

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

**In re:**

**Complaints against**

**Case No. 2016-075**

**Timothy Raymond Dougherty  
Attorney Reg. No. 0064500**

**and**

**Christopher Thomas Cicero  
Attorney Reg. No. 0039882**

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

**Respondents**

**Disciplinary Counsel**

**Relator**

**OVERVIEW**

{¶1} This matter came on for hearing on May 9-11 and July 12-13, 2018 before a panel composed of William H. Douglass, Patrick M. McLaughlin, and Tim L. Collins, panel chair. None of the panel members is from the appellate district in which the complaints arose that give rise to this matter or served on the probable cause panels that certified the complaints to the Board.<sup>1</sup>

{¶2} Relator was represented by Joseph M. Caligiuri and Lia J. Meehan. Respondent-Cicero was *pro se* and present throughout the proceedings. Respondent-Dougherty was present throughout the proceedings and represented by Ric Daniell.

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<sup>1</sup> The formal complaint filed against Respondent-Dougherty was certified to the Board on December 6, 2016 and assigned Case No. 2016-075. The formal complaint against Respondent-Cicero was certified to the Board on February 8, 2017 and assigned Case No. 2017-008. The panel chair granted Relator's motion to consolidate the two cases for hearing on May 31, 2017. The consolidated case was scheduled for hearing in August 2017, October 2017, and January 2018. The August 2017 hearing dates were vacated upon joint motion of the parties, and the October 2017 and January 2018 dates were vacated upon motion of Respondent-Dougherty.

{¶3} This matter proceeded on the second amended complaint with regard to Respondent-Dougherty, and the first amended complaint with regard to Respondent-Cicero. Each Respondent filed a separate answer.

{¶4} No stipulations were entered by the parties during the proceedings. The panel heard testimony from the following witnesses, who were all subject to direct and cross examination, as well as examination by members of the panel:

- Christopher T. Cicero
- Timothy R. Dougherty
- -Angela Granata
- David Davis
- David Kasser
- Donald Holtz
- Rick Brunner
- Michael McLean
- Kari Ferri
- Scott Kirschman
- Merri Klein
- Amy Sanderell
- Jonas Miller
- Lyndsay Ferri (nka Aronhalt)
- Nick Kean
- Karen Kean
- Wayne Stanley
- Dante Scuderi
- Karen Hockstad
- Marilyn Smith

{¶5} Voluminous quantities of exhibits were introduced during the evidentiary hearing, filling four large, three-ring binders collectively that were admitted. Other voluminous records were not offered into evidence, albeit were brought to the hearing or not admitted. Relator propounded 114 exhibits, all of which were admitted. Respondents jointly propounded 78 exhibits, four of which were withdrawn and eight of which were not admitted over objection. Additionally, the parties supplemented the record, by agreement, with a single joint exhibit of telephone records after the evidentiary hearing closed.

{¶6} Based on the evidence presented, the panel finds, by clear and convincing evidence, that Respondents engaged in professional misconduct as set forth below. Considering the rules violated, harm cause, relevant aggravating and mitigating factors, and applicable case precedent, the panel recommends that Respondent-Cicero be permanently disbarred and that Respondent-Dougherty be suspended for a period of two years with one year stayed on conditions.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶7} Respondent-Cicero is an attorney at law and was admitted to the practice of law on May 16, 1988. Respondent-Dougherty was admitted to the practice of law in Ohio on May 15, 1995. He has not had prior disciplinary charges brought against him.

### **Respondent-Cicero's Disciplinary History**

{¶8} Respondent-Cicero has been disciplined on three occasions by the Supreme Court of Ohio:

- *Disciplinary Counsel v. Cicero*, 78 Ohio St.3d 351, 1997-Ohio-207. The Supreme Court found that Cicero misrepresented a personal, intimate relationship with a Franklin County Court of Common Pleas judge during the pendency of a criminal matter he was defending before that judge to clients, the opposing assistant county prosecutor, and other attorneys. While evidence was introduced that Cicero also lied during the investigation and in the disciplinary hearing itself, a pleading defect in the disciplinary complaint caused the Court to only find a violation of DR 1-102(A)(5) [conduct prejudicial to the administration of justice]. However, because of the gravity of Respondent's disciplinary violation, he was suspended for one year. He was reinstated after completing his term suspension.
- *Disciplinary Counsel v. Cicero*, 134 Ohio St.3d 311, 2012-Ohio-5457. Cicero was found to have committed two rule violations by revealing to a third party client information learned during discussions with the prospective client, and thereby engaging in conduct that adversely reflected on Cicero's fitness to practice law. The Court specifically adopted the hearing panel's findings of fact and conclusions of law, wherein the panel chose not to believe Cicero's testimony, because "Respondent's testimony at the hearing was at times disingenuous and not credible." *Cicero, supra* at ¶14. Cicero was suspended for one year due to the severity of his violations.
- *Disciplinary Council v. Cicero*, 143 Ohio St. 3d 6, 2014-Ohio-4639. Cicero was found by the Court to have violated four rules when he appeared on his own behalf for a speeding ticket in the Franklin County Municipal Court. Therein he obtained a blank, signed judgment entry, caused his own employee to complete the judgment entry inserting a headlight violation and no points rather than the speeding ticket for which he was in court, then informed the arraignment judge that a prosecutor had offered him the reduced charge when no one had made that offer. When challenged, Cicero also wrote to the chief city prosecutor perpetuating the false story. Cicero admitted to lying in the municipal court, and was found to have intentionally lied about the sequence of

events in the disciplinary proceeding. He was sanctioned by the Court with an indefinite suspension from the practice of law. The Court found that the panel's findings were supported by "dishonest, unprofessional, and censurable conduct, which was prejudicial to the administration of justice and which adversely reflects on Cicero's fitness to practice law." *Cicero, supra* at ¶26. Chief Justice O'Connor's dissent, which urged permanent disbarment, vigorously argued that Cicero's egregious misconduct, risk of recidivism, quiver of untruths notable for its depth, fraud, intentional interference with court proceedings, repeated evasive, deceptive and dishonest conduct, spectacular talent for deflecting blame and minimizing misbehavior, inability to conduct himself in an ethical manner, increasing misconduct, longstanding pattern of dishonesty and recalcitrance, self-serving behavior, and habitual law breaking reinforce the worst stereotypes about the legal profession. *Cicero, supra* at ¶28, *et seq.*

{¶9} Respondent-Cicero was suspended from the practice of law effective November 28, 2012 for his second disciplinary case, but was charged with his third disciplinary case before being reinstated. While he was indefinitely suspended by the order dated October 23, 2014, he has not been authorized to practice law since November 28, 2012.

#### **Angela Granata Matter**

{¶10} Since 1993, Angela Granata was the owner of a family business called Columbus Microfilm, Inc.

{¶11} CMI Experienced severe financial problems, went bankrupt in the 2000s, and a receiver was appointed during that process. Hearing Tr. pp. 464-465.

{¶12} During the course of the receivership, a condominium that was part of the receivership estate was sold. Granata believed the sale took place inappropriately, as the condominium was not listed on the schedule of assets in the bankruptcy. Hearing Tr. 465, 479, 704-705.

