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

In re:

Complaint against

Harvey Bruce Bruner
Attorney Reg. No. 0004829

Respondent

Ohio State Bar Association

Relator

Case No. 2019-048

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

OVERVIEW

{¶1} This matter was heard on October 13, 2020, before a panel consisting of George Brinkman, James D. Caruso and Thomas M. Green, panel chair. The hearing was conducted via video conference as to which all parties agreed. 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 was present at the hearing and represented by Robert Housel and Michael O'Shea. Desiree Blankenship, James Roberts, and James Manken appeared on behalf of Relator.

{¶3} This case involves seven counts of alleged misconduct involving six clients over a span of several years. In this fully stipulated case, the complaint was amended at bar by agreement of the parties with the submission of stipulations filed the morning of the hearing. Hearing Tr.15–16. The case was submitted on the following claims:

- *Count I (Russell Matter)*—Prof. Cond. R. 8.4(h). The alleged violation of Prof. Cond. R. 8.1(a) was withdrawn.

- *Count II (Harb Matter)*—Prof. Cond. R 8.1(b). The alleged violation of Prof. Cond. R. 1.4(a)(1) was withdrawn.

- *Count III (Ortega Matter)*—Prof. Cond. R. 1.5(b) and 1.15(a)(2). The alleged violations of Prof. Cond. R. 1.4(a), 8.4(c), and 8.1(a) were withdrawn.

- *Count IV (Jackson Matter)*—Prof. Cond. R. 1.1 and 1.15(a)(2). The alleged violation of Prof. Cond. R. 1.5 was withdrawn.

- *Count V (Herron Matter)*—Prof. Cond. R. 1.1 and 1.15(a)(2).

- *Count VI (Walton Matter)*—Prof. Cond. R. 1.5(b) and1.15(a)(2). The alleged violations of Prof. Cond. R. 1.5(a), 8.4(c), and 8.1(a) were withdrawn.

- *Count VII (Professional Liability Insurance)*—Prof. Cond. R. 1.4(c).

{¶4} The panel accepts, in part, the amendment of the claimed violations, as more fully outlined below. The only witness to testify was Respondent on cross-examination in Relator's case. Respondent declined to offer any evidence or other defense in his own case. Forty exhibits were admitted in evidence, with the parties stipulating to their authenticity and admissibility. Based upon the parties' stipulations, the exhibits and the evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct as outlined below. Upon consideration of the applicable aggravating and mitigating factors, and case precedents, the panel recommends that Respondent be suspended from the practice of law for two years and ordered to make restitution to two individuals.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in Ohio on November 9, 1974, and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio. Stipulations ¶2.

{¶6} Respondent was previously suspended for two years for violations of Prof. Cond. R. 1.3, 1.4 and 1.5(a), with the suspension stayed on condition of making restitution of $12,000 to three clients. *Ohio State Bar Assn. v. Bruner*, 133 Ohio St.3d 163, 2012-Ohio-4326.

Count I—Russell Matter

{¶7} Respondent was hired to represent Theodore Russell on April 7, 2017 in a criminal trafficking case. Russell paid Respondent $5,000 on April 7, 2017 and an additional $3,000 on May 1, 2017. Stipulations ¶5.

{¶8} Russell filed a grievance on October 23, 2017, stating, *inter alia*, that Respondent had repeatedly treated him with disrespect and used an aggressive tone and negative words. Stipulations ¶6.

{¶9} Russell recorded a number of their conversations including one in which Respondent threatened that he would make Russell's "life miserable" if he filed a grievance. Stipulations ¶7; Stipulated Ex. 10 at 2:11/20:02.

{¶10} In an interview conducted by Relator on June 6, 2018, the transcript of which was admitted into evidence as Stipulated Ex. 64, Respondent denied that he ever threatened Russell. *Id.* at 104-105. In a deposition taken February 8, 2019, admitted into evidence as Stipulated Ex. 65, Respondent repeatedly denied threatening Mr. Russell. *Id.* at 101, 103-104. When confronted with Russell's recording, Respondent then admitted that he told Russell that he would make Russell's life miserable, *Id.* at 107, yet still denied he had made a threat. At the hearing, Respondent directly admitted that he had threatened Russell. Hearing Tr. 34-35.

{¶11} The parties stipulated and the panel finds, by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the

lawyer's fitness to practice law]. Stipulations ¶9. The panel unanimously dismisses the alleged violation of Prof. Cond. R. 8.1(a).

