Supreme Court of Ohio Clerk of Court - Filed December 10, 2021 - Case No. 2021-1518

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

In re:

Complaint against

Hon. Pinkey Susan Carr
Attorney Reg. No. 0061377

Respondent

Disciplinary Counsel

Relator

Case No. 2020-054

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

OVERVIEW

{¶1} This matter was heard on August 30, 2021 and November 1, 2021 before a panel consisting of Dr. John R. Carle, Hon. D. Christopher Cook, and David W. Hardymon, panel chair. None of the panel members resides in the district from which the complaint arose.

{¶2} Respondent was present at the hearings and represented by Richard S. Koblentz and Nicholas E. Froning. Joseph M. Caligiuri and Michelle A. Hall appeared on behalf of Relator.

{¶3} This case involves multiple allegations of judicial misconduct by Respondent, a Cleveland Municipal Court judge, that occurred over a period of two years. In a 118-page amended complaint, Relator alleged misconduct in five separate counts, each setting forth numerous instances with common elements and broadly categorized as follows:

- **Count I**—Issuance Capiases and False Statements;
- **Count II**—*Ex Parte* Communications, Improper Plea Bargaining, Arbitrary Dispositions;
- **Count III**—Improper Use of Capiases and Bond to Compel Payment of Fines and Court Costs;
- **Count IV**—Public Confidence, Lack of Decorum and Dignity Consistent with Judicial Office; and
- **Count V**—Abuse of Contempt Power and Failure to Recuse.

{¶4} By her answer to the amended complaint, Respondent admitted virtually all of

Relator's factual allegations and subsequently joined Relator in submitting lengthy stipulations of both fact and rule violations, all of which are accepted by the panel as having been proven by clear and convincing evidence.

{¶5} This matter had been pending for eight months and set for hearing twice when Respondent retained new counsel in April 2021. Respondent then requested that the hearing be continued a third time to allow Respondent the opportunity to develop mitigation evidence. That request was granted insofar as the hearing was bifurcated between a first phase that addressed only findings of fact and conclusions of law, and a second phase dedicated to the issue of mitigation. The first phase was completed on August 30, 2021, and Respondent was granted an additional two months in which to prepare mitigation evidence. The mitigation phase of this case took place on November 1, 2021.

{¶6} The record in this case is voluminous. It includes 176 pages of pleadings, 360 joint exhibits, seven and a half hours of video recordings from Respondent's courtroom, with corresponding transcripts (marked as Joint Ex. 31-52), and 126 pages of stipulations, from which the essential facts giving rise to this matter have been established.[1] In addition, the panel took 496 pages of hearing transcript into consideration. Rather than describe each of the overwhelming number of instances where Respondent's behavior violated the Code of Judicial Conduct and the Ohio Rules of Professional Conduct, the panel incorporates herein by reference the parties' stipulations. In the paragraphs below, the panel endeavors to provide context for its recommendations by recounting mere portions of the factual record, which are organized along

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[1] The stipulations contain citations to specific exhibits, including video recordings of proceedings in Respondent's courtroom and transcripts of those recordings. Quotations contained in the stipulations and this report are taken verbatim from the videos. Joint Ex. 1 is an index that cross-references the video clips and their corresponding transcripts. The panel reviewed both. Unless otherwise indicated, citations in this panel report are to the stipulations alone without also repeating the references to videos and exhibits contained therein. Citations in this panel report to the transcript refer to the record of the hearings held on August 30 and November 1, 2021.

the lines of the five counts of the amended complaint and representative of Respondent's behavior in each category.[2]

{¶7} Based upon the parties' stipulations and the evidence adduced at the hearing, it is clear Respondent conducted business in a manner befitting a game show host rather than a judge of the Cleveland Municipal Court. She ruled her courtroom in a reckless and cavalier manner, unconstrained by the law or the court's rules, and without any measure of probity or even common courtesy. Her actions could not help but seriously compromise the integrity of the court in the eyes of the public and all who had business there.

{¶8} Accordingly, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors, and case precedents, the panel recommends that Respondent be suspended from the practice of law for two years, with no portion stayed. The panel further recommends that Respondent's reinstatement be subject to additional conditions set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶9} Respondent was admitted to the practice of law in Ohio on May 17, 1993 and is subject to the Rules of Professional Conduct, the Rules for the Government of the Bar of Ohio, the Code of Judicial Conduct and the Rules for the Government of the Judiciary of Ohio.

{¶10} Since January 2012, Respondent has served as a full-time judge of the Cleveland Municipal Court. Previously, Respondent served 13 years as an assistant prosecuting attorney for Cuyahoga County.

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[2] While the verbatim quotes included herein are compelling evidence of misconduct, they pale in comparison to the courtroom videos from which they were taken. It is also noteworthy that the specific examples of misconduct described in the stipulations are themselves merely a sampling of the kinds of things that went on in Respondent's courtroom every day.

Count I—Issuing Capiases and False Statements

{¶11} This count concerns events that took place in a five-day period in March 2020, during the early stages of the coronavirus pandemic.

{¶12} On Friday March 13, 2020, Michelle Earley, the administrative and presiding judge of the Cleveland Municipal Court, issued an administrative order essentially suspending courthouse activity intended to prevent the spread of the coronavirus and protect the public and the court's employees. Judge Earley ordered that all civil and criminal cases on the personal dockets of the court's judges and on the arraignment docket, set for hearing from Monday, March 16, 2020 to Friday, April 3, 2020, be rescheduled for a date three weeks from the originally scheduled date. The order further directed the clerk of courts to issue summons to all the affected defendants, directing them to appear on the newly scheduled date, and similarly directed that all parties to civil cases be notified of the postponement. Joint Ex. 53.

{¶13} Despite Judge Earley's order, Respondent did not reschedule her cases. On Monday, March 16, 2020, she presided over her regular docket, including eight criminal cases involving defendants who were not then held in jail ("non-jail defendants"). In each of these cases, Respondent issued capiases for the defendants who did not appear for court. Her orders are reflected both in her verbal statements on the record and in her journal entries, which noted the defendants' failure to appear, the issuance of a warrant and the setting of a bond ranging from $2,500 to $10,000. Stipulations ¶¶15-16.

{¶14} In an exchange with a police officer who appeared for a case, Respondent declared that she was "disappointed when David[3] was sending me all these memos saying "no court, no jails.' I'm like 'what? I'll be there. I did say it." At the end of Monday's court session,

[3] David Morrow was Respondent's bailiff.

Respondent advised the public defender that her office's clients should appear in court on the following two days, even though the Cleveland Municipal Court's press release about Judge Earley's administrative order advised otherwise. Stipulations ¶13.

{¶15} The following day, Respondent continued to preside over her regular docket, as though Judge Earley's order and the ensuing press release had never been issued. As before, only a handful of non-jail defendants and their counsel appeared. As before, Respondent "rewarded" one defendant by waiving all fines and costs and rescinding warrants, following her acceptance of a plea bargain because the defendant was "brave enough to come to court." As before, Respondent proceeded to issue capiases and set bonds for seven defendants who did not appear. Stipulations ¶24. As before, the public defender assigned to her courtroom, Mark Jablonski, inquired as to whether his office's clients should plan to be in court the following day and Respondent said they should. Then the following exchange occurred:

Jablonski:	Judge, can I ask this? If we are able to get ahold of any of our clients that are scheduled for tomorrow who are not in jail, can we tell them to continue the case?
Respondent:	--No, no, uh-uh.
Jablonski:	So the court's administrative order regarding continuances—
Respondent:	I'm here, I'm here. If people show up, I'm here. So no, don't call people and tell them not to show up, if they show up, I'm here. Yeah, don't do that—
Jablonski:	In light of this pandemic, there's no concern?
Respondent:	Hi. For the third time—
Jablonski:	OK. Thank you, Judge. Just clarifying—
Respondent:	I will be here if people show up. I am here.
Jablonski:	Thank you, Judge.

Respondent: OK, thank you, okay, okay, okay, okay, okay, okay, okay.

Stipulations ¶ 25.

{¶16} Shortly after Jablonski left the courtroom, Respondent turned to her staff and mocked him, saying "I'm like, 'stop it, not everybody watch the news.' I'm gonna call 'em and tell 'em don't come—I'm sure he is, little idiot." *Id.* ¶26.

{¶17} After finishing her Tuesday docket, Respondent learned that Matthew Woyma, the person responsible for scheduling the court's cases, had cancelled Respondent's civil docket for March 26, 2020 pursuant to Judge Earley's order. In open court, she instructed her bailiff to tell the case scheduler "to get his ass back on that phone and put all my civil cases back on." Inasmuch as Woyma had already sent written notice of the postponement to all parties and counsel, he was forced to send another letter to all concerned resetting the cases for March 26. Because of time constraints, he also had to telephone every party and counsel in order to tell them to disregard the first notice he had sent. Stipulations ¶¶ 27-29.

{¶18} That evening, cleveland.com, the electronic outlet of the *Cleveland Plain Dealer*, published an article captioned "Cleveland judge flouts court's postponements amid coronavirus pandemic, issues warrants for no-shows." Joint Ex. 111. The same article appeared on the front page of the *Cleveland Plain Dealer* the next morning, Wednesday, March 18, 2020. Again, Respondent conducted hearings that day in spite of Judge Earley's order.

{¶19} When no one initially responded after the first case was called that morning, Respondent commented on the cleveland.com article from the bench:

> And as I have done all week, thank you for the great article in cleveland.com who failed to mention that (a) there is a process the person is not here, (b) there is a box to check, Failed to Appear, (c) I write the time and "Corona Day Three," you must have a way to reflect why the person is not here, I guess that part wasn't relevant nor important . . . . Anyone that is not here like this person here on the journal entry it has to reflect the person is not here, I note the time and put "corona." So then

later on, I'll know exactly why that person was not here.

Stipulations ¶¶30-31.

{¶20} Respondent failed to mention that she had, in fact, issued warrants and set bonds for the non-jail defendants who did not appear on Monday and Tuesday. For the remainder of the day, Respondent again disposed of her docket as though Judge Earley's order did not exist. She dismissed cases because the arresting officer failed to appear without making any effort to determine whether his or her absence was because they, unlike her, were heeding the administrative judge's order. In 20 cases involving non-jail defendants who failed to appear, she noted "failure to appear" and "corona day 3" in her journal entries and issued warrants for their arrests. The only departure from her practice on Monday and Tuesday was that she did not set bonds for no-shows on Wednesday.

{¶21} Throughout that morning she criticized the *cleveland.com* article for "creating a mess" by reporting, accurately, that she was issuing warrants for people who did not come to court. During a recess in Wednesday's proceedings, Respondent granted an interview to a reporter from the local Fox News affiliate. She again criticized the *cleveland.com* article as "untrue" and "reckless," and falsely stated that she had not issued any arrest warrants the previous two days:

> Respondent: It's funny because, that story was absolutely, number one, untrue, and number two, it was reckless. Because you already have the mass hysteria as it relates to coronavirus, so now as a result of that story, you have people who probably would not have come to court now all of the sudden they're in a panic to come to court under the guise that a warrant would be issued for their arrest.
>
> * * *
>
> As far as issuing warrants for their arrest, absolutely untrue. I did check the box, failure to appear, because that would absolutely represent what happened. The person was not here. But I also wrote in the notes, Corona Day One and the time, so it accurately reflected exactly what occurred. So, issuing warrants for arrest, um, no, that didn't happen, but it really made me feel good because I did not get

> not one telecall—telephone call from a lawyer, a police officer, a text from anyone that knew me because they knew that number one, the story was reckless, number two, they know that I'm fair.
>
> * * *
>
> This is ridiculous, why would I issue a warrant for someone's arrest, knowing what's going on as it relates to Corona? Simply not true.

Stipulations ¶42.

{¶22} After the interview had been concluded, Respondent continued to talk with the reporter about the "mess" that the *cleveland.com* article had created, prompting the reporter to respond, "And you are not, to be clear, you are not issuing any warrants?" Respondent replied, falsely, "Absolutely not." *Id.* ¶43. This was untrue.