{¶13} At the same time, Granata was a defendant in a civil action filed on behalf of the Brunner Quinn law firm for legal fees that Granata incurred in the course of litigating seven different lawsuits during the financial distress and ultimate demise of CMI. The collections case

for legal fees was being prosecuted by now-suspended lawyer Kenneth Donchatz on behalf of the Brunner Quinn law firm. Hearing Tr. 647, 970.

{¶14} Granata was a student at Franklin University in an online course taught by Respondent-Dougherty that concluded in April 2011. Hearing Tr. 465-467.

{¶15} On April 26, 2011, Granata contacted Respondent-Dougherty to discuss whether he could represent her with respect to the CMI condominium sale matter and the Brunner Quinn collection matter. Hearing Tr. 466-467; Relator's Ex. 19.

{¶16} The initial meeting occurred on April 27, 2011, wherein both the CMI condominium matter and the Brunner Quinn collection matter were discussed. Respondent-Dougherty agreed to take on the representation, and Granata paid him \$700. She also paid him \$1,000 on February 20, 2012, \$1,000 on March 15, 2012, \$1,000 on July 9, 2012, \$1,000 on August 20, 2012, \$500 on September 26, 2012, and \$500 on December 6, 2012, with each payment occurring before Respondent-Dougherty moved into Respondent-Cicero's office. Granata paid \$500 on February 1, 2013, after Respondent-Dougherty relocated to Respondent-Cicero's office on Mound Street. All of the payments were deposited into Respondent-Dougherty's personal bank account. Hearing Tr. 195-196; Relator's Ex. 20 and 26.

{¶17} Respondent-Dougherty did not have an IOLTA at the time of being retained by Granata, did not do any work for her so as to have earned the initial payment. Therefore, when he negotiated the initial payment, he did so by depositing an unearned legal fee into an account that was not an IOLTA. Hearing Tr. 196-197.

{¶18} In December 2012, Respondent-Dougherty decided to make a career change from being a contract and medical industry lawyer, to learning to practice criminal defense and family law. Hearing Tr. 171-174. After being introduced to and meeting with Respondent-Cicero, in

January 2013, Respondent-Dougherty moved into the office formerly serving as the Law Offices of Chris Cicero on Mound Street in Columbus. Hearing Tr. 171-175.

{¶19} From the time Respondent-Dougherty moved into Respondent-Cicero's office in January 2013, he occupied the street level, "upstairs" office that included a waiting area and a conference room that Respondent-Cicero had formerly utilized. Respondent-Cicero moved into a basement office just below Respondent-Dougherty in the same building. Hearing Tr. 1436.

{¶20} Granata continued the attorney-client relationship with Respondent-Dougherty after he relocated to the Mound Street law office, specifically for the CMI and Brunner Quinn collection matters.

{¶21} With regard to the CMI case, Respondent-Dougherty never entered an appearance in the bankruptcy case or filed a new case in any court. He also never informed Granata in writing that she did not have a case from the time she hired him in April 2012 until she last wrote and personally communicated with him as counsel pursuing the CMI condominium sale matter on November 26, 2013. Hearing Tr. 205-206; Relator's Ex. 40.

{¶22} With regard to the Brunner Quinn lawsuit, Respondent-Dougherty negotiated an in-court settlement of the case in April 2012 on favorable terms of \$100 per month payments, but did so without Granata's knowledge, permission, or ability to pay so as to remain in compliance with the apparently favorable terms. Hearing Tr. 470-471; Relator's Ex. 24.

{¶23} On August 15, 2012, Granata was already in default of the \$100 per month settlement payments, and became the subject of a motion to show cause due to her nonpayment. Hearing Tr. 473-478; Relator's Ex. 35-36.

{¶24} Granata repeatedly requested that Respondent-Dougherty attend to the Brunner Quinn matter and inform her of the status, all to no avail. Hearing Tr. 473-479; Relator's Ex. 37-39.

{¶25} With regard to a third case, the Stamatakos case, that matter presented for the first time when Granata interacted with Respondent-Cicero, in addition to Respondent-Dougherty, in April 2013. Hearing Tr. 483-484.

{¶26} When Respondent-Dougherty first discussed the Stamatakos case with Granata, it was at a Columbus area coffee house, Cup o' Joe, when he also informed Granata of his new office that, he misrepresented, was with a new partner. Hearing Tr. 483.

{¶27} On April 7, 2013, Respondent-Dougherty and Granata scheduled and kept an appointment at the Mound Street office, where Respondent-Cicero was introduced as Respondent-Dougherty's partner. Hearing Tr. 483-484. During the appointment a discussion was had with both Respondents participating in how to handle the CMI, the Brunner Quinn, and the Stamatakos cases. Hearing Tr. 484-5.

{¶28} On April 7, 2013, when Granata met with Respondents Dougherty and Cicero at the Mound Street offices, Respondent-Cicero wrote and typed up a termination letter to Granata's then lawyer, Adam Hubble, in the Stamatakos case that day, after describing to Granata the legal work performed by Hubble in a common, yet vulgar, expression, and instructing her on the necessity of delivering the letter to Hubble that day. Hearing Tr. 486-489; Relator's Ex. 28.

{¶29} Despite the extraordinary step of facilitating the termination of counsel on the eve of a court scheduled mediation, Respondent-Dougherty did not enter an appearance in the Stamatakos case, and, although in the courthouse, did not attend the mediation. Hearing Tr. 1482-

1483; 585-588. Five days after the mediation, the case ended when summary judgment was entered against Granata. Hearing Tr. 588.

{¶30} After the entry of summary judgment, Granata asked Respondent-Dougherty to work on the Stamatakos case appeal. Respondent-Dougherty informed Granata additional fees were required for the appellate work. Granata did not have money to pay the fees. Instead she delivered, either as collateral or as a fee, an album by The Who called “Quadrophenia” that included the autographs of the four members of The Who. Hearing Tr. 230-234; 492-4; Relator’s Ex. 41.

{¶31} As late as November 26, 2013 Granata thought Respondent-Dougherty was working with her on the CMI, Brunner Quinn, and the Stamatakos law suits, and asked for information on those law suits and a statement as to the legal fees she had paid to Respondent-Dougherty through that time. Hearing Tr. 495-98; Relator’s Ex. 40.

{¶32} Ultimately, on May 10, 2014, Granata wrote one final time to Respondent-Dougherty to seek the return of her file and The Who album, and again requested an itemized statement for all the money she had paid to Respondent-Dougherty during the course of his representation. Hearing Tr. 499, 1490-1492; Relator’s Ex. 40.

{¶33} Respondent-Dougherty did not respond to Granata’s email inquiries about her cases and never sent an itemized fee bill in response to the letters she sent him on November 26, 2013 or May 10, 2014. Hearing Tr. 1489-1491. Likewise, he neither sent a disengagement letter to Granata nor called to confirm with her that he had been terminated as her lawyer. Hearing Tr. 1491-1492.

