ORIGINAL

THE SUPREME COURT OF OHIO

Cincinnati Bar Association **Relator**	:	
	:	**Case No. 2011-0023**
v.	:	
John W. Hauck, **Respondent**	:	**RESPONDENT'S MEMORANDUM IN RESPONSE TO RELATOR'S MOTION TO HOLD RESPONDENT IN CONTEMPT**

Respondent, John W. Hauck, is providing a Response to the Motion to hold Respondent in Contempt, on a *pro se* basis, as his previous attorney of record, John H. Burlew, Esq., died of heart problems on December 28, 2011. He was 63 years of age. Mr. Burlew had suffered from histoplasmosis, causing him to become legally blind, for several years before that time. He has gone to his heavenly reward. Thus Respondent Hauck must communicate on his own at this point.

This need to respond provides Respondent with an opportunity to address the Court himself, probably for the only time in his life, and thus he desires to fully explain the charges against him. As previously has been the situation in this case, Respondent does not dispute anything said by the **Relator, Cincinnati Bar Association**. And Respondent, as also has been the situation in the past, has provided Relator with all the evidence it needs to conduct the current cause of action. Respondent may tend to ramble in this Memorandum, but, in the end, the discussion will hopefully shed some light on the overall situation with Respondent, and may provide the Court with more of a basis to rule in the most appropriate manner.

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In this regard, Respondent has pondered and thought about the instant charges for the last several days. In responding to anything of this sort, inspirations and understandings come over a period of time. They do not come instantaneously. And they may come from different sources, some good and some bad, which need to be identified and sorted out. I could likely improve upon this Memorandum, in its accuracy and fairness, if given more than 10 days to respond. But I will do my best in the relatively short time allotted to me.

First, Respondent wishes to make an apology to the Supreme Court of Ohio for the transgressions of its Order dated July 7, 2012, and for the repeated violation of the Rules pertaining to IOLTA accounts. These are obvious violations on their face, and, to an objective observer, they should be cause for disciplinary action to be taken. None of this is denied. Respondent states that he has tried his absolute hardest to comply with the Order dated July 7, 2011, but that certain moral, humanitarian and even ethical (in the legal sense) compunctions caused him to overstep his bounds in the ways set forth in the Motion. These motivations are what I would like to discuss in this Memorandum.

There are basically three violations asserted in the Motion. The first two are for exceeding the deadline of July 7, 2011, or should it be July 12, 2011?, for concluding my representation of certain claimants on their personal injury claims. On one claim, that of Geisha Palmer, I executed the settlement of the claim, after it had been settled a day before the Order was issued. I fully outlined my reasons for doing so in a letter dated October 21, 2011 to the Bar Association. [Exh. A]

The other claim involved two men, Kervin Roberson and Anthony Griffin, who turned out to be considerably harder to deal with. Handling their claims caused me to take certain actions, all intended to be only in their best interest, that clearly could be considered "representation" and the

"practice of law" within the 30 day period following the Order dated July 7, 2011. My response to this supposed violation is set forth in my letter dated November 10, 2011 to the Bar Association. It is six pages in length. [Exh. B] I will not repeat it here, but will ask that you include it in your review of the Relator's motion. Both letters were written with the understanding, and with the expectation, that the Bar Association would be sending them to this Court.

The short answer to each of the first two violations (referred to above) is that there were offers of settlement pending at the time the Order was issued; no other attorneys would have assumed these clients' representation at that point, with attorney's fees owing, or at least claimed, by myself; and the additional work needed to conclude the claims, and to give the clients the best possible recovery on their claims, was completed within 30 days of the Order. The clients took no action to secure other counsel when immediately informed of their need to do so, and, in fact, became increasingly uncooperative as time passed, due to their perception of the "unfairness" and "unjustness" of the prospective settlements available to them. The clients refused to accept delivery of their files to them, when they personally came to the office to do so on August 5, 2011. [See Exhibit B, letter dated Nov. 10, 2011, page 4, bottom.] All further efforts by Respondent after that time were to urge the two former clients to secure new counsel, which they failed to do over a period of months, or to protect the attorney's fees, at least in part, as were earned from work on their claims. Finally, in an all-out effort to assist the former clients, Relator waived all right to his attorney's fees and costs on the claims, at which point one of the former clients did settle on a pro se basis. Relator is unaware of what became of the other former client.

The third violation was again with the IOLTA account. Respondent admits that there should be no excuse for this violation, after the IOLTA comingling had been the subject of the original

grievance action. But this is where Respondent made the mistake of listening to his conscience, and thinking that he was following a higher road to life.

The short answer to this technical violation was that Relator had placed $245.00 in the IOLTA account months ahead of the partial withdrawal of $125.00; that the health insurance provider to whom the money was owing refused, on a month to month basis, to accept payment of the $245.00 after receiving the IOLTA check, for the reason that the health provider thought much more was owed on the patient's account, for other treatment that was in fact irrelevant, as a result of the loss covered by the liability claim; that a poor, destitute family, headed by a former client and personal friend named Johnny Crank, needed money at the end of the month for food: and that the $125.00 was withdrawn from the IOLTA account largely to service the Crank family, and to permit them to buy food, when Relator had no money of his own or means by which to borrow the money at that point; and that the $125.00 was repaid to the IOLTA account two days later, on the first of the month, when money became available to do so. The health insurance provider, which evidently had deposited the IOLTA check without warning, was paid the check a couple of days later when it was put through a second time.

