Case No. 2021-1233

In the
Supreme Court of Ohio

MEDINA COUNTY BAR ASSOCIATION
Relator,

v.

RUSSELL ANTHONY BUZZELLI
Respondent.

BOARD CASE NO. 2021-001

RELATOR'S RESPONSE TO RESPONDENT'S OBJECTIONS TO BOARD DECISION AND ANSWER BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. Introduction

The Board of Professional Conduct of the Supreme Court of Ohio (the "Board") found that Respondent, Russell Anthony Buzzelli, ("Buzzelli") violated 18 Rules of Professional Conduct. The Board determined that there were six aggravating factors and one mitigating factor.

Buzzelli disagrees with the Board's conclusion that Buzzelli refused to acknowledge his wrongful conduct and also disagrees with the severity of the sanction. Relator, Medina County Bar Association ("Medina Bar"), will show that neither of Buzzelli's contentions are supported by the record.

II. Statement of Relevant Facts

A. Buzzelli's Violations of the Rules of Professional Conduct

In Count I, concerning Buzzelli's representation of Marybeth Foster ("Foster"), the Board found by clear and convincing evidence that Buzzelli's conduct violated the following Rules of Professional Conduct:

1. Buzzelli did not consult with Foster before he filed the Answer Instanter. *Prof.Cond.R. 1.4(a)(2)* - a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

2. Buzzelli could not adequately represent Foster as his sexual relationship with her created a conflict of interest. *Prof.Cond.R. 1.7(a)(2*) - a lawyer shall not represent a client when the lawyer cannot adequately represent that client due to self interest;

3. Buzzelli knowingly made a false statement to the U.S. District Court for the Northern District of Ohio by asserting that Foster consented to the filing of the Answer Instanter in response to the pending motion for default and by filing that pleading with Foster's name on the signature line of the pleading. *Prof.Cond.R. 3.3(a)(l)* - knowingly make a false statement of fact to a tribunal;

4. Buzzelli did not give any guidance to Foster on how to ethically work in a law office. *Prof.Cond.R. 5.3(a)* - a lawyer who possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect

measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of a lawyer;

5. Buzzelli touched Foster without her consent and threatened to kill Foster. *Prof.Cond.R. 8.4(b)* - a lawyer shall not engage in an illegal act that reflects adversely on the lawyer's honesty or trustworthiness;

6. Buzzelli knowingly made a false statement to the U.S. District Court for the Northern District of Ohio by asserting that Foster consented to the filing of an Answer Instanter in response to the pending motion for default and by filing that pleading with Foster's name on the signature line of the pleading. *Prof.Cond.R. 8.4(c)* - a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

7. Buzzelli's touched Foster without her consent, threatened to kill Foster, and exhibited an attitude which is prejudicial to the administration of justice in the disciplinary proceeding. *Prof.Cond.R. 8.4(d)* - a lawyer shall not engage in conduct prejudicial to the administration of justice; and

8. Buzzelli made a misrepresentation to a Court, presented false statements and evidence to the Board, and engaged in an illegal act (unwanted touching and threat to kill). *Prof.Cond.R. 8.4(h)* - a lawyer shall not engage in other conduct that adversely reflects on the lawyer's fitness to practice law.

Board, ¶ 34.

Count II also involved Foster, but that count solely concerned the petition for a civil stalking order that Buzzelli filed on behalf of his wife against Foster. The Board found by clear and convincing evidence that Buzzelli's conduct violated the following Rules of Professional Conduct:

9. Buzzelli represented his wife against Foster (his former client, office worker and lover). *Prof.Cond.R. 1.7(a)(2)* - a lawyer shall not represent a client when the lawyer cannot adequately represent that client due to self interest; and

10. Buzzelli used information he learned while representing Foster in her divorce to the disadvantage of Foster in the civil protection order hearing. *Prof.Cond.R. l.9(c)(1)* - a lawyer who has formerly represented a client in a matter shall not thereafter use information relating to the representation to the disadvantage of the former client.

Board, ¶ 47.

In representing Marlene Tramonte ("Tramonte") in a divorce Buzzelli committed further misconduct. The Board found by clear and convincing evidence that Buzzelli's conduct violated the following Rules of Professional Conduct:

11. Buzzelli did not send a counterproposal for settlement during the nine months that he represented Tramonte. *Prof.Cond.R. 1.3* - diligence;

12. Buzzelli did not confer with Tramonte before making proposals to her husband's lawyer. *Prof.Cond.R. 1.4(a)(3)* - a lawyer shall keep the client reasonably informed about the status of the matter;

13. Buzzelli failed to give Tramonte any accounting of her $15,000 fee advance for five months, despite her requests, and did not comply with her request for information as soon as practicable. *Prof.Cond.R. 1.4(a)(4)*- a lawyer shall comply as soon as practicable with reasonable requests for information from the client;

14. Buzzelli did not send a refund of the unearned fee to Tramonte and never sent a final accounting after he was fired by Tramonte. *Prof.Cond.R. 1.16(e)* - a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned; and

15. Foster, who was working in Buzzelli's law firm, without Buzzelli's knowledge gave Tramonte her file. *Prof.Cond.R. 5.3(a)* - a lawyer who individually possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligation of a lawyer.

Board, ¶ 101.

Buzzelli also committed misconduct when he represented Ramona J. Chirdon ("Chirdon"). The Panel found by clear and convincing evidence that Buzzelli's conduct violated the following Rules of Professional Conduct:

16. Buzzelli did not effectively represent Chirdon as her appeal was dismissed. *Prof.Cond.R. 1.1* - competence;

17. Buzzelli did not respond to the order of the appellate court. *Prof.Cond.R. 1.3* - diligence; and

18. Buzzelli did not tell Chirdon about the court's order nor the dismissal of the appeal. *Prof.Cond.R. l.4(a)(3)* - a lawyer shall keep the client reasonably informed about the status of the matter.

Board, ¶ 111.

B. Factors Affecting Sanction

1. Mitigation Factors

Buzzelli overemphasizes the only mitigating factor that the Board found, that Buzzelli had no prior discipline. Board, ¶ 124. Buzzelli tries to stretch that finding into 34 years of ethical practice. For example, see Respondent's Objections to the Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio ("Buzzelli Objections"), p. 6. However, there is no evidence of exemplary practice in the record.

The Panel found Buzzelli's character evidence not to be compelling. Board, ¶ 124. The people who are the most familiar with Buzzelli's character and reputation concerning his practice of law would be the Medina County judges and lawyers. However, Buzzelli did not have any character witnesses from the Medina County legal community.

The most telling evidence of Buzzelli's character are his own admissions. Buzzelli has declared that he is a master manipulator (Rel. Ex. 17), a good specimen for a master race (Rel. Ex. 15), and a killer (Rel. Ex. 16). The Medina Bar proved by clear and convincing evidence that Buzzelli has continued his manipulating ways by submitting false evidence and false testimony to defend against the grievances filed by a Magistrate, a City Prosecutor[1] and three clients.

[1] The grievance of the Barberton Prosecutor, Thomas Bown, is mentioned in paragraph 9 of Relator's Complaint and the Bown grievance alleges the same facts as Foster did. Therefore, the grievance filed by the Barberton Prosecutor was consolidated into Foster's grievance.

The most chilling evidence is Buzzelli's unwanted touching of Foster and his threat to kill her. (Rel. Ex. 16, p. 0349). Buzzelli and Foster, Buzzelli's client, office worker and lover, were alone in Buzzelli's office. Buzzelli stated,

> Is that door closed? Is that window closed? OK, good. Now, if you would please. I am going to me make this real clear. So, you can look at me and you can smell me when I say this. I don't give a shit whether you like it or not, but, I am going to touch your -inaudible- right now. Listen to me. I have fucking killed a human being. And you know what, I am not fucking proud of that. But the one thing that I have a capacity to do and to be, all right, is a killer. One thing you don't have and you talk big and bad, is you don't have that capacity. And it is a horrible capacity to have. Right? You want to rat me out and tell people about it, you go right ahead. But at the end of the day, the reason I don't go to the levels that you go to is because - inaudible - when I am fucking talking to you.

Id. According to Buzzelli, he was attempting to "scare (Foster) straight: due to Foster's alleged threat to kill him and his wife. (T. I-292, 11. 1-25; T. I-293, 12-16). That encounter says a lot about Buzzelli's character.

2. **Aggravation Factors**

While the Board found one mitigation factor, the Board found six aggravation factors. The Board found the following factors:

a. dishonest or selfish motive;

b. pattern of misconduct and multiple offenses;

c. submission of false evidence, false statements or other deceptive practices during the disciplinary process;

d. refusal to acknowledge wrongful conduct;

e. vulnerability of and resulting harm to victims of misconduct; and

f. failure to make restitution.

Those factors have a sufficient bearing on the sanction for a disciplined lawyer.

C. Buzzelli Did Not Timely Acknowledge His Wrongful Conduct

The first time that Buzzelli admitted to all 18 violations was in his Objections. Buzzelli Objections, p. 4. The Board found that Buzzelli failed to acknowledge his wrongful conduct, an aggravating factor that increases the severity of a sanction. Board ¶ 117.

Buzzelli denied all of the allegations in his answer to the complaint. *Id.* The first time he admitted any wrongdoing was the day before the first day of the hearing, when he admitted to a single violation of Prof.Cond.R. 1.7(a)(2). *Id.* Buzzelli admitted that his personal interests arising out of his sexual relationship with his client, Foster ("Foster"), limited his ability to appropriately represent Foster.

The Medina Bar proved that Buzzelli committed additional violations before Buzzelli admitted to any other wrongdoing. Board, ¶ 117. While under examination by the hearing panel of the Board ("Panel") in the second day of the hearing Buzzelli admitted violating five additional Rules of Professional Conduct[2]. *Id.*

In Buzzelli's Post-Hearing Brief he admitted three additional violations[3]. *Id.* It was not until Buzzelli's Objections that he admitted the remaining nine violations. Buzzelli's Objections, p. 4. Five months after the Medina Bar proved the 18 violations of the Rules of Professional Conduct Buzzelli has finally acknowledged all of his wrongful conduct.

Further, the Board found Buzzelli to be evasive, vague and accusatory. Board, ¶ 99 (evasive), ¶ 94, 116 (vague), ¶ 116, 117 (accusatory). Those findings support the Board's

[2] Buzzelli admitted violations of Prof.Cond.R. 1.9(c)(1), 3.3(a)(1), 8.4(c),(d) and (h) in Counts I and II involving Foster.

[3] Those violations are in Count IV involving Ramona J. Chirdon ("Chirdon") and are Prof.Cond.R. 1.1, 1.3, 1.4(a)(3).

conclusion that Buzzelli was not remorseful. Board, ¶ 117. Buzzelli's lack of remorse is consistent with his delayed acknowledgment of his mistakes.

Buzzelli's admission of his mistakes came too late to lessen his sanction. Buzzelli did not timely acknowledge the damage to his clients or to the profession of law. The Board found that Buzzelli frequently placed the blame for any wrongdoing on Foster and others. Board, ¶ 116, 117. Buzzelli even used his own wife for his own purposes. Board, ¶ 117, 119. Buzzelli continues to use his wife to help him out of the consequences of his unethical behavior. Buzzelli's Objections, p. 5-6; 10-11.

D. <u>Medical Condition of Buzzelli's Wife Not Relevant</u>

Buzzelli blamed his wife's medical condition for a number of his failures. For instance, he neglected to comply with the court's order in Chirdon when the Ninth District Court of Appeals demanded information about the extent of the trial court's order. Board, ¶ 104. Buzzelli blamed his lack of diligence on his wife's illness. Board, ¶ 108-109. However, the Board rejected Buzzelli's excuse. *Id.* Buzzelli even used his wife to get back at Foster when he filed a request for a civil protection against Foster. Board, ¶ 117, 119.

