ORIGINAL

IN THE SUPREME COURT OF OHIO

Cincinnati Bar Association,

Relator,

Case No. 2010-1894

v.

Robert N. Trainor,

Respondent.

Before the Court on Objections to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

RESPONDENT'S EXPEDITED MOTION TO VACATE ORDER OF JANUARY 24, 2011

(Expedited due to Oral Argument Scheduled for February 15, 2011)

Robert N. Trainor
Respondent, *pro se*
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(859) 581-1047 (fax)
mtrainor@fuse.net

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Attorney for Relator Cincinnati Bar Association
Laufman, Jensen & Napolitano, LLC
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Cincinnati, Ohio 45242
(513) 621-4556
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CLERK OF COURT
SUPREME COURT OF OHIO

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JAN 3 1 2011
CLERK OF COURT
SUPREME COURT OF OHIO

RESPONDENT'S EXPEDITED MOTION
TO VACATE ORDER OF JANUARY 24, 2011

Comes now Robert N. Trainor, Respondent, and moves this Court to vacate its Order of January 24, 2011 pursuant to S.Ct. Prac. R. 14.2(D). The Court was unaware of relevant factual information when it entered the Order in question, and Respondent believes that these facts preclude the granting of oral argument time to Relator.

I. INTRODUCTION

This controversy involves the filing of Objections to the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Commissioners on Grievance and Discipline ("Objections") *pro se* by Respondent. For reasons detailed below, Relator failed to properly notify litigants of, and failed to exercise due diligence in following up on ongoing cases, which led to Relator's failure to receive his copy of Respondent's Objections. This, in turn, led to Relator's failure to respond to said Objections, and to being precluded from participation in oral arguments in this matter. This Court denied the subsequent Expedited Motion of Relator Cincinnati Bar Association to Strike Respondent's Objections to Findings of Fact, Conclusions of Law, and Recommendation of the Board Pursuant to S.Ct. Prac. R. 14.2(D) ("Motion"), but permitted Relator ten days in which to respond and permitted Relator an opportunity to be heard at oral arguments.

This motion seeks to vacate the Court's Order of January 24, 2011 as it relates to Relator being permitted to respond and to argue, as the Court has not been fully informed of the relevant facts in this matter.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

In response to this Court's Order to Show Cause of November 10, 2010, Respondent filed his Objections and served them on Relator at Relator's last known address within the twenty-day time limit – on November 30, 2010.[1] Fourteen days following the Order to Show Cause, and six days before Respondent filed his Objections, Relator's counsel moved his office.[2] Relator does not deny having received a copy of the Order to Show Cause.[3]

Relator asserts that a "systematic initiative was implemented by [Relator] counsel's office to notify all opposing counsel of the change of address."[4] However, no evidence of this initiative accompanies Relator's Motion.[5] Nor does Relator indicate the time frame for any such

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[1] Motion, p. 2

[2] Motion, p. 2

[3] Motion

[4] Motion, p. 2

[5] Motion

initiative.[6] Relator, however, does admit that he failed to notify Respondent of his change of address.[7] The reason Relator gives for this omission is that Respondent "was represented by Mr. Hickey and such communication would have constituted improper conduct with a represented party."[8]

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[6] Motion

[7] Motion, p. 2

[8] Motion, p. 2

At the time of the issuance of the Court's Order to Show Cause (November 10, 2010), Relator's prior co-counsel, Patrick Hickey, who had been admitted *pro hac vice* to argue on Respondent's behalf, was no longer Respondent's counsel.[9] Mr. Hickey's *pro hac vice* status expired when the Board of Commissioners on Grievances and Discipline ("Board") was divested of authority in this matter, a fact Mr. Hickey confirmed with the Clerk of the Supreme Court before moving forward with this action.[10]

It should have been evident to Relator that Mr. Hickey was not counsel of record by a simple check of this Court's web site, an action Relator did not undertake until after receiving notice that Relator had been precluded from participating in oral arguments.[11]

Nevertheless, Mr. Hickey never received notice of Relator counsel's address change and Mr. Hickey was never made aware of any pending change of address for Relator's counsel during the proceedings before the Board.[12] Additionally, Respondent and his former secretary, Darlene T. Wescott, never had any such indication of an address change, nor did the United States Post

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[9] Affidavit of Patrick C. Hickey, ¶¶2, 5, 6; Affidavit of Respondent, ¶3

