

IN THE SUPREME COURT OF OHIO

In Re:

John Joseph Chambers
Respondent

:

:

CASE NO. 08-1991

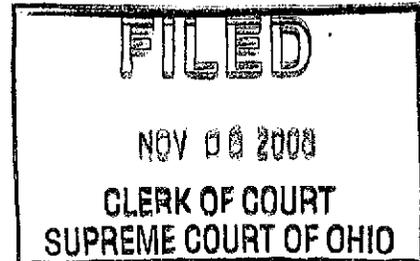
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Disciplinary Counsel
Relator

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**RESPONDENT'S OBJECTIONS TO THE FINAL REPORT OF
THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

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BRIEF IN SUPPORT OF OBJECTIONS

STATEMENT OF FACTS

I. PROCEDURAL CHRONOLOGY

On December 10, 2007, Relator's Complaint was certified by the Probable Cause Panel to the Full Board of Commissioners on Grievances and Discipline.

On April 2, 2008, Relator filed its Amended Complaint.

John J. Chambers, Esq., Respondent, failed to file an Answer to either Relator's Complaint or Relator's Amended Complaint.

On September 9, 2008, Relator filed a Motion for Default.

On September 10, 2008, the matter was referred to Master Commissioner Judge W. Scott Gwinn.

The Board of Commissioners on Grievances and Discipline ("Board") issued its Findings of Fact, Conclusion of Law and Recommendation in *Disciplinary Counsel vs. John Joseph Chambers., Esq., Respondent*, Board Case Number 07-098 ("Board's Findings"). The Board then certified Board Case Number 07-098 to this Honorable Court.

On October 17, 2008 this Honorable Supreme Court issued its Order to Show Cause requiring Objections to the Board of Commissioners Findings of Fact, Conclusion of Law and Recommendation to be filed no later than Thursday, November 7, 2008.

II. BRIEF FACTUAL SUMMARY

John Joseph Chambers, Respondent, was admitted to the practice of law in Ohio on May 15, 1995. *Relator's Complaint, p.1*

During the time in question in the instant case, June 2005 through the present, John J. Chambers, Respondent, has been in the solo practice of law.

In June 2005, when he went to pick-up his children at the residence of his ex-wife, John J. Chambers, Respondent, discovered for the first time, that his ex-wife had left Ohio with his 3 young children. He discovered that his ex-wife had moved to California. *Respondent's Exhibit 1, paragraph 5, attached hereto and incorporated herein.*

John J. Chambers, Respondent, became deeply depressed. So depressed that in November 2005, he spent 10 days on the couch at his home, not being able to leave his home. He then sought the assistance of his primary care physician, Dr. George Seikel. Dr. Seikel began treating Respondent for depression. *Respondent's Exhibit 1, paragraph 6, attached hereto and incorporated herein.*

In August 2006, Mr. Chambers, Respondent, was made aware that his 8 year old daughter was sexually molested by a babysitter while in California with his ex-wife. Despite Mr. Chambers' arguments to the contrary and despite the sexual molestation of his daughter, the Court returned his children to the custody of his ex-wife. When these events occurred, John J. Chambers, Respondent, began drinking again. Respondent began drinking again despite having uninterrupted sobriety for over 9 years (from June 30, 1997 until August 2006). *Respondent's Exhibit 1, paragraphs 7 and 8, attached hereto and incorporated herein.*

John J. Chambers, Respondent, began treating with Dr. Gintautas Z. Sabataitis on November 30, 2007. On December 4, 2007, Mr. Chambers, Respondent, signed and began attending an aftercare program (Phase III, Outpatient Aftercare Group Treatment) as part of his recovery from chemical dependency. In addition, Mr. Chambers, Respondent, attends AA meetings. *Respondent's Exhibit 2.*

In March 2008, John J. Chambers, Respondent, entered an intensive outpatient treatment program at the Cleveland Clinic to assist with his ongoing recovery from alcohol use/abuse

("chemical dependency"). He successfully completed that intensive outpatient treatment program in July 2008. John J. Chambers, Respondent, has maintained sobriety since April 21, 2008. *Respondent's Exhibit 1, paragraph 13, attached hereto and incorporated herein.*