Even though Buzzelli asserts that his wife is still unable to work, that conclusion is contradicted by the evidence. The Board found that "[s]ometime in the spring or early summer of 2019 she [Buzzelli's wife] was able to return [to work] and has continued to work for Respondent at his law office since then." Board, ¶ 8. Therefore, the health of Mrs. Buzzelli should not be considered in deciding a sanction for Buzzelli.

III. Argument

A. Protecting the Public

The Medina Bar agrees with Buzzelli that the primary purpose of a disciplinary sanction is to protect the public. Buzzelli Objections, p. 7. However, in order to protect the public a lengthy suspension of Buzzelli's ability to practice law is warranted.

Buzzelli

1) threatened to kill a client (Board, ¶¶ 22-23);

2) touched a client without consent (Board, ¶ 23);

3) made two misrepresentations to a court (Board, ¶25);

4) submitted false testimony and evidence in the hearing (Board, ¶¶ 58-63 and ¶ 71);

5) was found by the Board not to be credible (Board, ¶ 15, 23, 55, 56, 58, 63, 71, 84, 85, 86, 97, 109 and 116);

6) did not manage his law practice ethically (Board, ¶ 29);

7) did not perform his legal services diligently or competently (Board, ¶ 64, 111);

8) did not keep a client informed, consult with the clients on objectives or respond to a client with requested information (Board, ¶ 34);

9) was not cognizant of conflicts of interest (Board, ¶ 32, 46); and

10) did not return the unearned portion of a fee (Board, ¶ 85).

Despite all the above misconduct while practicing law, Buzzelli does not have a plan on how to improve his practice. Buzzelli has not outlined any steps he plans on taking to make sure that he does not repeat the same mistakes. A lengthy suspension is necessary in order to protect the public.

B. Violation of Lawyer's Oath of Office

> (P)rotecting the public,… is not strictly limited to protecting clients from a specific attorney's potential misconduct. Imposing attorney-discipline

> sanctions also protects the public by demonstrating to the bar and the public that this type of conduct will not be tolerated.

As cited in the dissent in Disciplinary Counsel v. Harmon, 158 Ohio St.3d 187, 248, 2019-Ohio-4171. *Disciplinary Counsel v. Shuman,* 152 Ohio St.3d 47, 2017-Ohio-8800, 92 N.E.3d. 850, ¶ 17.

The disciplinary system protects the public from dishonest lawyers who violate their oath of office.

> A lawyer who engages in a material misrepresentation to a court or a pattern of dishonesty with a client violates, at a minimum, the lawyer's oath of office.... Such conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer. We cannot expect citizens to trust that lawyers are honest if we have not yet sanctioned those who are not.

Disciplinary Counsel v. Fowerbaugh, 74 Ohio St.3d 187, 190, 658 N.E.2d 237 (1995).

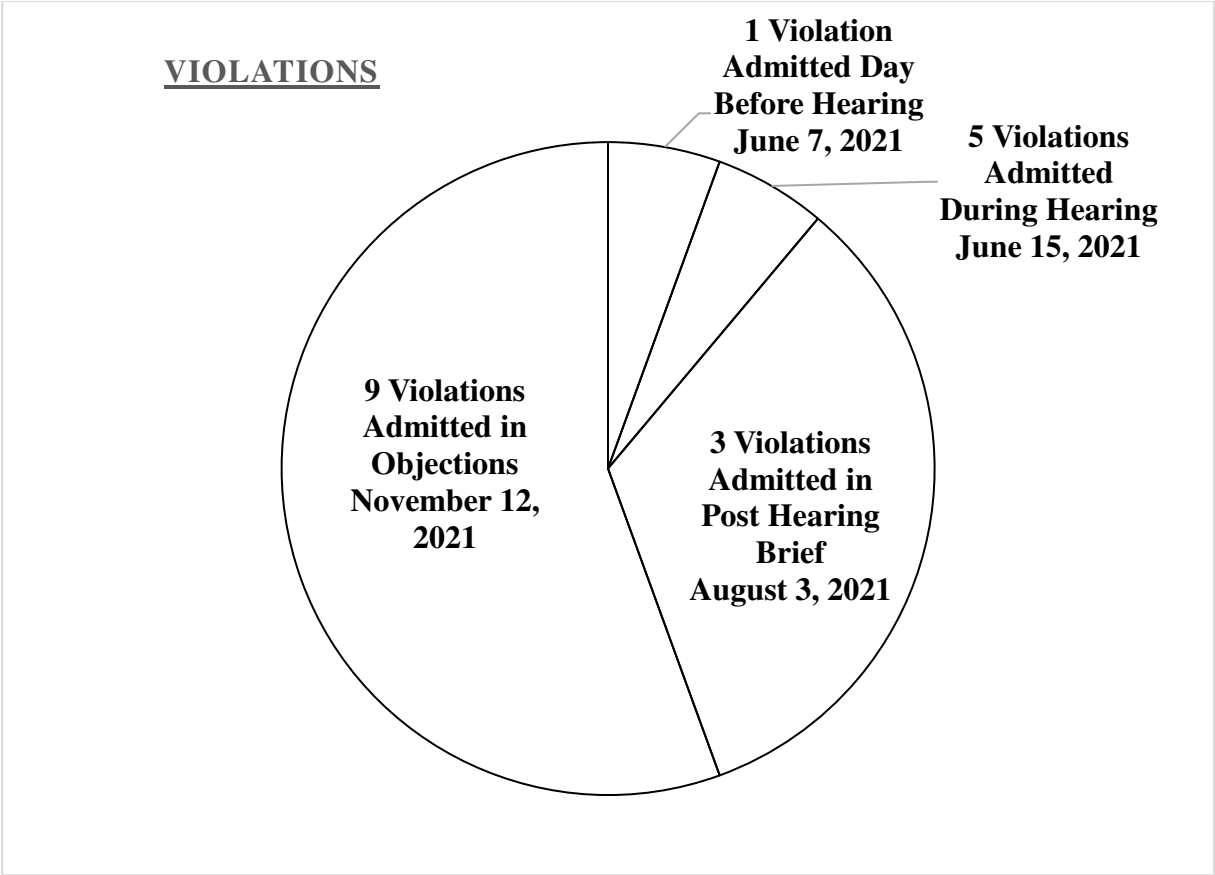
Buzzelli made two misrepresentations to the U.S. District Court for the Northern District of Ohio by indicating that a pleading was filed by Foster and not him and by implying that he had informed his client and the client had given consent to the filing. Board, ¶¶ 24-26. Also, Buzzelli submitted a false separation agreement (Res. Ex. M) and a faked separation agreement (Res. Ex. Q) as exhibits during the disciplinary hearing. (Board, ¶¶ 58-63, 71). The record contains extensive evidence of Buzzelli's dishonesty.

The Board increased the sanction from that recommend by the Panel due to the threat to kill the client (Board, ¶ 22) and the misrepresentations to the Court (Board, ¶ 25). Board, p. 39. The Panel recommended a two year suspension with six months stayed with conditions. Board, ¶ 38. Whereas, the Board recommended a full two year suspension with conditions. Buzzelli's dishonest conduct increased the sanction.

Even though the Medina Bar recommended an indefinite suspension in its Post Hearing Brief, the Medina Bar supports the two year suspension with the requirement of an application for reinstatement with the other conditions.

C. Board's Recommendation Appropriate

Buzzelli incorrectly requests a lesser sanction than recommended by the Board as he argues that he recognized his mistakes. Buzzelli Opposition, p. 5. However, Buzzelli did not timely admit to any mistakes. Buzzelli's unwillingness to admit to wrongdoing is clearly shown in the below chart.



So far no one has found a case that involves similar violations of the Rules of Professional Conduct, similar mitigating factors and similar aggravating factors to those in this case. However, *Toledo Bar Assn. v. Berling* is instructive with multiple counts of misconduct and numerous alleged violations of the Professional Rules of Conduct, including multiple counts of violations of Rules 1.3, 1.4(a)(3), 8.4(c) and 8.4(d). 160 Ohio St.3d 90, 2020-Ohio-2838.

According to the Panel in *Berling (supra* ¶ 104*),* a starting point for the consideration of a sanction can begin with the idea that

> the presumptive sanction for attorneys who accept retainers and fail to carry out contracts of employment is disbarment because the conduct in tantamount to theft of the fee from the client.

Disciplinary Counsel v. Rutherford, 154 Ohio St.3d 78, 2018-Ohio-2680 *(citing Disciplinary Counsel v. Henry,* 127 Ohio St.3d 398, 2010-Ohio-6206, ¶ 33, quoting *Cincinnati Bar Assn. v. Weaver,* 102 Ohio St.3d 264, 2004-Ohio-2683, ¶ 16). However, the Panel in *Berling* recommended a two-year suspension with no portion of the suspension stayed.

A recent case, *Ohio State Bar Assn. v. Bruner,* is also illustrative of a two year full suspension case, even though procedurally it is not similar to this case. Slip Opinion No. 2021-Ohio-4048. As in this case there was one mitigation factor. There were five aggravation factors, however here there are six.

The main element that makes *Bruner* applicable here is that the Board found Bruner not to be credible and to have "a rather cavalier attitude toward the truth." *Id.* at ¶ 45. The Board in this case stated that Buzzelli was not credible 13 times in its decision. Board, ¶ 15, 23, 55, 56, 58, 63, 71, 84, 85, 86, 97, 109 and 116. Such lack of candor is a continuing threat to the public.

Further, the Board found that Buzzelli was not remorseful and that his testimony was often unsupported by any credible evidence. Board, ¶ 99, 116. A credibility determination by the Panel is usually given deference. *Cuyahoga Cty Bar Assn. v. Wise*, 108 Ohio St.3d 164, 2006-Ohio-550, 842 N.E.2d, ¶ 24.

Those Board findings along with the Board's determination that Buzzelli refused to acknowledge the wrongful nature of his conduct negate Buzzelli's contention that he timely and

genuinely admitted his violations of the Rules of Professional Conduct. A full two year suspension, as in *Bruner,* is appropriate.

D. Buzzelli Cited Cases Not Applicable

1. ***Disciplinary Counsel v. Dougherty***

This case is not similar to *Disciplinary Counsel v. Dougherty*, despite Buzzelli's contention that Dougherty's misconduct was more severe than his and Dougherty received a lighter sanction. 157 Ohio St.3d 486, 2019-Ohio-4418, 137 N.E.3d 1174. The below chart compares the two cases.

<table>
<tr><th colspan="2">Disciplinary Counsel v. Dougherty</th></tr>
<tr><td colspan="2">Facts - Dougherty worked with a suspended lawyer, who performed legal services. Dougherty did not tell clients about the lawyer's suspension and delayed in registering the relationship with the suspended lawyer. Dougherty failed to complete the representation of one client, failed to return fee advances to two clients, and failed to put fee advances into an IOLTA.</td></tr>
<tr><td colspan="2">Sanction - Two year suspension with one year stayed as long as Dougherty paid restitution totaling $6,050 to two clients, refrained from any further misconduct and paid one-half of the costs of the proceeding. To be reinstated, Dougherty must pass the MPRE and serve two years of monitored probation.</td></tr>
<tr><th>Similarities to Buzzelli</th><th>Differences from Buzzelli</th></tr>
<tr><td>One mitigation factor - no prior discipline</td><td>14 violations in Dougherty instead of 18 in Buzzelli</td></tr>
<tr><td>Violation of Rules by Buzzelli and Dougherty
1.3 (diligence) (Buzzelli - two counts)
1.4(a)(3) (keeping client informed - Buzzelli three counts)
1.4(a)(4) (responding to client)
1.16(d) [Buzzelli 1.16(e)] (returning property or unearned fees)
8.4(c) (misrepresentation)</td><td>Four aggravation factors in Dougherty instead of six in Buzzelli.
Buzzelli submitted false evidence and false statements during disciplinary process and refused to acknowledge wrongful conduct.</td></tr>
<tr><td></td><td>Violations by Dougherty
1.5(a) (excessive fee)
1.15(a) (holding client's property separately)
5.5(a) (assisting unauthorized practice) and Gov.Bar R. V(8)(G)(6) and Gov.Bar R. V (23)(F) (not telling about working with suspended lawyer)</td></tr>
<tr><td></td><td>Violations by Buzzelli
1.1 (competence)
1.4(a)(2) (not consult with client)
1.7(a)(2) (conflict of interest - two counts)
1.1 (competence)
1.9(c)(1) (use of client's confidential information)
3.3(a)(1) (misrepresentations to a court)
5.3(a) (responsibility to manage nonlawyer - two counts)
8.4(b) (illegal act - unwanted touching and intimidation)
8.4(d) (prejudice to administration of justice)
8.4(h) (fitness to practice law)</td></tr>
</table>

Dougherty was not dishonest, did not make misrepresentations to a court, nor did he threaten to kill a client. *Id*. Further, Dougherty committed four less violations of the Rules of Professional Conduct than Buzzelli, and had two less aggravation factors than Buzzelli.