{¶23} Respondent's deception was carried over to an email exchange later that day with Judge Earley:

> Respondent: FYI I understand a woman from Cincinnati was turned away from C Monday. I will be there Monday-Friday if they send people in 1 at a time. Even though reported on the news no cases this week I still had defendants all 3 days. I am sure with *Cleveland.com* reckless inaccurate reporting I will have more next week since people fear i will put a warrant out for their arrest which did not happen. But I am available nonetheless ~
>
> Earley: Hello Judge, Thank you but all the cases set for 3C have been rescheduled. Access to the building as well as staff will be severely limited starting tomorrow.
>
> Also, so you didn't do arrest warrants for people who failed to appear?
>
> Respondent: Too late to ask that ridiculous question. My JE's reflect corona day 1 2 or 3. Time case was called and no defendant or FTA in which my journalizer notes NO WARRANT TO ISSUE.

Stipulations ¶46.

{¶24} This was untrue. None of Respondent's journal entries states NO WARRANT TO ISSUE.

{¶25} Respondent's failure to follow Judge Earley's order proved to be a costly burden to the administration of justice. When she learned that Respondent had, in fact, issued warrants, Judge Earley had to review all of Respondent's journal entries and then recall the warrants, set bonds, and issue summonses for the next court appearances. Judge Earley also had to arrange for the rescheduling of all of Respondent's civil cases. Stipulations ¶¶48-49.

{¶26} In addition, the Office of the Public Defender filed a complaint in the Eighth District Court of Appeals seeking a writ of mandamus and a writ of prohibition to compel Respondent's compliance with Judge Earley's order. Joint Ex. 187. The public defender also filed an affidavit of disqualification with the Chief Justice of the Supreme Court, charging that Respondent acted with a "calculated bias and disregard for the welfare of the named subjects of this Affidavit as well as for all other defendants appearing before Judge Carr." Joint Ex. 188. The Eighth District granted both writs, *sua sponte*, and Chief Justice O'Connor disqualified Respondent from presiding over criminal and traffic cases involving non-jail defendants during the pendency of Judge Earley's order. Joint Ex. 189, 191; Stipulations ¶¶50-54

{¶27} In brief, Respondent very publicly flouted her disregard of an administrative order that was designed to ensure the safety of the public and the court's personnel during the pandemic. She punished members of the public who followed that order and lied about it to the press and to the presiding and administrative judge of her court. This created the very danger that administrative order was intended to prevent—the spread of the coronavirus to the public and the court's staff by way of open court hearings.

{¶28} Based upon the parties' stipulations and the evidence adduced at the hearing the panel finds by clear and convincing evidence that as to Count I of the amended complaint, Respondent violated the following provisions of the Code of Judicial Conduct and the Rules of

Professional Conduct:

- **Jud. Cond. R. 1.2** [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety];

- **Jud. Cond. R. 2.2** [a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially];

- **Jud. Cond. R. 2.5(B)** [a judge shall cooperate with other judges and court officials in the administration of court business];

- **Jud. Cond. R. 2.8(B)** [a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity];

- **Prof. Cond. R. 8.4(c)** [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and,

- **Prof. Cond. R. 8.4(d)** [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

Count II—*Ex Parte* Communications, Improper Plea Bargaining, Arbitrary Dispositions

{¶29} R.C. 2937.02 *et seq.* sets forth mandatory procedural safeguards that a judge or magistrate must follow upon the first appearance of a person who has been arrested. These include, *inter alia*, informing the accused of the nature of the charge and the identity of the complainant, the right to have counsel and the right to a continuance to secure counsel, the effect of pleas of guilty, not guilty and no contest. Only then shall the court or magistrate require the accused to enter a plea. See R.C. 2937. 06. Crim. R. 11 and Traffic R. 10 both require that before accepting a plea of guilty or no contest, the judge or magistrate engage in a personal colloquy with the accused to ensure that the plea is being entered knowingly and voluntarily.

{¶30} Respondent routinely conducted hearings without the prosecutor being present to avoid compliance with these procedural safeguards without interference from the city's legal counsel. She was unabashed in doing so, at various times stating to her staff in open court:

- "The prosecutor's not here. Let's see how much we can get away with"

- "Oops, prosecutor is here"
- "Well the prosecutor isn't here so we need to get as many of these done before he or she gets here."

Stipulations ¶58.

{¶31} Respondent unilaterally recommended pleas to unrepresented defendants, with no prosecutor present, and accepted the pleas without explanation or discussion of the consequences, as required by Crim. R. 11 and Traf. R. 10. She routinely dismissed cases after unilaterally entering no contest pleas on behalf of defendants and then waived fines and costs without any inquiry as to the defendant's ability to pay.

{¶32} Respondent arbitrarily imposed or waived fines for ludicrous reasons and then created false journal entries to conceal her actions. Some samples of the reasons she gave in open court for waiving fines and costs follow:

- It was the defendant's birthday that month—Stipulations ¶87;
- The defendant's birthday was in September—*Id.* ¶83;
- The defendant's birthday was "one week ago, yesterday"—*Id.* ¶97;
- The defendant's birthday was six days after Respondent's brother's—*Id.* ¶101
- The defendant's birthday was five days before that of Respondent's best friend in college—*Id.* ¶107;
- The defendant's birthday was nine days before Valentine's Day—*Id.* ¶112;
- The defendant was born in the same month as the prosecutor—*Id.* ¶117;
- The defendant was born in the same month as Respondent—*Id.* ¶123.

{¶33} What follows in ¶¶34-56 below are some additional examples of *ex parte* communications, improper plea bargaining and arbitrary dispositions, taken verbatim from the video of proceedings in Respondent's courtroom and the parties' Stipulations.

Aubrey Breazeale, Case No. 2020 TRD 010599 (Stipulations ¶¶155-160)

{¶34} Aubrey Breazeale was charged with speeding and seatbelt violations. The prosecutor offered to dismiss the speeding charge in exchange for Breazeale's plea to the seatbelt

violation.

{¶35} When Respondent asked Breazeale how much he thought he should pay for not wearing his seatbelt, Breazeale stated, "I don't know, ma'am," which prompted Respondent to say, "I'm not a ma'am, little boy, I'm Judge Carr."

{¶36} Breazeale then pointed to one of the bailiffs that prompted the following exchange:

> Respondent: What you pointing to Eric[4] for?
>
> Breazeale: I know Eric.
>
> ***
>
> Respondent: Well, how do you know him? I mean, you could tell me. You know him from the bar, you know him from the strip club. You know him from AA, NA. Let me know. How do you know him?
>
> Breazeale: I see him out. We've been out.
>
> Respondent: Where y'all been? I'm just sayin'. He was out in the Lee Harvard area yesterday, was you with him?
>
> ***
>
> I'm going to suspend your fine and costs because you know Eric. And his birthday is May the 26th, the same day as my best friend's birthday. That's why I know. Okay. All right. Bye-bye. You're all set. You don't owe any money. Okay. Bye-bye. Mmm-hmmm. Why he didn't want to tell where he know Eric from?
>
> Joint Ex. 5A & 34, pp. 73-75.

{¶37} On the journal entry, Respondent wrote, "Fine & cost waived." Respondent checked the box "Ability to pay fine hearing had" and "Unable." Respondent also checked the box, "Found Indigent Costs Waived."

{¶38} In doing so, Respondent misrepresented that she conducted a hearing on Breazeale's ability to pay the fine and costs, that she found Breazeale indigent, and that she

[4] Eric Rowell, a deputy bailiff

determined that he was unable to pay the fine and costs.

{¶39} There was no hearing on Breazeale's ability to pay the fine and costs.

Jerry D. Parker, Jr., Case Nos. 2018 CRB 021706, 2019 CRB 000200, 2019 CRB 005482 (Stipulations ¶¶63-68)

{¶40} On May 21, 2019, Respondent conducted arraignments.

{¶41} Jerry Parker, Jr. appeared before Respondent on three separate cases a minor misdemeanor drug abuse charge and two open container violations, both fourth-degree misdemeanors.

{¶42} When Parker approached, Respondent began the conversation by demeaning Parker:

> Respondent: Let me see what Mr. Jerry is drinking on here. Jerry D! *** Let's see what kind of taste Mr. Jerry has. Mr. Jerry. That way I know how much I gonna need to fine him. Let's see. Milwaukee Best? I guess Mr. Jerry doesn't have too much money, then. Not gonna be able to fine him too much. 800 Malt Liquor? Tito's. Yeah, makes sense *** Well, I guess Mr. Jerry doesn't have too much money. How long it gonna take you to come up with $25, Mr. Jerry?
>
> Parker: Friday.
>
> Respondent: Friday? Really.
>
> Parker: Yes, ma'am.
>
> Respondent: Alright little boy. Don't call me ma'am. I told you I don't discriminate.
>
> Parker: I'm sorry.

Respondent: Ok, Mr. Jerry. I'm going to plead you to an Attempted Open Container, it's a minor misdemeanor. I'll get rid of that weed for you cuz I know Reddy[5] over here gave it to you at the West Side Market. You can't be taking weed from total strangers, okay? Pay the $25 by Friday. The other cases are dismissed. Court costs are waived.

Joint Ex. 26.

{¶43} Respondent unilaterally amended one open container charge to a minor misdemeanor, dismissed both the other open container case and the marijuana case. Respondent then unilaterally entered a guilty plea without input from Parker or the city. At no point did Respondent ask Parker if he wished to plead guilty.

{¶44} On the journal entry, under "Prosecutor Amends Charge," Respondent wrote, 601.08 MM, and checked the box "FG" for Found Guilty. Respondent amended the charge, not the prosecutor.

{¶45} Respondent also checked the box "Ability to pay fine hearing had" and that the defendant was "Unable" to pay the fine. Respondent also checked the box, "Found Indigent Costs Waived." However, Respondent wrote on the journal entry, "$25 fine by 5/24/19; no CWS/TTP."[6]

Matthew Thrasher, Case No. 2020 TRD 010653 Stipulations ¶¶83-88

{¶46} Matthew Thrasher was charged with speeding, a fourth-degree misdemeanor, and no seatbelt, a minor misdemeanor. He was arraigned, along with several others, on June 15, 2020. In a previous case, Respondent had waived the fine and costs simply because the defendant's birthday was in June. With no prosecutor present, Respondent stated, "I'll give you the same deal even though your birthday is in September. How would you like to proceed? Are you going to take the non-moving?" The following exchange then occurred:

---

[5] William Reddy, a deputy bailiff

[6] CWS stands for Community Work Service, while TTP stands for Time-To-Pay.

Thrasher: (Nodding).

Respondent: Yeah. Yeah. Yeah. I see your birthday is in September. We'll waive your fine and costs. Okay. Good-bye. You're free to leave.

Thrasher: Thank you.

Joint Ex. 5B & 34, p. 26.

{¶47} Thrasher never orally entered a plea, nor did Respondent advise him of the consequences of a plea. Yet, Respondent dismissed a charge, and pled Thrasher guilty to a non-moving violation.

{¶48} On the journal entry, Respondent wrote, "Fine & cost waived." Respondent checked the box "Ability to pay fine hearing had" and "Unable." Respondent also checked the box "Found Indigent Costs Waived."

{¶49} In doing so, Respondent misrepresented that she conducted a hearing on Thrasher's ability to pay the fine and costs, and that she determined that he was unable to pay the fine and costs.

{¶50} There was no hearing on the Thrasher's ability to pay the fine and costs.

{¶51} As Respondent was speaking to Thrasher, the prosecutor arrived, but did not take part in Thrasher's case. After Thrasher left, Respondent said, "Are you our prosecutor for the day?" When the prosecutor said, "I am, Your Honor," Respondent stated, "Oops, prosecutor's here." Staff laughed.

Malachi Harper, Case Nos. 2020 CRB 004589 & 2020 CRB 004753 Stipulations ¶¶*247-250*

{¶52} Malachi Harper was charged with an open container and loud noise in two separate cases. Both charges were fourth-degree misdemeanors. The prosecutor was not involved in Harper's cases.

