

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

12-0307

In Re: :

Complaint against : Case No. 11-076

Harvey B. Bruner : Findings of Fact,
Attorney Reg. No. 0004829 : Conclusions of Law, and
Respondent : Recommendation of the
Board of Commissioners on
Ohio State Bar Association : Grievances and Discipline of
the Supreme Court of Ohio

Relator :

FILED
FEB 21 2012
CLERK OF COURT
SUPREME COURT OF OHIO

CONSENT TO DISCIPLINE

{¶1} This case was submitted to the panel upon a consent to discipline agreement pursuant to BCGD Proc. Reg. 11. The agreement was filed with the Board on January 30, 2012, which is within the time period prescribed by BCGD Proc. Reg. 11(B).

{¶2} The panel finds that the agreement conforms to BCGD Proc. Reg. 11 and the undersigned members recommend acceptance of the agreement including the statement of facts and the violations of Prof. Cond. R. 1.3 (diligence); Prof. Cond. R. 1.4 (communication); and Prof. Cond. R. 1.5 (charging an illegal or excessive fee). The panel concurs in the agreed sanction of a two-year suspension, stayed in its entirety, with restitution ordered to be paid as follows: to Michael Cox in the amount of \$1,000; to Shawn Burton in the amount of \$8,500; and to Robert Haidet in the amount of \$2,500.

{¶3} The agreement of Relator and Respondent regarding consent to discipline is incorporated herein by reference. In addition to the exhibits referenced in the agreement, the

parties have submitted the following exhibits: Exhibit 1 (Amended Complaint); Exhibit 2 (Scheduled Restitution Payments); and Exhibit 3 (Criminal Retainer Contract).

{¶4} In recommending acceptance of the parties' agreement with respect to the suspension, the panel is guided by the holding of the Supreme Court in *Columbus Bar Assn. v. Williams*, 129 Ohio St.3d 603, 2011-Ohio-4381. In *Williams*, the respondent was appointed to appeal a defendant's convictions for rape, murder, and attempted tampering with evidence. *Id.* at ¶5. Although he sought two extensions of time to file a brief, he failed to do so and the appeal was dismissed. *Id.* at ¶6. In addition, the respondent was appointed to represent a defendant charged with aggravated robbery and aggravated murder. *Id.* at ¶7. The respondent received notice of the trial date, but he simply did not leave his office to defend the client. *Id.* The respondent testified that he had routinely used marijuana but had failed to seek treatment or to notify the court that he was unable to fulfill his duties to his clients. *Id.* at ¶6.

{¶5} The Supreme Court adopted the stipulations of the parties that the respondent had violated Prof. Cond. R. 1.3, 1.4(a)(1), 1.4(a)(3), 1.4(a)(4), 1.16(a), and 6.2. The Court accepted the recommendation of the parties that the respondent be suspended from the practice of law for two years, with the entire suspension stayed. *Id.* at ¶23. The Court noted that the respondent had no prior disciplinary record, that he had no selfish or dishonest motive, and that he had cooperated in the disciplinary proceedings while expressing remorse for his conduct. *Id.* at ¶18.

{¶6} In Count One of the instant case, Respondent was retained to file a motion for protective custody and various post-conviction motions for an inmate. Respondent demanded a flat fee of \$4,000 with \$2,000 charged up front. It was Respondent's practice to advise clients that his fees were nonrefundable, and he did not discuss an hourly rate with the client in this case. Respondent filed motions for shock probation and judicial release, but he conceded that

there were inaccuracies in the motions. He refused to refund the \$2,000 fee that had already been paid. Although Respondent had failed to maintain records documenting his time spent on the case, he created a time log in response to the grievance filed by the client.

{¶7} In Count Two of the instant case, Respondent was retained to represent a criminal defendant in post-conviction proceedings. Although he filed two motions on behalf of his client, he failed to file a timely notice of appeal with respect to the denial of a motion for a new trial. Respondent attempted to refund \$1,000 to the client. He explained that, during the representation of the client, he had been involved with multiple capital murder cases and had suffered the loss of his son. Once again, Respondent had kept no records of his time but submitted a time log to disciplinary authorities.

{¶8} As to Count Three of the instant case, Respondent was retained to represent a client in a criminal matter. He quoted a fee of \$10,000 not to exceed \$15,000 if the case proceeded to trial. After the client had paid \$5,000, Respondent sent the client a letter stating that he would accept an additional \$7,500 through the completion of the case. Respondent then sent the client another letter confirming that the client would pay \$4,000 immediately, with the remainder of the \$7,500 due if the client “[did] not have to go to jail.”