{¶34} The Who album was ultimately returned to Granata when Relator, in the course of prosecuting this case, informed Respondent-Dougherty of the request to return same. Respondent-

Dougherty had originally asked Respondent-Cicero what to do with the album when it was received, at which time Respondent-Cicero took the album and placed it in a secure place in the office on Mound Street. In order to effectuate the return, Respondent-Cicero took the album from its location in the office, drove it to the office of Ric Daniell, counsel for Respondent-Dougherty in this matter, where the album was retrieved by Granata. Hearing Tr. 1630. An insert in The Who album that Granata delivered with the album when she entrusted it to Respondent-Dougherty was not in the cover of the album when it was ultimately returned to her. Hearing Tr. 502.

### **David Terry Davis Matter**

{¶35} David Terry Davis was involved in a two-vehicle accident in May 2015 wherein a truck struck Davis' vehicle, causing major injuries to his neck and back and a high degree of pain. Relator's Ex. 59.

{¶36} On June 3, 2015, Davis called the law office on Mound Street to arrange for an appointment so as to secure new counsel, due to dissatisfaction with his then lawyer. Hearing Tr. 250; 1580; Relator's Ex. 58. The call was answered by Respondent-Cicero, and a long interview was conducted over the phone, reflected by four pages of handwritten notes. Hearing Tr. 1580; Relator's Ex. 58. The notes were thereafter passed on to Respondent-Dougherty by Respondent-Cicero. Hearing Tr. 1580.

{¶37} Davis knew to contact Respondent-Cicero because Davis had met Wayne Stanley, a decades-long friend, who coached Respondent-Cicero in college and maintained close ties to him since then. Stanley heard Davis explaining his troubles in a small pub and recommended that Davis contact Respondent-Cicero. Hearing Tr. 250-51.

{¶38} On June 4, 2015, Davis and his girlfriend, Merri Klein, travelled to the Mound Street law office and met with Stanley, Respondent-Dougherty, and Respondent-Cicero. After

initial introductions, Stanley and Respondent-Cicero went to the basement office for a short period. Hearing Tr. 251-253, 340-345, 1122-1123.

{¶39} After a few minutes, according to Davis and Klein but denied by Respondents, Respondent-Cicero took charge of the meeting with Davis and Klein in the conference room, giving his sales pitch about his expertise and abilities, how he was going to handle things, what Davis would do, and how Respondent-Cicero would help Davis. Hearing Tr. 252, 341-342. During the course of the meeting, Respondent-Dougherty was sent by Respondent-Cicero to make copies and do paper work, which apparently included taking notes on the meeting. Hearing Tr. 251-259; 342-343; Relator's Ex. 59.

{¶40} During the course of the meeting, it was explained to Davis and Klein by Respondent-Cicero that Respondent-Dougherty's name would appear on all papers, but that Respondent-Cicero would be doing the work on the case. Hearing Tr. 259, 343.

{¶41} Also, during the course of the meeting, according to Davis and Klein, but denied by Respondents, Respondent-Cicero obtained from Davis the telephone number for an eye witness to the accident giving rise to Davis' claim. Respondent-Cicero proceeded to call the witness on a speakerphone, introduced himself as Davis' attorney, and posed questions about the accident to the witness, all in the presence of Davis and Klein. Hearing Tr. 254-255, 343-344. It must be observed that no evidence as to this fact dispute was introduced by any party from the witness to the accident herself. Respondent-Dougherty testified that he spoke with the witness. Hearing Tr. 1546-1547. This led the panel to conclude that Relator did not prove Respondent-Cicero's conduct on this point by clear and convincing evidence.

{¶42} Before, during, and after the meeting with Davis, neither Respondent-Dougherty nor Respondent-Cicero provided Davis with a written notice of Respondent-Cicero's status as a suspended lawyer. Hearing Tr. 261-262, 346.

{¶43} When Davis inquired of Respondent-Cicero during the meeting as to the status of the suspension of his law license, Respondent-Cicero replied it was taken care of. Hearing Tr. 255-256.

{¶44} Ultimately, a few months later, after a telephonic altercation with Respondent-Cicero, Davis determined he did not wish to continue with the legal representation under the agreement with Respondent-Dougherty. He terminated the relationship with a letter addressed to both Respondent-Dougherty and Respondent-Cicero, because he believed they were working together in a partnership and he wished to let both know he was done working with them. Hearing Tr. 262-263; Relator's Ex. 61.

#### **Amy Sanderell Matter**

{¶45} Amy Sanderell is the daughter of Merri Klein, Davis' girlfriend. Klein inquired of Respondent-Cicero and Respondent-Dougherty about their knowledge and abilities in the area of domestic relations on behalf of Sanderell during the Davis meeting on June 5, 2015. Hearing Tr. 345-346. Thereafter, Klein suggested to Sanderell that Respondent-Cicero and Respondent-Dougherty could assist her with a child custody post-petition matter. Hearing Tr. 601.

{¶46} Sanderell and her boyfriend, Jonas Miller, traveled to the Mound Street office to meet with Respondent-Dougherty to discuss the child custody matter. Hearing Tr. 601-602.

{¶47} Before the meeting, Sanderell emailed copies of relevant paperwork to Respondent-Dougherty on the case, and she brought copies of same with her to the meeting. Sanderell did not

retain the services of Respondent-Dougherty. Hearing Tr. 640-641. Respondent-Dougherty did not appear to have read the materials before the meeting. Hearing Tr. 603-604, 722-724.

{¶48} The meeting was made up of Respondent-Cicero doing most of the talking, seasoned with a lot of profanity, about what he had done in family law matters, his analysis of Sanderell's case, and his opinion that because the ink on the divorce case had barely dried, it would be difficult to do much for her. Hearing Tr. 603-607, 723-757, 746-749.

{¶49} Sanderell was never provided with a notice by Respondent-Dougherty or Respondent-Cicero that Respondent-Cicero's law license had been suspended. Hearing Tr. 605, 725.

#### **Lyndsay Ferri, nka Aronhalt Matter**

{¶50} Lyndsay Ferri, nka Lyndsay Aronhalt, is an individual whom Respondent-Cicero has known for more than 15 years, personally and as a client while he was licensed to practice. Hearing Tr. 764.

{¶51} Ferri has been in recovery for opiates addiction for the past two years and is also treating for an anxiety disorder. Hearing Tr. 763-764, 780.

{¶52} On August 28, 2015, Ferri was arrested in Columbus by an off-duty police officer traveling in an unmarked car for operating a motor vehicle while intoxicated. Ferri was placed in the rear of a police cruiser, where she was recorded asking to speak to her attorney, Respondent-Cicero. Hearing Tr. 765-767.

{¶53} After being processed and released, on September 1, 2015, Ferri traveled to the Mound Street law offices, and met alone with Respondent-Cicero to discuss the charges and facts related to the arrest. Respondent-Cicero told Ferri the charges would be thrown out, and that contact would be made with the Columbus Chief of Police. Hearing Tr. 768-772.

{¶54} Also on September 1, 2015, Respondent-Cicero quoted Ferri a legal fee of \$1,800 to defend the charges. Ferri paid \$500 down on the legal fee utilizing a debit card, which was funded by cash provided by her husband, Rick Aronhalt. Hearing Tr. 768-769, 772-773.