Count II—Harb Matter

{¶12} Respondent was appointed to represent Michael Harb in a criminal case in the Cuyahoga County Common Pleas Court on May 4, 2012. Harb ultimately entered a guilty plea. In 2017, Harb filed a grievance against Respondent alleging a variety of issues. Stipulations ¶10.

{¶13} During the investigation, Respondent provided inconsistent information and, in response to Relator's letter of inquiry, failed to disclose material facts. Stipulated Ex. 17. Respondent later clarified his statements. Stipulations ¶11; Hearing Tr. 38. Respondent admitted there was a misstatement of a material fact in his response to the letter of inquiry. Hearing Tr. 40.

{¶14} The parties stipulated and the panel finds, by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R 8.1(b) [in a disciplinary matter, a lawyer shall not fail to disclose a material fact]. The panel unanimously dismisses the alleged violation of Prof. Cond. R. 1.4(a)(1).

Count III—Ortega Matter

{¶15} Respondent was retained by Carlos Ortega Sr. and his wife, Rosa Ortega, on March 5, 2016, to assess the prospects of post-conviction relief for their son, Carlos Ortega, Jr. In 2005, Ortega, Jr. had been convicted of two counts of aggravated murder, one count of aggravated burglary, one count of tampering with evidence and one count of felonious assault, and sentenced 27 years to life. The Ninth District Court of Appeals affirmed the conviction, and the Supreme Court declined jurisdiction. On December 13, 2007, Ortega, Jr. was resentenced and again appealed to the Ninth District, which refused to consider any new arguments relating to his conviction. Stipulations ¶13.

{¶16} Respondent determined there were two viable options for Ortega, Jr.—either a federal *habeas corpus* petition or a motion for new trial in the state trial court. Stipulations ¶14.

{¶17} Respondent quoted a fee of $5,000, to be paid $2,500 at that time with the balance payable at a later date. Ortega, Sr. paid Respondent $2,500 for which he received a receipt. There was no written fee agreement. Stipulations ¶15; Hearing Tr. 44.

{¶18} Respondent did not adequately communicate to Ortega the nature and scope of his representation and the basis or rate for the fees for which Ortega would be responsible, nor what work would be performed for the initial $2,500 payment. Stipulations ¶16. Respondent conceded during his testimony that Ortega did not understand the scope of the representation, and expected that Respondent would file a motion on his son's behalf, although he denied agreeing to do so. Hearing Tr. 43, 46.

{¶19} On April 21, 2016, Respondent met with Ortega Sr. and provided an invoice for 7.25 hours of work at $350 per hour, totaling $2,537.50. Stipulations ¶16. The clients believed that the itemized services were not performed or were performed on different dates. Hearing Tr. 45.

{¶20} Respondent failed to create and maintain a record in connection with representation of Ortega for his IOLTA records showing the name of the client, the date, amount, payee, and purpose of all funds received on behalf of that client, the date, amount, payee and purpose of each disbursement made on behalf of that client, and the current balance. Stipulations ¶17; Hearing Tr. 46-47.

{¶21} The parties stipulated, and the panel finds by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R. 1.5(b) [the scope of the representation and the basis or rate of the fee and expenses shall be communicated to the client]; and Prof. Cond. R. 1.15(a)(2)

[a lawyer shall maintain a record for each on whose behalf funds are held which includes the client name, date, amount and source of all funds received, the date, amount, payee and purpose of each disbursement, and the current balance]. Stipulations ¶18. The panel unanimously dismisses the alleged violations of Prof. Cond. R. 1.4(a) and 8.1(a).

Count IV—Jackson Matter

{¶22} On November 28, 2016, Respondent was retained by Derek Jackson to file a motion to withdraw a previous guilty plea and delay his prison report date. Stipulations ¶21. On September 19, 2016, Jackson entered a guilty plea, and on November 2, 2016, he was sentenced to 18 months in the Lorain Correctional Institute. That same day, Jackson moved to withdraw his guilty plea, and the motion was denied. Stipulations ¶20; Hearing Tr. 49.

{¶23} On November 28, 2016, at 2:40 p.m., Jackson paid Respondent $1,500 by credit card. Respondent did not work on this matter prior to being paid. Stipulations ¶22.

