THE SUPREME COURT OF OHIO

Disciplinary Counsel Relator, v. Hon. Kim Hoover Respondent.	:	Case No. 2023-0188

RESPONDENT'S OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW, AND REPORT AND RECOMMENDATION OF THE BOARD OF PROFESSIONAL CONDUCT

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Now comes Respondent, Hon. Kim Hoover, and submits his objections to the Findings of Fact, Conclusions of Law, and Recommendation ("Report") of the Board of Professional Conduct ("Board"), filed with this Court on February 3, 2023, and attached hereto as Appendix A-1. The Board's misunderstanding of Respondent's motivation and his application of the law in the underlying cases is summarized in the third paragraph of its Report, where it stated:

> This case is about money. Specifically, it involves Respondent's methods of collecting fines and costs from municipal defendants, whether those methods are lawful, and whether vulnerable individuals were coerced to pay costs and fines based on coercive tactics, thereby creating the equivalent of a modern-day debtor's prison.

This case is not about money. It is about Respondent's actions to get the attention of a small group of defendants who failed to appear in court, refused to fulfil their sentences, or otherwise thumbed their noses at the court. The Board itself concluded:

> [Respondent] testified that the collection of fines and costs is about more than money; it is about holding defendants accountable and teaching them responsibility. The panel finds Respondent's testimony on this matter to be genuine. (Report, ¶ 117.)

Respondent objects to the Board's findings as to professional misconduct and aggravating factors and to its recommendation of a two-year suspension from the practice of law. Respondent respectfully submits a one-year suspension, with six months stayed, is appropriate.

Statement of Facts

Respondent's Post-Hearing Brief Regarding Charges sets forth in detail the facts pertinent to each count of the Amended Complaint. Respondent incorporates the factual information contained in his Post-Hearing Brief Regarding Charges by reference. Specific facts relevant to Respondent's objections are addressed below.

Procedural Background

Relator and Respondent filed extensive stipulations in advance of the hearing in this matter. A hearing was held on September 19-20, 2022. Following the hearing, the parties filed post-hearing briefs on rule violations and separate post-hearing briefs on sanctions. In its post-hearing brief on sanctions, Relator sought a two-year suspension, with six months stayed; Respondent filed a brief requesting a fully stayed suspension, on any conditions this Court ultimately feels appropriate.

Thereafter, the Board issued its Report finding that Respondent engaged in the professional misconduct charged in the Amended Complaint. The Board recommended he should receive a two-year suspension as a result. On February 9, 2023, this Court issued a Show Cause Order.

Respondent now objects to the Board's Report and submits a one-year suspension with six-months stayed is appropriate.

ARGUMENT

I. OBJECTION: Respondent objects to the Board's findings as to professional misconduct and aggravating factors and to its recommendation that he should receive a two-year suspension from the practice of law. The appropriate sanction is a one-year suspension with six-months stayed.

In its Report, the Board stated Respondent "coerced payment from economically disadvantaged criminal defendants." (Report, ¶129). This statement is at the center of the Board's finding in this case. The Board, and the panel before it, incorrectly concluded that the individual defendants in this case were singled out—or coerced to pay fines and costs—because of their socio-economic status. But such a conclusion ignores the specific facts of each underlying case, and altogether misinterprets the purpose behind Respondent's actions in those cases.

A. Applicable Law

R.C. 2947.14 provides, in part:

> "If a fine is imposed as a sentence or part of a sentence, the court or magistrate that imposed the fine may order that the offender be committed to the jail or workhouse until the fine is paid or secured to be paid, or the offender is otherwise legally discharged, if the court or magistrate determines at a hearing that the offender is able, at that time, to pay the fine but refused to do so.
>
> ***
>
> No person shall be ordered committed to a jail or workhouse or otherwise be held in custody in satisfaction of a fine imposed as the whole or part of a sentence except as provided in this section."

R.C. 2947.14(A)&(D)(emphasis added). As the bench card addressing the statute states, "R.C. 2947.14 is the sole authority to commit an offender for willful refusal to pay a fine in a criminal case." Stipulations ("Stip."), ¶8. As case law interpreting provisions of the statute further explains, unless a defendant was "explicitly imprisoned for the purpose of satisfying his fine," the statutory requirements do not apply. *State v. James*, 106 Ohio App.3d 686, 690, 666 N.E.2d 1185 (9th Dist. 1995)(holding that because the defendant was not "explicitly imprisoned for the purpose of satisfying his fine," he was not entitled to the credit provided for by the statute).

In short, R.C.2947.14 only applies if an offender is able to pay his or her fines but willfully refuses to do so, and, in response, the judge orders him or her to serve time for the explicit purpose of satisfying that fine.

B. Individual Cases

The underlying cases referred to in the Amended Complaint can be divided into subcategories and addressed as such. This includes:

1. Defendants who were not jailed following their hearing before Respondent.

This subsection includes the following counts:

Erica Mitchell (Count 7)
Naima Miller (Count 8)
Frank Fovozzo (Count 3)
Phyllis Riddle (Count 6)
Tarra Murray (Count 14)
Logan Somma (Count 15)
Lanee Pruitt (Count 16)

(See Respondent's Closing Brief on Charges, p. 5-13, incorporated as if restated herein).

In a number of these underlying cases, the defendant had been issued a valid sentence, within the confines of the law, and then failed to fulfill the terms of the sentence. When those defendants appeared *again* before Respondent, he ordered them to "pay today," or "pay before release." This was, in large part, because they had failed to show responsibility and accountability in the past. Respondent was responding to irresponsible behavior on the part of these defendants. In others, his actions were a direct result of the defendant's prior conduct; and the defendant did not spend any time in jail as a result of "non-payment."

For example, Erica Mitchell (Count 7) and Naima Miller (Count 8) each arrived in court in police custody after being arrested on open warrants for failing to appear at their arraignments. Ms. Mitchell was scheduled for arraignment on a driving under suspension charge on June 26, 2020, and failed to appear, so a warrant was issued for her arrest. Stip., ¶97-98. She was arrested on the warrant on November 30, 2020, and brought before Respondent in police custody. Stip. at ¶99; Hearing Transcript ("Tr.")., p. 200. Ms. Mitchell pled guilty and Respondent issued a $100 fine, plus costs. Joint Ex. 81B. On the journal entry, Respondent wrote "pay $100 before release." Joint Ex. 82. Ms. Mitchell

paid the $100 "within the hour" and was released. Tr. 200. Respondent explained at the hearing that, when he was ordering a defendant to pay before release, for example, he was "trying to hold [the person] responsible for their crime or their offense." Tr. 198.

In Naima Miller's case, she was arrested for driving under suspension in November 2018. Stip. ¶103. She failed to appear at her arraignment and a warrant was issued for her arrest. *Id*. at ¶104. Over two years later, on January 29, 2021, she was arrested on the warrant and appeared before Respondent, while in custody, for arraignment. *Id*. at ¶105. Ms. Miller pled guilty and Respondent issued a $125 fine. *Id*. On the sentencing entry, Respondent wrote "pay today." Joint Ex. 89. This was his way of informing the clerk's office that Ms. Miller was to pay her fines and costs that same day, without a payment plan.[1] See, e.g., Tr. 100. Ms. Miller paid her fines and costs and was released from police custody that same day. *Id*.

In both Ms. Mitchell and Ms. Miller's case, Respondent issued the defendant a fine and costs and—because they had failed to come to court previously—he ordered the fines and costs be paid the same day, stating "pay before release." They paid and were released. Respondent's decision was not driven by these defendants' economic status; it was driven by their demonstrated irresponsibility.

[1] In the Report, the Board refers to Thomas DiCaudo's testimony that his clients (who pay him privately), automatically get 30 days to pay fines and costs. Report, ¶18. The Board interprets this to mean these individuals get 30 days to pay *because* they have the means to pay. The Board states that this "luxury" was not offered to many involved in this case. First, this ignores the testimony during the hearing that **everyone** gets a payment plan. As Respondent testified: "Everybody (gets a payment plan)***on your first appearance you walk down, you ask for it, you get a payment plan." Tr. 687. Second, this ignores the background of most of the cases at issue, namely that the defendant had already failed to appear or shown a lack of interest in being responsible. That is what resulted in the Respondent changing his approach with these defendants. It was the defendants' actions, not their economic status that drove Respondent's approach.

The same motivation impacted Respondent's handling of Tarra Murray's 2022 case. And Respondent did not order Tarra Murray (Count 14) to serve time for purposes of satisfying her fine. He did not order her to serve *any* time.

In 2018, Ms. Murray had pled guilty to two misdemeanor drug offenses and was sentenced to pay a fine of $750, plus court costs. Stip. ¶165-168. She was also ordered to serve 30 days in jail, but the jail time was suspended on condition she return to court to pay her fines and costs after being released from custody on another matter. *Id.* at ¶168. She did not do so. *Id.* at ¶169.

In 2022, Ms. Murray appeared for arraignment before Respondent on new felony and misdemeanor drug charges. Stip. ¶171-173. Tammy Thompson, a public defender, stood in with Ms. Murray for purposes of bond. *Id.* at ¶173. Prior to her case being called, Ms. Thompson met with Ms. Murray. Tr. 379. During their discussion, Ms. Thompson learned Ms. Murray had old cases with unpaid fines and costs. *Id.* at 380. She talked to Ms. Murray about the old cases/fines. *Id.* Ms. Thompson wanted to "prepare her for the fact that she would be asked about it so that if she was unable to pay, [she] would like to at least explain or give reasons why***." *Id.* at 381. Ms. Murray told her that she could pay. *Id.* at 382.

When Ms. Murray's case was called, Respondent questioned her failure to pay her past fines and costs, and told her that her failure to pay anything on her old case "makes it difficult for me to give you the bond your attorney is gonna ask for (a personal recognizance bond) because you're already showing yourself to be irresponsible." Joint Exhibit 151B. Ms. Thompson, upon addressing the court, immediately informed the court that Ms. Murray would pay the outstanding fines and costs that day:

Q: And so what happened after [Respondent] brought up Ms. Murray's fines?

A: So I offered immediately that she was able to pay them because she had given me that information when we spoke.

Tr. 384. As Respondent explained at the hearing, the fact that Ms. Murray was willing to pay her outstanding fines and costs that day—which was volunteered by her—was directly relevant to setting her bond on the new case. She previously didn't return to court and pay her fines and costs as ordered. *Id.* at 300. Her failure to do so was something he considered relevant to bond:

> [I]f you already have hidden from the Court for five years and not done what was ordered five years ago, that makes you different than the citizen right next to you who shows up with a summons, who has no such baggage.

Tr. 302. If, however, Ms. Murray was going to address her old fines and costs, then she wouldn't have anything "hanging over her head," and he would not have the "irresponsibility worry." *Id.* at 301. Her payment "restored [her] to the regular citizen who shows in here without baggage," and Respondent issued a PR bond." *Id.* at 304.

2. Defendants sentenced to serve previously issued jail time.

This subsection of cases includes the following counts:

Darcell Smitherman (Count 2)
Anthony Cesaratto (Count 9)
William Davis (Count 13)[2]

[2] The Board considered it an aggravating factor that several of the cases cited in the complaint involved events that occurred after the filing of the complaint. However, those counts (counts 13-16, involving Davis, Murray, Somma and Pruitt) all involved situations in which Respondent was not sending the defendant to jail for non-payment. Davis was sentenced to serve previously issued jail time; and Somma, Pruitt and Murray were not jailed following their hearing (see subsection 1., above). Respondent's handling of these cases therefore cannot be considered as aggravation.

(See Respondent's Closing Brief on the Charges, p. 14-17, incorporated as if restated herein).

Anthony Cesaratto's case is a good example of the cases in this sub-category. Mr. Cesaratto pled guilty in three different criminal cases and was ordered to serve ten days in jail and pay a $450 fine, plus costs. Stip. ¶109-110. Three days into serving his sentence, Respondent brought Cesaratto back to court and ordered him released, and ordered he return to court on June 19, 2015, but only if he had not paid his fines and costs. *Id*. at 114. This was, in Respondent's mind, his way of giving Cesaratto a second chance; he thought he'd bring him back on June 19 and release him, and Cessarato would in turn show him responsibility. Tr. 231.

Cesaratto did not pay, however, and a warrant was issued. Stip, ¶115. When Cesaratto appeared five years later before Respondent, the Judge ordered him to serve another three days of his sentence. Tr. 232. Cesaratto "had a second chance, he didn't pay, he didn't come back, (and had) seven days' (sic) jail hanging over [his] head." Tr. 233. Once again, R.C. 2947.14 was not applicable:

> I did not put him in jail for failing to pay. I put him in jail for not coming back, not showing responsibility. And then I reimposed, but before I let him walk away from it, ordering him to come back to me in three more days, not in seven, come back in three, they'll bring him, because I don't want him in jail. I just want to wake him up. Tr. 235.

Unlike Cesaratto, who had served a portion of his previously issued sentence, William Davis failed to serve the time on his old sentence altogether.

In 2000, after pleading guilty to a driving under financial responsibility suspension, Davis was sentenced to 90 days of home incarceration, with 60 days suspended on condition that he did not operate a motor vehicle without a license and pay his fines and costs within 30 days. Stip., ¶146-148. Davis failed to pay and also failed to

serve his 30-day home incarceration, which was to be installed and monitored by Oriana House. On March 20, 2000, a warrant was issued for his arrest. *Id*. at ¶149, 150.

In February 2022, Davis was brought before Respondent on new drug and traffic charges. *Id*. at ¶152. Respondent brought up Davis' then 22-year old case, saying, "we're not leaving here with a 22-year old case unresolved." *Id*. at ¶154. Davis had, as the judge said to him, taken off some 22-years before without taking care of his case. And, as the Judge learned during the course of the hearing, that included that Davis had not served time, in addition to not paying his fines and costs. He had done nothing he was ordered to do. As a result, Respondent issued an order committing Davis to "CASC, or other Oriana House Custodial Program with full restriction, for a term of 90 days." Joint Ex. 131. He noted on the entry that Davis "failed to do jail sentence, failed to pay." *Id*.

As Respondent explained at the hearing, this was a defendant being ordered to complete the sentence originally imposed: "It was ordered. And he took off. It wasn't a suspended sentence. He was going to do 30 (days, as originally ordered) no matter what." Tr. 294. R.C. 2947.14 was not implicated.

3. Defendants who were told they could be released early if they paid their fines and costs, or some portion thereof.

This subcategory includes the following counts:

Luke Ridenour (Count 5)
Michael Juersevich (Count 10)
Glen Williams (Count 11)
Steven Hudspath (Count 12)

(See Respondent's Closing Brief on the Charges, p. 17-22, incorporated as if restated herein).

In each of these cases, Respondent issued a valid sentence, within the confines of the applicable law, and fashioned alternatives for the benefit of the defendant and the overwhelmed court system as a whole:

In Count 5 (Luke Ridenour), Count 10 (Michael Juersevich), Count 11 (Glen Williams) and Count 12 (Steven Hudspath), Respondent exercised his discretion in sentencing and proposed alternatives; i.e., serve jail or pay the fine. This is not uncommon—other courts in Ohio do the same thing.[3] Incidentally, the law would have allowed him to order both, but he chose to give the defendant alternatives.

In Luke Ridenour's case, the defendant was brought before Respondent two days after overdosing at home. His mother resuscitated him with Narcan. Respondent knew Mr. Ridenour "very well, including his many rehabs, his other charges, his felonies." Tr. 214. As was evident from Mr. Ridenour's own testimony at the hearing, this was not his first day in court. See, Tr. 358-360.

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[3] See, e.g., *State v. Tesch*, 5th Dist. Stark No. 1997CA00266, 1998 Ohio App. LEXIS 6468, *7 (Nov. 23, 1998)("By journal entry filed April 24, 1997, the trial court imposed a $ 1000 fine plus court costs and sentenced appellant to one year in jail with 'a consideration by the trial court for early release' after ninety days and a substantial effort to pay off all fines and court costs."); *State v. Jones,* Franklin C.P. No. 10-CR-4774, 2012 Ohio Misc. LEXIS 7565 (April 17, 2012)("The Court hereby imposes the following sentence defendant shall serve the modified sentence of one hundred fifty eight (158) days determinate sentence at the Franklin County Corrections Center. The defendant shall serve the balance of one hundred twenty (120) days (jail time credit 38 days). If the defendant pays the court costs and the fine in full and shows proof of the payments, the defendant will be released forthwith."); *State v. Allen*, Shelby C.P. No. 15CR000068, 2015 Ohio Misc. LEXIS 12366, *2 (July 17, 2015)("After the Defendant has served one hundred and twenty (120) days, the Court will consider early release if all fines, costs and reimbursement have been paid."); *State v. Lovelady*, Franklin C.P. No. 10-CR-08-4863, 2012 Ohio Misc. LEXIS 6921, *2 (July 16, 2012)("DEFENDANT SHALL SERVE 150 DAYS AT THE FRANKLIN COUNTY CORRECTIONS CENTER. DEFENDANT CAN BE RELEASED EARLY UPON PAYMENT IN FULL OF ALL COSTS, COURT FINE, AND SUPERVISION FEES FOR A TOTAL AMOUNT OF $1,104.00.")

