

IN  
THE SUPREME COURT OF OHIO

Disciplinary Counsel,  
Relator

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CASE NO. 2009-693

Edward Royal Bunstine  
Respondent

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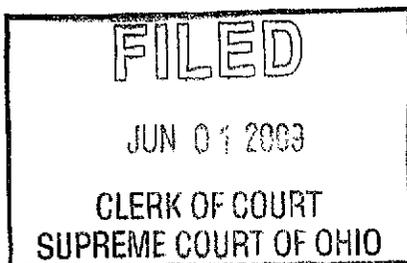
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RELATOR'S ANSWER TO  
RESPONDENT'S OBJECTIONS  
TO THE BOARD OF  
COMMISSIONERS' REPORT  
AND RECOMMENDATIONS



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**INTRODUCTION**

Now comes relator, disciplinary Counsel, and hereby submits this answer to respondent's objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline (the "board").

Based upon clear and convincing evidence presented at the hearing in this matter the board found that respondent's conduct violated DR 1-102(A)(5). Report at 3. The board dismissed the remaining alleged violation, DR 5-101(A)(1) finding that insufficient evidence was presented to support the violation. Report at 3. The board recommended that respondent's license to practice law be suspended for six months with the entire period stayed.

The board found the stipulated mitigation factors of an absence of a prior disciplinary record and full and free disclosure to disciplinary board. BCGD Proc. Reg.

10(B)(2). Additionally, the board found an aggravating factor in that respondent fails to appreciate the wrongfulness of his actions. BCGD Proc. Reg. 10(B)(1)(g). Report at 3.

The board's report was certified to this court on April 15, 2009. A show cause order was issued April 30, 2009. Respondent filed his objections on May 18, 2009 and it is to those objections that relator now responds.

Respondent failed to timely serve a copy of his objections and brief upon relator despite a certificate of service to the contrary. The certificate of service attached to respondent's brief states that a copy was served by "regular mail or personal delivery" on May 17, 2009. Relator did not receive a copy of the brief by either manner. It should further be noted that May 17, 2009 was a Sunday and neither relator's office nor the post office was open. Relator received a copy of respondent's objections and brief on May 26, 2009. The envelope is not postmarked.

For the reasons set forth herein, this court should overrule respondent's objections and adopt the Findings of Fact, Conclusions of Law and Recommendation of the board.

### **STATEMENT OF FACTS**

Respondent, Edward Royal Bunstine, was admitted to the practice of law in the state of Ohio on May 11, 1981.

Respondent is a sole practitioner in Chillicothe, Ohio. He is a former City Law Director and until May 2007 was employed as a part-time city prosecutor working in Chillicothe Municipal Court. Jt. Stip. 2, 3.

On August 6, 2006 Ryan Hammond (hereafter "Ryan Hammond") was arrested and charged with resisting arrest and disorderly conduct in Chillicothe Municipal Court

with the charges being filed on August 7, 2006. Jt. Stip. 4; Jt. Ex. 1, 2. Hammond's parents, Ron and Yvonne (hereafter "Hammonds"), are friends with respondent and his wife. Jt. Ex. 3; Tr. at 42, 64, 65.

The Hammonds spoke with respondent's wife, Lynn, to inquire about the court process and what would happen now that their son had been arrested. Tr. at 79, 84. The Hammonds did not ask respondent or his wife to intervene on their behalf or ask for representation. Tr. at 79, 85,86.

After speaking with the Hammonds, respondent's wife drafted a letter to Judge Street, who would handle Ryan Hammond's arraignment. The letter states that respondent and his wife are friends of the Hammonds and requests that Ryan Hammond receive court mandated counseling as a condition for his bond. Jt. Ex. 3. The letter details some of Ryan Hammond's mental health history, information that respondent acknowledges Judge Street would not have been presented with at arraignment. Tr. at 46. Respondent does not believe that this letter in any way advocates for Ryan Hammond. Tr. at 55.

Respondent then delivered this letter, in an envelope from his law firm, to Judge Street's bailiff the morning of Ryan Hammond's arraignment. Tr. at 46. When he delivered the letter, respondent told the bailiff it was for Judge Street. Tr. at 46. Respondent would have stayed for the arraignment and stated the same facts in open court but he had another appointment. Tr. at 47. At the time, respondent was not assigned to this matter nor was he the prosecutor in the courtroom that day. Tr. at 47.

Respondent testified that he did not tell his boss, the City Law Director, about the letter or provide his employer with a copy. Tr. at 48. Respondent could not recall

whether or not he had ever told the public defender who represented Ryan Hammond about the letter. Tr. at 53. Respondent did not believe that it was necessary to do so since the letter was in the file. Tr. at 48, 53. It appears that Judge Street made a note on the envelope to provide a copy of the letter to the public defender. Jt. Ex. 11.

