

NO. 2007-492

IN THE SUPREME COURT OF OHIO

DISCIPLINARY COUNSEL

Relator

vs.

CAROLE R. SQUIRE

Respondent

RESPONDENT'S OBJECTIONS TO FINDINGS
OF BOARD OF GRIEVANCE AND DISCIPLINE

Richard M. Kerger (0015864)
KERGER & ASSOCIATES
33 S. Michigan St., Suite 100
Toledo, Ohio 43604
Telephone: (419) 255-5990

Percy Squire (0022010)
PERCY SQUIRE Co., LLC
514 S. High Street
Columbus, OH 43215
Telephone: (614) 224-6528
FAX: (614) 224-6529

Counsel for Respondent

Lori J. Brown (0040142)
Assistant Disciplinary Counsel
Disciplinary Counsel of the Supreme
Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, OH 43215
Telephone: (614) 461-0256

Counsel for Relator

FILED

APR 27 2007

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
I. ARGUMENT 1
 A. Overview 1
 B. Statement Of Facts Supporting Objections To Findings. 3
 1. Count One – *Allison v. Patterson* and *Patterson v. Allison* 3
 2. Count Two – *Camburn v. Camburn* 10
 3. Count Three – *Fleming v. Fleming* 14
 4. Count Four – *Tylee Delibro* 19
 C. Response to Matters in Aggravation 22
 D. Sanction 31
 E. Conclusion. 42

TABLE OF AUTHORITIES

Cases

<i>Allison v. Patterson</i> (2003) 03-DV 10-786	3, 27
<i>Blakemore v. Blakemore</i> (1983), 5 Ohio St. 3d 217, 219	4
<i>Bruns v. The Vindicator Printing Co.</i> (1996) 109 Ohio App. 3d 396	25
<i>Deacon v. Landers</i> (1990), 68 Ohio App. 3d 26	4
<i>Disciplinary Counsel v. O'Neill</i> , (2004), 103 Ohio St. 3d 204	33, 34, 37
<i>Fleming v. Fleming</i> (2002) 02-DR 01-196	14
<i>Household Finance Corp. v. Altenberg</i> , (1966), 5 Ohio St. 2d 190	25
<i>In re Disqualification of Corrigan</i> (2004), 105 Ohio St. 3d 1243	7
<i>In re Disqualification of Olivito</i> (1994), 74 Ohio St. 3d 1261, 1263	7
<i>In re Tylee Delibro</i> (2004) 04-JU 09-12657	19
<i>Krems v. University Hospitals of Cleveland</i> , (1999)	25
<i>Krems v. University Hospitals of Cleveland</i> , (1999), Ohio App. 3d	25
<i>Manning v. Len Immke Burek, Inc.</i> (1971) 28 Ohio App. 2d 203	30
<i>National Medic Services Corp v. E.W. Scripps Co.</i> (1989), 61 Ohio App. 3d 752	25
<i>Office of Disciplinary Counsel v. Ferreri</i> , 85 Ohio St. 3d 649	32
<i>Office of Disciplinary Counsel v. Fowerbaugh</i> (1995), 74 Ohio St. 3d 187	32
<i>Office of Disciplinary Counsel v. Karto</i> , (2002), 94 Ohio St. 3d 109	33
<i>Parrish v. Parrish</i> , 95 Ohio St. 3d 1201, 1204 (2002)	4
<i>Patterson v. Allison</i> (2003) 03-DV 11-806	3
<i>State v. Horsley</i> , 2006 Ohio 6217 (Franklin County App. Ct. 2006)	40
<i>State v. Scruggs</i> (2000) 134 Ohio App.3d 631, 634	40

Statutes

Ohio Revised Code §2701.03	7
Ohio Revised Code §3113.31	3

Other Authorities

Code of Professional Responsibility	18
---	----

I. ARGUMENT.

A. OVERVIEW.

Respondent is before the Court in connection with disciplinary charges founded on four cases out of the more than 32,400 she handled in her six years as a domestic relations judge in Franklin County. It is important to note that of all of Ohio's courts, the Domestic Relations Courts in major metropolitan areas are often chaotic venues with emotionally charged cases being presented in an almost non-stop manner to Judges who have to resolve the issues presented to them by lawyers working hard to satisfy clients who are often overwrought and distraught. Moreover, far more commonly than other courts, judges have to break from handling one proceeding to take care of emergencies, often multiple emergencies. The sheer volume of cases makes it impossible for any Judge to keep in mind the facts and circumstances of each particular case.

These circumstances are relevant in considering whether the conduct described is a result of the nature of the docket or from a defect in the Judge's character that warrants sanctions. Absent a very clear pattern of improper conduct towards parties, Respondent suggests that this Court should be loathe to find ethical violations in such circumstances.

At the outset, counsel feels the obligation to speak frankly on a point of some delicacy. The situation in these four cases was made worse through the actions of two other judges of the Court on which Judge Squire sat. However well-intended, the conduct of Judges Mason and Priesse in meeting with lawyers dissatisfied with Judge Squire's handling of their cases and furnishing them with legal advice with how they

should proceed necessarily undermined Judge Squire's ability to maintain control in her courtroom. This is particularly true when one considers that Judge Mason was the Administrative Judge of that Court and a lawyer and judge of considerable stature. Assuming his good intentions, his actions necessarily emboldened lawyers to act in ways they might otherwise have not in dealing with Judge Squire. This made her task more difficult. Moreover, Judge Priesse's willingness to allow herself to be injected into cases on the docket of Judge Squire without checking with Judge Squire or her staff as to the nature of the proceedings, only made matters worse.

Let us accept that there was a level of frustration among the members of the Bench of that Court. It is nonetheless inappropriate for the consequences of these unusual circumstances to be borne so heavily by Judge Squire, whom the Board seeks to have suspended from the practice of law for one entire year.

Finally, it is interesting to note that in regard to two of the four counts, the Board found violations by Judge Squire when she failed to recuse herself after affidavits of disqualification were filed within a day before hearings which had been previously scheduled. Yet in the other two counts, the Board found that Judge Squire had acted improperly when she had recused herself from cases involving lawyers with whom she had had confrontations. This kind of guidance is not terribly helpful in explaining to Judge Squire, or others for that matter, as to how they should conduct themselves.

To put the point, if a Judge has determined that the conduct of an individual lawyer has been such that the Judge is concerned about her ability to be able to treat that lawyer and his or her clients fairly, it is necessary that the Judge recuse herself

from matters involving that lawyer. Judges are supposed to be above the fray, but they are also human beings and when they recognize that they have an attitude toward an individual that could unfairly affect the outcome of proceedings before them, they have an obligation to recuse themselves, whether counsel has recognized it or not.

But when an affidavit of prejudice is filed within seven days of a hearing, the Statute allows the Judge to determine whether to proceed. This is no doubt in recognition of the fact that the opposing party has a right to avoid having matters unfairly delayed through the filing of last minute affidavits. For the Board to suggest that the Judge was wrong regardless of which way she went is not appropriate.

B. STATEMENT OF FACTS SUPPORTING OBJECTIONS TO FINDINGS.

The following constitute the objections of Respondents to the findings made by the Board of Grievance and Discipline:

1. Count One – Allison v. Patterson and Patterson v. Allison

The Relator suggests that Respondent's failure to make a ruling on the ex parte CPO violated the provisions of Ohio Revised Code §3113.31. The statute does not require a ruling on the day the CPO is filed. Indeed the language of the statute is such that it clearly recognizes that a ruling may not be made: It requires a hearing but there is no particular proceeding outlined for a CPO.

The relevant portions of Ohio Revised Code §3113.31 read as follows:

(B)(1) If a person who files a petition pursuant to this Section requests an ex parte order, the Court shall hold an ex parte hearing on the same day the petition is filed.

The Court, for good cause shown at the ex parte hearing, may enter any temporary orders, with or without bond, including, but not limited to, an order described in Division (E)(1)(a), (b) or (c) of this Section, that the Court finds it necessary to protect the family (emphasis added.)

(2)(A) If the Court after an ex parte hearing issues an order described in Division (E)(1)(b) or (c) of this Section, the Court shall schedule a full hearing for a date that is within seven days after the ex parte hearing . . .

