ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	
Relator,	:	
vs.	:	**CASE NO. 2010-1805**
Richard Vincent Hoppel	:	
Respondent.	:	

RELATOR'S MOTION IN OPPOSITION TO RESPONDENT'S MOTION TO SUPPLEMENT THE RECORD

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CLERK OF COURT
SUPREME COURT OF OHIO

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INTRODUCTION

On or about December 6, 2010, respondent, Richard C. Hoppel filed a motion asking that this court supplement the record in this case by considering evidence that payment has been made to the grievants involved in this matter. Respondent attached copies of the checks written by "Herm Hopple" and letters to the grievants to the motion. Relator, Disciplinary Counsel, submits this response to respondent's motion to supplement the record.

RELATOR'S RESPONSE TO RESPONDENT'S MOTION

Relator objects to respondent's motion to supplement the record in this matter. A hearing on this matter was conducted May 18, 2010. At the end of the hearing, the record on this matter was closed.

Respondent now submits evidence that someone else has paid the money he owes to the multiple grievants in this matter. However, respondent did not make an effort to secure a loan from his father or make payments to the grievants until after the board's report and recommendation was filed with this court on October 20, 2010. The board recommended that respondent's license to practice law be indefinitely suspended.

Respondent is attempting to supplement the record with new information. The evidence proposed is not something that was unavailable at the time of the hearing as respondent claims because he never even made an attempt at restitution before the hearing. Respondent's effort in making restitution and submitting this evidence is an attempt to introduce mitigation before this court after the hearing. The time for respondent to submit mitigating evidence was before the panel at the hearing. Respondent failed to do so. He should not be given the chance to submit evidence at this late date in an attempt to negate the board's recommended sanction.

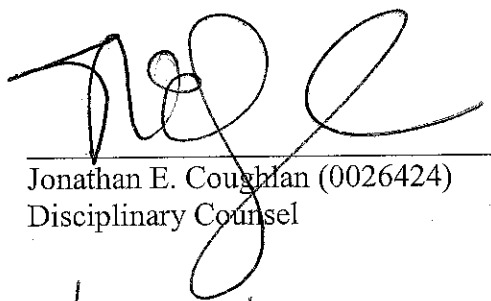
Respondent cites the case of *Columbus Bar Assn. v. Milless*, 96 Ohio St.3d 74, 771 N.E.2d 845, in support of his motion. However, the *Milless* case is not applicable. In that case, Milless failed to answer a complaint that was filed against him. However, after the court issued the show cause order, Milless hired counsel who filed objections and a motion to supplement the record. The motion to supplement the record was unopposed by the Columbus Bar Association as relator.

The facts of *Milless, supra,* are completely opposite the instant matter. Relator presented clear and convincing evidence of respondent's misconduct. Respondent participated fully in the disciplinary hearing and had the full opportunity to present evidence on his behalf, including evidence of restitution. Respondent did present evidence of other mitigation that was accepted by the panel. Respondent cannot now compare himself to someone whose only opportunity to present evidence occurred in front of the court. Therefore, this court should not permit respondent to supplement the record with additional mitigation evidence.

CONCLUSION

Respondent's post-hearing attempt to mitigate his misconduct with evidence of restitution made only after the board's report and recommendation was filed with this court should not be permitted. The court should deny respondent's motion to supplement the record.

Respectfully submitted,



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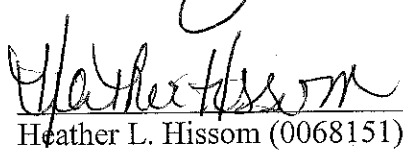
Disciplinary Counsel



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CERTIFICATE OF SERVICE

A copy of the foregoing Relator's Motion In Opposition To Respondent's Motion To Supplement The Record has been served upon Counsel for respondent Harry J. DePietro,, Esq., The DePietro Law Office, LLC, 7 West Liberty Street, Girard, Ohio 44420, via regular U.S. mail, postage prepaid, this 10th day of December, 2010.

Heather Hissom

Heather L. Hissom
Counsel of Record