{¶9} The panel concludes Respondent’s misconduct in this case was commensurate with the misconduct in *Williams*. The most serious misconduct in both cases was the neglect of client matters. The neglect in the instant case was less egregious than in *Williams*, where the respondent’s illegal drug use had caused him to completely ignore the needs of his clients. In the case at bar, Respondent performed some work on behalf of his clients, although he neglected certain matters and performed poorly with respect to others.

{¶10} The panel is mindful that Respondent also engaged in misconduct with respect to his fees. Nonetheless, as in *Williams*, Respondent has no prior disciplinary record, has cooperated with the disciplinary process, has accepted responsibility for his misconduct, and has agreed to make restitution to the clients harmed as a result of his misconduct.

{¶11} Under these circumstances, the panel concludes that recommended sanction of a two-year suspension, stayed in its entirety, upon the condition of restitution to the clients as set forth in ¶2 of this report, is a just resolution of this case. Accordingly, the panel recommends that such sanction be imposed.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on February 10, 2012. The Board voted to accept and adopt the agreement entered into by Relator and Respondent. The agreement sets forth the misconduct and the sanction of a two-year suspension, stayed in its entirety, with restitution as noted in ¶2 of the panel report, and this is the recommendation of the Board. The Board further recommends that the cost of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**

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

IN RE: Complaint against

Harvey B. Bruner,

Respondent,

Ohio State Bar Association,

Relator.

Case No. 11-076

Agreement of Relator and
Respondent Regarding
Consent to Discipline

Pursuant to Gov. Bar R. V, Sec. 11(A)(3)(c) and Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissions on Grievances and Discipline of the Supreme Court, the Relator and Respondent hereby enter into a written agreement in which Respondent admits to alleged misconduct, and Relator and Respondent agree upon a sanction to be imposed for such misconduct. This agreement has been entered into on the 30th day of January, 2012, within the time allowed pursuant to an extension of time granted by the Panel Chair.

1. Respondent admits, conditional upon acceptance of this agreement by the Board of Commissioners on Grievance and Discipline of the Supreme Court, that he has violated Ohio Rules of Professional Conduct 1.3, 1.4 and 1.5 as alleged by Relator in its Amended Complaint filed on January 20, 2012.

2. Relator and Respondent agree that the sanction for this misconduct should be a two year suspension, all stayed. Restitution will be paid by Respondent in the amount of \$1,000.00 to Michael Cox; in the amount of \$8,500.00 to Shawn Burton; and \$2,500.00 to Robert Haidet in accordance with the schedule attached hereto. (Exhibit A).

3. Relator and Respondent agree that none of the aggravating circumstances set forth under Section 10(B)(1) of the Rules and Regulations Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court apply to Respondent in connection with this matter.

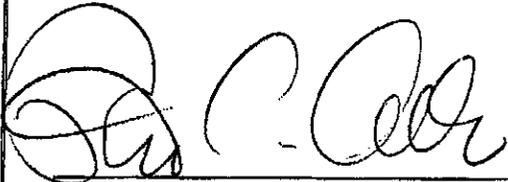
4. Relator and Respondent agree that the following mitigating circumstances do exist in connection with this matter, pursuant to Section 10(B)(2) of the Rules and Regulations Governing Procedure on Complaints and Hearings before the Board of Commissioners on Grievances and Discipline of the Supreme Court:

- a. There is an absence of a prior disciplinary record applicable to Respondent;
- b. There is an absence of a dishonest or selfish motive;
- c. There has been full and free disclosure to a Certified Grievance Committee and the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court concerning this matter, as well as a cooperative attitude displayed in connection with these proceedings;
- d. Respondent has a reputation relative to his character for candor and truthfulness among the bench and bar of Cuyahoga County, Ohio. Further,

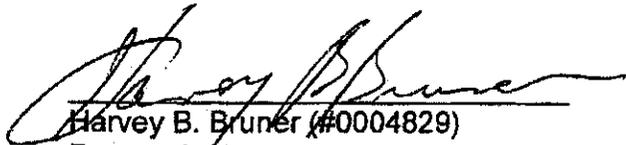
Respondent has a reputation for being an effective, diligent and prepared advocate among the bench and bar of Cuyahoga County, Ohio. Finally, Respondent has a reputation for fairness and professionalism among the bench and bar of Cuyahoga County, Ohio. (See attached Exhibit B, character letters of Judges and Attorneys.)