In addition, Dougherty's sanction was more severe than was reported by Buzzelli. Buzzelli stated that "this Court suspended Dougherty for two years with the second year stayed with conditions". Buzzelli Objections, p. 7. One of those conditions was a two year period of monitored probation. Dougherty, at ¶ 43. Therefore, even if Dougherty followed all the rules, he had a sanction continuing past the first year: the monitored probation.

Buzzelli again states that he acknowledged his misconduct, whereas Dougherty did not. Buzzelli Objections, p. 8. However, the Board found that Buzzelli also did not acknowledge his misconduct. Board, ¶ 117. The *Dougherty* case is not applicable in this case.

2. *Disciplinary Counsel v. Cheselka*

Again, despite Buzzelli's contention that Cheselka's misconduct is more serious than his and Cheselka got a lighter sanction, the *Cheselka* case is not applicable. *Disciplinary Counsel v. Cheselka*, 159 Ohio St.3d, 2019-Ohio-5286, 146 N.E.3d 543. For instance, Cheselka received a one year monitored probation, that is not proposed for Buzzelli. *Id*. at ¶ 37. The comparison chart is below:

Disciplinary Counsel v. Cheselka	
Facts - Cheselka had a "low cost criminal trial" practice. Cheselka was not competent, diligent, did not put his client's money in an IOLTA and did not return unearned fees. He ignored the disciplinary investigation and committed one falsehood in the disciplinary process that he also submitted to a court.	
Sanction - Two year suspension with one year stayed as long as Cheselka paid restitution of $2,500 to a client, submitted to an evaluation by the Ohio Lawyers Assistance Program and paid the costs of the proceedings. To be reinstated, Cheselka must show he complied with treatment recommendations of OLAP and take six hours of CLE on law office management. Once reinstated, Cheselka must serve a one-year term of monitored probation.	
Similarities to Buzzelli	**Differences from Buzzelli**
Both had no prior discipline	15 violations in Cheselka instead of 18 in Buzzelli
Violation of Rules by Cheselka and Buzzelli 1.1 (competence - but two counts by Cheselka and only one by Buzzelli) 1.3 (diligence - three counts for Cheselka and only two for Buzzelli) 1.4(a)(3) (keep client informed - two counts for both Cheselka and Buzzelli) 1.4(a)(4) (reply to requests for information by client - two counts by Cheselka and one by Buzzelli) 3.3(a) (misrepresentation to court) 8.4(c) (dishonesty)	Three mitigation factors in Cheselka instead of one in Buzzelli Cheselka submitted good character and reputation letters the Board found compelling; Board recognized stress on Cheselka due to parents' poor health and deaths. There was also some small mitigation due to evidence of Cheselka's depression and anxiety.
	Seven aggravating factors in Cheselka versus six aggravating factors in Buzzelli. Cheselka did not cooperate in the disciplinary investigation.
	Cheselka's misconduct was due to his efforts to "do too much with too little during a discrete period of time when his personal life was unsettled".
	Violations of Rules by Cheselka 8.1 (false fact in discipline matter), 1.15(c) (failure to put money in IOLTA) 8.1(b) and Gov. Bar R. V(9)(6) (fail to cooperate in disciplinary matter)
	Violations of Rules by Buzzelli 1.4(a)(2) (not consult with client), 1.7(a)(2) (conflict of interest - 2 counts) 1.9(c)(1) (use of client's confidential information) 1.16(e) (failure to return unearned fee) 5.3(a) (responsibility to manage nonlawyer-2 counts), 8.4(b) (illegal act - unwanted touching and intimidation), 8.4(d) (prejudice to administration of justice), 8.4(h) (fitness to practice law).

In *Cheselka* the disciplined attorney committed three less violations than Buzzelli and had two more mitigating factors. The additional mitigation was evidence of Cheselka's good character and reputation and the Board's recognition of the stress on Cheselka caused by his parent's poor health and their eventual deaths. *Id. at ¶30.* There was also a partial mitigation factor; there was some evidence of Cheselka suffering from depression and anxiety. *Id.*

Cheselka's falsehood to the court and to the grievance investigator was that he lied about the first time he received an affidavit from a recanting witness. That is not as egregious as filing a pleading in another person's name and threatening to kill a client, as Buzzelli did.

Even though Cheselka has one more aggravating factor than Buzzelli (failure to cooperate during disciplinary process), the Board found that Cheselka had "tried tough cases as a low-cost criminal trial lawyer" and "much of his misconduct arose from his efforts to do too much with too little during a discrete period of time when his personal life was unsettled." *Id. at ¶ 30, 32.* The Board had empathy for Cheselka that is missing in this case.

3. *Toledo Bar Assn. v. Yoder*

Buzzelli states that Yoder engaged in more severe conduct than he did, but got a lighter sanction. Buzzelli Objection, p. 9-10. However, all of Yoder's misconduct came from a tendency to hyperbole and a tendency to voice misrepresentations about people who opposed him. *Toledo Bar Assn. v. Yoder,* 162 Ohio St. 3d 140, 2020-Ohio-4775, 164 N.E.3d 405.

Yoder behaved during the disciplinary process and this Court found that Yoder gave full and fair disclosure to the Board, unlike Buzzelli. Even though Yoder was inappropriate in his interactions with people who opposed him, he did not threaten to kill a client, submit false evidence or have a dishonest or selfish motive. Below is a chart to compare *Yoder* and Buzzelli.

<table>
<tr><th colspan="2">Toledo Bar Assn. v. Yoder</th></tr>
<tr><td colspan="2">Facts - Yoder made misrepresentations to the court, opposing counsel and about opposing parties. Yoder sent threatening letters to potential witnesses against him.</td></tr>
<tr><td colspan="2">Sanction - Two year suspension with one year stayed as long as Yoder refrained from misconduct. Yoder's reinstatement was conditioned on an OLAP evaluation and compliance with all OLAP recommendations.</td></tr>
<tr><th>Similarities to Buzzelli</th><th>Differences from Buzzelli</th></tr>
<tr><td>Both had no prior discipline</td><td>13 violations in Yoder instead of 18 violations in Buzzelli</td></tr>
<tr><td>Violation of Rules by Yoder and Buzzelli
3.3(a) (1) (misrepresentation of facts to court)
8.4(c) (prejudice to administration of justice - Yoder two counts and Buzzelli only one).</td><td>Additional mitigating factor for Yoder - full and free disclosure to Board and cooperation in disciplinary investigation</td></tr>
<tr><td></td><td>Five aggravating factors instead of Buzzelli's six. Yoder made inappropriate statements about opposing counsel, but did not make false statements in the disciplinary process or have a dishonest or selfish motive.</td></tr>
<tr><td></td><td>Violations of Rules by Yoder
1.2(e) (alleging misconduct for advantage in civil case)
3.1 (asserting frivolous claim - two counts)
3.5(a)(6) (undignified conduct)
4.1(a) (false statement to non-client - two counts)
4.4(a) (harassing third party - two counts)</td></tr>
<tr><td></td><td>Violations of Rules by Buzzelli
1.1 (competence)
1.3 (diligence - two counts)
1.4(a)(2) (not consult client)
1.4(a)(3) (keep client informed - 2 counts)
1.4(a)(4) (request for information - 2 counts)
1.7(a)(2) (conflict of interest - 2 counts)
1.9(c)(1) (use of client's confidential information)
1.16(e) (failure to return unearned fee)
5.3(a) (responsibility to manage nonlawyer - two counts)
8.4(b) (illegal act)
8.4(h) (fitness to practice law)</td></tr>
</table>

The cases cited by Buzzelli do not prove that Buzzelli should get a lighter sanction. In each case there is a reason for a lighter sanction than is proposed for Buzzelli.

E. Hardship Brought on by Misconduct

Buzzelli should be aware of the consequences of his actions. Instead, he is again using his wife for his own purposes. This time it is to lessen his sanction. Throughout the time period of Buzzelli's misconduct Buzzelli mistreated his wife and used her health as an excuse.

Around the time that Buzzelli's wife needed support, as she was being treated for a drug addiction in a residential rehabilitation facility, Buzzelli continued his sexual relationship with Foster and moved out of the marital home and into Foster's apartment. Board, ¶ 113, 118, 132. Further, Buzzelli brought Foster into his law firm to do the duties that Mrs. Buzzelli had performed. Board, ¶ 28.

Buzzelli filed for divorce and asked the Medina County Domestic Relations Court for a protective order from the abuse of his wife. Board, ¶ 8. Interestingly, on the same day Mrs. Buzzelli filed for divorce and asked for a protective order from the abuse of Buzzelli. Board, ¶ 8.

After Buzzelli reconciled with his wife, Buzzelli took his wife, who was recovering from brain surgery, to the Medina County Common Pleas Court to request a civil protection order against Foster. Board, ¶ 37. The Board found that Buzzelli "used his wife to file a petition for a civil stalking protection order to get back at Foster". Board, ¶ 117, 119.

Now Buzzelli is trying to use his wife as a reason to lessen his sanction. He cites *Cuyahoga County Bar Assn. v. Poole* for the proposition that the loss of his livelihood, that supports his wife, is a factor that this Court should consider in order to decease the sanction. 120 Ohio St.3d 361, 2008-Ohio-6023, 899 N.E.2d 950, ¶ 17. In that case the mention of a loss of livelihood is *dicta*. *Id.*

In *Poole* this Court emphasized that Poole did not engage in dishonesty, ignore the disciplinary process or have a history of discipline. *Id.* at ¶ 18. This Court did not want to

jeopardize Poole's livelihood. Here Buzzelli has threatened to kill a client, made misrepresentations to a Court and presented false evidence and testimony to the Panel, among other misconduct that changes the appropriate sanction.

Further, Buzzelli contends that this Court should not take away his law practice because his wife cannot work. However, the Board found that Mrs. Buzzelli was working. Board, ¶ 8. Also, in this economy there are jobs available, including work-from-home jobs. Buzzelli is continuing to use his wife for his own purposes.

IV. Conclusion

Buzzelli has not learned that his actions undermined his clients and the public. Buzzelli continues to espouse positions that are not supported by credible evidence.

The extreme nature of Buzzelli's conduct warrants a full two year suspension of his privilege to practice law. It is important that Buzzelli be required to petition for reinstatement pursuant to Gov.Bar R.V, Section 25. Further, it is appropriate for Buzzelli to be ordered to make restitution to Tramonte in the amount of $7,869 within 60 days of the final disciplinary order and to pay the costs of this proceeding. As a condition of reinstatement, it is appropriate that Buzzelli maintain the continuing legal education requirements in Gov.Bar R. X. as well as complete six hours of continuing legal education about sexual harassment and employee management.

The Medina Bar requests that the Board decision be affirmed.

Respectfully submitted,

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APPENDIX

Board of Professional Conduct of the Supreme Court of Ohio Decision, Case No. 2021-001.