{¶24} On that same day, Respondent filed an appearance and a motion to withdraw plea or, in the alternative, continue Jackson's report date. Stipulated Ex. 85. The motion and memorandum in support was just over one page in length. The motion cites no legal authority, asserts that previous counsel did not adequately advise Jackson of the ramifications of his plea, and asserts that Jackson maintains his innocence and has a valid defense. Crim. R 32.1 and related case law requires a defendant seeking to withdraw a guilty plea after sentencing to meet the burden of establishing manifest injustice. Stipulations ¶25.

{¶25} At this time, Respondent was in a rehabilitation center recovering from double knee replacement surgery. Respondent charged Jackson $1,500 to file a motion that had been made weeks earlier and denied. Respondent stated that he was unaware of the earlier motion to withdraw

the guilty plea, stating "I don't think I looked at the docket because I was in the hospital." Stipulations ¶26.

{¶26} The parties stipulated, and the panel finds by clear and convincing evidence that Respondent's conduct violated Prof. Cond. R.1.1 [competence] and 1.15(a)(2). Stipulations ¶27. The panel unanimously dismisses the alleged violation of Prof. Cond. R. 1.5.

Count V—Herron Matter

{¶27} On August 20, 2010, James Herron, represented by Respondent, pled guilty to Rape, R.C. 2907.02(A)(2). The court imposed a prison sentence of 12 years. Stipulations ¶28.

{¶28} On August 10, 2015, in response to an inquiry from Herron, Respondent sent Herron a letter informing him that he would be eligible for judicial release on October 25, 2016. In August 2017, Herron's brother, Doug Herron, retained Respondent to petition for his brother's judicial release. Stipulations ¶29.

{¶29} Doug Herron paid Respondent $750 by credit card. Respondent failed to create and maintain a record containing the following information related to his IOLTA account: (a) the name of the client; (b) the date, amount and source of all funds received; (c) the date, amount, payee and purpose of each disbursement; and (d) the current balance. Stipulations ¶31.

{¶30} Respondent thought that Herron was eligible for judicial release. Hearing Tr. 56. Pursuant to R.C. 2929.13(F), the 12-year sentence was mandatory and Herron was not eligible for judicial release. Stipulations ¶30; Hearing Tr. 55-56. Respondent filed the motion for judicial release on October 20, 2017, and the motion was denied on February 2, 2018. Stipulations ¶32. Respondent refunded the $750 to Herron. Hearing Tr. 59.

{¶31} The parties stipulated, and the panel finds by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R 1.1 and 1.15(a)(2).

Count VI—Walton Matter

{¶32} Mary Walton consulted with Respondent on January 11, 2016 and February 22, 2016, concerning her son, Devonte Walton. A contract was executed between Respondent and Mrs. Walton on February 22, 2016, for a fee of $5,000. Mrs. Walton paid Respondent $3,000. Although the contract is silent as to the scope of the representation, Respondent stated that he was hired to find new evidence to help Devonte either file a motion for new trial or some other post-conviction work. Stipulations ¶¶34-35.

{¶33} The parties stipulated that Respondent failed to adequately inform Mrs. Walton of the scope of his representation and the basis or rate of the fees for which she would be responsible. Stipulations ¶38; Hearing Tr. 65.

{¶34} On July 6, 2016, Mrs. Walton filed a grievance against Respondent, but on August 8, 2016, she informed Relator that she did not want to proceed with the grievance. Stipulations ¶36. On December 20, 2016, Mrs. Walton filed a second grievance seeking a refund of fees because she was dissatisfied with the representation. Stipulations ¶37.

{¶35} Respondent failed to create and maintain a record in connection with representation of Walton for his IOLTA records showing the name of the client, the date, amount, payee and purpose of all funds received on behalf of that client, the date, amount, payee, and purpose of each disbursement made on behalf of that client, and the current balance. Stipulations ¶39.

{¶36} The parties stipulated, and the panel finds by clear and convincing evidence, that Respondent's conduct violated Prof. R. Cond.1.5(b) [the scope of the representation and the basis or rate of the fee and expenses shall be communicated to the client]; and Prof. Cond. R. 1.15(a)(2) [the lawyer shall maintain a record for each on whose behalf funds are held which includes the client name, date, amount and source of all funds received, the date, amount, payee and purpose

of each disbursement, and the current balance]. Stipulations 40. The charges of violating Prof. Cond. R. 1.5(a) and 8.1(a) are dismissed.

Count VII – Professional Liability Insurance.

{¶37} Between the date of expiration of his 2007/2008 Professional Liability Services, Inc. policy of professional liability insurance until the April 29, 2016 inception date of his Travelers Insurance policy, Respondent did not maintain a professional liability insurance policy. Stipulations ¶¶42-43.