{¶53} Respondent asked how Harper wished to proceed. When Harper informed the

judge that he wanted to plead no contest to both offenses, Respondent stated:

> Both of them? You don't have to take both of them. Why don't I amend the Loud Noise, that way you won't have an alcohol-related offense on your record. We'll get rid of that. And I'll make the Loud Noise a minor misdemeanor that way you don't have to pay that mandatory $75 fine. And it will cost you $5 plus court costs. And if you need time to pay, ask them for time to pay outside.
>
> Joint Ex. 8B and 37, p. 58.

{¶54} On the journal entry under "Prosecutor Amends Charge," Respondent wrote, "601.08."

{¶55} Respondent amended the charge, not the prosecutor.

{¶56} During arraignments on June 15, 2020, Respondent arbitrarily waived or suspended all fines and court costs for cases during the afternoon session, when the prosecutor was not present, despite the cases' similarity to those from the morning session, where she imposed fines and costs while the prosecutor was in court.

{¶57} The events described above are just four examples out of 34 incidents set forth in Count II of the amended complaint, depicted in the video record of arraignments and dispositions in Respondent's court, and recounted in the parties' stipulations. In each of these 34 incidents, she engaged in similar behavior; *i.e.,* inappropriate humor, frivolous and often demeaning dialogue with defendants, the arbitrary imposition or waiver of penalties and the creation of false journal entries.

{¶58} The panel finds the creation of false journal entries particularly troubling. Respondent not only violated multiple provisions of the Code Judicial Conduct and the Rules of Professional Conduct, she also routinely violated Ohio law. R.C. 2921.13, falsification, provides that it is a misdemeanor of the first degree to knowingly make a false statement when any of the following apply: "the statement is made in any official proceeding" or "the statement is made on a form, record, * * * or other writing that is required by law" or "the statement is made in a

document that purports to be a judgment * * * and is filed or recorded with * * * the clerk of a court of record." R.C. 2921. 13 (A)(1) and (13).

{¶59} In *State v. Jacob*, 2015-Ohio-4760, the Eighth District Court of Appeals upheld a municipal court judge's conviction on two counts of falsification where he unilaterally amended a charge from domestic violence to disorderly conduct and found the defendant guilty. All this was done without a prosecutor being present, without reading the defendant his rights, without inquiring whether the defendant had consulted an attorney, and without hearing from the victim. After entering a finding of guilty, the judge then wrote on the file "State" to give the impression that the prosecutor had amended the charge. He then signed a judgment entry that was subsequently journalized. Jacob argued on appeal that he did not knowingly make a false statement, but rather, had simply forgotten that he had changed the record when he signed the journal entry. The court "emphatically" rejected that claim and held that the evidence was "sufficient and substantial" to find him guilty of falsification pursuant to R.C. 2921.13(A)(11) and (13). *Id.* at ¶¶21-24.

{¶60} Respondent's actions were identical to those of the defendant in *Jacob*, save for the fact that she engaged in this conduct not once, but routinely over the course of nearly a year.

{¶61} Jacob resigned from judicial office after being convicted of soliciting prostitution and falsifying a court record. He was subsequently suspended for two years with one year stayed. See *Ohio State Bar Assn. v. Jacob*, 150 Ohio St.3d 162, 2017-Ohio-2733.

{¶62} Based upon the parties' stipulations and the evidence adduced at the hearing the panel finds by clear and convincing evidence that as to Count II of the amended complaint, Respondent violated the following provisions of the Code of Judicial Conduct and the Rules of Professional Conduct:

- **Jud. Cond. R. 1.2** [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety];

- **Jud .Cond. R. 2.2** [a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially];

- **Jud. Cond. R. 2.8(B)** [a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity];

- **Jud. Cond. R. 2.9(A)** [a judge shall not initiate, receive, permit, or consider ex parte communications];

- **Prof. Cond. R. 8.4(c)** [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; and

- **Prof. Cond. R. 8.4(d)** [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

Count III—Improper Use of Capiases and Bond to Compel Payment of Fines and Court Costs

{¶63} Under Cleveland Municipal Court Local Rule 4.07 [Joint. Ex. 269], at the time of sentencing, a court can grant a defendant's request for Time-to-Pay (TTP) their fines and costs. Upon request, the court sets a final payment date, and provides the defendant with a Fine and Cost Sheet. Defendants are then directed to the clerk's office to complete a TTP contract. If a defendant cannot pay the fine by the due date, the defendant can file a motion for an Ability to Pay Hearing with the clerk's office. The clerk's office then sets the matter for an Ability to Pay Hearing with the sentencing judge. Stipulations ¶273.

{¶64} Sometime in 2017, Respondent's bailiff, David Morrow, told Respondent that the clerk's office had a very low success rate when it came to actually collecting fines levied by the court. Respondent adopted his suggestion that she simply ignore Local Rule 4.07. August 30, 2021 Hearing Tr. 223-224.

{¶65} Accordingly, when a defendant was convicted of an offense, Respondent would set

a due date for the defendant to pay their fines and costs. Immediately after imposing sentence and without any motion from the defendant, she would *sua sponte* schedule the matter for her own "Ability to Pay Hearing" a few days after the due date. However, she would not notify either the defendant or the clerk's office of the hearing date. Thus, the defendant would not any receive notice of their obligation to appear for the Ability to Pay Hearing. When the defendant failed to appear for the Ability to Pay Hearing, Respondent would issue a capias and set bond at $2,500 or higher. Respondent would then write on the journal entry, "Post bond or pay fines and costs in full. No CWS/TTP." Stipulations ¶275.

{¶66} Respondent would also stamp the journal entry with "DEFENDANT DOES NOT QUALIFY FOR IN THE NEIGHBORHOOD OR OVER THE COUNTER. JUDGE PINKEY S. CARR." Stipulations ¶276.

{¶67} "In the Neighborhood" and "Over the Counter" are public service programs through the clerk's office that are designed to encourage people with outstanding warrants and tickets to obtain new court dates without being arrested. By precluding participation, Respondent ensured that the defendants would be arrested and held on the bond set in her journal entries. By tying the bond to the amount of the fine and costs, Respondent compelled their payment through incarceration, which is contrary to the law.[7] Stipulations ¶¶277-278.

{¶68} Although Respondent has stipulated to six specific instances of incarcerating defendants to compel the payment of fines and costs, one example will serve to illustrate the misconduct and its consequences.

[7] The Supreme Court of Ohio has issued a Bench Card, with extensive citation to authority, entitled, "Collection of Court Costs & Fines in Adult Trial Courts" to all trial court judges. Joint Ex. 270. Respondent simply disregarded it.

Danny Mobley, Case No. 2019 TRD 023537 Stipulations ¶¶279-289

{¶69} On July 25, 2019, Danny Mobley was cited for three minor misdemeanor traffic offenses—peel tires/exhaust noise, seatbelt, and reckless operation. Joint Ex. 271.

{¶70} On August 8, 2019, Mobley appeared for arraignment and entered a plea of not guilty. The case was assigned to Respondent's docket and scheduled for August 21, 2019, then again for October 23, 2019.

{¶71} On October 23, 2019, Mobley pled guilty to peel tires/exhaust noise, a minor misdemeanor, and the other two charges were dismissed. Joint Ex. 21.

{¶72} Respondent imposed the maximum $150 fine and court costs of $141. Respondent advised Mobley that his fines and costs were due in full by December 5, 2019.

{¶73} Respondent set the matter for an Ability to Pay Hearing on December 9, 2019; however, she never orally advised Mobley of the hearing or caused notice to issue through an entry or from the clerk's office. Joint Ex. 21, 271-272.

{¶74} On December 9, 2019, Mobley did not appear for the hearing; consequently, Respondent issued a capias for his arrest, and set bond at $25,000 for a minor misdemeanor.

{¶75} Respondent wrote on the journal entry, "Post $25,000 bond or pay fine and cost in full. No CWS/TTP." Joint Ex. 272.

{¶76} Respondent stamped on the journal entry, "DEFENDANT DOES NOT QUALIFY FOR IN THE NEIGHBORHOOD OR OVER THE COUNTER. JUDGE PINKEY S. CARR."

{¶77} On February 29, 2020, Mobley was arrested on the outstanding warrant for failing to appear at the Ability to Pay Hearing. Joint Ex. 271. Mobley served five days in jail for failing to pay the fine and costs associated with a minor misdemeanor traffic offense.

{¶78} On March 4, 2020, Mobley appeared before Respondent, who granted him credit-

for-time served in satisfaction of his fines and costs.

{¶79} Owing to Respondent's abuse of capiases, at least two other defendants spent time in jail, both for misdemeanor offenses of driving with suspended licenses. Giovanni Arroyo was incarcerated for two days on a charge of driving under an FRA suspension and Michael Bledsoe was jailed for six days on a charge of driving under suspension. Stipulations ¶¶290-306.

{¶80} In ¶274 of her answer to the amended complaint, Respondent stated that "she was unaware of the dictates of Local Rule 4.07 of the Cleveland Municipal Court." Moreover, Respondent simply disregarded blackletter law governing the collection of fines and costs. The bench card issued to her by the Supreme Court of Ohio is replete with citations to case law and statutes indicating that a person's ability to pay must be considered in assessing and collecting fines. A formal hearing "is the sole and exclusive method for imposing a jail sentence for willful refusal to pay a fine." Joint Ex. 270. See also, R.C. 2947.15.

{¶81} Respondent was aware of these requirements, but intentionally evaded them by setting up illusory hearings for which neither the defendants nor the clerk of courts was given notice. In her testimony, she admitted that she had essentially created a modern-day debtor's prison and improperly used capiases as a means to compel the payment of fines. August 30, 2021 Hearing Tr. 74-75.

{¶82} Respondent eventually discontinued her debtor's prison approach and gave a characteristically colorful explanation for doing so from the bench and directed to her staff:

> You notice I'm no longer the bill collector for the clerk's office. I'm not your B-I-T-C-H. See, you get it. Collect your own money. There you go, player. Mm-hmm. Collect your own money, player. I'm not your B-I-T-C-H. Run tell that. Mm-hmm. How you like them apples, suckas.
>
> Stipulations ¶ 459.

{¶83} Based upon the parties' stipulations and the evidence adduced at the hearing the panel finds by clear and convincing evidence that as to Count III of the amended complaint, Respondent violated the following provisions of the Code of Judicial Conduct and Rules of Professional Conduct:

- **Jud. Cond. R. 1.**2 [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety];
- **Jud. Cond. R. 2.2** [a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially];
- **Prof. Cond. R. 8.4(d)** [a lawyer shall not engage in conduct that is prejudicial to the administration of justice].

Count IV—Public Confidence, Lack of Decorum and Dignity Consistent with Judicial Office

{¶84} The Cleveland Municipal Court website addresses what is expected of the public in terms of appropriate dress and decorum. Among other things, it identifies inappropriate dress as including shorts and tank tops. It calls for courtesy, propriety and respect for the law and the persons who work and appear in the court.

{¶85} Nevertheless, Respondent referred to her bailiff in open court as "Miss Puddin." She has at various times appeared on the bench wearing workout attire consisting of a tank top and long shorts; or a T-shirt and above-the-knee spandex shorts and sneakers; and on more than one occasion, a T-shirt. Stipulations ¶¶336-345.

{¶86} She conducted court from a bench covered by an array of dolls, cups, and junk and novelty items. At the August 30, 2021 disciplinary hearing, her own counsel described her bench as resembling a flea market. Respondent responded that it had been that way since 2012, but that she had recently cleaned it up. August 30, 2021 Hearing Tr. 190.

{¶87} Respondent's appearance has not gone without notice by the public, as evidenced by Respondent's own remarks to one defendant's counsel:

> Your client was scared to come in. Your client was scared to come in. Officer Gray said he asked her, well, where is the Judge? She was like she in there, and he was like, the one in the T-shirt? He said I'm calling my lawyer. This couldn't be real.
>
> Joint Ex. 88 & 37, p. 40.