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

In re:

Complaint against

Russell Anthony Buzzelli
Attorney Reg. No. 0038165

Respondent

Medina County Bar Association

Relator

Case No. 2021-001

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

OVERVIEW

{¶1} This matter was heard via video teleconference on June 8 and June 15, 2021 before a panel consisting of George Brinkman, Danielle M. Parker, and Hon. Rocky A. Coss, 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 was present at the hearing and represented by Larry H. James and Natalie P. Bryans. Patricia A. Walker and Patricia F. Lowery appeared on behalf of Relator.

{¶3} This case involves alleged misconduct by Respondent with regard to his representation of one client with whom he was involved in an intimate romantic relationship, his representation of his wife against that person after he had terminated the attorney-client relationship and his romantic relationship with her, and his representation of two other clients.

{¶4} Based upon the parties' stipulations and 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 a period of two years with six months stayed on conditions set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in Ohio on May 11, 1987 and is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio. Respondent has not been disciplined previously.

Background

{¶6} Respondent married Gail Buzzelli approximately 20 years ago. Both had been married previously. Respondent has four children from his prior marriage, and Mrs. Buzzelli has three children from hers.

{¶7} Mrs. Buzzelli has had significant health problems for a number of years including physical and mental health and addiction to pain medication issues during the period involving the allegations of professional misconduct by Respondent. She had worked as an office assistant for Respondent for some time but was unable to do so from the fall of 2017 until the spring of 2019 due to her health issues.

{¶8} Respondent's wife was hospitalized for 31 days for treatment in October 2017 and Respondent moved out of the marital home in November 2017. Thereafter, both Respondent and his wife filed separate actions for divorce and petitions for civil protection orders against each other. The civil protection order petitions were dismissed by agreement. They reconciled in the late summer or early fall of 2018 and Respondent moved back to the marital home. Mrs. Buzzelli continued to have health issues that resulted in her undergoing brain surgery in November 2018. Sometime in the spring or early summer of 2019 she was able to return and has continued to work for Respondent at his law office since then.

Count I—First Foster Matter

{¶9} According to the testimony of the Respondent, in July and August 2017, Mary Beth Foster approached Respondent about representing her in a divorce case against her then-husband, David Foster. In August 2017, Ms. Foster was charged with a misdemeanor charge of domestic violence against Mr. Foster in the Barberton Municipal Court. Respondent testified that he initially declined to represent her but ultimately agreed to do so after meeting with Ms. Foster and her parents. She paid Respondent a retainer fee of $6,500 by check dated October 14, 2017. He deposited that check in his IOLTA on October 30, 2017.

{¶10} Respondent entered his appearance as counsel for Foster in both the divorce case in the Summit County Domestic Relations Court and the criminal case in Barberton Municipal Court. Respondent represented Foster through the termination of her divorce case by a final decree filed October 12, 2018. Her misdemeanor domestic violence charge in the Barberton Municipal Court was also concluded through a plea to a disorderly conduct charge. Foster decided that she wanted to withdraw her guilty plea and on June 19, 2018, and Respondent filed that motion as well as other post-conviction pleadings in the case. During the pendency of the divorce proceedings, he also filed a federal civil rights lawsuit in the U.S. District Court against David Foster.

{¶11} Relator alleged that Respondent and Foster became involved in an intimate romantic relationship after she had retained him in October 2017. Although Respondent acknowledged that he and Ms. Foster did engage in sexual conduct while he was her attorney in those two cases and two additional cases that arose later, he testified that the sexual relationship started at his office shortly after he first met Foster in July and August 2017. Foster did not testify in the case and there were no stipulations or written statements from her that stated when the sexual relationship with Respondent began.

{¶12} The only evidence offered by Relator to support the contention that the sexual relationship began prior to the establishment of the attorney-client relationship with Foster were statements by Richard Alkire that were made in a letter and in a meeting with the Relator's investigator. Alkire was the attorney who represented Respondent during the investigation of the Foster grievance.

{¶13} Relator's Ex. 10 was a letter from Alkire dated January 25, 2019 to attorney Robert Molnar who was investigating a grievance filed by Magistrate Brown with regard to Foster. In that letter, Alkire stated that Foster first approached Respondent in the parking lot of his office the week of August 14, 2017 and that their consensual sexual relationship started on September 18, 2017.

{¶14} Respondent also testified that during a meeting with the Relator's investigator prior to the filing of the complaint in this case, his prior counsel made a statement that Respondent and Foster had an all-but-sexual-intercourse relationship prior to the attorney-client relationship but did not have sexual intercourse until October 30, 2017, a date that was after the attorney-client relationship had been established. However, Respondent testified that both of these statements were mistakes by his former counsel, and he denied that they were his admissions.

{¶15} After the presentation of evidence, the panel unanimously concluded that although much of Respondent's testimony during the hearing was not credible, there was no direct or circumstantial evidence, other than the repudiated statements of his prior counsel, to establish by clear and convincing evidence that the sexual relationship began after Respondent was retained in October 2017. Therefore, the alleged violation of Prof. Cond. R. 1.8(j) in Count I was dismissed by order dated June 15, 2021.

{¶16} Sometime in the fall of 2017, Foster became involved in the Respondent's law office. Her exact status was unclear since she was never a paid employee. Respondent testified that she wanted to help in his office and possibly learn the skills to work in a law office. He agreed to teach her those skills and described her status as being like an internship and his as being her mentor.

{¶17} Respondent testified that Foster was not reliable in showing up for work and really had no specific duties to perform. However, a number of texts between Foster and Respondent were admitted into evidence and suggest that Foster was involved in the operation of the office including banking and the calendar.

{¶18} Foster did have a key to the office and used the same office computer that Mrs. Buzzelli had used. She had access to the business accounts and client files. Marlene Tramonte (see Count III, *infra*) testified that she spoke with her at some point while Respondent was representing her and eventually received a copy of her file from Foster outside of the office, after she had terminated Respondent as her attorney. Mrs. Buzzelli also testified that Foster was at the office, used the same computer that she did, and had access to bank accounts.

{¶19} After Respondent moved out of Foster's residence and decided to reconcile with his wife, their relationship worsened and eventually became extremely contentious. Respondent testified that his office computers, email accounts, and telephones were "hacked." However, the only evidence of this were hearsay statements allegedly made to him by a police officer and computer technicians. His testimony suggested that Foster had done this. He also testified that his office was broken into several times and that files, bank records, and other items were stolen. He advised the police that he suspected Foster and another individual as being responsible.

{¶20} Respondent also stated that Foster had taken a computer from the office that he was able to retrieve with the help of her father along with other items.

{¶21} Respondent testified that in September and December 2018, checks from clients and other checks related to clients' cases payable to him were stolen. He did not report this to the police or to the clients. He testified that he discovered the checks were deposited in December to his account and then transferred to Foster's although the amounts were eventually returned to his account. The means by which this was accomplished were unclear.

{¶22} On September 23, 2018, Respondent had a conversation with Foster at his office, part of which she recorded. A transcript of the recording was admitted into evidence and the actual recording was played during the hearing. During that conversation Respondent was shouting at Foster and said:

> I will tell the two million. Is that door closed? Is that window closed? OK, good. Now, if you would please. I am going to me make this real clear. So, you can look at me and you can smell me when I say this. I don't give a shit whether you like it or not, but, I am going to touch your -inaudible- right now. Listen to me. I have fucking killed a human being. And you know what, I am not fucking proud of that. But the one thing that I have a capacity to do and to be, all right, is a killer. One thing you don't have and you talk big and bad, is you don't have that capacity. And it is a horrible capacity to have. Right? You want to rat me out and tell people about it, you go right ahead. But at the end of the day, the reason I don't go to the levels that you go to is because - inaudible - when I am fucking talking to you.
>
> Relator's Ex. 16, p. 0349.

{¶23} During this confrontation, Respondent also touched Foster against her will as he stated on the tape. During his testimony, Respondent described his intent at that time as "Scared straight, I guess you'd call it, yes." Hearing Tr. 516. Clearly, it was meant to intimidate her. In fact, the panel finds that his comments were an implied threat to kill Foster. Respondent's justification for his statement was that Foster had threatened to kill his wife. However, as was the case with much of Respondent's testimony, there was no corroboration of this in any texts,

recordings, emails, or other evidence admitted at the hearing. The panel finds that this conduct was clearly intended to frighten Foster and constitutes a violation of R.C. 2903.22, Menacing, which is a misdemeanor, and an illegal act in violation of Prof. Cond. R 8.4(b). This incident occurred while he was representing Foster in the Barberton Municipal Court criminal case on post-conviction motions and the federal §1983 action in the U.S. District Court.

{¶24} Respondent informed Foster in October that he was going to withdraw from representing her in the federal case and the Barberton Municipal Court criminal case. He filed his motion to withdraw from the Barberton Municipal Court Case on December 3, 2018.

{¶25} There was a counterclaim pending against Foster in the federal civil rights case to which a reply was due. Respondent informed Foster that he would file a notice of voluntary dismissal without prejudice, but she advised him that he was not to take any further action in the case. Nonetheless, on January 2, 2019, using his e-filing account, Respondent filed a "Reply Instanter" in the case representing it to be a *pro se* filing by Foster and stating in the document that she had signed it. He also filed a motion for leave to withdraw as counsel. At no time did Respondent obtain Foster's permission to do this, and he did not inform her that he had done it.

{¶26} The "Reply Instanter" filed with the U.S. District Court clearly represented to the tribunal that it was filed by and signed by Foster, which it was not. Respondent admitted during his testimony that any reasonable person that looked at this document would reach that conclusion. Hearing Tr. 520. This was a misrepresentation to the court by Respondent as to both matters.

{¶27} Respondent was also charged with violations of Prof. Cond. R. 1.15(a) and 1.16(e) regarding Respondent's handling of Foster's retainer. Respondent testified that he deposited the retainer into his IOLTA. Relator presented no evidence of these allegations during the hearing

and therefore, the panel unanimously dismissed both allegations in Count I in its post-hearing order.

{¶28} Relator charged Respondent with violations of Prof. Cond. R. 5.3(a) and (c)(2). The panel finds that Foster, although not a paid employee of Respondent, was in fact "associated with" Respondent in the operation of his law practice as contemplated by Prof. Cond. R. 5.3. The rule applies to anyone who is associated with a lawyer whether or a paid employee. Foster had access to Respondent's computer, client files, and business and personal bank accounts, except for his IOLTA, and had either debit or credit cards of Respondent. She had a key to the office. She was in the office when clients were there. She answered the telephone. The text messages from Respondent to her certainly indicated that he was relying on her to be at the office.

{¶29} The evidence is clear that Respondent failed to make reasonable efforts to ensure that his office had in effect measures giving reasonable assurance that Foster's conduct would be compatible with the professional obligations of the lawyer. Respondent testified that she wanted to learn skills to work in a law office and that he intended to teach her those skills.

{¶30} He described her role to be similar to that of an intern, but the evidence shows that she was essentially acting as a receptionist/secretary/assistant from the winter of 2017 until their final breakup in the late summer of 2018. There is no evidence that Respondent provided any training, instruction, supervision, or guidance to her regarding client relations, client files, office bank accounts, the IOLTA, or other ethical responsibilities of a lawyer and any nonlawyer staff.

{¶31} With regard to the allegation of violation of Prof. Cond. R. 5.3(c)(2), the panel finds that there was no clear and convincing evidence that Foster committed violations of any specific rule for which Respondent could be held responsible. The panel unanimously dismisses this alleged violation.

{¶32} Respondent stipulated that he violated Prof. Cond. R. 1.7(a)(2) in the supplemental stipulations filed June 7, 2021. The panel finds that the stipulation is supported by clear and convincing evidence presented during the hearing. Respondent continued to deny all other allegations in the complaint prior to the hearing. In his post-hearing brief, Respondent admitted that he had also violated Prof. Cond. R. 3.3(a)(1), 8.4(c) and 8.4(d) that the panel finds have been proven by clear and convincing evidence.

