as a judicial secretary, had to prepare these reports, it should not have come as a surprise that she would have had difficulties in preparing these reports.

{¶93} Wyant submitted a written complaint to the common pleas court on October 20, 2014, and a "revised" complaint the following day. Relator's Ex. 16-17. Within a span of days, Wyant resigned her position, rescinded her resignation, and then rescinded her rescissions. Hearing Tr. 192, 578-579; Respondent's Ex. J. That resulted in the investigation at the common pleas court.

{¶94} Franklin County Court of Common Pleas Administrative Judge Patrick Sheeran oversaw the investigation into the allegations raised by Wyant's complaints. Hearing Tr. 930-940. At the conclusion of the investigation, Judge Sheeran proposed and the court adopted a series of recommended changes in policies and procedures that were prompted by the results of that investigation. Hearing Tr. 940-942; Respondent's Ex. C. The investigation did not lead the court to adopt or modify any of its policies or procedures with respect to working hours or leave time for judicial staff. *Id.*

{¶95} As part of the court's investigation in November 2014, MB was interviewed by Judge Sheeran. Hearing Tr. 667; Respondent's Ex. D. During that interview, MB expressed to Judge Sheeran that she did not want to make an allegation whether she was or was not sexually harassed. Hearing Tr. 670; Respondent's Ex. D at 10. Although MB reported to Judge Sheeran that Respondent had made comments to her, some of which were uncomfortable and some of which she found flattering, they were "a small piece of the overall experience." Respondent Ex. D at 21.

{¶96} MB served as a legal intern in Respondent's chambers from May through July or August 2013, a period of approximately 90 days. Hearing Tr. 122. At this time, MB had completed

her first year in law school, and was 23-years old by the time the internship ended. Hearing Tr. 125-126, 621.

{¶97} During the time of MB's internship, Respondent did not interact with her outside of the courthouse on a one-on-one basis. The two attended a number of lunches or happy hours together, but only as part of a larger group of people. Hearing Tr. 1272-1273.

{¶98} During the time period that MB was an intern in Respondent's chambers, Respondent claims he did not sexually harass her. Hearing Tr. 126-131, 1271-1272. However, he used this intern period to develop their relationship.

{¶99} Matthew Brady also interned with Respondent at the same time as MB. The two of them worked closely together during the entire summer. Hearing Tr. 886·887, 890, 892. During the internship, Respondent made a number of comments to Brady to the effect that appearances were important, and advising him to make sure his shoes were shined and his suit was tailored. Hearing Tr. 894.

{¶100} MB was invited to attend happy hours but she never felt "like [she was] compelled to go." Respondent's Ex. D at 14-15. Brady was similarly invited to attend happy hours, but did not feel obligated to do so. Hearing Tr. 895-896. Throughout the course of the summer, Brady did not observe any inappropriate conduct by Respondent towards MB, whether in the courthouse, at lunch, or at happy hour. Hearing Tr. 899-900. It is interesting to note that Brady testified that he never had Respondent's cell phone number, like Wyant and MB did. Nor did he engage in texting with Respondent. After the summer internship, Brady had no further communications with Respondent, unlike MB.

{¶101} In contrast, after MB's internship concluded, Respondent had lunch with her on three occasions. Each time MB reached out to Respondent to arrange the lunch. Hearing Tr. 136-

138, 644-645, 1273-1275. Each time he accepted.

{¶102} In April 2014, MB and Respondent had lunch together, and later that evening, attended a happy hour together at a bar known as Avalon. Hearing Tr. 138-140. Present that evening at the Avalon were Respondent, MB, Wyant, and Jones. The four of them were there for several hours drinking. Hearing Tr. 1276-1278. The environment was generally comfortable, with the group drinking, laughing, and dancing. Hearing Tr. 1096.

{¶103} During this evening at the Avalon in April 2014, and on more than one occasion thereafter, Respondent and MB engaged in sexual activity with one another. Hearing Tr. 138-140, 147-148, 646-648, 1277-1280. Respondent claims it was consensual.

{¶104} Subsequent to the evening at Avalon, Respondent and MB socialized with one another on several other occasions. On one such occasion, MB brought her sister with her to meet Respondent at a bar. Hearing Tr. 1286-1287.

