

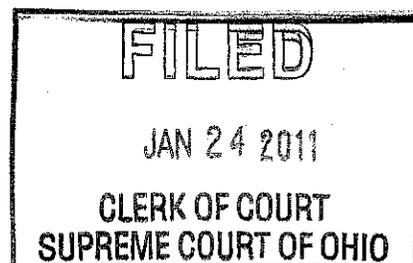
IN THE SUPREME COURT OF OHIO

Disciplinary Counsel :
:
Relators, : Case No. 2010-2199
:
v. :
:
Frederick B. Johnson :
:
Respondent. :

**MOTION TO SUPPLEMENT THE RECORD AND
TO REMAND PROCEEDINGS TO BOARD**

Karen H. Osmond (0082202)
COUNSEL OF RECORD FOR RELATOR
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
250 Civic Center Drive, #325
Columbus, Ohio 43215
Phone: (614) 461-0256
Fax: (614) 461-7205
Email: osmondk@sconet.state.oh.us

Alvin E. Mathews, Jr., Esq. (0038660)
COUNSEL OF RECORD FOR RESPONDENT
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Phone: (614) 227-2312
Fax: (614) 227-2390
Email: amathews@bricker.com



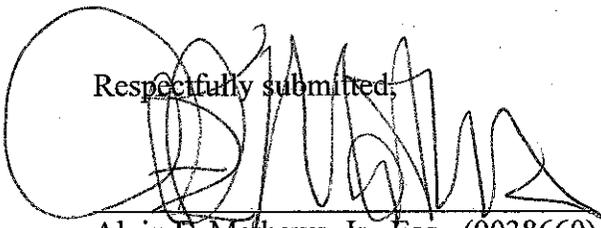
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**MOTION TO SUPPLEMENT THE RECORD
AND TO REMAND PROCEEDINGS TO BOARD**

Now comes Respondent, Frederick B. Johnson, by and through counsel, and hereby moves this court to issue an order permitting Respondent to present limited mitigation evidence, contained in the attached Affidavit of Mr. Johnson, relevant to the disposition of this matter and to consider remanding the matter to the Board of Commissioners on Grievance and Discipline for presentation of additional mitigation evidence. The reasons in support of the application are more fully set forth in the attached memorandum.

Respectfully submitted,



Alvin E. Mathews, Jr., Esq. (0038660)
 Bricker & Eckler LLP
 100 South Third Street
 Columbus, OH 43215
 Phone: (614) 227-2312
 Fax: (614) 227-2390
 Email: amathews@bricker.com

MEMORANDUM

Relator, Disciplinary Counsel, filed its formal complaint in this matter and Respondent, Frederick Johnson, failed to file an answer in the proceedings. Thereupon, Disciplinary Counsel filed a motion for default, which was granted. The Master Commissioners rendered factual findings, conclusions of law, and a recommendation of a two-year suspension of Respondent's license, with six months of the suspension stayed. The Board of Commissioners on Grievances and Discipline adopted the Master Commissioner's report and filed its report with this Court on December 17, 2010.

After this court issued an order to show cause, Respondent filed Objections to the Board's report, along with the instant Application. This Application is made pursuant to Gov.Bar. R. V, Section 11(D), which in relevant part states:

The process of procedure under this rule and regulations approved by the Supreme Court shall be as summary as reasonably may be. Amendments to any complaint, notice, answer, objections, report, or an order to show cause may be made at any time prior to the final order of the Supreme Court. The party affected by the amendment shall be given reasonable opportunity to meet any new matter presented.