{¶33} The panel finds that Respondent's conduct also violated Prof. Cond. R. 8.4(h) in that his interaction with and his threat against Foster adversely reflects on his fitness to practice law. The panel further finds that Respondent's conduct in Count I is so egregious as to warrant an additional finding that it adversely reflects on Respondent's fitness to practice law. *Disciplinary Counsel v. Bricker*, 137 Ohio St.3d 35, 2013-Ohio-3998, ¶21, and *Columbus Bar Assn. v. Okuley*, 2021-Ohio-3225, ¶¶31.

Rule Violations

{¶34} Therefore, the panel finds by clear and convincing evidence that Respondent's conduct violated the following Rules of Professional Conduct as alleged in Count I:

- *Prof. Cond. R. 1.4(a)(2)*—a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- *Prof. Cond. R. 1.7(a)(2)*—material limitation conflict;
- *Prof. Cond. R. 3.3(a)(1)*—knowingly make a false statement of fact to a tribunal;
- *Prof. Cond. R. 5.3(a)*—a lawyer who possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- *Prof. Cond. R. 8.4(b)*—an illegal act that reflects adversely on the lawyer's honesty or trustworthiness;

- *Prof. Cond. R. 8.4(c)*—conduct involving dishonesty, fraud, deceit, or misrepresentation;
- *Prof. Cond. R. 8.4(d)*—conduct prejudicial to the administration of justice; and
- *Prof. Cond. R. 8.4(h)*—other conduct that adversely reflects on the lawyer's fitness to practice law.

Count II—Second Foster Matter

{¶35} Respondent testified that as his relationship with Foster deteriorated in the fall of 2018 and as he had decided to reconcile and to move back in with his wife, a series of break-ins and thefts occurred at his office with numerous items stolen including some of his IOLTA records, office equipment, checks payable to him, a computer, and other items. He testified that Foster also vandalized his office including spreading cat feces and cat litter through the office. He testified that he was able to get some of his property from her home with the assistance of her father and that criminal charges were pending against her in Medina County Common Pleas Court.

{¶36} Respondent's wife had brain surgery in October 2018. Due to the possibility of seizures or other complications, it was necessary for her to have someone with her at all times. Respondent spent a great deal of time staying with her at home and taking her to her medical appointments. At times, one of her adult children would stay with her. In order for him to continue working, Respondent fixed a space in his office for Mrs. Buzzelli to rest in while he was working at the office. On occasion, she would answer the telephone or do other light work for Respondent as he had no office employees at that time.

{¶37} On March 8, 2019, Respondent took his wife to the Medina County Common Pleas Court to petition for a civil stalking protection order against Foster. Respondent was listed as counsel for Gail Buzzelli in the petition. Respondent's Ex. I-1, p. 0213. He was present with her

during the hearing which resulted in issuance of an *ex parte* civil stalking protection order against Foster.

{¶38} On April 2, 2019, Foster was observed to be in the Walmart parking lot located across the street from Respondent's law office. Mrs. Buzzelli called the Wadsworth Police Department and Foster was arrested for violating the *ex parte* order and incarcerated that same day.

{¶39} The final hearing on the civil stalking protection order was scheduled for April 3, 2019 but was continued until May 1 2019 due to Foster's arrest and incarceration the day before. Two days prior to the May 1, 2019 hearing, Respondent filed a motion as counsel for his wife to continue the hearing due to a medical appointment that Mrs. Buzzelli had. The hearing was continued to July 1 2019. On June 19, 2019, Respondent filed another motion to continue the July 1 hearing to October due to more medical appointments, but that motion was denied.

{¶40} The full hearing was held on July 1, 2019 before Magistrate Razavi of the Medina Common Pleas Court. At the hearing, Respondent represented his wife as counsel in the proceeding. Foster appeared without counsel. During the proceeding, Respondent repeatedly asked leading questions of his wife regarding several allegations about Foster's actions or past. Many of those questions pertained to actions that Foster allegedly committed involving Respondent or his law office.

{¶41} During the final hearing, Respondent cross-examined Foster and asked about her hacking her ex-husband's email during her divorce. At that point in the proceedings, Magistrate Razavi asked Respondent the following questions to which he responded as follows:

Razavi: Mr. Buzzelli, honestly, do you know this because you represented her in the divorce?

Respondent: Yes, sir. It's already been waived.

Razavi: It's been waived in what manner?

Respondent: She's filed—what happened is she filed a complaint with the Medina County Bar Association and with the filing of that, that waives the privilege because in order to respond to those allegations in which this is included, that, indeed, is the case.

Razavi: I'm not going to let you ask the question.

Relator's Ex. 25, pp. 553-554.

{¶42} During his testimony before the panel, Respondent testified that he had a "common law privilege" to use such information. When asked what that privilege was, he replied: "Self-defense and defense of others would be the common law privilege." Hearing Tr. 104. That response is clearly not a correct statement of law. Self-defense is a defense to a criminal charge or a civil tort action involving alleged unlawful use of force. It can also be a defense asserted by a respondent in a civil protection proceeding under R.C. 3113.31(E)(4)(d) as to whether either party acted in self-defense.

{¶43} However, the proceeding was a petition for a civil stalking protection order under R.C. 2903.214 that does not involve the actual or imminent use of force to cause serious physical harm or death that would trigger the right of self-defense, but rather proof of a violation of R.C. 2903.11. Further, the claim that he was exercising self-defense by using the information that he gained as Foster's attorney on behalf of his wife is disingenuous. Respondent was not a party to the action but counsel for the petitioner. Self-defense justifies the use of force to protect against actual or imminent attack involving physical harm, not the use of information by an attorney obtained during representation of a client.

{¶44} During his testimony, the Respondent admitted that he had used the information obtained from his representation of Foster in the civil stalking protection order proceeding to the

disadvantage of Ms. Foster. Hearing Tr. 523. This is a violation of Prof. Cond. R. 1.9(c)(1). The panel finds, as did Magistrate Ravazi, that Respondent had no right or privilege to use information that he had obtained during his representation of Foster to ask questions during the hearing on the civil stalking protection order that were designed to obtain an outcome to her disadvantage or detriment.

{¶45} On August 1, 2019, Razavi filed a magistrate's decision dismissing the petition finding on page one: Ms. Buzzelli's involvement in the events complained of is tangential." Relator's Ex. 27, p. 0581. At page three of the decision, Razavi stated: "Petitioner's counsel, Mr. Buzzelli, has personal knowledge and involvement in many of the incidents about which he questioned the witnesses." He also stated: "The Court finds that there are relatively few incidents that have occurred between Ms. Buzzelli and Ms. Foster themselves." *Id.* at p. 0583.

{¶46} As counsel for his wife in the civil stalking protection order proceeding, Respondent had a duty to her as his client to recommend an appropriate course of action in the proceeding. The panel finds that this ability was clearly limited by his responsibilities to his former client, Foster, and by his own personal interests. The panel finds that a significant amount of evidence presented through Respondent's questioning of his wife and Foster in the hearing pertained to Respondent's own alleged victimization by Foster, not his wife's. Further, he admitted that he could have been a witness in the case as is clear from the testimony. His own knowledge of alleged facts in the case clearly posed a significant risk to his ability to represent his wife in the proceeding.

Rule Violations

{¶47} The panel finds by clear and convincing evidence that Respondent's conduct violated the following Rules of Professional Conduct alleged in Count II:

- *Prof. Cond. R. 1.7(a)(2)*—material limitation conflict; and
- *Prof. Cond. R. 1.9(c)(1)*—a lawyer who has formerly represented a client in a matter shall not thereafter use information relating to the representation to the disadvantage of the former client.

Count III—Tramonte Matter

{¶48} On or about January 3, 2018, Marlene Tramonte retained Respondent to represent with regard to the termination of her marriage to Jack Tramonte. The Tramontes had been married for more than 40 years and had three adult children. Both parties were employed and had inherited significant assets including investment accounts and ownership shares in family businesses during the marriage. Some of those assets were held in trusts. They had also acquired significant marital assets including real estate during the marriage.

{¶49} Ms. Tramonte was fully aware of her husband's assets and had no concern that he was concealing anything from her. Mr. Tramonte was represented by Robert Roe Fox who has extensive experience representing clients in domestic relations cases. Fox sent Respondent a letter dated January 31 2018 requesting five items of information from Tramonte as he was in the process of drafting a proposed separation agreement and he needed those items to finish the draft agreement.

{¶50} On March 23 2018, Fox sent another letter to Respondent informing him that he still needed the information requested in the January 31 letter. The information was finally provided to Fox around May 15, 2018. Fox prepared a draft separation agreement and emailed it to Respondent on June 1. He mailed Respondent copies of various documents referenced in the proposed agreement.

{¶51} Respondent did not reply to that proposal. Fox contacted Respondent several times regarding the status of the proposal but did not receive any written reply or counterproposal.

Respondent had requested information about Mr. Tramonte's bonuses and income as a director and shareholder of a corporation. Fox provided Respondent with the name of the accountant, David Tissot, who handled the company accounting and tax preparation and indicated that Respondent had permission to talk to him regarding those matters.

{¶52} During the time that Respondent represented Ms. Tramonte the parties agreed on a division of certain personal property. In July of 2018, Mr. Tramonte was permitted to remove his personal property from the marital residence while she was gone.

{¶53} Respondent claimed in his testimony that he felt that there was a need to have forensic financial examinations of the corporations and other assets that were separate property inherited by Mr. Tramonte for the purpose of determining whether any possible appreciation in those assets might be determined to be marital assets subject to division in the case. Respondent testified that he had no evidence of that but that examinations were necessary to determine that as part of his representation of Ms. Tramonte. Hearing Tr. 418-419.

{¶54} Respondent testified that he discussed hiring experts in three different areas for the purpose of conducting financial reviews with Ms. Tramonte. He testified that he spent a great deal of time reviewing experts in those fields and had a list of three in each area from which he was going to have Ms. Tramonte chose which three to retain. *Id.* Ms. Tramonte testified that the only expert that Respondent discussed with her was the "tax guy" (Mr. Tissot) who was the person that Mr. Fox had identified to Respondent as the person who could answer questions about Mr. Tramonte's corporation compensation. Hearing Tr. 190-191. Fox testified that in his opinion, it was clear that there was no need for evaluations of the parties' separate marital assets including their ownership interest in family companies and that Respondent never brought that up with him at any time during the period that he represented Ms. Tramonte. Hearing Tr. 148.

{¶55} Respondent testified that Ms. Tramonte immediately retained the services of a tax attorney, Stuart Horwitz. Hearing Tr. 421. However, she denied this, and there was no other evidence presented by Respondent that Horwitz or any of these experts were actually employed or performed any examinations or evaluations of the businesses for Respondent or Ms. Tramonte. There were no contracts, invoices, reports, letters, or other documentation from any expert presented as evidence. The panel finds that Respondent's testimony on this claim was not credible.

{¶56} The only testimony offered about Respondent's actual discussions with any expert was regarding contacts with Tissot, the accountant for the Tramonte family businesses and Mr. Tramonte. Respondent prepared two billings for Ms. Tramonte—Respondent's Ex. O dated in June of 2018, and Respondent's. Ex. Q that he testified he prepared in March of 2021 but did not submit to Ms. Tramonte. There are no entries in either of those bills that show that any experts were paid by Respondent for any examinations or evaluations of Mr. Tramonte's assets. There was no evidence presented that any of the three experts had ever billed Ms. Tramonte. If he had done all of this work, he should have had some evidence of that to produce at the hearing. Therefore, the panel finds Respondent's testimony regarding this issue is not credible

{¶57} Ms. Tramonte became frustrated with the lack of progress in her case. She notified the Respondent by email on October 17, 2018 that she was in the process of obtaining another attorney. From January 18, 2018 through October 17, 2018, Respondent had not presented Mrs. Tramonte or Fox with a proposed separation agreement in response to that proposed by Fox in May 2018. After Mrs. Tramonte obtained new counsel, the parties negotiated a separation agreement that is part of Respondent's Ex. N and was signed by Mrs. Tramonte on July 19, 2019. Mr. Tramonte signed it on July 23, 2019.