Ron Hammond testified at the hearing that he did not even know that a letter had been written until after the arraignment and even then, was told about it by respondent's wife. Tr. at 81. Neither respondent, nor his wife, gave a copy of the letter to the Hammonds. Tr. at 81. Ron Hammond did not ask respondent to aid with this matter and, in fact, anticipated that his son, Ryan Hammond, would be assigned a public defender. Tr. at 84, 86.

Respondent was then assigned to prosecute Ryan Hammond's case after the arraignment. Respondent did not recuse himself from this case, knowing not only that he was a friend of the family but that he had participated in writing the letter to Judge Street. Tr. 52, 53. In fact, respondent does not believe that he had any reason to recuse himself from the case. Tr. at 54.

Respondent handled a "nonappearance" pretrial in Ryan Hammond's case during September 2006 and a second pretrial on October 13, 2006. Jt. Ex. 5, Tr. at 52. Ryan Hammond was represented by a public defender, who had been assigned at his arraignment. At the second pretrial, respondent worked out an agreement whereby Ryan Hammond would participate in a 16 week counseling program and all charges would be dismissed upon completion of the program. Jt. Stip. 9, Tr. at 52.

After arranging the agreement, respondent recused himself from the case which was then assigned to another city prosecutor, Michelle Rout. Respondent never

discussed why he was recusing himself or made a note about it on the case log. Jt. Ex. 5, Tr. at 15. Rout testified that she eventually asked why she was assigned the case and was told of the letter by the Judge Bunch, who was then assigned to the case. Tr. at 15, 16.

Despite Rout and Judge Bunch's belief that the letter was the cause of respondent's recusal from the case, respondent believes that statements he made to the Hammonds at the October 2006 pre-trial caused a conflict. Respondent states that he told the Hammonds that he would help them with their son, Ryan Hammond, including talking to him if they asked. Again, the Hammond's did not ask respondent to do this, and respondent never actually spoke to Ryan Hammond. Tr. at 57. Respondent does not believe that his friendship with the Hammonds or writing the letter created a conflict that would have prevented him from handling the case once it was assigned to him. Tr. at 54.

Because respondent had already worked out the agreement, Rout did not believe that she had any authority to revisit the agreement. She saw her role as only conducting necessary follow-up pretrials to make sure the Ryan Hammond was attending counseling. Tr. at 14, 16, 17.

**RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS**  
**OBJECTIONS**

**I. The Board Properly Found that Clear and Convincing Evidence Showed that Respondent's Conduct Violated DR 1-102(A)(5).**

Respondent argues that the record does not contain clear and convincing evidence that he violated DR 1-102(A)(5).<sup>1</sup> The record is clear that respondent engaged in conduct that was prejudicial to the administration of justice.

The standard of proof in a case involving alleged ethical violations is proof by clear and convincing evidence. This Court has defined "clear and convincing evidence" as the:

measure or degree of proof which is more than a "mere preponderance of the evidence," but not to the extent of such certainty as is required "beyond a reasonable doubt" in criminal cases, and which will produce in the mind of the trier of facts a firm belief of conviction as to the facts sought to be established.

*Disciplinary Counsel v. Furth*, 93 Ohio St.3d 173, 2001-Ohio-1308, 754 N.E.2d 219.

Respondent fails to state how the record of this case fails to meet this standard.

Respondent's brief only offers continued justification for what he did and reiterates the same explanation that he provided at the hearing. It is this same explanation that was rejected by the board in finding that respondent engaged in misconduct.

Respondent provides this court with his own definition of "conduct prejudicial to the administration of justice," defining it as conduct that shows a "bias." The true definition of conduct prejudicial to the administration of justice is very broad.

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<sup>1</sup> In addition to his brief, respondent has filed separate "objections" to the board report. These objections concern what respondent states are factual errors but the objections are really synopsis of the arguments contained in his brief. As such relator will address them as if they were contained in the brief.

It not only includes conduct that is directly related to litigation or judicial proceedings, but can also encompass personal behavior, whether connected to a legal proceeding or not. See: ABA, Lawyers' Manual Of Professional Conduct: Conduct Prejudicial To The Administration Of Justice. Law. Man. Prof. conduct 101:501.

This Court has encompassed various aspects of this definition in its cases finding that an attorney has engaged in conduct that is prejudicial to the administration of justice. *Disciplinary Counsel v. Brown*, 90 Ohio St.3d 273, 2000-Ohio-82, 737 N.E.2d 516 (attorney failed to file briefs on behalf of criminal clients, included false statements in personal affidavit); *Columbus Bar Assn. v. Winkfield*, 107 Ohio St.3d 360, 2006-Ohio-6, 839 N.E.2d 924 (attorney continued representing client after suspension); *Disciplinary Counsel v. Marshall*, 74 Ohio St.3d 615, 1996-Ohio-241, 660 N.E.2d 1161 (attorney's failure to cooperate in disciplinary proceeding); *Disciplinary Counsel v. Hiltbrand*, 110 Ohio St.3d 214, 2006-Ohio-4250, 852 N.E.2d 733 (attorney convicted of reckless operation, driving under suspension, telephone harassment and driving while intoxicated, violating court order).

