

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

In re:

Complaint against

Case No. 2014-087

**Javier Horacio Armengau
Attorney Reg. No. 0069776**

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

Respondent

Columbus Bar Association

Relator

OVERVIEW

{¶1} This matter was heard on January 9, 2019 before a panel comprised of Hon. D. Chris Cook, Tim L. Collins, and Patrick M. McLaughlin, panel chair. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent, who appeared via Skype video connection from his location at the London Correctional Institution, was represented by John M. Gonzales. Michael S. Loughry, Terry K. Sherman, and David Bloomfield appeared on behalf of Relator.

Respondent's Criminal Convictions and Related Disciplinary History

{¶3} This case involves Respondent's misconduct evidenced by a Franklin County jury's guilty verdicts on eight felonies and one misdemeanor returned on July 7, 2014. The jury returned not guilty verdicts on nine counts of the indictment.

{¶4} After a trial at which Respondent testified, the jury convicted him on one count each of rape, kidnapping, and public indecency; two counts of gross sexual battery; and four counts of sexual imposition. A direct appeal was taken to the Court of Appeals for the Tenth Appellate District. On June 22, 2017 the court, one judge dissenting, affirmed in part, reversed in part, and

remanded for resentencing. *State v. Armengau*, 2017-Ohio-4452. The Supreme Court of Ohio declined to review the case. *State v. Armengau*, 2018-Ohio-365. Upon remand for resentencing, the common pleas court imposed a sentence of thirteen years, declared him a Tier 1 Sex Offender, and directed that he be subject to a mandatory period of post release control for five years following release from prison. No fine was imposed. Relator's Ex. 3.

{¶5} On July 8, 2014, the Supreme Court granted Relator's motion for interim remedial suspension, directing Respondent to cease practicing law pending final disposition of disciplinary proceedings. *Columbus Bar Assn. v. Armengau*, 2014-Ohio-3023. On September 15, 2014, the Court imposed an interim felony suspension as a result of the aforementioned criminal convictions. *In re Armengau*, 2014-Ohio-3940.

Initial Board Proceedings

{¶6} On December 15, 2014, Relator filed its complaint with the Board of Commissioners on Grievances and Discipline, now known as the Board of Professional Conduct. Respondent filed his answer on January 26, 2015. That day, the Board issued an entry *sua sponte* staying this action on the ground that Gov. Bar R. V, Section 18(C) mandates that the Board defer any hearing in a pending disciplinary proceeding that is based on a criminal conviction “until all *direct* appeals from the conviction * * * are concluded.” (Emphasis added.) The parties were directed to advise the Board upon termination of the “pending direct appeal” so that a hearing panel could be appointed by the director of the Board.

{¶7} Relator filed a motion to lift the stay on June 29, 2018 advising that Respondent has exhausted his “direct appeals.” Counsel for Respondent filed an opposition on July 10, 2018 acknowledging that the “direct appeal was denied” but argued that his client has two other appeals pending and is preparing an appeal to the federal court. By order of July 17, 2018 the Board chair returned this matter to the active case docket because “the direct appeal from [Respondent’s]

conviction is concluded.” Accordingly, that same day, the Board director filed an entry appointing the members of the current panel.

Prehearing Procedural History

{¶8} By filing of August 3, 2018, Respondent moved for an indefinite continuance or stay pending resolution of his appeals. The motion concedes that “Respondent lost his direct appeal * * * which affirmed his convictions on all counts, but remanded the case back to the trial court for resentencing.” Relator filed an opposition to the motion, and Respondent submitted a reply in support.

{¶9} While Respondent’s motion was under consideration, the parties filed on August 21, 2018 a joint motion for separate hearing on Count One of the complaint and for a stay of proceedings on Counts Two through Fourteen. Count One concerns Respondent’s convictions on the eight felonies and one misdemeanor counts. Counts Two through Fourteen allege other professional misconduct not related directly to the convictions that form the basis for Count One.

{¶10} By the August 29, 2018 entry of the panel chair, the pending motions were decided as follows: (1) Respondent’s motion for an indefinite continuance or stay is denied on its merits (his *direct* appeal is concluded and the pending appeals are *indirect* to the judgments of conviction) and, alternatively, for mootness in view of the ruling on the joint motion for bifurcation of counts; and (2) the joint motion for separate hearing (bifurcation) on Count One of the complaint is, for the reasons advanced by the parties and good cause having been demonstrated, granted.