[10] Affidavit of Patrick C. Hickey, ¶6

[11] Motion, p. 3

[12] Affidavit of Patrick C. Hickey, ¶7

Office ever notify Respondent or Ms. Wescott that the Objections sent to Relator's known address was not deliverable.[13] The document sent to Relator was never returned to Respondent's office.[14]

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[13] Affidavit of Respondent, ¶¶6-10; Affidavit of Darlene T. Wescott, ¶3

[14] Affidavit of Respondent, ¶10; Affidavit of Darlene T. Wescott, ¶3

Interestingly, when Relator became aware that Respondent had filed Objections twenty-five (25) days after the fact (upon receipt of the Notice of Oral Argument, December 23, 2010[15]), he contacted Mr. Hickey to inquire into this apparent problem[16], but did not move to strike Respondents Objections until twenty-seven (27) days later (January 19, 2011)[17].

III. ARGUMENT

It is clear from the above that Relator failed to exercise due diligence in notifying the appropriate persons of his change of address. Indeed, he admits to have failed entirely to notifying Respondent of such change, and has proffered no evidence whatsoever that he ever notified anyone of his change of address.[18] There is no evidence that the United States Postal Service ever failed to deliver Respondent's Objections to Relator – no notice was ever returned to Respondent, the package sent to Relator was never returned to Respondent as undeliverable, Mr. Hickey never received notice of Relator counsel's change of address, and neither Mr. Hickey

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[15] Motion, p. 3

[16] Motion, p. 3

[17] Motion

[18] Motion

nor Respondent ever had any indication that Relator counsel's address was going to change.[19]

[19] Affidavit of Respondent, ¶¶9,10; Affidavit of Darlene T. Wescott, ¶3; Affidavit of Patrick C. Hickey, ¶7

Additionally, Relator waited an inordinate amount of time in which to respond (by way of his motion to strike) to Respondent's Objections – assuming Relator had received the Objections timely, he would have had only ten (10) days in which to respond[20], but it took Relator at least twenty-seven (27) days from discovery of such filing just to file a motion to strike same[21]. Had Relator acted diligently, some form of response to Respondent's Objections should have been filed within ten days of discovery, which would have been Monday, January 3, 2011 – sixteen (16) days before the Motion was filed. Such diligence would have precluded at least some of the necessity for the urgency behind Relator's Motion, which was filed only twenty-seven (27) days prior to oral argument.

Additional evidence of lack of Relator's diligence in handling this matter is clear from the lack of calendaring of this matter. At the time of the Order to Show Cause (November 10, 2010), Relator's original address was still good.[22] Relator knew that twenty days later (November 30), when a response was due, his address would have changed (just 6 days prior). That put Relator on notice that he needed to pay special attention to this matter, and that he needed to notify ***both*** counsel of record of his address change.

IV. CONCLUSION

For the foregoing reasons, Respondent requests that Relator be precluded from filing a response to Respondent's Objections, and that Relator be precluded from participating in oral

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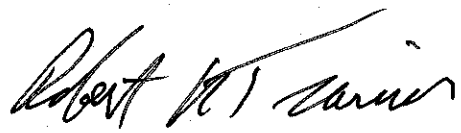
[20] S.Ct. Prac. R. 14.4(B)

[21] Motion, filed January 19, 2011

[22] Motion, p. 2

arguments before this Court.

Respectfully submitted,



ROBERT N. TRAINOR
Respondent

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of January, 2011, a copy of the foregoing Respondent's Expedited Motion to Vacate Order of January 24, 2011 was mailed via FedEx to the following:

Clerk
Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431

and

Mr. Paul M. Laufman
Laufman, Jensen & Napolitano, LLC
4310 Hunt Road
Cincinnati, Ohio 45242.

Robert N. Trainor

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IN THE SUPREME COURT OF OHIO

Cincinnati Bar Association,

Relator,

Case No. 2010-1894

v.

Robert N. Trainor,

Respondent.

AFFIDAVIT OF RESPONDENT

Comes now Robert N. Trainor, after first being duly cautioned and sworn, states and deposes as follows:

1. The information contained in this affidavit is true and based upon my personal knowledge.

2. I am Respondent in this matter and was Respondent and Co-counsel in the matter before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, Case No. 10-023.