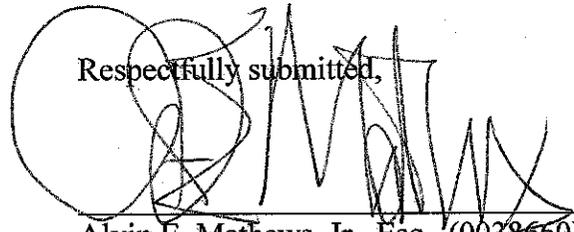
Gov.Bar R. V (11)(D). Additionally, there is precedent for permitting Respondent to supplement the record at the stage of the proceedings where the Court has issued its Order to Show Cause. In the case *Butler County Bar Association v. Portman*, 116 Ohio St.3d 1450, 2007-Ohio-6842, the Respondent did not answer the complaint, and the Board of Commissioners on Grievances and Discipline referred Relator's motion for default to a master commissioner, who determined respondent, among other strings, had neglected numerous client matters, failed to refund unearned retainers, and

misrepresented the receipt of public defender fees. The Board adopted the master commissioner's recommendation of a permanent disbarment. This Court permitted respondent to supplement the record with considerable mitigation evidence, and the Court decided to remand the matter to the Board, permitting Mr. Portman to present additional mitigation evidence to the Board, which was later reviewed by this Court. The Court's review resulted in a more appropriate sanction under the circumstances – an indefinite suspension with credit for time served. *Butler County Bar Association v. Portman*, 121 Ohio St.3d 518, 2009-Ohio-1705; *see, also, Columbus Bar Association v. Milles*, 96 Ohio St.3d 74, 2002-Ohio-3455 (court permitting respondent to supplement the record, and without remand, reducing the sanction from an indefinite suspension to a fully stayed suspension).

In the present case, Respondent regrets his failure to participate in the hearing, after giving some cooperation during Relator's investigation. While Respondent did provide some explanation for his conduct, including that his father's death and bout with prostate cancer had caused him to be depressed, that information is not discussed in the Board Report. *See*, Exhibit 12 to Relator's Motion for Default. This and other information should be considered by the Court before its decision is rendered. Thus, consistent with the procedural rules and case law, Respondent should be permitted to supplement the record. Additionally, Respondent's newly-submitted mitigation evidence should be given some weight in the Court's determination as to whether this matter should be remanded for further consideration by the Board.

Respondent has signed a contract with the Ohio Lawyers Assistance Program and plans to begin treatment for a mental condition that may have bearing on his misconduct (*See*, Affidavit of Frederick Johnson, attached hereto and made a part hereof).

For the foregoing reasons, Respondent respectfully urges this Court to issue an order permitting Respondent to supplement the record with additional evidence regarding Respondent's contract with the Ohio Lawyers Assistance Program, so that this Court may determine whether the case should be remanded to the Board for further consideration.

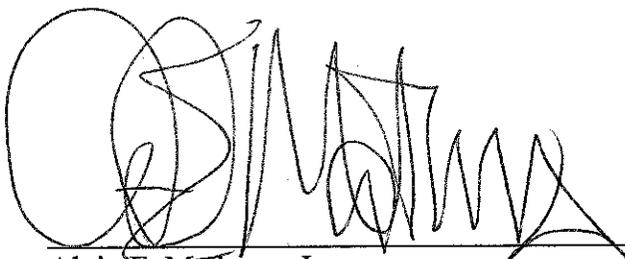
Respectfully submitted,


Alvin E. Mathews, Jr., Esq. (0038660)
Bricker & Eckler LLP
100 South Third Street
Columbus, Ohio 43215
Phone: (614) 227-2312
Fax: (614) 227-2390
Email: amathews@bricker.com
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Motion to Supplement the Record and to Remand Proceedings to Board* was sent via regular U.S. mail, postage prepaid this 24th day of January, 2011, to the following:

Karen H. Osmond
Assistant Disciplinary Counsel
Office of Disciplinary Counsel
250 Civic Center Drive, #325
Columbus, Ohio 43215

A handwritten signature in black ink, appearing to read "Alvin E. Mathews, Jr.", written over a horizontal line.

Alvin E. Mathews, Jr.

**BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO**

Disciplinary Counsel

Relator

Vs.