John J. Chambers, Respondent, has also been treating with David J. Muzina, M.D. for his Bipolar disorder and chemical dependency, which Mr. Muzina first diagnosed on March 31, 2008. *Respondent's Exhibit 3.*

III ARGUMENT

Proposition of Law No. 1:

Gov. Bar R. V, Section 8(D) provides sufficient authority and discretion to remand disciplinary cases to the Board of Commissioners on Grievances and Discipline for further proceedings by the Board

For the reasons that follow, John J. Chambers, Respondent respectfully requests that this Honorable Court remand this disciplinary case to the Board for further proceedings.

Gov. Bar R. V, Section 8(D) provides, *inter alia*, "the Supreme Court shall enter an order as it finds proper." *Gov. Bar R. V, Section 8(D)*. In this case, given that John J. Chambers, Respondent's, chemical dependency and mental disability impeded his participation in the prosecution of this case, given that his chemical dependency and mental disability contributed to cause his misconduct, and the amount of additional mitigation now being offered by John J. Chambers, Respondent, it is within the authority and discretion of this Honorable Court to remand this disciplinary case to the Board of Commissioners on Grievances and Discipline for further proceedings.

One of the four factors that this Honorable Court takes into consideration when determining the disciplinary sanction to impose upon a respondent is the attorney's mental state

at the time of the time of the acts giving rise to the disciplinary case. *See, Stark Cty. Bar Assn. v. Ake*, 111 Ohio St.3d 266, 2006-Ohio-5704, ¶ 44.

John J. Chambers, Respondent, suffered from depression, undiagnosed and untreated Bipolar disorder and from chemical dependency during the events giving rise to his disciplinary case. *Respondent's Exhibits 1, 2,3 and 4, attached hereto and incorporated hererin.* John J. Chambers, Respondent, also suffered a stroke on October 16, 2008. For a period of time the stroke left him unable to speak, read or do simple tasks, such as use the telephone or turn on a computer. *Respondent's Exhibit 1, paragraph 11 and Respondent's Exhibit 4, attached hereto and incorporated herein.* Thus, John J. Chambers', Respondent's mental state at the time of his misconduct was impaired by his chemical dependency, his depression, his undiagnosed and untreated Bipolar disorder, and the other medical and life events through which he suffered.

As is so often the case with lawyers suffering from chemical dependency and mental disability, John J. Chambers, Respondent, neglected a client matter, made a poor decision in another matter and failed to cooperate with Relator. In his Affidavit, (Respondent's Exhibit 1) Respondent recounts how he intended to prepare and file the Motion for Mr. Wilmore and how he intended to send Relator a response to allegations pending against him, but "fear grips me to such an extent that, even with knowledge of the severe consequences I could face, I am incapable of finding the resolve to deal with a difficult situation." *Respondent's Exhibit 1, paragraph 24, attached hereto and incorporated herein.* Mr Chambers, Respondent, also testifies in his Affidavit how he misinterpreted and misapplied the Rules of Professional Conduct when negotiating for dismissal of Mr. Stump's grievance and then entering into a Settlement Agreement, of the civil law suit with Mr. Stump, which contained a clause wherein Mr. Stump would dismiss his grievance. *Respondent's Exhibit 1, paragraphs 16 through 22.*

Mr. Chambers, Respondent, when describing in his Affidavit (Respondent's Exhibit 1) what occurred on January 17, 2008 during settlement discussions in Respondent's civil case with Mr. Stump in the presence of the Court, is **not** intending to cast any aspersions on the Court or to grieve against the Court. Mr. Chambers, Respondent, is merely reciting how the events transpired on January 17, 2008, including how Mr. Stump's signed letter was transmitted to Disciplinary Counsel's Office. Mr. Chambers, Respondent is also describing his mental state during his settlement negotiations with Mr. Stump's prior counsel and with Mr. Stump on January 17, 2008. *Respondent's Exhibit 1g through 1L, attached hereto and incorporated herein.*

Mr. Chambers, Respondent respectfully submits that his chemical dependency and his mental disability contributed to cause his misconduct. Respondent's claim is supported by the medical evidence.