{¶105} Another engagement occurred in October 2014. Hearing Tr. 143. Respondent and MB went bar-hopping together and then attended a private party at a condo owned by Karl Schneider, a local attorney and friend of Respondent's. Hearing Tr. 143-144, 1282-1284. During part of this evening, MB was seated in Respondent's lap while on the condo balcony. They were openly and physical involved. MB testified that Respondent told her to remove her bra and encouraged others to touch M.B. which Respondent denies. Hearing Tr. 144-146, 1283.

{¶106} Regardless, from April through October 2014, Respondent and MB engaged in consensual sexual activity with one another each time that they were together. Hearing Tr. 1280-1282. Respondent's characterization of his relationship with MB, between April and October 2014, was essentially that of an affair. However, MB was quite young. Respondent was a married, and a sitting judge running for office. Respondent acknowledged that this was inappropriate and

wrong. Hearing Tr. 1284-1286.

{¶107} At some point in October 2014, after the evening at the condo described earlier, MB contacted Respondent by text message to say "I'm coming down to your courtroom. Wear your fancy robe." Hearing Tr. 149. The following day, MB visited Respondent's courtroom along with a criminal defense lawyer for whom she was working. Hearing Tr. 149-150.

{¶108} The evidence and the exhibits in these proceedings clearly and convincingly demonstrate Respondent's repeated misconduct. Respondent made sexual and suggestive comments, both within the courthouse and in public. His conduct was predatory when he engaged in inappropriate sexual discussions with his employees and former employees of the court. As an employer and as a judge, he exerted control, power, and influence thus putting him in an advantage when he engaged in such conduct.

{¶109} By the allegations contained within Count Three of the complaint, Relator proved by a clear and convincing evidence that Respondent violated the following provisions of the Code of Judicial Conduct and Rules of Professional Conduct:

- Jud. Cond. R. 1.2;
- Jud. Cond. R. 1.3 [a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others];
- Jud. Cond. R. 2.3(B) [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment]; and
- Respondent's conduct in sexually harassing MB and Wyant was sufficiently egregious that he also violated Prof. Cond. R. 8.4(h) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]. See *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998.

AGGRAVATION, MITIGATION, AND SANCTION

Aggravating Factors

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

- Respondent committed multiple violations of both the Ohio Rules of Judicial Conduct and of the Rules of Professional Conduct;

- Respondent has refused to accept responsibility for his misconduct.

- Respondent attempted to shift the blame for some of his rule violations to his victims and former and employees. An example of this was Respondent's theme of his case. In the opening statement for the Respondent, his counsel stated "*They gave as good as they got.*" (Emphasis added);

- Rather than resulting from inadvertence, as Respondent has suggested or claimed, the substantial number of rule violations by Respondent result from intentional conduct by Respondent and therefore constitutes a pattern of misconduct;

- Respondent acted in a dishonest or selfish motive in dealing with his employees and with respect to his use of campaign funds for impermissible purposes;

- Respondent's response to the charges against him in these disciplinary proceedings lacks credibility and calls into question his character as an attorney;

- Respondent's actions in dealing with his former employees constitutes sexual harassment;

- Respondent's actions had a detrimental effect on at least one of his former employees/legal intern.

{¶111} Respondent suggested that he did not create a culture of sexual harassment and that his "rude and obnoxious behavior" occurred only after 5:00 p.m. when he started drinking. Hearing Tr. 1301, 1333-1334. However, by all accounts, including his own testimony, Respondent did not drink during the work day. Nevertheless, the Respondent made inappropriate comments to at least two of his employees, on numerous occasions, while at work. Hearing Tr. 497, 507, 630.

{¶112} This panel found that the testimony of Tupes, Vincent, and MB was credible. At this stage of the disciplinary process, they had nothing to gain but much to lose. Their appearance at the hearing and testimony could only endanger their professional careers, cause them embarrassment, and subject them to public ridicule. As a result, this panel finds that the testimony

of those witnesses much more credible than that of the Respondent. To be blunt, this panel finds that the Respondent was less than forthright. Respondent's own admissions about his conduct with his employees outside the courthouse corroborated the testimony of others as to what occurred.

{¶113} Comment [2] to the Preamble and Scope of the Ohio Code of Judicial Conduct states, in relevant part, that "[j]udges should maintain the dignity of judicial office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives." Similarly, Comment [1] to Jud. Cond. R. 1.2 provides that "[p]ublic confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. Thus, this principle applies to both the professional and personal conduct of a judge." Respondent in this case has failed to meet these standards.