{¶38} During this period when he was uninsured, Respondent did not provide any notice to clients nor have any client sign a notice that he was uninsured. Those clients to whom he failed to provide notice or secure a signed confirmation included Mary and Davonte Walton, Carlos Ortega Sr., Rosa Ortega and Carlos Ortega, Jr. Stipulations ¶¶42-45.

{¶39} The parties stipulated, and the panel finds by clear and convincing evidence, that Respondent's conduct violated Prof. Cond. R. 1.4(c)(c) [a lawyer shall inform a client by written notice that the lawyer does not maintain professional liability insurance, and the notice shall be signed by the client]. Stipulations ¶46.

Other potential violations

Prof. Cond. R. 1.15(c)

{¶40} Based on the testimony at the hearing and the exhibits that were admitted into evidence, Respondent violated Prof. Cond. R. 1.15(c) [fees and expenses paid in advance shall be deposited into an IOLTA]. Stipulated Ex. 64 at 4–7.

{¶41} In the Russell, Ortega, Jackson, Herron, and Walton matters, Respondent received advance payment for fees and expenses, and failed to deposit any of those funds into an IOLTA. Hearing Tr. 82-83. However, Respondent was never charged with a violation of Prof. Cond. R.

1.15(c). The "absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprived" Respondent of procedural due process were the panel to find him guilty of violating Prof. Cond. R. 1.15(c). *Disciplinary Counsel v. Reinheimer*, Slip Opinion No. 2020-Ohio-3941, ¶ 11, citing *In re Ruffalo*, 390 U.S. 544, 551 - 552, 88 S. Ct. 1222, 20 L.Ed.2d 117 (1968).

Prof. Cond. R. 8.4(c)

{¶42} Based on the testimony at the hearing and the exhibits that were admitted into evidence, the panel finds clear and convincing evidence that Respondent violated Prof. Cond. R. 8.4(c) [conduct involving fraud, dishonesty, deceit, or misrepresentation].

{¶43} In the Russell matter, Respondent repeatedly denied making a threatening statement to Russell. Only when confronted with a recording of his statements did Respondent concede that he said what he had been accused of saying. However, Respondent was never charged with a violation of Prof. Cond. R. 8.4(c) as to Russell and so lacked fair notice of any claim of such a violation. It would be a due process violation for the panel to now find such a violation.

{¶44} It is a different story with respect to violations that were charged. In the Ortega matter, Respondent gave Ortega an invoice on April 21, 2016, showing work performed on March 25, April 2 and April 10. Subsequently, Respondent stated that all of his work was done on March 12, then later said that he did not start working on this matter until March 30 and April 7. Hearing Tr. 8488. Respondent was charged with a violation of Prof. Cond. R. 8.4(c), although the parties jointly agreed to amend the complaint at the inception of the hearing and dismiss the Prof. Cond. R. 8.4(c) allegation. The panel gave clear notice that it had not accepted the amended claims and was considering the evidence related thereto. Hearing Tr. 9, 79, 97–99, 104. Respondent was afforded an opportunity to present any additional testimony and choose not to proceed. Hearing

Tr. 95. Based on the evidence in this record, the panel finds that Respondent violated Prof. Cond. R. 8.4(c) in the Ortega matter.

{¶45} In the Walton matter, Respondent stated that he visited Davonte Walton in the Ohio State Penitentiary in Youngstown on July 22, 2016, for which he charged four hours including travel time from Cleveland to Youngstown and back. Stipulated Ex. 64 at 139-141; Stipulated Ex. 65 at 45–53. Respondent further stated that he visited Walton at the same penitentiary on September 30, 2016, again charging for four hours including travel time. *Id.* The Department of Rehabilitation and Corrections records do not show any visits by Respondent to Walton in Youngstown in July or September, but do show that Mr. Walton was incarcerated in the Cuyahoga County jail between July 7, 2016 and October 12, 2016, where Respondent visited Walton on July 8 and July 22. *Id.* The jail is approximately five minutes from Respondent's law office. Stipulated Ex. 65 at 27.

{¶46} Respondent was charged with a violation of Prof. Cond. R. 8.4(c). Although the parties jointly agreed to amend the complaint at the inception of the hearing and dismiss the Prof. Cond. R. 8.4(c) claim, the panel gave clear notice that it had not accepted the amended claims and was considering the evidence related thereto. Hearing Tr. 9, 79, 97–99, 104. Respondent was afforded an opportunity to present any additional testimony and choose not to proceed. Hearing Tr. 95. Based on the evidence in this record the panel finds a second violation of Prof. Cond. R. 8.4(c) in the Walton matter.