{¶11} On September 7, 2018 Relator filed a motion *in limine* seeking prehearing guidance for the reason that “Respondent intends to proceed on Count One in a manner which is inconsistent with law and precedent.” The motion states that at the hearing the Respondent “plans to *relitigate* * * * the underlying facts which led to Respondent’s conviction, and/or the judgment of conviction itself.” Simply stated, Relator advocates that the facts underlying Respondent’s convictions

constitute “settled matters” that cannot be relitigated for any purpose including the mitigation of any sanction.

{¶12} Respondent’s brief in opposition to the motion *in limine*, filed September 24, 2018, renders transparency by advising that “Respondent intends to prove that the convictions should be overturned. To do so does not require the criminal trial to be relitigated. It only requires the Panel to hear evidence of the factual basis for the legal arguments Respondent has made in the appellate cases currently pending and in the Federal Habeas Corpus action to follow.” Respondent argued candidly that “the Panel will most likely decide between disbarment or indefinite suspension [and] should this Panel be convinced that the convictions underlying the disciplinary violations are likely to be reversed, it may determine that an indefinite suspension is more appropriate.” Accordingly, Respondent’s brief argued facts related to the criminal trial and challenged the decision of the court of appeals regarding the venue of the trial.

{¶13} Relator filed a reply in support of the motion *in limine* on October 4, 2018 advocating, in relevant part, that whether Respondent seeks to relitigate the facts which were relevant to his conviction or relitigate his appellate claims and positions “Neither is appropriate or permissible in this forum. His conviction and the facts which underlie it are proven for the purposes of this proceeding.” (Emphasis in original.)

{¶14} The panel chair issued an order on November 8, 2018 granting Relator’s motion *in limine*. Fundamentally, the panel lacks the authority and the jurisdiction to readdress factual or legal issues resolved by Respondent’s direct appeal. Legally, Respondent is collaterally estopped from relitigating in a civil action an issue determined adversely, whether by jury verdict or on a plea of guilty, to the defendant in a prior criminal proceeding. The criminal conviction is conclusive proof and operates as an estoppel on a defendant attempting a second bite at the apple in a subsequent civil proceeding.

{¶15} The order directed that Respondent is estopped from relitigating facts supporting his convictions, affirmed on direct appeal, in the forthcoming disciplinary hearing. Respondent will not be permitted to relitigate the facts supporting the nine counts upon which he was convicted nor may he present evidence or argument challenging the legal rulings made by the court of appeals in affirming the convictions.

{¶16} Moreover, the November 8, 2018 order observed that Gov. Bar R. V, Section 18(B) provides that “A certified copy of the entry of conviction of an offense...shall be conclusive evidence of the commission of that offense * * * against a judicial officer or an attorney based upon the conviction * * *.” Both the case authorities and the governing rules for disciplinary proceedings mandate that Respondent’s criminal convictions, affirmed on direct appeal, are conclusive evidence of guilt.

{¶17} While the motion *in limine* was under advisement, Respondent filed a renewed motion to stay the proceedings on October 26, 2018. The basis for the motion being that Respondent has now appealed his resentencing judgment which, according to Respondent, constitutes a *direct* appeal thereby invoking Gov. Bar R. V, Section 18(C) requiring that a disciplinary matter “not be brought until all *direct* appeals from the conviction * * * are concluded.” (Emphasis supplied.) In support of the motion, Respondent cites to federal case authorities addressing habeas petitions filed in federal court. No Ohio case authorities are presented in support of the motion.¹

{¶18} On November 26, 2018 the Relator filed its brief in opposition to the renewed motion for stay. On November 29, 2019, Respondent filed a reply in support of the motion.

¹ Respondent’s appeal of the trial court’s resentencing remains pending before the Tenth District Court of Appeals, with oral argument scheduled for April 9, 2019. Case No. 18-AP-300.

{¶19} As briefing was in progress on Respondent's renewed motion for stay, his counsel filed, pursuant to Civ. R. 30, a notice to take the video deposition of Respondent on December 12, 2018 at the London Correctional Institution. This prompted Relator to file a request for a status conference "to discuss the management of Mr. Armengau's testimony."