There is no requirement for a ruling, contrary to the testimony of various lawyers, judges and the arguments of the Board of Grievance and Discipline. Tyack Tr. 815. Since there is no particular procedure to be followed in connection with a CPO hearing, there is simply no basis upon which to criticize Judge Squire for the actions she took or did not take in this case, and certainly it is not an appropriate basis for discipline.

The decision whether to grant a civil protection order lies within the sound discretion of the trial court. *Deacon v. Landers* (1990), 68 Ohio App. 3d 26. Therefore, an appellate court cannot reverse the judgment of the trial court absent an abuse of discretion (i.e., “more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.” *Blakemore v. Blakemore* (1983), 5 Ohio St. 3d 217, 219). *Parrish v. Parrish*, 95 Ohio St. 3d 1201, 1204 (2002). It is a difficult circumstance from which to find an ethical lapse.

Before protection was sought for the child, Judge Squire was already familiar with the facts and circumstances of the case from the application for CPO made by Theresa Allison, an application which was granted a week earlier. In its recommendation, the Board suggests it was “immaterial” to the CPO proceeding whether

this case may have involved a “custody battle.” Judge Squire, it is felt by the Board, should be disciplined for injecting that consideration.

Respondent suggests that circumstance of a “custody battle” was indeed central to her assessment of the credibility of the witness. Theresa Allison initially filed her petition seeking protection from Mr. Patterson without mentioning a word about the child. Presumably a mother concerned that her child was in danger would have not hesitated to add the child at the earliest possible time. The failure to do that should raise a question in the mind of a responsible jurist as to whether the child was in fact in danger, or whether this was part of a “custody battle.” This is certainly relevant to the judge assessing the credibility of the parties before her as to whether one or more of them had motives not directly related to the safety of the child.

The Board then suggests that Respondent acted improperly when she conducted a hearing and issued an order changing the custody provisions previously ordered by Judge Priesse in granting an emergency custody order.

The fact is that at the time Judge Priesse was entering the emergency change of custody order, counsel for Ms. Allison were proceeding in the Court of Appeals to secure a Writ of Mandamus requiring Judge Squire to hold a hearing on the requested CPO. The record reflects that the Writ was resolved by an agreement between counsel for Judge Squire and counsel for Ms. Allison that a hearing would be held that afternoon. How can the Board find fault for Judge Squire holding a hearing and making decisions when she was in effect ordered to do that by the Court of Appeals?

It is also significant in assessing what took place in the *Allison v. Patterson* and *Patterson v. Allison* to reflect on the multiple filings made within a short period of time. Judge Squire was confronted with three CPO's - one for Theresa Allison alone, one for Greg Patterson and their child and one for Theresa Allison and their child. Thrown into the mix were a Motion for an emergency change of custody, with an order for a law enforcement intercept of an 8 year old girl, a Writ of Mandamus, Writ of Prohibition and an Affidavit of Prejudice. All of these were filed as Judge Squire was trying to find out if the child needed to be protected from her father.

While Theresa Allison claimed to be acting in the best interest of the child, it should be noted that Exhibit 3 indicates that the investigation of Theresa Allison indicated that there had been abuse and neglect of the child on the part of Theresa Allison. This finding was made on December 9, 2003, two months after Ms. Allison tried to recover custody of the child, a custody change approved by Judge Priesse. This clearly suggests that Judge Squire acted responsibly. Judge Squire's motive and intent in a difficult and confused situation was directed to the best interest of the child, hardly something that should cause her to be subjected to discipline.

The Board also suggests that by failing to disqualify herself after an Affidavit of Bias and Prejudice was filed on November 12, 2003, Judge Squire violated Canon 3(E)(1) indicating that the Judge should disqualify herself from when her impartiality might be reasonably questioned. The difficulty with this standard is that Judge Squire's views were formed from the actions of litigants in court before her. If the Supreme Court is to suggest that hearing opinions can be unethical, Judges hearing cases

who concluded that a particular party is lying might be subjected to such a motion because they would indeed have a bias against that individual. That would seem to be ill-advised guidance for this Court to provide.

Recall that the law is that a judge is presumed to follow the law in all respects, and not to be biased. *In re Disqualification of Olivito* (1994), 74 Ohio St. 3d 1261, 1263. If a judge abuses his or her discretion, a party's remedy is to appeal, which Allison did and later dismissed prior to obtaining a ruling.

Moreover, Ohio Revised Code §2701.03, which deals with the disqualification of a Judge of the Court of Common Pleas, expressly requires that the affidavit shall be filed "not less than seven calendar days before the day in which the next hearing in the proceeding is scheduled ..." 2701.03(B). In that same statute, Sub-Section (D)(1)(2), it is provided that a judge against whom a disqualification has been filed may proceed with the case if the affidavit was not timely filed. See 2701.03(D)(2)(A). Contrary to the testimony of lawyers and judges called by Disciplinary Counsel, Judge Squire was within her rights to continue with the case in view of the untimely nature of that affidavit. While some may disagree with what she did, it is certainly improper to find that she engaged in unethical conduct when she did that which she was entitled to do under the statutes of the State of Ohio.

The Ohio Supreme Court has set a high threshold for a finding of judicial bias. In *In re Disqualification of Corrigan* (2004), 105 Ohio St. 3d 1243, at ¶¶ 2, 6, 10-11, 13, the Court found insufficient evidence of bias and refused to disqualify a judge after: (1) he had an attorney forcibly removed from his chambers; (2) held a baseball bat

while berating those lawyers; (3) referred derisively to their expensive clothing and jewelry, and (4) called them “jackasses,” and referred to a “crowbar” needed to prod them along in discovery. By sharp contrast here, the evidence showed Respondent was not biased; rather, she exercised the proper amount of control over her courtroom to make way for more time-sensitive matters that would suffer if other cases monopolized the court’s time. There is therefore no clear and convincing evidence she violated the Codes.

There are a few issues that, while not found by the Board to constitute violations, nonetheless flavor this matter. The first is that, during the proceedings, a lawyer went into the Judge’s private conference room, in an area in which only judges and their staff are to be found, without the judge’s permission, and took away the child involved in the matter before Judge Squire. The lawyer acted on advice from Judges Mason and Priesse, and no doubt obtained access to that private area from the same source. McCaughen Tr. 209; Fell Tr. 340, 354-5, 357.

It does not seem a stretch to think that a judge confronted with conduct of that kind has a right to be distressed. There ought to be some sort of presumption that if a person is sitting in a private conference room of a common pleas judge, the Judge wants that individual there. For a private lawyer to go in and remove someone is simply wrong, be it a child or an adult. Judge Squire had a right to be concerned about that conduct.

Moreover when Judge Squire began the hearing which counsel for Ms. Allison had filed a writ of mandamus to insure would occur, the lawyers refused to participate. They concluded that their participation in the proceeding would somehow taint their Affidavit of Disqualification they had filed earlier. McCaughan Tr. 154-6.

Neither Disciplinary Counsel nor the Board seems troubled by the fact that two lawyers simply “bailed out” on their client. There is no legal doctrine anywhere that says a lawyer filing an Affidavit of Prejudice somehow loses those claims if he or she proceeds with a hearing before the challenged Judge. By refusing to proceed, the lawyers made a bad situation worse.

The extent of the “game” being played out before Judge Squire is perhaps underscored by the fact that Ms. Allison’s lawyer, apparently relying upon statements by her client, told the Court that Ms. Allison could not appear in Court because she had to go to work from 11:00 a.m. to 6:00 p.m. McCaughan Tr. 185. However, Ms. Allison instead of attending the hearing or being at work, went to a school and picked her daughter up between 3:00 and 3:30. McCaughan Tr. 185.

Judge Mason did not deny giving advice to lawyers appearing before Judge Squire. He talked with lawyer McCaughan about a judge not holding a hearing on a petition and a tug of war about the child. He gave her advice and directions at several meetings they had. Tr. 475-477. He told her to press the Judge to hold a hearing and if the Judge did not, file a writ of mandamus. Tr. 477. He recalls somewhat extensively the discussion of the Affidavit of Bias and Prejudice. Tr. 478-79. He even went so far as to give his opinion that once a trial court is aware there was an Affidavit of Prejudice filed, the trial court should take no further action. Mason Tr. 480.

