IN THE SUPREME COURT OF OHIO

ORIGINAL

DISCIPLINARY COUNSEL,	:	
	:	
RELATOR,	:	
	:	CASE NO. 2010-2021
VS.	:	
	:	
PERCY SQUIRE,	:	
	:	
RESPONDENT.	:	

OPPOSITION OF PERCY SQUIRE TO RELATOR'S MOTION TO STRIKE ATTACHMENTS TO RESPONDENT'S ANSWER BRIEF

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MAR 21 2011
CLERK OF COURT
SUPREME COURT OF OHIO

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DISCIPLINARY COUNSEL,	:	
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RELATOR,	:	
	:	**CASE NO. 2010-2021**
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OPPOSITION OF PERCY SQUIRE TO RELATOR'S MOTION TO STRIKE ATTACHMENTS TO RESPONDENT'S ANSWER BRIEF

Relator has moved under Ohio R. Civ. P. 12(F) to strike attachments to the undersigned's Answer Brief based upon the argument that Section 6 of the Rules of Practice of the Ohio Supreme Court provide the "requirements and limitations for merit briefs filed in disciplinary cases before this court." See, p. 3, Relator's Motion to Strike. Relator has also alleged that the attachments should be stricken for the reason they are outside what is permitted to be within an Answer brief under S. Ct. Prac. R. 6.3 and 6.2(B). Relator's arguments are without merit and should be rejected.

It should be noted at the outset here that the undersigned did not file the initial appeal from the Recommendation of the Panel or Board and has accepted full responsibility for his actions in this matter. The initial appeal here has been filed by Relator. Given that Relator has requested appellate review, Relator should be required to obtain review in accordance with appropriate procedural rules and Ohio law. As discussed below, Relator has failed to do this and his motion to strike should therefore be denied.

In point of fact, Relator has alleged as authority for his first ground for striking the attachments to the undersigned's Answer brief, Ohio R. Civ. P. 12(F). Rule 12(F) has no application whatsoever to this matter. The Ohio Rules of Civil Procedure provide, in pertinent part:

> **(F) Motion to Strike.** Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty –eight days after the service of the pleading upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent or scandalous matter.

Ohio R. Civ. P. 12(F) (emphasis added).

An Answer brief under Rule V of the Supreme Court Rules for the Government of the Bar of Ohio, is not a pleading under Civil Rule 12(F). In this connection, the Ohio Rules of Civil Procedure state:

> **(A) Pleadings**. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

Ohio R. Civ. P. 7(A).

Based upon the above, there is no authority under Rule 12(F) to strike the attachments to the undersigned's Answer brief for the reason an Answer brief is not a pleading within the meaning of the Ohio Rules of Civil Procedure.

Relator also makes the erroneous argument that the attachments should be stricken for the reason they are outside the ambit of what may be attached to a merit brief under Supreme Ct. R. Prac. 6.2(B) and 6.3. This argument is inequitable however for the reason Relator's Objection did not comply with Sp. Ct. Prac. R. 6.2(B).

In point of fact, Rule 6.2(B) states:

(B) Contents

The appellant's brief shall contain all of the following:

(1) A table of contents listing the table of authorities cited, the statement of facts, the argument with proposition or propositions of law, and the appendix, with references to the pages of the brief where each appears.

(2) A table of the authorities cited, listing the citations for all cases or other authorities, arranged alphabetically; constitutional provisions; statutes; ordinances; and administrative rules or regulations upon which appellant relies, with references to the pages of the brief where each citation appears.

(3) A statement of the facts with page references, in parentheses, to supporting portions of both the original transcript of testimony and any supplement filed in the case pursuant to S.Ct. Prac. R. 7.1 through 7.2.

(4) An argument, headed by the proposition of law that appellant contends is applicable to the facts of the case and that could serve as a syllabus for the case if appellant prevails. If several propositions of law are presented, the argument shall be divided with each proposition set forth as a subheading.

(5) An appendix, numbered separately from the body of the brief, containing copies of all of the following:

(a) The date-stamped notice of appeal to the Supreme Court, the notice of certified conflict, or the federal court certification order, whichever is applicable;

(b) The judgment or order from which the appeal is taken;

(c) The opinion, if any, relating to the judgment or order being appealed;

(d) All judgments, orders, and opinions rendered by any court or agency in the case, if relevant to the issues on appeal;

(e) Any relevant rules or regulations of any department, board, commission, or any other agency, upon which appellant relies;

(f) Any constitutional provision, statute, or ordinance upon which appellant relies, to be construed, or otherwise involved in the case;

(g) In appeals from the Public Utilities Commission, the appellant's application for rehearing.

Sp. Ct. R. Prac. 6.2(B) (emphasis added).