{¶55} Ferri did not know or meet Respondent-Dougherty until the next day, in court, September 2, 2015. Hearing Tr. 773-774. During the morning of September 2, Ferri and Aronhalt waited several hours for Respondent-Dougherty to appear in court and were alerted that Respondent-Dougherty was present when texts between Ferri and Respondent-Cicero were exchanged. Hearing Tr. 775-776.

{¶56} On November 9, 2015, Ferri was arrested a second time, also in Columbus and also for operating a motor vehicle while intoxicated. Hearing Tr. 777, 779.

{¶57} During the arrest, Ferri was again recorded in the back of a police cruiser, asking to call her attorney, Respondent-Cicero. The call was recorded on video and from a speaker phone. Hearing Tr. 780-781; Relator Ex. 64.

{¶58} During the recorded call, Respondent-Cicero answered the telephone at the Mound Street law offices, acknowledged Ferri on the phone telling him the officers wanted to take a bodily fluid sample from her, to which Respondent-Cicero instructed Ferri that she “had to refuse” to allow that sampling before handing the telephone to Respondent-Dougherty. Hearing Tr. 782-783; Relator’s Ex. 64. Ferri confirmed that she decided to refuse any bodily fluids test as soon as she was instructed by Respondent-Cicero that she had to refuse. Hearing Tr. 782-783.

{¶59} Between November 9, 2015 and January 22, 2016, Ferri met with Respondent-Cicero to make additional payments toward her legal fees and to discuss legal issues in her two cases—where she was required to be and how she was required to act with respect to her cases. Hearing Tr. 784. Ferri also made cash payments to Respondent-Dougherty. Hearing Tr. 779, 809.

{¶60} On July 29, 2016, Ferri was attending a probation meeting and was contacted in person by an investigator from Relator. In response to that contact, Ferri engaged in a string of text messages with Respondent-Cicero as to how she should act and what she should say to the investigator, and then spoke with Respondent-Cicero on the phone. Hearing Tr. 790-800.

### **David Kasser Matter**

{¶61} David Kasser was charged with three counts of burglary for breaking and entering homes in central Ohio. Hearing Tr. 884.

{¶62} At the recommendation of Donte Scuderi, a longtime acquaintance of Respondent-Cicero, Kasser traveled to the Mound Street office on January 26, 2017 to meet with Respondent-Cicero to see if Respondent-Cicero would take on Kasser's defense. Hearing Tr. 884-885.

{¶63} Prior to January 26, 2017, Kasser had been represented by another criminal defense attorney, but a medical-legal theory Kasser wished to explore and present in his defense was not something prior counsel was willing to entertain. Hearing Tr. 885-889).

{¶64} Kasser discussed the medical-legal theory with Respondent-Cicero, who was initially not persuaded. Respondent-Dougherty, who also attended the meeting, expressed interest in the defense and convinced Respondent-Cicero that Kasser should come in as a client. Hearing Tr. 887-888.

{¶65} A discussion of legal fees was then had between Kasser and Respondent-Cicero, and an amount of \$6,000 was agreed to, with \$1,700 paid down in cash. Hearing Tr. 889, 995-96, 960; Relator Ex. 87.

{¶66} Respondent-Dougherty issued a receipt for the down payment. On the same date, an engagement letter was signed by Kasser and Respondent-Dougherty. Respondents' Ex. G.

{¶67} At no time was Kasser presented with a written notice of Respondent-Cicero's suspension. Hearing Tr. 890.

{¶68} On December 19, 2017, Respondent-Dougherty filed a motion to withdraw as counsel for Kasser. Relator's Ex. 94. The "Memorandum" portion of the motion divulged confidential information, and potentially attorney-client privileged communications, to the court as the grounds for his motion, all of which cast his then client in a poor light. The motion included the following language:

Mr. Kasser has told others that he is going to do all he can to keep his case moving through the system by using any means necessary; that he has "used" three attorneys to date, and that now is the time for him to represent himself. Counsel will no longer work with Mr. Kasser and is firing him this date. In addition, Mr. Kasser came to court his morning (12-19-17) and received his own continuance until January 31, 2018, without the signature of counsel, who was present in the courthouse; but in another courtroom at the time Mr. Kasser secured his continuance. Counsel would have informed the court what Mr. Kasser was doing had he been present.

*Id.*

### **Nick Kean Matter**

{¶69} Nick Kean, an individual charged with the second-degree murder of his roommate, retained Respondent-Dougherty to defend the case through trial. Hearing Tr. 657.

{¶70} Respondent-Dougherty had never tried a murder case before taking on the Kean matter. Hearing Tr. 497.

{¶71} Respondent-Dougherty charged Kean's grandmother \$20,000 up front to defend the case and did not deposit any portion of the \$20,000 into his IOLTA after receiving same. Hearing Tr. 448; Relator's Ex. 103.

{¶72} During the course of the preparation and trial, Respondent-Dougherty repeatedly informed Kean what Respondent-Cicero thought of how Respondent-Dougherty was to prepare

the defense of the case and that both Respondents prepared Kean's case for trial. Hearing Tr. 659-662. In fact, Respondent-Cicero acknowledged that he helped Respondent-Dougherty behind the scenes throughout with Kean's case. Hearing Tr. 153-155.

{¶73} On at least one occasion during trial, Respondent-Cicero and Respondent-Dougherty were communicating by text about the way the murder trial was proceeding. Hearing Tr. 662-664.

{¶74} No written notice of Respondent-Cicero's status as a suspended lawyer was ever provided to Kean. Hearing Tr. 664.

{¶75} After his arrest, but before trial, Kean's grandmother located in her home a bloody sweatshirt that Kean had been wearing at the time of the incident, apparently covered with decedent's blood. Hearing Tr. 1164-1166.

{¶76} Mrs. Kean sought to deliver the bloody sweatshirt to Respondent-Dougherty, but was unable to reach him on the phone or in person, despite repeated calls and visits to the Mound Street law office. Ultimately, she determined to go to the Mound Street law office and simply wait in her car until someone showed up, which finally worked as she met Respondent-Cicero. Hearing Tr. 1166-1167.

{¶77} When Respondent-Cicero appeared in the parking lot of the office, and after introductions, Mrs. Kean gave the bloody sweatshirt to him in a bag. Respondent-Cicero then brought the bag into the Mound Street law office. Hearing Tr. 1169-1170.

{¶78} Respondent-Cicero deposited the bag containing the bloody sweatshirt on the chair of Respondent-Dougherty. Hearing Tr. 156-158. It was turned over to the Columbus Police Department and used as an exhibit in the Kean trial. Hearing Tr. 691.

{¶79} Respondents both deny that Respondent-Cicero received any compensation for anything he did in this case, and no direct evidence to the contrary was presented by Relator. Hearing Tr. 1540, 1700.

### **Operative Admissions**

{¶80} Through their own testimony and supported by exhibits presented and as noted, Respondents admitted to the following conduct. These admissions are sufficient to establish many of the alleged rule violations by clear and convincing evidence, albeit the significance of these admissions is, at times, contested by Respondents.