The fact is, again without attacking his intention, Judge Mason was engaged in improperly advising the lawyers appearing before another Judge. He is not an appellate judge reviewing the actions of Judge Squire. He is not an ombudsman. He is in

theory her colleague on the bench. Worse, the advice he gave the lawyer was wrong. But there emboldened by the fact they had judicial support, these lawyers appeared before Judge Squire and clung to improper legal positions with respect to the effect of the Affidavit of Bias and Prejudice. It made the situation more difficult for Judge Squire.

At the end of the matter involving Theresa Allison and Brent Patterson is at the end of the matter, which took two years, Mr. Patterson was granted full custody of his daughter. Patterson Tr. 1660.

2. Count Two – Camburn v. Camburn.

The facts and circumstances of this case demonstrate a nearly classic domestic relations proceeding. The wife files for divorce. The husband enters the fray filing for an emergency CPO for himself and the children seeking to gain custody of the child. The battle is on between the adults, with the children in the balance. There is an old African saying that when the elephants fight, the grass gets trampled. Far too often in Domestic Relations Courts, the “grass” is the children of divorcing adults.

On January 18, 2005, Attorney Susan Lantz appeared with Gregory Camburn, asking for an *ex parte* CPO in which Camburn and his children 4 year old Suzanne and 5 year old Michael be protected from his wife, Maria Camburn. Judge Squire held a hearing on Camburn’s Petition and read his supporting documentation. Exhibit F-4, F-5.

As explained at the hearing, during these weeks, Judge Squire was the Duty Judge. The Duty Judge system made for a congested two weeks for that judge, both during the weeks as Duty Judge – January 17, 2005 – and the week of full hearings that

always follow – January 24, 2005.¹ These are the two weeks in which most of the *Camburn* allegations arose.

¹ During that week – the week of January 17, 2005 – Judge Squire had more than 115 cases on her docket.¹ As a result, she had to expedite lower priority cases – like *Camburn* – to make room for those matters that most needed the Court’s attention.

In this week, Judge Squire had a number of difficult matters, including:

- 04 JU 0710426 – a juvenile aggravated murder charge
- 03 JU 1219239 - another juvenile aggravated murder charge
- 05 JU 743 – a juvenile bind over (*i.e.*, a matter where a juvenile was accused of a crime and was to be tried as an adult)
- Ten emergency CPO petitions
- More than 100 other cases.
- Walk-in emergencies, walk-in evaluations of financial affidavits

On January 18, 2005, Attorney Susan Lantz appeared with Gregory Camburn, asking for an *ex parte* CPO in which Camburn and his children 3 year old Suzanne and 5 year old Michael be protected from his wife, Maria Camburn. Respondent held a hearing on Camburn’s Petition¹ and read his supporting documentation¹.

On January 18, 2005 Respondent was not on the bench when Lantz and Camburn appeared in Respondent’s courtroom. Respondent was in chambers reviewing files and preparing for the thirty case morning docket. The thirty cases set on Respondent’s January 18, 2005 docket, including *Camburn v. Camburn*, included 13 divorce cases, ten cases of Petitioners who sought Civil Protection Orders, two cases of Plaintiff’s complaints for legal separation and motion hearings. The case numbers of the 30 cases include:

Case No. 02-DR04227; Case No. 03-DR-3328; Case No. 04-DR-2297; Case No. 04-DR-3134; 04-DR-3341; Case No.04-DR-3464; Case No. 04-DR-3653; Case No. 04-DR-4213; Case No. 04-DR-4731; Case No. 05-DV-50; Case No. 05-DV-51; Case No. 05-DV-52; Case No. 05-DV-53; Case No. 05-DV-54; Case No. 05-DV-55; Case No. 05-DV-57; Case No. 04-DR-581; Case No. 04-DR-1217; Case No. 04-DR-1629; Case No. 04-DR-1958; Case No. 04-DR-2297; Case No. 04-DR-3321; Case No. 04-DR-4213; Case No. 04-DV-775; Case No. 04-DV-1144; Case No. 05-DV-26; Case No. 91-DR-1413; Case No. 95- DR- 3867; Case No. 03-DR-4326;

In addition to the 30 cases on the regular docket, the Respondent entertained four emergency matters in the morning and three requests in the afternoon as well as re-filings on CPO’s. Respondent handled at least 39 cases January 18, 2005. See, Exhibit G12 10 lines 4, 5.

It is significant to note that at the time of these issues, Mr. Camburn was living in Iowa and did not intend to move back to the Columbus area. He was unsure of how many times he had even been in Columbus during the previous year, estimating it was from two to four times. Camburn Tr. 764-65. His emergency CPO was not filed at the time of the incident involved, rather it was filed a month and a half later. Camburn Tr. 773-74. Frankly the appearance he created was that he was living in Worthington, Ohio and that he was at risk from his wife when in fact he lived in Iowa and was in no danger whatsoever. The obvious reason he filed the CPO was because he had just been sued for divorce. Camburn Tr. 773-74.

One of the objections of Respondent is that the Board suggested that she testified falsely when she said she had already heard from Mr. Camburn. Respondent suggests that this is from a lack of familiarity on the part of the Board members with the CPO process. There is no record made and often the lawyers and the clients come to the bench and talk freely in front of the Court. That happened in this case. Judge Squire had heard from Mr. Camburn and had made her decision on his various issues based in part upon what he said.

The Board suggests that in granting or denying a petition for a CPO or delaying her decision, the Judge was improperly focusing on "the best interests of the child." Respondent would agree that if the CPO had been sought solely on behalf of Greg Camburn, the "best interests of the child" might not be relevant. But he sought to have protection extended to the couple's children, then in the custody of their mother. Judge Squire granted Mr. Camburn's CPO but determined that it was not appropriate to do so for

the children. She was certainly entitled to consider “the best interests of the child” at that point, as noted above.

The Board suggests that Judge Squire acted improperly in contacting the grandparents of the minor children in what was supposed to be an *ex parte* proceeding. There is nothing in the law that prevents a Judge from making a reasonable inquiry to determine the circumstances presented before her, particularly as regards a CPO which has no particular process provided.

For Ms. Lantz and Mr. Camburn to suggest that they were not aware that Judge Squire was going to call the grandparents after they furnished Judge Squire with the phone number to reach them is difficult to believe. Moreover, the phone call was not placed in chambers without counsel present. It was placed from the bench in the presence of Mr. Camburn and his lawyer. While it is true the call was not on a speaker phone, certainly Judge Squire’s side of the conversation was heard. In the absence of a clear indication of what the procedures for a CPO are to be, it cannot be maintained that this conduct is an ethical lapse. The Board criticized Judge Squire for not handling this as an *ex parte* matter. *Ex parte* proceedings do not mean that the Judge cannot hear witnesses other than the parties before her. The term refers to the fact that the opposing party is not present, and that is in fact what happened here.

The Board also suggests that by failing to dispose of the *ex parte* CPO the Judge violated the Code of Judicial Conduct Canon 3(B)(a). She did dispose of Mr. Camburn’s *ex parte* CPO as to him. She did not rule as to the children and for reasons set forth in the Objections to the Findings in Count One, she was not obliged to do so.

Last, the Board found a violation for her failure to timely disqualify herself, again on an Affidavit filed within seven days before the hearing. That is a matter committed to the discretion of the Judge and while this Court or others might disagree with the Judge's exercise of discretion in this matter, the fact is she had the statutory right to do so and it is not proper to predicate an ethical violation on her decision. The statutory provisions noted in Count One apply here as well.²

3. Count Three – Fleming v. Fleming.

² Lantz' overzealous advocacy on behalf of Camburn and Lantz' refusal to accept Respondent's assessment of the Camburn case greatly interfered with Respondent's discharging her responsibilities as to the other 29 cases on Respondent's docket on January 18, 2005.

During the Camburn case Lantz repeatedly presented in Respondent's courtroom, oblivious to the effect of her overzealous advocacy on others' cases set in courtroom 65. Each time Lantz appeared it diverted Respondent's attention from other cases. Lantz' testimony before the Panel as set forth below is a partial list of Lantz' visits to Respondents courtroom during the Camburn case.