{¶58} During his testimony, Respondent was presented with Respondent's Ex. M , the dissolution decree and separation agreement, and asked who had drafted it. He responded: "I'm virtually certain that I did." Hearing Tr. 159. The panel finds that testimony is not credible for several reasons.

{¶59} First, the caption in the exhibit states that is for filing in Ottawa County, rather than in Summit County, the county in which a dissolution was actually filed by the parties after Mrs. Tramonte obtained new counsel.

{¶60} Second, the first page of the exhibit states that the date of the agreement was December 1, 2018. Respondent had been terminated by Mrs. Tramonte in October 2018. There were no court proceedings pending at that time and clearly no court date was scheduled.

{¶61} Third, Respondent testified that he believed that he needed evaluations and forensic examinations of the businesses and other assets to determine what if any values might be considered marital property before he could draft a settlement agreement, yet he offered no testimony that he had received any expert reports prior to his termination on October 17, 2018. During his testimony, Respondent emphasized the need for those reports as a reason for supposedly preparing a list of three experts in three different fields for selection by Ms. Tramonte, yet he claims that he prepared Respondent's Ex. M without having those reports. Respondent offered no explanation for that.

{¶62} Fourth, Fox testified that he never received any proposed separation agreement from Respondent. Ms. Tramonte testified that Respondent had never provided her with a draft. If, as Respondent testified, he had taken the case to near final agreement, it seems likely that he would have provided it to both his client and opposing counsel yet, clearly he did not.

{¶63} Finally, the hearing was held on September 5, 2019 nearly a year after Mrs. Tramonte had terminated Respondent as her counsel. If Respondent's work was the basis for the dissolution at the time his representation was terminated by Ms. Tramonte in October 2018, it would not have taken until July 2019 for the parties and their attorneys to execute it. The panel finds that Respondent's testimony on this matter lacks credibility. While there is no doubt that he prepared Respondent's Ex. M at some point, there is no credible evidence that it was done prior to his termination on October 17, 2018.

{¶64} The panel also finds that Respondent was not diligent during the nine months that he represented Ms. Tramonte. After Mrs. Tramonte retained another attorney to represent her, it took approximately eight months to reach an agreement and to have the Tramontes sign the dissolution petition and separation agreement. If Respondent had done as much work as he claimed and turned it over to her new attorneys, it would not have taken that long to conclude the case.

{¶65} Ms. Tramonte testified that she had asked Respondent for an accounting of her $15,000 retainer on several occasions some of which are confirmed in emails that she sent to him on April 16, April 30 and May 15, 2018. Respondent's Ex. Q5, Q8, and Q10. Respondent testified that he did not provide monthly accountings as it was to be provided at the end of the case. However, there is no such provision in the fee agreement. Relator's Ex. 7. It does contain a provision that interest will be charged at ten percent per month for outstanding balances which would suggest that monthly billings would be made.

{¶66} Ms. Tramonte requested interim billings from Respondent several times. He did not provide her a bill until June 2018. Relator's Ex. 8, Respondent's Ex. O. Ms. Tramonte testified that when she talked with Respondent on the telephone and informed him that she was

terminating him as her attorney, he advised her that she would be entitled to a refund of approximately $1,200 to $2,000 of her retainer. Respondent testified that he told her that she would owe him at least another $2,500 if he prepared a final bill and she told him to forget it. Only after Ms. Tramonte filed her grievance did Respondent decide to prepare a final billing. According to his testimony, Respondent was not able to finish the final accounting of the $15,000 retainer until March 2021. Respondent's Ex. Q. He provided the accounting to his counsel and Relator but has not presented it to Mrs. Tramonte.

{¶67} During his testimony, Respondent testified that he had to reconstruct both of his billings to Mrs. Tramonte because his computer had been hacked and he was unable to access his email account until he obtained the services of an expert to help him access his email accounts and computer.

{¶68} When he was presented with Relator's Ex. 8/Respondent's. Ex. O, Respondent answered questions regarding it as follows:

> Q. All right. Let's take a look at Exhibit 8. Could you explain to the Board what Exhibit 8 is, please.
>
> A. This is a part of the Excel spreadsheet, that I mentioned earlier, I did my level best to reconstruct after the computer was hacked.
>
> Hearing Tr. 68.

{¶70} Based upon this testimony, Respondent was able to access his computer and his email account no later than of June 2018 to prepare the interim billing for Ms. Tramonte.

{¶71} With regard to the "final billing" that was admitted as Respondent's Ex. Q, Respondent testified that he began working on it in 2019 and did not finish it until March 2021. Hearing Tr. 70-72. He again blamed this on his computer and email account being hacked and inaccessible. Again, the panel finds this testimony to lack credibility. There is no evidence in the

record to corroborate Respondent's claims about his computer being hacked other than his references to hearsay statements from other persons who did not testify. He had been able to reconstruct the interim billing in June 2018 after the alleged hack, but yet claimed he could not complete the final billing for over two years. If he had the ability in June 2018 to extract information from his computer and his email account, he should have had that ability in October 2018. The panel finds that this exhibit lacks any credibility and was created solely for the purpose of attempting to justify his not refunding any of the retainer to Mrs. Tramonte.

{¶72} Count III of the complaint included an alleged violation of Prof. Cond. R. 1.15(a) that requires a lawyer to keep a record of all client funds. Respondent alleged that his IOLTA records for the period during which he was representing Ms. Tramonte were stolen. He testified that he deposited Ms. Tramonte's retainer of $15,000 into his IOLTA. Relator offered no evidence that he did not have a record of Ms. Tramonte's funds. He testified that he did obtain copies of his bank statements and cancelled checks on the account that were provided to the Relator during the investigation of the grievance. However, those records were not presented as evidence.

{¶73} In its post-hearing brief, Relator stated: "Respondent was unable to produce a fee bill, because, his computers had been stolen and billing and other files corrupted and paper files removed from his office." Based upon the evidence and this acknowledgment, the panel finds that the Relator did not prove a violation of Prof. Cond. R. 1.15(a) by clear and convincing evidence and unanimously dismisses that alleged violation.

{¶74} Relator alleged that Respondent had overbilled Ms. Tramonte for time spent on experts and other work that he did not do. Although the panel does not believe the testimony of Respondent regarding the number of hours billed in Respondnet's Ex. O and Q, Relator did not charge him with charging an excessive fee under Prof. Cond. R. 1.5(a). Therefore, the issue is

whether Respondent actually failed to refund fees that he did not earn in violation of Prof. Cond. R. 1.16(e).

{¶75} In its post-hearing brief, Relator made a very limited statement about the violation of Prof. Cond. R. 1.16(e). The entire argument appears to be that since Respondent informed Ms. Tramonte that she would be entitled to a refund of $1,200 to $2,000 and did not receive one along with a final accounting, the violation has been proven. Relator does not discuss the interim billing, or the final billing in its post-hearing brief as they relate to the rule violation, but only under the aggravating circumstances portion of its brief regarding restitution, and then only as it relates to Relator's Ex. 8/Respondent's Ex. O.

{¶76} In his June 1, 2018 interim billing, Respondent billed Ms. Tramonte for 66.15 hours at $150 per hour for a total of $9,925. As Relator noted in its brief, the total amount is a mathematical error as 66.15 multiplied by $150 is actually $9,922.50. Relator argues at pages 23-24 of its post-hearing brief that 13.75 hours should be deducted from the 66.15 hours billed as the evidence shows that work was not actually done and was therefore, not earned. Relator has argued in its post-hearing brief and reply that Respondent's Ex. Q was created solely to present a defense and to allow him to retain the full retainer and is false evidence.

{¶77} The panel has examined both billings and notes that there are a number of inconsistencies between them. Relator's Ex. 8/Respondent's Ex. O contains the following entries: "Dvelop(sic) and prepare all pleadings as directed 5.75", "Create 4 Fin Plan Spousal Support Scenarios 4" and "Locate case experts x 3 5." These are the amounts that Relator urges be deducted from the interim billing as unearned. The panel agrees that the billing for the pleadings/separation agreement and experts are not supported by the evidence and should be deducted as fees not earned.

{¶78} With regard to the 5.75 hours for pleadings and the five hours for experts, there are no other entries in the billing showing dates the work was done or what pleadings were prepared. Fox testified that one hour should have been sufficient to do four spousal support calculations.

{¶79} In his final billing, Respondent listed 1.8 hours on June 2, 2018 for creating a separation agreement in Buzzelli format which contradicts the five hours listed in the June 2 billing. He also included five hours for finalizing the separation agreement, but the dates listed are August 15-21, 2018 not prior to June 2018 as claimed in the June 2, 2018 billing.

{¶80} With regard to the expert witnesses, Respondent listed five hours for experts in the June 2 billing. In the final billing, he listed "Expert witness sourcing" during the period of "04/11/18 thru 04/18/18" in the amount of 30 hours. There is no explanation as to what "sourcing" meant. However, there is a billing for a phone call on May 15, 2018 which reads as follows: "Phone call with client re: objection to 40-50 hours for expert witness search; agree on 30 hours." This matches the number described as "Expert witness sourcing" and implies that he and Ms. Tramonte agreed to limit the charge for the search to 30 hours.

{¶81} However, there is a billing in Respondent's Ex. Q for April 12, 2018 which states: "Office meeting with client; present 9 expert witnesses for consideration." It would appear from this entry that Respondent had not expended 30 hours in his search prior to that meeting. If he had already selected nine names of experts and had discussed it with her, then why would he bill 30 hours from April 11-18 for that work?

{¶82} Respondent's Ex. Q includes dates of various meetings, phone calls, and emails with Mrs. Tramonte. He included dates and times for correspondence, phone calls and emails with Fox, Mr. Tramonte's attorney. He included emails and meetings with David Tissot, the accountant for Mr. Tramonte and his companies. However, there are no dates, emails, or correspondence with

any of the nine experts that Respondent allegedly researched and presented to Mrs. Tramonte on April 12, 2018. As previously noted, Ms. Tramonte testified that Respondent had discussed hiring experts but never was she presented with any names and did not employ any. Therefore, the panel finds that Respondent did not do the work that he billed for experts and therefore did not earn that fee.

{¶83} If as he claims, Respondent had done 30 hours of research on the issue of experts, there should have been some documentation of that in Ms. Tramonte's file such as email or written correspondence, copies of curriculum vitae, an analysis of the experts' expertise, fee rates, etc. None of this documentation was presented to the panel

{¶84} With regard to the four hours charged for preparing various spousal support scenarios, Relator argues that three hours should be deducted as Fox said it would only have taken him one hour to do this. He explained that once the information was put into the "FIN" program that calculates spousal support, in order to change the scenario, it is easy to change the amount in various fields in the program to make those calculation. Again, the panel finds that Respondent's testimony was not credible regarding this billing and that Respondent did not earn four hours but only one hour for that work.

{¶85} Based upon the testimony and the overall evidence regarding the Tramonte billing, the panel finds that Respondent's testimony on the billings—Relator's Ex. 8/Respondent's Ex. O and Respondent's. Ex. Q—is not credible and both contain billing for fees that he did not earn, namely 30 hours for searching for experts, 6.8 hours for preparing pleadings including a separation agreement that neither his client or opposing counsel ever received, and three hours for the spousal support calculations. This total of 39.8 hours was not earned and must be deducted from any bill to Mrs. Tramonte.

{¶86} A comparison of the two bills shows further inconsistencies that lead to the conclusion that Respondent's billings are not credible. In the interim billing through June 2, 2018, Respondent listed 15 telephone conferences with the client at 15 minutes each for a total of three hours. The notation on the billing states "No Chrg." However, the "final billing" contains charges for telephone conferences totaling 6.5 hours with Mrs. Tramonte as follows:

1/31/18	0.35
3/23/18	0.2
3/24-4/17/18	3.2
4/25/18	0.5
4/25/18	0.35
4/27/18	0.45
5/4/18	0.6
5/25/18	0.65

{¶87} Therefore, Respondent charged Ms. Tramonte for 6.5 hours of telephone conferences that he said were free in his earlier billing and totaled only three hours. These hours should be deducted from any fees claimed to be due.