Case No.: 2010-2199

Frederick B. Johnson

Respondent

AFFIDAVIT OF RESPONDENT

STATE OF OHIO)
) ss
COUNTY OF UNION)

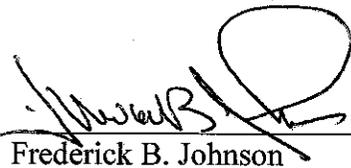
I, Frederick B. Johnson, who is of the age of majority and is competent to testify, after being duly sworn, states:

- 1.) I am the respondent in the above-captioned matter.
- 2.) The investigation of my conduct by the disciplinary Counsel was commenced in August of 2009.
- 3.) I initially cooperated with the Disciplinary Counsel, including the attendance at a deposition in January of 2010. Thereafter, I stopped responding to their requests, as I became paralyzed and felt hopeless about the situation. I had become depressed as a consequence of several life events, including my father's death, my own prolonged illness (prostate cancer) and the financial downturn of the economy, which had a disastrous effect on my law practice and my ability to generate revenue.
- 4.) When the formal complaint was filed, I did not respond; nor did I hire a lawyer to respond for me. When I receive a Motion for Default Judgment, I never even opened the envelope; nor did I seem to care what repercussions the proceedings would have on my future ability to practice law.
- 5.) I also did not reveal my mental and physical suffering to my colleagues of the bench and the bar, although they could plainly see the effects of my depression did how I had emotionally changed.
- 6.) I was called into a conference with Judge Fraser and Judge Coleman-Eufinger, along with Magistrate Jillisky, who had read the posting on the Supreme Court website. They convinced me that I was doing a disservice to myself by

failing to respond and/or defend the allegations.

7.) As a result of their recommendation, I sought help from the Ohio Lawyers Assistance Program, who interviewed me on Monday, January 10, 2011. After the interview, I entered into a contract for treatment of my depression which condition I understand has existed for some time. I also scheduled a January 14, 2011 appointment to see a therapist by the name of Stephanie Stark, who I plan to treat with on an ongoing basis. (See OLAP Contract, attached hereto and made apart hereof). Additionally, I will be seeing a psychiatrist to obtain mediation.

8.) Lastly, I have hired the service of Alvin E. Matthews, Esq. to request that instant proceedings be reopened and/or remand for consideration of mitigation evidence by the Board of Commissioners on Grievances and Discipline, and/or this Court.

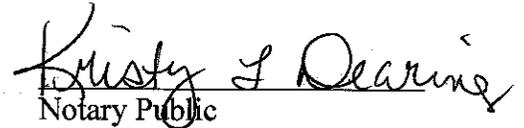


Frederick B. Johnson

On this 19th day of January, 2011 came Frederick B. Johnson, who after being sworn, state the above is the truth to the best of his belief and knowledge.



KRISTY L. DEARING
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES SEPTEMBER 7, 2013



Notary Public

CONFIDENTIAL

Ohio Lawyers Assistance Program, Inc.

1650 Lake Shore Drive, Suite 375, Columbus, Ohio 43204-4991
Tel. 800-348-4343 614-586-0621 Fax: 614-586-0633
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CLINICAL DIRECTOR

MEGAN R. SNYDER, MSW, LISW
CLINICAL ASSOCIATE

OHIO LAWYERS ASSISTANCE PROGRAM, INC.
MENTAL HEALTH CONTRACT

WHEREAS, Frederick B. Johnson

by order of the Supreme Court of Ohio dated 1-10-2011, participation in the program offered by the Ohio Lawyers Assistance Program, Inc. (OLAP) is required, and/or, is obligated by reason of an agreement with OLAP to participate in the program offered by OLAP and/or Ohio Lawyers Support System (OLSS), and/or, is currently involved in the Supreme Court of Ohio disciplinary process, and/or, is applying for admission to the Ohio bar, and/or, has been diagnosed as suffering from a mental health or related disorder(s), and desires assistance from and participation in the program offered by OLAP, and

WHEREAS, OLAP is a nonprofit Ohio corporation providing evaluation, rehabilitation, and assistance to attorneys suffering from mental health or related disorder(s), and to provide monitoring and reporting services in connection therewith.