Dr. Sabataitis, Respondent's treating psychologist, testifies that "Mr. Chamber's depressive disorder and relapses into alcohol abuse contributed to the lack of professionalism he exhibited which has resulted in the allegations of neglect he now faces." *Respondent's Exhibit 2, page 2a, paragraph 5, attached hereto and incorporated herein.* Likewise, David J. Muzina, M.D., Respondent's treating psychiatrist makes the causal connection between Respondent's chemical dependency and mental disability and his misconduct. Dr. Muzina opines,

I have reviewed the Motion for Default at his request. It is obviously difficult for me to comment on Mr. Chamber's capability as an attorney or his actions that predate my initial contact with him in March of 2008. However, based upon my psychiatric diagnosis of bipolar disorder (previously undiagnosed and untreated) in the context of alcohol dependence, I highly suspect that the behaviors noted by Disciplinary Counsel in the Motion for Default were associated with his mental illness. *Respondent's Exhibit 3, page 3c, attached hereto and incorporated herein.*

Even George R. Seikel M.D., Respondent's treating primary care physician makes the causal connection between Respondent's misconduct and his chemical dependency and mental disability. Dr. Seikel states:

I have not judged how much of his disciplinary action is due to alcohol, due to lack of mental medical care and due to his family dynamics subconsciously affecting his case with Mr. Wilmore (which he suggests now). All these are logical contributors to his case. *Respondent's Exhibit 4A, attached hereto and incorporated herein.*

This Honorable Court's inclusion in June 2000 of specific rules on chemical dependency as mitigation in disciplinary cases, its inclusion in February 2003 of specific rules on mental disability as mitigation in disciplinary cases and the long line of disciplinary cases this Honorable Court has issued since utilizing those rule modifications, evidences this Honorable Court's recognition that attorneys suffering from chemical dependency and other mental disabilities should be permitted to make a record of their diagnosis, successful treatment and prognosis in order to determine the appropriate sanction to impose upon the attorney. *Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline of The Supreme Court, Section 10.*

Gov. Bar R. V, Section 11(E)(1)(c) permits a disciplinary agency to communicate with OLAP when there is reasonable cause to believe that a lawyer being investigated is suffering from chemical dependency or mental disability. This exception to the confidentiality of disciplinary investigations is further evidence of this Honorable Court's recognition of and commitment to seeing that lawyers who are impaired receive treatment so that they can return to the competent, ethical and professional practice of law in Ohio.

Dr. Sabataitis and Dr. Muzina both testify to a reasonable degree of medical certainty

that with continued sobriety and a course of treatment to address his mood disorder, Mr. Chambers can effectively, competently and ethically practice law. *Respondent's Exhibit 2, paragraph 6 and Respondent's Exhibit 3, paragraph 6, attached hereto and incorporated herein.*

In the instant case, John J. Chambers, Respondent, "ask[s] this court for another chance to demonstrate that I have the ability to function effectively as a lawyer." *Respondent's Exhibit 1f, paragraph 25, attached hereto and incorporated herein.*

This Honorable Court can give Mr. Chambers, Respondent, "another chance" by remanding this disciplinary case back to the Board for further proceedings.

Now that Mr. Chambers, Respondent, has arrived at a place in his recovery that he can effectively deal with his disciplinary case, the opportunity for a hearing or if appropriate, Consent to Discipline, will provide the Board and this Honorable Court a complete record on which to determine the appropriate sanction to be imposed upon Mr. Chambers for his admitted misconduct.

In addition, a remand to the Board of Mr. Chambers' disciplinary case will provide Disciplinary Counsel with the opportunity to explore Mr. Chambers' chemical dependency and mental disability issues, his recovery, and his prognosis. On remand, Disciplinary Counsel would also be afforded the opportunity to explore Mr. Chambers' other offered mitigation.

John J. Chambers, Respondent, respectfully submits that the request for remand to the Board is not made for purposes of delay, or to impede the disciplinary system, but is made in the spirit of this Honorable Court's recognition that chemical dependency and mental disability affects a lawyer's mood, memory and thought processes such that with effective treatment, a lawyer can return to the competent, ethical and effective practice of law.