{¶20} The panel chair conducted a telephonic status hearing on November 30, 2018. In advance, counsel were advised to be prepared to address the renewed motion for a stay and the notice to take the video testimony of Respondent. Counsel attended and argued their respective positions. The panel chair advised the parties of his rulings and noted that a formal order would follow.

{¶21} By order of December 5, 2018, in consideration of the pleadings and arguments of counsel, there being no Ohio authority offered in support of the renewed motion for stay, and the inapplicability of the federal case relied upon by Respondent, and for the reasons set forth in the panel chair's entry of August 29, 2018 the renewed motion for a stay was denied.

{¶22} Addressing the Civ. R. 30 notice, the December 5, 2018 order granted Relator's oral motion for a protective order prohibiting the video deposition from going forward. Civ. R. 30(A) states, in relevant part, "The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes." Leave of the court, in this instance the panel chair, had neither been sought nor given for the deposition to proceed as noticed. In addition, Respondent did not demonstrate that he would be unavailable to testify at the January 9, 2019 hearing. The panel is charged with the duty to weigh Respondent's credibility, and this is best fulfilled by observing his live testimony and having the opportunity to question Respondent directly. Accordingly, Respondent's testimony could be arranged via video uplink or Skype that will present the testimony live before the panel.

{¶23} The December 5, 2018 order also acknowledged the request of Respondent's counsel that his client be permitted to proffer for the record the evidence he anticipates will be barred by the panel chair's granting of Relator's motion *in limine*. Counsel for the parties were advised that Respondent would be permitted to proffer for the record.

January 9, 2019 Hearing

{¶24} At the January 9, 2019 hearing, Relator called no witnesses and introduced three exhibits representing certified copies of judgment entries (one for the misdemeanor count and the second for the felony counts) and the amended judgment entry. Respondent has appealed the resentencing judgment of conviction, and as noted above, that appeal is pending before the Tenth District Court of Appeals.²

{¶25} Respondent testified via video conferencing and presented four fact witnesses. Respondent offered no exhibits. Members of the panel questioned Respondent at the hearing.

{¶26} The parties filed post-hearing briefs on February 25, 2019.

{¶27} Based upon the evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below, and recommends that Respondent be disbarred.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶28} Respondent was admitted to the practice of law in the state of Ohio in November 1998 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

{¶29} Respondent was disciplined previously in 2003 for three violations of the former Code of Professional Responsibility, to wit: (1) asserting a lawyer's personal knowledge of the

² At the time of the hearing, Respondent had a second appeal pending in the Tenth District in which he assigned as error the trial court's denial of his Crim. R. 29 motion prior to resentencing. By decision dated March 21, 2019, the court of appeals overruled the assignments of error and affirmed the judgment of the trial court. Case No. 18-AP-276.

facts in issue; (2) engaging in conduct that is prejudicial to the administration of justice; and (3) disregarding a ruling of a tribunal made in the course of the proceedings. Finding the mitigating circumstances of Respondent's cooperation, no prior discipline, and remorsefulness the panel recommended a public reprimand, and the Board adopted the recommendation. The Supreme Court agreed and publicly reprimanded Respondent. *Disciplinary Counsel v. Armengau*, 99 Ohio St.3d 55, 2003-Ohio-2465.

Count I—Respondent's Criminal Convictions

{¶30} In Count One, Relator alleges the grand jury's indictment, the petit jury's convictions on the eight felony counts and one misdemeanor count, and the judgment of conviction and sentence as facts sufficient to establish violations of the following: (1) Prof. Cond. R. 8.4(b) [an illegal act that reflects adversely on the lawyer's honesty or trustworthiness]; (2) Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; and (3) Prof. Cond. R. 8.4(h) [other conduct that adversely reflects on the lawyer's fitness to practice law].

{¶31} As noted above, Relator called no witnesses to testify and introduced as exhibits the certified copies of the judgments of conviction of Respondent. Relator advocates that is all that is required in order to meet its burden on the Count One claims.

{¶32} The panel finds that the criminal convictions, affirmed on appeal, are conclusively established for the purposes of this disciplinary proceeding. The question now presented is whether the criminal convictions conclusively establish violations of the three Rules of Professional Conduct alleged in Count One. Neither party thought it necessary in their post-hearing briefs to cite to court authorities in addressing their respective Rule 8.4 arguments.