5. The attached Affidavit of Respondent (Exhibit C) is expressly incorporated herein by reference.

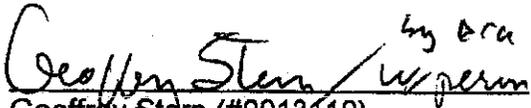
Respectfully submitted,



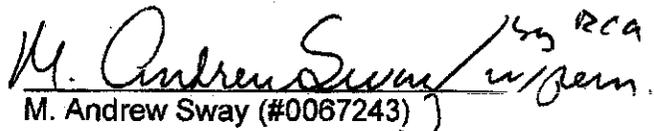
Richard C. Alkire (#0024816),
Counsel for Respondent
Richard C. Alkire Co., L.P.A.
250 Spectrum Office Building
6060 Rockside Woods Boulevard
Independence, Ohio 44131-2335
216-674-0550



Harvey B. Bruner (#0004829)
Respondent
Harvey B. Bruner Co., L.P.A.
700 West St. Clair Avenue, Suite 110
Cleveland, OH 44113
216-566-9477



Geoffrey Stern (#0013119)
Counsel for Relator
Kegler, Brown, Hill & Ritter
65 East State Street, Suite 1800
Columbus, OH 43215-4295
614-462-5457



M. Andrew Sway (#0067243)
Counsel for Relator
Smith, Rolfes & Skavdahl Co., L.P.A.
65 E. State Street, Suite 2000
Columbus, OH 43215
614-469-7130



Eugene P. Whetzel (#0013216)
Counsel for Relator
Ohio State Bar Association
P. O. Box 16562
Columbus, OH 43216
614-487-2050

EXHIBIT A

Scheduled Restitution Payments

Harvey Bruner, Esq.

Bd. of Comm. Case No. 11-076

Date of Payment	Cox	Burton	Haidet	Total Paid
Feb. 15, 2012	\$ 500.00	\$ 1,000.00	\$ 500.00	\$ 2,000.00
March 15, 2012	\$ 500.00	\$ 1,000.00	\$ 500.00	\$ 2,000.00
April 15, 2012		\$ 1,000.00	\$ 1,000.00	\$ 2,000.00
May 15, 2012		\$ 1,500.00	\$ 500.00	\$ 2,000.00
June 15, 2012		\$ 2,000.00		\$ 2,000.00
July 15, 2012		\$ 2,000.00		\$ 2,000.00
Total Paid:	\$ 1,000.00	\$ 8,500.00	\$ 2,500.00	\$ 12,000.00

Payment will be made from Respondent's counsel's IOLTA account made payable to each grievant in the amounts and on the dates specified above.

EXHIBIT B



THE COURT OF COMMON PLEAS
COUNTY OF CUYAHOGA
JUSTICE CENTER
1200 ONTARIO STREET
CLEVELAND, OHIO 44113

JANET R. BURNSIDE
Judge
(216) 443-8671

January 19, 2012

Board of Commissioners on Grievances and Discipline
65 South Front St.
Columbus, OH 43215

Re: Harvey Bruner

Dear Friends,

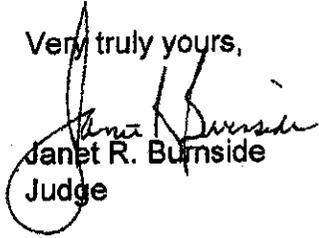
I understand Harvey Bruner has a pending matter before you. I was not the trial judge in any of the cases involved in the current proceeding.

During my 21 years on this bench, Mr. Bruner has tried several criminal cases in my courtroom, some with juries, some to the Court. In many other cases he has negotiated plea arrangements and zealously represented his clients at their sentencing. I have consistently found him to be knowledgeable and hard working in his clients' behalf. He is always prompt and well prepared for all his appearances.

In short, he is a valuable member of our profession.

I wanted you to have this information to consider in your disposition of the case.

Very truly yours,


Janet R. Burnside
Judge

JRB:ajz



THE COURT OF COMMON PLEAS
COUNTY OF CUYAHOGA
JUSTICE CENTER
1200 ONTARIO STREET
CLEVELAND, OHIO 44113

STUART A. FRIEDMAN
Judge

January 27, 2012

Board of Commissioners on Grievances and Discipline
Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus, Ohio 43215-3431

Re: Harvey Bruner, Esq.

To whom it may concern:

I have been asked to write on behalf of Harvey Bruner. Having known Mr. Bruner for many years, I am pleased to be able to do so.