After being advised that he could be sentenced to jail, a fine, or both, Ridenour pled guilty. Tr. 211. Respondent issued a 30-day jail sentence, a $750 fine, plus court costs, and he suspended his license. Tr. 212. However, Respondent indicated he'd suspend the sentence if Ridenour paid his fines and costs that day. *Id.* As Respondent testified:

> I was giving him a way out. As I told you before, I either take his heroin money, since he was blue on the bathroom floor a day and a half earlier, or I put him in jail, where we try to save his life by keeping him away from heroin.

Tr. 214. Respondent did not condition the jail sentence on his ability to pay his fines and costs; he issued an alternative—a choice:

> If I could keep him out of jail and send a message, that's what I'm going to do. If I sent him to jail and he goes to jail and he starts having a withdrawal, then I've accomplished nothing. He's released. He hasn't paid and he's just out there on the streets. I gave him a chance, a choice to make him either be responsible one way or the other.

Tr. 215. Respondent knew Ridenour's mother might pay for him, as she'd done in the past. If she came in and paid something on his fines and costs, which he said on the record he'd consider (Tr. 216), then he'd know there was someone looking out for him. Tr. 219. But sometimes parents reach a breaking point and "they say, no more." *Id.* At some point, "he'd have to take responsibility." *Id.*

Ridenour's mother paid $500 that day and he was released. Both Ridenour and his mother testified at the hearing and presented what is understandably their side of the events. It is not uncommon that a defendant or his/her family may be displeased with or distraught by the outcome of criminal proceedings. But a judge cannot be swayed by the emotional impact an immediate sentence may have on a defendant or his family. One of the goals of sentencing is to change the offender's behavior/rehabilitate the defendant.

Here, something undoubtedly worked, because Ridenour has not been in trouble with the Court—and has been sober—since.

As to Michael Juersevich, he was sentenced to 10 days in jail with five days suspended after pleading guilty to a theft charge (he stole from the same store he had previously been convicted of stealing from). He also received a $250 fine. On the entry, Respondent wrote, "Release upon payment in full or 5-24-20, then TP 30 days." Stip. ¶126. Juersevich did not pay his fine and served five days in jail. *Id*. at ¶128. As Respondent explained, he was not putting Juersevich in jail because he had not paid old fines and costs on his old theft case; he was putting him in jail on this new case. He could have sent him to jail for six months. Tr. 262. He sentenced him to five days in jail as punishment for his crime, because he "stole from the same store as the last time and didn't take care of that or come back." Tr. 264. If he paid, he could be released early, but otherwise, he was going to serve his punishment. R.C. 2947.14 was not implicated.

Glen Williams was charged with driving under suspension in 2007. Stip. ¶130. He failed to appear for arraignment and a bench warrant was issued. *Id*. ¶131. He was arrested in 2008 and again failed to appear, and another warrant was issued. *Id*. at 132. On May 22, 2020, he appeared before Respondent after being arrested on that warrant, and pled guilty. *Id*. at ¶133. Respondent issued a 20-day jail sentence and a $110 fine. On the entry, he wrote "20 days jail; suspended if F + C pd. Pay before release." Joint Ex. 109. Williams paid his fines and costs that same day, and was released. Respondent fashioned a sentence that was intended to meet the requirements of sentencing—to punish and rehabilitate—in one manner or another. As he testified:

> I'm going to punish you either with a fine and jail, just a fine, and if you can't pay anything, I might just use jail. In this case, I gave him the option. That

> option allowed him to do what was best for him. *** [He] had the money in his pocket and went downstairs and paid it in full.

Tr. 273. His sentence was appropriate under the law and issued after Williams had repeatedly failed to appear. It was not intended to coerce Williams to pay; it was intended to be exactly what it was—a legal sentence for a crime committed.

The same can be said for Steven Hudspath. He was charged with theft and failed to appear at his arraignment, so a warrant was issued for his arrest. He was arrested and appeared before Respondent on January 27, 2020. Stip. ¶138-139. Hudspath pled guilty, and Respondent sentenced him to $250 fine and 10 days in jail. On the sentencing entry, he wrote: "release after 1-28-20 (one day) if F + C paid in full or RTC 2-3-20." Joint Ex. 115. Hudspath served the one day in jail as ordered, then paid his F + C and was released. Stip. ¶144. As Respondent testified, Hudspath "was going to jail no matter what he did." Tr. 280. He was going to serve at least one night in jail; he could be released early if he paid, as he ultimately did.

C. Analysis of the Charged Rule Violation

Fourteen of the sixteen counts in the complaint involved cases in which Relator asserted that R.C. 2947.14 applied and Respondent disagreed. It was Relator's obligation to prove by clear and convincing evidence that Respondent's conduct in the above counts violated the Rules charged:

- 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. 2.3(b) [A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice];
- Prof.Cond.R. 8.4(d) [A lawyer shall not engage in conduct that is prejudicial to the administration of justice]

As to Rules 1.2, 2.2, and 8.4, Relator's contention was that by failing to apply R.C. 2947.14 in each of the cases charged, Respondent failed to follow the law and his conduct harmed the public's view of the judiciary and was prejudicial to the administration of justice. However, in all but Dawson's and Cannon's cases, Respondent did not violate the statute because it was not triggered. For those same reasons, his claimed failure to follow R.C. 2947.14 does not support the alleged violations of Rule 1.2, 2.2 or 8.4 in those 14 cases.

As to Dawson and Cannon, while Respondent stipulated to Rule 2.2 violations, his conduct did not violate Rules 1.2, 2.3 or 8.4. Nor did the clear and convincing evidence support such findings.

Judges make mistakes, and—unfortunately—sometimes defendants improperly spend time in jail. This is not an excuse for Respondent's conduct; it is reality. Cases get reversed on appeal after finding a judge abused his or her discretion[4] and defendants are released. This does not, in and of itself, mean that the judge's conduct failed to promote public confidence in the independence, integrity, and impartiality of the judiciary, or that the judge committed an ethical impropriety. Here, Respondent acknowledges that he sent

[4] An abuse of discretion may also be found "where a trial court 'applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact.'" *Thomas v. Cleveland,* 176 Ohio App.3d 401, 2008-Ohio-1720, 892 N.E.2d 454, ¶ 15 (8th Dist.).

Dawson to jail when in fact he did not have legal authority to do so. In Cannon's case, a true clerical error resulted in a bad result, for which Respondent takes ownership. But it was never his intent that Cannon be sent to jail. His conduct supports a 2.2 finding that he failed to follow the law in Dawson and Cannon's cases, but throughout the course of his career, including in these cases, he has worked to promote the independence, integrity, and impartiality of the judiciary, and has always sought to avoid impropriety and the appearance of impropriety.

As to the alleged Rule 2.3 violation in all of the counts asserted, Relator claims that Respondent, in the performance of his judicial duties in these cases, by words or conduct, manifested bias or prejudice towards poor people in violation of Rule 2.3. This is neither logical nor factually true.[5] As he testified, Respondent wants people who come before the Court to be responsible for their actions. Following Relator's logic, imposing any fines on a "poor defendant" would show bias and prejudice, because payment of a fine by a poor defendant is a greater punishment than payment of the same fine by a wealthy defendant.

Respondent has worked for almost three decades to help better the people who come through his court. He has not moved to the common pleas court because he wants to help people before they even get there, in hopes that they never do. Given the programs Respondent has created and the afterhours time he devotes to those programs each week, Respondent's commitment to the underprivileged in his community is beyond question.

Relator takes sixteen cases out of the hundreds of thousands that Respondent has presided over during the last 27 years on the bench and says, because he gave defendants

[5] For example, Ms. Thompson, who represents indigent defendants, testified she has never had an experience in which Respondent treated her clients unfairly. Tr. 390. Further, "When it comes to arraignments, *** the bonds that were set [by Respondent] were more fair than other courtrooms that I've worked in." *Id.*

the opportunity to pay their fines and costs and not serve jail time (an option many of them accepted), or because he ordered them to pay that day after skirting previous obligations, that this is clear and convincing evidence of bias towards poor people. These few cases (1) don't show bias, they show forced accountability in one manner or another; and (2) they are not reflective of the judge's judicial demeanor as a whole. What does he do time and time again for judicial defendants that appear before him? He gives them the low fines and standard costs. When they can't pay fines and costs, Respondent offers community service—he has them paint, do service projects, or work in the garden in lieu of paying. He gives them time to pay. When they don't timely pay the first time, he gives them more time.

As Judge Coates acknowledged, a fine that is not paid is not punishment. Tr. 433. Nor is a sentence that is not served. If Respondent does not collect from the defendants, and does not (or cannot due to sentencing guidelines or overcrowding at the jail) sentence defendants to jail time, there has been no punishment. And in turn, no rehabilitation. So his goal is to impact the defendants one way or another, to hold them responsible—no matter whether rich or poor. He is not biased against poor people. He may be harsh towards defendants who don't take responsibility for their actions or who repeatedly appear before him, but that harshness is not based on their financial status or rooted in bias of any kind; it is solely centered on his desire to hold people accountable and teach responsibility.

Allowing defendants to be released early if they paid was not coercion. Holding defendants accountable for their prior conduct was not coercion. It was Respondent's intent to impose a punishment that was actually *impactful* on these defendants and did not allow them to skirt responsibility. This is, by statute, his job and the goal of any

sentence issued.[6] The Board seemingly ignored this in its Report, and concluded that Respondent's sentences were grounded in bias against the economically disadvantaged. In reaching this conclusion, the Board ignored the facts of the individual underlying cases. It also ignored the evidence showing that all defendants in Respondent's court are given an initial opportunity to enter into a payment plans (see, e.g., Tr. 687.); that Respondent's sentences—including those in the cases involved—are light in comparison to what the law would allow him to issue; and that Respondent makes it a practice of giving defendants additional opportunities to be responsible provided the defendant shows *some* interest in being responsible (as set forth above).

Finally, it ignores the Respondent's outstanding commitment to his community and his judicial philosophy as a whole. When asked by the Panel to summarize that philosophy—and the balance of operating the court and "getting people back on the right track"—Respondent elaborated on what his father taught him, that there are consequences for action, and "you've got to change your actions to change the consequences." Tr. 725-726.

> What we do is, we make people come and pay even if it's a token. They have to be responsible enough to come and pay. And they are proud of themselves when they get it done because we tell them we're proud of them. Beth will say, "Why don't you take a month off, it's Christmas." [They'd] say, "Miss Beth, we'll be back." It gives them a sense of pride. Maybe nothing else in their life have they seen through to the end. Tr. 126.

[6] R.C. 2929.21: "The overriding purpose of misdemeanor sentence is to protect the public from future crime by the offender and to punish the offender. To achieve these purposes, the sentencing Court shall consider the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender and making restitution to the victim and the public."

A token is good enough. *Id.* It is more about "showing responsibility, showing some self-discipline."*Id.* at 272. If that doesn't work, they try community service. *Id.* at 728. If someone trying can't pay fines or costs, and community service isn't working, Respondent will try alternatives:

> If they can't pay fines and costs or I don't think that works, then we make them do good deeds. "I want you to come back to me with a list of ten good deeds you did for someone you get nothing in return for." *** And then they'll come back and they'll say, "I cleaned up behind the neighbor's garage, the little old lady. I've done this, I've done that." And I'll say, "Well, let's find a way to give you some credit for that because I want to reward you." Yeah, those things work. Tr. 728.

Respondent has been creative over the years in this regard, as his bailiff, Beth Magelaner, explained:

> [W]e've seen thousands of cases, and I am awe struck at how he relates to these people. I mean, one-on-one, individual, each case is very different, very different circumstances, and he relates to them, trying to help them. I mean, he's very creative with how he tries to help them, community service. We have a garden, everything from planting the seed to harvesting and donating the plants, community service workers have helped with. We have a metal bike work (*sic)* [rack]that a metal work gave instead of paying fines and costs. We have artwork, thanks to [Respondent], hanging in our courthouse that was commissioned by the Judge, by a Defendant to paint instead of doing fines and costs. Tr. 607.

These are not the acts of a judge who is all about the money, as the Board concludes. These are the acts of a judge who wants to use the system to help defendants succeed.

By making this case all about money and coercion, and ignoring the facts of each case and Respondent's actual intent in each case, the Board incorrectly placed this case somewhere between *Disciplinary Counsel v. Medley*, 104 Ohio St.3d 251, 2004-Ohio-6402 (which resulted in an 18 month suspension with six months stayed) and *Disciplinary Counsel v. Carr*, Slip Opinion No. 22-Ohio-3633 (which resulted in an indefinite suspension). That placement is not correct. As discussed below, considering the

evidence in this case and the applicable precedent, this case at most should result in a one-year suspension with six months stayed.

Applicable Case Law

When imposing sanctions for attorney or judicial misconduct, this Court considers several relevant factors, including the ethical duties the lawyer violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases. However, because each disciplinary case is unique, the Court is not limited to these specific factors and may take all relevant factors into account when determining which sanction to impose in any particular case. *Columbus Bar Ass'n v. Watson*, 144 Ohio St.3d 317, 2015-Ohio-4613, 42 N.E.3d 752, ¶ 7; see also, *Wood Cty. Bar Ass'n. v. Driftmyer,* 155 Ohio St. 3d 603, 606, 2018-Ohio-5094, 122 N.E.3d 1262.

***Ohio State Bar Ass'n. v. Goldie*, 119 Ohio St. 3d 428, 2008-Ohio-4606, 894 N.E.2d 1226**

The Ohio State Bar Association charged Judge Goldie with violating Canon 3(B)(2), among others, by "denying three defendants due process in flagrant disregard of the law." *State Bar Ass'n v. Goldie*, 119 Ohio St. 3d at 429.

The Walker Case

Judge Goldie presided over a criminal case against David Walker. He was convicted in 2003 of multiple offenses stemming from his failure to properly confine or control dogs in his care. In sentencing Walker on one of these convictions, Judge Goldie ordered Walker to surrender two dogs and serve a 30-day jail sentence, to be followed by a five-year period during which Walker would be unable to keep animals on his property. Judge Goldie suspended both parts of the sentence, however, on the condition that Walker "cooperate" while on probation with local animal-control authorities. Thereafter,

Judge Goldie presided over a series of animal-control proceedings against Walker. In the disciplinary case, the parties focused on one of Judge Goldie's rulings against Walker—an order directing him to pay restitution for the care and feeding of some bears that another judge had earlier ordered to be seized from his premises.

In February 2004, three of the seven bears in Walker's charge escaped from their enclosures and had to be captured by law-enforcement officers. The day after the escape, Judge Goldie ordered Walker to remove the bears from the premises within 14 days. Walker complied and moved the bears to property rented by Todd and Tammy Bell.

The following month, some of the Walker bears escaped from the control of the Bells. A visiting judge immediately ordered the bears seized and placed in the custody of Animal Control.

Within days—and without providing Walker prior notice or the opportunity to be heard—Judge Goldie ordered Walker and Bell to pay the county's expenses incurred in transporting, feeding, and otherwise caring for the bears.

By February 2005, the cost of the bears' upkeep had reached over $32,127. Again, without providing Walker prior notice or an opportunity to be heard, Judge Goldie ordered Walker to pay the amount owed in full by the end of the month. Judge Goldie further ordered that if Walker did not pay the ordered restitution, the bears would be forfeited and placed elsewhere.

Walker appealed the Judge Goldie's order, and the court of appeals reversed, in part, by finding that she had had no authority to order restitution. The court further criticized Judge Goldie's failure to afford Walker even the pretense of due process:

> In our opinion, the state's arguments are contradictory and confusing. The state's difficulty in clearly articulating a position may stem from the trial judge's failure to comply with rudimentary due process requirements. As

> we mentioned, the trial judge never held any type of evidentiary hearing after ordering Walker to remove the bears from his property. Instead, the judge merely held various 'review' hearings, at which she made statements about events that happened outside court and about which no testimony or evidence was presented. The judge also did not give Walker an opportunity to examine witnesses or to present his own evidence. Then, after making her own observations of 'fact,' the judge issued decisions about what would be done with the bears.
>
> ***
>
> We do not know how the escape [from the Bell property] occurred, or why, or even if Walker had anything to do with it -- *because there is no evidence in the record*. Instead of holding a probation revocation hearing and issuing appropriate orders after providing Walker with due process, the trial court held a number of 'review' hearings, at which the court did little more than discuss its thoughts and opinions on matters that were outside the record.

Id. at ¶10, citing *State v. Walker*, 164 Ohio App.3d 114, 2005-Ohio-5592, 841 N.E.2d 376 (2nd Dist.), at P 60.

The parties stipulated that Judge Goldie had abused her discretion and violated Canon 3(B)(2) by ordering the forfeiture of Walker's bears unless he paid for their confiscation and care.