{¶88} Respondent revels in this lack of decorum, telling one defendant who apologized for his own attire, "You see how I'm dressed? I have my Cavs T-shirt on." Joint Ex. 37, p. 48. After another defendant expressed surprise at the lenient sentence he received, Respondent stated, "You can trust me. I know I'm not dressed like the judge but I am really the judge." Joint Ex. 37, p. 119.

{¶89} During a series of proceedings in open court, Respondent maintained an on-going dialogue with her staff and even defendants about "Paradise Valley," which is a Starz television series about a Mississippi strip club. August 30, 2021 Hearing Tr. 69. She asked a defendant if she knew her bailiff, "Ms. Puddin' from P-Valley"; she teased her deputy bailiff about driving to P-Valley to "find him that little girl with the curly blonde hair"; and she announced "You know what my P-Valley, my name gonna be Passion. I got to go to that class though so I can learn how to climb that pole." All this while lawyers and their clients waited to have their matters resolved and the public watched. Stipulations ¶¶433-439.

{¶90} Respondent resents being called "ma'am" and berates defendants who use that term in the mistaken belief they are being respectful. (*e.g.,* "I'm not ma'am, I'm Judge Carr, little boy. I'm not ma'am. Judge Carr and Judge Carr only.") Stipulations ¶376. Although frequently behaving as though courtroom decorum does not apply to her, Respondent subjects defendants who depart in the most trivial manner from her random notions of what is proper courtroom behavior—such as standing with hands crossed instead of at their sides or indicating they had not heard something Respondent said—to an angry rebuke delivered by Respondent screaming at

them. Stipulations ¶¶463-467.

{¶91} In her interactions with people before her, Respondent routinely speaks in an undignified manner. When questioned about this by her own counsel at the August 30, 2021 disciplinary hearing, Respondent could offer no explanation:

> Q: Judge, can you explain to the panel the behavior, including what I'm going to call the singsong tenor that we heard in some of the videos today, the loud boisterous behavior, the calling out? I'm thinking, particularly, of one clip that we saw today, where somebody told you they couldn't hear one thing that you said, and then you gave a really loud voice and meaning almost like somebody was deaf, or quite frankly, it almost sounded to me like a person who goes to Europe and tries to talk English to somebody who doesn't speak English, who thinks if they talk louder and slower they'll understand. Can you explain why it was you engaged in that behavior?
>
> A. I wish I had an explanation for you.
>
> August 30, 2021 Hearing Tr. 177-178.

{¶92} On more than one occasion, Respondent joked that she would be amenable to some form of a bribe in return for a lenient sentence. In open court, she has engaged in dialogues with defendants about accepting kick-backs on fines and arranging "hook-ups" for food and beverages, and products like carpet or storage facilities. Respondent does this in a joking manner, but it is clear from the reaction of the defendants who come before her that they, and presumably others in the courtroom, do not always perceive it as a joke. What follows is but one of seven examples, which is taken verbatim from the stipulations and the video recording from Respondent's courtroom.

Eugene Williams, Case No. 2018 TRC 026449 Stipulations ¶¶359-361

{¶93} On July 22, 2020, Eugene Williams appeared before Respondent to request driving privileges on a driving inder the influence charge from 2018. Driving privileges are subject to a $50 mandatory fee. While Williams, who worked at INA Automotive, was standing before

Respondent, she stated to her staff:

> Respondent: Ms. Puddin, Mike, I got us another hookup. We could get our cars fixed here at INA. I got us some flooring, carpet.
>
> Williams: Absolutely. You can bring 'em—
>
> Respondent: I got us the floor and carpet. I'm getting us the hookup here—
>
> Williams: --Bring 'em out. You all could bring 'em. That's all right.
>
> Respondent: No problem.
>
> Williams: Absolutely.
>
> Respondent: Mike, it's in Bedford Heights, okay. Puddin, Reddy, it's close to Puddin in Bedford Heights.
>
> Williams: We'd love to take care of you guys, absolutely.
>
> Respondent: --Always gettin us the hookups. Don't worry, we don't have to pay. It's on him.
>
> Joint Ex. 12B.

{¶94} Respondent asked Williams if he had $50. When Williams said, "no," Respondent waived the $50 fee, stating:

> Well, who's going to pay his $50. Puddin' gets paid today so does Mike. They both got $50, after all, you hooking us up. Maybe they will pay your $50. $50 fee waived. All right. You're all set.
>
> *Id.*; Joint Ex. 40, p. 46.

{¶95} On the journal entry, Respondent wrote, "No Bitching Necessary." [Sic] Respondent then passed the journal entry to a deputy and said, "Show that JE to Ms. Puddin. * * * Look at the all capital letters." As Gray (aka Ms. Puddin) read the entry, Respondent broke out laughing, while her bailiff called the next case.

{¶96} Based upon the parties' stipulations and the evidence adduced at the hearing the panel finds by clear and convincing evidence that as to count four of the amended complaint, Respondent violated the following provisions of the Code of Judicial Conduct:

- **Jud. Cond. R. 1.2** [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety];
- **Jud. Cond. R. 2.2** [a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially];
- **Jud. Cond. R. 2.8(A)** [a judge shall require order and decorum in proceedings before the court]; and
- **Jud. Cond. R. 2.8(B)** [a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity].

Count V—Abuse of Contempt Power and Failure to Recuse

{¶97} In the Cleveland Municipal Court, judges rotate handling the arraignment docket. If a case is not disposed of at arraignment, it is randomly assigned to one of the 12 judges of the court.

{¶98} A.B., age 20, and her 19-year-old sister, C.B., were charged with assault, a first-degree misdemeanor, and disorderly conduct, a fourth-degree misdemeanor, for allegedly assaulting a 16-year-old girl. On May 21, 2019, Respondent presided over A.B. and C.B.'s arraignment. Stipulations ¶¶536-538.

{¶99} Although Respondent's normal procedure is to deny a personal bond where the alleged offense involves an act of violence, Respondent initially decided to release both A.B. and C.B. on a personal bond provided they wear a GPS monitor. Stipulations ¶569, Joint Ex. 30A.

{¶100} For reasons that are not clear from the video record of the arraignment, Respondent took an immediate dislike to A.B. While both sisters were before the bench with the public defender, Maggie Walsh, A.B. apparently looked away from Respondent as she read the conditions of the "no contact" order that was a condition of their release. Again, this is not readily apparent on the video, but Respondent stated "Hi, I'm up here. Maggie, you might want to advise your client—oh, don't worry. She is going to get plenty of time with me." Joint Ex. 27A.

{¶101} Respondent then asked Walsh which client was standing closest to Walsh. When Walsh said, "A.B.," Respondent stated:

> A.B. is going to spend some time with me today. A.B. can have a seat after they install her GPS monitor, and Miss C.B. is free to leave. But A.B.—she is going to stay with me for a minute or two. (Humming) I can tell. I knew this was going to be a pleasant experience for me. I didn't even have company yesterday. I'm so glad to have company. (Humming) I'm so happy. Mm-hmm. That's okay.
>
> Stipulations ¶542, Joint Ex. 27A (video).

{¶102} Walsh then informed Respondent of a potential conflict in representing A.B. and C.B. and asked if the defendants could be assigned to the same judge. Respondent stated, "No, I'm hoping I get A.B." Respondent was referring to her wish that A.B.'s criminal case would be assigned to Respondent's docket after arraignment. Stipulations ¶543.

{¶103} For the remainder of the morning, Respondent continued to antagonize A.B. in front of a courtroom full of people, stating to the public defender

> Oh yes, I'm very hopeful. I could tell. I could tell. No, thank you, Maggie. You'll see her later, don't you worry, Maggie, aww"; and to her bailiff (David) and her case scheduler (Veronica): "I love company. David is going to be so happy. We have company, Veronica. Now, you be on your best behavior" (laughing). Unprompted, Respondent later stated, "I knew I chose wisely. I could tell, that little pleasin' personality of hers.
>
> Stipulations ¶¶544-548.

{¶104} At that point, A.B. muttered something to the deputy about the way she was being treated, to which Respondent snapped:

> Respondent: What did she say? She said this Court is fucked. What did she say? Oh, okay. Corny as fuck. Okay, corny as fuck.
>
> A.B.: I said corny the way you're treating me. Like, I didn't do—
>
> Respondent: Oh, no problem. Uh-huh. Close your mouth. Don't interrupt my courtroom. You don't want to have a problem with me. I told you that when—
>
> A.B.: Inaudible.

Respondent:	Close your mouth.
A.B.:	inaudible—like—
Respondent:	Close your mouth.
A.B.:	--treat me like this.
Respondent:	Say one more thing. Take her back in the back for me, please. Mm-hmm. Bye-bye.

Joint Ex. 27A, Joint Ex. 48A, pp. 7-8.

{¶105} A.B. left the courtroom in tears and remained in the lockup area for several hours until Respondent brought her back to the arraignment room. August 30, 2021 Tr. 148.

{¶106} Respondent was told by the court's staff that A.B. repeatedly referred to her as a "bitch" so loudly while she was in the holding cell that another judge had to close his courtroom doors. *Id.*

{¶107} When A.B. appeared back in front of Respondent around noon, Walsh advised Respondent that A.B. wanted to apologize to the court. At that point, Respondent stated, "Oh, I don't need her apology." Respondent proceeded to advise A.B. that she was being charged with two counts of contempt of court, and one count of obstruction of official Business. Stipulations ¶552.

{¶108} A.B., again in tears, was taken out of the courtroom. Respondent had her brought back to court because A.B. was upset that she never had a chance to say anything. When the public defender encouraged A.B. to speak, A.B. stated, "It doesn't matter. You don't care" and "It doesn't matter. I've been trying to say anything. I don't even know what to say. If I say anything, it's just going against me. It doesn't matter." Joint Ex. 27B, 48B, pp. 5-6.

Respondent:	You think it's ok to call me 50 bitches and say that the courtroom—this is---
A.B.:	I walked up to --
Respondent:	--some corny ass shit?

A.B.: You would be mad.

Walsh: Stop interrupting.

A.B.: No. I'm trying to explain myself. I walked up to the stand. You read the paper. You didn't even let me talk. You automatically changed your attitude from happy to just anything, like you was just basing me off of a piece of paper.

Respondent: Oh, well—

A.B.: --soon as I walked up to the stand—

Respondent: --if you'll let me answer—well, Number 1, you needed to have legal counsel. So Number 1, I wasn't going to have them equip you with a GPS. That's why I said have a seat. Have a seat, because I needed to call Attorney Margaret Walsh to make sure she explained to you why you're having a GPS installed. And, you keep rolling your eyes.

A.B: I'm not rolling my eyes. I'm about to cry. That's why—

Respondent: That's not acceptable. Well, let's see—doing like this (indicating)—maybe that's acceptable for you.

Walsh: You're not even crying. Could you stop interrupting her.

A.B.: See here is the problem.

Respondent: That's okay.

A.B.: Why can't I just talk. Why? Like, I'm—

Respondent: Yeah, go ahead. You talk.

Walsh: You don't have any tears.

Respondent: You talk. I'll listen.

A.B.: (To Walsh) I do have tears. Can you go? Get away from me.

Walsh: Yeah, I can get away from you.

A.B.: She (Walsh) is just rude, like—I don't even want to stand next to you.

Respondent: Now Maggie is rude? That's a no. No.

A.B.: She is rude. That's what I'm saying.

Walsh: That's what she said. She heard you.

A.B.: How is she going to tell me I don't have tears in my eyes.

Walsh: You don't have any tears in your eyes.

A.B.: See, now didn't I just say now Maggie is rude?

Walsh: Fine.

Respondent: Take her away. Bye-bye. 'Didn't I just say now Maggie is rude?'

* * *

Respondent: Lord have mercy. Now Maggie is rude. You don't even listen. I didn't say you. Her—oh, okay. * * * Poor little pumpkin. All I said was no Maggie is rude. Maggie was like get away from me.* * * I know. Maggie was like you don't even have any tears. Oh, I know she didn't. Look. That's—look. Bye, Maggie, I'm sorry.

