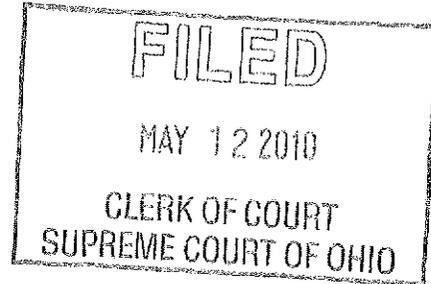


BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

10-0851



In Re:	:	
Complaint against	:	Case No. 09-022
Scott Pullins Attorney Reg. No. 0076809	:	Findings of Fact,
<u>Respondent,</u>	:	Conclusions of Law and
Disciplinary Counsel	:	Recommendation of the
<u>Relator.</u>	:	Board of Commissioners on
	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
	:	
	:	

This matter was heard on October 13, 2009 and October 29, 2009 in Columbus, Ohio, before panel members Judge Joseph J. Vukovich of Mahoning County, Alvin R. Bell of Hancock County, and Charles E. Coulson of Lake County, Chair. None of the members of the panel was a member of the probable cause panel that reviewed this complaint or resided in the appellate district from which the complaint arose. The hearing was held on the allegations contained in the first amended complaint filed on March 25, 2009. Michael Murman appeared as counsel for Relator. He was a special counsel appointed by Disciplinary Counsel to handle the investigation and prosecution of this formal complaint. Scott Pullins represented himself pro se.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Respondent was admitted to the practice of law in the State of Ohio on November 10, 2003. The first amended complaint contained seven counts alleging violations of the Code of Professional Responsibility, the Rules of Professional Conduct, and Gov. Bar R. IV and V. The panel finds the following, by clear and convincing evidence, as to each count in the complaint.

COUNT 1

On or about January 17, 2006 the Respondent, on behalf of himself, his daughter, and his wife's parents, filed an action in the Knox County Court of Common Pleas wherein Respondent was seeking a civil protection order against Mr. Carl F. Holmes. This case, *Scott A. Pullins et al. v. Carl F. Holmes*, 06ST010022, was assigned to Judge Otho Eyster, Presiding Judge of the Knox County Court of Common Pleas.

At the time of the filing of this action, Respondent filed a petition for a civil stalking protection order, asking the court to issue an ex parte protection order under R.C. 2903.214 (D). The Knox County Court of Common Pleas followed its local "Rules of Practice and Procedure," in ruling on the request for an ex parte protection order. Local Rule 22, Civil Protection Order Hearings, states, in part, "Hearings on ex parte orders may be conducted upon affidavit only, at the discretion of the court."

On the same day it was filed, January 17, 2006, and in compliance with the above Knox County Common Pleas Court local rule, Judge Eyster considered the request for an ex parte order upon the affidavits filed by Respondent, and denied the request. The court set the matter for a full hearing on February 3, 2006. Both parties to this lawsuit filed requests to continue the final hearing. The full hearing was set for March 3, 2006.

On or about January 20, 2006, and then again on or about January 23, 2006, Respondent filed disciplinary grievances against Judge Eyster with the Office of Disciplinary Counsel. On February 21, 2006, prior to the court conducting a full hearing on Respondent's petition for protection order, Respondent filed an affidavit of disqualification against Judge Eyster with the Supreme Court of Ohio.

Respondent's affidavit of disqualification of Judge Eyster was denied by the Supreme Court on March 16, 2006. The grievances filed by Respondent with Disciplinary Counsel were dismissed on March 20, 2006, with no finding of misconduct by Judge Eyster.

On March 20, 2006, Respondent filed a notice of voluntary dismissal of the lawsuit.

At the time that Respondent filed the affidavit for the disqualification of Judge Eyster with the Supreme Court, Judge Eyster had not waived confidentiality regarding any grievance filed against him, and no formal complaint had been filed with the Board of Commissioners on Grievances and Discipline. Thus, the fact that the grievances were filed was confidential. Respondent stated that he was aware that all documents and proceedings relating to the grievances filed by him were confidential. Respondent testified that at the time he filed the affidavit of disqualification which revealed that grievances were filed against Judge Eyster, he was aware of the Supreme Court case of *In re Disqualification of Krueger* (1995), 74 Ohio St.3d 1267.¹

The Respondent's affidavit of disqualification filed with the Supreme Court contained the following accusations against, and statements about Judge Eyster:

- 1) "The judge (Judge Eyster) has violated Canons 1, 2 and 3 of the Ohio Judicial Code of Conduct."
- 2) "Judge Eyster apparently disagrees with this law." (Emphasis by Respondent) Respondent is referring to R.C. 2903.214 (D)(1).
- 3) "Eyster summarily denied the petition for an ex parte order and refused to grant an ex parte hearing."

¹ See Tr. 564 and 565. The Supreme Court in *In re Disqualification of Krueger*, reminds an attorney who is filing an affidavit of disqualification that "Gov.Bar.R. V(11)(E) requires that disciplinary complaints remain private until and unless formal proceedings begin before the Board of Commissioners on Grievances and Discipline." See *In re Disqualification of Krueger* (1995), 74 Ohio St.3d 1267, *Disciplinary Counsel v. Spicer*, 106 Ohio St.3d 247, 2005-Ohio-4788, *In re Disqualification of Lorig* (1996), 75 Ohio St.3d 1212. Respondent testified that he was not aware of the Board of Commissioners on Grievances and Discipline, Opinion No. 98-3 (Apr. 3, 1998) that holds it is improper to state in an affidavit of disqualification that an attorney has filed a disciplinary grievance against a judge.