3. After receipt of this Court's Order to Show Cause, dated November 10, 2010, I learned that the *pro hac vice* status of my co-counsel in the proceedings before the Board, Patrick Hickey, had been terminated at the conclusion of the proceedings before the Board. It was and is my understanding that this termination was automatic, and that the proceedings before this Court are a new matter for which Mr. Hickey has not been admitted.

4. I then proceeded to file objections to the Board's recommendations *pro se*.

5. My office timely mailed to counsel for Relator, Paul M. Laufman, a copy of those objections at the address then known to me and as set forth in the Findings of Fact Conclusions

of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio in November of 2010, 30 Garfield Place, Suite 750, Cincinnati, Ohio 45202.

6. At no time prior to receipt of Expedited Motion of Relator Cincinnati Bar Association to Strike Respondent's Objections to Findings of Fact, Conclusions of Law, and Recommendation of the Board Pursuant to S.Ct. Prac. R. 14.2(D) was I aware of Mr. Laufman's change of address.

7. I never received notification, formally nor informally, of Mr. Laufman's change of address from Garfield Place to Hunt Road.

8. I never had reason to believe that Mr. Laufman's address had changed prior to my mailing of a copy of my objections to him in November of 2010, twenty days after filing of the Order to Show Cause.

9. I never had reason to believe that Mr. Laufman's address was to change prior to my mailing of a copy of my objections to him in November of 2010.

10. I never received notification of any sort, even from the United States Postal Service, that the objections mailed to Mr. Laufman at the Garfield Place address were undeliverable as addressed.

FURTHER AFFIANT SAYETH NAUGHT.

Robert N. Trainor

COMMONWEALTH OF KENTUCKY)
COUNTY OF KENTON)

SWORN TO AND SUBSCRIBED before the undersigned notary public by the aforesaid Robert N. Trainor, on this the 28th day of January, 2011.

Charlene T Wescott
NOTARY PUBLIC
ID # 410238

My Comm Expires:
01-04-2014

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IN THE SUPREME COURT OF OHIO

Cincinnati Bar Association,

Relator,

Case No. 2010-1894

v.

Robert N. Trainor,

Respondent.

AFFIDAVIT OF PATRICK C. HICKEY

Comes Patrick C. Hickey, affiant, and after being duly cautioned and sworn states as follows:

1. Affiant is a licensed attorney before the Courts of the Commonwealth of Kentucky and the United States District Court of Kentucky, Eastern District.

2. After the initiation of the Ohio Bar Complaint in Case No. 10-023, Mr. Trainor asked that affiant serve as co-counsel in the matter by admission ***Pro Hac Vice***. In fact, my first participation in the matter was attendance at the telephonic pre-trial with the Chair of the Board of Commissioners on Grievances and Discipline. This issue of ***Pro Hac Vice*** admission was the first order of business.

3. Permission was given at this telephonic pre-trial conditioned upon the submission of the proper application, fee, and certificates of good standing from the Courts wherein I am admitted and have been for 38 years.

4. Self evidently, I was co-counsel with Mr. Trainor because proceedings had taken place in the case prior to my ***Pro Hac Vice*** admission and Mr. Trainor was my sponsoring attorney which is required for ***Pro Hac Vice*** admission as co-counsel.

5. There was never a substitution of counsel filed in this matter only my entering the case as co-counsel, ***Pro Hac Vice***.

6. Sometime following this Court's setting of the matter for oral argument, Realtor called my office and asked why he was not mailed a copy of the Respondent's Objections and Request for Oral argument.

I explained to the Realtor that I did not represent the Respondent as co-counsel, subsequent to the hearing before the Board of Commissioners on Grievances and Discipline; that the Respondent was proceeding ***Pro Se***; and that the Supreme Court of Ohio requires a second filing for admission ***Pro Hac Vice*** (a second application, certified good standing certificates, and an additional fee).

During this conversation, Realtor related that he had moved his office from 30 Garfield Place, Suite 750, Cincinnati, Ohio 45202 to 4310 Hunt Road, Cincinnati, Ohio 45242.