I have been a judge on the Cuyahoga County Common Pleas Court since early 1987. Throughout that time Mr. Bruner has practiced before me. Without exception he has shown himself to be a zealous advocate on behalf of his clients. He invariably does whatever is necessary in order to prepare his cases for trial—whatever research or investigation may be called for, and whatever time commitments may be involved.

I never have had occasion to sanction or otherwise to criticize Harvey's conduct on any matter before me. In brief, his record over my quarter-century on the bench has been above reproach in every respect.

I hope this adequately addresses any issues that may be before the Board as to Harvey Bruner's performance as an attorney. Please feel free to contact me should you have any further questions.

Yours sincerely,


Stuart A. Friedman
Judge



THE COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

JUSTICE CENTER

1200 ONTARIO STREET

CLEVELAND, OHIO 44113

ROBERT C. McCLELLAND

Judge

(216) 443-8686

January 20, 2012

Board of Commissioners on Grievances and
Discipline of the Ohio Supreme Court
C/O Richard C. Alkire, Esq.

Re: Harvey B. Bruner, Esq.
Case No. 11-076

Dear Members of the Board,

I have had the opportunity to know and work with Harvey B. Bruner for over twenty years. While knowing Mr. Bruner as a business acquaintance for much of that time, I have more recently had the opportunity to work with Mr. Bruner in a professional capacity when he has appeared before my Court in the representation of criminal defendants. As a result of knowing Mr. Bruner and interacting with him in a variety of circumstances, I believe I am qualified to provide an appraisal of his integrity, skill, and expertise as an attorney and his strong personal ethic.

Mr. Bruner has provided excellent representation and counsel for all of his clients who have appeared in cases before my Court. In every instance, I have found Mr. Bruner to be a strong advocate on behalf of his clients, an attorney who acts as an officer of the Court, and someone who uses his skills to obtain good results for his clients. I am always pleased to see him appear in a case in my Court because I know he will get the job done professionally.

I have always found Mr. Bruner to have impeccable integrity and ethics in all of his dealings. A lawyer's word is his bond and I have always been able to take Mr. Bruner at his word. He is highly respected in the Cleveland legal community and has earned that good reputation. Mr. Bruner is both a fine attorney and, more importantly, a fine person.

If I can provide you with any additional information, please do not hesitate to contact me.

Very Truly Yours,

Robert C. McClelland
Judge

RCM/mmb



Donald C. Nugent
Judge

United States District Court
Northern District of Ohio
801 West Superior Avenue
Cleveland, Ohio 44113-1842

January 25, 2012

Phone (216) 357-7160
Fax (216) 357-7165

Richard C. Alkire
Attorney At Law
250 Spectrum Office Building
6060 Rockside Woods Boulevard
Independence, OH 44131 - 2335

Re: Ohio State Bar Association
Harvey B. Bruner
Board of Commissioners Case No. 11-076

Dear Mr. Alkire:

This letter is in response to the Subpoena Duces Tecum issued to me dated January 6, 2012.

I have had the opportunity to have known Harvey B. Bruner both personally and professionally for over thirty years. During this period of time Mr. Bruner has always conducted himself in a manner that demonstrated a commitment to his family, his community, and the legal profession.

As both a state and federal trial judge, I have presided over at least twenty-five cases in which Mr. Bruner has represented one or more parties. In each instance, Mr. Bruner always demonstrated a dedication and total commitment to his client while maintaining a professional relationship to opposing counsel and the Court.

Mr. Bruner has always conducted himself with the highest ethical standards in each case before me. The respect I have for Mr. Bruner's integrity and ability is reflected by the fact that I have appointed him as counsel to indigent criminal defendants many times over the years, and in each instance, Mr. Bruner's representation was outstanding.

I trust this letter satisfies the request reflected in the Subpoena.

Sincerely,

A handwritten signature in black ink that reads "Donald C. Nugent". The signature is written in a cursive style with a large, prominent "D" and "N".

Donald C. Nugent
United States District Judge



THE COURT OF COMMON PLEAS

COUNTY OF CUYAHOGA

JUSTICE CENTER

1200 ONTARIO STREET

CLEVELAND, OHIO 44113

SHIRLEY STRICKLAND SAFFOLD

Judge

443-8735

January 23, 2012

Board of Commissioners on Grievances and
Discipline of the Ohio Supreme Court
C/O Richard C. Alkire, Esq.