The Webb Case

In early August 2006, Judge Goldie held a contempt hearing for Howard Webb after he was arrested and charged with contempt for "for repeatedly violating previous agreements to pay fines and court costs in nine criminal and traffic cases in the Xenia Municipal Court." At the contempt hearing, the Judge Goldie sentenced Webb to 30 days in jail for each contempt, and ordered he serve them consecutively, which resulted in 270 days of jail time. Webb appealed the sentences, which were later voluntarily dismissed after Webb was released from custody.

In her disciplinary proceedings, Judge Goldie conceded that she "followed none of the procedures required (in R.C. 2947.14) to determine Webb's ability to pay assessed

fines before sending him to jail." *Id*. at ¶18. She also conceded that she "knowingly failed to follow the law" and that her failure violated Canon 3(B)(2).

The Brandon Case

Anthony Brandon was convicted of vehicular manslaughter. He was sentenced to 90 days, suspended, in jail; five years of probation; $1000 fine; and 500 hours of community service. Brandon filed a motion to change the venue of his community service, which Judge Goldie denied. The court of appeals reversed that decision and remanded the matter to her docket.

On remand, Judge Goldie held a hearing because Brandon had not yet paid the $1,000 fine ordered as part of his sentence. She learned at the hearing that Brandon was living out of state with his mother, not attending college as he had earlier represented, and did not have a full-time job. In response, Judge Goldie found Brandon, who had appeared without counsel, in contempt and sentenced him to an unconditional 30 days in jail for failure to pay his fine.

Brandon appealed and the court of appeals again reversed, finding a denial of due process. At her disciplinary hearing, Judge Goldie conceded that her knowing failure to comply with the law violated Canon 3(B)(2).

Judge Goldie had left the bench prior to her disciplinary case, however, this Court nevertheless found that her "knowing disregard of constitutional and statutory rights breached duties to the judicial system and caused prejudice." *Id*. at ¶26 (emphasis added). This Court further recognized Judge Goldie had a public reprimand for previous judicial failings, which was "of some aggravating effect." Like Respondent here, however, Judge Goldie "also did not act dishonestly or out of self-interest." She conceded her wrongdoing,

and, like Respondent, "submitted many letters recommending her character and reputation." Taking all of this into account, this Court issued a public reprimand.

***Disciplinary Counsel v. Bachman*, 163 Ohio St.3d 195, 2020-Ohio-6732**

In *Disciplinary Counsel v. Bachman*, Magistrate Judge Bachman of the Hamilton County Court of Common Pleas "unlawfully held a woman in custody for two days for contempt of court after she created a disturbance outside of his courtroom." Report, ¶123. The woman was not a defendant or litigant before Magistrate Bachman at the time. She was ordered to jail after being physically brought into the courtroom by Magistrate Bachman and held in contempt, without any accord to her due process rights.

On September 4, 2018, Magistrate Bachman was conducting an asset-forfeiture trial in his courtroom. K.J., the woman ultimately jailed, came to the courthouse with the intent to file a petition for a civil protection order. After she completed the necessary paperwork, an employee in the clerk of courts' office informed her that she had missed the 8:10 a.m. filing deadline for her petition to be heard that day and that she would have to return the following day. K.J. went to Magistrate Bachman's courtroom in the apparent hope of having her case heard that day.

After being turned away by Magistrate Bachman's clerk, K.J. walked toward the exit. As Magistrate Bachman's clerk began to walk back to the courtroom, K.J. screamed loudly. Magistrate Bachman, who was on the bench inside his courtroom at the time, said, "Okay, time-out" and stopped the trial. *Bachman*, 2020-Ohio-6732, at ¶6. Magistrate Bachman left the bench and exited the courtroom. When he saw K.J. walking to the exit, he ordered her to stop and return to his courtroom. *Id.* at ¶7. He then ran to catch up with her and again ordered her to return to the courtroom. *Id.* As she complied, he "placed his

hand between her neck and her shoulder and redirected her to a side entrance." *Id.* Then, "[w]ith his hand still firmly between her neck and her shoulder, Bachman directed her into the courtroom and into the jury box." *Id.* The following exchange then occurred, as quoted by this Court in its decision:

> [Bachman to K.J.]: Have a seat right in that jury box, and don't move.
>
> [Bachman to the clerk]: Get the sheriff up here.
>
> [K.J.]: What? Why?
>
> [Bachman]: If you open your mouth one more time, you're adding on to your misery ma'am.
>
> [K.J.]: What—
>
> [Bachman]: Stop. Now—now—now, let me see who is here for my 8:30 cases. *Id.* at ¶8.

Shortly thereafter, when deputies arrived, Magistrate Bachman ordered the deputies to take her into custody "for causing a ruckus," and said, "three days in jail." *Id.*

K.J. was upset and crying and yelling. *Id.* at ¶9. In response to this, Magistrate Bachman said, "Don't make it worse ma'am." K.J. resisted the deputies and screamed again. In response to this, Magistrate Bachman said, "Ten days." *Id.* at ¶10. The deputies then dragged K.J. out of court. *Id.* She served two of the ten days in jail before the administrative and presiding judge watched the video footage of what happened and ordered her released. *Id.* at ¶11.

This Court issued a six-month suspension to Magistrate Bachman. As the Board noted in this case:

> Similar to Respondent, Bachman did not have a prior disciplinary record, exhibited a cooperative attitude towards the proceedings, presented evidence of good character or reputation, and did not act with a selfish or dishonest motive, although the [Bachman] Court disagreed with the last factor. Additionally, the victim was vulnerable and was harmed by

> Bachman's conduct. Bachman's conduct affected the liberty of one victim; Respondent's conduct affected 16. (Report, ¶124)(internal citations omitted).

Thus, the Board in the instant case recommended Respondent receive a sanction more significant than Bachman's six-month suspension.

***Disciplinary Counsel v. Repp*, 165 Ohio St. 3d 582, 2021-Ohio-3923**

In *Disciplinary Counsel v. Repp,* this Court issued a one-year suspension against Judge Repp after he ordered a spectator ("A.O.") who was "quietly observing the proceedings in his courtroom" to take a drug test and, when she refused, he held her in contempt and sentenced her to ten days in jail. *Disciplinary Counsel v. Repp*, 2021-Ohio-3923, at ¶2. During proceedings involving A.O.'s, boyfriend, Judge Repp interrupted proceedings and said: "Oh, before we get started, I think [A.O.'s] under the influence. I want her drug tested." *Id*. at ¶7. A.O. did not have a case pending before Judge Repp at the time, nor was she on probation to the Court. *Id*.

The bailiff took A.O. to the probation department so that a test could be administered. *Id*. at ¶8. While there, A.O. texted her boyfriend's mom, who was in the car outside with A.O.'s daughters, and told her she was "afraid to leave the courthouse because she thought that Repp would issue a warrant for her arrest." *Id*. The probation officer later told A.O.'s sister, who arrived at the courthouse, that she could not leave until she took the test. *Id*. at ¶9. A.O. asked for a lawyer and was told she was not eligible. *Id*.

A.O. told the probation officer she would not take the test. *Id*. The officer, in turn, told her that she would be sent back before Judge Repp after he was finished with lunch. *Id*.

After lunch, the probation officer took A.O. back in front of Judge Repp. When he asked her why she wouldn't take the test, she said she "did not think she had done anything wrong to be in trouble." *Id.* at ¶13. The following exchange then occurred:

> Repp stated, "Okay. Well, you come into my courtroom, I think you're high, you're in trouble." A.O. replied, "Okay. I'm not, though." Repp then asked A.O. whether she wanted to take the drug test, and when she stated that she did not, he said: "Can I have a journal entry. We're going to hold you in contempt. I'm going to submit and commit you for ten days. When you decide you want to take a test, then I'll, then we'll talk about this again. All right?" A.O. replied, "Okay." Repp stated, "Is there anything else? Remand to custody. You have the keys, [A.O.]" *Id.*

A.O. was immediately remanded to the custody of the Seneca County sheriff, handcuffed, and transported to the county jail. *Id.* at ¶14.

Once at the jail, A.O. experienced several "indignities." *Id.* at ¶15. This included being forced to take a pregnancy test and undergo two full-body scans. After the female officer conducting the scans "allegedly detected anomalies that she believed could have been contraband inside A.O.'s," a male senior officer was called to review A.O.'s body scan. The female officer attempted to cover A.O.'s breast and genital areas, but the male officer told the female officer "that that was unnecessary, and then the male officer asked A.O. whether she had pierced nipples." *Id.* A.O. was ultimately handcuffed and transported to Tiffin Mercy Hospital where she was required to submit to a second pregnancy test and either a CT scan or an MRI scan. After no contraband was found, she was returned to jail. Once there, she became scared and worried for her children and told a corrections officer she was willing to take a test because she wanted to go home. *Id.* at ¶16. The officer told her she "had her chance." *Id.*

The next day, A.O.'s retained counsel filed a notice of appeal and motion to stay the sentence pending the appeal. *Id.* at ¶17. Judge Repp set a hearing on the motion to

stay. In advance of the hearing, the elected prosecutor told Judge Repp he did not know of any authority allowing a judge to hold a spectator in contempt for refusing a drug test. *Id*. at ¶18. Later that day, defense counsel moved to vacate the contempt finding and the prosecutor agreed. *Id*. at ¶19. A.O. was then released from jail. *Id*.

In addition to charges related to the above, Judge Repp was charged with charges relating to his courtroom demeanor towards A.O. and her boyfriend. The Board found—and this Court agreed—that three aggravating factors were present: the judge acted with a selfish or dishonest motive, he committed multiple offenses, and he caused harm to two vulnerable victims. *Id*. at ¶23. In addition:

> The Board also specifically rejected Repp's testimony that his misconduct was motivated by a desire to help A.O. Instead, it found that the audio and video recordings of Repp's in-court statements to A.O. and T.D. exhibited arrogance and a desire to prove that his suspicions about A.O.'s impairment were accurate and consistent with unsubstantiated rumors that he had heard about her and T.D.'s past drug use. *Id*. at ¶24.

There were also mitigating factors present, including lack of prior disciplinary record, full and free disclosure, and cooperative attitude towards the proceedings, and the Board attributed "some mitigating effect" to the Judge's character letters. *Id*.

Here, the Board viewed Judge Repp's case in comparison to the *Bachman* case, cited above. The Board found "that in contrast to the victim in *Bachman,* who briefly interrupted a court proceeding, A.O. did *absolutely nothing* to justify Repp's attention in the courtroom—let alone his order that she be drug tested." *Id*. at ¶30 (emphasis original). Further, Repp's "undignified, improper, and discourteous demeanor had been directed at *two* victims—A.O. and T.D.—as opposed to Bachman's single victim." And unlike in Bachman, in Repp's case, one of the victims, A.O., suffered "great personal indignities and emotional distress as a result of the security and medical screenings she had to endure

during her incarceration, on top of the anxiety regarding the care and well-being of her two young children." *Id*. The Board recommended, and this Court agreed, that a one year suspension—six months more than that received by Bachman—was appropriate. *Id*. at ¶33.

***Disciplinary Counsel v. Medley*, 104 Ohio St.3d 251, 2004-Ohio-6402**

Disciplinary Counsel v. Medley involved six rule violations in three counts. Counts I and III resulted in a finding of the following rule violations:

- In Count I: Canons 1 (a judge shall uphold the integrity and independence of the judiciary); 2 (a judge shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); 3(B)(7) (a judge shall not initiate, receive, permit or consider communications made to the judge outside the presence of the parties or their representatives concerning a pending or impending proceeding); and 4 (a judge shall avoid impropriety and the appearance of impropriety in all the judge's activities); and DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice).

- In Count III: Canons 1, 2, 3(B)(7), 3(B)(8) (a judge shall dispose of all judicial matters promptly, efficiently, and fairly and comply with the guidelines set forth in the Rules of Superintendence); 3(E)(1) (a judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned); 4 and 4(A) (a judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment); and DR 1-102(A)(4) (conduct involving dishonesty, fraud, deceit or misrepresentation) and 1-102(A)(5).

In Count VI, which is most relevant to the instant analysis, Judge Medley was found by this Court to have improperly instituted a procedure in debt collection cases that resulted in a significant number of defendants being held in jail on open warrants for unpaid debts:

Judge Medley operated a small claims court at the Gallipolis Municipal Court. As part of that court, he instituted a procedure related to the collection of outstanding debts. *Id*. at ¶26. The court created a preprinted complaint form which it offered to prospective

plaintiffs for use in filing cases. After a complaint was filed, the deputy clerk entered a trial date on the preprinted complaint form. The form was then sent to the named defendant. *Id.*

From there, another form was used by the court to determine next steps in the case. This second preprinted form included a checklist of various dispositional options. *Id.* at ¶27. If the defendant received the original complaint but failed to appear on the trial date, Judge Medley would check another box on the form indicating that the defendant had not answered and was in default. *Id.* The form further provided in this instance that judgment was entered for the plaintiff, including an award of statutory interest and costs, in a sum equal to the amount demanded in the original complaint. *Id.* The form included another box that, if checked as was typical, allowed the court to order the defendant to pay the judgment in 30 days. *Id.* at ¶28.

The same section of the form indicated to the defendant that if the judgment were not paid within the 30-day time period, the defendant would need to appear at a hearing to arrange payment on a date filled in in advance on the form. *Id.* The form further advised that "Failure to appear will result in a warrant for the arrest of the defendant(s)." *Id.* After this second form was signed by Judge Medley, it was entered as a judgment in favor of the plaintiff.

If a defendant had not paid within 30 days and did not appear at the hearing set on the form, another box on the form would typically be checked indicating that the defendant failed to appear and a warrant should be issued for his or her arrest. *Id.* at ¶29. After Judge Medley checked this box and signed the form, a bench warrant was issued and provided to law enforcement for execution. The warrant would set bond at the same

amount of the judgment, plus interest and costs, without any possibility of release upon a lesser amount (i.e., ten percent bond). *Id*.

At the hearing, Judge Medley "acknowledged that 'significant numbers' of judgment debtors were, in fact, arrested on these warrants, sometimes in counties hundreds of miles away, and were not released until they posted bail, often in the amount of their debt." He further testified "that collections by the court increased from about $90,000 in 1993 to approximately $800,000 in 2003." *Id*. After the court collected a debt, it issued payment to judgment creditors. *Id*. at ¶30.

The panel found Judge Medley's procedure to be "offensive and wholly inappropriate." *Id*. at ¶31. It concluded that a significant number of judgment debtors had been arrested on small claims warrants even though arrest is not an authorized method to collect judgments, and it also questioned whether the constitutional rights of defendants had been infringed. *Id*.

This Court ultimately held that "it is apparent that [Judge Medley] approached small-claims suits with a predisposition in favor of plaintiff-creditors and a willingness to disregard established law governing the collections of judgments." *Id*. at ¶ 35. Further, Judge Medley's "procedure circumvented the protections afforded by law to small-claims court judgment debtors by making freedom from incarceration dependent upon payment in full of a small-claims judgment." *Id*. at ¶35. The Court concluded that, "[i]n short, [Judge Medley] failed to observe the high standards of conduct integral to preservation of the integrity and independence of the judiciary in violation of Canon 1" and "he acted in a manner unlikely to promote public confidence in the impartiality of the judiciary in violation of Canon 2 and prejudiced the administration of justice in violation of DR 1-102(A)(5)." *Id*. at ¶36.

Judge Medley received an eighteen-month suspension, with six months stayed, resulting in him serving twelve months off.

Unlike Respondent, Judge Medley had prior discipline. The Board acknowledged that in its Report, and yet concluded that Respondent's conduct "necessitates a more severe sanction," finding that Judge Medley "mistreated small claims debtors," (a "significant" number of them, according to Judge Medley) and here Respondent "coerced payment from economically disadvantaged criminal defendants." Report, ¶129.

Judge Repp ordered a bystander to jail for refusing to take a drug test. This was in no way a form of punishment or rehabilitation, as she had not been charged with or committed a crime and was not even a defendant before the Court. Judge Repp was found to have acted with a selfish or dishonest motive, and his "expressions of remorse and acceptance of responsibility were tempered by other statements that he made to the board and by his overall demeanor." *Disciplinary Counsel v. Repp*, 165 Ohio St. 3d 582, 2021-Ohio-3921, ¶31. His case resulted in a one-year suspension.

Unlike *Repp*, the Board in this case did not find Respondent acted with a selfish or dishonest motive. It recognized that "there is no question that Respondent has done great things for the Stow Municipal Court, many defendants, and the community," which is counter to the decision in *Repp* in which this Court attributed only "some mitigating effect" to the judge's character testimony. Respondent's extensive character letters speak to the fact that Respondent cares about all people who come before him, no matter what their background may be.

And, of great significance, the Board in this case found Respondent's testimony genuine with regard to the idea that "the collection of fines and costs is about more than money; it is about holding defendants accountable and teaching them responsibility."