AGGRAVATION, MITIGATION, AND SANCTION

{¶47} When recommending sanctions for attorney misconduct, the panel must consider all relevant factors, including the ethical duties violated by Respondent, precedent established by

the Supreme Court, and the existence of aggravating and mitigating factors. Gov. Bar R. V, Section 13(A).

Aggravating Factors

{¶48} The parties stipulated to the following aggravating factors which were supported by the testimony and exhibits.

- Prior discipline;
- A pattern of misconduct;
- Multiple offenses;
- Vulnerability of the victims; and
- Failure to make restitution of $1,250 to Carlos Ortega, Sr. and $1,500 to Mary Walton.

{¶49} The panel finds, by clear and convincing evidence, that each of those aggravating factors is present. In addition, the panel finds, by clear and convincing evidence, that Respondent's mendacity must be considered as an aggravating factor. Respondent's testimony was not credible particularly with respect to the Russell, Harb, Ortega, and Walton matters.

Mitigating Factors

{¶50} The parties stipulated that Respondent did not have a dishonest motive and had a cooperative attitude toward the proceedings. Based on the testimony at the hearing and the exhibits admitted into evidence, the panel declines to accept this stipulation. The record does not support a finding that Respondent did not have a dishonest motive or that he was cooperative toward these proceedings. Respondent did not keep or make accurate records of his time for purposes of charging fees to his clients, treating funds advanced by clients as his money. Respondent has made restitution to only one of the clients to whom a refund is due. As to cooperation, there was nothing offered in evidence to support a cooperative attitude.

{¶51} Respondent was granted two weeks, post-hearing, in which to submit evidence of character, and provided three complimentary letters from members of the Cuyahoga County Common Pleas Court, Judge Kathleen Ann Sutula, Judge Robert McClelland and Judge Brian J. Corrigan. Each of the letters indicated that the writer was well acquainted with Respondent, had reviewed the allegations in this matter, and lauded Respondent's professionalism and competence.

{¶52} Respondent also submitted as character evidence a report dated February 26, 2020, from Deborah Koricke, Ph.D, and a report dated March 31, 2020, from James E. Valentine, Esquire.[1] Neither witness was called to testify at the hearing and were not subject to Relator's cross-examination. Dr. Koricke reports her clinical assessment of Respondent based on interviews, a mental status examination and standardized psychological testing, concluding that Respondent suffered from depression which "likely played a role in some of his less than optimal decision making, which caused at least some of the current client complaints." Dr. Koricke recommended counseling and consultation with a psychiatric prescriber. However, Dr. Koricke did not comment on Respondent's character, nor did she describe a sustained period of successful treatment or opine that Respondent will be able to return to competent, ethical professional practice under specified conditions. Gov. Bar R. V, Section 13(C)(7)(c)-(d).

{¶53} The Valentine report is from an experienced criminal defense attorney who discusses some of the issues associated with criminal defense practice, and comments on the cases and complaints of several of the grievants. There is no indication that Valentine knows Respondent, nor does he express any opinion as to Respondent's character. The panel concludes that neither the Koricke report nor the Valentine report constitute evidence of mitigation.

[1] These letters were accepted for the record over Relator's objections.

Sanction

{¶54} The parties stipulated to a recommended sanction of a two-year suspension with one year stayed. Upon consideration of the applicable aggravating and mitigating factors, and case precedents, the panel recommends that Respondent be suspended from the practice of law for two years.

{¶55} Cases which address multiple offenses with aggravating and mitigating factors include:

- *Disciplinary Counsel v. Noel*, 134 Ohio St.3d 157, 2012-Ohio-5456. The Supreme Court imposed an indefinite suspension for violations of Prof. Cond. R. 1.15(a), 8.1(b), 8.4(c), 8.4(h), and former Gov. Bar R., Section 4(G). Aggravating factors of prior discipline, multiple offenses and failure to cooperate. No mitigating factors were found.

- *Cleveland Bar Assn. v. Gruttadaurio*, 136 Ohio St.3d 283, 2013-Ohio-3662. The Court imposed an indefinite suspension for violations of Prof. Cond. R. 1.3, 1.4(a)(3), 1.4(c), 1.5(a), 1.15(a), 8.1(a), 8.4(c), 8.4(d), and 8.4(h). Aggravating factors of pattern of neglect, multiple offense, failure to acknowledge the wrongful nature of the conduct, failure to make timely restitution. Mitigating factors of no prior discipline, no dishonest or selfish motive, and cooperative attitude.