NOW, THEREFORE, the parties who agree as follows:

I, Frederick B. Johnson agree to:
to be determined

- 1. Report to for an assessment to determine diagnosis, appropriate level of care, and treatment recommendations no later than 1-30-2011.
2. Renegotiate the terms of this Agreement upon receipt of the above evaluation if required by OLAP.
3. Totally refrain from the use of all mood altering substances, including alcohol.
4. Prior to the use of any mood altering/psychoactive prescription medication, I agree to notify the prescribing physician that I am under contract with OLAP, and request that the physician notify OLAP in writing that he/she has knowledge of my chemical dependency, identify the drug or drugs prescribed, and advise of the reason for said prescription.

- may have a glass of wine per month.

5. Provide OLAP with the name, address and telephone number of each physician and other mental health professional(s) treating me, and herein authorize OLAP to obtain any information desired from said professionals.

6. I have selected as my primary physician, Dr. Henzel, located at _____, with telephone number _____.

7. I agree to obtain treatment from my primary physician and mental health professional(s) and to provide free and unlimited release of all information concerning my health and participation in treatment to OLAP.

8. I understand the need for and have requested that my primary physician, as well as any other treating professional(s), notify OLAP immediately of the following:

- a. failure to comply with or progress in treatment;
- b. any change of medication;
- c. discontinuation of therapy;
- d. change of treating professional(s);
- e. failure to appear for appointments, continue prescribed medications or cooperate in the therapeutic process.

9. Accept Scott Moke, Stephanie Kozmarich, Megan Snyder as Monitor of my performance under this contract and I assume the responsibility of making at least one personal contact per month with my Monitor, in addition to other therapy sessions recommended by my Monitor, treating physician and/or mental health professional(s).

10. Provide my OLAP Monitor with whatever substantiating documentation the monitor may require to assure compliance with this contract.

11. Provide OLAP with notification of any changes in my physical or mental health, address, phone number, or employment.

12. If available and endorsed by my Monitor, actively participate in a facilitated support group for recovering professionals.

13. If therapeutically indicated, submit to and pay for random urine drug/alcohol screens at the direction of OLAP.

14. Provide appropriate signed release forms for urine/blood laboratory results, treatment center records, psychiatric or mental health records, physician or therapist reports and other written and verbal information required to assure compliance with the terms of this Agreement.

15. Participate in continuing private and/or group therapy as required by OLAP, treating physician, mental health professional(s) or Monitor.

16. Immediately notify OLAP as well as my monitor in the event I use any mind or mood altering substances without a prescription from the physician above or any new physicians that may not be aware of my condition(s).

17. Agree to pay OLAP \$50.00/\$100/\$200 monthly administrative fee and forward payment to OLAP by the fifth day of each month.

18. Involve my family in continuing supportive care as suggested by OLAP, my Monitor, my physician and my mental health professional(s).

19. Make appropriate restitution, if applicable.

20. To perform in accordance with each and every term contained in any court order and this agreement.

21. To the modification of these Contract terms as required by my monitor and dictated by a change in circumstances.

22. To attend the annual OLAP workshop, if possible.

OLAP agrees to:

1. Provide a trained and/or certified individual to monitor the performance required by this Contract.
2. Insofar as treatment and ability to practice law is concerned, and where applicable, assume an advocacy role before any Commission Court Agency or with any Employer or other person to whom Participant must report or account.
3. Assume the responsibility to hold this Contract and all information acquired in furtherance thereof in strict confidence until released from such obligation in writing.
4. Assume the responsibility to report compliance or non-compliance with this Contract to the appropriate person (this report may also be made by the Monitor).

This Contract shall remain in effect for three (3) years from the date of execution and may be extended by order of the Court or agreement of the parties.

Date: 1.10.2011

Date: January 10, 2011

OHIO LAWYERS ASSISTANCE PROGRAM, INC.

By: Scott R. Mote
 Scott R. Mote, Esq.
 Stephanie S. Krznarich, MSW, LISW-S, LCDC-III
 Megan R. Robertson, MSW, LISW
 Paul A. Caimi, J.D., LCDC-III, ICADC
 Patrick J. Garry, Esq.