Thus there were one or more clear violations of the Order and/or the Rules pertaining to IOLTA accounts. Again, Relator does not dispute the allegations in Relator's motion.

But what was the motive and the inducement for such violations? It is not enough to say that Respondent was thinking only of his clients in the first two instances, and in serving his fellow man, Johnny Crank and his family, in the last instance. More needs to be said about conscience, faith, and one's obligation when confronted with conflicting needs, obligations and duties.

Respondent is mindful of a similar dilemma of conscience that afflicted a famous statesman named Socrates, in 399 BC, at the very end of his life. Socrates was put on trial in Athens for his

impious actions towards the citizenry of the state. He believed in one God instead of many Gods. He did not deny the spirits and demons that others in his culture respected, but he listened more to his inner voice than to other influences. For this he was found guilty of impiety and sentenced to death. The account of his self-defense of his actions, before a jury of 500 persons in Athens, is found in Plato's dialogue entitled ***The Apology***.

Now the practice of law is like a lifeblood to most attorneys. It is a profession, a career, and a means by which to make a comfortable living. To lose that lifeblood is as if one dies. Not in a literal sense, but in the sense of being able to contribute to the benefit of others through the legal system.

There are challenges to practicing in the legal system. Especially as a sole practitioner. Respondent has practiced too long on his own. In part, it is because he had a mission in the inner-city area of Cincinnati that he pursued for years, during which time he developed a pattern of very modest income and very modest living. The Court might note the amount of time and effort devoted by Respondent to the explanations set forth in Exhibits A and B, and to his preparation of this Memorandum. Is all of this an efficient use of time? Does it lead to any revenue? The answer must be in the negative to each such question. But so it was with practically all of Respondent's law practice. A search for truth, and for the best service to the client. But not a practical way to pay the bills. So money appears to be a problem, and it may be the downfall of this suspended attorney.

Let's take this discussion a small step forward, and return to our destitute family headed by a man named Johnny Crank. A few additional comments about him may in order. Johnny Crank was the last of 15 children in his family, who grew up in the inner city of Cincinnati. As the child of a poor family, without adequate parental care, he gradually learned to steal, break into buildings, and sell drugs. I met him at age 11 or 12, while he was still developing these patterns. When he

began getting caught as an adult, I represented him on a *pro bono* basis on his criminal charges. His last case resulted in his being sent to the Monday Program in Dayton for drug rehabilitation. He actually came out of the program committed to not doing drugs or to breaking the law. He tells me that it has now been 23 years since his release from Monday, and he has been absolutely "clean"the entire time. But he has cancer, is fully disabled, and with dislexia and no education is hard pressed to care for his wife, several children and extended dependents who stay at his house. He managed over a long time to secure a Metropolitan Housing house. He looks upon me as his mentor, but I look upon him at this point as an angel in disguise.

So what Rules and laws should govern my relationship to Johnny Crank and his family? How do I respond to him when it is late in the month, and I am poor myself, and he has not just 3 or 4, but 6 or 8 other people in the house who are crying out for food? Is there a Rule against assisting a former client financially? Or in comingling money with a former client? There are Rules pertaining to IOLTA accounts, but what is the difference to a health provider if it is paid on a Thursday or on a Saturday, after waiting several months to cash its check? These questions are beyond my mortal comprehension. Especially when one weighs the human hardship on each side of the balance. My own law license? That is not so important is seems.

Finally, I should refer the Court once again to the testimony provided by Magistrate Kathy King at the Panel hearing on September 29, 2010. The Grievance Committee (but not necessarily the Panel) found her testimony to be "compelling" [Findings, page 5 bottom] and to constitute "extraordinary evidence of mitigation." [Findings, page 6 bottom]. Relator recalls one comment made by Magistrate King in her testimony, which may be quite appropriate to mention at this point. It is, essentially, "I would not trust Mr. Hauck with my money, for he might give it to the poor."

Conscience may lead me to other activities besides law. This is still undecided, in my head, but not in my heart. Teaching, social work, or even being a probation officer. This is what I used to do as a public defender, and to some lesser extent with my paying clients while in private practice. But it may mean the death of my practice of law.

And I have already suffered a great penalty just from the suspension. The Ohio Board of Education tells me that they will need to do a full investigation of my "conduct" to determine whether or not I am fit to obtain a license as a substitute teacher. The primary issue is the basis for the suspension of the law license. They have been holding my application, pending their investigation and review, for more than 5 months at this point, and the expected outcome is not clear to me at this time.

My attorney friends, family, and those who know me all advise me to stay in law. "Of course you must regain your license, and of course you must practice law, or at least be qualified to do so. Then you can retire in good standing." They all say unanimously. They all say I was an excellent civil and criminal attorney, surpassing most other attorneys in my areas of practice. And attorneys, judges and administrators all get to know each other after awhile, and who is good, who is run-of-the-mill, and who is of lesser motivation or ability. Socrates was confronted with the same choice as to whether to be prudent and practical, and to save his life, or to speak his conscience without remorse. He chose the latter course of action.