Report, ¶117. This genuine testimony should be afforded more weight than it was provided by the Board. It goes directly to Respondent's mindset in the underlying case and clearly distinguishes this case from *Repp*.

Conclusion

Considering the above case law, and comparing this Court's decisions in those cases to the case at hand, Respondent respectfully submits that a one-year suspension with six months stayed is appropriate. It would place this case in its appropriate place on the continuum of cases cited. This sanction will adequately protect the public and will caution other members of the judiciary against similar behavior.

Respectfully Submitted,

/s/ George D. Jonson

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was sent by electronic mail this 21st day of March, 2023, to:

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Appendix

Appendix A-1 Findings of Fact, Conclusions of Law, and Report and Recommendation of the Board of Professional Conduct

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

In re:

Complaint against	**Case No. 2021-034**
Hon. Kim Richard Hoover **Attorney Reg. No. 0002331**	**Findings of Fact,** **Conclusions of Law, and** **Recommendation of the**
Respondent	**Board of Professional Conduct**
Disciplinary Counsel	
Relator	

OVERVIEW

{¶1} This matter was heard on September 19-20, 2022 before a panel consisting of Aletha M. Carver, Hon. John W. Wise, and Teri R. Daniel, chair of the panel. None of the panel members resides in the district from which the complaint arose or served as a member of the probable cause panel that reviewed the complaint pursuant to Gov. Bar R. V, Section 11.

{¶2} Respondent was present at the hearing and represented by George D. Jonson and Lisa M. Zaring. Joseph M. Caligiuri and Kelli C. Schmidt appeared on behalf of Relator.

{¶3} This case is about money. Specifically, it involves Respondent's methods of collecting fines and costs from municipal defendants, whether those methods are lawful, and whether vulnerable individuals were coerced to pay costs and fines based on coercive tactics, thereby creating the equivalent of a modern-day debtor's prison.

{¶4} Based upon the parties' stipulations and evidence presented at the hearing, the panel finds, by clear and convincing evidence, that Respondent engaged in professional misconduct, as outlined below. Upon consideration of the applicable aggravating and mitigating factors, and case

precedents, the panel recommends that Respondent be suspended from the practice of law for a period of two years.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶5} Respondent was admitted to the practice of law in Ohio on November 2, 1979 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 Rules for the Government of the Judiciary of Ohio. Stipulations ¶¶1-2.

{¶6} At all times relevant to the matters in this case, Respondent served as one of two full-time judges on the Stow Municipal Court. Judge Lisa Coates is the other judge who served on the Stow Municipal Court. In 2021, Respondent ran for Judge Coates's seat in the primary election; he was defeated but retained his seat on the Stow Municipal Court. Stipulations ¶¶4-5.

{¶7} Sixteen counts are alleged in this case; each count contains the same four violations:

- 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. 2.3(B) [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice[1].]; and,
- Prof. Cond. R. 8.4(d) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice.].

[1] Examples of manifestations of bias or prejudice include, but are not limited to: epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased. Jud. Cond. R. 2.3(B), Comment 2.

Statutory Provisions Governing Collection of Fines and Costs

{¶8} Prior to reviewing the individual counts, an understanding of R.C. 2947.14 is necessary. R.C. 2947.14 is the "sole and exclusive method for imposing a jail sentence for willful refusal to pay a fine. Incarceration for nonpayment should only be used as a last resort and after compliance with all statutory and procedural safeguards." Stip. Ex. 7. The Supreme Court of Ohio has made clear that fines and costs are separate and distinct, and their purposes are not to generate revenue. Specifically, costs are civil obligations, must be separated from fines, and may only be collected by the methods provided for the collection of civil judgments. Fines, on the other hand, are considered a criminal penalty, and a defendant may be jailed for the willful refusal to pay a fine that he or she has the ability to pay and credited in the amount of $50 per day. To jail a defendant for nonpayment of a fine pursuant to R.C. 2947.14, the defendant must be afforded due process, including reasonable notice, an advisement of the right to counsel, and an opportunity to be heard. *Id.*

{¶9} All counts in this matter relate to whether Respondent had an obligation to apply R.C. 2947.14 to each respective defendant. Relator submits that Respondent was unlawfully collecting costs and fines by threatening the liberty of vulnerable defendants to self-fund the Stow Municipal Court. Respondent, by his own admission, was aware of R.C. 2947.14 but deemed it to be "impractical" and not "an effective tool." Hearing Tr. 39, 46. Respondent did not apply the statute and, over time, became "oblivious" to it. Hearing Tr. 45. Respondent argues that R.C. 2947.14 was inapplicable to all but two defendants—Dawson and Cannon—and he admits violations of Jud. Cond. R. 2.2 in those two counts—Counts One and Four.

{¶10} The initial question that must be addressed is that assuming Respondent committed a violation R.C. 2917.14, does this statutory violation amount to an ethical one? The panel finds

that this question should be answered in the affirmative. In *Disciplinary Counsel v. Carr*, ___ Ohio St.3d ___, 2022-Ohio-3633, a municipal court judge disregarded R.C. 2947.14 in favor of her own system of debt collection whereby she used warrants and incarceration to compel the payment of costs and fines to improve the court's collection rate. *Id.* at ¶¶28, 30. Six individuals were arrested on warrants, five of which spent some period of time in jail. *Id.* at ¶30. The Supreme Court of Ohio unanimously found that the judge's conduct violated Jud. Cond. R. 1.2, Jud. Cond. R. 2.2, and Prof. Cond. R. 8.4(d). *Id.* at ¶32. The *Carr* case illustrates the interplay among the three rule violations in like scenarios—a judge who fails to follow the law thereby (a) treats parties unfairly (Jud. Cond. R. 2.2), (b) prejudices the administration of justice (Prof. Cond. R. 8.4(d)), and (c) fails to promote the public's confidence in the integrity and impartiality of the judiciary (Jud. Cond. R. 1.2). Further support for the panel's position is found in Comment [5] to Jud. Cond. R. 1.2: "Actual improprieties include violations of law, court rules, or provisions of this code."

{¶11} Having found that the failure to apply R.C. 2947.14 when warranted triggers potential ethical obligations, each count must now be addressed to determine the applicability of R.C. 2947.14. Although each count contains unique facts, the panel has grouped the counts into four general categories.

Coercing Payment Under Threat of Incarceration in Nonjailable Offenses

{¶12} This category includes the discussions of Counts One, Three, Four, Six, Seven, Eight, and Fifteen.

Count One—The Dawson Matter

{¶13} On September 24, 2019, Douglas Dawson pleaded guilty before Respondent to driving under suspension, an unclassified, non-jailable misdemeanor offense. Stipulations ¶¶11, 14; Stip. Ex. 14. Respondent sentenced Dawson to a $100 fine and court costs, totaling $537.

Stipulations ¶15, Stip. Ex. 14. Dawson entered a payment plan with the clerk's office, and after making a $100 payment, the court set the matter for another hearing on November 21, 2019; however, Dawson was only required to appear if he had not paid the balance of his fines and costs. Stipulations ¶18. Dawson failed to appear, and because he had not paid the balance of his fines and costs, Respondent's magistrate issued a warrant for Dawson's arrest, setting bail at $7,500 or ten percent on a nonjailable offense. Stipulations ¶19; Stip. Ex. 14. On December 29, 2019, police arrested Dawson on the outstanding warrant, and Dawson appeared before Respondent the following day. Stipulations ¶¶20-21. After calling the case, the following exchange took place between Respondent and Dawson:

Respondent: Takes $507 to get you out, or you're gonna stay about 10 days.

Dawson: Well I don't get paid 'til um –

Respondent: Oh, man, you're gonna be stayin' then. Once I've given you the break –

Dawson: I know. I know, Your Honor –

Respondent: And you blow it off. I don't want to hear anymore.

Dawson: $405.

Respondent: $507.

Dawson: $507.

Respondent: Including two bench warrants, which jerked your court costs way up. How long ya been in jail now?

Dawson: Um – since last night. Gonna screw – this – this'll mess up my uh employment too.

Respondent: Yeah. It probably will. That's the problem with screwin' with me.

Dawson: Yeah – yeah – I know.

Respondent: When it comes time I don't care. And that's where we're at right

now.

Dawson: Right.

Respondent: In the "I don't care" category. So, you've heard people come up here. I try hard to keep people out of jail. I try hard to give a little break –

Dawson: I – I understand, Your Honor. I know. I know.

Respondent: Good luck.

Dawson: How many days?

Respondent: Uh, I think I put on there release you after January 7th –

Bailiff: Release upon payment in full or release January 5th –

Respondent: 5th.

Bailiff: Credit $50 a day in jail.

Respondent: So every day, you owe $50 less than you did the day before.

Dawson: And this is the 1st right?

Respondent: So you get credit for yesterday and today –

Dawson: No Wednesday's the 1st.

Respondent: So if you came up with $407, they'd release you. Tomorrow you come up with $357, they'd release you. If you don't come up with anything, they're gonna release you on January 5th, and we'll call it even. Okay?

Dawson: I guess.

Respondent: Okay. See ya.

Stip. Ex. 22A, 22B.

{¶14} On the commitment order, Respondent ordered, "Release upon payment in full $517.00 or release 01/05/20, credit $50/day." Stipulations ¶ 23; Stip. Ex. 24.

{¶15} As a result of Respondent's order, Dawson spent seven days in jail. Stipulations ¶25. Respondent did not apply R.C. 2947.14, did not provide adequate due process to Dawson, and did not segregate the $100 fine from the court costs. Even if Respondent had applied R.C. 2947.14, Dawson could have been held only two days based on the amount of the fine.

{¶16} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count One:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶17} In this count, Respondent stipulated that his conduct violated Jud. Cond. R. 2.2. He did not admit the remainder of the violations. Regarding Jud. Cond. R. 1.2 and Prof. Cond. R. 8.4(d), Respondent's admitted failure to follow the law, applied to the holding in *Carr*, *supra*, demonstrates a prejudice to the administration of justice and weakens the public's perception of a fair and independent judiciary.

{¶18} Furthermore, Respondent's conduct violated Jud. Cond. R. 2.3(B). If Dawson had $507, he would have walked out of Respondent's courtroom: "If he paid it, I would have let him go." Hearing Tr. 82. Because he did not, Dawson was jailed for seven days. This count is the first of many that demonstrate a bias toward the most vulnerable persons—those of low socioeconomic status, the mentally ill, the drug or alcohol dependent. Contrast this scenario with one testified to by Thomas DiCaudo, a private attorney who represents defendants before Respondent. DiCaudo told that panel that his clients—clients who can afford private

representation—are automatically given 30 days to pay fines and costs without even asking. Hearing Tr. 785. That luxury was not offered to Dawson or to many of the other victims who follow in this report. Instead, Dawson lost his liberty due to his economic status, thus a violation of Jud. Cond. R. 2.3(B) is appropriate.

Count Three—The Fovozzo Matter

{¶19} On August 31, 2020, Frank Fovozzo pleaded guilty before Judge Lisa Coates to physical control and open container. Stipulations ¶41. Judge Coates sentenced Fovozzo to 180 days in jail, with 177 suspended, and imposed $976 in fines and costs for both cases. Stipulations ¶42. Fovozzo agreed to pay $244 each month for four months as part of a payment plan with the clerk's office. Stipulations ¶43.

{¶20} On October 19, 2022, Fovozzo was arrested and charged with two unclassified and nonjailable misdemeanor offenses. Stipulations ¶45. At the time, Fovozzo had a balance of $732 on his prior closed cases. Stipulations ¶44. Fovozzo appeared before Respondent, without counsel, for arraignment and entered a plea of not guilty. Stipulations ¶49. Respondent set the matter for a pretrial then proceeded to question Fovozzo, who was not in custody, about his outstanding fines and costs:

> Respondent: Now, that's the good news. No big deal in this case. However, you got two old cases you haven't taken care of. How come?
>
> Fovozzo: Lost my job. I'm going through – I don't want to give you a sob story – going through a lot of stuff. Process of getting evicted, where I stay at, it's not – I know – I just didn't have the money to pay it.
>
> Respondent: Yeah, that don't explain resisting arrest, for example.
>
> Fovozzo: Resisting arrest?
>
> Respondent: That's one of the charges. Open container –
>
> Fovozzo: No, the uh –

Respondent: Doesn't sound like poverty.

Fovozzo: They dis – they dismissed the resisting arrest.

Respondent: And, let's see, what else? OVI. That doesn't sound like poverty.

Fovozzo: They reduced it down to, uh, physical control. The –

Respondent: Okay. I – I – I'm not looking at the cases, just the amount that was owed and what you were originally charged with. Uh – these cases started clear back in February. And I don't see that you've done anything to take care of 'em.

* * *

Respondent: Why have you made no attempt to take care of these cases?

Fovozzo: I just don't have the money. * * * I do care. I want to get it taken care of. I really do. I'm just down on my luck right now. I'm not trying to give you a sob story. I'm just telling you.

Respondent: Hey – and I want to play shortstop for the Yankees. Hoping ain't getting the job done. Wantin' doesn't get the job done. How are you eating?

Fovozzo: Barely.

Respondent: How are eating? Getting money for food?

Fovozzo: Well I got a little bit of money. In my account –

Respondent: Why won't you answer my questions?

Fovozzo: How am I eating?

Respondent: How are you paying any bills?

Fovozzo: I have a little bit of money in my account that – a family member let me borrow just the other day.

Respondent: How much?

Fovozzo: $2000.

Respondent: $2000. What are you wiling to pay today on the old cases?

Fovozzo: I can't pay anything right now. I mean –

Respondent: All right. I'm gonna put you in jail then. And here's the good news though. I'm gonna give you credit for $50 a day. That way you don't have to worry about food, clothing, anything, okay?

Stip. Ex. 50A, 50B.

{¶21} Without meaningful inquiry into Fovozzo's ability to pay and without advising him of his due process rights, Respondent held Fovozzo in an area of the courtroom referred to as "the bullpen" until he could be transported to the jail or obtain the funds necessary to pay the fines and costs on the closed cases. Stipulations ¶61. Respondent stipulated that the "bullpen" was a secure area adjacent to the courtroom where persons cannot leave until released by security. Stipulations ¶¶61-62. Respondent also stipulated that Fovozzo was held "in custody" at that time. Stipulations ¶61. Nearly five hours later, Fovozzo used a credit card to pay $622.50, the balance owed on the two closed cases, and Respondent authorized his release. Stipulations ¶¶63-64.

{¶22} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Three:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶23} As in Count One, despite R.C. 2947.14 being the sole and exclusive authority for imposing a jail sentence to collect a fine, Respondent failed to follow the law; he did not provide the required due process, he did not make the requisite inquiries, and he did not segregate the fines

and costs. Moreover, Respondent's conduct was prejudicial to the administration of justice and weakened the public's perception of a fair and independent judiciary. Additionally, Respondent demonstrated a bias toward Fovozzo due to his socioeconomic status. Had Fovozzo stated that he was able to pay his outstanding fines and costs, he would not have been placed in the bullpen or threatened with continued incarceration. And, as evidenced by the transcript excerpt quoted above, Respondent was demeaning and sarcastic to Fovozzo.

Count Four—The Cannon Matter

{¶24} On October 18, 2018, Matthew Cannon was arrested and charged with driving under suspension, an unclassified misdemeanor, and turning at intersection, a minor misdemeanor. Both charges were nonjailable offenses. Cannon failed to appear for arraignment in the Stow Municipal Court, and Respondent issued a capias for his arrest. Stipulations ¶¶65-66. Almost a year later, on October 8, 2019, Cannon was arrested on the outstanding warrant. Stipulations ¶67. The same day, he appeared before Respondent without counsel and pleaded guilty to both charges. Respondent ordered Cannon to pay a fine of $125 and court costs of $442. Stipulations ¶¶68-69. On the sentencing entry, Respondent wrote, "Pay before release or RTC[2] 10/11/19 8:30 (Credit $50 a day in jail.)." Stipulations ¶70; Stip. Ex. 60. Cannon did not pay his fine that day and was subsequently incarcerated for four days. Stipulations ¶71. Prior to incarcerating Cannon, Respondent did not conduct an ability to pay hearing or advise Cannon of his rights pursuant to R.C. 2947.14. Stipulations ¶72.

{¶25} On October 11, 2019, Cannon was brought back to court, and Respondent credited him $250 ($50 per day served plus an additional $50). The following exchange occurred:

Respondent: Matthew, have you learned your lesson about being a deadbeat?

Cannon: Yes, sir.

[2] RTC is Respondent's abbreviation for "return to court."

Respondent: When you don't take my orders, what happens, I put you in an orange suit and say just sit there and look at the walls.

Cannon: Absolutely. That's first time and I – will be the last.

Respondent: I'll tell you what it'd be the last time for me.

Cannon: Absolutely.

Respondent: Those hours go slow don't they?

Cannon: Very slow. Yes. Especially when you're the only person in there.

