

ORIGINAL

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE
CASE NO. 09-022

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

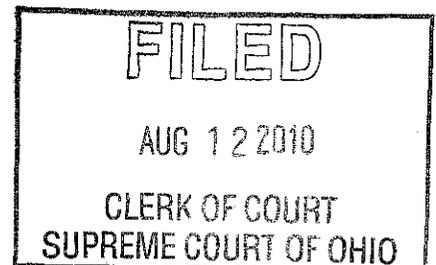
RELATOR'S MEMORANDUM OBJECTING TO
RESPONDENT'S SECOND REQUEST
FOR JUDICIAL NOTICE UNDER EVIDENCE RULE 201

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Respondent. : SECOND REQUEST FOR JUDICIAL
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BRIEF

I. INTRODUCTION

Respondent has submitted a request that this Court take judicial notice of twenty precedents. The request is supported by a brief in support which asserts that such is authorized by Ohio Evidence Rule 201.

Relator objects to the request as set forth herein.

II. THE REQUEST SHOULD BE OVERRULED BECAUSE
OHIO EVIDENCE RULE 201 DOES NOT CONTEMPLATE
JUDICIAL NOTICE OF LEGAL PRECEDENTS BECAUSE
LEGAL PRECEDENTS ARE NOT EVIDENCE

The concept of judicial notice relates to the acceptance and acknowledgement by a tribunal that certain facts exist and are a reality. Obviously legal precedent decisions meet this criteria; relator accepts that the precedents referred to in the request exist.

However, the existence of these cases does not make them material and relevant evidence. This requires argument. Thus, the depiction and labeling of legal

precedents as facts amenable to judicial notice, as respondent does here, constitutes argument and should be overruled as the untimely submission of such.

III. THE REQUEST SHOULD BE BARRED BECAUSE IT IS NOT IN ACCORD WITH GOV. BAR R. V. (8) (B) AND S. CT. R. VI (8).

A. The Request violates Gov. Bar R. (B) (8) because it constitutes argument.

Following the filing of the report and recommendation of the Board of Commissioners on Grievances and Discipline, this Court issues its order to show cause which in this case occurred May 14, 2010. All objections to the report must be filed within twenty (20) days thereafter. Respondent filed his objections to the report on June 3, 2010. The instant request and accompanying brief and authorities constitute new objection argument and should be overruled as an untimely filing of such.

B. The Request violates the rule because it contains argument regarding the presentation of precedents.

S. Ct. R. VI (8) provides in pertinent part:

... If a relevant authority is issued after the deadline has passed for filing a party's merit brief, that party may file a citation to the relevant authority but shall not file additional argument.

S. Ct. R. IV (8) applies to the instant filing by respondent because this filing is accompanied by a brief in support thereof; the brief constitutes argument and, therefore is an untimely filing of supplemental argument which should be barred.

IV. CONCLUSION

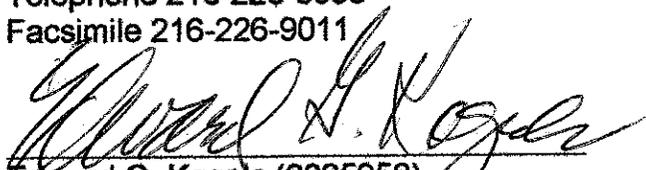
The instant request is a request for judicial notice of legal precedents. By definition, the request constitutes argument because legal precedents cannot qualify as material facts unless they are supplemented by persuasive argument. As such the request violates two (2) specific rules of practice. Thus, the instant request is simply an

out of rule attempt by respondent to submit supplemental argument and should be overruled as such.

Respectfully submitted,



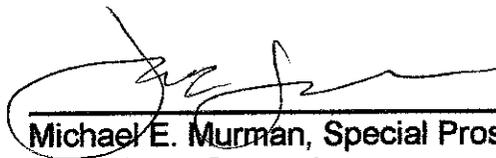
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CERTIFICATE OF SERVICE

A copy of the foregoing Relator's Memorandum Objecting to Respondent's Second Request for Judicial Notice Under Evidence Rule 201 was served upon Respondent Scott A. Pullins, Esq., 110 East Gambier Street, 2d Floor, Mount Vernon, Ohio, 43050 and 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 11 day of August, 2010, by regular United States Mail, postage prepaid.



Michael E. Murman, Special Prosecutor to
Disciplinary Counsel