But let's go back to look at my pattern, one more time. And this time it should be the bigger, overall pattern. How fit and capable is Relator to practice law? How successful can he be in serving anybody, or in managing his practice in a manner that conforms to law and custom?

The overall pattern is as follows: Respondent began to comingle his accounts in the early 2000s because the banks instituted a high-cost return check fee system on all accounts. Fees of

$30.00 or more were assessed for infractions, and, in a rigorous effort to enforce the new rules, the banks imposed the fees without notice, immediately upon refusal of a check, and compounded the fees based upon other checks being refused after the initial fees were assessed. Previously Respondent had reviewed his bank statements once a month, reconciled his accounts, and not been overly concerned with his balances. After all, it was only money.

The decision to combine the accounts into "one account" was improper, totally "unbusinesslike," and against the Rules, in hindsight. But it served a purpose to try to minimize costs. And, Respondent found that governmental agencies could not garnish the "one account" if it were in a name other than his own. In hindsight, the IRS was not the problem over the years so much as was the State of Kentucky. You could work with the IRS. I was completely open with them, and paid taxes out of the "one account." Kentucky, on the other hand, had a means by which to garnish an account, even in Ohio, if the state withholding taxes were not paid in timely fashion. I consistently employed one or more persons who lived in Kentucky. Thus the "one account" was a protection against this practice, even though the taxes were eventually paid when cash flow permitted. The point of this long recitation is that the basis had been laid, early in the 2000s, for later problems with a grievance filing.

Next in the pattern was a malpractice claim submitted against my liability carrier sometime in the mid 2000s. This was on some complex civil litigation, in which I had failed to join a third party subcontractor as a direct defendant within two years, even though the subcontractor had been joined as a third party defendant, and had fully participated in discovery and trial preparation, in timely fashion. So I referred my client, who case had been dismissed when the named defendant was dismissed, to my insurance carrier. (This was OBLIC.) She obtained a settlement. But the point of this recitation is that it caused my insurance rates to skyrocket, making coverage unaffordable after that time.

Next in the pattern is the filing of the grievance action. And next after that is the filing of the current motion.

It does appear that money is the central issue in much of the pattern over the past several years. Money which is the root of all evil. Despise money, and try to ignore it, and it comes back to bite you. If your intentions are elsewhere, you nevertheless should be on guard for a rear attack.

On the other hand, everything ultimately comes down to conscience. One's intentions, one's actions in life, and one's adherence to the law and to the rules of the culture. Which is to prevail? The need for money, or for obeying the customs and laws of the society, or of following one's conscience, after a full examination of all the alternatives open to a person. It is hoped that the Lord will guide one's conscience, in all matters from day to day, but, as Socrates was aware, there are "spirits and demons" that can affect a person in the most unknowing ways.

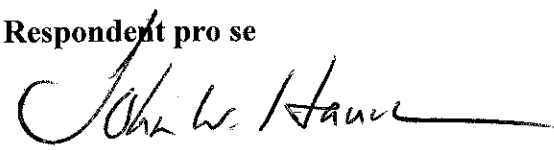
Having been sentenced to die, Socrates ends his apology to the jury with these words, which I have slightly paraphrased for effect: "The hour of departure has arrived, and we must go our separate ways – I to die, and you to live. But only God knows which is the better fate."

Thus I submit this Memorandum to the Court in the best of good conscience. Like Socrates, I have no penalty to propose that is consistent with the gravity of the offenses charged. Socrates proposed a fine of thirty minas. He prefaced his offer with the following observations: "If I had money I would have proposed a fine to the amount of whatever I was able to pay, since that would have done me no harm. But I have none, and therefore I must ask you to proportion the fine to my means." Certainly this served only to infuriate his judges all the more. After all, the penalty proposed by his accusers was death. I am hopeful that this Memorandum will not so infuriate the Court in the current case. It is the truth, and there is nothing I can do about that.

In conclusion, I would say only one thing further. If you have read this far, I should say that I appreciate your attention and thoughtfulness. And if I am suspended for additional time, or given any other great penalty for my actions, better it be as a result of good service to my clients, above and beyond the normal call of duty, than for harm to any client. Better it be for generosity to all of my clients, or to a friend in need, than for ignoring a client or a friend in need. And better it be for helping a friend in distress, instead of worrying about my own well being. For I am very well, thank you, despite my poverty and outward affliction.

Respectfully submitted,

By: Respondent pro se



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Respondent's Memorandum in Response to Relator's Motion to Hold Respondent in Contempt has been sent to the following persons by ordinary U.S. mail on this 3 day of February, 2012.

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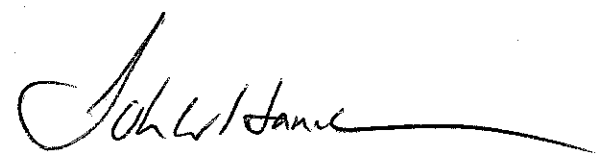

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