Respondent: He's the only person in there?

Unknown: He was the only jail.

Respondent: How come you don't do what you're supposed to do?

Cannon: There was a lot of – I mean – there's no excuse, I should've came to court, but there was a lot of things going on with my, uh, my son passing away, starting to lose our home, just things like that that I got consumed with everything else and just totally forgot. And it was – that's my fault. I take – I admit that. That's my fault.

Respondent: How long have you been in the jail?

Cannon: Uh four days not about – since Monday night. Monday at 9:00 p.m. And I am, I'm extremely sorry.

Respondent: You probably don't believe this, but I try very hard to keep people out of jail.

Cannon: Oh, I understand.
Respondent: I know it would make me crazy. I'm gonna tell them to let you out.

Cannon: Okay.

Respondent: Right now. As soon as I can get you back there. I'm gonna credit $250 toward fines and costs. The balance you're going to pay in 30 days or we're gonna be talking orange again.

Stipulations ¶73.

{¶26} The journal entry from the hearing stated, "10-11-19 Release, credit $250, balance TP[3] by 30 days." Stipulations ¶74; Stip. Ex. 60.

{¶27} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Four:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶28} In this count, Respondent stipulated that his conduct violated Jud. Cond. R. 2.2. Stipulations ¶76. He did not admit the remainder of the violations. Regarding Jud. Cond. R. 1.2 and Prof. Cond. R. 8.4(d), Respondent's admitted failure to follow the law, applied to the holding in *Carr*, *supra*, demonstrates a prejudice to the administration of justice and weakens the public's perception of a fair and independent judiciary.

{¶29} Furthermore, Respondent's conduct violated Jud. Cond. R. 2.3(B). Respondent admitted that if Cannon had paid the fine on October 8, he would not have been jailed. Additionally, Respondent called Cannon a "deadbeat" and threatened to return him to jail if he did not pay the balance of the costs due within 30 days. Respondent's conduct and words demonstrate a bias towards Cannon due to his socioeconomic status. Accordingly, a violation of Jud. Cond. R. 2.3(B) is warranted here as well.

[3] TP is Respondent's abbreviation for "to pay."

Count Six—The Riddle Matter

{¶30} On October 18, 2018, Phyllis Riddle was arrested and charged with two counts of driving under suspension, both unclassified misdemeanors, and expired tags, a minor misdemeanor. All of the charges were nonjailable offenses. Stipulations ¶86. Riddle was arraigned, and a pretrial was set for November 1, 2018. Stipulations ¶87. On November 1, 2018, Riddle appeared without counsel and entered a plea of guilty. Stipulations ¶88. Respondent imposed a $200 fine and court costs. Stipulations ¶89. Respondent then advised Riddle that she would need to return to court on December 3, 2018, but only if she failed to pay her fines and costs in full by that date. Stipulations ¶90. On December 3, 2018, Riddle failed to appear and had not paid her fines and costs; consequently, Respondent issued a warrant for her arrest. Stipulations ¶91. On the corresponding journal entry, Respondent wrote, "12-3-18 FTA @ RTC BW $5000/10% or surety. KRH."[4] Stipulations ¶91; Stip. Ex. 72.

{¶31} On or about September 27, 2019, Riddle was arrested on the outstanding warrant. Stipulations ¶92. A family member posted Riddle's bail, and Riddle appeared in court on September 30, 2019. Stipulations ¶93. During the hearing, the following exchange occurred:

> Respondent: Phyllis, you've been hiding from me. You didn't come back, you didn't do anything. So here's the bad news. It looks like whoever posted the bond for you says you can't use it for fines and costs. So, now it's time to pay the piper. What it means is that you now have to pay fines and costs or you don't go home. And, it says you owe $664.40 'cause you got the extra charges with it going to the Attorney General. If you go to jail, you get credit for $50 a day. That means that you'd be in there for approximately two weeks. Gonna be able to come up with any or all of it to shorten your time?
>
> Riddle: Mmmm. I just lost my job. And, no.
>
> Respondent: Okay.

[4] This line indicates that Riddle failed to appear for the return to court date, that a bench warrant was issued, and that a bail of $5,000, 10% case or surety, would be imposed. KRH are Respondent's initials.

Riddle: I have a child. Right.

Respondent: You haven't done what you were supposed to do. All we said was either pay it or come back and talk to us. You didn't do either. Because of that, now we don't talk anymore. Who posted the bond for you?

Riddle: My mother.

Respondent: Do you want to call her before they take you off? Do you think there's any chance that she'd step up?

Riddle: Um, could I please try?

Respondent: Yeah, we'll try that. I'm gonna go ahead and do the order, which I'll read it to you here in just a second. Why didn't you at least come back?

Riddle: Honestly, I – from day to day – I just wasn't thinking. I – I really would never just deliberately not do that. I don't know. Whatever.

Respondent: You're aware that we had you sign, acknowledge the date and everything else?

Riddle: I guess. I'm sure I did. I just –

Respondent: Yeah. It said you must appear on December 3rd, 2018, at 1 p.m. before Judge Hoover regarding further orders if fines and costs not paid. You signed that on November 1st, so we gave you a month to try to come up with something or do what you were gonna do. Having failed (inaudible).

Stipulations ¶ 94.

{¶32} Respondent prepared an entry that stated, "Remand CF[5] jail forthwith. Release upon payment of F + C in full. Credit $50/day." Stipulations ¶95; Stip. Ex. 76. Later that day, while still in custody, Riddle was able to pay her outstanding fines and costs, which totaled $664.40, and she was released that same day. Stipulations ¶96.

[5] CF stands for Cuyahoga Falls.

{¶33} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Six:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶34} The distinguishing factor between Riddle and Dawson and Cannon was that Riddle was able to come up with the money owed before she was transferred to the jail, but the same tactics were used by Respondent. Respondent admitted at the hearing in this matter that he knew that it was "illegal" to hold Riddle on a nonjailable offense; it was his position that she was never taken to the jail and was, therefore, not in custody.[6] Regardless of whether Riddle was actually in custody, it is the panel's position that threatening a defendant with jail with no legal basis to do so is equally a violation of the ethical rules.[7] Respondent acknowledged that if pressured, Riddle would pay: "So I got right down to the final act, which is the way it always goes with Phyllis, and it ended the way it always does with Phyllis, in that she paid it all." Hearing Tr. 127. When asked if he handled Riddle's case appropriately, Respondent stated, "Historically. We did the same thing five other times." Hearing Tr. 138. Jailing defendants for inability to pay demonstrates a bias against defendants who do not have the ability to pay. Coercing payment from defendants before

[6] Respondent admitted in his response to Relator's Letter of Inquiry that Riddle was "jailed" for nonpayment of fines even though she was charged with nonjailable offenses. Stip. Ex. 12.

[7] Respondent argued throughout the hearing that defendants held at the courthouse were not technically "in custody" even if they were not permitted to leave. It is the panel's position that this is a distinction without a difference. Nevertheless, whether defendants were actually held in custody or instead were unlawfully threatened with custody does not matter as the panel finds that both situations amount to violations of the rules.

they are jailed further demonstrates Respondent's bias. If a defendant has money to pay, she walks out of the courthouse; if not, she goes to jail.

Count Seven—The Mitchell Matter

{¶35} On June 17, 2020, Erica Mitchell was cited for driving under suspension, an unclassified misdemeanor, and a nonjailable offense. Stipulations ¶97. Mitchell failed to appear for her arraignment, and a warrant was issued for her arrest. Stipulations ¶98. On November 30, 2020, Mitchell was arrested on the outstanding warrant and was brought before Respondent, without counsel, for arraignment. Stipulations ¶99. Mitchell pleaded guilty to the charge, and the following exchange took place between Respondent and Mitchell:

> Respondent: All right here's the problem. I fine you a hundred dollars, I don't want you in jail, but I don't trust you to pay now.
>
> Mitchell: I can pay it. Not right t- this second, but –
>
> Respondent: Yeah, I's thinkin' I's just gonna keep ya in jail 'til you could pay it. That way I'd know for sure.
>
> Stipulations ¶100.

{¶36} Respondent imposed a $100 fine. Stipulations ¶101. On the journal entry, Respondent wrote, "Pay $100 before release, balance w/i 30 days. Recall BW[8]." Stipulations ¶101; Stip. Ex. 82. Mitchell explained to Respondent that she was unemployed and was receiving $189 of public assistance. Stip. Ex. 81A, 81B. Later that day, Mitchell paid the $100 and was released. Stipulations ¶102.

{¶37} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Seven:

[8] BW is Respondent's abbreviation for bench warrant.

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶38} As with Riddle, Mitchell was threatened with incarceration on a nonjailable offense unless she paid her fines and costs. As with all defendants previously discussed, Respondent did not conduct an ability to pay hearing, did not advise Mitchell of her due process rights, did not separate fines and costs, and did not otherwise apply R.C. 2947.14. Regarding bias, Respondent used coercion and racial undertones in his speech, which is inconsistent with a fair and impartial judiciary. Specifically, Respondent used the following accented speech to Mitchell, a black woman: "I's thinkin' I's just gonna keep ya in jail." Stip. Ex. 79, 81A, 81B. When asked whether he agreed that his conduct of threatening jail for a nonjailable offense was coercive, Respondent responded, "I was going to say, I would use the term merciful." Hearing Tr. 201. This further demonstrates Respondent's biased mentality.

Count Eight—The Miller Matter

{¶39} On November 23, 2018, Naima Miller was charged with driving under suspension, an unclassified misdemeanor, and speeding, a minor misdemeanor. Stipulations ¶103. Both charges were nonjailable offenses. Stipulations ¶103. Miller failed to appear for her arraignment, and a warrant was issued for her arrest. Stipulations ¶104.

{¶40} On or around January 29, 2021, Miller was apprehended on the warrant and appeared, without counsel, before Respondent for arraignment and pleaded guilty to the charges. The following exchange took place:

Respondent: Where you been child? We've been looking for you for two years.

Miller: Working. I be workin'.

Respondent: You've been workin' round the clock for more than two years?

Miller: I swear this is – Four 12ss, every single day, yes.

Respondent: Uh what you're charged with here isn't that dig a deal, except that you end up getting' the warrants and stuff –

Miller: And I thought if you paid your fines you would – everything would disappear.

Respondent: Well you didn't even pay the fines and make everything disappear. You are charged with driving under suspension and speeding. Not the kind of charges I put people in jail for. The driving under suspension is punishable by up to $1,000, the speeding up to $150. You understand all that?

Miller: Yes.

Respondent: How do you plead to those charges?

Miller: Guilty.

Respondent: I fine you $100 and costs for driving under suspension, $25 and costs, uh, for the speed. Now tell me you got money. 'Cause this isn't something where after two years I can give you time to pay.

Miller: Yeah, I do.

Respondent: So what happens is they'll figure out what you owe, you gotta pay it.

Miller: Okay.

Respondent: We get that done, they'll cut you loose, get you outta that beautiful orange suit.

Miller: Yeah.

Respondent: How ya likin' that? Would you like that just to wear around the house?

Miller: No.

Respondent: No, I don't think so. Okay, they'll take care of it, we'll get you worked out.

Stipulations ¶105.

{¶41} Respondent sentenced Miller to a $125 fine and court costs. Stipulations ¶106. On the sentencing entry, Respondent wrote, "Pay today." Stip. Ex. 89. The commitment paper stated, "To pay $512 before relase (sic)." Stipulations ¶107; Stip. Ex. 90. The total of outstanding fines and costs was $512. Stip. ¶107. Later that day, Miller paid $512 and was released. Stipulations ¶108.

{¶42} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Eight:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶43} As with Riddle and Mitchell, Miller was threatened with continued incarceration on a nonjailable offense unless she paid her fines and costs. As with all defendants previously discussed, Respondent did not conduct an ability to pay hearing, did not advise Miller of her due process rights, did not separate fines and costs, and did not otherwise apply R.C. 2947.14. Regarding bias, Respondent again used coercion and racial undertones in his speech, which is inconsistent with a fair and impartial judiciary. Notably, to a black female defendant, Respondent stated, "Where you been child?" at the beginning of her hearing. Stipulations ¶105; Stip. Ex. 86, 88A, 88B. Further, Respondent stated to Miller, "'Tell me you got money.' 'I do. I can pay it.'

'Done. Get her out of here.'" Hearing Tr. 207. Respondent's comments illustrate his socioeconomic bias.

Count Fifteen—The Somma Matter

{¶44} On February 17, 2022, Logan Somma was charged with one count of possession of drugs, a minor misdemeanor, and a nonjailable offense. Stipulations ¶177. On February 24, 2022, Somma appeared without counsel for his arraignment before Respondent. Stipulations ¶178. He entered a guilty plea, and Respondent sentenced him to a $150 fine. Stipulations ¶179. During the hearing, the following exchange took place:

> Respondent: Here's your problem: because you've shown yourself to not obey court orders, and you have an extensive record, I fine you $150.
>
> Somma: Okay.
>
> Respondent: I'm not going to suspend your license cause it's already –
>
> Somma: Yeah –
>
> Respondent: Expired or suspended. But here's the part you're not going to like. I don't trust you to pay this. Therefore, they're going to figure out what you owe. You're either going to pay it, or you're going to stay.
>
> Somma: I don't have any money right now.
>
> Respondent: You're going to stay. What happens is, you've done this over and over and over again. The reason you've got warrant blocks, it looks like ten of them, if because you never do what you're supposed to do.
>
> Somma: I was – I have to serve probation today, I was going to go to probation –
>
> Respondent: Boy, aren't they going to be ticked when they find out that you can't come because you've got new drug convictions? Looks to me like you're almost looking to go back to prison.
>
> Somma: I'd rather not.

Respondent: I wouldn't think you'd volunteer for it. But you obviously, you're not learning your lessons.

Somma: Your Honor, I'll pay it.

Respondent: Drugs. Theft. Violence.

Somma: I'll pay the fine if you give me the fine.

Respondent: You don't do what you're supposed to do. That's what the problem is. Do you think I want to just get in line with a warrant myself? Your drug problems are obviously very bad.

Somma: I was – here trying to take care of it like I was supposed to.

Respondent: Yep. With all your problems, you're still bouncing weed in your pocket, huh?

Somma: Not at the moment. I don't have any money on me, Your Honor.

Respondent: You already told me that. I assume that, or you wouldn't have this matter for not showing up. Uh, anybody you can call, or are we just wasting our time?

Somma: I could call my wife, and she could pay it over the phone.

Respondent: Why don't you have a seat in the front row. I won't put you in the lockup, and Beth, maybe we can find out what he owes.

Stipulations ¶179.

{¶45} That day, Kelly Langan, Somma's wife, paid Somma's $150 fine and $140 in court costs. Stipulations ¶180. Respondent never conducted an ability to pay hearing or otherwise complied with R.C. 2947.14. Stipulations ¶181.

{¶46} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Fifteen:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶47} As with Riddle, Mitchell, and Miller, Somma was threatened with continued incarceration on a nonjailable offense unless he paid his fines and costs. As with all defendants previously discussed, Respondent did not conduct an ability to pay hearing, did not advise Somma of his due process rights, did not separate fines and costs, and did not otherwise apply R.C. 2947.14.

Using Suspended Jail Time to Coerce Payment of Fines and Costs

{¶48} This category includes the discussions of Counts Five, Ten, Eleven, Twelve, and Thirteen.

Count Five—The Ridenour Matter

{¶49} On or about January 10, 2021, Luke Ridenour was charged with possession of drug abuse instruments, a first-degree misdemeanor, after overdosing in his home. Stipulations ¶77. On January 12, 2021, Ridenour appeared before Respondent without counsel for arraignment. Stipulations ¶78 After being advised of his potential penalties, Ridenour entered a plea of guilty. Stipulations ¶¶79-80. Before imposing Ridenour's sentence, Respondent stated, "I don't put people in jail for this kind of stuff, Luke. I mean, you're going to kill yourself. You want to kill yourself, that's your business. At the same time, if the police gotta get involved, then it's my business." Stipulations ¶81. Respondent sentenced Ridenour to 30 days in jail, a $750 fine plus court costs, and a one-year suspension of his driver's license. Stipulations ¶86. Respondent suspended the 30-day jail sentence on the condition that Ridenour pay his fines and costs that day. Stipulations ¶82. The following exchange then took place between Respondent and Ridenour:

Respondent: Uh, you're going to start making some telephone calls to raise money, I guess. How much you got with you now?

Ridenour: I don't have anything on me now. I have $45 at home.

Respondent: Oooh. That's not good. Okay. I'm gonna write down here that you gotta pay it now. So when you get down to the clerk's office, they're going to tell you have much you owe. Then you're gonna start calling mom and dad and grandma and ask them for birthday presents early, okay?

Ridenour: Yes, sir.

Respondent: So for right now, I'm going to write, "Pay today" however, Beth, if he can come up with a substantial amount I might give him some (inaudible). I want you to live brother. I don't want to put you in jail, but if you keep doing crazy where it risk me, get behind the wheel of a car –

Ridenour: This was at home, you know that, right?