7. In a letter addressed to affiant and faxed to the Respondent's office on April 26, 2010 from Stephen C. Rodenheffer, Chairman of the Board of Commissioners on Grievances and Discipline, he wrote, at ¶ 2 of this letter as follows: " The Board has instructed me to communicate to you if you wish to act as co-counsel with Mr. Trainor that you make an application in this case to participate on a ***Pro Hac Vice*** basis. A formal motion to that effect needs to be filed with the Board in this case and I would ask that you communicate with Realtor's counsel to see if they have any objection, if they have no objection and you are in good standing with the Bar in the Commonwealth of Kentucky, an order granting you permission will be issued. If the Realtor does object, we will conduct some type of hearing or conference to resolve the issues raised by

your application." This letter was carbon copied and faxed to Realtor at (513) 621-5563. There were no objections made by Realtor and I was admitted as co-counsel, ***Pro Hac Vice***.

9. Realtor has consistently overlooked or ignored my status as co-counsel.

8. I never received at anytime a letter, e-mail or telephone call advising me of the change of office address of the Realtor until the telephone conversation described in paragraph 6 above.

Further the affiant sayeth naught.

PATRICK C. HICKEY (KBA# 31670)
Attorney at Law, AFFIANT
3130 Stoneridge Drive
Edgewood, KY 41017
(859) 341-4411
Fax: (859) 341-3577
Email: kylawyer01@gmail.com

STATE OF KENTUCKY)
) SS:
COUNTY OF KENTON)

Subscribed ,sworn, and acknowledged before me a Notary Public by PATRICK C. HICKEY, this 28th day of January, 2011.

NOTARY PUBLIC
ID # 410238

My Commission Expires:
01-04-2014

SUPREME COURT OF OHIO

Cincinnati Bar Association,

Relator,

Case No. 2010-1894

v.

Robert N. Trainor,

Respondent.

A F F I D A V I T

Comes now Darlene T. Wescott, Affiant herein, and after first being duly cautioned and sworn, states as follows:

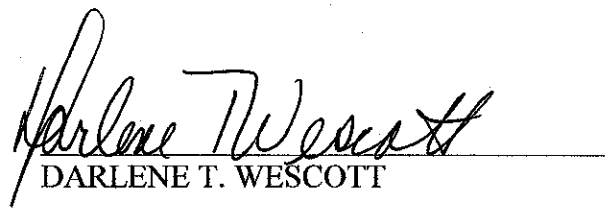
1. Affiant states that she had been employed by the Respondent, Robert N. Trainor, from September 14, 1998 through January 7, 2011, as Secretary and Office Manager.

2. That in her capacity as such her duties were to file all pleadings and correspondence that came into said office and to make notations as to new addresses of opposing counsel in all of Mr. Trainor's cases; to take telephone messages and if opposing counsel indicated that they were relocating their office or had relocated their office, to make proper notation in the existing file.

3. Affiant states that to the best of her knowledge and recollection, she did not have notice of the change of address for opposing counsel in the above-referenced matter and that at the time of the filing of ***RESPONDENT'S OBJECTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION OF THE BOARD WITH REQUEST FOR ORAL ARGUMENT***, she placed a copy of same in the mail to Mr. Paul M. Laufman, at Laufman, Jensen & Napolitano, LLC, 30 Garfield Place, Suite 750, Cincinnati, Ohio

45202. That as of the last date Affiant worked, January 7, 2011, the envelope had not been returned by the United States Post Office and therefore it is the belief of the Affiant that the document was delivered as addressed.

Further Affiant sayeth naught.



DARLENE T. WESCOTT

COMMONWEALTH OF KENTUCKY

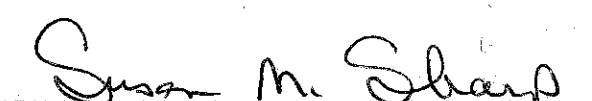
SS

COUNTY OF KENTON

Sworn and subscribed to before me, a Notary Public, this 27th day of January 2011 by Darlene T. Wescott.

My Commission Expires:

November 6, 2014



NOTARY PUBLIC ID# 187565

CERTIFICATE OF SERVICE

I hereby certify that an original and sixteen (16) copies of the foregoing Affidavit was this 28th day of January, 2011 mailed to:

Clerk
Supreme Court of Ohio
65 South Front Street, 8th Floor
Columbus, Ohio 43215-3431 and

Mr. Paul M. Laufman
Attorney for Relator Cincinnati Bar Association
Laufman, Jensen & Napolitano, LLC
4310 Hunt Road
Cincinnati, Ohio 45242

Robert N. Trainor

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