- 4) “Judge Eyster simply ignored the Petitioner’s motion for an ex parte hearing.”
- 5) “Petitioner has spoken with other local attorneys who have informed him that Judge Eyster routinely refuses to hold ex parte hearings and rarely grants permanent protection orders.”
- 6) “Petitioner has brought three separate formal complaints against Judge Eyster with the Office of Disciplinary Counsel regarding Judge Eyster’s refusal to follow Ohio law and Ohio civil rules concerning the above matters.” (Rel. Ex. 1)

The panel finds that Judge Eyster had not violated the Ohio Judicial Code; Judge Eyster did not simply ignore Petitioner’s motion for an ex parte hearing but, in fact, reviewed the affidavit and made a ruling the same day. The panel and further finds that Respondent knew that he should not reveal the fact that he had filed grievances against Judge Eyster with the Office of Disciplinary Counsel, but did so anyway based upon his belief that an affidavit of disqualification directed to the Chief Justice, number one, was private to some extent as opposed to sending out a press release. Therefore the panel finds that the above acts of Respondent violated the Code of Professional Responsibility, specifically:

- 1) DR 1-102(A)(5) [conduct prejudicial to the administration of justice];
- 2) DR 1-102(A)(6) [conduct that adversely reflects on the lawyer’s fitness to practice law];
- 3) DR 7-106(C)(6) [undignified or discourteous conduct which is degrading to a tribunal];
- 4) DR 8-102(B) [knowingly make a false accusation against a judge].

Respondent violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance].

Respondent violated Gov. Bar R. V(11)(E), requiring that all proceedings and documents relating to review and investigation of grievances shall be private.

The panel does not find by clear and convincing evidence that Respondent violated DR 1-102(A)(4) [conduct involving dishonesty, fraud deceit, or misrepresentation] as it relates to Count I, and recommends dismissal of the same.

COUNT II

On September 13, 2005, Respondent was appointed by Judge Eyster to serve as a guardian ad litem in the case of *Regina Cotton v. Robert Cotton*, Knox County Court of Common Pleas case number 04-DC-070153. On February 1, 2006, Respondent filed a report and recommendations of the guardian ad litem in the above case.

In Respondent's report and recommendations of the guardian ad litem, Respondent made the following statements:

- 1) "On July 13, 2005 . . . as is his custom, Judge Otho Eyster refused to hold an Ex Parte Hearing and summarily denied the request for an Ex Parte Protection Order."
- 2) "Apparently Judge Eyster does not agree with this portion of Ohio law [R.C. 2903.214 (D)(1)] so he routinely ignores it."
- 3) "In my years of practicing law and working with appointed and elected officials, this is the worst example that I have ever seen of negligence and incompetence in carrying out the duties of a public official."
- 4) "Unfortunately, Judge Otho Eyster and this Court have failed her (Regina Cotton) significantly in her time of greatest need." (Rel. Ex. 4)

Respondent's conduct in making the above statements violated the Code of Professional Responsibility, specifically:

- 1) DR 1-102(A)(5) [conduct prejudicial to the administration of justice];
- 2) DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law];
- 3) DR 7-106(C)(6) [undignified or discourteous conduct which is degrading to a tribunal].

Respondent's conduct by making the above referenced statements also violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance].

COUNT III

On April 3, 2006, Respondent as the attorney for his wife, Kathryn Pullins and his father-in-law, Stephen Elliot, filed a lawsuit in the Knox County Court of Common Pleas against Carl F. Holmes, et al. The case caption is *Kathryn Elliot Pullins, et al., v. Carl F. Holmes, et al.*, Case Number 06IN040168. Contemporaneous with filing the complaint, Respondent filed a motion for a temporary restraining order and attached an affidavit in support of the motion. (Rel. Ex. 5)

On its face, the affidavit in support of the motion for temporary restraining order appears to be signed by Respondent's wife, Kathryn Elliot Pullins, as plaintiff. Respondent's wife's signature on the affidavit also appears to be have been notarized by Respondent. The affidavit states in its totality the following: "Now comes Plaintiff Kathryn Elliot Pullins on April 3, 2006, and swears that the information contained in the previously filed complaint and the motion for a temporary restraining order filed herein is all true and accurate to the best of my knowledge and belief."

The affidavit was not signed by Kathryn Pullins, but signed instead by Respondent himself. Respondent maintains that during depositions, "[M]y wife and I discovered that a signature on a filing wasn't hers. Apparently I had gotten her permission to sign the document over the phone and failed to indicate so on the filing. My wife and I have a legal right to sign legal documents on each other's behalf because we both have very broad powers of attorney."²

² Rel. Ex. 6, the October 11, 2007 letter of Respondent to Assistant Disciplinary Counsel.

