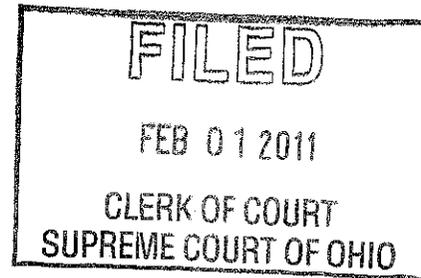


IN THE SUPREME COURT OF OHIO



Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215

CASE NO. 2010-2199

Relator

**RELATOR'S RESPONSE TO
RESPONDENT'S MOTION TO
SUPPLEMENT THE RECORD AND
TO REMAND PROCEEDINGS
TO BOARD**

Frederick Bruce Johnson
214 South Court Street
Marysville, Ohio 43040

Respondent

**RELATOR'S RESPONSE TO RESPONDENT'S MOTION TO SUPPLEMENT THE
RECORD AND TO REMAND PROCEEDINGS TO BOARD**

Now comes relator, Disciplinary Counsel, and hereby submits the following response to respondent's, Frederick Bruce Johnson's, Motion to Supplement the Record and To Remand Proceedings to Board. With some qualification, relator does not oppose respondent's motion.

MEMORANDUM IN SUPPORT

On January 24, 2011, respondent filed a Motion to Supplement the Record and to Remand Proceedings to Board. Attached to respondent's motion was a personal affidavit and a copy of a contract that respondent had entered into with the Ohio Lawyers Assistance Program (OLAP) 14 days earlier on January 10, 2011. Respondent requests that he be permitted to supplement the record with the information contained in his affidavit and his contract with OLAP so that this Court can consider whether this case is appropriate for remand to the Board of Commissioners on Grievances and Discipline (board) for introduction of mitigation evidence.

Respondent further requests that should this Court determine that this case is appropriate for remand that this case be remanded to the board.

As to respondent's request to supplement the record, relator has no objection. As to respondent's request to remand this case to the board, relator also has no objection; however, relator notes that in the past, this Court has only remanded cases for "the most exceptional circumstances." *Dayton Bar Ass'n v. Stephan* (2006), 108 Ohio St.3d 327, 2006-Ohio-1063, 843 N.E.2d 771 (denying a request for a remand finding that "attorneys have an obligation to assist in disciplinary matters and that the record should be developed in the answers and hearings prior to reaching this Court"). *See also Cleveland Bar Ass'n v. Witt* (1999), 85 Ohio St.3d 9, 1999-Ohio-198, 706 N.E.2d 763 (denying a request for a remand finding that the respondent only awoke to the "consequences of his inaction" after a show cause order was issued).

Should this Court determine that this case qualifies as an "exceptional circumstance," relator respectfully requests that the remand be strictly limited to the introduction of additional mitigation evidence.¹ *See Butler County Bar Ass'n v. Portman* (2007), 116 Ohio St.3d 1450, 2007-Ohio-6842, 878 N.E.2d 28 and *Disciplinary Counsel v. McShane* (2009), 121 Ohio St.3d 169, 2009-Ohio-746, 902 N.E.2d 980 (remanding a case to the board after respondent "proffered compelling evidence of a mental disability in explanation for his failure to answer as well as substantial evidence in mitigation of his misconduct.") Although it appears from respondent's objections to the board's Findings of Fact, Conclusions of Law, and Recommendation (board report), which were filed simultaneously with the instant motion, that respondent agrees to the salient facts of this matter, respondent should not be permitted to contest the facts and/or provide

¹ The board has already considered respondent's lack of prior discipline and his restitution.

additional information concerning the facts of this matter as found by the board in light of the fact that he has already forgone several opportunities to do so.²

In the event that this Court permits respondent to supplement the record, but decides not to remand this case to the board, relator respectfully requests that the information contained in respondent's affidavit and his contract with OLAP be given its proper weight. To the extent that respondent is claiming that the statements in his affidavit and his OLAP contract regarding his depression should be considered as mitigating, relator objects.

BCGD Proc. Reg. 10(B)(2)(g) states that in order for a mental disability to qualify as a mitigating factor, the following four factors must be met:

1. A diagnosis of a mental disability by a qualified health care professional;
2. A determination that the mental disability contributed to the cause of the misconduct;
3. A sustained period of successful treatment; and
4. A prognosis from a qualified health care professional that the attorney will be able to return to the competent, ethical professional practice under specified conditions.

While any or all of these criteria may be met on remand, they have not been developed in the record as it currently exists. As such, should this Court permit respondent to supplement the record, but decide not to remand the case, respondent's statements regarding his depression should not be considered as mitigating.

² Respondent received the draft complaint from relator in July of 2010, the formal complaint from the board in August of 2010, and a service copy of relator's Motion for Default Judgment in November of 2010. Board report at 3, respondent's objections at 3, and respondent's affidavit. At any of these junctures, respondent could have responded, denied and/or contested the facts of this matter, but he chose not to do so.

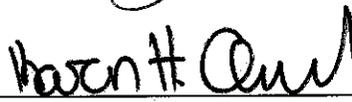
CONCLUSION

In conclusion, relator does not oppose respondent's request to supplement the record, nor does relator oppose respondent's request to remand this case to the board. Relator notes, however, that in the past, this Court has only remanded cases under "exceptional circumstances." Should a remand be allowed, relator requests that the purposes of the remand be strictly limited to the introduction of mitigation evidence, and should a remand not be allowed, relator requests that the information in the record be given its proper weight.

Respectfully submitted,



Jonathan E. Coughlan (0026424)
Disciplinary Counsel, Relator

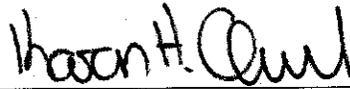


Karen H. Osmond (0082202)
Staff Attorney, Counsel for Relator

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing "Relator's Response to Respondent's Motion to Supplement the Record and to Remand Proceedings to Board" was served upon respondent's counsel, Alvin E. Mathews, at Bricker & Eckler LLP, 100 South Third Street, Columbus, Ohio 43215 and upon the Board of Commissioners on Grievances and Discipline, c/o Jonathan W. Marshall, Secretary, 65 South Front Street, 5th Floor, Columbus, Ohio 43215 via U.S. Mail, postage prepaid, on this 1st day February 2011.



Karen H. Osmond (0082202)
Counsel for Relator