{¶81} The Mound Street law office had a yard sign facing the street reading “James Hill Chris Cicero Attorneys at Law” that remained in front of the Mound Street law office until sometime in late 2017, approximately five years after Respondent Cicero had been suspended. Hearing Tr. 30-33; Relator’s Ex. 8-9.

{¶82} Respondent-Dougherty had been practicing in the Mound Street law office for three years by the time Respondent-Dougherty’s name was substituted as a tenant for that of Respondent-Cicero on the building’s yard sign, albeit the building was then graced with the name “Chris Cicero Law Building”. Hearing Tr. 33-34; Relator’s Ex. 10.

{¶83} Before the addition of Respondent-Dougherty’s name on the sign, the Mound Street law office building did not have a name to it. The building being renamed as the “Chris Cicero Law Building” at Respondent-Cicero’s direction and control. Hearing Tr. 33-35.

{¶84} Respondent-Dougherty did not register Respondent-Cicero’s employment with the Office of Disciplinary Counsel during the period January 2013 through June 2014 even though Respondent-Cicero was in the employ of Respondent-Dougherty as a suspended lawyer. This

nonregistration was in violation by both Respondents of their respective duties as prescribed by the Supreme Court of Ohio. Hearing Tr. 61-62; Relator's Ex. 17.

{¶85} Respondent-Dougherty did not prepare a written notice to be provided to clients about his hiring and utilization of Respondent-Cicero when he hired him. Rather, sometime in 2014 at the earliest and perhaps as late as 2017, the notice was prepared. Hearing Tr. 192-193. However, it is uncontested that each of Respondent-Dougherty's clients or prospective clients who testified in this proceeding did not receive any written notice regarding Respondent-Cicero's employment as expressly required. Hearing Tr. 192.

{¶86} The only method of distributing the written notice regarding Respondent-Cicero's suspension utilized by Respondent-Dougherty was passive, with stacks of reproductions of the notice purporting to be sitting in two spots in Respondent-Dougherty's Mound Street law office. No witnesses testified to seeing those notices when visiting the Mound Street law office. Hearing Tr. 82-86).

{¶87} When Respondent-Dougherty was making the effort to return The Who album to Granata, he did so by asking Respondent-Cicero to take possession of the album and drive it to the office of Ric Daniell for retrieval by Granata, which Respondent Cicero did. Hearing Tr. 84.

{¶88} When arrested by the Columbus Police for operating a motor vehicle while intoxicated, Ferri was instructed by Respondent-Cicero that "you have to refuse" in reference to a request by law enforcement to obtain bodily fluid samples from her. Hearing Tr. 130-131.

{¶89} Respondent-Dougherty did not provide itemized fee bills to Granata or Kasser, when requested by those clients to account for the legal fees they had paid him. Hearing Tr. 1484-1492; 957-958.

{¶90} Respondent-Dougherty did not complete the representation of Kasser for which he was paid a flat fee of \$6,000. He gave Kasser no refund when he terminated the attorney-client relationship. Hearing Tr. 957-958; 1513-1522; Respondent's Ex. G.

{¶91} Respondent-Dougherty did not deposit any money paid to him prior to undertaking work by Granata, Kasser, and Mrs. Kean into an IOLTA. Rather, the money was deposited into a personal or business account. Hearing Tr. 195-196, 467; Relator's Ex. 20, 26.

{¶92} Respondent-Dougherty did not keep time records contemporaneous with the services rendered. Rather, he created a recapitulation years later, not for the clients, but based upon the demand of Relator. Hearing Tr. 1452, 1486-1487; Relator's Ex. 52 and 53. Based upon the testimony adduced at the hearing and the work-product evidenced by exhibits admitted into evidence, the panel reviewed the reasonable amount of time that should have been taken for performing the scope of work for Granata's matters and the scope of work for Kasser's matter. The panel accepted the \$200 per hour rate Respondent-Dougherty charged and concluded that 16.75 hours were properly chargeable for the Granata matters, and 14 hours were properly chargeable for the Kasser matter.

### **Credibility of Witnesses**

{¶93} In assessing credibility of witnesses, the panel recognized direct conflict of testimony between some of the Relator's witnesses and Respondents' witnesses, including Respondents themselves. At times, the panel concluded Relator's witness were more believable, and the evidence adduced was clear and convincing on the points those witnesses addressed. On others, the panel found the contradiction of testimony did not surpass the burden of proof by clear and convincing evidence. To that end, the panel concluded that the testimony of David Davis and Merri Klein did not establish, by clear and convincing evidence, their description of the initial

meeting with Respondents. There was obvious animus exhibited during the hearing by Davis toward Respondent-Cicero, and Klein lacked memory of specific events, rendering both of their testimony insufficient to overcome the testimony of the Respondents. While the panel may have accepted the Davis and Klein testimony had the burden of proof been different, the panel concluded it could not in this matter because it was less than clear and convincing.

{¶94} The panel found that the demeanor of Respondent-Cicero toward the other members of the defense table to be that he, not his fellow Respondent or Respondent's counsel, was in charge. Objections lodged by Ric Daniell were regularly, in essence, overruled by Respondent-Cicero after being made by Daniell on behalf of Respondent-Dougherty. See, *e.g.*, Hearing Tr. 767. Instructions were given by Respondent-Cicero to Respondent-Dougherty's counsel during the course of cross-examination, to the point that the panel wondered who was representing whom. See, *e.g.*, Hearing Tr. 717. Finally, Respondent-Cicero's conduct during cross-examination and during a break in Ferri's testimony in front of all the trial participants, with him speaking with the witness extensively and emotionally in the hallway, while she sobbed uncontrollably, extended chest to chest hugging by Respondent-Cicero of the witness in the hallway outside the hearing room, walking back to the hearing room with his arm wrapped around her, when she was clearly called as a hostile witness by Relator, and then conducting a cross-examination so rambling, so focused on emotional issues, and so upsetting to Ferri that the examination had to be terminated by the panel chair, was unprofessional and inappropriate in ways never seen before by the panel. Hearing Tr. 840-858.

{¶95} With regard to Respondent-Cicero's details of meeting with Respondent-Dougherty's clients and his participation in those meetings on substantive matters, the panel found the denials during the testimony of Respondents not credible, and the testimony of the witnesses

on those subjects, with the exception of Davis and Klein, credible and constituting clear and convincing evidence.

{¶96} With respect to Respondent-Dougherty's denials as to the substantive legal discussions held with his clients together with Respondent-Cicero (except for Davis), the panel found his specific and general memory lacking, his hearing testimony compared to his deposition testimony to have been amply impeached as to his credibility on those subjects, and generally found Relator's witnesses (except for Davis and Klein) to be more credible than Respondent-Dougherty, constituting clear and convincing evidence.