Vol. II, Transcript of Proceeding Before the Panel: Susan Lantz's multiple times in courtroom 65 1) Pg. 533, line 17 11 a.m. 2) Pg. 534, line 12 Susan accompanied by two court workers 3) Pg. 535, line 25 thru 536, line 1 4) Pg. 536 line 8-10 "We waited for a break between cases she was hearing. We asked to approach. We approached." Pg. 537, line 19-23 "I communicated to Judge Squire...our belief that Maria's parents had knowledge of her whereabouts and possibly the children." 5) Pg. 548, line 9-12 Jan. 25, 2005 (Susan) approached Judge about emergency custody procedures 6) Pg. 550 line 23 7) line 25 Jan. 28, '05 Lantz returned to crtrm 65 8) Pg. 555, line 21-24 9) Pg. 560, line 14-16 10) Pg. 564, line 20 11) Pg. 571, without Judge's input Lantz brought Tory (employee from clerk's office) to crtrm 65.²

This is yet another classic domestic relations case. By the time of the disciplinary hearing last Fall, the Flemings' divorce was still not final. In fact, *Fleming v. Fleming* is set for May 17, 2007, 9:30 a.m., 373 S. High Street, Columbus, Ohio 43215, courtroom 65 for further hearing. Dr. Fleming had managed to drag out the proceeding for five years, a circumstance that was aided by his having filed bankruptcy on three occasions and changing counsel throughout the proceeding. Indeed one counsel, Kim Halliburton-Cohen, withdrew from his representation after the incidents in Count Three because Dr. Fleming totally failed to cooperate, including failing to provide basic financial information. See Relator's Exhibit H-11.

It needs to be remembered that the Judge had an obligation not solely to Dr. Fleming but also to Mrs. Fleming who was anxious for the divorce, in part due to domestic violence which Dr. Fleming had perpetrated against her, according to a document recording Mrs. Fleming's visit to a hospital emergency room; said document filed in *Fleming v. Fleming*, Case No. 02-DR-01-0196 in Franklin County. Although in ill health, she and her mother traveled repeatedly from Augusta, Georgia to Columbus for the hearings which Dr. Fleming just as routinely avoided. At a hearing on April 14, 2004, there can be no doubt that counsel for Dr. Fleming, Michael Winston, was told to have his client available. The record of the hearing does not reflect this discussion, so how can Respondent be so sure? Because Dr. Fleming's new lawyer, Kim Halliburton-Cohen filed a motion on the day before the June 15th hearing seeking to excuse her client's attendance and to reschedule the hearing. If counsel had not understood that Dr. Fleming was supposed to be present, there would have been no need for that motion to be filed. Both

lawyers knew the Doctor's presence had been requested. Furthermore, Attorney Peggy Blackmore periodically testified that Attorney Winston agreed Mr. Winston and his client Dr. Fleming would be present.

It is also significant to note that Ms. Halliburton-Cohen recognized that a local rule required parties to be present but felt she said that she had the right to ignore the rule.

- Q. And what about that rule that I read that said parties have to appear?
- A. That's a local rule. The issue is whether or not they are statutorily required to appear. It is a local rule.
- Q. Is it your opinion, ma'am, that you're free to disregard the local rules?
- A. If they conflict with a client's rights, they absolutely, by law, fall. It is a procedural local rule, that's all.
- Q. But you can choose to either honor or ignore as you see fit?
- A. Are you speaking specifically of me? I was there.
- Q. But you felt you didn't have to bring your client, notwithstanding the local rule, so you can ignore it?
- A. My client is a grown man. Whether he attends or does not attend is his call. I do not deliver clients places, neither does Mr. Winston. Halliburton-Cohen Tr. 982-3.

The Board's finding that Judge Squire's conduct violated an ethical rule, gives succor to lawyers like Ms. Halliburton-Cohen and her view of local rules.

Consider further the testimony of Delores Mack, the mother-in-law of Mrs. Fleming. Judge Squire was not rude to Ms. Halliburton-Cohen, but Ms. Halliburton-Cohen seemed dramatic about the case. Delores Mack Dep. Tr. 10. Judge Squire raised

her voice but under the circumstances with the lawyer's conduct, the Court was trying to do what she could to control things. Mack Dep. Tr. 10-11. Ms. Mack never saw Judge Squire do anything inappropriate. Mack Dep. Tr. 26.

Consider also the testimony of Christopher Cooper, a lawyer with more than 20 years of experience. He goes regularly to the Franklin County Court of Domestic Relations. Cooper Tr. 1628. He had been summoned to the Court on June 16th by a young lawyer he mentored. Cooper Tr. 1631. As he sat and listened and watched the exchange with Mr. Winston and Ms. Halliburton-Cohen, he did not think Mr. Winston was being appropriate in the way he addressed the Court. Cooper Tr. 1632. He later told Mr. Winston he never witnessed an attorney being so inappropriate with a sitting judge and told Mr. Winston he was lucky he was not held in contempt. Cooper Tr. 1632. Both lawyers were yelling at the Judge and Mr. Winston did not seem to be listening or hearing what the Judge was saying. Cooper Tr. 1647. Mr. Cooper never saw the Judge do anything inappropriate and thought the Judge showed great restraint. Cooper Tr. 1633. One of the participants, Michael Winston, testified at the hearing that he believed the atmosphere created by himself and Ms. Halliburton-Cohen by raising their voices made it difficult for the Court to maintain order and he apologized to Judge Squire for his conduct. Winston Tr. 879-80.

The Board also found that the Judge violated the Canons by engaging counsel for Mrs. Fleming in a conversation without the participation of Dr. Fleming's lawyer. The Respondent would note that the conversation dealt with a motion for continuance, an essentially procedural matter, and the Respondent suggests these kinds of

conversations happen routinely throughout the State of Ohio. They do not deal with the substance of the proceeding. It is not conduct which is appropriately the subject of a disciplinary sanction.

The Board also found Judge Squire acted improperly when she contacted Dr. Fleming's place of employment. What the Board does not note is that the employer of Dr. Fleming invited the call in the letter which was submitted by counsel for Dr. Fleming. If counsel for Dr. Fleming had thought that direct contact with the Court was inappropriate, she should not have included it in her filing which sought to justify Dr. Fleming's non-appearance. Again, while others may differ on her actions, the conduct of Judge Squire here is not appropriately subjected to sanctions.

As noted earlier, Judge Squire and Mr. Winston had clearly agreed that Dr. Fleming was to be present. The local rules support the reasonableness of that request. By attempting to insure that Dr. Fleming would be present, Judge Squire was doing no more than protecting the rights of the other litigant before her, Ms. Fleming.

One of the findings the Board made was that the Respondent had lied about denying Winston's Motion to Withdraw. The record is clear. She did not rule on the Motion to Withdraw when it was filed. Certainly Mr. Winston wanted to get off the case right at that point and the Judge's refusal to rule left him counsel of record. It was not until 89 days later that the Motion to Withdraw was granted. Respondent respectfully suggests that the Board's conclusion that she made a false statement in this case is simply not supported by the record.

The Board suggests that by disqualifying herself in the Fleming case and all other cases in which Halliburton-Cohen was or became counsel of record, Respondent violated the Code of Professional Responsibility and Canons 2 and 4. At the risk of making light of a most serious matter, the Respondent would note that this is a classic Catch-22. On the one hand in Counts I and II, she supposedly violates the Canons by failing to recuse herself. Then when she recuses herself, she violates the Canons. If a Judge has an attitude towards a lawyer that would cause the perception that she may be prejudiced towards that lawyer's clients, it would seem consistent with both the Canons and the Code that the Judge recuse herself. That is what Judge Squire did in the *Fleming* matter.

4. Count Four – Tylee Delibro.

What the Board ignores is that the emergency nature of this situation arose from decisions of the parties before Judge Squire. Had there been proper planning, there would have been no emergency. The problem arose because the Ponca Indian Nation bought plane tickets for its social worker to come to Columbus to pick up the child before the paperwork had been completed. Indeed the Tribe's lawyers in Columbus did not learn of this issue until the Friday before the social worker's Monday arrival. Innis Tr. 1029.

Proceedings of this nature are extremely unusual. Judge Priesse indicated she had never seen one before. Priesse Tr. 1115.

