

**ORIGINAL**

IN

THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator

Percy Squire,

Registration No. 0022010

Respondent

CASE NO. 2010-2021

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**RELATOR'S MOTION TO STRIKE  
ATTACHMENTS TO RESPONDENT'S ANSWER BRIEF**

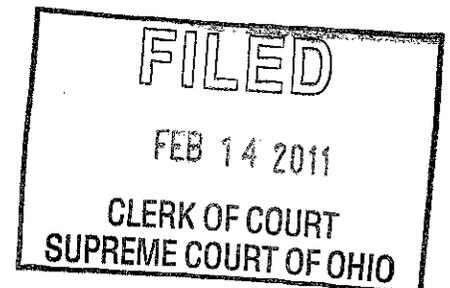
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IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

Percy Squire

Respondent.

CASE NO. 2010-2021

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RELATOR'S MOTION TO STRIKE  
ATTACHMENTS TO RESPONDENT'S ANSWER BRIEF

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INTRODUCTION

On November 22, 2010, the Board of Commissioners on Grievances and Discipline (the board) filed its report and recommendations with this Court. The board found that respondent, Percy Squire, violated numerous disciplinary rules and recommended respondent be suspended for 24 months with 12 months stayed on conditions.

Relator, Disciplinary Counsel, filed objections to a portion of the board's findings in Count Three and to the recommended sanction. Inter alia and as set forth in relator's objections, this Court should conclude that respondent's misconduct necessitates the imposition of an indefinite suspension. Relator's objections were filed on January 10, 2011 and this matter is scheduled for oral argument on April 5, 2011.

Respondent filed an answer to relator's objections on February 9, 2011.<sup>1</sup> To his answer brief, respondent appended three "exhibits" identified as A, B, and C. Now comes relator and for all of the reasons set forth in the following memorandum moves this Court pursuant to Civ. R.12(F) to strike the attachments to respondent's answer brief.

### MEMORANDUM

Section 6 of this Court's Rules of Practice clearly provides the requirements and limitations for merit briefs filed in disciplinary cases before this Court. Not only are respondent's attachments outside the limitations of what may properly be attached to a brief, all three of the "exhibits" were previously stricken by the hearing panel. See S.Ct. Prac. R.6.3 and S.Ct.Prac.R.6.2(B). See, also Appendix A, attached hereto.

"The determination of a motion to strike is vested within the broad discretion of the court." *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 38, 2006-Ohio-6365, 857 N.E.2d 1208 (citation omitted). "Civ. R.12(F) allows a court to strike any pleading or material determined to be insufficient, redundant, immaterial, impertinent, or scandalous." *Id.* S.Ct.Prac.R. 10.2 provides that "[t]he Ohio Rules of Civil Procedure shall supplement these rules unless clearly inapplicable." *Id.* The "exhibits" attached to respondent's answer brief are redundant, immaterial, and impertinent and should be stricken by this Court. See Civ. R.12(F).

The "exhibits" that respondent has endeavored to place before this Court are identical to the items that respondent attached to the written closing argument that he

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<sup>1</sup> For reasons that are entirely unclear, respondent has chosen to address the entire board report in his answer brief.

filed with the board. To wit, "Exhibit A" is a photocopy of a motion that respondent filed with the board during the disciplinary case and which was ruled on by the hearing panel; "Exhibit B" purports to be an unsworn "declaration" by Mark D. Lay, a witness whose sworn testimony was submitted to the hearing panel by trial deposition; and, "Exhibit C" purports to be a journal entry.

Exhibit A is a photocopy of a motion that respondent filed with the board on May 5, 2010. This motion was denied by the panel chair on May 6, 2010, the first day of the disciplinary hearing. Notably, the May 5, 2010 motion is nearly identical to a motion filed by respondent on October 30, 2009. Respondent's October motion was denied by the panel chair on November 19, 2009.

Attached to Exhibit A are newspaper articles that respondent withdrew as proposed exhibits at the disciplinary hearing after relator objected to their admission.<sup>2</sup> Nonetheless, Exhibit A is already in the record and should be stricken by this Court as it is at the very least redundant and immaterial. Civ. R.12(F).

Exhibits B and C were never offered into evidence by respondent and are not a part of the record. Moreover, the fact that Exhibit B was already stricken by the board under nearly identical circumstances makes respondent's offer of the exhibit to this Court impertinent and clearly necessitates that it be stricken from the record.

Exhibit B purports to be an unsworn statement allegedly signed by a witness in this case, Mark D. Lay. Lay is incarcerated in a federal correctional facility in New Jersey. Lay's testimony for the disciplinary hearing was taken by sworn deposition at that New Jersey facility on April 21, 2010. See Stipulated Exhibit 76.

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<sup>2</sup> Clearly, the newspaper articles constitute inadmissible hearsay.

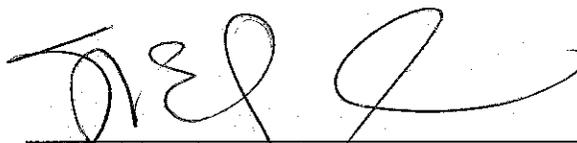
Relator provided respondent with several months notice of his intention to depose Lay. At no time did respondent object to the taking of Lay's deposition. Respondent advised relator only a few days before the deposition that he would not attend. Despite relator's efforts, the correctional facility staff was unable, on such short notice, to allow respondent to participate by telephone. Not surprisingly, Exhibit B contradicts some of Lay's sworn testimony.

As determined by the panel, the time for respondent to present evidence challenging Lay's testimony was either at the time of Lay's deposition or at the disciplinary hearing. Relator vehemently objects to respondent's efforts to introduce the unsworn statement of a witness after the evidentiary hearing. Respondent cannot introduce information after the close of the proof in a fashion that denies relator the opportunity to examine the "evidence" and/or cross examine the witness. Exhibit B is impertinent and immaterial and should be stricken by this Court.

Exhibit C is a journal entry from *Brian Wallace v. Biswanath Halder*, Cuyahoga County Court of Common Pleas Case No. CV-06-591169. This entry was journalized after the evidentiary hearing in this disciplinary matter and is not relevant. Likewise, Exhibit C was previously stricken from the record by the panel chair and it is impertinent and immaterial.

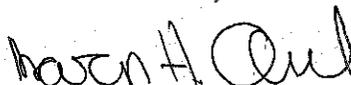
Accordingly and for all of the foregoing reasons, this Court should grant relator's motion to strike and the "exhibits" attached to respondent's answer brief filed with this Court should be stricken.

Respectfully submitted,



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel, Relator



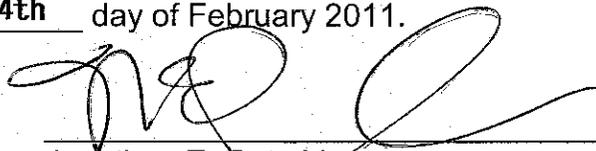
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Motion to Strike has been served upon respondent,  
Percy Squire, Percy Squire Co. LLC, 514 S. High St., Columbus, OH 43215, via regular  
U.S. mail, postage prepaid, this 14th day of February 2011.



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Jonathan E. Coughlan  
Counsel of Record