For the foregoing reasons, John J. Chambers, Respondent, respectfully requests that this

Honorable Court remand his disciplinary case to the Board for further proceedings.

Proposition of Law No. 2

Abundance of Mitigation Warrants a Lesser Sanction

If this Honorable Court does not remand Mr. Chambers' disciplinary case to the Board for further proceedings, but instead determines to decide this disciplinary case and sanction John J. Chambers, Respondent; Mr. Chambers respectfully requests that the entire one-year suspension recommended by the Board be stayed and that Mr. Chambers be put on probations with conditions. The conditions of Mr. Chambers' probation would include:

1. Participation in OLAP and complete satisfaction of the terms of his 2 year OLAP contact;
2. Continued treatment with Dr. Sabataitis and Dr. Muzina and any other treatment professional recommended by either Dr. Sabataitis and Dr. Muzina;
3. Continued permission for Dr. Sabataitis to report to Disciplinary Counsel or his assistant "should Mr. Chambers drop of out treatment, revert to the use of alcohol, or stop attending Alcoholics Anonymous meetings.";
4. Monitoring Attorney appointed to monitor Mr. Chambers;
5. Any other conditions as required by this Honorable Court.

In *Akron Bar Assn. v. Catanzarite*, 119 Ohio St.3d 313, 2008-Ohio-4063 ¶ 37, citing to *Disciplinary Counsel v. Agopian*, 112 Ohio St.3d 103, 2006-Ohio-6510 ¶ 10, citing *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004-Ohio-4704 ¶53 and *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97 at 100; this Honorable Court held that the purpose of the disciplinary system is not to punish the respondent, but to protect the public. In this case, now that Mr. Chambers, Respondent is at a point in his recovery where he can effectively participate

in this case, to sanction him to a one-year suspension with 6 months stayed would in fact be punishment.

The public is protected if this Honorable Court stays the entire one-year suspension recommended by the Board on conditions as suggested above. The public is protected for the following reasons:

- Mr. Chambers, Respondent, has provided authority for his treating psychologist, Dr. Sabataitis “to report to the Court immediately, should Mr. Chambers drop out of treatment, revert to the use of alcohol, or stop attending Alcoholics Anonymous meetings.” *Respondent’s Exhibit 2a, paragraph 7, attached hereto and incorporated herein;*
- OLAP will be monitoring Mr. Chambers, Respondent;
- a monitoring attorney can be appointed to additionally monitor Mr. Chambers, Respondent and his compliance with all of his medical care providers.

In *Disciplinary Counsel v. Eisenberg* (1998), 81 Ohio St.3d 295, in *Dayton Bar Assn. v. Kinney* (2000), 89 Ohio St.3d 77 and also in *Disciplinary Counsel v. Markijohn*, 99 Ohio St.3d 489, 2003-Ohio-4129 at paragraph 8, this Honorable Court held that an abundance of mitigating evidence can justify a lesser sanction.

In the instant case, there is an abundance of mitigation. First, there is **no** prior disciplinary action against Mr. Chambers, Respondent. *Relator’s Motion for Default.*

Mr. Chambers, Respondent, has made monetary restitution to Mr. Wilmore by refunding the \$2,500 paid for legal fees. *Respondent’s Exhibit 1c, paragraph 12, attached hereto and incorporated herein.*

Mr. Chambers, Respondent, has admitted his misconduct. *Respondent’s Exhibit 1, paragraphs 10, 17, 18, 22 and 24, attached hereto and incorporated herein.*

Mr. Chambers, Respondent, entered a plea of no contest to a reduced charge and was found guilty of a violation of Section 601.08, attempted aggravated disorderly conduct by Judge

Zone in the Cleveland Municipal Court. Mr. Chambers was placed on one-year probation and ordered to receive anger management treatment. *Respondent's Exhibit 1m, attached hereto and incorporated herein.* Thus, other penalties/sanctions have been imposed upon Mr. Chambers for his physical altercation with Mr Stump.