Respondent: What's that?

Ridenour: You know this was at home, right?

Respondent: Yeah.

Ridenour: Okay. I was just making sure.

Respondent: The fact that mom's gotta call and save your life. All right, you have a seat in the front row—be with you in a minute.

Stipulations ¶ 82.

{¶50} On the journal entry from the hearing, Respondent wrote, "Pay Today." Stipulations ¶83; Stip. Ex. 65. After contacting his family, Ridenour was able to secure $500 and informed Respondent's bailiff. Stipulations ¶86. The bailiff stated that he would have to check with Respondent to see if that was enough to release Ridenour. After conferring with the bailiff, Respondent authorized Ridenour's release after several hours. Stipulations ¶84. On the journal

entry, Respondent crossed out, "Pay Today," and wrote, "Pay $500 today." Stipulations ¶85; Stip. Ex. 65.

{¶51} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Five:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶52} Contrary to R.C. 2947.14, Respondent held Ridenour in custody for hours, threatened to jail him for his inability to pay his costs and fines, did not provide due process protections, did not separate fines and costs, and did not credit Ridenour $50 toward his fines and costs. Respondent also demonstrated a bias based on Ridenour's socioeconomic status. He questioned how long Ridenour would have to work to "get a thousand bucks in [his] pocket." Respondent also stated, "If you got money for heroin, you got money for fines and costs." Stip. Ex. 64A, 64B. At the hearing in this matter, Ridenour told the panel, "Because I had been told that I wouldn't be put in jail that day for that offense, but yet I'm being held captive there I would say related to my financial situation." Hearing Tr. 357. The clerk of courts verified Ridenour's belief that his detainment was based on his ability to pay: "He was being kept and his jail sentence was contingent upon his mother paying. He was crying in the lobby. And there was bartering back and forth between the bailiffs as to exactly how much money was going to be acceptable to get him out." Hearing Tr. 544. Justice cannot be conditioned on a defendant's, or his family's, ability to pay.

Count Ten—The Juersivich Matter

{¶53} On May 19, 2020, Michael Juersivich, Jr., was arrested and charged with theft, a first-degree misdemeanor. Stipulations ¶122. The following day, Juersivich appeared before Respondent, without counsel, for arraignment. Stipulations ¶123. After being informed of the charge and potential penalties, Juersivich pleaded guilty; he was sentenced to ten days in jail, with five days suspended, and a $250 fine. Stipulations ¶¶125, 127. Respondent wrote on the sentencing entry, "Release upon payment in full or 5-24-20, then TP 30 days." Stipulations ¶127; Stip. Ex. 105.

{¶54} Respondent also noticed that Juersivich still owed $751.30 in fines and costs on a 2017 case. During the hearing, Respondent stated, "If someone comes in and takes care of it for you, I'll cut you loose, but right now you're untrustworthy." He further stated, "They'll release you if you pay in full." Stip. Ex. 104A, 104B. Juersivich did not pay his fines and costs on either case; consequently, he served five days in jail. Stipulations ¶128. Had he been able to pay, he would not have had to serve any jail time. Stipulations ¶129.

{¶55} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Ten:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶56} Respondent jailed Juersivich for failing to pay his fines and costs on his prior case:

Relator: Right. So what you're saying is, "If you pay the $751.30, you walk?"

Respondent: Clear up your old case for which he didn't put you in jail, give you a chance of the new case.

* * *

Relator: You don't think that the statute applied even though you had decided to put him in jail because he hadn't paid $751.30 from his old costs?

Respondent: Because the old case still existed, I put him in jail on the new case.

Hearing Tr. 261-262.

{¶57} In doing so, the protections of R.C. 2947.14 should have been triggered. Respondent should have separated the amounts of fines and costs, afforded Juersivich his procedural due process rights, and conducted a hearing on Juersivich's ability to pay. Moreover, Juersivich was on disability for schizophrenia, was poor, and was unrepresented. Due to his socioeconomic status, he served five days in jail, whereas if Juersivich had had the money, Respondent would have "cut [him] loose." Hearing Tr. 259. Respondent's actions demonstrated a bias against Juersivich.

Count Eleven—The Williams Matter

{¶58} On September 16, 2007, Glen Williams was charged with driving under suspension, a first-degree misdemeanor, and taillight/license plate light, a minor misdemeanor. Stipulations ¶130. After failing to appear for arraignment, a bench warrant was issued for his arrest. Stipulations ¶131. The next year, Williams was arrested on the outstanding warrant but again failed to appear for arraignment, and a second warrant was issued for his arrest. Stipulations ¶132.

{¶59} On or about May 22, 2020, Williams was arrested and appeared before Respondent, without counsel, for arraignment on the 2007 case. Stipulations ¶133. Williams pleaded guilty to the charges and was sentenced to pay $110 in fines and to serve 20 days in jail; the jail sentence

was suspended on the condition that Williams pay his outstanding fines and court costs that day. Stipulations ¶¶134-135. During the hearing, the following exchange occurred:

Respondent: Oh man. You've been dancin' this thing around for 14 years?

Williams: It's been that long? No, what happened sir, I knew it was a while now, and um, I was in the progress – or process I should say – of getting that situated. As far as I can remember. But then my mom passed away, so I had to leave, and I had to deal with the, uh, burial, so the license and the (inaudible) I couldn't afford anymore so – but right now because of a job, I'm – I was working downtown, Cleveland, so it was accessible public transportation, but because of this whole situation now, that building shut down, so the company has a position out in Twinsburg on (inaudible) Road, so (inaudible) supposed to be living north of Orlando so um, I'm trying to clear all these things up to see if I can actually get back on the road so I can start working.

Respondent: Well, you didn't do what you were supposed to do, Glen. They had you in the program, trying to get your license back, you didn't complete things and then you didn't come back, then they sent you a notice.

Williams: (Inaudible) I moved a few times, so that could be it, too, sir.

Respondent: But here's where this gets ugly. Today I now find you guilty, something we hadn't done before.

Williams: Right.

Respondent: And I'm going to sentence you. When I sentence you –

Williams: Yes.

Respondent: I'm gonna order you to make sure you pay all fines, costs before you are released, because I'm not going to go looking for you ever again.

Williams: Oh, no sir, I'm not trying –

Respondent: If you don't have any money, then it ain't gonna work out today.

Williams: Okay. May I ask how much exactly do I have to –

Respondent: It's gonna be a lot, 'cause you've had warrants issued on at least a couple occasions.

Williams: (Inaudible).

Respondent: On the charge with the tail light –

Williams: Yes.

Respondent: I fine you $10. On the charge of driving under suspension, I find you $100 and costs. I do not want to put you in jail. However, I'm saying fines and costs must be paid before your release. If they are not paid, then you will serve 20 days in jail. Therefore – you have security? – they're going to take you down to the clerk's office.

Williams: Yes, sir.

Respondent: They're gonna say – they're gonna do all their little work and figure out this is how much you owe. At that point in time if you pay it, you're gonna go out the door.

Williams: Okay, sir.

Respondent: If you can't they're gonna put – take you into custody, and we'll talk again in three weeks.

Williams: Hm.

Stipulations ¶135.

{¶60} On the sentencing entry, Respondent wrote, "20 days jail; suspended if F + C pd. Pay before release." Stipulations ¶136; Stip. Ex. 109. Williams paid $629 in fines and costs that day and was released without serving any jail time. Stipulations ¶137.

{¶61} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Eleven:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶62} Respondent coerced payment on a 13-year-old case by threatening 20 days in jail:

> Relator: You told him that you didn't want to put him in jail, so the real reason you put him in jail was to squeeze him to pay his fines and costs?
>
> Respondent: I'm going to teach him a lesson one way or another.
>
> Hearing Tr. 272.

{¶63} Respondent's bias is demonstrated in his own statement to Williams: "if you don't have any money, then it ain't gonna work out for you today." Stipulations ¶135; Stip. Ex. 108A, 108B.

Count Twelve—The Hudspath Matter

{¶64} On January 5, 2020, Steven Hudspath was charged with theft, a first-degree misdemeanor, after stealing two bottles of Coca-Cola from a Sheetz convenience store. Stipulations ¶138. He failed to appear for his arraignment in Stow Municipal Court, and a warrant was issued for his arrest. Stipulations ¶ 139. Hudspath was arrested on the warrant on January 27, 2020, and appeared before Respondent, without counsel, the same day. Stipulations ¶¶140-141. Hudspath pleaded guilty to the theft charge, and Respondent sentenced him to pay a $250 fine and to spend ten days in jail. Stipulations ¶142. During the hearing, the following exchange occurred:

> Respondent: You're just a thief. This is a mistake. This is a complete plot to – All right, $250 and costs, 10 days in jail. I'll tell 'em to release you if you've paid all fines and costs after tomorrow. If you haven't paid fines and costs you'll continue to sit there until you'll see me. Unfortunately for you, I'm gonna be outta town Wednesday, Thursday, and Friday, which means it would be until Monday before I could see you. Hopefully you'll pay the fines and costs –

Hudspath: Well –

Respondent: And get released.

Hudspath: I don't know. I don't have the funds right now.

Respondent: You are never to return to any Sheetz. Do you understand that?

Hudspath: Yes, sir.

Respondent: If there is no money coming, get comfortable. I'm gonna make you pay a price somehow, since you've done this over and over again.

Stipulations ¶142.

{¶65} On the sentencing entry, Respondent wrote, "release after 1-28-20 if F + C paid in full or RTC 2-3-20." Stipulations ¶143; Stip. Ex. 115. The following day, Hudspath paid the remaining balance on his fines and costs and was released after serving one day in jail. Stipulations ¶144.

{¶66} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Twelve:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶67} The sentence that Respondent imposed on Hudspath was ostensibly lawful, but became problematic when Respondent conditioned Hudspath's release upon the payment of his fines and costs:

Relator: He gets one night in jail, but the other nine days he gets to walk if he has money?

Respondent: Yes.

Hearing Tr. 281.

{¶68} Respondent was also demeaning to Hudspath:

- "As I'm looking at your criminal record, it becomes obvious this ain't your first rodeo."
- "Aren't you a little old to be a petty thief?"
- "You enjoy time in jail, do you?"
- "What brings you here from Virginia? I think I like you better in Virginia is why I'm askin'."
- "You oughta stay in jail. You're just a thief."

Stip. Ex. 114A, 114B.

{¶69} Respondent failed to apply R.C. 2947.14; he failed to segregate fines and costs, failed to protect Hudspath's due process rights, and failed to hold an ability to pay hearing. His conduct and words also demonstrate a bias against those with lower socioeconomic statuses.

Count Thirteen—The Davis Matter

{¶70} On January 18, 2000, William Davis was charged with four traffic offenses; he ultimately pleaded guilty to one count of driving under suspension, a misdemeanor of the first degree, and the remaining three counts were dismissed. Stipulations ¶¶145-146. Davis was sentenced to pay a $1,000, with $500 suspended, and $125 in court costs. Stipulations ¶148. He was also sentenced to serve 90 days of home incarceration, 60 days suspended on conditions, including paying his fines and costs within 30 days. Stipulations ¶148. On March 20, 2000, a warrant was issued for Davis's arrest because he had failed to comply with the ordered conditions. Stipulations ¶149.

{¶71} On June 21, 2017, the fines and court costs from the 2000 case were sent to the Ohio Attorney General's Office for collection. Stipulations ¶151.

{¶72} On February 16, 2022, Davis was charged with possession of drug paraphernalia and three traffic offenses. Stipulations ¶152. On February 24, 2022, Davis appeared before Respondent, without counsel, for his arraignment. Stipulations ¶153. Davis entered pleas of not guilty, and the following exchange occurred:

Respondent: You got a case here that is 22 years old that you haven't paid off. And now you have a new case.

Davis: I've been in Florida.

Respondent: You what?

Davis: I was in Florida, sir.

Respondent: So, if you move to Florida you don't have to take care of your old fines and costs?

Davis: To be honest with you, uh, Judge, I have no idea what the fine is, sir.

Respondent: Man, I hope Florida was good to you and you came home with a bank account. Because we're not leaving here with a 22-year-old case unresolved.

* * *

Davis: Sir, I promise you, if I had knowledge of the 22-year-old case, I would've done something about it by now, Your Honor –

Respondent: I can't understand you. I don't know if, if you're mumbling or if it's because –

Davis: Oh, I'm sorry, sir. Maybe I'm not close enough [to the microphone], sir. I said, if I would have known something about the 22-year-old case, or had recollection of it while I was gone, sir, I would have made some kind of attempt to set up a payment plan or something.

Respondent: Well, we're going to take care of it today, or you're not going home.

Davis: Your Honor, I don't have anybody with me today.

Respondent: Then you're not going to go home.

Davis: And Um, I was going to go file my taxes as soon as I leave here, Your Honor.

Respondent: No. It's 22 years old. You were convicted in February of year 2000. Your record was bad enough that the magistrate ordered a $1,000 fine, 90 days in jail, suspend $500 of the fine, suspend 60 days in jail, on the condition that you not operate a motor vehicle without a valid license and that you pay your fines and costs within 30 days –

Davis: Your Honor –

Respondent: You then apparently took off –

Davis: No, sir, it wasn't like that, Your Honor, I promise you.

Respondent: And when you tell me, I don't know if –

Davis: When I left this state, Your Honor, my mother had just passed away. I didn't have anything here, sir. All my brothers went to Florida.

Respondent: We had you sign a form, acknowledging exactly how much you owe, when it was due –

Davis: I'm sure, Your Honor.

Respondent: So even though I feel bad for you with your mother, the fact that, the fact you didn't take care of this business –

Davis: Your Honor, if you give me the opportunity today, I promise you, I promise you. I came back to this state to be with my daughter and my grandchildren, sir.

Respondent: You signed a form promising that you immediately ignored when you left –

Davis: Yes, sir. I would pay that in full –

Respondent: You owe $792.

Davis: Sir, I don't have seven hundred –

Respondent: I'm going to give you credit for $50 a day, each day in jail.

Davis: Sir, please don't do that.

Respondent: Do the math, you'll know how long you're going to stay.

Davis: Your Honor, could you please work with me on this, I promise –

Respondent: Work with you? [Inaudible]

Davis: Sir, please sir. Please, sir. I promise you. I promise you, sir.

Respondent: Your promises mean nothing.

Davis: Your Honor –

(Stip. ¶ 154).

{¶73} On February 24, 2022, Respondent issued an order committing Davis to "CASC, or other Oriana House Custodial Program with full restriction, for a term of 90 days." Stipulations ¶155; Stip. Ex. 131. On the journal entry, Respondent wrote, "Δ failed to do jail sentence, failed to pay. Remand to RIP for 90 days then RTC." Stipulations ¶166; Stip. Ex. 132. Before issuing the order, Respondent did not conduct an ability to pay hearing or otherwise follow R.C. 2947.14. Stipulations ¶157).

{¶74} Davis was transported to Oriana House, but the staff could not locate the proper placement for him. Stipulations ¶158. Staff informed Davis that he was to remain in the facility, but he made a phone call and left the building. *Id.* A bench warrant was issued for Davis's arrest. Stipulations ¶159. Upon learning of the warrant, Davis retained Tiana Bohanon to represent him. Stipulations ¶160. On March 4, 2022, Bohanon filed a motion to recall the warrant on Davis's behalf. Stipulations ¶161. The same day, Respondent issued an entry, on which he hand-wrote, "Active warrants. Must present self. KRH." Stipulations ¶162; Stip. Ex. 137.

{¶75} On March 15, 2022, the fines and court costs from the 2000 case were again sent to the Ohio Attorney General's Office for collection. Stipulations ¶163. At the time of the hearing in this matter, the warrant remained outstanding. Stipulations ¶164.

{¶76} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Thirteen:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶77} Respondent had a legal basis to incarcerate Davis, but the exchange between them made clear that fact that Davis would only be incarcerated if he could not pay his outstanding fines and costs. Davis begged Respondent to release him because he did not have the financial means to pay. Such disparate treatment establishes that Respondent harbors a bias against defendants who lack the financial ability to pay their fines and costs. Additionally, Respondent failed to apply R.C. 2947.14; he failed to segregate fines and costs, failed to protect Davis's due process rights, and failed to hold an ability to pay hearing.

Coercing Payment Through Incarceration or the Threat of Incarceration

{¶78} This category includes the discussions of Counts Two, Nine, and Sixteen.

Count Two—The Smitherman Matter

{¶79} On February 20, 2020, Darcell Smitherman was arrested and charged with criminal trespass, a misdemeanor of the fourth degree. Stipulations ¶28. The following day, he appeared before Respondent for his arraignment via video from the Summit County jail. Stipulations ¶29. Smitherman entered a plea of not guilty and expressed that he wanted to take the case to trial. Stipulations ¶30. Respondent reviewed Smitherman's past criminal files, which were numerous. Stipulations ¶31. Smitherman owed $500 in outstanding fines and $1,841 in outstanding costs on

five previous cases in he had already been convicted. Smitherman also had 40 days of suspended jail time on those five cases. Stipulations ¶32.

