

IN THE SUPREME COURT OF OHIO

In Re:

John Joseph Chambers
Respondent

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:
:
:

CASE NO. 08-1991

Disciplinary Counsel
Relator

RESPONDENT'S ANSWER BRIEF TO RELATOR'S OBJECTIONS

Mary L. Cibella #0019011
614 West Superior Avenue Suite 1300
Cleveland, Ohio 44114
216-344-9220
Fax. No. 216-664-6999
E-mail: mlcibella@earthlink.net

Jonathan E. Coughlan, #0026424
Disciplinary Counsel
RELATOR

COUNSEL FOR RESPONDENT,
JOHN JOSEPH CHAMBERS

Carol A. Costa, #0046556
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
250 Civic Center Drive Suite 325
Columbus, Ohio 43215-7411
614-361-0256
COUNSEL FOR RELATOR,
DISCIPLINARY COUNSEL

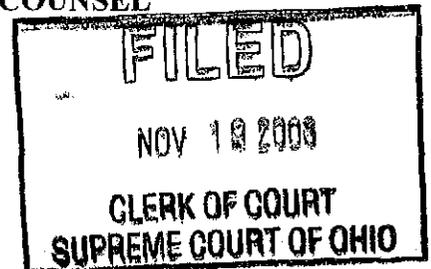


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ANSWER BRIEF

STATEMENT OF FACTS

I. 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 to Respondent's Objections.*

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 to Respondent's Objections.*

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 to Respondent's Objections.*

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, attached to Respondent's Objections.*

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 to Respondent's Objections.*

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

III ARGUMENT

Proposition of Law No. 1:

Abundance of Mitigation Warrants a Lesser Sanction
When Five Factors Are Considered

Relator argues in its Objections that an indefinite suspension is warranted when an attorney "intentionally disregards the disciplinary process and attempts to intimidate a party into withdrawing a disciplinary grievance." *Relator's Objections, Proposition of Law page 7.*

When determining the sanction to be imposed upon a respondent for professional misconduct, this Honorable Court has consistently held that five factors are to be considered. Those five factors are: "the duties violated, the actual or potential injury caused, the attorney's mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in

similar cases.” *Stark Cty. Bar Assn v. Ake*, 111 Ohio St.3d 266, 2006-Ohio-5704 ¶ 44.

The application of the five factors to the instant case warrant a sanction less than indefinite suspension for John J. Chambers, Respondent.

The duties violated by John J. Chambers, Respondent, are failure to cooperate with Disciplinary Counsel during its investigation of both the Wilmore and Stump grievances and attempting to get Mr. Stump to withdraw his grievance. For the reasons that follow, **none** of these duties were violated intentionally.

In November 2005, Mr. Chambers was suffering from a deep depression brought about by the abrupt move out-of-state of his minor children by his ex-wife. Mr. Chambers’ depression was so severe that for 10 days in November 2005, he was on his couch and was unable to leave his home. He sought treatment assistance from his primary care physician; and began treating with his primary care physician for what was diagnosed as depression. *John J. Chambers Affidavit paragraphs 5 and 6, Respondent’s Exhibit 1 attached to Respondent’s Objections.*

Approximately 8 months later, on July 5, 2006, the first letter of inquiry concerning the Wilmore matter was sent by Relator to Mr. Chambers. On August 3, 2006, the second letter of inquiry on the Wilmore matter was sent by Relator to Mr. Chambers. Around this same time in August 2006, Mr. Chambers learned that his then 8-year-old daughter, who was residing out-of-state, had been molested. This news exacerbated Mr. Chambers’ depression to the point where – “Thoughts of my own death were daily occurrences”. *John J. Chambers Affidavit paragraphs 7 and 8, Respondent’s Exhibit 1 attached to Respondent’s Objections.*

Not only was Mr. Chambers’ depression made worse in August 2006, but he was no longer able to maintain his sobriety. His over 9 years of uninterrupted sobriety were lost. He began drinking again. Mr. Chambers continued to drink until April 21, 2008. He successfully

completed an intensive outpatient treatment program at the Cleveland Clinic in July 2008.

Relator argues that Mr. Chambers intentionally disregarded Disciplinary Counsel during its investigation of the Wilmore grievance.

Mr. Chambers' did **not** intentionally disregard Disciplinary Counsel or intentionally fail to respond. Mr. Chambers' depression and chemical dependency affected his mind and his actions such that he could not form the specific intent to disregard Disciplinary Counsel. Mr. Chambers, attempted to cooperate with Disciplinary Counsel when he called Relator on May 1, 2007 to request additional time to respond. However, as is so often the case with persons suffering from chemical dependency and mental disability, he could not follow-through to prepare a response. As Mr. Chambers avers, "while I knew the problem wouldn't go away if I stuck my head in the sand, it appeared that avoidance was my only available coping mechanism, I would be paralyzed by fear whenever I would get a letter from the Supreme Court or the Disciplinary Counsel. Often, I would be afraid to even open them . . ." *John J. Chambers Affidavit paragraph 23, Respondent's Exhibit 1 attached to Respondent's Objections.*

The same holds true for the Stump grievance investigation. The Stump grievance investigation began in September 2007 and lasted until January 2008. Mr. Chambers was still suffering from depression during this time period, although he was receiving some treatment from his primary care physician for same. Although Mr. Chambers did begin treating with Dr. Sabataitis in November 2007 for his chemical dependency problem and what Dr. Sabataitis diagnosed as depression and anxiety, he still needed additional treatment, including an intensive outpatient program at the Cleveland Clinic beginning in March 2008 and completed in July 2008. Given Mr. Chambers' mental state due to his chemical dependency and mental disability, he did **not** intentionally disregard Disciplinary Counsel during its investigation of the Wilmore

grievance and did **not** intentionally disregard Disciplinary Counsel during its investigation of the Stump grievance.

The second factor to be considered when determining the sanction to be imposed upon an attorney for professional misconduct is the actual or potential injury caused. In both the Wilmore and Stump matter, the actual or potential injury is minimal.

In the Wilmore matter, the monies paid by Mr. Wilmore for the filing of a Motion for Release have been refunded. *John J. Chambers Affidavit paragraph 12, Respondent's Exhibit 1 attached to Respondent's Objections.* In addition, Mr. Wilmore filed a *pro se* Motion to Reconsider his prison term and a *pro se* Motion for Judicial Release. The Court denied both of Mr. Wilmore's motions. *John J. Chambers Affidavit paragraph 12, Respondent's Exhibit 1 attached to Respondent's Objections.*

In the Stump matter, Relator has continued prosecution of that matter despite any requests by Mr. Stump to withdraw his grievance.

The third factor to be considered when determining the sanction to impose upon a respondent is the attorney's mental state at the time of the violations. As set forth above, Mr. Chambers was suffering from depression, chemical dependency, and as diagnosed by Dr. Muzina on March 31, 2008, Bi-Polar Disorder along with the chemical dependency.

Dr. Sabataitis, Mr. Chambers' treating psychologist, Dr. Muzina, Mr. Chambers' treating psychiatrist, and Dr. Seikel, Mr. Chambers' treating primary care physician, all make the causal connection that Mr. Chambers' chemical dependency and mental disability contributed to cause his misconduct. *Respondent's Objections pages 5 and 6; Respondent's Exhibits 2, 3 and 4 attached to Respondent's Objections.* Mr. Chambers' mental state at the time of the misconduct was sufficiently impaired that he did **not** intentionally disregard Disciplinary Counsel and did

not intentionally attempt to intimidate Stump into withdrawing his grievance.

The fourth factor to be considered when determining the sanction to be imposed upon an attorney for professional misconduct is the existence of aggravating or mitigating factors. The mitigating factors are:

1. Admitted his misconduct, *John J. Chambers Affidavit paragraphs 10, 17, 18, 22, 24, Respondent's Exhibit 1 attached to Respondent's Objections*;
2. Other penalty/sanctions imposed for his physical altercation with Mr. Stump, *Respondent's Exhibit 1m, attached to Respondent's Objections*;
3. Demonstrated remorse, *John J. Chambers Affidavit, Respondent's Exhibit 1 attached to Respondent's Objections*;
4. Restitution to Mr. Wilmore, *Respondent's Exhibit 1c, attached to Respondent's Objections*;
5. Admissions of his life events and the impact those events had and have on him;
6. His complete disclosure to his medical professionals of his disciplinary case to assist them in their treatment of him;
7. His chemical dependency and mental disability, *Respondent's Exhibits 2, 3 and 4, attached to Respondent's Objections*.

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 in Respondent's Objections, or in the alternative, remands this case to the Board. The public is protected for the following reasons:

1. 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 to Respondent's Objections*;
2. OLAP will be monitoring Mr. Chambers, Respondent;
3. 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. There is an abundance of mitigation in this case as set forth above.

The fifth factor to consider when determining the sanction to impose upon an attorney for professional misconduct is: what sanctions were imposed in similar cases?

In *Cuyahoga County Bar Association v. Nance*, 119 Ohio St.3d 55, 2008-Ohio-3333, Mr. Nance was charged with engaging in conduct that adversely reflects on the lawyer's fitness to practice law. This is one of the disciplinary charges against Mr. Chambers. In *Nance, supra.*,

Mr. Nance impermissibly made withdrawals from his trust account 121 times to pay for his personal and business expenses. Even though the misuse of trust account monies has been held by this Honorable Court to be grounds for disbarment, Mr. Nance received a six-month stayed suspension. The mitigation in Mr. Nance's case was no prior discipline, no intentional dishonesty, and restitution.

In the instant case, Mr. Chambers attempted to get Mr. Stump to withdraw his grievance and neglected/failed to cooperate with Disciplinary Counsel. Although these matters are serious, they do not rise to the level of misuse of trust account monies. Why should Mr. Nance, who 121 times misused his trust account and who had NO evidence of any chemical dependency or mental disability that contributed to cause his misconduct, be given a six-month stayed suspension and Mr. Chambers be given Relator's suggested sanction of an indefinite suspension?