Mr. Chambers, Respondent, has also demonstrated his remorse. An example of Mr. Chambers' remorse is when he states:

It is not lost on me just how badly my neglect reflects upon the practice of law. Ours is a particular important profession, one in which trust is the key component of an attorney-client relationship.

For an attorney to simply not perform as promised makes all attorneys look bad. *Respondent's Exhibit 1, paragraph 10.*

Mr. Chambers, Respondent, has been diagnosed as suffering from both chemical dependency and a mental disability by both Dr. Sabataitis and Dr. Muzina, both qualified health care professionals.

Dr. Sabataitis, Dr. Muzina and Dr. Seikel all offered their opinion to a reasonable degree of medical certainty that there is a causal connection between Mr. Chambers' chemical dependency and mental disability and his misconduct.

In July 2008, Mr. Chambers, Respondent, completed an intensive, outpatient recovery program through the Cleveland Clinic.

Mr. Chambers, Respondent, is participating in a 2-year outpatient aftercare/recovery program under the care of Dr. Sabataitis.

Mr. Chambers, Respondent, is entering into a 2-year contract with the Ohio Lawyers Assistance Program ("OLAP") and agrees to abide by the terms of that contract.

Mr. Chambers, Respondent, is continuing his aftercare for his Bipolar disorder with Dr. Muzina.

Dr. Sabataitis and Dr. Muzina have both opined to a reasonable degree of medical certainty that with continued sobriety and a course of treatment to address his mood disorder, Mr. Chambers, Respondent, can effectively, competently and ethically practice law.

Mr. Chambers', Respondent's ability to effectively address this disciplinary case at this time as evidenced by:

- his admissions of misconduct;
- his complete disclosure to his medical professionals of his disciplinary case;
- his entering into an OLAP contract;
- his admissions of his life events and impact those events had and have on him;
- his restitution to Mr. Wilmore;
- his remorse for his misconduct.

All of the above are evidence that Mr. Chambers is being rehabilitated such that he can effectively, ethically and competently continue to practice law in Ohio. All of the above are evidence that Mr. Chambers has submitted an abundance of mitigation in support of a lesser sanction.

For the forgoing reasons, if this Honorable Court determines that it should decide this case and issue a sanction against John J. Chambers, Respondent, Mr. Chambers respectfully requests that the entire one-year suspension period recommended by the Board be stayed and that he be put on probation with conditions as set forth above.

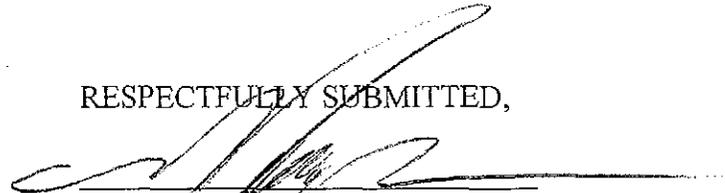
IV CONCLUSION

John J. Chambers, Respondent, respectfully requests that this Honorable Court remand his disciplinary case to the Board for further proceedings based upon his proven chemical dependency and mental disability issues that are causally connected to his misconduct, as well as,

for all of the other reasons cited in this Brief.

In the alternative, if this Honorable Court does not remand his disciplinary case to the Board, John J. Chambers, Respondent, respectfully requests that the sanction imposed upon him be a one-year suspension with the entire suspension stayed on conditions as set forth in this Brief.

RESPECTFULLY SUBMITTED,



Mary L. Cibella, #0019011

Counsel for John Joseph Chambers, Respondent

PROOF OF SERVICE

I Mary L. Cibella, Counsel for Respondent, John Joseph Chambers, Esq., do hereby certify that on November 5th, 2008, a copy of Respondent's Objections to the Findings of Fact, Conclusions of Law, and Recommendations of the Board of Commissioners was sent by:

Overnight Federal Express to:
Kristen D. Frost, Clerk
The Supreme Court of Ohio
65 South Front Street
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Certified U.S. Mail # 7003 1010 0004 2604 2738 to
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Certified U.S. Mail # 7003 1010 0004 2604 2745 to
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Counsel for Respondent, John Joseph Chambers, Esq.

Attachment not scanned