Respondent notarized the purported signature of Kathryn Elliot Pullins. The affidavit reads as if Kathryn Pullins appeared before Respondent. She did not. Respondent does not indicate on the affidavit that he was signing his wife's name. Respondent placed his notary stamp and seal upon the affidavit notarizing his own signing of his wife's name. (Tr. 361-362)

Respondent's conduct, as alleged above, violated the Code of Professional Responsibility, specifically:

- 1) DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation];
- 2) DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law]; and
- 3) DR 7-102(A)(4) and (6) [in his representation of a client a lawyer shall not knowingly use perjured testimony or false evidence, or participate in the creation or preservation of evidence when he knows or it is obvious that it is false].

COUNT IV

On May 24, 2006, Respondent, Scott A. Pullins, filed a pro se lawsuit against Thomas Collier, a member of the Ohio House of Representatives, seeking relief for alleged defamation. Respondent filed this lawsuit in the Knox County Common Pleas Court, and it is captioned *Scott A. Pullins v. Thomas Collier*, Case No. 06 OT 050242. The case was assigned to Judge Thomas P. Curran, sitting by assignment. As the defendant was a member of the House of Representatives, the case was defended by the office of the Ohio Attorney General.

On June 30, 2006, the office of the Ohio Attorney General, on behalf of defendant Thomas Collier, filed a Civ. R. 12(B)(1) motion to dismiss for lack of subject matter jurisdiction, stating that this action must be brought before the Ohio Court of Claims.

On October 20, 2006, a hearing was held before Judge Curran in which Respondent, representing himself, and an assistant attorney general appeared as counsel. At the hearing,

Respondent provided the court with law suggesting that the court should not grant the defendant's motion to dismiss, but should instead "hold the instant case in suspense, pending a ruling by the Ohio Court of Claims." The parties agreed that the case would be held in suspense, and depending upon the court of claims' decision, the Knox County Court of Common Pleas would either dismiss the instant action or proceed further on the merits. Judge Curran then ordered, "accordingly, this case shall be placed in suspense, pending a decision by the Court of Claims." That order was signed on October 20, 2006, and copies were given to Respondent and the assistant attorney general. (Rel. Ex. 16)

While the above case of *Pullins v. Collier*, was still in suspense, and knowing that the Court of Claims had not yet decided the issue of subject matter jurisdiction, Respondent, on December 26, 2006, caused to be issued two subpoenas under this case caption and case number. Respondent failed to serve opposing counsel with the required notice of the issuance of these subpoenas. (Rel. Ex. 17)

Both subpoenas contained duces tecum requests. One subpoena was made out to an organization called ECR, and the other to an individual by the name of Michael J. Hawk. Neither ECR nor Michael J. Hawk had anything to do with, any connection with, or any relevance to the *Pullins v. Collier* case. The information Respondent requested were "documents that may lead to the identity of internet posters known as "buckeye for OS" and "curious mind." According to Respondent, he had read disparaging comments made about his family and his law practice on websites. Some of these comments were started when posters to the website made comments that Respondent had sued Collier. Respondent's goal was to learn the identity of the posters. None of the information sought by Respondent in these subpoenas had any relevance to

the pending case. The information sought from these two subpoenas would only satisfy personal interests of the plaintiff as to the identity of his critics.

It came to the attention of the Clerk of the Knox County Common Pleas Court that Mr. Pullins had issued two subpoenas on a case in suspension. The Clerk of Courts notified her lawyer, the Knox County Prosecuting Attorney. On January 29, 2007, the Prosecuting Attorney, on behalf of the Knox County Clerk of Courts, filed a notice with Judge Curran of the issuance of the subpoenas on a stayed case. (Tr. 36)

On January 30, 2007, Respondent, in his first attempt to not have to explain his actions in issuing the two subpoenas, filed an objection to the clerk's giving notice of the filing of the two subpoenas.

On February 23, 2007, Judge Thomas Curran filed an order entitled "Order to Attorney Scott Pullins to explain issuance of two civil subpoenas duces tecum while this case was in suspense." The order required Respondent to appear before the court at 12:00 p.m. on March 19, 2007 and, among other things, to defend against the suggestion of an apparent abuse of process. (Rel. Ex. 17)

Upon learning of Judge Curran's order, in an apparent second attempt to not have to explain his issuing of the two subpoenas to Judge Curran, Respondent filed a notice of voluntary dismissal (Civ. R. 41(A)) of the lawsuit in Knox County. A few days later, Respondent filed a Civ. R. 41(A) second notice of dismissal in the Court of Claims. Despite the dismissals, Judge Curran intended to proceed with the March 19, 2007 hearing to have Respondent explain the issuance of the two subpoenas.