This Court has also issued decisions wherein the only ethical violation that an attorney engaged in was DR 1-102(A)(5). *Disciplinary Counsel v. Marshall*, 74 Ohio St.3d 615, 1996-Ohio-241, 660 N.E.2d 1161; *Disciplinary Counsel v. Cicero*, 78 Ohio St.3d 351, 1997-Ohio-207, 678 N.E.2d 517.

Respondent does not cite any cases to support his allegation that his conduct was not prejudicial to the administration of justice. Neither does respondent point to any testimony or exhibits that would show that the evidence does not support the board's

finding. In fact, respondent's brief contains multiple facts and statements that are not part of the testimony offered at the hearing by either respondent or any other witness.<sup>2</sup>

The crux of this case is that respondent should not have involved himself in Ryan Hammond's prosecution after participating in writing and delivering a letter on behalf Ryan Hammond to Judge Street. The letter clearly advocates a position for the benefit of the defendant. Specifically, the letter advocates that Ryan Hammond should receive counseling as a condition of bond. Jt. Ex. 3. Despite respondent's repeated denials that Ryan Hammond was not the beneficiary of the letter, the focus of the letter is clear - Ryan Hammond should receive the benefit advocated (i.e. counseling). This position is upheld by the board's finding that the letter was for Ryan Hammond's benefit. Report at 2.

After being assigned the case as a part-time prosecutor, respondent worked out an agreement that achieved the result he advocated for in the letter. Jt. Ex. 5. The issue is not whether or not Ryan Hammond needed counseling, but whether it should have been respondent who secured it for him.

The ultimate outcome for Ryan Hammond is not the issue in this case. Respondent seems to believe that the ends justify the means: Ryan Hammond needed counseling, Ryan Hammond got counseling. Respondent advocated for counseling on Ryan Hammond's behalf. Respondent then negotiated an agreement for counseling for Ryan Hammond while he was representing the City of Chillicothe.

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<sup>2</sup> For example, Respondent provides detail regarding the incident leading to Ryan Hammond Hammond's criminal charges and details of his mental health history.

Despite respondent's attempts, he cannot couch his behavior as that of victim advocate, a normal part of prosecution. In this case, the Hammonds were not the victim's of Ryan Hammond's actions but rather had simply called the police. Tr. at 82. The Hammonds were parents concerned for their son and who were looking for advice on how to convey their wishes for their son to the court. Tr. at 79. Respondent, and his wife, took it upon themselves to become personally involved.

Respondent's brief shows why respondent's conduct was prejudicial to the administration of justice. Respondent acknowledges that the letter conveys facts that would not have been presented at an arraignment proceeding. Tr. at 46. Because there were no subsequent hearings or any testimony taken in Ryan Hammond's criminal case, respondent possessed knowledge beyond that which was present in the record. Respondent had that knowledge by virtue of his relationship with the Hammonds. Respondent states his knowledge about Ryan Hammond in his brief, even though it too is not contained in the record from the disciplinary hearing.

Respondent states that the prosecutor who was assigned this case after respondent recused himself did not revisit the agreement so it must have been acceptable. Rout testified that she didn't know about the letter until well into her involvement in Ryan Hammond's case. Tr. at 15. She also testified that she saw her role as only monitoring and implementing the agreement. Tr. at 38. She did not revisit the original charges or facts to make any judgment on the appropriateness of the agreement.

Respondent had the case reassigned after he worked out the agreement because he believes that he created a conflict of interest at the pretrial. Respondent

states a conflict existed because he offered to talk to Ryan Hammond if the Hammonds asked him to do so.<sup>3</sup> Tr. at 56, 57. Even during his disciplinary hearing, respondent did not believe that the letter created any conflict or impacted his ability to handle the matter Tr. at 54.

In fact, testimony at the hearing showed that there were multiple avenues for the Hammonds to express their concerns to the court. Rout stated that a victim advocate works in the arraignment courtroom for the purpose of providing victims, and others, with information about the process and that the advocate often addresses the judge on behalf of victims. Tr. at 22. Rout also testified that occasionally the victim advocate would come get a prosecutor from another courtroom if someone needed a protection order or other action beyond her comfort level. Tr. at 22. Also, police officers often addressed the court with concerns about particular defendants. Tr. at 22. There were alternatives for the Hammonds to be able to communicate with the court at arraignment. More importantly, Ryan Hammond was going to be assigned an attorney with whom the Hammonds could have communicated since they were not the victim's of his crime. Tr. at 84. Respondent simply could have conveyed these methods to the Hammonds, effectively addressing their inquiry.