Re: Harvey B. Bruner, Esq.
Case No. 11-076

Dear Members of the Board,

For more than twenty years, Harvey Brunner has appeared as a defense attorney on various cases in my courtroom. He has enthusiastically represented his clients. He is familiar with the law, conscientious as he applies the law to the relevant facts and always professional in his representation and presentation.

He certainly has been a credit to the legal profession.

Sincerely,

Shirley Strickland Saffold
Judge

SSS/mmb



THE COURT OF COMMON PLEAS
COUNTY OF CUYAHOGA
JUSTICE CENTER
1200 ONTARIO STREET
CLEVELAND, OHIO 44113

KATHLEEN ANN SUTULA
Judge
443-8697

January 19, 2012

Board of Commissioners on
Grievances and Discipline
The Supreme Court of Ohio
65 S. Front Street, 5th Floor
Columbus, OH 43215-3431

RE: Harvey B. Bruner, Esq.

To Whom It May Concern:

I am writing on behalf of and in support of Attorney Harvey Bruner, who, I understand, has a matter pending before the Board of Commissioners on Grievances and Discipline.

I have known Harvey professionally for over thirty years. Harvey has practiced before me in my Court many times. He is a man of principle, honesty and integrity. He clearly shows a zealous passion for his clients' rights and he represents all clients in an extremely professional manner. I believe his conduct as a lawyer is truly professional and beyond reproach, always putting forth his best efforts on behalf of his clients.

I would hope that this Board look upon Harvey as an extremely competent and professional attorney. His reputation, as far as I am concerned, is beyond reproach.

If I can be of further assistance, please let me know.

Sincerely,


Kathleen Ann Sutula
Judge

KAS/wec



THE ILLUMINATING BUILDING
55 PUBLIC SQUARE-SUITE 1600
CLEVELAND, OHIO 44113
TELEPHONE (216) 696-4600
FAX (216) 696-4606

November 2, 2011

Board of Commissions on
Grievance and Discipline
The Ohio Supreme Court
65 S. Front Street - Fifth Floor
Columbus, Ohio 43215-3431

In re: Harvey Bruner, Esq.

To Whom it May Concern:

I am writing on behalf of and in support of my friend and colleague Harvey Bruner, Esq., who I understand has a matter pending before you.

I have known Harvey Bruner for nearly 30 years. He has been a very close and trusted friend over that period of time and also a colleague as we practiced law together for some years.

Is Harvey a good friend? Absolutely! He is a loyal, kind, caring and trustworthy individual always available to be of assistance in any way he can.

I also know Harvey as a family man, a loving husband and father, always willing to make sacrifices whenever necessary for their well being and success.

As an attorney, Harvey is a man of principle and honesty and integrity. He has a passion for the law and his clients rights, second to no one.

We as criminal defense attorneys are retained on some cases and appointed on others.

Harvey's energy is relentless whether he is assigned or retained. He truly believes in his client's position, exercises due diligence in his representation and persists in his efforts until his goals are achieved in the best interest of his clients.

I have never seen Harvey take advantage of anyone.

I believe his agenda and conduct as a lawyer is truly professional and beyond reproach, always putting forth his best efforts to achieve justice for his clients.

Bruner, Harvey

The judges and attorneys that I am familiar with share that opinion of Harvey.

I am proud to call him my friend and my colleague.

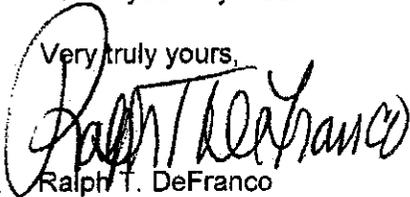
I would hope that this body look to Harvey favorably for whatever issue is before you.

Harvey's reputation precludes any suggestion to the contrary.

If I can be of further assistance in this matter, please feel free to contact me.

Thank you very much.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ralph T. DeFranco". The signature is written in a cursive style with a large initial "R".

Ralph T. DeFranco

RTD:lw

November 3, 2011

Board of Commissioners on
Grievances and Discipline
Supreme Court of Ohio

RE: Harvey B. Bruner

To Whom It May Concern:

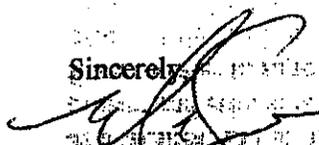
It is my immense pleasure to write this character reference for Attorney Harvey B. Bruner. As someone who has previously worked for, done business with and gotten to know personally, his intelligence, diligence and honesty are that of someone whom I have been proud to share in this prestigious position.