On March 7, 2007, in a third attempt to stop his being required to appear before Judge Curran to explain his issuance of the two subpoenas, Respondent filed a lawsuit against Judge

Curran. Respondent filed a lawsuit in the Knox County Court of Appeals, case number 07-CA-04, which was a complaint in prohibition against the court (Judge Curran) taking any further action. Respondent asked the court of appeals to issue a writ of prohibition against Judge Curran permanently enjoining and prohibiting him from further proceedings at the common pleas level. Judge Curran, through his counsel, filed a motion to dismiss. The court of appeals agreed with Judge Curran's motion and the case was dismissed on the morning of March 19, 2007. Respondent's ordered appearance was scheduled to take place at noon that same day. Respondent did not appear for the hearing, having called the court claiming that he was ill. Judge Curran reset the hearing to May 31, 2007, as the time for Respondent to explain the issuance of the two subpoenas. (Tr. 62)

On April 5, 2007, in a fourth attempt to prevent his having to explain the issuance of the two subpoenas, Respondent filed an affidavit of disqualification against the Judge Curran with the Supreme Court of Ohio. In Respondent's affidavit of disqualification, he states the following:

- 1) "Court's conduct in this matter is biased and prejudiced against me and is apparently in violation of a number of Judicial Canons." The Respondent then specifically enumerates: Canon 3(B)(2)[a judge shall not be swayed by partisan interests, public clamor, or fear of criticism]; Canon 3(B)(5)[a judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice]; Canon 3(B)(7)[a judge shall not initiate, receive, permit, or consider communications made to the judge outside the presence of the parties or their representatives concerning a pending or impending proceeding except (certain enumerated circumstances that are not applicable here)]; Canon 3(B)(9)[while a proceeding is pending or impending in any court, a judge shall not make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing.]; and finally Canon 3(E)(1)[a judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where: (a) The judge has a personal bias or prejudice concerning a party or party's lawyer, or personal knowledge of disputed

evidentiary facts concerning the proceedings; and (d)(v) Is to the judge's knowledge likely to be a material witness in the proceeding."

- 2) "Judge Curran is no longer acting as an impartial judge, but has already decided key evidentiary and legal matters and has crossed over to acting as an advocate."
- 3) "Judge Curran has already prejudged this issue without affording me an opportunity to argue my case." (Rel. Ex. 1)

Respondent also alleges in the affidavit of disqualification, that Judge Curran made an ex parte telephone call to Mr. Broeren, the Knox County Assistant Prosecuting Attorney. Both Judge Curran and Assistant Prosecuting Attorney Broeren testified that no such telephone call ever occurred.³ (Tr. 53)

On April 26, 2007, Chief Justice Moyer denied Respondent's affidavit of disqualification.

Respondent's justification for issuing the two subpoenas on a suspended case was that they were "prepared and served in preparation to ask the Knox County Common Pleas Court for a gag order in the underlying jury case." The panel finds this assertion by Respondent not credible and merely an excuse.⁴

Respondent's explanation for his failure to serve copies of the two subpoenas on opposing counsel was that he did not intentionally fail to serve opposing counsel; that one of the subpoenas was never served and that he remembered mailing a copy of the other subpoena to the opposing counsel. (Tr. 510-512) The panel finds Respondent's excuse to be flimsy and that

³ In weighing the credibility, demeanor and reasonableness of the witnesses testifying on this issue (the Respondent, Judge Curran and Attorney Broeren), the Panel determined that this allegation was false.

⁴ The actual words used by Judge Curran as to Respondent's assertion that the subpoenas were for a gag order was that Respondent's statement was an "inherently false statement." (Tr. 100)

Respondent's failure to serve copies of the subpoena on opposing counsel was an intentional act.⁵

On March 29, 2007, while the case of *Pullins v. Collier*, (06 OT 050242) was still in suspension, Respondent issued a second subpoena to Michael Hawk, commanding him to appear at the hearing set for May 31, 2007. This is the same Michael Hawk who had been issued a subpoena previously. Hawk had absolutely nothing to do with any of the merits or proceedings of the pending matter. On the same day, March 29, 2007, Respondent subpoenaed the Knox County Prosecuting Attorney, requiring him to bring all records in the above matter, and subpoenaed the Mount Vernon News, asking them to bring any video taken of the hearing held on March 19, 2007.

On May 3, 2007, in the same case of *Pullins v. Collier*, which had been in suspension, and then dismissed (Civ. R. 41A) by Respondent and with the only relevant matter pending in that case being the May 31, 2007 hearing wherein Respondent was to come into court and explain to Judge Curran why he had issued the two subpoenas on December 26, 2007, which were an apparent abuse of process, Respondent issued eleven more subpoenas. Each subpoena was duces tecum requiring copies of correspondence be presented to Respondent by May 12, 2007 for the May 31, 2007 hearing. These eleven subpoenas included the following:

- 1) Subpoena to Judge Thomas Curran (the presiding judge of the case), who was served with the subpoena at his home in Shaker Heights, Ohio, and wherein he was ordered to bring correspondence to or from three individuals, including the Knox County Prosecuting Attorney, who was the judge's statutory attorney before the court of appeals' action filed by Respondent;
- 2) Disciplinary Counsel;
- 3) The Attorney General of the State of Ohio;

⁵ Judge Curran called Respondent's explanation for failure to serve copies of the subpoenas on opposing counsel as "totally bizarre." (Tr. 100)

- 4) The Ohio House of Representatives;
- 5) Thomas Collier, the defendant in the suspended case;
- 6) The Knox County Prosecutor; and,
- 7) Mariam St. Jean, who was not a party to this lawsuit but was a party to another lawsuit in which Respondent was involved.

None of the eleven subpoenas had relevance to the pending matter. They can only be described as an abuse of process and an attempt by Respondent to obtain information of imagined conspiracies against him.