- *Columbus Bar Assn. v. Boggs*, 129 Ohio St.3d 190, 2011-Ohio-2637. Boggs was suspended indefinitely for violations of Prof. Cond. R. 1.1, 1.3, 1.4(a)(3), 1.4(c), 1.5(a), 1.15(a), 1.15(c), and 8.4(h). Aggravating factors included prior discipline, dishonest and selfish motive, pattern of misconduct, and multiple offenses; mitigating factor of cooperation during the proceedings.

- *Disciplinary Counsel v. Friedman*, 114 Ohio St.3d 1, 2007-Ohio-2477. Friedman received a two-year suspension with six months stayed for violation of former DR-1-102(A)(4) [8.4(c)], 1-102(A)(6) [8.4(h)], 2-106(A) [1.5], 2-110(A)(3)[1.16], 6-101(A)(3)[1.3], and 9-102(B)(3),(B)(4),(E)(1)[1.15]. Aggravating factors of multiple offenses and a pattern of misconduct. Mitigating factors of no prior discipline, cooperation, evidence of good character and reputation, disorder, and other interim rehabilitation.

- *Disciplinary Counsel v. Wallace*, 138 Ohio St.3d 350, 2014-Ohio-1128, involved a two-year suspension, one year stayed, for violations of Prof. Cond. R. 1.15(a), 1.15(a)(2), 8.4(c) and 8.4(h). There were aggravating factors of

prior discipline, a dishonest or selfish motive, and multiple offenses; mitigating factors of cooperation, good character and restitution.

- *Disciplinary Counsel v. Blair*, 128 Ohio St.3d 384, 2011-Ohio-767, involved a two-year suspension, 18 months stayed, for violations of Prof. Cond. R. 1.15(a)(1) – (2), 5.3(a), 8.4(c), and 8.4(h). There were aggravating factors of dishonest or selfish motive; mitigating factors of no prior discipline, restitution, cooperative attitude and other interim rehabilitation.

- *Disciplinary Counsel v. Corner*, 145 Ohio St.3d 192, 2016-Ohio-359, involved a two-year suspension, one year stayed, for violations of Prof. Cond. R. 1.1, 1.3, 1.5(a), 1.5(e), 1.15(a)(2), 1.15(a)(3), 1.15(c), 8.4(c) and 8.4(d). There were aggravating factors of a pattern of misconduct and multiple offenses; mitigating factors of no prior discipline, cooperation and an underlying disorder.

{¶56} What separates Respondent's case from those discussed above is the mix of mitigating and aggravating factors. The list of Respondent's aggravating factors is lengthy: prior discipline, a pattern of misconduct, multiple offenses, vulnerability of the victims, failure to make restitution, and a rather cavalier attitude toward the truth. For mitigation, Respondent provided three character letters. On balance, the panel finds that Respondent's conduct was more egregious than the respondents in *Wallace, Blair,* and *Corner*. Respondent represents a continuing threat to the public and his conduct warrants a more significant sanction than a partially stayed, two-year suspension, but not to the level of an indefinite suspension.

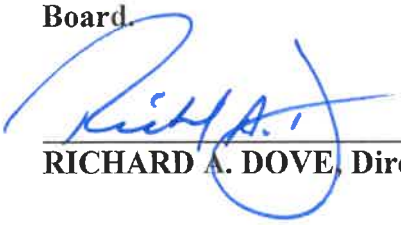
{¶57} Based upon the foregoing, the panel recommends that Respondent be suspended for two years from the practice of law, and that Respondent be ordered to make restitution to Carlos Ortega, Sr. in the amount of $1,250 and to Mary Walton in the amount of $1,500 within 90 days of the Supreme Court's disciplinary order in this matter.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on December 11, 2020. The Board voted to adopt findings of fact, conclusions of law, and

recommendation of the hearing panel and recommends that Respondent, Harvey Bruce Bruner, be suspended from the practice of law in Ohio for two years and ordered to make restitution to Carlos Ortega, Sr. in the amount of $1,250 and to Mary Walton in the amount of $1,500, with proof of restitution to be provided to Relator within 90 days of the final disciplinary order issued by the Supreme Court. The Board further recommends that Respondent be 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