

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 TO STRIKE RELATOR'S
MEMORANDUM IN OPPOSITION TO RESPONDENT'S REQUEST TO STRIKE
COUNTS FIVE, SIX, AND SEVEN**

Scott A. Pullins, Esq. (0076809)
Attorney & Counselor at Law
110 East Gambier Street, 2nd Floor
Mount Vernon, Ohio 43050

740-392-3505
202-330-4594 FACSIMILE

scott@pullinslaw.com
www.pullinslaw.com

Respondent – Pro Se

Michael E. Murman, Esq. (0029076)
Edward G. Kagels, Esq. (0025958)
Office of Disciplinary Counsel of the
Ohio Supreme Court
14701 Detroit Ave., #555
Lakewood, Ohio 44107

216-226-6996

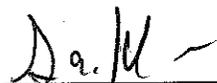
Counsel for Relator

RECEIVED
JUL 28 2010
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JUL 28 2010
CLERK OF COURT
SUPREME COURT OF OHIO

Now comes the Respondent, pro se, and requests that this Honorable Court strike Relator's Memorandum in Opposition to Respondent's Request to Strike Counts Five, Six, and Seven filed July 23, 2010. A memorandum in support is provided.

Respectfully Submitted,



Scott A. Pullins, Esq. (0076809)
Attorney & Counselor at Law
Scott A. Pullins, Ltd., LPA
110 East Gambier Street, 2nd Floor
Mount Vernon, Ohio 43050-1186
740-392-3505
202-330-4594 FACSIMILE

www.pullinslaw.com
scott@pullinslaw.com

Respondent – Pro Se

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 26TH day of July 2010.



Scott A. Pullins (0076809)

MEMORANDUM IN SUPPORT

I. THIS COURT MAY SANCTION COUNSEL FOR RELATOR FOR HIS REPEATED MISSTATEMENTS OF LAW AND FACT.

In his recently filed pleading, counsel for Relator essentially argues that this Court has no authority to sanction him, another misstatement of law and fact. More specifically, he argues that he may only be sanctioned for discovery violations or frivolous conduct under ORC 2323.51 or Civil Rule 37 and that those rules are not applicable for this proceeding. However, Ohio Supreme Court Rule 14.5 expressly provides authority to this Court to sanction counsel for the Relator.

If the Supreme Court, sua sponte or on motion by a party, determines that an appeal or other action is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose, on the person who signed the appeal or action, a represented party, or both, appropriate sanctions. An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

A statement in a pleading that a party and its counsel may not be sanctioned by this Court is not well grounded in fact nor warranted by existing law.

II. THIS COURT MAY SANCTION COUNSEL FOR THE RELATOR FOR INCORRECTLY STATING THAT RESPONDENT'S MOTION FOR SANCTIONS WAS FILED OUT OF RULE.

Counsel for the Relator argues that this Court may not consider Respondent's motion for sanctions because he argues that it must be filed within 20 days of the Board issuing its certified report. However, Respondent's motion to strike and for sanctions was based upon counsel for Relator's false statements of law and fact in his answer brief filed after the deadline.

Nothing in the express language of Supreme Court Rule 14.5 places a time limit on a motion for sanctions by a party. In fact, this Court may sanction counsel or a party or both for frivolous action at any time sua sponte. Additionally, the express language of Ohio Supreme

Court Rule 14.4 provides authority to file proper motions without any restrictions as to time. Any memorandum in opposition to a motion must be filed within ten days and a reply to a memorandum in opposition is not permitted. Counsel for the Relator's continued arguments that Respondent may not file any motion later than twenty days after the filing of the Board's report both defies logic and common sense, is not well grounded in fact, nor warranted by existing law.

III. THIS COURT HAS AUTHORITY TO STRIKE FRIVOLOUS PLEADINGS AS A SANCTION.

The express language of Ohio Supreme Court Rule 14.5(A) gives this Court the authority to enact any sanction that it considers just in response to a finding of frivolous activity.

The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Supreme Court considers just.

Supreme Court Rule 14.5(A)

When an attorney files a pleading that is not well grounded in fact or warranted by existing law and it is determined to be frivolous, striking that pleading is certainly an appropriate sanction. In fact, Ohio courts have long had express authority to strike insufficient claims or defenses under Ohio Civil Rule 12(F) and inherent authority to strike pleadings from their files.

The power of the court of common pleas to order stricken from the files an answer which is a sham answer, one which, although good in form, is false in fact and not pleaded in good faith, is a power existing at the common law, and is one of the powers inherent in the court to be exercised in the due and speedy administration of justice.

White v. Calhoun, 83 Ohio St. 401 (Ohio 1911)

Upon motion made by a party before responding to a pleading, or if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading an insufficient claim or defense or any redundant, immaterial, impertinent or scandalous matter.

Ohio Civ. R. 12

Counsel for the Relator's continued argument that this Court may not strike a pleading as a sanction for frivolous conduct is not well grounded in fact nor is it warranted under current law. For these reasons, Respondent respectfully requests that this Court strike Relator's Memorandum in Opposition to Respondent's Motion to Strike Counts Five, Six, and Seven as a sanction for counsel for the Relator's continued frivolous conduct. Thank you.