Respondent's conduct, as alleged in Count IV, violated the Code of Professional Responsibility, specifically:

- 1) DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit or misrepresentation];
- 2) DR 1-102(A)(5) [conduct that is prejudicial to the administration of justice];
- 3) DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law]; and
- 4) DR 7-106(A) [disregard a standing rule of a tribunal].

Respondent's conduct, as alleged in Count IV, violated the Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 3.1 [a lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so];
- 2) Prof. Cond. R. 3.5(a)(6) [a lawyer shall not engage in undignified or discourteous conduct that is degrading to a tribunal];
- 3) Prof. Cond. R. 8.2(a) [a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard for the truth or falsity concerning the qualifications or integrity of a judicial officer...];
- 4) Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation];

- 5) Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and
- 6) Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

Respondent's conduct, as alleged in Count IV, violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.]

COUNT V

Bradley L. Wilhelm was a defendant in a criminal case in the Knox County Court of Common Pleas, case number 03CR010004. The case was presided over by Otho Eyster, Judge of the Court of Common Pleas, Knox County. Defendant's case was tried by a jury and the defendant was convicted of three counts of intimidation and one count of having weapons while under disability. All counts were felonies. On October 15, 2004, the Court of Appeals for the Fifth Appellate District reversed appellant's conviction for the three counts of intimidation, and affirmed appellant's conviction for one count of having weapons while under disability.⁶

Respondent, Scott Pullins, undertook the representation of Bradley L. Wilhelm, asking the court for restoration of firearms rights. On March 9, 2007, Respondent filed an affidavit of disqualification in the Supreme Court of Ohio, asking that Judge Otho Eyster be removed from the case. In the affidavit of disqualification Respondent states the following:

- 1) The Honorable Otho Eyster "is prejudiced in this matter against the defendant, the defendant's family, and the defendant's legal counsel.... Legal counsel (Respondent) alleges that the Honorable Judge Otho Eyster has a clear bias in this case towards these individuals."
- 2) "Legal counsel (Respondent) alleges that Judge Otho Eyster has violated several Canons of the Ohio Judicial Code of Conduct."

⁶ *State v. Wilhelm*, 5th Dist. Nos. 03-CA-25 and 03-CA-26, 2004-Ohio-5522.

- 3) Respondent's "own observation of the behavior of the trial court, (Judge Eyster) and the statements made by other criminal defendant's (sic) to this legal counsel, Defendant and Defendant's counsel believe that the trial court has likely already met with the county prosecutor and/or the assistant county prosecutor ex parte and made up his mind to reject this request."⁷
- 4) "On May 12, 2006, while waiting in the courtroom prior to numerous criminal hearings, this legal counsel (Respondent) observed the County Prosecutor John Thatcher, Assistant County Prosecutor Rob Broeren, and Judge Eyster go into the Court's chambers prior to the hearings where they apparently discussed the pending criminal cases ex parte without any defendant or defense counsel allowed to participate."
- 5) "This legal counsel (Respondent) has witnessed these apparent ex parte discussions between the Court and the prosecutors on other occasions, but he cannot document the dates at this time. In addition, clients of this legal counsel have told me that they have observed this activity as a regular occurrence in Judge Eyster's courtroom."
- 6) "On July 21, 2006 this legal counsel (Respondent) overheard bits and pieces of a lengthy conversation between Judge Eyster and Judge Thomas Patrick Curran discussing the details of the case *Complete Comfort Systems v. Pullins, et al.* Judge Curran was appointed by this Court to replace Judge Eyster . . . This legal counsel (Respondent) agreed to settle that litigation partly because he did not believe he could obtain a fair trial in front of Judge Curran because of the ex parte discussions, and this Court had replaced the Trial Judge once already." (Rel. Ex. 21)

On May 25, 2007, Chief Justice Moyer denied the affidavit of disqualification. In the Chief Justice's judgment entry he noted that the prosecuting attorney and assistant prosecuting attorney responded to the affidavit as well, and they both denied holding any ex parte discussions with the Judge.

⁷ No evidence of ex parte conversations was presented to this hearing panel. To the contrary, testimony elicited from Judge Eyster, the County Prosecutor, the Assistant County Prosecutor and the Respondent convinced the panel that this and the two following allegations are false.

Both Judge Eyster and Judge Curran testified they did not have conversations about the details of the *Complete Comfort Systems v. Pullins* case. The panel finds this to be another false allegation by Respondent.⁸

Respondent's conduct as alleged in Count V violated the Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 3.1 [a lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so];
- 2) Prof. Cond. R. 3.5(a)(6) [undignified or discourteous conduct that is degrading to a tribunal];
- 3) Prof. Cond. R. 8.2(a) [make a statement that the lawyer knows to be false or with reckless disregard for the truth or falsity concerning the qualifications or integrity of a judicial officer];
- 4) Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit or misrepresentation];
- 5) Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and
- 6) Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

Respondent's conduct, as alleged in Count V, violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude towards the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.]

COUNT VI

On December 20, 2007, Respondent, as attorney for his wife and two other plaintiffs, filed a lawsuit against individuals associated with the Apple Valley Property Owners Association

⁸ Respondent could not testify to any specifics of the conversation he overheard that involved actual details of the case. Respondent testified the comments he heard Judge Eyster say were: "Well, good luck on that one. You're going to have your hands full. You know, I . . . worked my best, I tried my hardest to try to get this thing settled but, you know, these guys are really hard-headed and stubborn." (Tr. 413)

(AVPOA). The suit also named the AVPOA as a defendant. The action was filed in the Knox County Court of Common Pleas and was entitled *Kathryn Elliott Pullins, et al. v. Jeff Harmer et al.*, Case No. 07 OT 12-0697. This case was assigned to Judge Otho Eyster.