The order sought would have transferred the child from custody of the Franklin County Court to Oklahoma. The child was a ward of the Franklin County Court of Common Pleas and Judge Squire was making sure that before she relinquished that

control, she understood what was going to happen. Innis Tr.1010-11. When Mr. Innis, appearing on behalf of the moving parties, was unable to explain anything concerning the case to Judge Squire, she delayed action. Innis Tr. 1032-33. This is particularly true in light of the fact that the granting of the petition would have been the first step towards reuniting the child with her mother. This would be the same mother who had created the situation leading to child abuse. Relator's Ex. I-1; Innis Tr. 1031-32. Indeed at the hearing, Mr. Innis candidly admitted the rush to transfer was driven by concerns about money. Innis Tr. 1029-30.

Mr. Innis's testimony about the emergency on September 30th was that it arose because there were two social service agencies who were running around trying to get the child on an airplane to get her home. Innis Tr. 1028. If there had been advance planning, this problem would have never occurred. Innis Tr. 1028-29. He testified that Children Services in Franklin County wanted the child in Oklahoma "in the worst possible way." Innis Tr. 1029.

And a large part of the reason for haste was money. Tr. 1029-30. Money "had a lot to do with it." Not the interests of the child, but the social agency's budget. Innis Tr. 1030. Yet to Judge Priesse and others, this was simply a matter of routine that required little consideration since all the lawyers involved had agreed. Priesse Tr. 1094. At the time she knew nothing about the merits of the underlying charge. Priesse Tr. 1095. She agreed that a common pleas judge should invest some discretion in a matter before signing. Priesse Tr. 1096. But all she did was ask if everyone was in agreement. Priesse Tr. 1096.

Of course the lawyers were in agreement because their clients were concerned about the financial end of things.

Perhaps Judge Squire and Judge Priesse would have been even more concerned if they understood that a part of the transfer was to have the child taken back into the custody of the mother, a mother who refused to admit or recognize that sexual abuse was occurring at the time the child was taken from her. Relator's Exhibit I-1; Innis Tr. 1031-32.

There was admittedly some confusion as to when Judge Squire would return that day, but as Judge Priesse testified, Judge Squire was back in the courthouse by 2:37 p.m., less than a half an hour after Judge Priesse was asked to intervene in the matter. Priesse Tr. 1093-94. Waiting only became a problem because money was driving the situation, as Mr. Innis testified.

The order transferring the child was signed by Judge Priesse without any contact with Judge Squire's chambers. Priesse Tr. 1090. All she wanted to know is that the lawyers agreed. Priesse Tr. 1096. The same lawyers who were concerned about money and whose client wanted the child in Oklahoma in "the worst possible way."

As to Judge Squire's interaction with Richard Innis subsequent to this event, the discussions occurred in open court, the testimony is that they were conducted at the bench in tones not audible to others in the courtroom. Davis Tr. 1605. Judge Squire was surprised to find Mr. Innis in her room since she had not been aware that he was to be the lawyer in the matter until he arrived. Davis Tr. 1604. Respondent did not want to

interact with Mr. Innis in private due to misunderstandings concerning prior conversations Judge Squire engaged in with Innis.

Angel Hall was also a witness standing beside the bench as Respondent spoke to Innis. Angel Hall testified, "No," in response to the question, "Was the Judge shouting?" Hall Tr. 1715. Angell Hall testified, "No," in response to the questions, "Was the Judge yelling?" Hall Tr. 1715. In response to the question, "Was the Judge, in fact, talking quietly?" Angel Hall testifies, "Yes, I think she had her hand over the mic." Hall Tr. 1715. Innis' client, Carole Barbee, testified that she could not hear what Respondent said to Innis. Barbee Tr. 1431. Ms. Barbee acknowledged she was in the front row of seats in the back of the courtroom; the now closest to the bench. Ms. Barbee acknowledged Mr. Innis' back was facing her when he spoke to Respondent. Barbee Tr. 1431. Ms. Barbee testified she had no idea what was going on during the exchange between Respondent and Mr. Innis although it was taking place only ten feet from where she sat in the courtroom. Barbee Tr. 1428.

Since Judge Squire had a feeling of mistrust toward Mr. Innis, the only thing she could do was recuse herself. It is not appropriate for the Board to suggest discipline for a Judge because of such actions.

C. RESPONSE TO MATTERS IN AGGRAVATION.

(1) Alleged False Statements – The introductory portion of the Board's Findings of Fact and Conclusions of Law states at ¶17 that "Judge Squire's recollection of and her testimony about her work experience is somewhat hazy." The facts concerning

Judge Squire's credentials are well-established. The Judge's testimony in this connection and her resume are detailed within the record.

Judge Squire is a native of Springfield, Ohio. She graduated from Springfield South High School in 1971, where she was the president of her senior class and editor of the school newspaper and a National Honor Society member. She matriculated at Ohio State University for both undergraduate and law school; graduating in 1977. Judge Squire served as an assistant to the Franklin County Prosecuting Attorney, the Honorable George Smith, and following several years in private practice became a magistrate for three ½ years within the Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Unit. She accompanied her husband to various duty assignments in the United States Army during the period 1978-1982, during which time she worked part time as a professorial lecturer at American University in Washington D.C., worked full time as an attorney in the Office of the General Counsel of the Navy, worked as Assistant Director for Youth Alternatives Project providing technical assistance, concerning juveniles in the court systems, to ten states, including Ohio. During an assignment in Europe, Judge Squire worked as an instructor teaching United States servicemen at the University of Maryland overseas in Aschaffenburg, Germany. Upon returning to Columbus, Ohio in 1985, she held positions with the office of the Ohio Attorney General in the Victims of Crime Division. She was elected to the Franklin County Domestic Relations Court in 2000, for a full term that commenced in January 2001. When Judge Squire was questioned during her deposition upon oral examination concerning her background, she was instructed by counsel for the Office of Disciplinary

Counsel to leave all written materials in her possession at the deposition on the floor and not to consult her resume or other documents to refresh her memory. As a result, Judge Squire discussed the detailed dates and positions that she has held since law school graduation from memory. Perhaps this is what contributed to the conclusion that the Judge Squire's background is "hazy." Judge Squire has had a thirty year career that has included legal positions in Washington D.C., Europe and Columbus, Ohio. There is no question concerning her background and credentials and the record is lucid in this connection.

The Board's Findings and Conclusions contain eighteen references to alleged misrepresentations by Judge Squire. There are no allegations within this entire proceeding that are more troubling and erroneous than these assaults upon Judge Squire's veracity.

Until the institution of these disciplinary proceedings, Judge Squire had never been accused of any misconduct involving misrepresentation, questionable veracity or an allegation of any form of moral turpitude. The letters of support submitted by persons that have known her for years and her reputation for honesty are from the former presiding Prelate of the Pentecostal Assemblies of the World, Bishop Norman L. Wagner, the former Chief Judge of the United States District Court for the Northern District of Ohio, the Honorable Thomas D. Lambros, and other long term acquaintances who are personally familiar with Judge Squire's reputation for truth and honesty. By reason of the grave significance of these attacks on her character, considerable attention will be devoted

here to refuting the conclusory unsupported allegations concerning Judge Squire's integrity that are contained within the Board's Findings.

Judge Squire's extensive commitment to church-related activities at Shiloh Baptist Church here in Columbus over the past twenty years belies the notion that she is a person of dubious character. It is clear under Ohio law that contrary to the manner in which the Board's Findings assail Judge Squire's character, allegations of this nature require more support than the simple unsupported declarations that are replete throughout the Board's Findings.

In this connection, Ohio law states that "a representation is false when it is not substantially true." See, Household Finance Corp. v. Altenberg, (1966), 5 Ohio St. 2d 190, and Ohio Jury Instructions §307.03. "The truth or falsity of a representation depends on the nature and obvious meanings of the words taking into consideration all surrounding circumstances." Id. (emphasis added).

Under Ohio law, in the context of a civil action, "a statement is false when it is not substantially true." See, Krems v. University Hospitals of Cleveland, (1999), Ohio App. 3d. 6; Bruns v. The Vindicator Printing Co. (1996) 109 Ohio App. 3d 396; and National Medic Services Corp v. E.W. Scripps Co. (1989), 61 Ohio App. 3d 752. A statement "is substantially true when the gist or substance of the statement is true, or is justified by the facts, taking the statement as a whole." Id. Also see, Prosser, Law of Torts (4 Ed. 1971), 798-799. A statement is not false or a misrepresentation if the imputation is substantially true to justify the gist or sting or the substantial truth of the statement. Id. The declarant's words must be given their natural and ordinary meaning,

taking into consideration the circumstances in which the statement was made. The law will ignore any minor ways in which the statement is false. See, Ohio Jury Instructions concerning defamation §264.01 (emphasis added).