Respondent, as part of his argument, disagrees with the board's finding that he fails to appreciate the wrongfulness of his conduct. Respondent repeatedly stated at the hearing that he had not done anything wrong in knowing about the letter, delivering it to the court, and later prosecuting the case. Tr. at 55, 64, 91, 93, 94. Respondent continues to believe that the court needed to be aware of the information his wife found

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<sup>3</sup> The Hammond's never asked respondent to talk to their son.

out from the Hammonds. Tr. at 92. Respondent's brief continues with the same type of statements. Respondent has shown that he does not comprehend why it is misconduct to write a letter to the court on behalf of his friend's and their son, the defendant in a pending criminal case, and then to prosecute the case. Based on respondent's own statements, it was wholly appropriate for the board to find the aggravating factor that respondent fails to appreciate the wrongfulness of his conduct.

The board found that relator proved by clear and convincing evidence that respondent violated DR 1-102(A)(5). The record of this case shows that respondent engaged in conduct that affected the prosecution of a criminal case and that he fails to appreciate the wrongfulness of his conduct.

**II. The Board report complies with the requirements of Gov. Bar. Rule V(6)(j).**

Respondent's assertion that the panel report does not comply with Gov. Bar R. V(6)(j) is incorrect. Respondent contends that the panel report must be signed by all three panel members before being submitted for review by the entire board or the report is void. There is no support for respondent's position in Gov. Bar R. V.

Gov. Bar. R. V(6)(j) states that if the hearing panel finds that a respondent is guilty of misconduct, it must file a "certified report of the proceedings, its finding of facts and recommendations" with the Secretary of the board. There is no language in the rule requiring a specific number of signatures or that the report be signed at all.

Respondent infers that because only two panel members signed the report that the panel members were not unanimous in their finding, in which case, he argues the panel report is void. By extrapolation, respondent believes that the board report is also

void. There is no requirement for panel members' signatures in Gov. Bar R. V. There is no provision in Gov. Bar R. V stating that a finding of misconduct must be supported by the signature of all panel members or must be unanimous. The lack of signature does not present any evidence of the individual panel member's opinion of the evidence presented.

In addition, there is no requirement that a finding of misconduct be unanimous. Gov. Bar R. V(6)(j). Respondent points to Gov. Bar R. V(6)(h) to state that the panel must be unanimous in its decision. However, that provision of the rule applies only when the panel dismisses all alleged ethical violations. It does not apply to a finding of misconduct. There is no similar requirement when the panel finds an ethical violation.

Respondent also states that attached to the board report filed with this Court pursuant to Gov Bar R. V(6)(L) on April 15, 2009 was a newspaper article about respondent. Respondent states that the article is "prejudicial error" and the board report should be vacated.

The board report filed on April 15, 2009 did have attached to it a newspaper article about respondent. However, the Secretary for the board filed a motion to strike the article on April 21, 2009. The motion states that the article was not an exhibit or part of the record in the disciplinary case, which is correct. This Court granted the motion and removed the exhibit from the record on April 24, 2009.

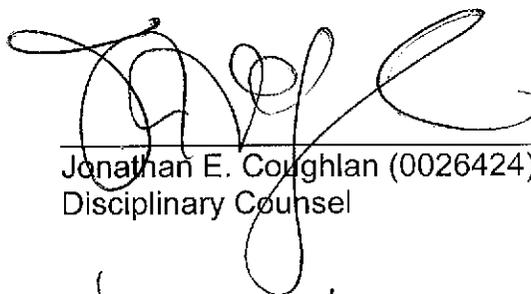
Respondent does not provide any evidence that the article was considered by either the panel or board or even how it came to be attached to the board report. Respondent does not make any argument that the article caused him prejudice outside of its mere existence.

Because the article has been stricken from the record, it is not in evidence for this Court to review and is not subject to consideration without a showing by respondent that actual prejudice occurred. Absent showing how he was harmed, respondent's argument is moot due to the Court's order of April 24, 2009.

### CONCLUSION

The board properly found that respondent violated DR 1-102(A)(5) by clear and convincing evidence. After weighing the mitigating and aggravating factors, the board reached the appropriate sanction. This Court should uphold the recommended violation and sanction of six month suspension with the entire term stayed.

Respectfully submitted,



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



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## CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Relator's Answer To Respondent's Objections To The Board Of Commissioners has been served via hand delivery upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215-3431, and via regular U.S. mail, postage prepaid, upon respondent Edward Royal Bunstine, Esq., 32 South Paint Street, Chillicothe, OH 45601, this 1<sup>st</sup> day of June, 2009.



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Heather L. Hissom (0068151)