{¶33} With respect to Prof. Cond. R. 8.4(b), Relator submits that Respondent's illegal acts reflect on his honesty and trustworthiness sufficient to show a violation. To the point, Relator argues that "Respondent's rape and sexual assaults were violent, illegal acts that reflect adversely

on his trustworthiness.” Relator’s Post-hearing Brief, p. 4. Respondent counters that by not introducing evidence specifically showing that his “acts” reflected on honesty or trustworthiness, Relator has not met its burden.

{¶34} The panel finds that Relator has shown by clear and convincing evidence that by virtue of the acts for which Respondent was convicted, the nature and character of the offenses proved at trial beyond a reasonable doubt, all affirmed on appeal, that the misconduct here demonstrates illegal acts reflecting adversely on Respondent’s trustworthiness in violation of Prof. Cond. R. 8.4(b).

{¶35} Regarding Prof. Cond. R. 8.4(c), Relator reaches to distinguish the conduct required under Prof. Cond. R. 8.4(c) from that required under Prof. Cond. R. 8.4(b). Essentially, Relator’s position is that Respondent’s use of his law license reflects a “fundamental dishonesty,” constituted a “fraud and misrepresentation,” and that he “deceptively used his law license as a vehicle” to access his victims. *Id.* While these allegations may or may not be correct, it is undisputed that Relator presented no evidence at the hearing to meet its burden of proof. The panel would have to speculate that any one of these allegations is clear and convincingly true, and we cannot do so. Moreover, unlike Prof. Cond. R. 8.4(b), which requires an *illegal act* that is conclusively established on this record, Prof. Cond. R. 8.4(c) requires evidence of *conduct* that is not established on this record.

{¶36} The panel unanimously finds that Relator has not met its burden of proof as to the misconduct allegation relating to Prof. Cond. R. 8.4(c) and dismisses that alleged violation.

{¶37} Lastly, respecting Prof. Cond. R. 8.4(h), even Respondent acknowledges that “it can probably be agreed that the convictions in this case involved alleged conduct that would adversely reflect on a person’s fitness to practice.” *Id.* at p. 7. Relator advocates that an attorney “who engages in violent felonies, especially violent felony sexual assaults, is not someone whose

conduct is consistent with the trust which must be placed in attorneys by the courts, the bar and the public.” *Id.* at p. 5. The panel concurs and finds that Relator has met its burden of proof in that the record shows by clear and convincing evidence that Respondent’s conduct reflects adversely on his fitness to practice law. The panel further finds Respondent’s conduct to be sufficiently egregious to warrant a separate finding of the Prof. Cond. R. 8.4(h) violation. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, ¶21.

{¶38} Each party addressed a case in their post-hearing briefs, albeit on the issue of sanctions, that is also instructive on the question of misconduct. In *Disciplinary Counsel v. Williams*, 130 Ohio St.3d 341, 2011-Ohio-5163, Williams was convicted on three counts of raping his seven-year-old nephew and one count of kidnapping with a sexual motivation. One of the rape convictions was vacated on appeal. Williams received a life sentence. In the disciplinary proceeding, a master commissioner was appointed to rule on a motion for default and found that Williams’ conduct violated DR 1-102(A)(3) and DR 1-102(A)(6) under the former Code of Professional Responsibility. The Board adopted the master commissioner’s findings of fact and recommended sanction. The Supreme Court adopted the Board’s report and recommendation and permanently disbarred Williams.

{¶39} The two disciplinary rule violations found in *Williams* correspond to Prof. Cond. R. 8.4(b) and Prof. Cond. R. 8.4(h). These are the conduct rules found by this panel to have been violated by Respondent.

AGGRAVATION, MITIGATION, AND SANCTION

Additional Background Relative to Respondent’s Victims

{¶40} In its post-hearing brief, Relator argues that a “particularly heinous aspect of these convictions is that his victims are individuals who were his employees, clients and client family members.” Relator’s Post-hearing Brief, p. 1. Accordingly, it is necessary to review who the

victims are on the counts for which Respondent was convicted. Since Relator called no witnesses and elected not to cross-examine Respondent, the record is uniquely sparse on facts identifying the victims and distinguishing them from the nine counts for which Respondent was acquitted, as well as matching each victim with the nine conviction counts and the sentences imposed. The hearing record gets us only so far in that Respondent, in his testimony, mentions the three women by name but does not identify the guilty verdicts that relate to each of the victims or state the sentences received on those counts of the indictment. Hearing Tr. 95-96. The hearing transcript, therefore, requires additional facts that the panel feels are essential in understanding the nature of the relationship between Respondent and each of his victims. Those additional facts are found in the Tenth District Court of Appeals decision cited by both parties in this proceeding and referenced in ¶4 of this report. The court's careful and detailed decision was authored by Judge Klatt who is a commissioner on the Board of Professional Conduct.³

{¶41} The appellate court referred to each victim not by name but by the victim's initials. It is possible then to review the name testified to by Respondent and determine the initials of that person as described in the appellate court's decision.