* * *

Walsh: She is a grown woman.

Respondent: Tell me about it. Well, look. You know she has to have a screw loose if she got—assault a 16-year-old girl with her 19-year-old sister. Now that's a darn shame.

Bailiff: Right.

Respondent: It take two of them to beat up a 16-year-old girl. Yeah. I could tell she got a screw loose.

Joint Ex. 27B, Joint Ex. 48B, pp. 6-11.

{¶109} Respondent charged A.B. with three counts of contempt of court in violation of R.C. 2705.02. In an affidavit to support the charges, Respondent stated that A.B. "while in a courtroom, *** did repeatedly refer to the court as a bitch, and called the courtroom 'shit.'" Stipulations ¶557; Joint Ex. 351.

{¶110} In fact, Respondent did not personally hear A.B. say anything disrespectful. She was told by her deputy that A.B. mumbled a disparaging remark about the way she had been treated in court and heard second-hand that A.B. subsequently called Respondent a "bitch" several times

while A.B. was in the holding cell, not the courtroom, outside of Respondent's presence. Stipulations ¶¶549-551.

{¶111} Despite Respondent's involvement in the matter, she failed to recuse herself from A.B.'s contempt case.

{¶112} On June 4, 2019, A.B.'s court-appointed counsel appeared on A.B.'s behalf. Respondent called the case shortly before 9:00 a.m.; however, A.B. was not present because she had an appearance before Judge Sweeney on the assault charge. Respondent asked her lawyer if he wanted to ask for a continuance to get in touch with A.B., "because I'd love to issue a capias, no bond." Stipulations ¶559.

{¶113} When A.B. arrived from Judge Sweeney's courtroom, she entered a not guilty plea to all three charges of contempt and Respondent released her on a personal bond and set a hearing date.

{¶114} On August 13, 2019, A.B. appeared with counsel for a hearing on the contempt charges. A.B. withdrew her not guilty plea and entered a plea of guilty to the first charge of contempt, a fourth-degree misdemeanor. The prosecutor nollied the other two contempt charges.

{¶115} Before imposing sentence, Respondent inaccurately summarized what had happened at the arraignment, stating that A.B. had said "I don't have to talk to you," when, in fact, A.B. never said any such thing. Stipulations ¶¶563-565.

{¶116} On the single charge of contempt, a fourth-degree misdemeanor, Respondent sentenced A.B. to 30 days in jail, followed by five years of active probation, and imposed a $250 fine. Respondent suspended the fine and 15 days of the jail time. Respondent also ordered A.B. to complete anger management classes and read an apology letter aloud in open court on September 4, 2019.

{¶117} On September 4, 2019, A.B. appeared in court with her apology letter; however, her attorney was late. Rather than wait for A.B.'s attorney, Respondent proceeded with the hearing. Despite the fact that A.B. had already completed the sentence imposed by Respondent on August 13th, Respondent ordered A.B. to write another letter titled, "How would you feel if I called your mother a bitch," and imposed a further sentence of random substance abuse testing.

{¶118} Respondent continued to torment A.B., who was still without counsel, by telling the courtroom audience her version of A.B.'s behavior, which was not entirely accurate:

Respondent: *(To A.B.)* Random substance abuse testing today, September 4, 2019 as well as October 4, 2019, mandatory. Need test results by October the 18th 2019 as well as another letter, quote, "How Would You Feel If I Called Your Mother a Bitch?" end of quote. Also report to today, September 3, *(sic)* 2019.

(*To the courtroom audience*) And ladies and gentlemen, if you are wondering why I said that she needed to write a letter as to quote "How Would You Feel If I Called Your Mother a Bitch," end of quote on August – no – on May 21, 2019, she was in the arraignment room because she and her sister, who's 17 or 18, probably 18 or 19, and she's 21?

A.B.: 20

Respondent: 20. Decided to go up to a high school.

A.B.: I did not go to a school.

Respondent (*To the Courtroom Audience*): Ahh...ight. [sic] Well it doesn't matter. Wherever the two of them went, they decided to jump on, beat up, attack, a 16-year-old girl. So that's what brought her to the arraignment room on May 21, 2019 . . . Oh, this one right here, rolling her eyes, and I'm like lookin' at the public defender who's been my friend 26 years and so, you know, I'm tellin' her, courtroom full of people in the arraignment room, "Hello, I'm up here," "I don't have to look at you," I'm like, ooooooh, ooooooh, I could tell we gon have a problem because see you're not gon talk to me like that. I don't have any children, and even if I did, you're not gonna talk to me like that because I didn't talk to my mother like that. We was cool. She was my girl.

(Respondent now shouting at A.B.) The thought of me talking to her like that, I would not be here today because she didn't play dat.

(To the courtroom audience) I had more respect for her and adults, people of authority, it just didn't work that way in my world. Notwithstanding I told her she had to sit in time out over on the side since obviously she was behaving like a disrespectful child, what did she do, oh she thought it would be a good idea to act up in the arraignment room, "This corny ass court," Ooooh, this is what you think of court? It's corny ass? Oh. Okay. They take her in the back. Uh. She must have called me bitch 50 times. Oh. Now I'm a bitch? She was screaming bitch so loud that my colleague, Judge Patton, who was in the felony arraignment room, he had to have them close the door. So I'm a bitch. Oh. I'm 53-years-old. I don't even play the bitch stuff playfully with my girls. We have more respect for one another. Oh it gets better. While she's callin' me all kind a bitches, they bring her up to my courtroom. You would think, uh, maybe at some point, she thought about this thing. Oh no, got her on videotape, actin' up up here. That same public defender, who tried to help her, I even told her, you would think maybe, hmmmm, after being here for about 6 hours in the holding cell – maybe it was 4 not 6 – that, hi, and even the public defender told her, "You might want to apologize to Judge Carr. She'll probably let you go." And which, I would have, even though you have disrespected me to the utmost. See I don't get paid to be called bitches.

A.B.: And I apologized to you twice –

Respondent: You did not!

A.B.: I did. When we were in that other room –

Respondent: No! *(To bailiff)* Get the transcript, from all of the days – not right now – has never – even before I sent her to jail, for 15 days, no apology came out of her mouth.

A.B.: You told me you didn't accept my apologize...my apology.

Respondent *(to courtroom audience)*: Her lawyer apologized but she – don't interrupt me – and see this is what I had to go through. Make a long story short, she told the lawyer *(Respondent yelling)* "Get away from me!" The lawyer was like, *(Respondent starts making a mocking crying noise)* no tears coming down, but you're gon love this next part, her assault case, was assigned to Judge Suzanne Sweeney, one of my colleagues, mmmmm, she ain't had no problem with her. Oh we had to appoint

her, the court, a lawyer for her case, his name is Antonia Nicholas (*sic—Nicholson*). Oh my god, Antonio, who is African American like me, he suggested, to her, prior to court, "You might want to take an anger management class." Oh my god, did she cop an attitude with him, "I don't want him as my lawyer!" I'm like does she not like black people? Does she realize she's black? Oh you can only respect white lawyers and white judges? Mmmm...

A.B.: That's not the case –

Respondent: So I didn't want you to leave out of here – please don't interrupt me –

A.B.: I just –

Respondent (*to courtroom audience*): I didn't want you to leave out of here thinkin', Why did Judge Carr want her to write a letter as to how would you feel if I called your mother a bitch –

A.B.: (Inaudible)

Respondent: Stop talking! See, this is why –

A.B.: (To bailiff) She was talking to me –

Respondent: So anyway, you are, uh, hi. Let me explain something to you. You are on 5 years of active probation. To me. It's gonna be a long 5 years.

A.B.: (Inaudible) I didn't do anything.

Respondent: What did she say?

Bailiff: This is bullshit.

A.B.: I did not!

Respondent: This is some bullshit? Mmm. Put her in the holding cell for me Juanita! Juanita put her in the holding cell for me.

A.B.: I didn't do anything.

A.B.: I said oh my goodness.

Respondent: Contempt charge again. Thank you. 'preciate it. In the holding cell. Uh, bye bye.

Joint Ex. 30A, Joint Ex. 52, p. 6-12.

{¶119} A.B., who now was hysterical, was again taken to the lock-up. When A.B. was gone, Respondent continued her monologue to the courtroom audience:

> So, my point was, I didn't want anyone on social media sayin', Dang, why did Judge Carr have that girl write a letter, 'How Would You Feel If I Called Your Mama a Bitch?' That's why. Next case. And I apologize.
>
> Joint Ex. 30A, Joint Ex. 52, p. 13.

{¶120} Later in the morning, A.B.'s attorney appeared before Respondent with A.B. Respondent informed her attorney of the events that transpired earlier and that she would be filing new contempt charges.

{¶121} A.B.'s lawyer questioned Respondent as to why she proceeded when she knew A.B. was represented by counsel. Respondent indicated that her bailiff tried to call him and that she was just taking the written apology from A.B.

{¶122} Respondent failed to recuse herself from A.B.'s second contempt case.

{¶123} On October 16, 2020, A.B. pled no contest to the second contempt charge. Respondent sentenced her to 30 days in jail, a $250 fine, and court costs. Respondent suspended the jail sentence and fine and waived the court costs.

{¶124} A.B. appealed Respondent's imposition of five years of community control sanctions on the single, original, contempt charge, arguing that it was not a proper penalty. The court of appeals agreed, and vacated A.B.'s community control sanction in a decision filed on November 5, 2020. *City of Cleveland v. A.B.*, 2020-Ohio-5180. Joint Ex. Ex. 354.

{¶125} The appellate court determined that the other sanctions imposed by Respondent ($250 fine, 15 days in jail) were within her sound discretion, but stated that Respondent had "an ethical obligation to conduct * * * herself in a courteous and dignified manner." (citing *Kaffeman v. Maclin (In re Cleary)*, 88 Ohio St.3d 1220, 1222-1223.) The appellate court condemned Respondent's behavior, pointing out that Respondent "used sarcastic language, inappropriately

suggested A.B. was mentally ill, and said that she was 'so glad to have company' and hoped to preside over A.B.'s assault case." *Id.*

{¶126} The appellate court further noted that if "A.B. would have randomly drawn [Respondent] to preside over her assault case, A.B. would certainly have had grounds to request that [Respondent] recuse herself from A.B.'s case or request the Chief Justice of the Ohio Supreme Court to disqualify and remove the judge from her case," and criticized Respondent for her failure to warn A.B. that her conduct would lead to contempt charges if she did not change her behavior. *Id.*

{¶127} In the video of A.B.'s arraignment, it is apparent that Respondent took an immediate dislike to A.B., but it is not apparent that A.B. did anything to warrant 15 days in jail, mandatory drug testing and five years of active probation. A.B. did not act-out physically, refuse a lawful order, fail to cooperate, or engage in any conduct that required a contempt citation to alleviate an immediate threat to the administration of justice. *See City of Cleveland v. A.B., supra.* See also, *Disciplinary Counsel v. Bachman,* 163 Ohio St.3d 195, 2020-Ohio-6732 and *Disciplinary Counsel v. Repp*, ___ Ohio St.3d ___, 2021-Ohio-3923.

{¶128} At the August 30, 2021 disciplinary hearing, Respondent admitted that charging A.B. with the first contempt citation "for rolling her eyes and her comments in the lockup" was an abuse of her discretion and that the judge's friend, Maggie Walsh, failed to provide adequate representation to A.B. August 30, 2021 Tr. 149.

{¶129} Respondent further admitted to antagonizing A.B. from the bench, acting in a rude and discourteous manner, and instigating the incident that led to A.B.'s second contempt citation. Aug 30 Tr. pp. 149-152.

{¶130} Respondent's only explanation for her failure to recuse herself was that she didn't

know how to handle contempt proceedings because no one had ever explained them to her prior to the commencement of this disciplinary case. August 30, 2021 Tr. 191.