{¶97} In sum, the panel concluded that Respondent-Cicero has a proven track record of years of living on the professional and ethical edge as a lawyer subject to the Ohio Rules of Professional Conduct. In this, his fourth appearance in the disciplinary system, Respondent-Cicero evidenced behavior that, in the aggregate and as to specific acts, crossed the line from being an ethical attorney. Respondent-Cicero often rationalized and minimized behaviors unquestionably prohibited by the Rules of Professional Conduct, Rules for the Government of the Bar, and express orders of the Supreme Court of Ohio. Respondent-Dougherty committed specific violations of the Rules of Professional Conduct and Rules for the Government of the Bar as alleged in this case and exhibited poor ethical self-assessment and conduct.

{¶98} The panel concludes that Relator has proven by clear and convincing evidence, based upon the exhibits, and the testimony presented at the hearing, that Respondents have violated the rules charged in the amended complaint as follows.

**Respondent-Dougherty**

*Count One--Granata Matter*

- Prof. Cond. R. 1.3 [diligence];

- Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of a matter];
- Prof. Cond. R. 1.4(a)(4) [a lawyer shall comply as soon as practicable with reasonable requests for information from the client];
- Prof. Cond. R. 1.5(a) [a lawyer shall not collect a clearly excessive fee];
- Prof. Cond. R. 1.15(a) [a lawyer shall hold property of clients separate from lawyer's own property];
- Prof. Cond. R. 1.16(d) [as part of termination of representation, a lawyer shall take steps, to the extent reasonably practicable, to protect the client's interests, including notice to the client, time to obtain new counsel, and delivering all papers and property to the client to which the client is entitled];
- Prof. Cond. R. 5.5(a) [a lawyer shall not assist another to practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction];
- Prof. Cond. R. 8.4(c) [conduct involving fraud, dishonesty, deceit, or misrepresentation];
- Former Gov. Bar. R. V, Section 8(G) [failing to register the employment of a suspended lawyer].

*Count Two—Davis and Sanderell Matters*

- Prof. Cond. R. 5.5(a); and
- Gov. Bar. R. V. Section 23(F) [if a suspended attorney will perform work or provide services with any client matter, the employing attorney shall provide written notice to the client of the suspended attorney's status].

{¶99} As noted above, the panel finds these rule violations only with regard to Respondent-Dougherty's conduct in the Sanderell matter and does not find clear and convincing evidence with regard to Respondent-Dougherty's conduct in the Davis matter. Further, based on the finding of a violation of Gov. Bar R. V, Section 23(F), the panel unanimously dismisses the alternatively plead violation of Prof. Cond. R. 8.4(h).

*Count Three—Ferri-Aronhalt Matter*

- Prof. Cond. R. 1.15(c) [A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance];
- Prof. Cond. R. 5.5(a); and
- Gov. Bar. R. V, Section 23(F).

{¶100} Based on the finding of a violation of Gov. Bar R. V, Section 23(F), the panel unanimously dismisses the alternatively plead violation of Prof. Cond. R. 8.4(h).

*Count Four—Kasser Matter*

- Prof. Cond. R. 1.6(a) [a lawyer shall not reveal any information relating to the representation of a client, including information protected by the attorney-client privilege];
- Prof. Cond. R. 1.15(c);
- Prof. Cond. R. 1.16(e) [a lawyer who withdraws from employment shall promptly refund any unearned legal fees];
- Prof. Cond. R. 5.5(a); and
- Gov. Bar. R. V, Section 23(F).

{¶101} Based on the finding of a violation of Gov. Bar R. V, Section 23(F), the panel unanimously dismisses the alternatively plead violation of Prof. Cond. R. 8.4(h).

*Count Five—Kean Matter*

- Gov. Bar. R. V, Section 23(F).

{¶102} Based on the finding of a violation of Gov. Bar R. V, Section 23(F), the panel unanimously dismisses the alternatively plead violation of Prof. Cond. R. 8.4(h).

**Respondent-Cicero**

*Count One—Granata, Davis, Sanderell, Ferri-Aronhalt, and Kasser Matters*

- Prof. Cond. R. 5.5(a);

- Prof. Cond. R. 8.4(c); and
- Former Gov. Bar R. V, Section 8(G)(1)(a) [Granata matter only] and analogous Gov. Bar R. V, Section 23(A)(1) [a suspended lawyer shall not have any direct client contact other than as an observer in any meeting, hearing or interaction between an attorney and a client].

{¶103} As noted above, the panel finds these rule violations only with regard to Respondent-Cicero’s conduct in the Granata, Sanderell, Ferri-Aronhalt, and Kasser matters, and does not find clear and convincing evidence with regard to Respondent-Cicero’s conduct in the Davis matter. Further, based on the finding of a violation of former Gov. Bar R. V, Section 8(G)(1)(a) and current Gov. Bar R. V, Section 23(A)(1), the panel unanimously dismisses the alternatively plead violation of Prof. Cond. R. 8.4(h).

*Count Two—Kean Matter*

{¶104} The panel finds that the allegations against Respondent-Cicero in Count Two of the Kean matter related only to Respondent-Cicero receiving evidence from Kean’s grandmother, taking that evidence to the office of Respondent-Dougherty, and placing same in Respondent-Dougherty’s office for him to deal with. The panel does not find that act is a violation of Gov. Bar R. V. Section 23(A)(2) [a suspended attorney shall not handle client property]. No precedent from the Supreme Court of Ohio exists defining “handling client property” for purposes of the current rule or its predecessor. However, Adv. Op. 2008-7 issued by the Board indicates that “Under [former] Section 8(G)(1)(b) a disqualified or suspended attorney is not permitted to receive, disburse, or otherwise handle client property. Pursuant to this restriction, a disqualification or suspended lawyer should not have any duties related to client trust funds or property.”

{¶105} The panel concludes that a bloody sweatshirt does not constitute “trust funds,” “securities,” “moneys,” or otherwise similar property. The panel concludes that Respondent-Cicero served as a necessary and appropriate conduit of evidence necessary for a fair trial in the

murder case of Kean, and therefore concludes that Count Two of the amended complaint fails. The panel dismisses the alleged violation of Gov. Bar R. V, Section 23(A)(2).

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

{¶106} Pursuant to Gov. Bar R. V, Section 13, the panel gave consideration to whether any mitigating and aggravating factors were proven by clear and convincing evidence in this matter, and found as follows

#### **Respondent-Cicero**

{¶107} The panel finds the following aggravating factors as to Respondent-Cicero:

- Prior disciplinary offenses, including violation of specific provisions of the order of the Supreme Court of Ohio of which Respondent-Cicero was either unaware or willfully ignored and violated, both of which are inexcusable;
- A dishonest or selfish motive in trying to keep his name as a lawyer in the public arena by not de-identifying his law office from a sign facing the public that a reasonable person would consider holding himself out as a lawyer despite being suspended from the practice of law for years;
- A pattern of misconduct as reflected in each of the three prior disciplinary proceedings, and the present one;
- Multiple offenses;
- A refusal to accept the wrongful nature of most of his conduct; and
- The vulnerability and resulting harm to the public.

{¶108} In mitigation, although Respondent-Cicero brought several witnesses in to espouse that the public need not be protected from him, the panel did not find that marginal mitigation evidence to overcome the overwhelming aggravating evidence before it.