{¶88} In his final bill, Respondent charged Mrs. Tramonte 2.75 hours for Lexis Asset Tracker research, but in the interim bill through June 2, 2018, he charged her 3.5 hours.

{¶89} In the interim bill, Respondent listed a charge of 0.65 hours for a telephone call with a Stu Horwitz, who is a tax attorney that Respondent claimed that Ms. Tramonte hired. However, in the final bill, there was no charge listed.

{¶90} Respondent listed numerous email in both billings. However, a comparison of the two shows that some listed in the interim bill are not listed in the final bill and similarly, emails billed through June 2, 2018 in the final bill are not listed in the earlier billing.

{¶91} Finally, the final billing also contains a mathematical error. The bill totaled 165.95 hours, but the correct total is 166.30.

{¶92} These inconsistencies, along with the testimony from both Mr. Tramonte and Fox that they never received any of these documents from Respondent, support Relator's contention that Respondent's Ex. Q was created in an attempt to justify Respondent retaining the entire $15,000 retainer paid by Ms. Tramonte.

{¶93} Respondent testified that Foster removed Mrs. Tramonte's file from his office. Ms. Tramonte testified that she received this file from Foster at a meeting outside of the office sometime after she terminated Respondent which occurred on October 17, 2018. In any event, Respondent had the actual paper documents in his possession on October 17 before it was removed and for a time after that to prepare a final billing at for Ms. Tramonte. Further, he had been able to reconstruct the June 2, 2018 interim billing after the alleged hack of his computer and email account so he should have been able to do that in October 2018.

{¶94} Respondent's testimony throughout the hearing as to when his computer and email account were hacked and when his IOLTA records and office files were allegedly stolen was vague as he claimed there were several break-ins at his office. Respondent presented as exhibits Wadsworth Police Department Incident Reports dated December 9, 2018 regarding a suspicious vehicle (Respondent's Ex. E), December 27, 2018 regarding a criminal trespass (Respondent's Ex. F1), January 5, 2019 regarding theft of funds (Respondent's Ex. G), and January 12, 2019 regarding a possible break-in (Respondent's Ex. H). All of these complaints were filed by Respondent. He admitted that he did not file any reports regarding the theft of his IOLTA records, client files, or other items. However, all of these occurred after October 2018 and did not involve his computer or email account.

{¶95} Respondent testified that he had the file in October 2018 and copied the entire file, except for his notes and sent them to Mr. Quillen, the attorney that Ms. Tramonte retained.

Therefore, he retained the original file and his notes at that time from which he could have prepared a final billing prior to the alleged thefts.

{¶96} The December 27, 2018 incident resulted in Ms. Foster being charged with criminal trespass, a fourth-degree misdemeanor in the Wadsworth Municipal Court to which she eventually entered a plea of guilty on June 6, 2019 and was placed on probation. Respondent's Ex. F2. Foster was indicted by the Medina County grand jury on five counts: (a) criminal trespass, a fourth-degree misdemeanor alleged to have occurred on December 8, 2018; (b) theft of funds exceeding $7,500, a fourth-degree felony that allegedly occurred on November 15, 2018 and continued thereafter; (c) receiving stolen property, including checks, a fifth-degree felony alleged to have occurred on April 5, 2019; (d) identity fraud, a fifth degree felony alleged to have occurred on November 15, 2018 and continuing; and (e) a violation of the *ex parte* civil stalking protection order issued in favor of Gail Buzzelli alleged to have occurred on April 2, 2019. Respondent's Ex. K1.

{¶97} Again, the panel finds that Respondent's testimony as to the alleged theft of his IOLTA records, client files, and other items preventing him from preparing a final bill is not credible. Further, Respondent sought no advice from the Office of Disciplinary Counsel as to what he should do with regard to the alleged theft of his IOLTA records. Ms. Tramonte received her file from Foster in November 2018. Respondent had ample time to prepare a final account before the file was taken but failed to do so until well after a grievance was filed. He completed the final account in March 2021 and presented to his counsel, not Ms. Tramonte.

{¶98} In his post-hearing brief, Respondent argues that he cannot be found to have violated Prof. Cond. R. 5.3(a) under Count III because Relator did not present evidence or testimony that he failed to exercise managerial authority over an employee in his law office or to

make a reasonable effort to ensure that measures were in place to give reasonable assurance that Ms. Foster's conduct was compatible with the professional obligations of the lawyer

{¶99} Prof. Cond. R. 5.3 states in the first paragraph: "With respect to a nonlawyer employed by, retained by, or associated with a lawyer, all of the following apply:" Under this definition, it is not necessary that the nonlawyer be a paid employee. Ms. Foster was clearly associated with Respondent's law office by his own admission although his description of that association was vague and somewhat evasive at times. Clearly, she had access to client files and an office computer. She had a key to the office. She was in the office when Ms. Tramonte was there for some meetings. This qualifies her as a nonlawyer under the rule.

{¶100} Respondent took no action to prevent Ms. Foster from having access to his office for an extended period of time after he had decided to reconcile with his wife. To the extent that Respondent claims that Mrs. Foster's actions prevented him from compiling billings, it was due to his own failure to make reasonable efforts to ensure Ms. Foster's actions would comply with his professional obligations.

{¶101} Therefore, the panel finds by clear and convincing evidence that Respondent's conduct violated the following Rules of Professional Conduct alleged in Count III:

- *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 the 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. 1.16(e)*—a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned; and
- *Prof. Cond. R. 5.3(a)*—a lawyer who individually possesses managerial authority in a law firm shall make reasonable efforts to ensure that the firm has

in effect measures giving reasonable assurance that the nonlawyer's conduct is compatible with the professional obligation of the lawyer.

Count IV—Chirdon Matter

{¶102} On February 12, 2019, Respondent was appointed by the Wadsworth Municipal Court to represent Ramona J. Chirdon in the appeal of her conviction in that court for OVI. Respondent was contacted by telephone by the court and conducted two telephone conferences with Chirdon immediately as the deadline for filing the appeal was only a two days away. He also met with her in person. He filed the notice of appeal with the Ninth District Court of Appeals on February 13, 2019 along with a docketing statement, praecipe to the court reporter and notice of appearance. Respondent's Ex. R1-4.

{¶103} On March 4, 2019, Magistrate C. Michael Walsh issued a magistrate's order stating that the appellate court required additional information to determine whether it had jurisdiction to consider the appeal. Relator's Ex. 2/Respondent's Ex. R5. The order stated: "Within 20 days of journalization of this order, appellant is ordered to file a response demonstrating how all counts and specifications have been resolved by the trial court. Appellant shall attach a copy of the indictment or complaint and any additional orders he relies upon."

{¶104} Respondent did not inform Chirdon of this order. The deadline to comply with the order was March 24, 2019. Respondent failed to file a response to the order.

{¶105} On April 25, 2019, the appeal was dismissed by the three-judge panel assigned to the case for failure to comply with the March 4, 2019 order. Realtor's Ex. 4/Respondent's. Ex. R6. Respondent did not notify Chirdon of this order and took no immediate action on the case. After Chirdon filed a grievance against Respondent and he had consulted with his prior counsel, he filed a motion on July 18, 2019 for a two-week extension to file a transcript and for a briefing

schedule. Relator's Ex. 5/Respondent's. Ex. 9-10. He did not offer any explanation as to why he did not file a motion to reopen the case.

{¶106} Respondent was not aware that, on June 7, 2019, Joseph Medici, chief counsel for the Ohio Public Defender had filed a motion in the case to reopen the appeal on the basis that it had been dismissed due to the ineffectiveness of the Respondent. Respondent's Ex. R7. On July 15, 2019, the Ninth District Court of Appeals granted the motion to reopen the appeal and appointed Wesley Johnson to represent Chirdon on appeal.

{¶107} On July 25, 2019, Walsh issued a magistrate's order dismissing the motions filed by Respondent as he was not counsel of record. Relator's Ex. 6/Respondent's Ex. R11.

{¶108} Respondent claimed in his testimony that he had several telephone conversations with Walsh about his wife's health. Respondent testified about this as follows:

> Q. What was your understanding with the chief magistrate?
>
> A. My understanding was that he was aware of the total situation involving my wife; that he had spoken to the court or to a judge, a justice, concerning this matter. I wasn't there. I can only tell you what was told to me and that I was not to be concerned about these entries.
>
> Hearing Tr. 423.

{¶109} However, Respondent did not call the magistrate to testify to any of these alleged conversations at the hearing nor did he offer any documentation as to correspondence such as emails or other evidence of communications with the magistrate. The panel finds Respondent's testimony as to this claim not to be credible. The fact that the court granted the motion to reopen the case because Chirdon had been the victim of ineffective assistance of counsel from Respondent directly contradicts this claim.

{¶110} Respondent denied committing any violations regarding this count until his testimony during the second day of the hearing. During that testimony, Respondent finally

admitted that his conduct violated Prof. Cond. R. 1.1, 1.3 and 1.4(a)(3). In his post-hearing brief, Respondent's counsel admitted that the Respondent's conduct violated those rules.

{¶111} Therefore, the panel finds by clear and convincing evidence that Respondent's conduct violated the following Rules of Professional Conduct alleged in Count IV:

- *Prof. Cond. R. 1.1*--competence;
- *Prof. Cond. R. 1.3*—diligence; and
- *Prof. Cond. R. 1.4(a)(3)*—a lawyer shall keep the client reasonably informed about the status of the matter.

AGGRAVATION, MITIGATION, AND SANCTION

{¶112} 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). The panel finds by clear and convincing evidence the following aggravating and mitigating factors are present in this case.

Aggravating Factors

Dishonest or selfish motive

{¶113} Respondent's misconduct in Counts I-III demonstrated that he had a dishonest and/or selfish motive with respect to Foster and Tramonte. Respondent benefitted from his relationship with Foster including engaging in a sexual relationship and living with her for a period of time in her residence while estranged from his wife, having her work in his office without being paid, and using information that he obtained from their attorney-client relationship in the civil stalking protection order case while he represented his wife against Foster.

{¶114} With regard to Tramonte, he clearly did not want to refund any of the $15,000 retainer fee and in order to do so, billed her for work which he did not perform in the interim billing

in June 2018, and did not finish the final billing until March of 2021 after the filing of the complaint. The panel finds that exhibit to have been created not as a legitimate billing document but as an attempt to justify his failure to refund any of the retainer to Tramonte.

Pattern of misconduct and multiple offenses

{¶115} Respondent's violations occurred over a period of over a year and involved three clients. Respondent committed a total of 18 violations regarding three separate clients.

Submission of false evidence, false statements, or other deceptive practices during the disciplinary process

{¶116} During the panel hearing, Respondent submitted evidence that was false, specifically the separation agreement and pleadings that he claimed he had drafted for Tramonte and the billings that he prepared and presented for her. The panel has also found that much of Respondent's testimony was not credible. His testimony was often vague, accusatory, and unsupported by any credible evidence.

Refusal to acknowledge wrongful conduct

{¶117} Respondent denied all allegations in his answer to the complaint and did not acknowledge that he had committed any violations until June 7, 2021, the day before the first day of the hearing when he admitted to a violation of Prof. Cond. Rule 1.7(a)(2) as set forth in paragraphs two through fifteen of the complaint. During his testimony on the second day of the hearing, he admitted that he had violated Prof. Cond. R. 1.9(c)(1), 3.3(a)(1), 8.4(c),(d) and (h) as alleged in Counts I and II regarding Foster, and Prof. Cond. R. 1.1, 1.3 and 1.4(a)(3), as alleged in Count IV regarding Chirdon, that his counsel acknowledged in Respondent's post-hearing brief. During his testimony, Respondent attempted to blame Foster's actions or those of others. He used his wife to file a petition for a civil stalking protection order to get back at Foster. He demonstrated no remorse regarding his misconduct other than regretting that he had agreed to represent Foster.