{¶131} Based upon the parties' stipulations and the evidence adduced at the hearing the panel finds by clear and convincing evidence that as to Count V of the amended complaint, Respondent violated the following provisions of the Code of Judicial Conduct:

- **Jud. Cond. R. 1.2** [a judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety];
- **Jud. Cond. R. 2.2** [a judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially];
- **Jud. Cond. R. 2.8(B)** [a judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity];
- **Jud. Cond. R. 2.11(A)(1)** [a judge shall disqualify herself in any proceeding in which the judge's impartiality might reasonably be questioned including when the judge has a personal bias or prejudice concerning a party, or personal knowledge of the facts that are in dispute in the proceeding]; and,
- **Jud. Cond. R. 2.11(A)(2)(d)** [a judge shall disqualify herself in any proceeding in which the judge's impartiality might reasonably be questioned including when the judge is likely to be a material witness in the proceeding].

Respondent's testimony at the August 30, 2021 Hearing

{¶132} Respondent has a compelling life story. She is the youngest of four children who were raised by a single mother. From early childhood, she wanted to be a lawyer, in part, as a result of living through her parents' divorce when she was four or five years old. She attended Cleveland public schools and worked her way through law school. After graduation, she embarked on a career of public service that has included positions as a Cleveland city prosecutor, the law director for the city of Cleveland, and an assistant Cuyahoga County prosecutor. She was elected to the Cleveland Municipal Court bench in 2011 and took office in January of 2012. August 30, 2021 Tr. 156-163.

{¶133} During the course of her career, Respondent has been a role model who has given generously of her time to the community. Among other things, she has regularly participated in a reading program at a local elementary school, served on the boards of the United Black Fund and the Cleveland chapter of the NAACP, and has been active in the Southern Christian Leadership Conference and the Coalition of Negro Women. She was raised in the church and for the past twenty years has been a member of the Mt. Zion Church of Oakwood Village where she regularly works in the food pantry. August 30, 2021 Tr. 165-168. The 57 testimonial letters submitted on her behalf describe a warm, giving, and much-admired member of the community.

{¶134} Through Respondent's testimony and the entreaties of her counsel, the panel was assured that from 2012 to 2018, her behavior on the bench was exemplary. She stated that she was unaware of her bad behavior until the disciplinary complaint was filed in September 2020 and at the urging of her counsel, consulted a psychologist in May 2021. Only then did she realize the effects of sleep apnea, which complicated her struggles with weight gain, hot flashes, and copious perspiring brought on by menopause. She believes that exhaustion and frustration with her inability to deal with the changes in her physiology, led to her intemperate behavior on the bench. The panel was further assured that those physical maladies, and their behavioral manifestations, were now under control. August 30, 2021 Tr. 168-175; 193-195.

{¶135} The panel accepts that Respondent has benefited, and will continue to benefit, from psychological counseling and improved medical care. However, the panel does not accept Respondent's attempts to draw a causal relationship between her health and her misconduct.

{¶136} First, it is worrisome that Respondent was unaware that her conduct on the bench was problematic. August 30, 2021 Tr. 219. It is one thing to contend that the putative "cause" of her behavior was not known to her until suggested by her psychologist during the pendency of her

disciplinary case, and quite another to deny even knowing that there was a problem; particularly when the problem was glaringly evident, on a daily basis, for over two years. Being unaware of the supposed cause does not explain being oblivious to the problem.

{¶137} Second, it is difficult to perceive how ridiculing defendants, lawyers, and others in her court, likening herself to a character in a television series about a fictional Mississippi strip club while conducting the court's business, waiving fines and costs because a defendant was born in the same month as her college friend, suggesting "hook-ups" as a *quid pro quo* for lenient treatment, dressing in gym attire, and holding court behind a bench littered with the detritus of an adolescent's bedroom, can be attributed to menopause or lack of sleep. Countless lawyers and judges have dealt with fatigue and menopause during their careers without violating the rules of professional conduct. The panel recognizes that every individual is unique when it comes to issues of health but concludes that Respondent's actions here were not driven by her feeling poorly; rather, they were the product of poor judgment and no small degree of arrogance.

{¶138} Third, even if Respondent's health issues could account for her flippant and inappropriate public behavior, they cannot account for her utter disregard of the law concerning matters that arose in her court. Respondent's refusal to abide by Judge Earley's order closing the court during the pandemic, her evasion Ohio law and her own court's rule governing the collection of fines and costs, her abuse of capiases and contempt powers, her intentional falsification of journal entries, her disregard of Crim. R. 11 and Traf. R. 10 in accepting pleas, and her unilateral amendment of complaints without a motion, a hearing, or input from the prosecutor were conscious and intentional acts, repeated over time, not momentary mood-driven lapses in judgment. Far from suggesting a medical problem, they evince an attitude reminiscent of "The Only Law West of the Pecos" by a judge who has grown accustomed to doing whatever she wants,

however she wants, whenever she wants.

{¶139} Fourth, Respondent admitted that prior to 2018, during the period when she and her counsel contend were the "good judge" years, she engaged in much of the same conduct with which she is charged now: *i.e.,* falsifying journal entries, arbitrarily waving fines and costs based on birth dates, and abusing the use of capiases. She acknowledged that her medical problems had nothing to do with any of this--it was "just the way [she] judged." August 30, 2021 Tr. 222-228.

{¶140} Finally, it is difficult to accept the proposition that Respondent's health issues only became manifest when she was on the bench. Respondent has tendered 57 testimonial letters and presented the testimony of two character witnesses, all of which attest to Respondent's high character and cheerful nature in a variety of settings outside of her court. In community service programs, in church, in presentations at schools, on vacation, and in her social interactions with others, she is described in glowing terms. Respondent offered no explanation as to why physical and psychological conditions beyond her control would cause her demeanor to change abruptly only when she took the bench.

AGGRAVATION, MITIGATION, AND SANCTION

{¶141} When recommending sanctions for attorney misconduct, the panel must consider all relevant factors, including the ethical duties violated by Respondent, precedent established by the Supreme Court, and the existence of aggravating and mitigating factors. Gov. Bar R. V, Section 13(A).

Aggravating Factors

{¶142} The parties have stipulated to the following aggravating factors, all of which the panel finds to be present by clear and convincing evidence:

- A dishonest or selfish motive;

- A pattern of misconduct;
- Multiple offenses; and
- The vulnerability of and resulting harm to victims of the misconduct.

Mitigating Factors

{¶143} The parties have stipulated to the following mitigating factors, all of which the panel finds to be present by clear and convincing evidence:

- The absence of a prior disciplinary record;
- Full and free disclosure to the board or cooperative attitude toward proceedings; and
- Character or reputation.[8]

{¶144} In addition, Respondent proposed an additional mitigating factor of a mental disorder that contributed to the cause of the misconduct. In support of this contention, Respondent presented expert testimony and a lengthy report from Jason R. Riebe, Psy.D., a clinical psychologist. Dr. Riebe's initial 38-page report was admitted in evidence as joint exhibit 358, and his four page supplemental report was admitted in evidence as joint exhibit 359.

The November 1, 2021 Hearing and Dr. Riebe's Analysis

{¶145} Respondent was referred to Dr. Riebe by her counsel and was examined by him via video conferences on May 21, 2021, May 28, 2021, and June 4, 2021. Dr. Riebe diagnosed Respondent with a "Mood Disorder," brought on by menopausal symptoms and "Sleep Apnea Hypopnea, Moderate." "Mood Disorder" is no longer recognized as a separate diagnostic category in the Diagnostic and Statistical Manual of Mental Disorders (DSM), but Dr. Riebe described it as a broad classification for several different categories of depression, no single one of which is

[8] The parties stipulated that counsel for Respondent advised the character witnesses of the nature of the charges before receiving their letters. However, some letters specifically state that the author has no knowledge of the allegations and stipulated facts in this matter. See ¶152, *infra*.

specified in his report. Menopause and sleep apnea are very common disorders, not unique to Respondent. November 1, 2021 Tr. 166. Dr. Riebe also diagnosed Respondent with "Generalized Anxiety Disorder," due to her medical problems and stress. In his opinion, Respondent's mental disabilities caused or contributed to the cause of Respondent's misconduct.

{¶146} Dr. Riebe walks a razor-thin line in testifying that Respondent suffers from serious mental disorders that require a regimen of medication and at least a year of weekly sessions with a psychiatrist and a psychotherapist, but nevertheless is not so seriously impaired as to render her incapable of continuing to serve as a judge.

{¶147} There are several troubling aspects to Dr. Riebe's analysis. To begin with, he serves in two potentially conflicting roles with respect to his relationship to Respondent. At first, he assumed the role of a forensic psychiatrist, retained only to provide objective, unbiased opinions relative to this disciplinary case. However, one month after issuing his forensic report on July 13, 2021, he transitioned to being Respondent's treating psychotherapist. Hence, when he testified in this matter on November 1, 2021, he was both a forensic analyst, bound to render objective testimony, and a treating therapist, obligated to do no harm to his patient. November 1, 2021 Tr. 79-80.

{¶148} Another problem was Dr. Riebe's limited knowledge of the facts and his lack of familiarity with the breadth of Respondent's misconduct. He candidly admitted that he did not have time to review all of the available material relating to this case while seeing his other patients and performing the duties his job required of him. November 1, 2021 Tr. 78.

{¶149} Dr. Riebe was provided with more than seven hours of video from Respondent's courtroom but felt it necessary to review only 15 to 30 minutes, just to get a flavor of her actions. As a result, he knew nothing about the A.B. contempt proceedings in Count V and they are not

mentioned in his report. November 1, 2021 Tr. 77. His report indicates that he "reviewed" the pleadings in this case, but it was evident that he did not appreciate the significance of the allegations. For example, he was not aware of the consequences of Respondent's failure to abide by Judge Earley's coronavirus order and the ensuing legal proceedings: cases rescheduled by the administrative judge, writs of prohibition and mandamus from the Eighth District Court of Appeals, and an order from the Chief Justice of the Supreme Court disqualifying her from certain cases. *Id.* at 154-157. He was unaware of Respondent's untruthful response to the charge of wrongfully issuing capiases that appears in ¶42 of her answer. *Id.* 173-175. In his report, the 118-page first amended complaint, alleging 25 rule violations, is not even mentioned as one of "stressors" causing Respondent's depression and anxiety. Joint Ex. 358, p. 9.

{¶150} While Dr. Riebe stated, generally, that his opinions were meant to "cover all the misconduct" alleged, he did not address the bulk of Respondent's misconduct in either his report or his testimony. November 1, 2021 Tr. 169. In response to a question from the panel, he stated that his diagnosis and opinion were confined to what he observed of Respondent's behavior on the bench as displayed in the 15-30 minutes of video that he reviewed. He could offer no analysis or opinion about the other instances of misconduct set forth in the first amended complaint. November 1, 2021 Tr. 160.

{¶151} His knowledge about the events giving rise to this matter is derived mostly from his interviews with Respondent. That is problematic inasmuch as Respondent was as untruthful with Dr. Riebe as she was with others. She told him that she didn't know about Judge Early's March 13, 2020 coronavirus order until April 13, 2020 and blamed her bailiff for not telling her about its details. Joint Ex. 358, pp. 9-10. In her testimony, she admitted this was not true. August 20, 2021 Tr. 33. She told Dr. Riebe that she committed some "unintentional clerical errors" when,

in fact, she had intentionally falsified journal entries. Joint Ex. 358, p. 10. On June 30, 2021, Respondent told Dr. Riebe that she had not been treated for sleep apnea, but her medical records establish that on September 25, 2017 her primary care physician noted "Diagnosed with Sleep Apnea. She declines wearing CPAP."[9] Joint Ex. 358, p.3.

{¶152} Respondent also misled her own counsel when it came to providing information to people from whom he solicited character letters. Those persons were told that her problems arose from "negligently" failing to check the correct boxes on a court form, which resulted in capiases being issued for people who did not appear for hearings during the time the court was closed pursuant to Judge Earley's coronavirus order. This was not true and mirrored the false assertions in her Answer to the First Amended Complaint. See Answer, ¶42; November 1, 2021 Tr. 221-224. In fact, in each instance she verbally ordered the issuance of a capias, on the record, in addition to completing the court form. Stipulations ¶¶16 and 24.