The Board's Findings concerning the purported misrepresentations of Judge Squire do not articulate any standard against which her statements are being scrutinized and clearly do not conform to the standards set forth within the above authorities. Indeed, the authorities set forth above concerning when a statement is false apply in the context of civil actions. Notwithstanding the lack of any stated standard against which to judge Respondent's statements, the Findings repeatedly assail her veracity. The Findings manifest an arbitrary hindsight standard that totally ignores the intensity surrounding the hostile circumstance associated with the four disputes under review here.

In point of fact, ¶63 of the Findings states:

At the outset of the November 10th hearing, Respondent set forth her version of what had happened in the cases. *Id.* at 3-9. Respondent's account of the events leading to that day's hearing contrast markedly from the actual sequence and the record of events and actions. *Inter alia*, respondent stated, "[s]uffice it to say that because of the interference in the plans and then my surprise at everything that I was reading, I want to make sure the record reflects what I believe, this Court truly believes, to be the 100 percent truth about what happened here." *Id.* at 5. (Emphasis added).

Simple logic insists that a statement of what a declarant believes is purely introspective. The declarant may be mistaken; however, if the declarant qualifies the statement by stating the record should reflect what the declarant believes, what the

declarant believes is subjective. If the belief of the declarant is erroneous it may still reflect the declarant's honest mental process. For instance, the Board believes what is within its Findings; that does not make the Findings true. The views of the declarant may be wrong, however, if the declarant states this is what I believe, so long as the declarant accurately records the belief, all the declarant is doing is placing on the record what their belief is, albeit erroneous. Such a qualified statement is not a misrepresentation. Here Judge Squire said she was putting on the record what she believed. In effect, the Board's Finding in ¶63 is that Judge Squire did not believe what she said and put on the record. It is difficult to reconcile this conclusion by the Board with its repeated references to Judge Squire being prone to rationalization, self-righteousness and incapable of admitting wrongdoing. These are attributes of a person that believes they are correct. Judge Squire's statement in ¶63 is hardly a misrepresentation it is a statement of her subjective view. The Finding to the contrary should be rejected.

Other examples of alleged misrepresentation are equally troubling. ¶64 states Respondent claimed she had to cancel her vacation and a medical appointment. There is no evidence in the record to contradict Judge Squire's statements in this connection. ¶65 states: "Respondent claimed she gave the file to her bailiff." The record does not contradict this statement by Judge Squire. ¶65 goes on to state the bailiff was able to find the missing petition that Respondent had previously claimed was not in the file. Judge Squire's statement that the petition was not in the file is an assertion that she did not see the petition within the file. If she was mistaken that does not make this statement a misrepresentation. Similarly, the Board's Findings in ¶65 states "Respondent

then claimed she had “endeavored” to entertain the request for the parties...” This again is an expression of an introspective nature. To refer to this statement by Judge Squire as a “claim” suggests the Board has invaded the Judge’s cerebrum.

Another example of the Findings discounting Judge Squire’s perceptions of events is found within ¶130 where it is stated, “Respondent interjected her own biased version of the case.” Judge Squire’s statements beginning on page 71 of Exhibit C10 accurately reflect the procedural history of the *Allison v. Patterson* matter. The Findings characterize the Judge’s comments as biased, but fail to cite any reference to the case’s docket of entries or pleadings that contradict the case history as she related it. Obvious prejudice attaches to Judge Squire by reason of the Findings characterization of Judge Squire’s observations as mere “claims” or as “biased.” These characterizations should be rejected by the Court as merely conclusory. The entire tenor of the Findings are tainted by their reference to things stated by Judge Squire as “claims” or “falsehoods,” but when stated by others as “assertions” or “testimony.”

The Finding repeats its references to false and misleading statements in Count II. Paragraphs 188, 189, 190, 191, 192 and 193 allege that Judge Squire made false statements concerning orders she issued to Susan Lantz. The Findings totally ignore the statements of Joseph Caparotti within his February 14, 2005 affidavit which states: “On Thursday February 3, 2005, Judge Squire ordered that the minor children Michael and Suzanne Camburn, at the time in the custody of their father, the defendant Greg Camburn, be delivered to the court at 8:00 a.m. February 4, 2005; also see, March 2005 Affidavit of Stephanie Mingo; also see Testimony of Greg Camburn at Exhibit F9 and G12 which

supports Judge Squire's statements concerning having the children present. The only testimony that contradicts Judge Squire was that of her antagonist, Ms. Lantz. Nonetheless, the Findings state Judge Squire made false statements. The weight of evidence simply does not support the Findings conclusory allegations within ¶188-193. It is particularly troublesome that the Findings would state in ¶190 that Judge Squire falsely indicated that she made calls by agreement of Ms. Lantz and her client, when the telephone number was obtained from Ms. Lantz, Ms. Lantz was present when the call was made, and neither Ms. Lantz nor her client objected to Judge Squire making the call. The affidavit of Stephanie Mingo the Judge's bailiff supports this. Ms. Mingo's Affidavit states: "While at the bench, Susan Lantz and her client Mr. Camburn, verbally consented to Judge Squire placing a phone call to a witness in this case." Separate and apart from whether a telephone contact of this nature is appropriate, an issue discussed within the ex parte portion of this document, Judge Squire's characterization of an agreement that the call be made is clearly reasonable and an expression of the gist of what occurred "taking into consideration the circumstances in which the statement was made." See, National Medic Services Corp., supra.

Count III is replete with allegations of misrepresentation that neither apply the relevant falsehood standard controlling under Ohio law or give deference to the evidence within the record. Specifically, ¶217 states Judge Squire made misstatements. For example, the Finding states Judge Squire stated during the June 15, 2004 hearing, Ms. Halliburton-Cohen could not proceed because Mr. Winston had not requested leave to withdraw. In ¶249 the Finding states Mr. Winston filed a motion to withdraw on June 17,

2004. This is an obvious contradiction. It was not a falsehood for Judge Squire to state on June 15, 2004, that Mr. Winston had not filed a motion to withdraw. The Findings admit in ¶249 that the motion to withdraw was filed on June 17, 2004. This is an additional example of the Finding's manner of simply characterizing Judge Squire's statements which are supported by the record as false. Another example is ¶218, where the Findings state "Judge Squire falsely claimed that Respondent's bailiff left a telephone message on the morning of June 14, 2004." There is absolutely no evidence that Judge Squire did not instruct her bailiff to leave messages for counsel or that counsel did not receive messages from her bailiff. The Findings are totally devoid of contrary evidence in this connection. Where it is claimed that a statement is false, the burden is upon the proponent of the claim to produce evidence of falsehood. *See, Manning v. Len Immke Burek, Inc.*(1971) 28 Ohio App. 2d 203. The Findings are totally deficient in this regard in relation to ¶217, 218, 200 and 250. A final example of Count III's defects is ¶250 which claims that Judge Squire falsely stated that she refused Mr. Winston's motion to withdraw. The inconsistency in the Finding's logic is patent in this instance. It was Judge Squire's previous refusal that she is referring to in her entry in ¶250 that led to the two day delay and contempt proceeding that is the basis of Count III. On one hand the Findings criticize Judge Squire for not letting Mr. Winston out of the case and then on the other hand state she falsely asserted that she had refused his motion to withdraw. If Judge Squire had not refused Winston's motion to withdraw, the conflict discussed in Count III concerning counsel for Dr. Fleming would not have occurred. Judge Squire's statement in

her entry discussed in ¶250 is entirely accurate. The Finding's criticism of how she handled Winston's withdrawal is itself proof of the entry's accuracy.

The allegations of falsehood in Count IV are also erroneous. For instance, ¶274 alleges that Judge Squire falsely stated that Mr. Innis told her Judge Preisse would not sign his entry unless he agreed to send her a letter concerning Judge Squire's handling of the Delibro matter. The record is clear that a conversation occurred between Judge Squire and Mr. Innis concerning the issue. What Finding 274 represents is a rejection of Judge Squire's version and the embrace of Mr. Innis'. At best the evidence is in equipoise on this issue. It is inappropriate to simply reject the version of one witness in favor of a witness situated as Mr. Innis, who has a motive by reason of his continuing to practice before Judge Preisse to have a faulty recollection of what transpired. There is no question that Judge Preisse requested a letter from Mr. Innis. There is no question Mr. Innis prepared a letter. In view of these circumstances it is extremely unfair and contrary to the Ohio standard of proof of falsehood to characterize Judge Squire's version of events as a misrepresentation.