Mitigating Factors

{¶114} Respondent has no prior discipline.

{¶115} Respondent suffered, as it relates to Count One, an imposition of other penalties and sanctions.

{¶116} Respondent presented substantial testimony regarding his use and abuse of alcohol. The blatant suggestion was that it was the alcohol that caused the problem. There was testimony from Respondent that he is an alcoholic [Hearing Tr. 1287] and that he did not begin drinking until he was in his mid-30's. Admittedly, he voluntarily entered into a contract with OLAP. However, that was not until late in 2014, after he was already in trouble. Hearing Tr. 1288-1289. At the time, he was cooperative with OLAP when he entered into a three-year contract.

{¶117} Though he is currently sober, he has had several relapses.

{¶118} There was substantial character testimony on the Respondent's behalf. David

Pemberton, a businessman and an attorney who is currently inactive and who has served as Respondent's AA sponsor. Additionally former Judge Connor, Judge Tyack, and Saxbe all testified that the Respondent had a positive reputation in the legal and business communities. Hearing Tr. 810. However, there has never been any suggestion that Respondent drank on the job and that the alcohol was the source of his problems.

{¶119} Respondent presented testimony from Judge Tyack, former Judge Connor; Saxbe, and Pemberton to offer that he is a changed individual and that he suffered from alcohol but did not offer any further testimony from his family or from a licensed counselor to support his argument regarding his abuse of alcohol. Respondent also cited *Disciplinary Counsel v. Connor*, 105 Ohio St. 3d 100, 2004-Ohio-6902 in support of his position

{¶120} Though Respondent sought mitigating credit for a substance abuse issue with alcohol, this panel does not find that Respondent is entitled to mitigation credit because he failed to completely satisfy the requirements of Gov. Bar. R. V, Section 13(C)(7). Respondent failed to present evidence that:

(a) a disorder caused or contributed to his conduct;

(b) he has undergone a substantial period of successful treatment or certification of successful completion of an approved treatment program; or

(c) that there was a prognosis from a qualified professional that he will be able to return to the competent, ethical and professional practice of law under specified conditions.

{¶121} Though there was testimony from Scott Mote, former Judge Connor, and Pemberton, none of them, either individually or collectively, met the professional qualifications of this rule. Therefore, no credit is given in mitigation.

{¶122} By all of the testimony, except Respondent's, Respondent sexually harassed his staff and abused his power during the work day when he was not drinking. Not a single person,

other than the Respondent, testified that his drinking caused the collective conduct that led to multiple violations. While at the same time, Respondent denied that misconduct ever occurred. More importantly, Respondent never claimed that the criminal conduct, to which he was convicted, was as the result of his alleged addiction to alcohol.

Recommended Sanction

{¶123} As the Supreme Court of Ohio has instructed, the purpose of these proceedings is not to punish, but rather to protect the public. *Ohio State Bar Assn. v. Resnick* 128 Ohio St.3d 56, 2010-Ohio-6147. In their post-hearing briefs, Relator and Respondent have addressed the sanction issue. Relator suggests that the appropriate sanction in this matter is an indefinite suspension. Respondent suggests that he has committed no violations, except for his three misdemeanor convictions. Respondent admitted to a finding of the violation of Jud. Cond. R. 1.2 in regard to the allegations of Count One. Respondent argued that Counts Two and Three should be dismissed. Therefore, at most there should be a public reprimand. Arguing in the alternative, Respondent suggested that, if there is a finding that Respondent committed misconduct as it relates to Counts Two and Three, any sanction imposed should be a fully stayed suspension.

{¶124} We first begin with the position of Respondent. As noted above, Respondent has committed multiple rule violations that have called into question his character and integrity as an attorney and judge. In addition, there has been an impact upon the women he sexually harassed and his attitude in the conduct of the proceedings.

{¶125} Respondent's counsel, in opening statement, took the approach that "They gave as good as they got," suggesting that Respondent did not have a professional and personal obligation to comply with the Ohio Rules of Judicial Conduct or the Ohio Rules of Professional Conduct. The panel found that Tupes, Vincent, and MB had absolutely nothing to gain by testifying in this

case other than ridicule and potential harm to their careers. With that having been said, the panel believes little of Respondent's testimony.