Frederick B. Johnson
 Participant
Frederick B. Johnson
 Print Name

CONFIDENTIAL

Ohio Lawyers Assistance Program, Inc.

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MEGAN R. ROBERTSON, MSW, LISW
CLINICAL ASSOCIATE

AUTHORIZATION FOR DISCLOSURE OF MEDICAL RECORDS

I, Fredrick B. Johnson, authorize the Ohio Lawyers Assistance Program, Inc. (OLAP) to disclose information about me to:
(Name, Address, Telephone Number)

Alvin Mathews-attorney
Jane Johnson-wife
Therapist-name to be determined
Psychiatrist-to be determined
Information to be released will be limited to:

Dr. Henzel - primary care physician
Judge Fraser
Jody Charolette Coleman-Eufinger

- 1. Diagnosis
2. Compliance and involvement with the treatment plan, treatment recommendations and aftercare
3. Any regression in status when appropriate
4. Unilateral cessation of participation on my part
5. Positive urine test results
6. Quarterly reports and a final summary when appropriate

I further understand that this consent for disclosure of information may be revoked by me at any time by written notice to that effect, but such revocation would not limit any information previously released. If not previously revoked, this consent agreement will terminate three (3) years from 1-10-2011, or upon the successful completion by the person named above as a participant in the Ohio Lawyers Assistance Program, Inc. Lawyers Support System, whichever occurs later. I further understand that my records are protected by Federal and State confidentiality laws and any further disclosure of information regarding my situation is prohibited without written authorization.

A photocopy of this Authorization may be relied upon for all purposes.

Program Participant

Date

Witness

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MEGAN R. ROBERTSON, MSW, LISW
CLINICAL ASSOCIATE

AUTHORIZATION AND RELEASE

I, Frederick B. Johnson authorize OHIO LAWYERS ASSISTANCE PROGRAM, INC., its employees, agents, and my Monitoring Attorney, to release information in conjunction with the disciplinary or admissions proceedings in which I am involved to the following:

[X] The Supreme Court of Ohio, the Office of the Disciplinary Counsel, the Board of Commissioners on Grievances and Discipline, and the Columbus Bar Association Ethics Grievance Committee;
AND/OR

[] The Supreme Court of Ohio, the Board of Commissioners on Character and Fitness, and the Bar Association Admissions Committee

Information to be released will be limited to:

- 1. Date of initial contact and date of assessment, if any;
2. Diagnosis;
3. Recommendations to treatment or follow-up with treatment professionals;
4. Occurrence of relapses, if any;
5. Drug and alcohol test results, if any;
6. Date of entering into and compliance with OLAP contract;
7. Prognosis;
8. Related information received from treatment providers;
9. Reservations regarding fitness to practice law, if any.

I further understand that this consent for disclosure of information may be revoked by me at any time by written notice to that effect, but such revocation would not limit any information previously released. If not previously revoked, this consent agreement will terminate three (3) years from 1-10-2011, or upon the successful completion by the person named above as a participant in the Ohio Lawyers Assistance Program, Inc. Lawyers Support System, whichever occurs later. I further understand that my records are protected by Federal and State confidentiality laws and any further disclosure of information regarding my situation is prohibited without written authorization.

[Signature]
Program Participant

Jan 10, 2011
Date

[Signature]
Witness

Johnson, Fred
1.10.2011.

Recommendations:

1. Begin individual counseling for support due to depression and other current stressors.
(- determine what your mental health benefit is from your insurance company and obtain a list of preferred providers.)
- (suggestion: The Center for Balanced Living (Washington). David R. Daqq,
(614) 293-9556
→ specialize in eating disorders)
2. ^{MRS} Consider seeking a consult with a psychiatrist to discuss medication for mood.
3. Begin an exercise program, with your Dr's approval. 30 min a day x 3 days a week.
4. Begin healthy eating. 3 balanced meals with healthy snacks.
5. Obtain sleep study to determine if there is an issue.
6. OLAP Mental Health Contract for three years
7. Call OLAP daily until linked with therapist.