On January 8, 2008, Respondent filed an affidavit of disqualification asking the Supreme Court of Ohio to remove Judge Eyster from the case. Respondent prepared the affidavit of disqualification and had it signed by his wife, Kathryn Pullins, as plaintiff.

In the affidavit of disqualification (Ex. 26), Respondent alleged that Judge Eyster is married to Ms. Carol Garner, who is employed as President and Director of the Foundation for the Knox County Community Hospital. Respondent further alleged that the AVPOA is the only non-governmental organization that has a representative as a voting member and/or director of the Foundation of the Knox County Community Hospital. Respondent claimed that the AVPOA, along with its officers, directors and employees which are parties to the within action, essentially employ and otherwise supervise the judge's spouse. Respondent further says that in addition, of the approximately thirty-six directors/voting members, it appears that nine of them are also members/owners of the AVPOA. Finally, of those nine member/owners of the AVPOA, two also are local attorneys, Jim Giles and Kim Rose, that regularly practice in front of Judge Eyster.

On February 12, 2008, the Supreme Court of Ohio denied the affidavit of disqualification.

On November 10, 2008, Respondent filed an amended complaint in the case *Kathryn Elliott Pullins, et al. v. Jeff Harmer et al.*, Case No. 07 OT 12-0697. The defendants in the lawsuit filed numerous motions to dismiss and for judgments on the pleadings. By January 27, 2009, the trial court had granted defendants' motions to dismiss or for judgment on the pleadings

on all but one of the counts of the amended complaint. Respondent promptly, on January 27, 2009, filed appeals on the dismissed counts. (Tr. 184)

On February 17, 2009, Respondent issued a subpoena (Rel. Ex. 62) to Judge Eyster's wife, Carol L. Garner. The subpoena to Ms. Garner was as Development Director for the Knox County Community Hospital and required her to produce the following documents to Respondent at his law office:

- 1) A list of all donors to the Knox County Community Hospital and the Foundation for the Knox Community Hospital for donors that have given or pledged since your first day of work until the present;
- 2) The list should include the name of the individual or entity that made the donation, the donation amount, the date of the donation or pledge, and the address of the donor.

Respondent was upset with Judge Eyster, believing that he had not received a fair trial because all of the counts in the complaint, but one, were dismissed. Through the subpoena of Carol Garner, Respondent was attempting to resurrect the same allegations that Respondent had included in his affidavit of disqualification filed on January 8, 2008, and which had been denied by the Supreme Court on February 12, 2008.

On March 5, 2009 in the same case of *Pullins v. Harmer*, the plaintiff filed a "second request for order or recusal" asking Judge Eyster to recuse himself from all proceedings and stated "unless the court recuses themselves at this time, plaintiffs will be forced to file another affidavit of disqualification with the Chief Justice."

In the *Pullins v. Harmer* lawsuit at the time the Respondent issued the subpoena to Carol Gardner, fifteen of the sixteen counts had been dismissed and were on appeal to the Court of Appeals. The one remaining issue for the trial court was the refusal to provide records. However, those records did not have anything to do with Carol Garner or the Knox County

Community Hospital. Respondent's purpose was to file a new affidavit of disqualification with the Supreme Court and resurrect the same issues on which the Court had already ruled.

Respondent, in the first amended complaint filed in *Pullins v. Harmer*, included a count which listed attorney Donald W. Gregory, as a defendant. The complaint accused attorney Gregory of legal malpractice. Relator alleges in Count VI of the First Amended Complaint that the lawsuit against Attorney Gregory was initiated because Gregory reported Respondent's alleged misconduct in an affidavit to Disciplinary Counsel, which was the subject matter of Count III herein. Relator also alleges that the lawsuit against Donald W. Gregory was frivolous and not based on law or fact. The trial court did grant Attorney Gregory's motion to dismiss and motion for judgment on the pleadings and found that:

- 1) Plaintiffs have made no allegation that defendant Gregory or the AVPOA Board violated any Association rules or committed fraud;
- 2) Plaintiffs cannot state individual claims for malpractice against defendant Gregory;
- 3) The statute of limitations for malpractice action bars this lawsuit against defendant Gregory as a matter of law by res judicata;
- 4) As a matter of law, there is no separate claim for punitive damages.

Based upon the evidence presented to the panel, the panel does not find by clear and convincing evidence that including attorney Gregory in this lawsuit violated the Rules of Professional Conduct.

The other conduct of Respondent as alleged in Count VI violated the Rules of Professional Conduct, specifically:

- 1) Prof. Cond. R. 3.1 [a lawyer shall not bring or defend a proceeding, or assert or controvert an issue in a proceeding, unless there is a basis in law and fact for doing so that is not frivolous];
- 2) Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice];

- 3) Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

The panel does not find by clear and convincing evidence that Respondent's conduct as alleged in Count VI violated Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit or misrepresentation], and recommends its dismissal.