{¶126} The cases cited by Respondent, and also by Relator, do not deal directly with conduct that is presented in the case at bar. Those cases did not deal with criminal convictions and of culture where sexually charged commentary, flirtation, and sexual conduct were regularly present. Respondent's actions towards his female employees, coupled with his actions in fundraising for his election and reporting of his expenses, suggest one of sheer indifference to the rules. As a result, the cited cases from both sides do not deal directly with the situations like the current one in which Respondent finds himself.

{¶127} In *Ohio State Bar Assn. v. Mason*, 152 Ohio St.3d 228, 2017-Ohio-9215, the Supreme Court stated that disbarment is appropriate when a judge engages in fraud, dishonesty, protracted or premeditated acts, or the abuse of judicial office. Under the guidance of *Mason*, Respondent's conduct warrants disbarment because his conduct involved criminal violations associated with holding and seeking judicial office, he sexually harassed and engaged in inappropriate sexual conduct with his staff on a protracted basis, and he abused his judicial office. However, it was Relator's position that an indefinite suspension is sufficient to deter future potential misconduct by respondent and that it will send a message to the legal community that this is conduct that will not be tolerated.

{¶128} The Supreme Court has stated that, because they assume a heightened station in our society, judges must maintain a standard of personal and professional conduct above that expected of attorneys. *Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194 (citing *In re Coffey's Case* (N.H.2008), 949 A.2d 102, 114). Respondent must be held to these standards. As

a result, a substantial sanction is appropriate.

{¶129} The panel analyzed two lines of cases to reach an appropriate sanction for Respondent. The first line of cases focuses on financial disclosure violations involving attorneys: *Disciplinary Counsel v. Forbes,* 122 Ohio St.3d 171, 2009-Ohio-2623; *Disciplinary Counsel v. Dann*, 134 Ohio St.3d 68, 2012-Ohio-5337; *Disciplinary Counsel v. Taft*, 112 Ohio St.3d 155, 2006-Ohio-6525; *Disciplinary Counsel v. Gwinn*, 138 Ohio St. 3d 167, 2014-Ohio-101; and *Disciplinary Counsel v. Costabile*, 143 Ohio St.3d 331, 2015-Ohio-2082.

{¶130} The second line of cases focuses on unwanted sexual advances and inappropriate sexual conduct toward individuals in a vulnerable position: *Lake County Bar Assn. v. Mismas*, 139 Ohio St.3d 346, 2014-Ohio-2483; *Cincinnati Bar Assn. v. Young*, 89 Ohio St.3d 306, 2000-Ohio-160; *Disciplinary Counsel v. Campbell*, 68 Ohio St.3d 7, 1993-Ohio-8; and *Disciplinary Counsel v. Skolnick*, 153 Ohio St.3d 283, 2018-Ohio-2990.

{¶131} Forbes was an attorney who served on the board of the Bureau of Worker's Compensation Oversight Commission. As a member of the commission, he was required to file annual financial disclosure statements under R.C. 102.02(A). After knowingly failing to disclose benefactors of meal and travel expenses, and failing to disclose creditors to whom he owed more than $1,000, Forbes was criminally charged with four violations of R.C. 102.02(A). Forbes was also charged with two counts of violating R.C. 102.03(E). *Id.* Forbes was found guilty of the charges.

{¶132} The Board found, and the Court agreed, that Forbes's conduct adversely reflected on his fitness to practice law. The Court stated that Forbes's "illegal acts reflected poorly on the legal profession and disserved the public interest." The Court also held that the facts that form the basis of a criminal charge are indisputable in a disciplinary proceeding if a guilty or no contest

plea is entered, and cannot be explained away. In light of the numerous mitigating factors and only one aggravating factor, the Court imposed a six-month stayed suspension.

{¶133} Similarly, Dann was charged with two first-degree misdemeanor counts for soliciting improper compensation in violation of R.C. 2921.42(A)(1) and filing false financial disclosures in violation of R.C. 102.02(D). As a result of his criminal convictions, relator charged Dann with violating Prof. Cond. R. 8.4(h) for engaging in conduct that adversely reflects on the lawyer's fitness to the practice law.

{¶134} In mitigation, Dann provided full and free disclosure to the Board, displayed a cooperative attitude toward the proceedings, presented evidence of good character and reputation, and had been subject to other penalties and sanctions. In aggravation, Dann stipulated to prior misconduct. The panel also considered Dann's "poor judgment," and "his efforts to explain away his ethical breaches." The Court agreed, and adopted the recommended six-month suspension. It declared, "Like judges, the attorney general has a heightened duty to the public by virtue of his elected office."