I came to know Harvey in the winter of 2000 first as a law clerk after then recently completing an internship with the Department of Justice. During the course of working for Mr. Bruner, he personally trained me and spent significant time making sure that I became familiar with the Criminal and Civil Rules of Procedure. His character and dedication became readily apparent in not only fulfilling but exceeding my expectations as a mentor. In the following two years I worked for Harvey, he continually taught me the proper and ethical ways in dealing with significant criminal and civil matters ranging from murder to rape to complex personal injury cases. I had the opportunity to try several cases while working with Harvey and have continued to maintain both a personal and professional relationship through the years.

Although Harvey has been successful at many endeavors he has taken on throughout his career, he continued to provide me with life lessons as he himself was raising six (6) children in this demanding profession. I continued to work for Harvey through law school and still as a lawyer when I was licensed in 2004. Shortly thereafter, I started my own family by getting married in 2004 and had two (2) children within the following eighteen months. Harvey continued to mentor me on the importance of the ethical obligations of a lawyer all while expressing his inexhaustible dedication to his profession and family.

I would appreciate your most favorable considerations to him. I have had the opportunity to work with many lawyers in my legal career and none have had more unbounded dedication to serve their clients and their community as Mr. Harvey Bruner.

Sincerely,



Marcus S. Sidoti
Partner

EXHIBIT C

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

IN RE: Complaint against

Harvey B. Bruner,

Respondent,

Ohio State Bar Association,

Relator.

Case No. 11-076

Affidavit of Respondent

State of Ohio

County of Cuyahoga

SS:

Affiant, having personal knowledge of the following and competent to testify thereto, having been duly sworn, deposes and says that:

1. He is the Respondent in the Amended Complaint (attached as Exhibit 1) brought against him by the Ohio State Bar Association, Case No. 11-076.
2. He was admitted to the bar of the State of Ohio on November 9, 1974, Registration No. 0004829.
3. He has never been the subject of a discipline proceeding prior to the one asserted in the aforementioned Amended Complaint.
4. He is and has been engaged in the general practice of law, including criminal defense, personal injury and other litigation.

5. He admits to having committed violations of Ohio Rules of Professional Conduct 1.3, 1.4 and 1.5 as set forth in the Agreement to which this Affidavit is attached.

6. In connection therewith, he admits that grounds exist for the imposition of a sanction against him for such misconduct, and that the Agreement to which this Affidavit is attached sets forth all grounds for discipline currently pending before the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

7. Respondent admits to the material facts relevant to the misconduct listed in the Agreement as set forth in Paragraphs 1 through 29, inclusive, of the Amended Complaint, attached hereto as Exhibit 1.

8. He agrees to the sanction of a two year suspension, all stayed, to be recommended to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court.

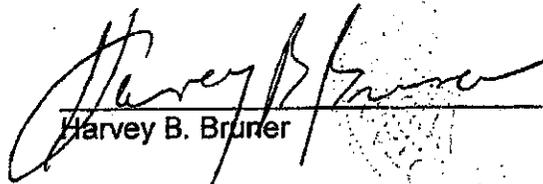
9. He agrees to pay restitution in the amount of \$1,000.00 to Michael Cox; in the amount of \$8,500.00 to Shawn Burton, representing a complete refund of the fee Mr. Burton paid and in the amount of \$2,500 to Robert Haidet. These payments will be made according to the schedule attached hereto and incorporated herein. (See attached Exhibit 2)

10. By way of extenuating circumstances, he states that during the period of time when the various violations of the Ohio Rules of Professional Conduct occurred, he was under extraordinary stress due to the simultaneous pendency of four capital murder cases and the suicide of his son. While not relying on these circumstances as excuses for his misconduct, they did constitute unusual and extraordinary stressors in his life.

11. By way of mitigation, he states that he has changed his fee agreement practice for all criminal defense cases with which he is involved as counsel. Where previously he had typically entered into oral flat fee agreements with criminal defense clients, he now uniformly enters into written fee agreements which comply with Prof. Cond. Rule 1.5. See attached exemplar contract, Exhibit 3.

11. He states that the admissions made in this Affidavit and the Agreement to which this Affidavit has been attached are freely and voluntarily given, without coercion or distress, and that he is fully aware of the implications of the admissions and agreement on his ability to practice law in Ohio.

12. He understands that the Supreme Court of Ohio has the final authority to determine the appropriate sanction for the misconduct admitted by him.


Harvey B. