

APPEAL FROM THE BOARD ON GRIEVANCES
OHIO SUPREME COURT

Merrie M Frost

No. 09-69

Respondent

OBJECTIONS TO FINDINGS
OF FACT AND BRIEF IN
SUPPORT

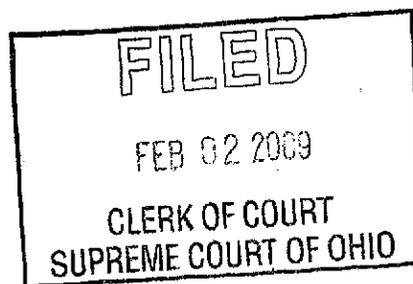
Vs.

Disciplinary Counsel

OBJECTIONS TO FINDINGS OF FACT AND BRIEF IN SUPPORT

Respectfully submitted,

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Now comes the respondent and hereby files her appeal to the recommendation from the Board of Commissioners. Specifically, respondent states that there are several reasons why the recommendation must be reversed.

First, even if the sanction is warranted, which respondent denies, respondent has never been disciplined and the sanction is excessive. Respondent would state that she deserves an opportunity to rectify the problems she was sanctioned for and allowed to practice law. At the most, a public reprimand should be imposed.

Respondent is being sanctioned for what can only be considered an unconstitutional purpose. First, the basis for the sanctions is two motions for recusal, one federal and one state. Respondent was required in both recusals, per the civil rules, to state with particularity the grounds for the recusal of the judge. The motion itself can be inherently discourteous to the judiciary. You are asking the judge to step down from a case because the judge cannot perform his/her duty. That in and of itself is contentious.

The rule will not allow for vague reasons being stated, just as a fraud claim must be stated with particularity, so must the recusal motion. Respondent then had to follow the civil rules, which then put her in violation of the disciplinary rules. That makes the disciplinary rules unconstitutional as a violation of due process. Respondent cannot follow the civil rules without violating the disciplinary rules. That violates the fourteenth amendment as applied to the states. (Respondent would state that a motion for recusal should quite possibly be revamped to avoid this problem in the future. For example, perhaps all recusal should be under seal and initially simply ask for the recusal without any reason, to allow a judge to consider recusing himself/herself voluntarily.)

Secondly, the statements in the motion were protected under the first amendment. There is no legitimate governmental purpose for restricting the first amendment of an attorney who is reporting what she believes is good faith claims to support a recusal motion. At the very least, the government would be required to consider the sanctions under strict scrutiny standard, as it is a fundamental constitutional right. Considering that the recusal motion is a required motion and the attorney is required to state with particularity the grounds for such motion, the government cannot withstand the strict scrutiny standard.

Additionally, although respondent was alleged to have been discourteous to The Honorable Judge John Adams, Judge Adams admitted on the stand that respondent was never rude or discourteous to the judge during the proceedings. The only complaint from Judge Adams was based upon the recusal motion filed by respondent-which again is a requirement of the civil rules. The recusal process puts respondent in a "catch 22" which again makes the rule unconstitutional.

Additionally, respondent suggested on more than one occasion that she would take a polygraph or "lie detector test" to show that she did not lie about anything contained in the motions. It would seem that the disciplinary counsel would have considered this proposal since law enforcement all over the country use this test in their quest for truth. Further, it has been used in Ohio in a criminal case in Summit County. However, this offer was rejected by the Board. If the truth really matters, would not this test have been a clear path to follow?

The disciplinary procedure is a process to which the government must follow the constitutional protections proscribed by law. It is also a means by which the government

may take a constitutionally protected privilege from its citizens, but only again, if it follows the constitution. To sanction respondent when she was following the rules is not constitutional.

For all the foregoing reasons, the recommendation should be vacated. The rules on how to file a recusal should be rewritten to not put attorneys in a position that to follow one rule he/she has to violate another rule.

Respectfully submitted,



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Proof of Service

A true copy of the foregoing was sent via regular mail on this 30 day of January 2009 to the following:

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