{¶80} Respondent then remanded Smitherman to the Community Alternative Sentencing Center ("CASC") for 30 days and engaged in the following exchange:

> Respondent: They're not going to hold you in the Summit County jail for this charge, but I'm tired of playing with you like the deputies are. You make a fool of the system by constantly being arrested for the exact same thing, never paying a dime, and by doing that, you know that the jail won't hold you a misdemeanor of the fourth degree. Therefore, you get out, you do the exact same thing again and none of it matters to you, so this time, I'm going to try and get clever, figure out a reason to hold you for a month or two 'cause I gotta do something to punish you or you'll just keep doing the same old, same old. In the meantime, we'll let you set the other matter for trial. You're right, you should go to trial on that one. Okay, thanks. We're done.
>
> Smitherman: I just want to know the outcome for today, will I be released?
>
> Respondent: I'm hoping not.
>
> Smitherman: Oh, okay. Thank you, sir.
>
> Stipulations ¶34.

{¶81} In the sentencing order, Respondent listed the five previous cases and wrote: "[Defendant] has repeatedly been convicted of criminal trespass and has always failed to pay fines/costs or do community service to satisfy his debts and/or return to court to address these issues. Remand CASC forthwith for 30 days, credit $1,500 toward F+C, RTC for further orders." Stipulations ¶35; Stip. Ex. 38.

{¶82} Smitherman's case was assigned to Judge Coates's docket. Stipulations ¶37. On March 12, 2020, Smitherman pleaded guilty to criminal trespass and was sentenced to 30 days in jail with credit for the 17 days that he served under Respondent's order. Stipulations ¶38.

{¶83} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Two:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶84} Respondent imposed suspended jail time on Smitherman without any procedural due process prior to doing so:

Relator: In other words, when you put someone on a suspended sentence, it's just like putting them on probation, they're entitled to the same due process?

Respondent: Okay.

Relator: You agree with that, right?

Respondent: Yeah.

Relator: So just like under Crim. Rule 32.3, when there's a revocation of probation, you've got to give them a notice of the violation, an opportunity to be heard, the right to counsel, all sorts of procedural due process, rights?

Respondent: Perhaps.

Relator: You didn't give Mr. Smitherman any notice, right?

Respondent: We'd have to create the Darnell Smitherman Municipal Court.

Relator: Right. But you didn't give him any notice, right?

Respondent: No, I guess not.

Hearing Tr. 162.

{¶85} In addition, Respondent did not advise Smitherman of his due process rights, did not apportion the fines and costs, did not inquire into Smitherman's ability to pay, and did not otherwise apply R.C. 2947.14. To be sure, based on the fines owed on the prior five cases, Respondent could only incarcerate Smitherman for ten days, not the 30 days ordered. Respondent also demonstrated a bias against Smitherman by getting "clever" to find a way to incarcerate him for being a repeat offender who had an inability to pay his fines and costs.

Count Nine—The Cesaratto Matter

{¶86} On May 26, 2015, Anthony Cesaratto entered guilty pleas, without counsel, in three separate matters in the Stow Municipal Court. Stipulations ¶109. Respondent sentenced Cesaratto to serve ten days in jail and pay $450 in fines. Stipulations ¶110. On the sentencing entry, Respondent ordered, "Release on payment in full or return to court on 5/29/15 @ 8:30am." Stipulations ¶111; Stip. Ex. 92-94. Per the terms of the order, had Cesaratto been able to pay his fines and costs, he would not have had to serve any jail time, but because he could not pay, he remained in jail until May 29, 2015, when he was returned to court. Stipulations ¶¶ 112-114. Respondent ordered Cesaratto's release, but required him to return to court on June 19, 2015, if he had not fully paid his fines and costs. Stipulations ¶114. Cesaratto failed to pay and failed to appear; Respondent issued a warrant for his arrest. Stipulations ¶115.

{¶87} Five years later, on June 16, 2020, Cesaratto was arrested on the outstanding warrant; no charges were pending. Stipulations ¶116. Cesaratto appeared before Respondent, without counsel, and Respondent ordered Cesaratto held in custody until he paid his fines and costs in full, or until June 19, 2020, when he would be returned to court:

> Respondent: There's three different cases, and you owe like 1200 bucks and you haven't don't anything. Tell me why I shouldn't just keep you in jail, give you credit for 50 bucks a day, let you stay there a month.

Cesaratto: Because I'll get it paid. I've been done for five years. I've been here for six months now. I've established residency and ties back to the community.

Respondent: One of these cases is 10 years old. You haven't paid a dime.

Cesaratto: I understand. But I've been back for the last five years and I'm, ya know, getting a house, doing this, doing that. I can get the money paid.

Respondent: I'm not interested in the future. What do ya got right now to pay?

Cesaratto: Couple hundred.

Respondent: You stay. I'm not playing with you for 10 years.

Cesaratto: Well I'm just sayin' I got bills.

Respondent: Everybody in the room's got bills. If I told them all, "I tell you what, I'll give you 10 years, I'll give you 15 years," how do you think that works? You want to make some calls, see if your new life has made people trust you to lend money?

Cesaratto: No.

Respondent: Go have a seat.

Stipulations ¶118; Stip. Ex. 98A, 98B.

{¶88} On the journal entry, Respondent wrote the following:

Δ has failed to pay F+C, has failed to return to court for further hearings, for 5-10 years. Δ has been actively employed he states. At court he disrupted court proceedings by loudly passing gas, laughing, banging on the structure. Release upon payment in full, credit $50 each day, return to court 6-19-20 8:30 a.m. if still in custody. Hold CF Jail.

Stipulations ¶119; Stip. Ex. 99.

{¶89} Cesaratto did not pay his fines and costs and remained in custody until he was brought back to court on June 19, 2020. Stipulations ¶120. At that point, he was released and was credited $100 toward his fines and costs. Stipulations ¶121. Respondent did not conduct an ability to pay hearing or otherwise comply with R.C. 2947.14.

{¶90} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Nine:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶91} Cesaratto was incarcerated for four days, and while Respondent argued it was time on Cesaratto's original sentence, Respondent's words indicated the time was due to the fact that Cesaratto failed to pay his fines and costs. By jailing Cesaratto for failure to pay his fines and costs, Respondent was required to comply with R.C. 2947.14, and he failed to do so. Fines and costs were not segregated, Cesaratto's due process rights were not protected, and Cesaratto was not credited $50 per day. Respondent also demonstrated a bias toward Cesaratto. He was demeaning to him, calling him a "fool" with "the attention span of a gnat." Stip. Ex. 100A, 100B. Even after Cesaratto paid $1,200 toward the amount owed, he was threatened with more jail time if the balance was not paid off. Stip. Ex. 100A, 100B.

Count Sixteen—The Pruitt Matter

{¶92} On October 29, 2017, Lanee Pruitt was charged with two counts of operating a vehicle under the influence and three accompanying traffic violations. Stipulations ¶182. On January 9, 2018, Pruitt pleaded no contest to one count of OVI, and Respondent found her guilty. Stipulations ¶183. The remaining charges were dismissed. Stipulations ¶183. Pruitt was sentenced to serve five days in jail, 30 days of home incarceration, six months of community

control, and treatment recommendations including ignition interlock and alcohol monitoring. She timely completed all of the terms of her sentence. Stipulations ¶184.

{¶93} Pruitt was also sentenced to pay fines and court costs totaling $3,312. Stipulations ¶185. On May 9, 2018, Pruitt entered a payment plan, in which she agreed to pay $100 towards her fines and court costs every two weeks. The payment plan did not require Pruitt to return to court. Stipulations ¶186.

{¶94} Pruitt missed her payments on July 16 and August 1, 2018, and the clerk sent Pruitt past due notices. Stipulations ¶187. On or around September 29, 2018, Magistrate John Clark inappropriately issued a warrant for Pruitt's arrest based on her failure to pay her fine and court costs. Stipulations ¶188. On October 12, 2018, Pruitt's case was sent to the Ohio Attorney General's Office for collection. Stipulations ¶189.

{¶95} On or about February 10, 2022, Pruitt was a passenger in a vehicle being driven by a friend. Stipulations ¶190. During a traffic stop, the police ran Pruitt's information and arrested her on the outstanding warrant. Stipulations ¶191. At that point, she had paid $1,511.80 toward her fine and court costs. Stipulations ¶192. Pruitt was brought before Respondent later that day, and the following exchange took place:

Respondent: All right. You haven't done right, Lanee. You haven't paid fines and costs. You didn't come back to court.

Pruitt: That's the thing. I never knew I had to come back to court. I was on, uh, house arrest. I mean I was on an ankle monitor.

Respondent: Looks like you quit paying.

Pruitt: Only because –

Respondent: How come?

Pruitt: Because I had a baby in 2017. When I had got, um, arrested then when I had did get arrested that day I ended up not, uh, staying with

my company that I was working with. So I didn't have no way to pay it at that time. But I do see that they was, like, taking it from my, uh, taxes.

Respondent: Tell me something good. Tell me you showed up today and you got $2,469 with you.

Pruitt: No. But I'll have it in a couple weeks.

Respondent: How are you gonna have it in a couple weeks when you haven't done it in –

Pruitt: Because it's income tax time.

Respondent: – four or five years?

Pruitt: Yeah, it's income tax – well, wait wait –

Respondent: You must've hit the lottery?

Pruitt: No. It's income tax season. You – you get all the tax money back. But I was gonna – I didn't even know I had a warrant out for my arrest or I had to come back to court honestly or I would have been did it. It said how long ago it was I haven't drove since then. So I haven't got like pulled over or anything. I never got anything in the mail saying I had to come to court. But I had a um, what is them called? A probation officer? For the ankle monitor that I had on. And she never told me nothing about coming back to court after I got that ankle monitor off. She just was like you have to set up a payment plan, which I did but I failed to pay it.

Respondent: (To staff) Did you look at this? Did she do the jail? Did she –

Staff: Yeah, she's done the jail. What she didn't do was return to court. Magistrate Clark had her on a payment plan, return to court, every so often, and make payments and she failed to appear at her last return to court so he did a warrant.

Pruitt: Yeah, which I didn't know about honestly. Because I woulda came to court if I could pay or if I couldn't pay. I wouldn't have missed a day of court.

* * *

Respondent: So here I am. Four years later. And you showed up and made payments twice. Why shouldn't I just keep you in jail?

Pruitt: Well I can make the payments.

Respondent: You didn't, for four years is what I'm saying. Had you, this would have been over long ago.

Pruitt: You're right.

Respondent: But you just walked away. Why should I trust you now?

Pruitt: Because I have a job now, and I have, I just had an infant, like I don't – I can't –

Respondent: What can you come up with today?

Pruitt: Well I don't get paid until Friday. I got like a hundred, $200 in my –

Respondent: Nah.

Pruitt: I got like $200 –

Respondent: Just go ahead on back there. I'll think about it for a bit but –

Pruitt: Okay.

Respondent: I don't think I'm gonna let you go when you've taken a four-year vacation from it. See ya.

Stipulations ¶193.

{¶96} Respondent issued a court order requiring that Pruitt be held in custody until she paid $250 and that she return to court on February 22, 2022. Stipulations ¶194. Pruitt paid the $250 approximately one hour later and was released. Stipulations ¶195. Respondent did not credit Pruitt $50 toward her fines as required by R.C. 2947.14 for the time she was in custody. Stipulations ¶196. On February 22, 2022, Pruitt appeared in court and provided proof that the Ohio Attorney General's Office had seized her tax refund of $426.60, which was credited to her outstanding fines and costs. Stipulations ¶197. Respondent ordered Pruitt to appear on April 22, 2022, for "further orders." Stipulations ¶198; Stip. Ex. 172. On April 21, 2022, Pruitt paid $200

toward court costs, and on April 22, 2022, she again appeared in court. Stipulations ¶199. On April 22, 2022, Respondent ordered Pruitt to appear again on May 23, 2022, for "further orders." Stipulations ¶200; Stip. Ex. 173.

{¶97} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Sixteen:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶98} Even though Respondent conceded that the warrant for Pruitt was issued in error, he tried to justify holding her in custody:

> Relator: But you would agree, Your Honor, that you had no legal basis to hold her even if she shouldn't pay the 250 bucks?
>
> Respondent: No, I think I still had a basis to hold her.
>
> Relator: Under what theory?
>
> Respondent: The fact that she's sitting there, and I say, "You're not leaving until you make some arrangements. You don't have to pay the whole thing."
>
> Hearing Tr. 323.

{¶99} Respondent extorted money from Pruitt, who was wrongfully arrested and then held in custody under threat of continued custody until she paid $250. Fines and costs were not segregated, Pruitt's due process rights were not protected, and Pruitt was not credited $50 per day. Respondent also demonstrated a socioeconomic bias toward Pruitt.

Using the Threat of Bail to Coerce Payment of Old Fines and Costs

{¶100} This category includes the discussion of Count Fourteen.

Count Fourteen—The Murray Matter

{¶101} On November 28, 2017, Tarra Murray was charged with attempted unlawful purchase of pseudoephedrine, a misdemeanor of the second degree, and possession of drug paraphernalia, a misdemeanor of the fourth degree. Stipulations ¶165. On January 19, 2018, Murray pleaded guilty to both charges and was sentenced to pay a $750 fine and $358 in court costs; she was also ordered to serve 30 days in jail, which was suspended on the condition that she pay her fines and costs after she was released from custody in a separate matter. Stipulations ¶¶ 166, 168. Her driver's license was also suspended for 12 months. Stipulations ¶168.

{¶102} Murray did not pay the fines or court costs, and on April 26, 2018, the case was sent to the Ohio Attorney General's Office for collection. Stipulations ¶169. Between March 2019 and April 2021, Murray was credited with $351 towards her costs through collections made by the Ohio Attorney General's Office. Stipulations ¶170.

{¶103} On or about June 7, 2021, Murray was charged with possession of drugs, a felony of the fifth degree, and possession of drug paraphernalia, a misdemeanor of the fourth degree. A warrant was issued for her arrest. Stipulations ¶171. In February 2022, Murray was served with the warrant and appeared for arraignment on February 24, 2022. Stipulations ¶172. At that hearing, the following exchange occurred:

> Respondent: You have an old case you haven't paid anything on, and now you have new charges. That makes it difficult for me to give you the bond your attorney is going to ask for because you're already showing yourself to be irresponsible. * * * Do you have an attorney or the ability to hire one?
>
> Murray: I need one. * * *

Respondent: How do you support yourself?

Murray: Right now, I'm not working because of the warrant. But now that the warrant is cleared up, I'm going to start work again. And I do have something to pay on that fine today.

Respondent: Are you willing to allow the public defender to stand in with you for purposes of the bond hearing today?

Murray: Of course.

Respondent: Ms. Thompson.

Thompson: Thank you, Your Honor. * * * We did discuss the monies owed on the other case, and she did indicate to me that she has some, some money that she can pay on that today.

Respondent: Five years later on old drug cases, she's got some money? What kind of money do you have to pay on your five-year-old drug convictions?

Murray: I can pay it all off.

Respondent: Huh?

Murray: I can pay it all off.

Respondent: Pay it all?

Murray: Mmhmm.

Respondent: That's a big difference then. [Inaudible] Anything else you want to tell me about bond?

Thompson: So, based on those things we'd ask the court to consider a personal recognizance.

Respondent: I would consider that, but I want to know that that got paid. How is that going to get done?

Murray: I can pay it today with my card right now.

Respondent: Where's he at?

Murray: No, my card. My bank card.

Respondent: Okay. If you go over there and pay that, you're going to come back, at that point in time, I will address bond. I've heard what you have to say, so you don't have to stick around. I'm inclined to give her a signature bond.

Stipulations ¶173.

{¶104} Murray paid $882.20 in satisfaction of her outstanding fines and costs on the 2017 case, and Respondent issued personal recognizance bonds in the 2021 cases. Stipulations ¶¶ 174-175.

{¶105} Based upon the evidence presented at the hearing in this matter and the stipulations of the parties, the panel finds, by clear and convincing evidence, that Respondent violated the following rules with regard to Count Fourteen:

- *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. 2.3(B)* [a judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice.]; and,
- *Prof. Cond. R. 8.4(d)* [conduct prejudicial to the administration of justice.].

{¶106} Murray was the only defendant who had the benefit of counsel. Murray's counsel, public defender Tammy Thompson, who testified at the hearing in this matter, understood the importance of expressing to Respondent that Murray could make a payment. Hearing Tr. 380-382. Murray's bond was conditioned on her ability to pay her outstanding fines and costs, not on the application of Crim. R. 46:

Relator: Well, why wouldn't you just give her the PR bond before she paid?

Respondent: Because she didn't pay –

Relator: Because you were conditioning your –

Respondent: – on the old case.

Hearing Tr. 308.