#### **Respondent-Dougherty**

{¶109} The panel finds the following aggravating factors as to Respondent-Dougherty:

- Dishonest or selfish motive as Respondent-Dougherty acted to protect his own financial self-interest, and to protect the arrangement he had come into with Respondent-Cicero;
- A pattern of misconduct in how he acted toward his clients;
- Multiple offenses;
- The vulnerability and resulting harm to victims of his misconduct; and
- A failure to return files and property to his clients, constituting failure to make restitution. This is amplified when the fees charged to Granata and Kasser are determined to be excessive, as set forth below.

{¶110} The sole mitigating factor as to Respondent-Dougherty is the absence of prior discipline.

### **Sanction**

#### *Respondent-Cicero*

{¶111} The findings of fact and conclusions of law of this panel leave no room for any sanction as to Respondent Cicero other than permanent disbarment. The decision recently announced by the Supreme Court of Ohio in *Trumbull Cty. Bar Assn. v. Large*, 2018-Ohio-4074 (decided October 11, 2018) is directly applicable, and supports permanent disbarment.

{¶112} The *Large* case involved a lawyer who was appearing for a third time before the Board of Professional Conduct. His first and second disciplinary cases were for tax fraud, neglect of client matters, misuse of his IOLTA account, dishonesty, failure to assist in a grievance investigation, failure to properly inform clients of his suspension, and failure to return client files and funds upon suspension. His third disciplinary case included repeat violations and a new ones, such as neglect of client matters, failure to communicate with a client, and bringing a frivolous lawsuit, all of which damaged clients financially. Six aggravating factors, and no mitigating factors, were presented at the panel hearing. The Board recommended and the Court held that

“Large’s history of misconduct reflects a... disregard for his professional obligations and therefore disbarment is necessary to protect the public.” *Id.* This same pattern of repeated misconduct and ethical disregard is present here. Respondent-Cicero’s history of repeated misconduct and disregard of the explicit order of the Supreme Court to not to have direct, substantive interaction with clients is patent.

{¶113} The Supreme Court has not established a presumption for a specific sanction when a lawyer has had multiple instances of prior discipline solely based on the prior discipline. However, the Court has held that repeat misconduct of a similar nature will warrant an increased sanction.

In rendering discipline, this Court considers the respondent’s previous disciplinary history and increases the discipline where appropriate. The Court deals more harshly with cumulative misconduct. Additionally, cumulative misconduct of a similar nature should warrant an even more severe discipline than might dissimilar conduct.

*Disciplinary Counsel v. King*, 103 Ohio St.3d, 2004-Ohio-5470, ¶25 [internal citation omitted].

{¶114} However, whenever an Ohio attorney has been suspended as a result of a disciplinary matter and practices while under suspension, the Court has held that the presumptive sanction for continuing to practice law while under suspension is disbarment. *Disciplinary Counsel v. Fletcher*, 135 Ohio St.3d 404, 2013-Ohio-1510. (“Our precedent provides that disbarment is the presumptive sanction for an attorney who continues to practice law while under suspension.”) *Cleveland Metro. Bar Assn. v. Brown*, 143 Ohio St.3d 333, 2015-Ohio-2344, ¶15, cited by *Cleveland Metro. Bar Assn. v. Pryatel*, 145 Ohio St. 3d 398, 2016-Ohio-865. Likewise, “absent any mitigating circumstances, the penalty for ignoring orders of the Court and continuing to practice law while under suspension is disbarment.” *Cincinnati Bar Assn. v. Rothermel*, 112 Ohio St. 3d 443, 2007-Ohio-258, ¶14.

{¶115} Respondent-Cicero practiced law by giving legal advice to Granata, Sanderell, Ferri, and Kasser. “The practice of law is not restricted to the appearances in court; it also encompasses giving legal advice and legal counsel, meaning counsel that is accompanied by an act requiring legal skill and training.” O. Jur. 3d, Sec. 116. Respondent-Cicero’s unauthorized practice of law while under suspension, as well as ignoring orders of the Supreme Court, require imposition of the presumptive sanction of permanent disbarment.

{¶116} In the case of Respondent-Cicero, his primary effort in this case was to recast what he can and cannot do as a suspended lawyer under Gov. Bar R. V, Section 23(A) and (F) and the October 23, 2014 order issued by the Supreme Court of Ohio as to his last indefinite suspension, arguing, without authority, that the panel should be pragmatic.

{¶117} Gov. Bar. R. V, Section 23 provides impertinent part:

(A) **General Prohibitions.** A disqualified attorney shall not do either of the following:

- (1) Have any direct contact, other than servicing as an observer in any meeting, hearing or interaction between attorney and client;
- (2) Receive, disburse, or otherwise handle client trust funds or property.

\* \* \*

(F) **Notice to Clients.** If a disqualified or suspended attorney will perform work or provide services in connection with any client matter, the employing attorney or law firm shall inform the client of the status of the disqualified or suspended attorney. The notice shall be in writing and provided to the client before the disqualified or suspended attorney performs any work or provides any services in connection with the client matter.

{¶118} Respondent-Cicero was not only forbidden from rendering legal services, from direct substantive client contact, and from receiving, disbursing or otherwise handling any client trust funds or property, but also was to be certain that anyone acting as his employing attorney

complied with the registration requirement by the Supreme Court of Ohio's suspension order issued on October 23, 2014. He ignored each of these straight forward requirements and now seeks to either deny or rationalize what he has done. Participating in a substantive meeting with Granata wherein a letter firing the predecessor counsel was prepared by Respondent-Cicero; failing to be certain his employment with Respondent-Dougherty was registered as ordered for 22 months; personally assuring that any reasonable person who might see his law office sign would think that he was still a practicing attorney by retaining a false and misleading sign advertising Chris Cicero as an attorney at law; participating in a substantive law discussion along with Respondent-Dougherty, Sanderell, and Miller wherein analysis of the legal scenario Sanderell was in was provided by him; meeting with Ferri alone to discuss legal problems arising from a criminal arrest; setting a legal fee and collecting part of same from Ferri; providing legal advice to Ferri regarding refusing bodily fluids tests proposed by law enforcement at the scene of a second arrest for driving a motor vehicle while intoxicated; participating in a substantive law discussion during a meeting with Respondent-Dougherty and Kasser regarding viable defenses to three breaking and entering charges; discussing the fee to be charged, to Kasser during the initial client meeting; and working on the Kean murder trial without being certain that his employer, Respondent-Dougherty, had provided a proper written notice of Respondent-Cicero's status to Kean are each violations of the applicable prohibitions. Collectively, these violations are, in the case of Respondent-Cicero, worthy of the sanction of permanent disbarment because they demonstrate a historic pattern of disregard for his professional obligations. To argue that a pragmatic or rational approach to the application of these rules somehow lessens the unambiguous significance of each rule and each violation, is disingenuous. The reason the Supreme Court issued its suspension order to Respondent Cicero in 2014 and promulgated its Rules for the Government of the Bar is to protect

the public from being placed at risk from unethical lawyers. Respondent-Cicero urges he only did things a secretary or staffer would do for a lawyer. Respondent-Cicero is not a secretary or staffer—he is a suspended lawyer, hence he has a new for which there are more bright line restrictions on him than on a secretary or staffer at a law firm. Because he chose to ignore, rationalize, or act ignorant of the unambiguous limitations placed on him does not eliminate those restrictions. Accordingly, because he has proven, time and again in four disciplinary cases, that he cannot act as an ethical attorney, he must be permanently disbarred to protect the public.

