

IN THE SUPREME COURT OF OHIO

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Attorney Registration No. (0002122) :
Respondent : Case No. 2010-0805
:
Disciplinary Counsel :
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Relator :

RESPONDENT'S MEMORANDUM IN OPPOSITION TO RELATOR'S MOTION TO STRIKE; AND MOTION TO SUPPLEMENT THE RECORD

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Relator asks this Court to strike Respondent's Appendix C, a decision of the United States Bankruptcy Court for the Southern District of Ohio Western Division, as irrelevant and improper evidence.

The relevance of this judicial opinion is clear, as evidenced by the Findings of Fact of the Board of Commissioners and the Agreed Stipulations of Respondent and Relator himself. In the Agreed Stipulations, Relator acknowledged that First Financial Bank filed an adversity action against Respondent in bankruptcy court, claiming Respondent committed fraud—and that the litigation was ongoing. “This matter is still pending.” Agreed Stipulations, ¶ 42. Likewise, the Board discussed the adversary action and alleged fraud in its Findings of Fact, Conclusions of Law and Recommendation, and noted: “This matter is still pending.” Findings of Fact, ¶ 36.

Appendix C supplements a set of facts that was important enough to stipulate to, and important enough to be mentioned in the Report and Recommendation. Therefore, Appendix C is relevant and should not be stricken on that basis.

In addition, Relator argues that use of this judicial decision is improper evidence because Respondent did not file a separate motion requesting to supplement the record. In the Facts section of Respondent's Answer to Relator's Objections to the Board's Recommendation, Respondent asked this Court to take judicial notice of Appendix C, and explained both its relevance and the Ohio rule allowing such judicial notice. As the Answer noted, Ohio law allows courts to take judicial notice in certain circumstances. See *Disciplinary Counsel v. Sargeant*, 118 Ohio St. 3d 322, 2008-Ohio-2330, 889 N.E.2d 96 (this Court cited to Ohio Evidence Rule 201(C) for the proposition that a judicially noticed fact must be one “whose accuracy cannot reasonable[y] be question.”) Because the accuracy of the bankruptcy decision cannot be questioned, this Court can take judicial notice of it.

In the alternative, should this Court require a separate filing in order to supplement the record, as Relator suggests, Respondent asks this Court consider this Memorandum to be its Motion to Supplement the Record.

Respondent attached a judicial opinion that resolved an unresolved issue previously referenced in the record. To strike Appendix C would require the Court to go forward with a less than complete understanding of the facts involved.

For the foregoing reasons, Respondent asks this Court to deny Relator's Motion to Strike.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I served a copy of the foregoing by First-Class U.S. Mail, postage prepaid, upon the following on this 7th day of July, 2010:

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