{¶135} Taft received a public reprimand after he engaged in conduct that reflected adversely on his fitness to practice law for failing to report gifts he received as governor. In 2005, after reviewing financial disclosure statements he submitted, he discovered that he failed to disclose 19 benefactors who gave him gifts over a seven-year period. Taft reported the findings to the Ohio Ethics Commission, and he pled no contest to four counts of filing false disclosure statements. In a consent-to-discipline agreement, Taft stipulated to the facts, violations, and sanction. Taft received a public reprimand.

{¶136} The same sanction was imposed on Gwinn for failure to disclose contributions received by her in an unsuccessful campaign. Likewise that was the sanction imposed on

Costabile, who was a mayor, was convicted for failing to disclose information on a required financial disclosure form. Costabile's nondisclosure occurred over a period of years and involved a large sum of money.

{¶137} In the case at bar, Respondent pled guilty to three misdemeanors that involved knowing and willful violations of the law. But Respondent's actions are different than in Forbes, Dann, Taft, Gwinn, and Costabile. The Respondent is a sitting judge. In addition to falsely reporting campaign expenditures, Respondent asked or permitted his staff to complete campaign related tasks during normal work hours. He had his judicial secretary solicit, retrieve, and distribute campaign contributions in violation of Jud. Cond. R. 4.4(B). He also failed to monitor his judicial secretary, encouraged her to attend golf outings in connection with his campaign during business hours, and failed to ensure that she submitted appropriate leave time. Respondent's conduct demeans the public's trust in the legal system.

{¶138} The second line of cases to be considered, those involving sexual harassment, also provide guidance on the appropriate sanction in this case. In *Mismas*, the Supreme Court recognized that "unwelcome sexual advances are unacceptable in the context of any employment, but they are particularly egregious when they are made by attorneys with the power to hire, supervise, and fire the recipient of those advances." Mismas was an attorney who made inappropriate sexual comments and advances to the third year law student he employed. Mismas sent her sexually explicit and inappropriate text messages, and he declared that her continued employment depended on her compliance with his demands. Mismas also indicated that loyalty and honesty were important qualities to him. His misconduct caused the law student to quit after a brief 12-day period of employment. Unlike *Mismas*, the present case involved actual sexual

physical contact.

{¶139} The Board found that Mismas violated Prof. Cond. R. 8.4(h) and recommended a public reprimand. The Court, however, imposed a one-year suspension with six months stayed, stating that "Mismas did not just send sexually explicit text messages to a law student he sought to employ—he abused the power and prestige of our profession to demand sexual favors from her as a condition of her employment."

{¶140} In another sexual misconduct case, David Young created a hostile work environment and engaged in a pattern of discrimination over a two-year period. Young made inappropriate sexual comments to one of his employees, including telling her that he wanted to have sex with her. Also, Young advised his student employees that he knew influential people and that he could give bad character references when they applied to take the Ohio bar exam.

{¶141} The Court found that Young created a hostile work environment and engaged in discrimination in violation of former DR 1-102(B) (engaging, in a professional capacity, in conduct involving discrimination prohibited by law) and former DR 1-102(A)(6) (engaging in conduct that adversely reflects on the lawyer's fitness to practice law). Young was also found to have discriminated and violated other disciplinary rules. Therefore, the Court imposed a two-year suspension with one year stayed.

{¶142} The former judge, John Campbell, subjected multiple women to unwelcome and offensive sexual remarks and/or physical contact while he was an attorney and a judge. In all the instances of inappropriate conduct, Campbell was in a position where he "exercised authority, either directly as an employer or as a judge before whom the complainant was required to appear." Campbell was charged in a six-count complaint with violating former DR 1-102(A)(6) (conduct adversely reflecting on fitness to practice law); former DR 1-102(A)(5)(conduct prejudicial to the

administration of justice); and former Code of Judicial Conduct Canons 1 (failure to uphold the integrity and impartiality of the judiciary), 2(A) (failure to conduct self at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary), and 3(A)(3) (failure to be patient, dignified and courteous to lawyers).