{¶153} Respondent misled her lawyer, her character witnesses and her therapist to make her misconduct appear less serious than it was. Considered with Respondent's lies to Judge Earley and the media, and hence the public, about not issuing capiases, and her falsification of journal entries, these lies to her own lawyer and therapist demonstrate a disturbing dishonesty that pervades Respondent's behavior in this case. Dr. Riebe acknowledged that the mental disorders he diagnosed do not account for Respondent's lying. November 1, 2021 Tr. 116, 175.

{¶154} The fact Respondent's deceit lies at the heart of nearly all of the misconduct at issue here, and cannot be attributed to a diagnosed mental disorder, renders Dr. Riebe's opinions of limited utility. See *Disciplinary Counsel v. Parker, 116 Ohio St.3d, 64 2007-Ohio-5635* at ¶117 ["[t]he record contains no evidence that [Parker's] condition precludes him from recognizing truth.

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[9] CPAP is a medical device worn at night to treat sleep apnea.

Indeed, [Parker] could not raise this defense without necessarily disqualifying himself from the practice of law in any capacity."]

{¶155} This is the first time Dr. Riebe has evaluated a judge for purposes of opining about his or her ability to fulfill the duties of the office. He "believes" he may have evaluated a lawyer once before. November 1, 2021 Tr. 148-149. Dr. Riebe did not read the transcript of the August 30, 2021 hearing, wherein Respondent testified that falsifying journal entries, arbitrarily waving fines and costs, and abusing the use of capiases was "just the way [she] judged," irrespective of her medical conditions. November 1, 2021 Tr. 165. His report is silent as to whether or how that kind of behavior would comport with his understanding of the duties of judicial office.

{¶156} The panel accepts Dr. Riebe's diagnosis and treatment recommendations, but not his conclusion that Respondent's misconduct in 2018, 2019, and 2020 can be attributed to his after-the-fact observation of depression and anxiety in May 2021. This is particularly true in light of the fact that this disciplinary action, with very serious potential consequences for Respondent, intervened and was well underway at the time of his examination.

{¶157} Respondent's medical records establish that she was being treated for the menopausal symptoms and sleep apnea that Dr. Riebe identifies as the cause of her depression and anxiety, long before her misconduct occurred. Dr. Riebe's own report references five clinical notes from her doctors between November 30, 2015 and March 29, 2018 establishing the diagnoses and treatment for menopausal symptoms and sleep disorder. Joint Ex. 358 pp. 16-17. This was during what she and her counsel characterize as the "good judge" years, before the first reported incident of misconduct occurred on December 4, 2018.

{¶158} More to the point, those same medical records establish that Respondent was exhibiting no signs of depression or anxiety as a result of menopausal symptoms and a sleep

disorder during the period when the misconduct occurred. There are 13 clinical notes ranging from December 29, 2018 to February 9, 2021 reflecting that Respondent was being successfully treated for these conditions, was making good progress towards her weight loss goals, and was sleeping well. In each of these doctor's appointments, she reported that she was doing fine, and often that she "feels great."

{¶159} During this time, Dr. Riebe had no relationship with Respondent and did not even know she existed. He did not interview court personnel or Respondent's family and friends; nor did he speak with anyone else who was in a position to observe her during this time or read the testimonial letters from people who were. November 1, 2021 Tr. 152-153. Those letters, written by friends, family, and colleagues, describe a person who is the very antithesis of depressed and anxious:

- Deidre Lawson Benjamin writes, "Pinkey is very funny, entertaining and I am always laughing when I am with her. I adore her positive vibe." Joint Ex. 355B.

- Lynnette Forde writes, "Her easy, outgoing nature and quick wit make her a joy to be around both in crowds and on-on-one. She is the sun around which all her friends revolve." Joint Ex. 355F.

- Debra Nunn writes, "She is always pleasant, respectful, witty, humorous, hard-working and the life of the party." Joint Ex. 355I.

{¶160} On the other hand, one such letter submitted by her bailiff, Alicia Gray (the same individual to whom Respondent referred above as "Miss Puddin"), provides a telling description of Respondent before and after the inception of this disciplinary case. It suggests that Respondent's depression and anxiety stem from her disciplinary problems rather than the other way around:

> Judge Carr has definitely changed since all the articles in the newspaper and this case began in March. She is still caring and pleasant but more serious and very slow to respond. Judge Carr loves her job, the defendants and employees. But

> when we take our lunchtime walks, people often ask her if she's still a judge because of all the negative newspaper articles. Although she never says anything, I know it bothers her because it upsets me.
>
> Joint Ex. 356 F.

{¶161} In contrast to these contemporaneous observations from people close to Respondent, Dr. Riebe had no first-hand knowledge about Respondent's health, mental state, and behavior during the relevant time frame. His observation of Respondent's troublesome behavior was limited to 15-30 minutes of video. When he did make a diagnosis in July 2021, he quickly transitioned from forensic examiner to Respondent's therapist, and focused on developing a treatment plan that would aid Respondent.

{¶162} That treatment plan entails psychiatric counseling and psychotherapy for at least a year. As of the November 1, 2021 hearing, Respondent had only been under treatment for a little more than two months. While Dr. Riebe reports she is making good progress, he also made it clear that she is a long way from being recovered. November 1, 2021 Tr. 171. He also acknowledged that while Respondent has thus far been fully committed to her treatment and motivated to improve her health, she also has personality traits that present challenges to treatment, including a tendency to present herself in a favorable light, a reluctance to commit to treatment and a lack of self-awareness. Personality traits tend to be "long-standing and difficult to change." Joint Ex. 358 pp. 21-22; November 1, 2021 Tr. 101-105.

{¶163} One jarring indicator of these traits is Respondent's own characterization of her situation. Looking back on her misconduct, she characterized it as essentially a problem of style; *i.e.,* she "absolutely" "got the job done," albeit without "finesse" or the "honor and grace that I am doing it currently today." November 1, 2021 Tr. 207-208. Respondent's misconduct demonstrates a myriad of problems, but a lack of finesse is not one of them.

{¶164} She believes she is "Pinkey 2.0, better and improved" because "I'm no longer suffering from depression. I'm in my right mind, I'm in control, and I have an appreciation for what's going on, my medical condition." *Id.* Dr. Riebe, on the other hand, describes her as a "very sick individual" in need of an extended course of treatment. November 1, 2021 Tr. 159, 171.

{¶165} Applying the criteria of Gov. Bar R. V, Section 13(C)(7), Relator questions whether the short duration of Respondent's treatment—two months—and her reluctance to accept her therapist's opinion of her condition, establish "a sustained period of successful treatment," as the rule requires. Relator's Post-hearing Brief, pp. 5-6. However, the panel does not find it necessary to reach that question because, for the reasons set forth above, we do not find that a causal link between Respondent's current mental disability and her past misconduct has been established, as also required by the rule.

{¶166} Nevertheless, in light of Respondent's voluntary commitment to a comprehensive mental and physical health evaluation and her adherence to the treatment plan laid out by Dr. Riebe, the panel finds that Respondent has presented additional evidence in mitigation that will be considered in connection with its recommendation of a sanction. See *Parker, supra.* at ¶86. ["[former] BCGD Proc.Reg. 10 (B) authorizes consideration of 'all relevant factors,' including those specified and as [Parker] observes, we frequently do weigh concerns not specified there."]

Sanction

{¶167} Respondent appears to be sincerely regretful of her misconduct and for having betrayed the confidence reposed in her by her family, friends, and the community at large. It was apparent to the panel that being forced to watch videos of her own behavior, during the course of a public hearing, was a painful and humiliating experience for her. She has taken steps with Dr. Riebe and others to address her health issues, and she has entered into an OLAP contract. Joint

Ex. 360. She also has enlisted Cuyahoga County Common Pleas Judge Joan Synenberg to act as a mentor [August 30, 2021 Tr. 188-189] and has solicited input from court personnel and practicing lawyers about improving her performance as a judge.

{¶168} Respondent testified that she now takes pains to ensure that her comportment and actions as a judge are beyond reproach. August 30, 2021 Tr. 180-190. There is no evidence to suggest otherwise, and the panel accepts Respondent's representations of her improved behavior. Indeed, it would be shocking if a 118-page disciplinary complaint, replete with unassailable facts and incontrovertible rule violations did not have a salutary effect on Respondent's attitude towards her job.

{¶169} That is not to say Respondent escapes sanction simply because her improved conduct does not appear to pose an imminent threat to the public interest. Even where a judge loses a bid for reelection and, unlike Respondent, no longer has the ability to inflict continued harm to the public's perception of the judiciary, a significant sanction for significant prior misconduct is warranted. See *e.g., Disciplinary Counsel v. Squire*, 116 Ohio St. 3d 110, 2007-Ohio-5588 at ¶106.

Judges are held to the highest ethical standards

{¶170} The touchstone for disciplinary cases involving judges is *Disciplinary Counsel v. O'Neill*, 103 Ohio St. 3d 104, 2004-Ohio-4704, which has been cited more than a dozen times in subsequent cases. In its opinion, the Court affirmed the standard of conduct set forth in the Code of Judicial Conduct with the following observation:

> Because they are so important to our society, judges must be competent and ethical, and their actions must foster respect for their decisions as well as for the judiciary as a whole. Given that discretion, judges are expected to conduct themselves according to highest standards of professional conduct. Indeed, it is often said that judges are subject to the highest standards of professional behavior. Judges are held to higher standards of integrity and ethical conduct than attorneys or other

persons not invested with the public trust.

> Judges should exercise their judicial functions with integrity, impartiality, and independence. They should perform their work with a high degree of competence, and should treat litigants, witnesses, attorneys, and others who appear before them with courtesy and respect. * * * In sum, they should inspire trust and confidence, and should bring honor to the judiciary. (Citations omitted.)
>
> *O'Neill* at ¶¶57-58.
> See also, *Preamble, Ohio Code of Judicial Conduct* and
> *Disciplinary Counsel v. Elum*, 133 Ohio St. 3d 500, 2012-Ohio-4700,
> citing *Disciplinary Counsel v. Russo*, 124 Ohio St. 3d 437, 2010-Ohio-605.

{¶171} It follows that although the purpose of sanctions is to protect the public and not to punish the offender, the public is protected "by sending a strong message to members of the judiciary that abusing the trust of public employees and the public at large will result in significant consequences." *Disciplinary Counsel v. Horton*, 158 Ohio St. 3d 76, 2019-Ohio-4139 at ¶77. Thus, "sanctions serve as a deterrent to similar violations by judges, lawyers and judicial candidates in the future (citations omitted)" * * * and "notify the public of the self-regulating nature of the legal profession and enhance public confidence in the integrity of judicial proceedings (citations omitted)". *Horton* at ¶60. See also, *Disciplinary Counsel v. Burge*, 157 Ohio St. 3d 203, 2019-Ohio-3205 at ¶ 36 ["The primary purpose of judicial discipline is to protect the public, guarantee the evenhanded administration of justice, and maintain and enhance public confidence in the integrity of the judiciary."]

{¶172} The panel also is guided by the court's instruction in *Horton* concerning multiple violations of the rules of conduct:

> This case includes violations in three separate areas, and in determining the sanction necessary to protect the public, we must take into account the cumulative array of [Respondent's] violations. Imposing a sanction that is equivalent to a sanction in a case with only one type of violation would demean the number and severity of [Respondent's] infractions
>
> *Horton* at ¶53.

{¶173} Here, Respondent committed a breathtaking number of infractions in five broadly defined categories set forth in the first amended complaint, the parties' stipulations, and this report. Public faith in the judiciary would be betrayed if, in the face of more than 100 stipulated incidents of misconduct over a period of two years, the disciplinary system meted out a sanction that was not significant.

Respondent's habitual discourtesy requires a strong response

{¶174} After nine years on the bench, Respondent has come to regard her courtroom as her private domain rather than a venue in service to the public.