{¶42} The first woman, identified as C.C., hired Respondent to represent her adult son who had been indicted for aggravated murder and other charges. With regard to Respondent's conduct toward C.C., the jury in Respondent's case returned a guilty verdict on Count 3, gross sexual imposition, and on Count 2, public indecency, a misdemeanor. The sentence imposed for gross sexual imposition was 15 months. The sentence imposed for public indecency was 30 days in jail with full credit for time served. Accordingly, C.C. was neither an employee nor client of

³ Judge Klatt did not participate in the discussion or consideration of the panel's findings, conclusions, or recommendations to the Board and recused himself from the Board's consideration of this report.

Respondent. She was a relative of Respondent's client.

{¶43} The second woman, identified as K.R., engaged Respondent to represent her in a criminal matter. With regard to Respondent's conduct toward K.R., the jury returned a guilty verdict on Count 8, gross sexual imposition, resulting in a sentence of 15 months. The misconduct occurred while K.R. was a client of Respondent.

{¶44} The third woman, identified as L.M., engaged Respondent to represent her in divorce proceedings and for advice on immigration issues as she was an immigrant from Venezuela. Sexual contact between L.M. and Respondent was "frequent over the next three years, always under the implied threat that if he dropped her case she would lose her immigration status and custody of her daughter." *State v. Armengau*, 2017-Ohio-4452, ¶34. Respondent eventually hired L.M. to perform office work to assist in paying her legal bills. The jury returned guilty verdicts on six counts. On Count 10, rape, Respondent received a sentence of 9 years. On Count 14, kidnapping, a sentence of 4 years was handed down. On Counts 15, 16, 17, and 18, sexual battery, the court imposed a sentence of 30 months on three of the counts, and the fourth count was merged with Count 10 for sentencing and the prosecution elected to sentence on Count 10. The total sentence was 13 years and it remained at 13 years following resentencing for the trial court's failure to merge Counts 10 and 14 for sentencing purposes. L.M. was both a client and an employee when Respondent's misconduct took place.

Mitigating Factors

{¶45} Respondent called witnesses who testified favorably to his character, diligence as a defense counsel, and dedication to the practice of law. The panel found these witnesses to be credible and sincere in their testimony. The panel must also note the disparity between the eight felony and one misdemeanor convictions, primarily the rape and kidnapping convictions, and the testimony of four witnesses describing their favorable experience with Respondent. And while we

fairly give mitigating credence to the version of Respondent described by the four witnesses, the panel must hold supreme the conclusively established convictions of Respondent. Particularly, this is so for the convictions for rape and kidnapping of L.M. who was a client and then an employee during the period when Respondent's misconduct occurred.

{¶46} In further mitigation, Respondent testified that he is working with the court to make restitution to any former client that the court determines was harmed by Respondent's inability to continue the representation once he was suspended and subsequently incarcerated. Hearing Tr. 86-89. Lastly, in mitigation, other penalties have been imposed on Respondent in the form of his criminal sentence.

Aggravating Factors

{¶47} Relator advocates the presence of several aggravating factors that the panel find applicable: (1) prior disciplinary offense; (2) dishonest or selfish motive; (3) a pattern of misconduct; (4) multiple offenses; and (5) vulnerability of and harm to the two victims who were clients of Respondent.

{¶48} In contrast, the panel declines to apply two aggravating factors advocated by Relator. Relator seeks to impose a refusal to acknowledge the wrongful nature of his conduct and the submission of false statements as aggravating factors for the reason that Respondent continues to maintain his innocence. The record before the panel reflects that Respondent has consistently maintained his innocence, testified in his defense at trial, filed several appeals, continues to collaterally challenge the convictions affirmed on direct appeal, and sustains that position in this proceeding. The panel deems it unwarranted to impose these aggravating factors on this record. If the criminal justice system were perfect, the aggravating factors could be applied. But the criminal justice system, the best system anywhere, is nevertheless imperfect. We therefore decline to strip Respondent of *his belief* in his innocence and his right to stand on that belief in this

proceeding without adverse impact.