Inspection of Relator's Objection clearly establishes that it does not comply with the requirements of Rule 6.2(B). The Relator's filing is not organized according to the requirements of 6.2(B). Relator's filing is organized as follows:

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INTRODUCTION 1
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CERTIFICATE OF SERVICE..... 29
APPENDIX A
Findings of Fact, Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

There are no propositions of law or statement of facts in Relator's Objection.

As shown above, neither Civil Rule 12(F) nor Sp. Ct. Prac. R. 6.2(B) provide any authority for the striking of the attachments to the Answer brief of the undersigned.

Procedure in disciplinary cases in Ohio is governed by Rule V of the Ohio Rules for Government of the Bar.

Rule V of the Rules for Government of the Bar provides, in pertinent part:

> **Section 8. Review by Supreme Court; Orders; Costs; Publication; Duties of Disqualified or Resigned Attorney.**
>
> **(A) Show Cause Order.** After the filing of a final report of the Board, the Supreme Court shall issue the respondent an order to show cause why the report of the Board shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of the Supreme Court on the respondent and all counsel of record personally or by certified mail.

> **(B) Response to Show Cause Order.** Within twenty days after the issuance of an order to show cause, the respondent or relator may file objections to the findings or recommendations of the Board and to the entry of a disciplinary order or to the confirmation of the report on which the order to show cause was issued. The objections shall be accompanied by a brief in support of the objections and proof of service of copies of the objections and the brief on the Secretary of the Board and all counsel of record. Objections and briefs shall be filed in the number and form required for original actions by the Rules of Practice of the Supreme Court of Ohio.
>
> **(C) Answer Briefs.** Answer briefs and proof of service shall be filed within fifteen days after briefs in support of objections have been filed. All briefs shall be filed in the number and form required for original actions by the Rules of Practice of the Supreme Court of Ohio.

Id. (emphasis added).

Under S. Ct. Prac. R. 10.8 merit briefs shall conform to the requirements set forth in S. Ct. Prac. R. 6.1 through 6.8 and 8.1 through 8.7, to the extent those rules are applicable. Id. (Emphasis added.)

Under S. Ct. Prac. R. 6.3(B) the Appellee's brief, here the Answer brief,

> **(B) Contents**
>
> The appellee's brief shall comply with the provisions in S.Ct. Prac. R. 6.2(B), answer the appellant's contentions, and make any other appropriate contentions as reasons for affirmance of the order or judgment from which the appeal is taken. A statement of facts may be omitted from the appellee's brief if the appellee agrees with the statement of facts given in the appellant's merit brief. The appendix need not duplicate any materials provided in the appendix of the appellant's brief.

In this case the undersigned did not file an objection. The undersigned was content to accept the Recommendation of the Panel and the Board. Relator by filing an Objection has drawn the decisions made below by the Panel concerning the attachments to the undersigned's Answer into controversy. In other words, the Panel's decision to overrule the undersigned's motion to disqualify Relator, the Declaration of Mark D. Lay

and Journal Entry in Brian Wallace v. Biswanath Halder, et al, Cuyahoga County Case No. CV-06-591169 are in controversy by reason of Relator having filed an Objection.

On November 19, 2009, the Panel denied the undersigned's motion to disqualify Relator. See, Exhibit A. The motion to disqualify was predicated upon the pendency of litigation against Relator in which the undersigned was counsel involving claims advanced by Relator against my spouse, a former Franklin County Common Pleas Judge. The undersigned seeks through attachment A to his Answer brief to appeal the Panel's denial of the motion to disqualify. No opportunity to appeal has otherwise been accorded to me.

In this matter the State has afforded Relator the right to appeal, See, Exhibit B.

The United States Supreme Court has stated that when a state affords a party a right to appeal, Equal Protection and Due Process require that this right be extended to all parties. See, Griffin v. Illinois, 351 U.S. 12 (1956).

Griffin states in relevant part:

> In this tradition, our own constitutional guaranties of due process and equal protection both call for procedures in criminal trials which allow no invidious discriminations between persons and different groups of persons. Both equal protection and due process emphasize the central aim of our entire judicial system -- all people charged with crime must, so far as the law is concerned, "stand on an equality before the bar of justice in every American court." Chambers v. Florida, 309 U. S. 227, 309 U. S. 241. *See also* Yick Wo v. Hopkins, 118 U. S. 356, 118 U. S. 369. [Footnote 11]
>
> It is true that a State is not required by the Federal Constitution to provide appellate courts or a right to appellate review at all. *See, e.g.,* McKane v. Durston, 153 U. S. 684, 153 U. S. 687-688. But that is not to say that a State that does grant appellate review can do so in a way that discriminates against some convicted defendants on account of their poverty. Appellate review has now become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings, the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations. *See* Cole v. Arkansas, 333 U. S. 196, 333 U. S. 201; Dowd v. United States ex rel.