{¶143} At the hearing, Campbell denied any offensive intent and he requested that the complaint be dismissed or, in the alternative, that he should receive only a public reprimand. The Court imposed a one-year suspension. In doing so, it noted that the foremost purpose of the Code of Professional Responsibility and the Code of Judicial Conduct is to "ensure a legal system of the highest caliber and to instill and maintain public confidence in the system." The Court went on to say that Campbell undermined this purpose, and his "actions were almost exclusively directed at those most likely to be intimidated by his position."

{¶144} Finally, Howard Skolnick was suspended for one year with six months stayed for his treatment of his paralegal, LD. Skolnick verbally insulted and harassed his employee for two and a half years. This caused his employee to suffer anxiety, and other emotional problems, including poor body image. Despite a recommendation from the Board of a stayed suspension, the Court believed that an actual suspension was appropriate given the pervasive nature of Skolnick's degrading conduct in order to protect the dignity of the legal system and to deter future misconduct of this nature by other attorneys.

{¶145} Like Young, Respondent told Wyant that she would not advance in her career if she did not attend happy hours with him after work, and he subjected her to repeated sexual advances and harassment. Similar to Mismas, Respondent sent Wyant text messages in which he referred to her as "sexy," and he repeatedly told her that he wanted to have sex with her. Respondent knew that Wyant was making more money in her positions as secretary and bailiff

than she had ever made before. Therefore, Wyant felt compelled to do what she needed in order to keep her job. Respondent also made sexual comments to MB while she was a student intern, specifically stating that he "wanted to fuck [her] in the ass" and telling her she "had a nice ass."

The Supreme Court has specifically stated:

> Legal clerkships play an important role in developing the practical skills necessary for law students to become competent, ethical, and productive members of the legal profession. Often, the skills, professional relationships, and reputations that students develop in these entry-level positions open the doors to their first full-time legal employment once they graduate and pass the bar exam. These first jobs can set the course for a new attorney's entire legal career. Attorneys who hire law students serve not only as employers but also as teachers, mentors, and role models for the next generation of our esteemed profession. To that end, we expect that attorneys will conduct themselves with a level of dignity and decorum befitting these professional relationships.
>
> *Mismas*, supra, ¶22.

{¶146} Respondent's misconduct is also similar to that of Campbell, particularly because he held a position of authority over the people who were affected by his inappropriate sexual comments and touching.

{¶147} In addition, Respondent was convicted of three misdemeanor charges for failing to file accurate statements in connection with his judicial campaign expenses by knowingly and willfully reporting expenditures that he knew were excessive. Further, he had his staff working on his campaign during normal business hours. Respondent's conduct breached his duty to the public. Although disbarment would be appropriate under *Mason*, a lesser sanction is sufficient to ensure a legal system of the highest caliber and to instill and maintain public confidence in the integrity of the judiciary.

{¶148} This panel finds that Respondent has violated several provisions of the Ohio Code of Judicial Conduct and of the Ohio Rules of Professional Conduct.

> One of the fundamental tenets of the professional responsibility of a lawyer is that he should maintain a degree of personal and professional integrity that meets the highest standard. The integrity of the profession can be maintained only if the conduct of the individual attorney is above reproach. He should refrain from any illegal conduct. Anything short of this lessens public confidence in the legal profession - because obedience to the law exemplifies respect for the law."
>
> *Forbes*, supra, ¶16 (internal citation omitted).

{¶149} The Supreme Court made the following observations regarding the importance of honest conduct by judges and public officials. [W]e have declared, "It is of utmost importance that the public have confidence in the integrity and impartiality of the judiciary." *Disciplinary Counsel v. Allen* (1997), 79 Ohio St.3d 494,495. And we have recognized that misconduct committed by a judge vested with the public's trust causes incalculable harm to the public perception of the legal system. *Disciplinary Counsel v. Hoskins*, 119 Ohio St.3d 17, 2008-Ohio-3194.

