

ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel : Case No. 10-0851
 Relator, :
 vs. :
 Scott Allan Pullins :
 Respondent. :

RELATOR'S MEMORANDUM OBJECTING TO
 RESPONDENT'S REQUEST TO STRIKE COUNTS V, VI AND VII
 AND FOR SANCTIONS FOR FRIVOLOUS CONDUCT
 AND DISCOVERY VIOLATIONS AGAINST REALTOR

COUNSEL FOR RELATOR

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Scott Allan Pullins : FOR FRIVOLOUS CONDUCT
: AND DISCOVERY VIOLATIONS
Respondent. : AGAINST RELATOR

BRIEF

I. INTRODUCTION

A. THE MOTION TO STRIKE

The filing of the instant request/motion to strike counts V, VI, and VII is a reiteration of arguments presented earlier in this case by respondent. They constitute a supplementation of his earlier filings. As such this filing is in violation of Gov. Bar R. V (8) (B).

Prior to filing his answer and before the hearing respondent moved to strike the amended complaint including challenging the validity of counts IV, V, VI, and VII, the motion to strike was overruled and the panel heard evidence relative to all counts. Respondent's evidence was not persuasive, and the panel and Board made findings of fact, conclusions of law, and recommendations that were filed May 12, 2010. The order to show cause issued May 14, 2010. Respondent's objections were timely filed June 3, 2010. Thus, the instant motion filed July 19, 2010 is untimely.

B. THE CLAIM FOR SANCTIONS

The instant request/motion asserts that relator should be sanctioned for the

conduct alleged in the request/motion. The specific sanction requested is not specifically set forth in the request/motion but it appears that the remedy requested is the striking of counts V, VI, and VII of the amended complaint. This claim is also without merit as presented herein.

II. THE REQUEST/MOTION TO STRIKE COUNTS V, VI AND VII OF THE AMENDED COMPLAINT WAS FILED OUT OF RULE

Gov. Bar R. V (8) (B) establishes the mandatory post hearing procedure to object to the report and recommendation of the Board of Commissioners on Grievances and Discipline in an attorney discipline case. Once the court issues its order to show cause, all objections to the report of the Board must be filed within twenty (20) days. The instant motion was filed forty seven (47) days after the time permitted. It should be overruled as untimely.

A. THE REQUEST TO STRIKE COUNTS V, VI AND VII OF THE AMENDED COMPLAINT IS WITHOUT MERIT

Four parts (Sections I, II, IV, and V) of the instant request/motion consist of accusations against relator's counsel and speculation(s) about the motives, and meaning(s) of his conduct. These constitute argument about the conduct and substance of this litigation. To the extent that they have not been the subject of the timely objections filed June 3, 2010, they are an out of rule presentation of supplemental argument and the content of which, valid or not, has been waived.

Section III of the instant request/motion asserts that the filing of the amended complaint was illegal because the new assertions therein existed, and are asserted to have been known to relator and its counsel at the time of the filing of the original complaint. This contention is without merit. Section 11(D) of Gov. Bar R. V provides

that amendments to any complaint may be made at any time prior to the final order of this court in the case. The only requirement is that the party affected by the amendment be afforded a reasonable opportunity to meet the allegations of the amendment.

Thus, even if respondent's contentions about the amendment are true, the filing of the amended complaint conformed to the requirements of Gov. Bar Rule V, 11 (D) and was a valid act.

B. THERE IS NO BASIS FOR SANCTIONS

While relator takes issue with the assertions and positions offered in support of the request for sanctions; it is respectfully submitted that it is not appropriate in this filing to engage in the lengthy argument that would be necessary to challenge the allegations of respondent and the lack of merit of the positions asserted. Relator disagrees with respondent's assertions and positions.

The subject of sanctions for untoward conduct in litigation is contemplated in two places in the law of Ohio: Civ. R. 37, and ORC 2323.51. Neither of these have application in these proceedings because the record does not provide the necessary predicate provided by either the rule or statute. Thus, there exists no basis to consider the subject of sanctions in this case.

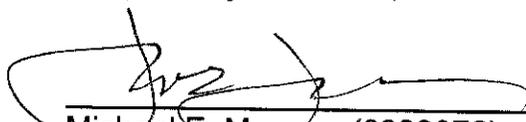
IV. CONCLUSION

The instant request/motion is an untimely submission of additional argument and constitutes an attempt to supplement and add arguments and objections out of rule; regardless of the dubious nature of the assertions.

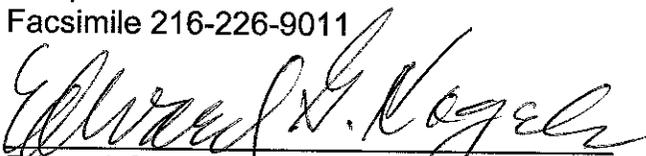
The filing of the amended complaint conformed to the requirements of Gov. Bar Rule V, 11(D) and contentions to the contrary are without merit.

There is no basis in the law of Ohio or the record for litigation of the subject of sanctions upon relator in this action, so the request is without merit.

Respectfully submitted,



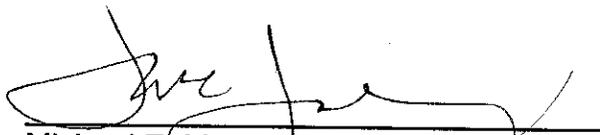
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CERTIFICATE OF SERVICE

A copy of the foregoing Relator's Memorandum Objecting to Respondent's Request to Strike Counts V, VI and VII and For Sanctions For Frivolous Conduct and Discovery Violations Against Relator was served upon Respondent Scott A. Pullins, Esq., 110 East Gambier Street, P.O. Box 1186, Mount Vernon, Ohio, 43050 and on Jonathan Marshall, Esq., Secretary, The Board of Commissioners on Grievances and Discipline, The Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431 this 22 day of July, 2010, by regular United States Mail, postage prepaid.



Michael E. Murman, Special Prosecutor to
Disciplinary Counsel