{¶175} Relator has aptly characterized Respondent's court as more akin to a circus than a court of law. Post-Hearing Brief, p. 2. From a bench resembling a flea market, at times dressed in spandex and a T-shirt, Respondent entertained herself and her staff with off-base humor and a variety of aspersions cast at lawyers and members of the public.

{¶176} In addition to referring to one public defender as a "little idiot," she mocked another with a theatrical measuring-tape demonstration of the distance between her bench and counsel's table because the previous day, he had asked her to keep her mask over her face *while she yelled at him*. Stipulations ¶¶490-497.

{¶177} The stipulations recount no fewer than 15 examples of Respondent's rude and discourteous behavior towards lawyers, court personnel, and litigants referenced in Count IV of the first amended complaint. Stipulations ¶¶455-534. These are in addition to the numerous other instances of unprofessional and intemperate behavior described in Counts II, III and V.

{¶178} Repeated and gratuitous references to the term "fuck boy" (Stipulations ¶¶425-430) during an arraignment, shouting at a defendant in a mocking, robotic voice simply because the defendant didn't hear something Respondent said (Stipulations ¶¶466-468) and urging an African-

American defendant to hurry from court because one of her Caucasian deputies was a slave owner (Stipulations ¶¶478-479), are representative of the kinds of events that occurred every day in Respondent's court. This is "just the way she judged." August 30, 2021 Tr. 227-228.

{¶179} Here is the Supreme Court's observation on this style of judging:

> Although discourtesy does not constitute an error or violation of law in the decision-making process, such conduct on the part of a judge is particularly egregious because it undermines respect for the law in a most insidious manner. . . [a] litigant who is subjected to rude and insensitive treatment is left without recourse. Whether the litigant wins or loses, the end result is an irreparable loss of respect for the system that tolerates such behavior.
>
> *O'Neill, supra* at ¶37.

{¶180} Such behavior "represents a profound threat to the institution of the law and requires a strong response." *Id.* at ¶39 (internal citations omitted).

Respondent's deceitful and unlawful conduct strike at the heart of the judicial system

{¶181} During a dangerous pandemic, Respondent flaunted her disregard of an administrative order designed to protect the public, issued arrest warrants for people who followed it, and then lied about it to her administrative judge and the public at large.

{¶182} Respondent ignored the law that protects the procedural rights of defendants when she took pleas, some of which she engineered *ex parte*, and then lied about it on her journal entries. She ignored the law governing the collection of fines and court costs, abused capiases to create a "debtor's prison" and, again, lied about it on her journal entries.

{¶183} The Supreme Court addressed similar conduct in *Disciplinary Counsel v. Medley,* 104 Ohio St. 3d 251, 2004-Ohio-6402. Medley disposed of a criminal case by negotiating a plea outside the presence of the prosecutor, issued arrest warrants to facilitate collections in small claims matters and falsified a journal entry to cover up *ex parte* communications in a collections case. Regarding the plea in the criminal case, the court stated, "A judge may not blatantly disregard

procedural rules simply to accomplish what he or she may unilaterally consider to be a speedier or more efficient administration of justice." *Id.* at ¶42.

{¶184} The court also found that the falsification of a journal entry warrants an actual suspension. *Id.* at ¶40. *See also Ohio State Bar Assn. v. Jacob*, *supra*, ["[t]he judge's false entry and his effort to cover up that misconduct were 'serious violations of his ethical duties as both an attorney and a judge,'" citing *Disciplinary Counsel v. Hale*, 141 Ohio St.3d 518, 2014-Ohio-5053 at ¶ 39].

{¶185} Although *Medley* may be distinguished from the within case on the basis of different aggravating and mitigating factors, the principal difference is the sheer number of offenses committed by Respondent as compared to those committed by Medley. Medley took *one* criminal plea in violation of procedural standards; Respondent did it routinely. Medley falsified *one* journal entry; Respondent did it routinely. The only similarity in misconduct is that Medley routinely employed arrest warrants and bonds to collect small claims judgments, just as Respondent routinely did to collect misdemeanor fines and costs. However, Medley did not conceal his actions with false journal entries. Respondent did. Finally, the court found that while Medley's conduct was the result of misguided attempts to run an efficient court in a small rural county, he did not act with a selfish or dishonest motive. Respondent did.

{¶186} In *Disciplinary Counsel v. Parker, supra*, the Supreme Court sanctioned a municipal court judge who committed a large number of rule violations while engaging in conduct similar to Respondent's. He jailed a spectator in his court for a muttered comment about the proceedings. He engaged in *ex parte* communications in an effort to force a plea in a criminal case and coerced pleas in others. He routinely mistreated people who appeared before him with rude and intemperate remarks. However, as was true with *Medley*, the number of incidents of

misconduct committed by Respondent far exceeds those committed by Parker, even if many are similar in nature.

{¶187} Parker compounded his problems by engaging in "misrepresentation, fabrication, and obstruction" in his response to the disciplinary investigation. Quoting *O'Neill, supra*, the court noted:

> [A] judge who misrepresents the truth tarnishes the dignity and the honor of his or her office" because "[t]ruth and honesty lie at the heart of the judicial system, and judges who conduct themselves in an untruthful manner contradict this most basic ideal.
>
> *Parker* at ¶120.

{¶188} The number of incidents of misconduct and dishonesty committed by Respondent dwarf those committed by Medley and Parker. Both Medley and Parker were suspended for 18 months, with six months stayed. Respondent's actions merit a more severe sanction.

The wrongful deprivation of liberty requires an actual suspension

{¶189} In *Disciplinary Counsel v. Bachman, supra*, a common pleas court magistrate was charged with judicial misconduct arising out of an incident wherein a woman had disrupted a trial in his courtroom by screaming in the hallway. Bachman left the bench, stopped the woman in the hallway, marched her back into the courtroom, and summarily held her in contempt of court. In response to her protests, he increased her three-day jail sentence to ten days. This followed an ugly spectacle that involved several sheriff's deputies and members of the court's staff forcibly restraining the woman while she tearfully pleaded for an explanation why she was being jailed for "a scream of frustration in the hallway that lasted one second." *Bachman* at ¶30.

{¶190} The Supreme Court rejected the Board's recommendation of a fully-stayed six-month suspension and instead, suspended Bachman from the practice of law for six months. The court addressed the power of contempt as follows:

> This court has made clear that the power to punish for contempt is properly used to secure the dignity of the courts, not to demean and intimidate people. (*Citations omitted.*) Abuse of this power 'not only throws doubts on [the judicial officer's] impartiality, but also weakens the public's perception of the integrity of the judiciary.
>
> * * *
>
> The power to summarily punish for direct contempt is not tempered by the rigors of due process. It is a prodigious power that is not to be invoked for actions that offend one's sensibilities or when a judicial officer feels personally affronted or disrespected.
>
> *Bachman* at ¶¶25, 33 (internal citations omitted).

{¶191} In *Disciplinary Counsel v. Cox*, 113 Ohio St.3d 48, 2007-Ohio-979, the court imposed an indefinite suspension on a former judge for three instances of misconduct, one of which was his abuse of his contempt powers. The court stated: "Because the judge's abuse of the contempt power seriously undermined the goals of strengthening public confidence in a fair and impartial judiciary, we imposed 'an equally serious sanction * * * for the public's protection and as a deterrent to such subversive conduct in the future." *Id.* at ¶42.

{¶192} Similar reasoning is found in *Disciplinary Counsel v. Parker, supra,* [18-month suspension, with six months stayed, for multiple violations, one of which involved jailing a spectator for contempt without cause] and in *Disciplinary Counsel v. Repp, supra*, [one-year suspension for jailing a courtroom spectator for contempt after she refused an unauthorized and unwarranted order for drug testing.]

{¶193} As stipulated in Count V, Respondent demeaned and intimidated A.B. at her arraignment and ordered her held in jail for rolling her eyes and making a comment to the courtroom deputy about her mistreatment. After several hours in the lockup, Respondent brought A.B. back to court and found her in contempt for rolling her eyes and shouting "bitch" while in the holding cell. In *Bachman*, the court noted that "the scream outside Bachman's courtroom can

be characterized only as a distraction at best or a momentary interruption to the proceedings at worst." *Bachman at* ¶23. A.B.'s shouting in the holding cell could not be heard in Respondent's courtroom, and nothing A.B. did in the courtroom even rose to the level of a distraction, much less a momentary interruption to the proceedings. She went to jail for 15 days for rolling her eyes.

{¶194} "Sending someone to jail is not the adult equivalent to sending a child to his or her room for a time-out." *Bachman* at ¶35.

{¶195} A.B. was not alone. As stipulated in Count III, Respondent routinely violated the law and improperly used capiases to compel the payment of fines and costs. Respondent sent Danny Mobley to jail for five days on a minor misdemeanor traffic offense for which the maximum penalty was a $150 fine. Respondent incarcerated Giovanni Arroyo for two days for driving under suspension and jailed Michael Bledsoe for six days for a similar offense. Others were arrested on capiases that never should have been issued. All were victims of Respondent's "debtor's prison."

{¶196} The language in *Bachman* is particularly apt here. "Disciplinary cases involving an abuse of judicial power, particularly one depriving a person of his or her liberty, are a significant violation of the public trust." *Bachman, supra,* at ¶33. "When a judicial officer's misconduct causes harm in the form of incarceration, that abuse of the public trust warrants an actual suspension from the practice of law." *Id.* at ¶21.

{¶197} The victim of Bachman's actions spent two days in jail. The victim in *Repp* spent one night in jail. In *Parker*, the victim was jailed for 24 hours. The *five* victims of Respondent's abuse collectively garnered 28 days in jail. They were not mere courtroom spectators as was the case in *Parker* and *Bachman*; but that is a distinction without a difference in terms of the harm suffered by the victims and the damage done to the public's perception of the judiciary.

Sanction recommendation

{¶198} The panel agrees with Respondent's assertion that the level of her cooperation in this matter was "complete" and laudable. Respondent's Post-Hearing Brief at pp. 4-5. She not only entered into extensive stipulations, which she unequivocally supported with testimony, she also permitted Relator to informally interview her twice, made Dr. Riebe available for informal interviews as well, and provided all of the requested authorizations allowing access to her medical records. However, Respondent's recommendation of a fully stayed two-year suspension is not supported by case precedent or the facts, despite her cooperation.

{¶199} Relator argues that the large number of different rule violations coupled with the sheer volume of incidents of misconduct renders this case without precedent and asserts that anything less than an unstayed two-year suspension would be inadequate. Indeed, were it not for Respondent's cooperation and her commitment to a treatment program, which includes an OLAP contract, Relator argues that an indefinite suspension would be warranted. The panel agrees.

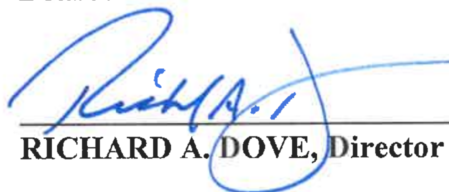
{¶200} Based upon the foregoing, the panel recommends that Respondent be suspended from the practice of law for two years with no portion stayed. The panel further recommends that Respondent's reinstatement be conditioned upon Respondent's: (a) compliance with her OLAP contract and any recommendations arising therefrom and (b) submission of a report from a qualified healthcare professional that she is able to return to the competent, ethical and professional practice of law at the end of her suspension.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on December 10, 2021. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Hon. Pinkey Susan Carr,

be suspended from the practice of law in Ohio for two years and ordered to pay the costs of these proceedings. The Board also recommends that, pursuant to Gov. Jud. R. III, Section 7(A), the Supreme Court's disciplinary order include a provision immediately suspending Respondent from judicial office, without pay, for the duration of her disciplinary suspension. The Board further recommends that Respondent's reinstatement be conditioned upon her submission of: (1) a report from a qualified healthcare professional that she is able to return to the competent, ethical and professional practice of law; and (2) proof of compliance with the October 30, 2021 OLAP contract and any amendment or extension thereof.

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