

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

CASE NO. 2011-0131

Kenneth Levon Lawson

Respondent.

RELATOR'S REPLY TO RESPONDENT'S MOTION TO STRIKE

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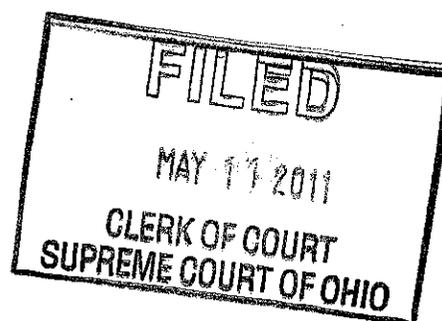
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RELATOR'S REPLY TO RESPONDENT'S MOTION TO STRIKE

On May 5, 2010, counsel for respondent, Kenneth L. Lawson filed a Motion to Strike.

Now comes relator with a response to respondent's motion.

ARGUMENT

Respondent's motion requests that this Court strike 14 lines from the Statement of Facts in Relator's Answer to Respondent's Objections. The text that respondent seeks to have stricken states:

First, respondent asserts that he has engaged in no misconduct since January 2007. [Respondent's objection brief at 2]. However, respondent overlooks some relevant information about his conduct since that time. This Court's prior indefinite suspension decision, ordered respondent to comply with his Ohio Lawyers Assistance Program [OLAP] contract. [Stip. Ex. B] This contract required respondent to have at least one weekly contact with his OLAP monitor and to submit monthly logs of his attendance at Alcoholics Anonymous meetings. [Tr. at 82-83] Despite these requirements, since his release from prison on March 9, 2010, respondent has failed to have weekly contacts with his OLAP monitor and has failed to submit any AA meeting logs to OLAP. [Tr. at 83, 85] Additionally, this Court has previously found an attorney's failure to

comply with an OLAP contract to be an aggravating factor. *Disciplinary Counsel v. Pullins*, 127 Ohio St. 3d 436, 2010-Ohio-6241, 940 N.E.2d 952 at ¶82-83. See also *In re Application of Tilson*, Slip Opinion No. 2011-Ohio-551 where a failure to follow the terms of an OLAP contract was found to demonstrate, in part, that Tilson did not possess the requisite character, fitness and moral qualifications to be approved to take the bar examination.

Respondent's motion to strike should be denied for five reasons. First, a motion to strike is governed by Civ. R. 12(F), which states in part "the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter." Respondent does not identify Civ. R. 12(F) in his motion or cite what specific basis under the rule he is relying upon for his motion to strike. However, as noted in the excerpt from relator's response brief above, respondent acknowledged that he failed to have weekly contact with his Ohio Lawyers Assistance Program [OLAP] monitor and failed to submit monthly logs of his attendance at Alcoholics Anonymous meetings, as required by his contract. As such, relator's reference to these facts are not an "insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter" and should not be stricken from relator's response brief.

Second, respondent's motion to strike incorrectly characterizes the section of relator's brief which he seeks to strike. Relator does not specifically request this Court to find that respondent's failure to comply with his OLAP contract is an aggravating factor. Relator simply pointed out respondent's OLAP noncompliance, in response to his assertion that he has not engaged in any misconduct since January 2007. In further support, relator cited two cases in which this Court found OLAP compliance-related issues to be a relevant factor to be considered in attorney disciplinary and admission proceedings.

Third, respondent's motion to strike is seeking to remove a relevant issue from this Court's consideration, prior to the upcoming oral argument on May 25, 2011. Relator cross-examined respondent on his OLAP non-compliance during the hearing and argued at the conclusion of the hearing that it was a relevant factor to be considered in determining the disciplinary sanction. Additionally, relator cited respondent's non-compliance with his OLAP contract in our objection brief as a factor in support of disbarment. As such, there is no reasonable basis to strike a discussion of this very same issue from relator's reply brief.

Fourth, respondent is asking this Court to grant his motion to strike based upon new evidence that is not a part of the hearing record. Respondent had a full opportunity to submit evidence and exhibits regarding his compliance with his OLAP contract during his disciplinary hearing. Further, respondent could have called Executive Director of the Hawaii Lawyers Assistance Program, Steven P. Dixon, and OLAP Executive Director, Scott Mote, to offer their opinions about his chemical dependency recovery and/or OLAP compliance and chose not to do so.¹ Instead, respondent has submitted hearsay evidence outside the record, almost six months after the hearing was concluded. As a result, relator and the hearing panel have been deprived of the opportunity to cross examine Mote and Dixon. Therefore, respondent's last minute submission of hearsay evidence should not be considered in support of respondent's motion to strike.

Fifth, the documents attached to respondent's motion – an undated letter from the Executive Director of the Hawaii Lawyer's Assistance Program Steven P. Dixon, a December 6,

¹ Respondent identified Dixon on his witness list, but did not call him as a witness.

2009 sworn affidavit from Ohio Lawyers Assistance Program Executive Director Scott R. Mote, an April 21, 2011 letter from Mote and respondent's draft stipulation, which relator declined to enter into – do not contradict the evidence in the record of respondent's non-compliance. While it is certainly admirable that respondent participated in activities to educate attorneys and law students about addiction and recovery, respondent, nonetheless failed to comply with the actual required terms of his OLAP contract and the prior order of this Court. Further, respondent admitted at his disciplinary hearing that he failed to comply with these exact same requirements for several months in 2007, after he had first entered into his OLAP contract. As such, the documents attached to respondent's motion, do not support respondent's request to strike a portion of relator's reply brief.

CONCLUSION

For the reasons stated above, relator requests that Respondent's Motion to Strike be overruled.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Relator's Reply to Respondent's Motion to Strike has been served upon Respondent's Counsel David C. Greer, Bieser, Greer & Landis, 400 National City Center, 6 North Main Street, Dayton, OH 45402-1908, via regular U.S. mail, postage prepaid, this 11th day of May, 2011.



Robert R. Berger
Counsel of Record