On balance there is not a single misrepresentation attributed to Judge Squire that is supported by evidence in the record. It is of paramount importance that Judge Squire's years of unblemished service and as an attorney not be cast aside in the arbitrary hindsight fashion reflected in the eighteen instances discussed above.

D. SANCTION.

(1) Recommendation – The Hearing Panel recommended a one year suspension with six months stayed. The Board doubled that sanction suggesting that “the

extent and nature of the judicial misconduct seriously affecting the administration of justice” required a longer suspension to protect the public.

There are but four cases involved here. During her tenure on the bench, Judge Squire handled over 32,400 such cases. Four cases hardly constitute a “pattern” at all and certainly not a “pattern” warranting a doubling of the sanction.

Indeed, in view of the unique factors of each of these four cases, Respondent suggests that the Panel’s requested sanctions are far beyond that which is necessary even if the Court accepts all of the factual findings of the Board.

Consider the cases relied upon by the Panel and the Board. In *Office of Disciplinary Counsel v. Fowerbaugh* (1995), 74 Ohio St. 3d 187, the lawyer repeatedly lied to his client about carrying out the legal matter which had entrusted to him. It is not just that he did not do the work, but instead that he had lied to the client about carrying out the work and indeed created false documents to help cover up his misconduct. Here the Court imposed a six-month suspension, predicating it upon dishonesty toward the client.

In this instance, Judge Squire hid nothing. She told the lawyers in *Allison* why she was not ruling on the CPO. She contacted Mr. Camburn’s mother-in-law in front of both Mr. Camburn and his lawyer. She told Ms. Halliburton-Cohen and Mr. Winston why she was upset with them. She told Mr. Innis why she was disqualifying herself. The question is whether the conduct is sufficiently egregious to warrant the imposition of a suspension from the practice of law. Respondent suggests it is not.

Another case cited by the Board is *Office of Disciplinary Counsel v. Ferreri*, 85 Ohio St. 3d 649. On several occasions in that case, the Respondent met with

the media and made unfounded and highly inflammatory remarks concerning other judges, the Court of Appeals and its employees, and various institutions of the Court. Not merely were the comments inflammatory, they were intended to be.

It can be fairly said that the comments made by Judge Squire which the Panel and Board criticized were made during the “heat of the moment,” but the same cannot be said of Judge Ferreri. The statements of the press came on one occasion from his own home. On another occasion it came a week after he had done his own investigation of supposed improprieties. There were no pressing concerns which required an immediate response such as confronted Judge Squire.

In *Office of Disciplinary Counsel v. Karto*, (2002), 94 Ohio St. 3d 109, the Judge was suspended for six months after misusing his contempt power, handling a juvenile matter in which he threatened an employee of the County Children Services with contempt unless she resigned immediately and handled a contempt proceeding without affording the defendant a right to counsel because he was angered by the perceived conduct of the person found in contempt. In agreeing with the Board’s recommendation of a six month suspension as opposed to a one year suspension with the entire year stayed, the Court found that among other things, the Judge had misused his powers for his own “personal purposes.” There is no suggestion in any of the matters involving Judge Squire that her actions were intended to satisfy any personal issues, but rather Judge Squire endeavored to prevent the most vulnerable form being further abused during the court proceedings over which she presided.

Finally, there is the decision in *Disciplinary Counsel v. O'Neill*, (2004), 103 Ohio St. 3d 204, a case in which there was a two year suspension from the practice of law with the second year stayed, the same sanction as here. But the only similarity between the cases is that both involved Judges of the Franklin County Court of Common Pleas.

In regard to Count I in *O'Neill*, the Court found more than ten cases in which the Respondent had failed to “comply with the law and act in a manner that promotes public confidence . . .” These included ignoring a mandate from the Court of Appeals after it had reversed one of her decisions; refusing to accept pleas of no contest because they were offered on the date of trial and her policy was that that could not occur; sentencing a defendant on the day of the plea rather than allowing for the preparation for a pre-sentence investigation which she had agreed to do the day before; ignoring the prosecutor’s request to allow him to prepare a victim-impact statement when the defendant made an unexpected change of plea at the first pretrial; and engaging in a pattern of misrepresentation with judges, litigants, attorneys and court personnel on multiple occasions.

Judge O’Neill was also found to have engaged in a pattern of rude, undignified and unimpressible conduct which included abusive verbal outbursts, justified expulsion from the courtroom and berating or humiliating persons in the presence of others. The testimony of the witnesses apparently established a hostile work and courtroom environment in which staff were on edge and persons were frightened and intimidated by her conduct. Her conduct was found to have affected the ability of court

personnel to perform their functions. Finally, she was found to have solicited campaign funds from the husband of a staff attorney, a clear violation of the Code of Judicial Conduct.

Whatever one might think of the conduct of Judge O'Neill and the sanction imposed against her, there is a clear distinction between what the Board found in this case, even assuming it to be true, and what occurred in the *O'Neill* case.

This is particularly true with respect to the Board's finding in this case as a mitigating factor that "Respondent enjoys a representation for good character in the community and among her friends and acquaintances." While that conclusion is true, there is more. What the Board ignores is the testimony of lawyers and court personnel that they had never seen Judge Squire engage in professional outbursts or be demeaning to anyone. For example, Gary Gottfried was admitted to practice in 1973 and spends 100% of his time in the Domestic Relations Court in Franklin Court. Tr. 1579. He has appeared in front of Judge Squire on many occasions and she has never treated him inappropriately. Tr. 1580. He has seen her in the courtroom and her demeanor has always been very professional and no outbursts. Tr. 1581. She has never said anything demeaning to his clients or any other person's clients nor has he ever heard her say anything rude to anyone. Tr. 1582.

To the same effect was the testimony of Morris Henderson, a lawyer who has been in practice since 2000 and is primarily engaged in family law and bankruptcy. Tr. 1585-86. He has appeared before Judge Squire many times and she was always very professional and never raised her voice at him other than when he "went over the top."

Tr. 1586-87. In doing that, she was letting him know that he was talking when he should not have been. He has never seen her be rude to his clients or to an opposing party. Tr. 1587.

His testimony also established that during the time the *Allison/Camburn* matters were before Judge Squire, Judge Squire was handling one of his cases involving Carla Cortledge. The issue was a child custody matter which stemmed from the mother's discovery that her child, who she had been falsely told was dead for six years by the father of the child, even to the extent of the father having staged a funeral, became increasingly concerned upon watching her ex-husband and daughter on The Montel Williams Show. Tr. 1589-90. This was a difficult case, but was made harder when the Allison/Patterson contretemps intervened.

During the Allison/Patterson proceedings, Rocco Martin and his wife were trying to get the visitation of his child's mother reduced since they felt she was being abusive to the child. Tr. 1593-94. This case was before Judge Squire as well. The child had burn marks on his upper leg and scratches around his neck. Tr. 1593-94. At no time did Judge Squire yell at Mr. Martin or his lawyer. She talked directly to Mr. Martin and he felt she was very attentive. Tr. 1594-95. And at the same time, Ms. Allison's counsel were filing writs of mandamus and emergency CPOs, demanding to be heard on their issues, all on behalf of a mother found to have been guilty of abuse and neglect.

Another witness to the demeanor of Judge Squire was Claudine Shelfo. She was the mother of Greg Patterson and was involved in the Allison/Patterson matters. She was in the Judge's courtroom and never heard Judge Squire yelling at anyone. Tr.

1685. She was there on more than five occasions and never heard Judge Squire yelling at anyone. Tr. 1686.

Then there is the testimony of Christopher Cooper. He has been a lawyer in general practice for 23 years. Tr. 1628. He does a bit of everything including practicing in Franklin County Court of Common Pleas, Domestic Relations Court. Tr. 1628. He has had cases before Judge Squire and has never seen her be rude to anyone or yell at anyone. Tr. 1629. He has never seen her demean anyone. Tr. 1630.