COUNT VII

On June 14, 2005, Respondent and his wife, Kathryn Pullins, were named defendants in a lawsuit filed in the Mount Vernon Municipal Court, case number 05 CVH 556. This lawsuit was removed to the Knox County Court of Common Pleas. The case is captioned *Complete Comfort Systems Inc. v. Scott Pullins, et al.*, Case No. 05-BR-080348, and was assigned to Judge Otho Eyster. On January 12, 2006, Respondent prepared an affidavit of disqualification of Judge Eyster for Respondent's wife to sign. (Rel. Ex. 45)

In the affidavit of disqualification Respondent states, "Judge Otho Eyster has clearly violated Canon 3 (E)(1), (1)(a), (1)(c), (1)(d)(iv), and (2) of the Ohio Judicial Code of Conduct..." Chief Justice Thomas Moyer, on February 6, 2006, filed a judgment entry granting the affidavit of disqualification to avoid the appearance of impropriety and specifically stated, "While I see no evidence in the record before me to suggest that Judge Eyster has shown any improper bias or prejudice in favor of the plaintiff, I conclude that he should not remain as trial judge on the case."

Respondent's conduct in stating that Judge Eyster "has clearly violated" portions of Canon 3 (E) violated the Code of Professional Responsibility, specifically:

- 1) DR 1-102(A)(5) [conduct that is prejudicial to the administration of justice];
- 2) DR 1-102(A)(6) [conduct that adversely reflects on the lawyer's fitness to practice law]; and,

- 3) DR 7-102(A)(5),(6) [knowingly make a false statement of law or fact, participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false].

Respondent's conduct by making the above referenced statement violated Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude towards the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance].

The panel does not find by clear and convincing evidence that Respondent violated DR 1-102(A)(4) [conduct involving dishonesty, fraud deceit, or misrepresentation] in Count VII, and recommends its dismissal.

MITIGATION

The panel finds, pursuant to BCGD Proc.Reg. 10(B)(2), that the following matters in mitigation are present:

- (a) Absence of a prior disciplinary record. Respondent has received no prior discipline from the Supreme Court.
- (b) Full and free disclosure to disciplinary Board or cooperative attitude toward proceedings. Respondent was cooperative throughout the process and very professional and respectful during the hearing on the merits.

Respondent did submit a number of letters and notes from clients, friends, and colleagues relating to his character or reputation. The panel does not find that these letters address the type of activity that is the subject matter of the disciplinary complaint, and they have limited value as a mitigating factor.

AGGRAVATION

The panel finds, pursuant to BCGD Proc.Reg. 10(B)(1), that the following matters in aggravation are present:

- (a) Dishonest or selfish motive. The panel finds that Respondent's actions showed both a dishonest and selfish motive. Respondent abused his position as a lawyer by issuing subpoenas to investigate those individuals who posted negative things about him on the internet, or those individuals with whom he was personally involved in litigation. His allegations against judges and prosecutors, and his explanation of his abuse of process were false and dishonest.
- (b) Pattern of misconduct. The panel finds Respondent, over a period of years, served subpoenas for his own personal interests; repeatedly made false allegations about judges, prosecutors and assistant prosecutors; and otherwise used his position as a lawyer as a license to harass.
- (c) Multiple offenses. Respondent's pattern of conduct was repeated in numerous cases.
- d) Refusal to acknowledge wrongful nature of conduct. Respondent states that he has apologized and recognizes the wrongfulness of his act. The panel finds such apology and acknowledgment is primarily lip-service. The panel's ability to describe Respondent's lack of understanding of the wrongfulness of his acts is almost beyond its power to describe. Respondent's apology to Judge Curran lacked sincerity. When Respondent was asked to explain why he issued eleven subpoenas to individuals in an apparent abuse of process, including subpoenaing a person who was a party to another lawsuit to either harass or obtain an advantage in that lawsuit, Respondent testified that such subpoenas were necessary because "I was going to show the Court that I wasn't the one abusing the process here."⁹ Respondent also testified that he did not think it was disrespectful to say that a judge has already made up his mind, is no longer acting impartially, and has violated the Canons. Further, Respondent felt that he was not being reckless towards the truth when he stated that a judge and prosecutors had met ex parte to discuss the criminal case even though Respondent had no evidence that such ex parte discussions occurred. The demeanor and testimony of Respondent lead the panel to find that Respondent believed his actions were justified and it is the judges and the other individuals, of whom he complains, who are wrong.
- e) Vulnerability of and resulting harm to victims of the misconduct. The panel finds judges' and prosecutors' reputations were harmed by Respondent's conduct. Those individuals who had nothing to do with a case and who were subpoenaed were put under stress and inconvenience. One of the lay persons subpoenaed, Carol Garner, demonstrated to the panel that receiving the subpoena at her place of employment caused her significant emotional distress. The infliction of such distress did not seem to concern Respondent.

⁹ Tr. 591.