Sanction

{¶49} When recommending sanctions for attorney misconduct, the panel must consider relevant factors, including the ethical duties violated by Respondent, and the sanctions imposed in similar cases.

{¶50} An overview of disciplinary cases involving felony convictions, excluding resignations with discipline pending and excluding treatment in lieu of conviction, shows approximately 216 felony disciplinary cases since 1980. Over the past ten years there have been approximately 79 disciplinary cases involving felony convictions, excluding resignations with discipline pending and treatment in lieu of conviction. As one might expect, the sanctions imposed by the Supreme Court depend, in part, on the nature of the crimes for which the respondents were convicted. For those cases decided over the past ten years, sanctions included disbarment, indefinite suspension, and term suspensions. Before we determine whether similar cases exist to the instant case let us consider other testimony and arguments of counsel with regard to mitigating and aggravating factors.

{¶51} Having considered mitigating and aggravating factors we look to similar cases in the effort to guide our sanction recommendation. The panel could find only one other rape conviction discipline case and that is *Williams, supra*. Both parties addressed the *Williams* opinion at the hearing and in post-hearing briefs. It is the case that each party understands must be addressed in the context of sanctions. Relator relies exclusively on *Williams*. Respondent cites to nine cases, leading with the Court's decision in *Ohio State Bar Assn. v. Mason*, 152 Ohio St.3d 228, 2017-Ohio-9215. Mason, a Cuyahoga County Common Pleas judge at the time of his misconduct, pled guilty to one count of attempted felonious assault and one count of domestic violence against his wife and was sentenced to 24 months in prison and six months in jail, with the

sentences to run concurrently and with additional conditions. *Id.* at ¶11. The Court rejected the Board's recommendation for disbarment and imposed an indefinite suspension.

{¶52} Of the nine cases cited by Respondent, six resulted in indefinite suspension, one case resulted in a two-year suspension, one case in a one-year suspension, and one case a six-month suspension. None of the nine cases is similar to this case in that the respondents were not convicted of rape, a violent offense, and kidnapping. While several of the cases cited by Respondent involved violence (e.g., aggravated assault, attempted felonious assault, sexual battery, and gross sexual imposition), it is undisputed that none involved convictions for rape and kidnapping plus several convictions for gross sexual imposition and sexual battery involving three victims.

{¶53} Williams was disbarred following his convictions for the rape of his seven-year-old nephew and one count of kidnapping with a sexual motivation. The similarities between this case and *Williams* outweigh the differences. Certainly, the rape of a minor child is especially egregious and a sentence of life more extreme than a 13-year sentence. But both cases involve convictions for rape and kidnapping, and Respondent here was convicted on counts relating to three separate victims occurring over a period of years. Importantly, both cases implicate the misconduct provisions of Prof. Cond. R. 8.4(b) and 8.4(h). This case is most similar to *Williams*.

{¶54} The Court has held that "disbarment is an appropriate sanction for conduct that violates DR 1-102 and results in a felony conviction." *Disciplinary Counsel v. Gallagher*, 82 Ohio St.3d 51, 52, 1998-Ohio-592. The Court has held that permanent disbarment is the only appropriate sanction for an attorney convicted of murder. *Discipline Counsel v. Rocker*, 85 Ohio St.3d 397, 1991-Ohio-401. *Williams* instructs that "we have permanently disbarred attorneys who have been convicted of other serious crimes involving moral turpitude, including reckless homicide, attempted murder, and murder" and "[l]ikewise, we conclude that permanent disbarment

is the only appropriate sanction for an attorney convicted of raping a child.” *Williams, supra* at ¶¶10-11. The panel believes that an attorney convicted of the rape and kidnapping of adults appropriately faces the sanction of disbarment.

{¶55} Based upon the applicable aggravating and mitigating factors and case precedents, the panel recommends that Respondent be permanently disbarred from the practice of law.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on April 5, 2019. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Javier Horatio Armengau, be permanently disbarred from the practice of law in Ohio and ordered to pay the costs of these proceedings.

Pursuant to the order of the 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