In *Medina Cty. Bar Assn. v. Butts*, 114 Ohio St.3d 472, 2007-Ohio-4263, Mr. Butts was charged with engaging in conduct prejudicial to the administration of justice, engaging in conduct adversely reflecting on his fitness to practice and neglect of a legal matter. Mr. Chambers is charged with conduct prejudicial to the administration of justice, conduct adversely reflecting on his fitness to practice and neglect/failure to cooperate.

In *Butts, supra.*, Mr. Butts was diagnosed as suffering from major depression. He also entered into an OLAP contract. Mr. Butts was sanctioned with a six-month stayed suspension. On the basis of *Butts, supra.*, the sanction to be imposed upon Mr. Chambers should be a stayed suspension.

In *Cuyahoga Cty Bar Assn. v. Rutherford*, 112 Ohio St.3d 159, 2006-Ohio-6526, Mr. Rutherford was charged with neglect, among other charges. As mitigation, Mr. Rutherford suffered from major depression. Mr. Rutherford's major depression contributed to cause his

misconduct. This Honorable Court stated, “We acknowledge respondent’s candor, his commitment to recovery, his complete restitution, and on review, his appreciation for the gravity of the situation.” *Rutherford, supra* at ¶17. Mr. Rutherford was sanctioned to a six-month stayed suspension on conditions.

In the instant case, Mr. Chambers has been candid in his Affidavit (Respondent’s Exhibit I attached to Respondent’s Objections), has committed himself to his recovery from both chemical dependency and mental disability, has made restitution to Mr. Wilmore and does appreciate the gravity of the situation. Given the similarities between Mr. Chambers and *Rutherford, supra.*, a stayed suspension for Mr. Chambers is warranted.

In *Disciplinary Counsel v. Wolf*, 110 Ohio St.3d 411, 2006-Ohio-4709, Ms. Wolf was convicted of two felonies for procuring dangerous prescriptions drugs by deception. In determining the sanction to impose upon Ms. Wolf, this Honorable Court considered that Ms. Wolf had no prior discipline, that she made good faith efforts to rectify the consequences of her misconduct, had other sanctions imposed upon her, and that her drug dependence contributed to cause her misconduct. Likewise, Mr. Chambers has no prior discipline, he has made restitution, he has admitted his misconduct, he has had other sanctions imposed upon him for his physical altercation with Mr. Stump, and, his chemical dependency and mental disability contributed to cause his misconduct. Just as the entire suspension for Ms. Wolf was stayed on conditions, any suspension for Mr. Chambers should also be stayed on conditions as set forth in Respondent’s Objections.

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 Relator’s Objections and suggested sanction be overruled. Mr. Chambers further

respectfully requests that the entire one-year suspension period recommended by the Board be stayed and that he be put on probations with conditions as set forth in Respondent's Objections. In the alternative, this case can be remanded to the Board.

IV CONCLUSION

John J. Chambers, Respondent, respectfully requests that Relator's Objections and suggested sanction be overruled. Mr. Chambers further 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 and in Respondent's Objections.

In the alternative, 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, for all of the other reasons cited in this Brief and in Respondent's Objections.

RESPECTFULLY SUBMITTED,



Mary T. Cibella, #0019011

Counsel for John Joseph Chambers, Respondent

PROOF OF SERVICE

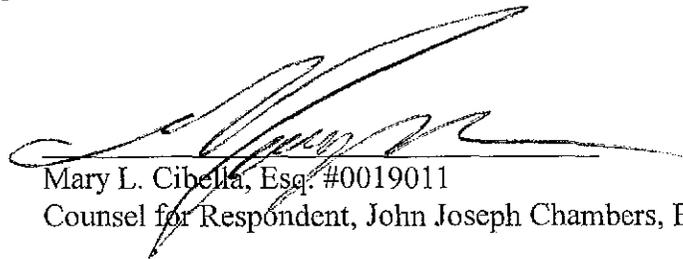
I Mary L. Cibella, Counsel for Respondent, John Joseph Chambers, Esq., do hereby certify that on November 18th, 2008, a copy of Respondent's Answer Brief to Relator's

Objections was sent by:

Overnight Federal Express to:
Kristen D. Frost, Clerk
The Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215

Certified U.S. Mail # 7003 1010 0004 2604 2769 to
Jonathan W. Marshall, Esq., Secretary
Board of Commissioners on Grievances and Discipline
65 South Front Street, 5th Floor
Columbus, OH 43215-3431

Certified U.S. Mail # 7003 1010 0004 2604 2752 to
Carol A. Costa, Esq., Assistant Disciplinary Counsel
Counsel for Relator
250 Civic Center Drive Suite 325
Columbus, Ohio 43215-7411



Mary L. Cibella, Esq. #0019011
Counsel for Respondent, John Joseph Chambers, Esq.