Vulnerability of and resulting harm to victims of misconduct

{¶118} There can be little doubt that Foster was a particularly vulnerable victim. She was in a contentious divorce proceeding and had a criminal charge filed against her by her then estranged husband. According to Respondent, he first began a sexual relationship with Foster in July 2017 and eventually agreed to represent her in October. He exploited that relationship by having her work without pay in his office, living with her while he was estranged from his wife, and trying to intimidate her by telling her he had killed a man during the time that their relationship was deteriorating.

{¶119} After he broke off the relationship, Respondent used information obtained during his representation of Foster against her in the civil stalking protection order hearing although it was eventually dismissed. Nonetheless, he obtained an *ex parte* order against her that resulted in her arrest for violating that order on what appears to be nothing more than being in the Wal Mart parking lot that is across the street from Respondent's office. It is clear from the evidence that he used his wife to attack Foster by filing the *ex parte* proceeding when, in reality, the claims were based on incidents between him and Foster.

{¶120} With regard to Tramonte, she was seeking to terminate a 40-plus-year marriage in an amicable manner. Respondent took advantage of her lack of experience regarding domestic relations cases and over a period of nine months, accomplished very little other than the division of personal property for a claimed fee in excess of $15,000.

{¶121} Chirdon's appeal of her conviction was dismissed due to Respondent's ineffective assistance of counsel. However, she was able to get her appeal reopened thanks to the efforts of the Ohio Public Defender which was still pending at the time of the panel hearing.

Failure to make restitution

{¶122} The only issue of restitution pertains to the Tramonte matter. In its post-hearing brief, Relator seeks to have the panel consider Relator's Ex. 8/Respondent's Ex. O for purposes of determining restitution in this case. That billing was through June 2, 2018 in the amount of $9,925.00. Relator argues that 13.75 hours should be deducted from that for the time charged of locating experts (five hours), preparing pleadings that were never filed or presented to Mrs. Tramonte or opposing counsel (5.75 hours) and billing for preparing various spousal support calculations (three hours). This amounts to $2,062.50 which leaves a balance earned of $7,860.

{¶123} The panel agrees that these hours were not earned and should be deducted. Since Respondent continued to represent Tramonte through October 17, 2018; it is likely that he would have had some additional hours to bill for his services. However, since Respondent did not promptly prepare a bill in October 2018 when he had the file, and had access to his computer and email accounts, the panel finds that there is no documentation that Respondent in fact earned any fees after the June billing and that he should not benefit from his failure to do what he was required to do, account for the retainer to his client. Therefore, the panel finds that Respondent owes Tramonte $7,860 in restitution and that he has failed to pay her that balance.

Mitigating Factors

{¶124} Respondent has no prior disciplinary record and presented some evidence of good character (Respondent's Ex. U1-6), although it was not compelling to the panel.

Sanction

{¶125} The primary purpose of disciplinary sanctions is not punishment, but protection of the public, *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, at ¶53. Relator urges the panel to recommend imposition of an indefinite suspension while Respondent asks for a

one-year suspension with all or at least six months stayed. Each party submitted several citations in support of their respective positions, but it appears that there have not been any prior cases that has the same combination of violations, aggravating and mitigating circumstances that are present in this case.

{¶126} Two of the cases cited by Relator are *Disciplinary Counsel v. Delay*, 157 Ohio St.3d 680, 2019-Ohio-2955 and *Toledo Bar Assn. v. Berling*, 160 Ohio St.3d 90 2020-Ohio-2838. Delay was indefinitely suspended after a finding of numerous violations involving four separate clients. These included multiple violations of Prof. Cond. R. 1.1, 1.3, 1.4(a)(3), 1.4(a)(4) and one each of 8.4(c) and 8.4(d) which the panel has found were committed by Respondent herein. However, it also included multiple violations of Prof. Cond. R. 8.1(b) and Gov. Bar R. V(9)(g) and others which were not present in this case. The Court found that eight of nine of the aggravating factors in Gov. Bar. R. V(13) were present with mitigating factor, absence of a prior disciplinary record.

{¶127} Berling received a two-year suspension. His misconduct involved eight clients and included violations of Prof. Cond. R. 1.3, 1.4(a)(3), 5.3(b), 8.4(c), 8.4(d) along with others including Prof. Cond. R. 1.8(j). There were six aggravating factors present including the refusal to acknowledge the wrongful nature of his conduct. Much of Berling's misconduct involved his handling of retainers and failure to make restitution. He also solicited one client for sexual activity.

{¶128} Respondent cited several cases in his post-hearing brief including *Disciplinary Counsel v. Leon*, 155 Ohio St.3d 582, 2018-Ohio-5090, and *Akron Bar Assn. v. Williams*, 104 Ohio St.3d 317, 2004-Ohio-6588. However, both of those cases included violations of Prof. Cond. R. 1.8(j) which is not proven in this case.

{¶129} Respondent also cited the case of *Disciplinary Counsel v. Brueggeman*, 128 Ohio St.3d 206, 2010-Ohio-6149. Bruggeman violated Prof. Cond. R. 8.1(b) and 8.4(h) with regard to

five clients, Prof. Cond. R. 1.3 with regard to four clients, Prof. Cond. R. 1.4(a)(3) and (4) with regard to three clients, and 1.4(a)(2) and 1.15(d) with regard to one client. He received a fully stayed suspension. However, there were only two aggravating factors—a pattern of misconduct and refusal to cooperate during the investigation prior to the filing of the complaint. There were several mitigating factors that are not present in this case including absence of a selfish or dishonest motive, full and free disclosure during the proceedings, and treatment for depression.

{¶130} Also cited in Respondent's post-hearing brief was *Akron Bar Assn. v. Bednarski*, 148 Ohio St.3d 615, 2017-Ohio-522 that involved an attorney who neglected her client's criminal appeal which resulted in its dismissal and the client serving a sentence. She also failed to maintain a trust account or notify her clients of her lack of professional liability insurance. The aggravating factors included failure to cooperate, vulnerability and harm to her victims, and failure to pay restitution. Mitigating factors in that case but not present in this case included absence of a dishonest or selfish motive. She also had an untreated alcohol problem and financial management problems. She received a two-year suspension with six months stayed.

{¶131} There appears to be no case precedent for the combination of the various violations that are present in this case. Therefore, the panel has also reviewed case law involving attorneys whose misconduct involved those rules violated by Respondent.

{¶132} Cases involving violations of Prof. Cond. R. 1.7(a)(2) are not common. In *Disciplinary Counsel v. Detweiler*, 135 Ohio St.3d 447, 2013-Ohio-1747, Detweiler committed violated that rule as well as Prof. Cond. R. 1.8(j). He received a one-year suspension. While there is not a finding of a violation of Prof. Cond. R. 1.8(j) in this case, there are two findings of Prof. Cond. R. 1.7(a)(2), one involving Foster and one involving Respondent's wife's civil stalking order case. Further, there is no doubt that there was a sexual relationship between Respondent and

Foster for an extended period of time. He lived with Foster for several months and was involved in a divorce case with his wife during that period. He allowed her complete access to his computer, email, and office files which led to other rule violations.

{¶133} Likewise, Prof. Cond. R. 5.3(a) violations are not common in the case law. Most involve attorneys whose lack of oversight resulted in their employees stealing funds from clients and/or the law practice. That did not occur here. However, Respondent clearly did not closely supervise Foster while she worked in the office. Furthermore, he delayed taking action to keep her from the office even after he moved out of her residence and the relationship was ending. If Foster was indeed responsible for hacking into Respondent's computer, email, and phone accounts, it was due to his own neglect in taking prompt action to prevent her access to those items which contained information about clients as well as his office and IOLTA accounts.

{¶134} There are several cases in which attorneys have violated Prof. Cond. R. 3.3(a)(1) and 8.4(b), (c), (d), and (h) that the panel find to be relevant to the sanction in this case. In *Disciplinary Counsel v. Phillabaum*, 144 Ohio St.3d 417, 2015-Ohio-4346, an assistant prosecuting attorney presented a case to a grand jury seeking an indictment for aggravated robbery and felonious assault. The grand jury returned an indictment on both counts. Phillabaum had not presented the issue of a gun specification to the indictment to the grand jury, and it did not vote on the specification. Nonetheless, he instructed a legal assistant to add the gun specification to the indictment which was filed with the court.

{¶135} Phillabaum pled guilty to dereliction of duty, a second-degree misdemeanor, and received 90-day jail sentence that was suspended on conditions of community control. The violations found were Prof. Cond. R. 3.3(a)(1), 8.4(c), (d) and (h). There were no aggravating

factors and mitigating factors of no prior discipline, a cooperative attitude during the proceedings, and proof of good character and reputation. He received a one-year suspension.

{¶136} In *Disciplinary Counsel v. Swift*, 142 Ohio St.3d 476, 2014-Ohio-4835, Swift violated Prof. Cond. R. 3.3(a)(1), 4.1(a), 8.4(c), (d) and (h) based on his overbilling for indigent counsel fees. He received a two-year suspension with one year stayed. There were four aggravating factors present including dishonest or selfish motive, a pattern of misconduct, multiple offenses and failure to make restitution. Mitigating factors were no prior discipline, a cooperative attitude during the proceedings and evidence of good character and reputation.

{¶137} In the case of *Disciplinary Counsel v. Bowman*, 110 Ohio St.3d 480, 2006-Ohio-4333, Bowman committed violations involving three clients of the former Disciplinary Rules equivalent to current Prof. Cond. R. 3.3(a)(1), 3.4(a), and 8.4(c), (d) and (h). He received a suspension of two years. The aggravating factors included a dishonest or selfish motive, a pattern of misconduct and multiple offenses. Mitigating factors were no prior discipline, payment of restitution, cooperation during the proceedings and an underlying disorder of depression.

{¶138} Finally, there are numerous cases involving violations of Prof. Cond. R. 8.4. In this case, Respondent violated Prof. Cond. R. 8.4(b), (c), (d) and (h) of that rule. In the case of *Medina Cty. Bar Assn. v. Lewis*, 121 Ohio St.3d 596, 2009-Ohio-1765, Lewis violated the same provisions of Prof. Cond. R. 8.4 by forging a judge's signature on a judgment entry granting his client occupational driving privileges after the judge had denied the request. A one-year suspension was imposed.

{¶139} The panel finds that the misconduct of Respondent warrants a significant suspension in order to protect the public. His misconduct was an abuse of the power that he had over a vulnerable client due to the attorney-client relationship. The panel finds that his misconduct

is more serious than those cases in which attorneys received one-year suspensions and is more similar to those cases in which the attorney received a two-year suspension.

{¶140} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for two years, with six months stayed upon the conditions that Respondent commit no further misconduct, completes at least six hours of continuing legal education on sexual harassment and employee management, pays restitution to Ms. Tramonte in the amount of $7,860, and pays the costs of these proceedings.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on October 1, 2021. The Board voted to adopt findings of fact and conclusions of law of the hearing panel. After discussion, the Board voted to amend the sanction recommended by the panel and recommends that Respondent, Russell Anthony Buzzelli, be suspended from the practice of law in Ohio for two years and ordered to (1) make restitution within 60 days of the final disciplinary order to Marlene Tramonte in the amount of $7,869 and (2) pay the costs of this proceeding. The Board further recommends that Respondent be required to petition for reinstatement pursuant to Gov. Bar R. V, Section 25 and, as part of the reinstatement proceeding, demonstrate that he has completed six hours of continuing legal education in the specific areas of sexual harassment and employee management, those hours in addition to the requirements of Gov. Bar R. X. In recommending the enhanced sanction, the Board references Respondent's threats of violence toward Foster (¶22, *supra*) and his misrepresentations relative to the federal court filing made on Foster's behalf (¶25, *supra*).

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

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Relator's Response to Respondent's Objections to Board Decision and Answer Brief was sent via email communication to the following on this 24th day of November 2021.

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