Cook, 340 U. S. 206, 340 U. S. 208; Cochran v. Kansas, 316 U. S. 255, 316 U. S. 257; Frank v. Mangum, 237 U. S. 309, 237 U. S. 327.

While the economic status of the undersigned is not an issue here, the right to appellate review is. The attachments to the undersigned's Answer brief are before the Court for consideration for the reason they were rejected by the Panel. The undersigned seeks appellate review of this rejection.

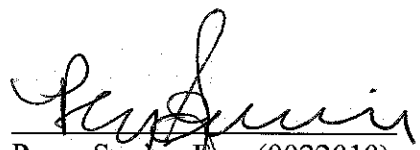
Rule V of the Rules Governing the Discipline of the Bar states:

> **(D) Rule to be Liberally Construed.** The process and 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 order to show cause may be made at any time prior to final order of the Supreme Court. The party affected by an amendment shall be given reasonable opportunity to meet any new matter presented. No investigation or procedure shall be held to be invalid by reason of any nonprejudicial irregularity or for any error not resulting in a miscarriage of justice. This rule and regulations relating to investigation and proceedings involving complaints of misconduct and petitions for reinstatement shall be construed liberally for the protection of the public, the courts, and the legal profession and shall apply to all pending investigations and complaints so far as may be practicable and to all future investigations, complaints, and petitions whether the conduct involved occurred prior or subsequent to the amendment of this rule. To the extent that application of this amended rule to pending proceedings may not be practicable, the regulations in force at the time this amended rule became effective shall continue to apply.

Id. (emphasis added.) By filing an Objection Relator has placed all rulings by the Panel into controversy, including the Panel's decision to overrule the Verified Motion to disqualify Relator and Mark Lay's Declaration, which directly contradicts Relator's argument that the undersigned was not owed additional legal fees by Mark Lay or that the undersigned did not, with authority of the Mark Lay trustee and beneficiary, borrow funds from the Lay Trust.

Given Relator's objection and the liberal interpretation standard mandated under Rule V, it is respectfully requested that the attachments be considered by the Court on review of the Panel and Board Recommendation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served via email March 21, 2011, upon the following:

Jonathan E. Coughlan, Esq. (0026424)
Disciplinary Counsel
Supreme Court of Ohio
250 Civic Center Drive, Suite 325
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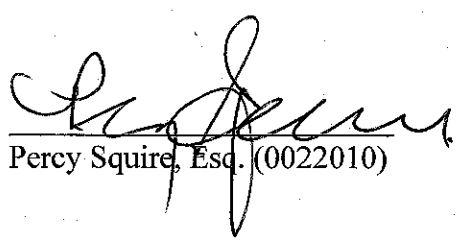

Percy Squire, Esq. (0022010)

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

FILED
NOV 19 2009
BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In Re:	:	
Complaint against:	:	Case No. 09-023
Percy Squire,	:	
Respondent	:	
Disciplinary Counsel,	:	
		ENTRY
Relator	:	

* * * * * * * *

Respondent has filed, pro se, his "MOTION TO DISMISS TO DISQUALIFY COUNSEL AND FOR A PROTECTIVE ORDER AND MEMORANDUM IN SUPPORT." Relator has filed his Answer to respondent's motion. Respondent has filed his Reply.

Respondent asserts that relator has engaged in vindictive prosecution and/or selective enforcement in the prosecution of this case. He seeks dismissal of the amended complaint filed by respondent, or in the alternative, to disqualify relator citing a conflict of interest arising from a case filed against relator by respondent's wife, Carole Squire, in the federal district court. Respondent also seeks dismissal of Count 3 of the Amended Complaint for failure to state a claim.

EXHIBIT
tabbies
A

The Panel Chair has reviewed the party's pleadings and accordingly finds that respondent has asserted no operative facts nor presented any credible, relevant evidence in support of his claims. Respondent's claims are without merit and his motion is therefore accordingly denied.

The Secretary shall cause copies of the Entry to be mailed to the parties. All subject to further order of the Chair.

Arlene Singer, Chair

FILED

DEC 01 2010

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Disciplinary Counsel,
Relator,
v.
Percy Squire,
Respondent.

Case No. 2010-2021

ORDER TO SHOW CAUSE

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio has filed a final report in the office of the clerk of this court. This final report recommended that pursuant to Rule V(6)(B)(3) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Percy Squire, Attorney Registration Number 0022010, be suspended from the practice of law for a period of two years with one year stayed on conditions contained in the panel report. The board further recommends that the costs of these proceedings be taxed to the respondent in any disciplinary order entered, so that execution may issue. Upon consideration thereof,

It is ordered by the court that the respondent show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered.

It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

After a hearing on the objections or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be more severe or less severe than said recommendation.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.

ERIC BROWN
Chief Justice

EXHIBIT
tabbies
B