

ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel

Relator,

vs.

Scott Allan Pullins

Respondent,

NO. 10-0851

Before the Board of Commissioners
On Grievances and Discipline
Case No. 09-022

**RESPONDENT SCOTT ALLAN PULLINS' REQUEST FOR REMAND TO THE
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

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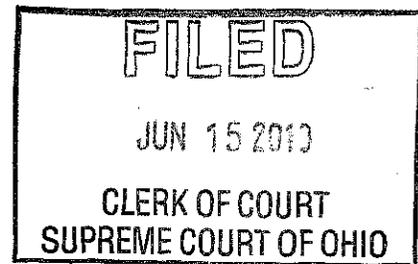
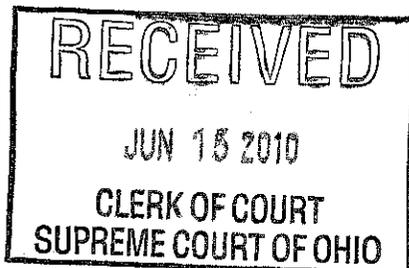
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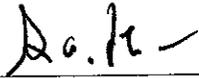
216-226-6996

Counsel for Relator



Now comes the Respondent, pro se, and requests that this Honorable Court remand this case to the Board of Commissioners on Grievances and Discipline for further proceedings. A memorandum in support is provided.

Respectfully Submitted,



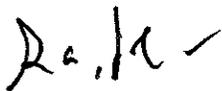
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CERTIFICATE OF SERVICE

A copy of this document was served upon counsel for the Relator, Michael Murman and Edward Kagels, 14701 Detroit Av., Suite #555 Lakewood, OH 44107-4109, and Jonathan Marshall, Secretary, The Board of Commissioners on Grievances and Discipline, the Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215 via first class, regular mail, this 11th day of June 2010.



Scott A. Pullins (0076809)

MEMORANDUM IN SUPPORT

I. THIS COURT'S AUTHORITY ON THIS MATTER

This Court has authority under Governing Bar Rule V to remand a case back to the Board of Commissioners on Grievances and Discipline under certain circumstances. Respondent respectfully alleges that three important reasons exist as to why this Court should grant this motion as explained below.

II. RELATOR HAS PUT RESPONDENT'S MENTAL CONDITION INTO ISSUE

Relator has never previously referred to or placed Respondent's mental condition into issue throughout these proceedings. Nonetheless, in Relator's answer brief, he refers to his initial reliance upon Respondent's statements that at the time of the alleged misconduct, Respondent "was under stress, and was having difficulty with his psychiatric medications when most of the questionable conduct occurred."

This Court has frequently remanded cases to the Board of Commissioners and ordered psychiatric exams when an attorney's mental condition is put into issue. Respondent requests that this Court orders such a remand and an examination to determine his mental condition to practice law, his present mental condition, and his mental condition at the time of the alleged misconduct.

We therefore remanded this cause to the board for further proceedings, including a psychiatric examination pursuant to Gov.Bar R. V(7). On remand, we ordered the board to determine (1) respondent's ability to practice law, (2) respondent's current mental condition, and (3) respondent's mental condition "during the events that formed the disciplinary charges against him."

Allen County Bar Ass'n v. Linnon, 104 Ohio St. 3d 189, 192 (Ohio 2004)

III. RELATOR IMPROPERLY RELIED UPON AN ERRONEOUS MATTER OF LAW WHICH HAS RECENTLY BEEN RULED UPON

As argued in Respondent's motion for judicial notice, Relator relied almost exclusively upon an erroneous conclusion of law in conducting a further investigation and in the decision to file the original and the amended complaint. Relator believed that Respondent's subsequent behavior after Respondent's deposition seriously undermined his previous assurances and remorse. **See Relator's answer brief at page 4.**

It is the general policy of Relator to stay proceedings on a grievance when they involve matters that are in litigation. **See Res. Ex. No. 58.**

This case and Relator's actions in it starkly illustrate the reasons for that policy. In this case, Relator concluded that "In spite of all of respondent's assurances that he had modified his behavior, the amended complaint, filed without request for leave, included the previously dismissed counts despite the court of appeal's ruling." **See Relator's Answer Brief at page 4.**

Relator believed that "The assurances and remorse displayed at the sworn statement had been undermined by subsequent conduct." **See Relator's Answer Brief at page 4.**

The majority of the panel agreed with that sentiment and attributed no mitigation to Respondent's expressions of remorse. **See Board Report at page 21.**

The problem with these conclusions is that they derive from an erroneous interpretation of the law. Relator essentially adopted the position of the Defendants' in a case that was in the midst of litigation. That position was categorically rejected by the Knox County Court of Appeals in a unanimous decision issued on June 9, 2010.

As Respondent had consistently argued, his actions in filing an amended complaint were not improper, but permitted under the circumstances. The Knox County Court of Appeals agreed in a decision issued just this week.

Appellants' earlier complaint was dismissed pursuant to Civ. R. 12 (B)(6) and Civ. R. 23.1. Civ. R. 12 (B)(6) is procedural in nature and does not adjudicate the merits of the

case. In the prior appeal, we reviewed the original complaint in light of Civ. R. 12 (B)(6), and found "none of these averments establish that the issues raised by the remaining counts in the complaint have been requested or unreasonably withheld." Pullins II, paragraph 31.

A complaint dismissed as insufficient as a matter of law pursuant to Civ. R. 12 (B)(6) can be re-filed, either if the statute of limitations has not run or the savings statute applies. If appellants included in their amended complaint sufficient allegations to satisfy Civ. R. 23.1, then the matter may proceed.

Pullins v. Harmer, 2010 Ohio 2590, P23-P24 (Ohio Ct. App., Knox County June 9, 2010)

This complaint should be remanded to the Board for consideration of the appellate court's decision and its effect on their previously erroneous legal conclusions.

IV. RELATOR NOW ACKNOWLEDGES THAT RESPONDENT'S BEHAVIOR MAY NOT WARRANT THE SEVERE SANCTION THAT HE PREVIOUSLY RECOMMENDED.

In his answer brief, Relator wrote the following, "Relator acknowledges that the conduct constituting the nucleus of each count in the amended complaint, standing alone and taken as an isolated incident, many not warrant severe sanction." **See Relator's answer brief, page 2.**

This directly contradicts Relator's summation and conduct throughout these proceedings for which the majority of the panel heavily relied upon. For example, Relator repeatedly characterized Respondent as a paper terrorist and frequently compared his conduct to that of Ellesbeth Baumgartner, Merrie Frost, and Harold Pollock. **See Relator's summation.**

Much of that opinion, certainly, could have derived from Relator's erroneous interpretation of the law as discussed above. Knowing the appellate court decision, Relator may have made a different decision on filing a formal complaint, an amended complaint, and/or in his conduct and recommendations to the panel. The only way to fairly determine this matter is by remanding this complaint back to the Board of Commissioners on Grievances and Discipline for further consideration of this issue.

V. CONCLUSION

Respondent has provided three significant reasons, that standing on their own, would provide sufficient reason to remand this case back to the Board. Standing together, the reasons are overwhelming. Respondent respectfully requests that this Court remand this complaint to the Board of Commissioners for Grievances and Discipline for further action. Thank you.