*Respondent-Dougherty*

{¶119} Respondent-Dougherty is charged with 20 rule violations, involving six clients, all over a period extending from 2012 through 2017. The charges range from not giving clients written notice he was employing a suspended lawyer, to allowing a suspended lawyer to have direct, substantive client contact, to not providing clients information when requested, to not utilizing an IOLTA for client trust funds, and more, as outlined above.

{¶120} Given the aggravating factors in this matter, the length of time of the violations and the number of clients impacted, case law supports a two-year suspension of Respondent-Dougherty from the practice of law with one year stayed, on conditions.

{¶121} Relator asks that an indefinite suspension be imposed on Respondent-Dougherty, while Respondent-Dougherty makes no sanction suggestion, believing Relator has entirely failed in its burden of proof. Relator argues that *Cleveland Metro. Bar Assn. v. Axner*, 135 Ohio St. 3d 241, 2013-Ohio-400, governs. Axner was charged with the neglect of five separate client matters, failure to reasonably communicate with some of these clients, and the employment of a suspended lawyer without registration for 14 years, as well as failure to cooperate in two of the resulting

disciplinary investigations. During the employment relationship with the suspended lawyer, Axner split fees evenly with the suspended lawyer on work the latter undertook.

{¶122} While Axner’s behavior is similar to that in this matter, Axner’s conduct is several times worse. For example, Axner’s improper retention of a suspended attorney extended to affirmatively sending the latter alone to direct client meetings for substantive legal purposes. This behavior went on for 14 years. Axner split the fees earned from the work by the suspended lawyer for Axner clients. Axner never registered the suspended lawyer-employee as required. Axner aggravated all of these situations by not cooperating with the disciplinary process. The panel found him to be an “extraordinary risk” to the public. While Dougherty has committed ample rule violations, the period is not as extensive, fee sharing was neither alleged nor proven, the suspended lawyer ultimately was registered, and the failure to cooperate was neither alleged nor proven.

{¶123} The panel finds a more apt case comparison to this one is *Disciplinary Counsel v. Talikka*, 135 Ohio St. 3d 323 2103-Ohio-1012. Talikka was found to have violated 38 rules by failing to act with reasonable diligence in representing clients in three separate matters. He also failed to inform two clients their cases had been dismissed, and to return unearned portions of their retainers when they terminated his representation. The Board recommended an indefinite suspension. The Court rejected the recommendation of the Board, and imposed a two-year suspension, with one year stayed on conditions. See, also *Disciplinary Counsel v. Folwell*, 129 Ohio St. 3d 97, 2011-Ohio 3181 and *Medina Cty. Bar Assn. v. Malynn*, 142 Ohio St. 3d 435, 2014-Ohio 5261 [holding that multiple rule violations by attorneys with no prior discipline warrants a two-year suspension with one year stayed].

{¶124} The duration and breadth of violations by Respondent-Dougherty convince the panel that time away from the practice is required. Respondent-Dougherty will have to decide

whether he or Respondent-Cicero will be required to relocate because a suspended lawyer is not permitted to work for the firm wherein the violation leading to the sanction occurred. Gov. Bar R. V, Section 23(B). Additionally, Respondent-Dougherty's understanding and application of the Rules of Professional Conduct to his practice are entirely substandard. The language of a flat fee contract and the method for utilizing same, the use of the IOLTA, the basis and method for accepting, resigning from, and declining client representation, the need to keep clients reasonably informed of their matters, and maintaining client confidentiality, among other professional conduct, all require careful examination and internalizing into Respondent-Dougherty's practice. Time away from the practice to regroup and undertake continuing legal education to learn and relearn these matters by Respondent-Dougherty would be best to protect the public. The panel is also convinced that monitoring Respondent-Dougherty's practice when he returns will serve to reinforce the ethical practice of law which is sorely lacking as shown by the evidence in this case.

### **Restitution**

{¶125} The panel is convinced that restitution with regard to the Granata and Kasser matters by Respondent-Dougherty is appropriate. Respondent-Dougherty did not keep contemporaneous time records while he represented any of his clients. Relator's Ex. 52 is but a recapitulation prepared years after the work in question was performed, not a meaningful, contemporaneous billing record. The panel did not find the exhibit persuasive as to the time Respondent-Dougherty spent on the matters identified thereon. Utilizing the standards of Prof. Cond. R. 1.5(a), the content of Relator's Ex. 52, and the testimony herein by Respondent-Dougherty, Granata, Brunner, Hockstad, Kasser and Kirschman, the panel reaches the following restitution calculations:

**Granata**

16.75	Hours
x \$200.00	Per Hour
<hr/>	
\$ 3,300.00	Adjusted Fee
\$ 6,200.00	Paid
<hr/>	
\$ 2,850.00	Refund to Angela Granata

**Kasser**

14.00	Hours
x \$200.00	Per Hour
<hr/>	
\$ 2,800.00	Adjusted Fee
\$ 6,000.00	Paid
<hr/>	
\$ 3,200.00	Refund to David Kasser

**Conclusion**

{¶126} The panel recommends that Respondent-Cicero be permanently disbarred, with one half of the costs of this proceeding taxed against him. With regard to Respondent-Dougherty, the panel recommends a two-year suspension from the practice of law with one year stayed; restitution to Granata and Kasser as set forth herein; completion of the Multistate Professional Responsibility Examination (MPRE) with a passing score; upon reinstatement, monitoring for two years; that one half of the costs of this proceeding be taxed against him; and that he refrain from further misconduct.

**BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on December 6, 2018 and voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel. The Board recommends that Respondent, Christopher Thomas Cicero, be permanently disbarred and ordered to pay one half the costs of these proceedings.

The Board recommends that Respondent, Timothy Raymond Dougherty, be suspended from the practice of law in Ohio for a period of two years, with one year stayed on the condition of no further misconduct, that he be ordered to pay one-half the costs of these proceedings, and that he be ordered to pay restitution, within 60 days of the Supreme Court's disciplinary order, to Angela Granata in the amount of \$2,850 and to David Kasser in the amount of \$3,200. The Board further recommends that, in addition to the requirements of Gov. Bar R. V, Section 24, Respondent-Dougherty should be ordered to take and receive a passing score on the Multistate Professional Responsibility Examination as a condition of reinstatement. Lastly, the Board recommends that upon reinstatement, Respondent-Dougherty be ordered to complete a two-year term of monitored probation pursuant to Gov. Bar R. V, Section 21, with the monitoring to focus on the development, institution, and compliance with appropriate law-office management, client relationships, and trust accounting principles.

**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.**

  
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**RICHARD A. DOVE, Director**