RECOMMENDED SANCTION

Relator cites for legal authority: *Disciplinary Counsel v. Gardner*, 99 Ohio St.3d 416, 2003-Ohio-4048; *Disciplinary Counsel v. Frost*, 122 Ohio St.3d 219, 2009-Ohio-2870; and *Disciplinary Counsel v. Baumgartner*, 100 Ohio St.3d 41, 2003-Ohio-4756. Relator believes that Respondent's conduct over a four year period spanning several cases involves conduct not as pervasive as Baumgartner's conduct, but not as restricted as Gardner's one time expression of frustration. Relator therefore recommends that Respondent be indefinitely suspended from the practice of law, based on the sanctions imposed in those cases, which the panel discusses below.

Respondent provided the panel with extensive case law, and recommends, based upon the evidence presented and the applicable case law cited by him, that the appropriate sanction is a public reprimand.

PANEL RECOMMENDATION

The panel finds that the case law submitted by Relator is more on point than the case law submitted by Respondent. In *Gardner*, the Supreme Court of Ohio stated, "Unfounded attacks against the integrity of the judiciary require an actual suspension from the practice of law." Gardner's actions involved unfounded attacks against the integrity of the judiciary on one occasion in one brief. Gardner received a six month suspension. In *Frost*, the respondent was sanctioned for filing false accusations of bias and corruption against judges and a county prosecutor, and also persisted in pursuing a baseless defamation suit. Frost was charged with three counts of professional misconduct involving many of the same ethical violations as Respondent. The Supreme Court of Ohio indefinitely suspended Frost from the practice of law in Ohio. In *Baumgartner*, the respondent was disbarred from the practice of law for making numerous and unfounded accusations of criminal and unethical activity against private

individuals and public officials, including a prosecutor. The Court noted that Baumgartner made countless accusations for which she had no credible proof.

The panel finds that the number of factors in aggravation outweighs the factors found in mitigation. The majority of the panel agrees with the recommendations of Relator, and recommends that Scott Allen Pullins be indefinitely suspended from the practice of law in Ohio.

Panel member Judge Joseph Vukovich dissented from some of the majority's findings of fact, conclusions of law and its recommended sanction. His dissent is set out below.

DISSENT

As I differ from the panel members in the majority as to some of their findings of fact, conclusions of law, and the proposed sanction, I respectfully dissent from their report relative to the following matters:

(1) In Count III, I would strike a finding of a violation of DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; In support, please note the following exchange between counsel for Relator and Respondent:

“Q. * * * Your motives were not dishonest, I think, so much as expedient in terms of the affidavit.

A. Yes.”

Deposition of Respondent, Oct. 8, 2008, p. 63, l. 17-21.

(2) In Count IV, I would strike a finding of a violation of DR 1-102(A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation];

For support, it is maintained that overzealous representation, abuse of process, and recklessness is not synonymous with a DR 1-102(A)(4) violation.

(3) On matters in aggravation, I find no dishonest or selfish motive by Respondent, and no refusal to acknowledge the wrongful nature of his conduct.

(4) I would amend the panel recommendation from an indefinite suspension to a two year suspension, with 18 months stayed.

SUPPORT FOR THE FOREGOING

While it is difficult to divorce our personal admiration for the respected jurist at the center of most of the charges against Respondent, we clearly have a duty to do so. Respondent, contrary to his bizarre behavior giving rise to these proceedings, was articulate, respectful, cooperative and showed skill at the hearing.

Contrary to the report, I found him to also be generally remorseful for his conduct when he was a relatively inexperienced attorney. In support, consider the following comments of the Respondent at his deposition (Oct. 8, 2008):

a) pp. 46-47,

“Q. Would you agree that was intemperate and perhaps uncalled for under the circumstances?”

A. I think it was uncalled for. I think the longer I do this . . . and look at stuff I’ve written in 2004, or 2005, 2006, I mean it just makes me cringe.

* * *

Q. Do you think you might owe the Judge an apology for at least some of this?

[p. 47] “I do; I’d love to have an opportunity to apologize to him [Judge Eyster].”

b) at 51: “I’m ashamed and embarrassed from that.”

c) at p. 55: “Q * * * so you acknowledge that the conduct in 2005 and 2006, some of this conduct complained about by Judge Eyster was over the top. It wasn’t appropriate.

* * *

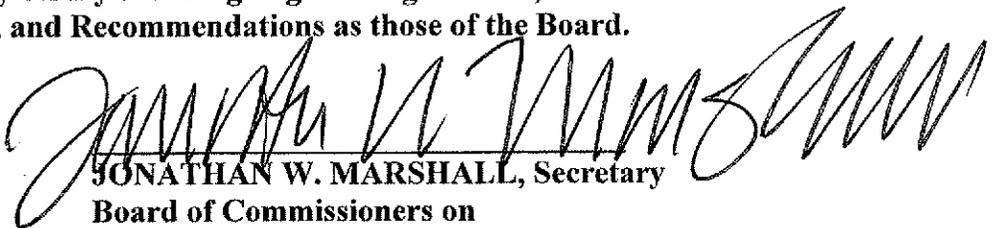
A. “Yes, I agree with that.”

Finally, in support of the sanction I feel is more appropriate than the one recommended by the panel, I offer a comparison with a case with more egregious behavior. See *Columbus Bar Assn. v. Vogel*, 117 Ohio St.3d 108, 2008-Ohio-504.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on April 9, 2010. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the majority of the Panel and recommends that Respondent, Scott Pullins, be suspended from the practice of law indefinitely in the State of Ohio. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**