{¶107} This count, although different than the others in the type of coercion that was used, is similar to the others in the fact that coercion was used to accomplish the payment of fines and costs. Here, Respondent failed to follow the criminal rules in setting Murray's bail. The coercive conduct failed to promote the public's confidence in the integrity and independence of the judiciary and was prejudicial to the administration of justice. Moreover, Respondent's conduct in this court further demonstrates a socioeconomic bias.

AGGRAVATION, MITIGATION, AND SANCTION

{¶108} When recommending sanctions for attorney misconduct, the panel must consider all relevant factors, including the ethical duties violated by the respondent, precedent established by the Supreme Court, and the existence of aggravating and mitigating factors. Gov. Bar R. V, Section 13(A). "The primary purposes of judicial discipline are to protect the public, guarantee the evenhanded administration of justice, and maintain and enhance public confidence in the integrity of the judiciary." *Disciplinary Counsel v. Bachman*, 163 Ohio St.3d 195, 2020-Ohio-6732, ¶22, citing *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704, ¶33.

Aggravating Factors

{¶109} The parties stipulated to, and the panel finds, the following aggravating factors:

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

{¶110} Respondent fails to comprehend the significant impact that his conduct has had on both the victims and their families. In this case, the victims were municipal court defendants who were the poor and downtrodden of society. Many suffered from substance abuse, some suffered

from mental illness, others told Respondent of family members that passed away around the time of their offenses. All were struggling financially, and these individuals should not lose their liberty when others would not. The panel notes the repeated and obvious disparate treatment of the socioeconomically disadvantaged as an aggravating factor.

{¶111} Additionally, Respondent exhibited no sympathy towards the victims during their respective hearings before him, or at the panel hearing in this matter. In fact, when questioned about Pruitt's emotional testimony, Respondent suggested that it was at best, "theatrical," or at worst, influenced by Relator. Hearing Tr. 697-698.

{¶112} The panel also considered whether Respondent acknowledged the wrongful nature of his conduct. Although it is true that Respondent displayed an overall cooperative attitude toward the proceedings, he was not entirely forthcoming during the hearing. He was, at times, combative with Relator, and also shifted blame to others. For example, in the Dawson matter, Respondent blamed unlawfully incarcerating Dawson on having to handle another judge's docket. Hearing Tr. 79-81. Similarly, in the Cannon matter, Respondent blamed his bailiff for altering the court order. Hearing Tr. 95. So while Respondent was cooperative, he did not fully acknowledge the wrongful nature of his conduct.

{¶113} Moreover, Respondent attempted to justify the lack of due process given to the victims due to their criminal histories. For example, in regard to Dawson, Respondent testified as follows:

> Relator: And you agree that he should have never spent a night in jail in this case, it's a non-jailable offense?
>
> Respondent: If you saw Dawson's record, you'd think any time he spent in jail was a good thing for the world.
>
> Hearing Tr. 73-74.

{¶114} This is but one of many examples of instances where Respondent was demeaning to the defendants who appeared before him.

{¶115} Finally, in terms of aggravation, the panel notes that the wrongful nature of Respondent's conduct was brought to his attention through the letter of inquiry sent to him in or around June 2021 and the initial complaint filed in this matter on December 6, 2021. Despite being aware of the concerning nature of his conduct, Respondent continued to engage in the same coercive tactics such that an amended complaint, adding four new counts, was filed on May 24, 2022.

Mitigating Factors

{¶116} The parties stipulated to, and the panel finds, the following mitigating factors:

- The absence of a prior disciplinary record;
- The absence of a dishonest or selfish motive;
- A cooperative attitude toward the proceedings; and
- Evidence of good character and reputation.

{¶117} The panel notes that, prior to this matter, Respondent has had an unblemished career of nearly 40 years as a lawyer and judge. He submitted evidence of his good character and reputation in the community from lawyers and judges. Respondent is actively involved in the community and created programs through the municipal court to educate and rehabilitate defendants. He testified that the collection of fines and costs is about more than money; it is about holding defendants accountable and teaching them responsibility. Hearing Tr. 272, 675-676. The panel finds Respondent's testimony on this matter to be genuine. Respondent is also quite proud of the strides that he made in terms of the court's budget, including the cuts that were made to expenses and the increased collection of debts. Respondent should be commended for these efforts.

{¶118} Based on the evidence presented at the hearing in this matter, there is no question that Respondent has done great things for the Stow Municipal Court, many defendants, and the community. However, "good intentions do not excuse him from complying with the Code of Judicial Conduct." *Disciplinary Counsel v. Lemons*, ___ Ohio St.3d ___, 2022-Ohio-3625, ¶24.

Sanction

{¶119} Respondent's judicial philosophy has been exhibited by his conduct and his own words: "If you don't have any money, then it ain't going to work out for you today." Stipulations ¶135; Stip. Ex. 108A, 108B. This philosophy does not promote the public's confidence in the judiciary and is inconsistent with a judge's fundamental responsibility to do justice. Former Chief Justice Maureen O'Connor sent a letter to all Ohio judges in 2018 reinforcing the priority of the courts to do justice, not to collect financial sanctions from defendants:

> I know the pressure that many of you face to generate revenue, to increase collection rates, to "self-fund" as if the courts are a business trading in a commodity. But court cases are not business transactions. We do not buy and sell a commodity; we perform a public service. Nevertheless, focus of the "business" of the courts appears at times to be overtaking interest in our fundamental responsibility to do justice.
>
> Stip. Ex. 8.

{¶120} Although the panel appreciates Respondent's position that the collection of fines and costs is a necessary part of a defendant's sanction, there is a process that must be followed in order to do so. Respondent acknowledged that he was aware of R.C. 2947.14 but found it to be ineffective. Hearing Tr. 39, 46. As a result of this case, however, Respondent told the panel that he has been "jolted," and plans to do things differently. Hearing Tr. 759. Respondent also explained that he has reflected on how he speaks to defendants:

> I've learned that you've got to watch your words. What happens is, I talk all day every day to hundreds of thousands of people. When you see it in black and white, it sounds rude. * * *. I'm going to be more careful. * * *. I can't be as informal

> as I have been even though I think I accomplish the same purpose. By being more formal, that will * * * comply better with the law.
>
> Hearing Tr. 739.

{¶121} The panel agrees. Respondent's casual attitude toward the application of the law, and toward defendants in general, led to liberties being violated and hindered the administration of justice. To be sure, "an abuse of judicial power that deprives a person of his or her liberty is a significant violation of the public trust." *Disciplinary Counsel v. Repp*, 165 Ohio St.3d 582, 2021-Ohio-3923, ¶29. Furthermore, "[w]hen 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." *Disciplinary Counsel v. Bachman*, 163 Ohio St.3d 195, 2020-Ohio-6732, ¶21. Respondent caused multiple defendants to lose their liberty for periods of time ranging from hours to several days. - Accordingly, a period of actual suspension is warranted in this case.

{¶122} To determine the length of suspension appropriate based on Respondent's conduct, the panel reviewed the following case law.

{¶123} First, in *Bachman*, a magistrate unlawfully held a woman in custody for two days for contempt of court after she created a disturbance outside of his courtroom. *Id.* at ¶¶5-11. The Supreme Court of Ohio found that Bachman's conduct violated Jud. Cond. R. 1.2 (requiring a judge at all times to act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and to avoid impropriety and the appearance of impropriety), Jud. Cond. R. 2.2 (requiring a judge to uphold and apply the law and perform all duties of judicial office fairly and impartially), and Jud. Cond. R. 2.8(B) (requiring a judge to 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). *Id.* at ¶12. In holding that Bachman's conduct warranted an actual suspension from the practice of law for six months, the Court explained:

> We recognize the many circumstances under which trial-court judges and magistrates can become exasperated with the courthouse conduct of parties, lawyers, and the public. Judicial officers are human beings with the full range of human emotions. But when lawyers become judicial officers, they are held to an additional—and a higher—standard of conduct. *See* Jud. Cond. R., Preamble [3]. This is particularly so because of the many ways in which a judicial officer can deprive a person of property and, more importantly, of liberty.
>
> *Id.* at ¶ 34.

{¶124} Similar to Respondent, Bachman did not have a prior disciplinary record, exhibited a cooperative attitude toward the proceedings, presented evidence of good character or reputation, and did not act with a selfish or dishonest motive, although the Court disagreed with the last factor. *Id.* at ¶14. Additionally, the victim was vulnerable and was harmed by Bachman's conduct. *Id.* Bachman's conduct affected the liberty of one victim; Respondent's conduct affected 16. Thus, Respondent is deserving of a sanction more significant than an actual suspension of six months.

{¶125} In *Disciplinary Counsel v. Repp, supra*, a judge was suspended for one year after he ordered a spectator in his courtroom to submit to a drug test. When she refused, Repp ordered that she be held in contempt for ten days. *Repp* at ¶¶2-14. She was released the following day. *Id.* at ¶19. The Supreme Court of Ohio indicated Repp's suspension was intended "to send a strong message to the judiciary that this type of judicial misconduct will not be tolerated." *Id.* at ¶¶2, 17, 32-33.

{¶126} The Court found that Repp had committed the following violations: Prof. Cond. R. 8.4(d) (conduct prejudicial to the administration of justice); Jud. Cond. R. 1.2 (requiring a judge to act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary); Jud. Cond. R. 2.2 (requiring a judge to uphold and apply the law and to perform all duties of judicial office fairly and impartially); and Jud. Cond. R. 2.8(B) (requiring a judge to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others

with whom the judge deals in an official capacity). *Id.* at ¶21. The Court found that Repp acted with a dishonest or selfish motive, committed multiple offenses, and caused harm to two vulnerable victims; it also found that Repp did not have a prior disciplinary record, made a full and free disclosure to the Board, exhibited a cooperative attitude toward the proceedings, and provided evidence of his good character and reputation. *Id.* at ¶¶ 23-24. Relying on *Bachman*, the Court suspended Repp for a period of one year. Respondent's conduct in this case is more wide-reaching than Repp's conduct, and thus, a longer actual suspension is necessary.

{¶127} In *Disciplinary Counsel v. Medley*, 104 Ohio St.3d 251, 2004-Ohio-6402, , a municipal court judge instituted his own debt collection procedure in civil cases:

> While he was judge of the Gallipolis Municipal Court, respondent used the following procedure in debt-collection cases in small-claims court. The court made available to prospective plaintiffs a preprinted complaint form for use in filing actions. After a complaint was filed, the deputy clerk of the court entered a trial date on the printed complaint form. The complaint was then sent to the named defendant by the court by certified mail.
>
> Respondent would thereafter employ a second printed form that included a checklist of various dispositional options. If the defendant failed to appear on the trial date, respondent would determine whether the defendant had been properly served. If so, respondent would check another box on the prepared form indicating that the defendant had not answered the complaint and was therefore in default. The box further stated that judgment is entered in the plaintiff's favor, including an award of statutory interest and costs, in a sum equal to the amount demanded in the complaint.
>
> Typically the court checked another box ordering the defendant to pay the judgment in full within 30 days. This section of the form advised the defendant that if the judgment was not paid, the defendant would be required to appear at a hearing "to arrange payment" on a date filled in in advance on the form. The text further advised that "[f]ailure to appear will result in a warrant for the arrest of the defendant(s)." After the form was signed by respondent, it would be entered as a judgment in favor of the plaintiff.
>
> Typically, if the defendant had not paid within 30 days and did not appear at the scheduled court hearing, another box would be checked indicating that the defendant had failed to appear for the hearing and ordering that a "warrant be issued for arrest of the defendant(s)." When respondent checked this box and signed the

> form, a bench warrant would be provided to law enforcement for execution. The bench warrant would set bond in the exact amount of the judgment, plus interest and costs, without allowing for the possibility of release upon payment of a ten percent bond. Respondent acknowledged that "significant numbers" of judgment debtors were in fact arrested on these warrants, sometimes in counties hundreds of miles away, and were not released until they posted bail, often in the amount of their debt.
>
> *Id.* at ¶¶27-30.

{¶128} In *Medley*, the panel found "the actions of respondent equivalent to the operation of a free collection service for small-claims judgment creditors." *Id.* at ¶33. The Supreme Court of Ohio noted that "it is apparent that respondent approached small-claims suits with a predisposition in favor of plaintiff-creditors and a willingness to disregard established law governing the collections of judgments." *Id.* at ¶35. Medley was suspended from the practice of law for 18 months with the final six months stayed on conditions. *Id.* at ¶43. In doing so, the Court reiterated that a "'judge's primary function is the administration of justice, not the collection of fines.'" *Id.* at 37, quoting *In re Hammermaster*, 139 Wash.2d 211, 234, 985 P.2d 924 (1999).

{¶129} The aggravating and mitigating factors are largely similar between *Medley* and the instant case, save that Medley also had previous discipline. *Id.* at ¶38. Despite this fact, Respondent's conduct necessitates a more severe sanction. Although Medley mistreated small claims debtors, Respondent coerced payment from economically disadvantaged criminal defendants through the denial of their fundamental due process rights.

{¶130} Most recently, the Supreme Court of Ohio decided *Disciplinary Counsel v. Carr*, ___ Ohio St.3d ___, 2022-Ohio-3633. In that case, a municipal court judge was charged with 24 rule violations in five counts. *Id.* at ¶2. Carr's conduct in Count Three is instructive here:

> [W]hen a defendant was convicted of an offense, Carr would set a date for the defendant to pay his or her fines and costs. Immediately after imposing the defendant's sentence and without any motion by the defendant, Carr would set her own ability-to-pay hearing to occur a few days after the TTP due date—without

> notifying the defendant or the clerk's office. When the defendants failed to appear for those hearings, Carr would issue a capias warrant and set a bond between $2,500 and $25,000 based on the defendant's failure to pay fines and costs that were typically just hundreds of dollars. She would then write on the journal entry, "Post bond or pay fines and costs in full. No [Community Work Service]/TTP." She would also stamp on the journal entry "DEFENDANT DOES NOT QUALIFY FOR IN THE NEIGHBORHOOD OR OVER THE COUNTER. JUDGE PINKEY S. CARR." (Capitalization sic.)
>
> Carr admitted that by precluding defendants from participating in those programs, she ensured that they would be arrested and held on the bonds set in her journal entries. Carr stipulated that "by tying the bond to the amount of the fine and costs, [she was] compelling the payment of fines and costs through incarceration, which is contrary to the law." *See* R.C. 2947.14 (requiring a judge to conduct a full hearing regarding an offender's ability to pay a fine—during which the offender has the right to be represented by counsel, to testify, and to present evidence—and permitting a judge to commit an offender to a jail or workhouse upon finding that the offender is able to pay a fine but refuses to do so).
>
> *Id.* at ¶¶ 28-29.

{¶131} The aggravating and mitigating factors were also similar between the two cases. *Id.* at ¶64. Upon consideration of the misconduct, as well as the aggravating and mitigating factors, the Board recommended that Carr be suspended from the practice of law for an actual period of two years. The Court disagreed, increasing Carr's suspension to an indefinite one. *Id.* at ¶¶84-85. The Court explained:

> Carr's unprecedented misconduct involved more than 100 stipulated incidents that occurred over a period of approximately two years and encompassed repeated acts of dishonesty; the blatant and systematic disregard of due process, the law, court orders, and local rules; the disrespectful treatment of court staff and litigants; and the abuse of capias warrants and the court's contempt power. That misconduct warrants an indefinite suspension from the practice of law.
>
> *Id.* at ¶97.

{¶132} Carr's conduct warranted a more severe sanction than is appropriate in the instant case. While she similarly created an environment where defendants were wrongly held in order to coerce payment of their fines and costs, her conduct involved four counts in addition to Count

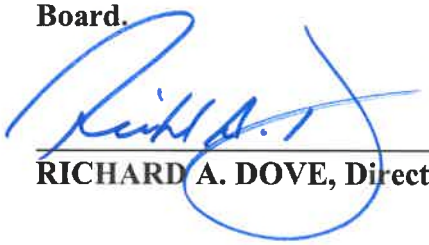
Three cited above, thus exceeding that of Respondent, and was representative of the way she operated her courtroom on a daily basis, treated staff and litigants, and included acts of dishonesty. Such is not the case here, and an indefinite suspension is disproportionate to Respondent's conduct.

{¶133} Respondent engaged in misconduct totaling 64 violations that impacted the liberty and due process rights of 16 unrepresented defendants who were economically disadvantaged and, in some cases, suffering from mental disorders and/or substance abuse; he displayed an unwillingness to acknowledge his misconduct and the harm caused by his actions. Based upon the foregoing analysis of the case precedent, the panel recommends that Respondent be suspended from the practice of law for a period of two years.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct considered this matter on February 3, 2023. The Board voted to adopt findings of fact, conclusions of law, and recommendation of the hearing panel and recommends that Respondent, Hon. Kim Richard Hoover, be suspended from the practice of law in Ohio for a period of two years and ordered to pay the costs of this proceeding. The Board further 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 his disciplinary suspension.

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