

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

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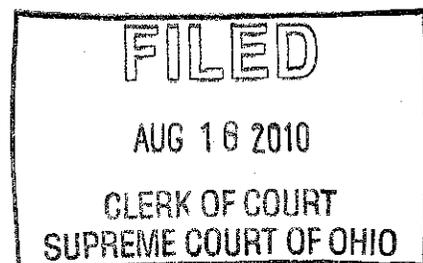
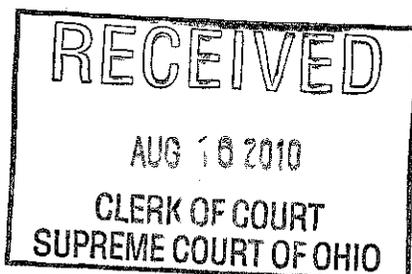
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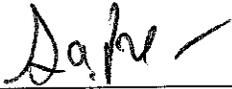
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Counsel for Relator



Now comes the Respondent and requests that this honorable Court strike Relator's Memorandum Objecting to Respondent's Second Request for Judicial Notice Under Evidence Rule 201. A memorandum in support of this request 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 13th Day of August, 2010.



Scott A. Pullins (0076809)

MEMORANDUM IN SUPPORT

I. THIS COURT SHOULD STRIKE RELATOR'S DOCUMENT BECAUSE IT IS MISLABELED.

Counsel for the Relator entitles his document as *An Appeal from The Board of Commissioners on Grievances and Discipline*. Counsel for the Relator is mistaken. The Board does not issue a judgment from which an appeal may follow. The Board issues a report and a recommendation to this honorable Court. This Court, and this Court alone has the authority and the duty to determine the facts and the law of each disciplinary case pursuant to its original jurisdiction.

The proper standard in disciplinary cases is that the Ohio Supreme Court, not the board of commissioners, makes the ultimate conclusion, both as to the facts and as to the action, if any, that should be taken. In cases of this kind, the board of commissioners acts for and on behalf of the court. In doing so, it makes recommendations as to the facts which should be found and the action which should be taken by the court. However, the court has full responsibility for determining what the facts are and what action should be taken on those facts. Therefore, in assessing the propriety of the conduct in question and the appropriate sanction, if any, the court is not bound by either the panel's or the board's conclusions as to fact or law.

In re Complaint Against Harper, 77 Ohio St. 3d 211 (Ohio 1996)

The Ohio Supreme Court has original jurisdiction over the admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law, Ohio Const. art. IV, § 2(B)(1)(g),

Ohio State Bar Ass'n v. Dalton, 124 Ohio St. 3d 514 (Ohio 2010)

II. THIS COURT SHOULD STRIKE RELATOR'S DOCUMENT BECAUSE IT MISTATES THE APPLICABLE LAW.

Counsel for the Relator continues to argue that Respondent may not file a motion and a memorandum in support of that motion after the filing of Respondent's objections. In support of that premise he cites *Ohio Gov. Bar. Rule V Section 8 (B)*. Nonetheless, nowhere within that rule does it prohibit the filing of motions in compliance with the Rules of Practice of the Ohio

Supreme Court.

(B) Response to Show Cause Order.

Within twenty days after the issuance of an order to show cause, the respondent or relator may file objections to the findings or recommendations of the Board and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued. The objections shall be accompanied by a brief in support of the objections and proof of service of copies of the objections and the brief on the Secretary of the Board and all counsel of record. Objections and briefs shall be filed in the number and form required for original actions by the Rules of Practice of the Supreme Court of Ohio.

Ohio Gov. Bar. Rule V

In fact, the Rules of Practice of this Court expressly permit the filing of motions and require a memorandum in support to be filed with those motions.

S.Ct. Prac. R. 14.4. Motions; Responses.

(A) Unless otherwise prohibited by these rules, an application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based. A motion to stay a lower court's decision pending appeal shall include relevant information regarding bond. A copy of the lower court's decision and any applicable opinion shall be attached.

(B) If a party files a motion with the Supreme Court, any other party may file a memorandum opposing the motion within ten days from the date the motion is filed, unless otherwise provided in these rules. A reply to a memorandum opposing a motion shall not be filed by the moving party. The Clerk shall refuse to file a reply to a memorandum opposing a motion, and motions to waive this rule are prohibited and shall not be filed.

(C) The Supreme Court may act upon a motion before the deadline for filing a memorandum opposing the motion if the interests of justice warrant immediate consideration by the Supreme Court. Any party adversely affected by the action of the Supreme Court may file a motion to vacate the action.

Ohio S. Ct. Prac. SECTION 14

Counsel for the Relator cannot have it both ways. If Respondent is prohibited from filing a motion with a memorandum in support because of Gov. Bar Rule V Section 8 (B), then Relator

is also prohibited from filing a memorandum opposing that motion.

III. THIS COURT SHOULD STRIKE RELATOR'S DOCUMENT BECAUSE IT MISTATES THE APPLICABLE RULE.

This Court should strike Relator's memorandum in opposition because it misstates the purposes of Evidence Rule 201. Evidence Rule 201 is designed for a Court to take judicial notice of facts that are beyond reasonable dispute.

A second class of facts subject to judicial notice is provided by Rule 201(B)(2). These are facts capable of accurate and ready determination. There is no need that such facts are also generally known in the community, each of the two classifications being independent of the other. The type of fact contemplated by 201(B)(2) includes scientific, historical and statistical data which can be verified and is beyond reasonable dispute. Such has been the law in Ohio and, again, there is an infinite variety of facts of scientific or historical nature that have been judicially noticed, thereby avoiding the necessity of proof on such issues.

Ohio Evid. R. 201 Comments

In this case Respondent has requested that this Court take judicial notice of the following fact that is beyond reasonable dispute:

It has been the common practice of attorneys to allege violations of the Canons or Code of Judicial Conduct concerning judges in court filings. These attorneys have not been punished for alleging a violation of the Canons or Code of Judicial Conduct in a court filing.

Pursuant to the express language of the rule, Respondent provided this Court with a number of cases which show within the language of the opinions that attorneys had alleged violations of the Canons or Code of Judicial Conduct and were not punished as a result. In fact, this Court has never punished an attorney for alleging a violation of the Code of Judicial Conduct.

IV. THE INTERESTS OF JUSTICE REQUIRE THIS COURT TO STRIKE RELATOR'S DOCUMENT.

Respondent has filed a number of requests with this Court concerning legal authority and undisputed facts that were discovered after the hearing of the Board of Commissioners on

Grievances and Discipline. There are rules that exist so that an attorney may request this Court to consider this legal authority and undisputed facts and Respondent has utilized them fully.

Nonetheless, Counsel for the Relator has objected to every single request under the theory discussed above. Counsel for the Relator is mistaken and the interests of justice require that his objections be stricken. The reality is that this Court has required that these rules be construed liberally, and not in the manner argued by Counsel for the Relator.

This rule and regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be construed liberally for the protection of the public, the courts, and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable and to all future investigations, complaints, and petitions whether the conduct involved occurred prior or subsequent to the amendment of this rule.

Ohio Gov. Bar. Rule V Section 11 (D)

In fact, the plain reading of this rule calls into question every objection made by Counsel for the Relator.

Amendments to any complaint, notice, answer, objections, report, or order to show cause may be made at any time prior to final order of the Supreme Court.

Ohio Gov. Bar. Rule V Section 11 (D)

For the above reasons, this honorable Court should grant Respondent's request to strike.

Thank you.