

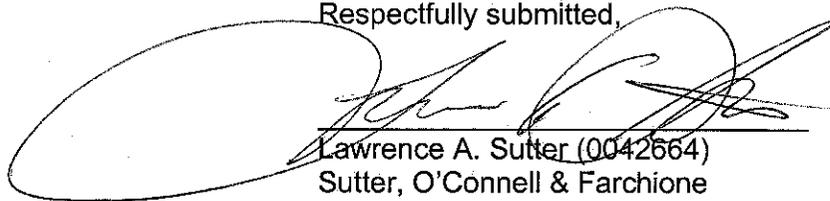
THE SUPREME COURT OF OHIO

| | | |
|-----------------------|---|--------------------------------|
| In Re: |) | |
| |) | Case No. 11-0408 |
| Complaint against: |) | |
| |) | |
| Joseph G. Stafford, |) | |
| |) | |
| Respondent, |) | RESPONDENT'S OPPOSITION TO THE |
| |) | MOTION TO SUPPLEMENT RECORD |
| Disciplinary Counsel, |) | |
| |) | |
| Relator. |) | |

Respondent, by and through counsel, submits this Opposition to the Motion to Supplement Record filed by the Secretary to the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. The Motion to supplement, as filed, does not meet the pre-requisites set forth in S. Ct. Prac. R. 5.8 Supplementation of the Record.

Respondent's objections are more fully set forth in the attached Memorandum in Support.

Respectfully submitted,



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| |) | MEMORANDUM IN SUPPORT OF |
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| |) | |

On May 2, 2011, Respondent filed Objections to the Findings of Fact, Conclusions of Law and Recommendations of the Board of Commissioners on Grievances of the Supreme Court of Ohio ("Board"). One of the primary arguments made in Respondent's Brief was the fact that the record before the Court did not establish by clear and convincing evidence that disciplinary action was warranted. These record deficiencies were spelled out in detail.

Two days later, on May 4, 2011, the Board filed a Motion to Supplement Record. The Board's Motion to Supplement attempts to enter in the record the deposition of Randy McGough who testified at the hearing. (Tr. 710-731) That deposition testimony was neither read into the record at the hearing nor proffered to the panel.

Supplementation of the record before the Ohio Supreme Court is strictly governed by S. Ct. Prac. R. 5.8 Supplementation of the Record. That Rule states as follows:

If any part of the record is not transmitted to the Supreme Court but is necessary to the Supreme Court's consideration of the questions presented on appeal, the Supreme Court, on its own initiative or on motion of a party may direct that a supplemental record be certified and transmitted to the clerk of the Supreme Court in accordance with S. Ct. Prac. R. 5.3(B).

Pursuant to the plain language of the S. Ct. Prac. R. 5.3(B), it is necessary for the party attempting to supplement the record to establish that the new evidence is necessary to the

Court's consideration of questions presented on appeal. The Motion to Supplement Record as filed by the Board contained only one sentence and provided no information as to why this supplementation is relevant to the appeal or how it impacts any issue that is under consideration by the court.

Further, a review of Relator's Objections to the Board of Commissioners' Findings of Fact and Conclusions of Law and Brief in Support indicates that only two objections were stated. Neither of these objections related to the deposition testimony of Randy McGough. There is no evidence before this Court that the deposition of Mr. McGough, a live witness at the hearing, would have any bearing on this Court's consideration of the issues.

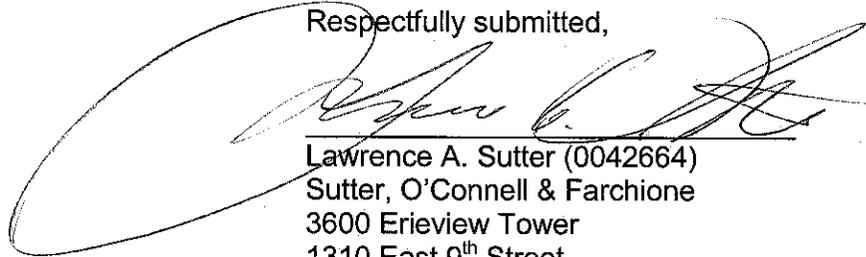
Pursuant to Gov. R. V, the time for production of evidence is at the formal hearing conducted before a panel appointed by the Secretary of the Board of Commissioners on Grievances and Discipline. After the Board issues its findings and recommendations based upon the certified report of the Panel, this Court issues an Order to Show Cause to the Respondent who then has the opportunity to object to the recommendations and support those objections with a Brief. Gov. R. V has no provision for the introduction of evidence after the Respondent and the Relator have filed their Objections to the Recommendations.

Only in the most exceptional circumstances will the Court accept additional evidence at that late stage of the proceedings. *Cuyahoga County Bar Assn. v. Chandler* (1998), 81 Ohio St.3d 441, 692, N.E. 2d. 568; *Columbus Bar Assn. v. Sterner* (1996), 77 Ohio St.3d 164, 167-168, 672 N.E. 2d. 633, 635. There is no question that the record should be developed in the pleadings and through testimony at the hearing before prior to reaching the Ohio Supreme Court. *Cleveland Bar Assn. v. Witt* (1999), 85 Ohio St.3d 9, 11, 706 N.E. 2d. 763; *Dayton Bar Assn. v. Stephan*, 108 Ohio St.3d 327, 2006-Ohio-1063, 843 N.E. 2d. 771, ¶15. Attempting to supplement the record after the hearing and after the objections were filed circumvents this process.

The Motion to Supplement Record is defective on its face, fails to meet the requirements of S.Ct. Prac. R. 5.8, and offers no "extraordinary circumstances" to justify this proposed addition to the record.

Respondent respectfully requests that this Court deny the Board's Motion to Supplement the Record.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read "Lawrence A. Sutter". The signature is written over a horizontal line.

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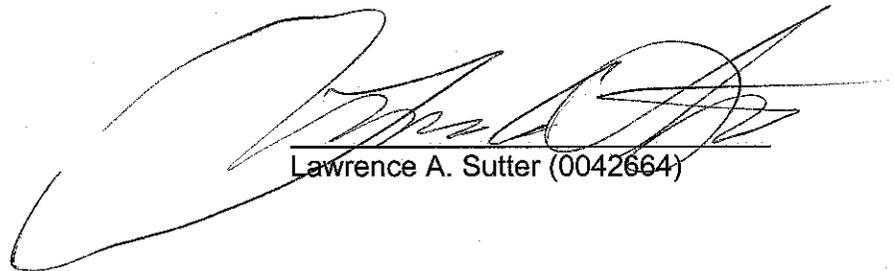
Attorneys for Respondent

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Respondent's Opposition to the Motion to Supplement Record was mailed via regular, U.S. Mail to the following on this 6th day of May 2011:

Jonathan W. Marshall
The Supreme Court of Ohio
Board of Commissioners on Grievances
and Discipline
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Lori J. Brown
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A large, stylized handwritten signature in black ink, appearing to read 'Lawrence A. Sutter', is written over a horizontal line.

Lawrence A. Sutter (0042664)