{¶150} Additionally, neither the Board nor the Supreme Court has hesitated to recommend or impose sanctions for judges who engage in misconduct, even where the conduct primarily occurred in their private lives and not in the course of their judicial activities in the courtroom. See, *e.g., Mason, supra* [judge indefinitely suspended following his conviction of attempted felonious assault and domestic violence against his wife]; *Disciplinary Counsel v. Williams*, 152 Ohio St.3d 57, 2017-Ohio-9100 [magistrate publicly reprimand for trying to use her status as a judicial officer to avoid being cited for DUI offense]; *Disciplinary Counsel v. Williams*, 145 Ohio St.3d 308, 2016-Ohio-827 [magistrate suspended from practice of law for, among other things, engaging in a sexual relationship with a party in an eviction proceeding over which he had presided, falsifying a loan application to obtain funds to purchase a motor vehicle for the woman and misappropriating wrongful death proceeds that were intended to finance an annuity for the decedent's minor children]; *Disciplinary Counsel v. Marshall*, 143 Ohio St.3d 62, 2015-Ohio-

1187 [judge publicly reprimanded for DUI offense].

{¶151} As the evidence graphically demonstrates, Respondent's inappropriate sexual conduct and statements occurred both in the courthouse during the workday and outside the courthouse during nonwork hours. Moreover, in both venues, the crucial factor was the control and power that Respondent possessed and exercised over his employees, whether or not they were in the workplace. Moreover, that control and power continued after the employment relationship or internship ended because Respondent implied, if not outright claimed, that he could "make or break" an employee's or attorney's career and her ability to get a new job.

{¶152} In either case, Respondent's conduct constitutes harassment, abuses the prestige of his judicial office and reflects adversely on the judiciary and the administration of justice. It also constitutes conduct adversely reflecting upon Respondent's fitness to practice law in violation of Prof. Cond. R. 8.4(h). *Mismas* and *Skolnick*, *supra*.

{¶153} For the above reasons, this panel recommends that Respondent be suspended from the practice of law for two years with one year of that suspension stayed, conditioned upon Respondent's continued attendance in Alcoholics Anonymous; that Respondent be evaluated by OLAP, enter into an appropriate agreement with OLAP, and comply with all conditions, restrictions and terms imposed by OLAP; that he have no further contact with any of his former female employees or interns who testified in these proceedings; that the Respondent pay the costs of these proceedings; and that he have no further violations.

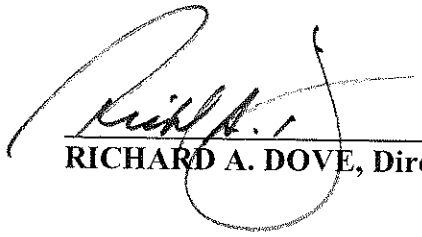
BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on December 7, 2018. The Board voted to adopt findings of fact and conclusions of law of the hearing panel. After discussion, the Board voted to amend the recommendation of the hearing panel and recommends that Respondent, Timothy Solomon Horton, be indefinitely suspended from the practice of law in Ohio with reinstatement conditioned on Respondent's: (1) continued participation in Alcoholics Anonymous; (2) submission to a new OLAP evaluation and compliance with any treatment and counseling recommendations arising from the evaluation; (3) absence of further contact with the former female employees and interns who testified in these proceedings; and (4) payment of the costs of these proceedings. The Board's recommendation to amend the sanction proposed by the panel is predicated on Respondent's predatory and harmful conduct toward and the vulnerability of the victims of his conduct and the flagrant abuse of his position of authority vis-à-vis Elise Wyant and MB. The Board cites to the Court's opinions in *Mismas* and *Skolnick*, both of which were cited by the panel, and the recent decision in *Disciplinary Counsel v. Sarver*, Slip Opinion No. 2018-Ohio-4717. In each case, the lawyer-respondents received six-month actual suspensions[1] for engaging in harassment (for Mismas and Skolnick) or inappropriate sexual activity with a client (for Sarver). However, each of those cases involved misconduct by a lawyer and there was but a single victim. In this matter, Respondent-Horton was a judge at the time the misconduct occurred and continues to serve in a position of trust and authority that he can exploit for his personal gratification. Further, his conduct was directed at multiple women who were subject to his authority, and he engaged in other acts of misconduct associated with judicial campaign activities, including violations that gave rise to criminal convictions. For these reasons

[1] Each actual suspension was part of a longer, partially stayed suspension. In *Sarver*, three justices would have imposed an actual suspension of one year.

and those cited by the panel, the Board concludes that a longer suspension, coupled with stringent conditions on reinstatement to the practice of law, is necessary to protect the public and promote public confidence in the integrity of the judiciary.

Pursuant to the order of the Board of Professional Conduct, I hereby certify the forgoing findings of fact, conclusions of law, and recommendation as that of the Board.



RICHARD A. DOVE, Director