There is the testimony of Effie Davis, the bailiff for Judge Squire who has held her job for a year and a half before the hearing. Tr. 1598-99. After working for a couple of years as a teacher, she worked in Children Services for 33 years. Tr. 1598-99. She started working again in February of 2005 when Judge Squire asked her to come in for "a couple of months" to help out. She wound up staying. Tr. 1600. That is hardly the testimony from court personnel who felt badgered and frightened in terms of doing her job.

To the same effect was the testimony of former bailiff Angel Hall, a nearly three year employee on the personal staff of Judge Squire. She never heard Judge Squire yell or be rude. She testified as to the manner in which the Judge conducted herself and the manner in which the Judge treated employees, lawyers and litigants with courtesy and respect. Hall Tr. 1701 and 1703. Again, hardly the kind of conduct found in the *O'Neill* case.

Even Jennifer Thompson, one of the lawyers from the Legal Clinic involved in the Theresa Allison matter, described Judge Squire's interaction with Ms.

McCaughan when the lawyer was trying to serve the affidavit of Bias and Prejudice as reflecting a demeanor that was “more like her everyday demeanor. She was pretty calm at the time and just ready to proceed.” Thompson Tr. 282. In other words, Judge Squire’s normal demeanor is one of calmness.

In deciding to enhance the penalty, the Board found that aggravating factors included the fact that there was a “pattern of misconduct” and “multiple offenses.” These are in reality the same aggravating factor counted twice. The pattern of misconduct comes from the four separate counts, and to use both as an aggravating factor weighs far too heavily against the Respondent.

Another aggravating factor found by the Board was the submission of “false evidence, false statements, or other deceptive practices during the disciplinary process.” But in point of fact, the Board did not find that these supposed false statements were created solely for the deception of the panel or anyone else. Rather they reflect Respondent’s perception of the events. The handling of this issue by the Panel and the Board leaves unclear as to whether this is truly considered to be an aggravating factor or a part of the basis upon which the Panel and Board chose to disregard certain of the testimony of Respondent. If it is not an aggravating factor, and that certainly seems so based on the way it is worded, that leaves but one aggravating factor measured against multiple mitigating factors.

As to the mitigating factors, the Panel and the Board discounted the fact that Respondent contended that there was “scheming and malevolence” by her fellow Judges and the complaining lawyers.

The fact is that the record supports a concerted action between two judges of her own court and the complaining lawyers. Without in any way characterizing the motives, the fact is that communications occurred between Judges of the same Court and lawyers dissatisfied with Judge Squire. It is hardly surprising that Judge Squire did not come off well in those discussions. Moreover, neither of the Judges bothered to check with Judge Squire or her staff as to the particular circumstances regarding the cases in which they involved themselves. Instead they chose to provide ex parte advice to unhappy lawyers.

And the term ex parte is used advisedly. While these lawyers appear to have been distressed at Judge Squire, there was an entire other set of lawyers on the other side of the proceedings who were never privy to the discussions between Judge Mason, Judge Priesse and their opposing counsel. While Judge Squire is attacked for talking with Ms. Blackmore in an ex parte conversation, nothing is made of the contacts between the lawyers and Judges Mason and Priesse.

Regardless of the intention, these actions of these judges were unnecessary, inappropriate and wrong. It is the sort of conduct that this Court should not countenance, which in effect will by endorsing the sanctions recommended by the Board.

(2) Pattern of Misconduct – The Findings of the Board conclude that Judge Squire is guilty of a pattern of misconduct within the meaning of Section 10(B)(c)(C) of the *Rules and Regulations Governing Procedure on Complaints and Hearing Before the Board of Commissioners on Grievances and Discipline of the Supreme Court*. This Finding is contrary to Ohio law.

The Ohio Supreme Court defines misconduct as follows:

(1) Misconduct. "Misconduct" means any violation by a justice, judge, or an attorney of any provision of the oath of office taken upon admission to the practice of law in this state or any violation of the Code of Professional Responsibility or the Code of Judicial Conduct, disobedience of these rules or of the terms of an order imposing probation or a suspension from the practice of law, or the commission or conviction of a crime involving moral turpitude.

Ohio Gov. Bar. R. V, Section 6(A)(1). A pattern of misconduct however is not defined by any authority known to Respondent. Ohio courts have defined a pattern of conduct however.

Under Ohio law a pattern of conduct:

Means two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents.*** *State v. Shue, Cuyahoga App. No. 84007, 2004 Ohio 5021, at P16, appeal not allowed (2005), 105 Ohio St.3d 1452, 2005 Ohio 763, 823 N.E.2d 457, citing State v. Tichon (1995), 102 Ohio App.3d 758, 768, 658 N.E.2d 16, dismissed, appeal not allowed, 73 Ohio St.3d 1450, 654 N.E.2d 986.*

See, *State v. Horsley*, 2006 Ohio 6217 (Franklin County App. Ct. 2006), and OJI §503.211. "One incident is insufficient to establish a pattern of conduct." *State v. Scruggs* (2000) 134 Ohio App.3d 631, 634.

To establish a "pattern of conduct" under Ohio law two or more incidents closely related in time must occur." Cf. "Pattern of corrupt activity," R.C. 2923.31(E). Both a pattern of conduct and a pattern of corrupt activity are statutorily defined terms and may under Ohio law be predicated on the occurrence of two actions or incidents

(emphasis added). In contrast a “pattern of misconduct” is not a statutorily defined term.

However, the Ohio Rules of Professional Conduct state:

Self-regulation of the legal profession requires that a member of the profession initiate disciplinary investigation when the lawyer knows of a violation of the Ohio Rules of Professional Conduct involving that lawyer or another lawyer. A lawyer has a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

Rule 8.2, Comment 1 (emphasis added).

A pattern of misconduct differs from the mere allegation of multiple offenses, otherwise Section 10 of *The Guidelines for Imposing Lawyer Sanctions* would not address the topics in separate subparagraphs. A pattern of misconduct therefore does not automatically arise, as the Findings suggests, from the mere allegation of multiple incidents. A pattern of misconduct requires a finding that multiple incidents occurred, closely related in time that manifest a continuing course of behavior. Here alleged incidents occurred on October 29, 2003; June 15, 2004; January 18, 2005, and September 30, 2005. While these incidents arose from allegations lodged by persons appearing before Judge Squire, during the interim literally hundreds of cases, lawyers and parties appeared before Judge Squire between these incidents without complaint. Given the Judge’s thirty year career as a lawyer and nine year tenure as a jurist, fairness requires these four complaints be regarded as isolated instances. For this reason the Findings’ characterization of this case as a pattern of misconduct should be rejected.

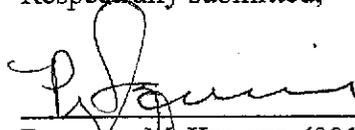
E. CONCLUSION.

This Court has the final word on this case. You have a case in which Judge Squire argued for herself against the charges presented by Disciplinary Counsel and did so forcefully. The Board suggests this is an aggravating factor.

But it is difficult when, years after the events in the calm, serene circumstance of a Supreme Court hearing room to hear yourself attacked for trying to protect children, to try to protect both sides of a lawsuit. None of these were easy cases. Each of the four counts has its own unique signature.

And in each, Judge Carole R. Squire did her best to do her duty. For you is the decision of what to do. You will send a message. She derived no personal benefit here, no gain for herself. So be sure your decision is a message reflecting justice, tempered in mercy.

Respectfully submitted,



RICHARD M. KERGER (0015864)
KERGER & ASSOCIATES
33 S. Michigan St., Suite 100
Toledo, OH 43604
Telephone: (419) 255-5990
FAX: (419) 255-5997

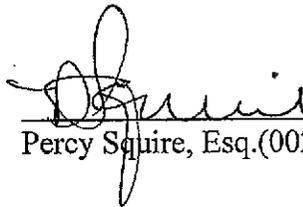
and

PERCY SQUIRE (0022010)
PERCY SQUIRE Co., LLC
514 S. High Street
Columbus, OH 43215
Telephone: (614) 224-6528
FAX: (614) 224-6529
Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served by mailing same on the 27th day of April, 2007 to:

Lori J. Brown, Esq.
Assistant Disciplinary Counsel
Disciplinary Counsel of the Supreme Court of Ohio
250 Civic Center Drive
Suite 325
Columbus, OH 43215



Percy Squire, Esq.(0022010)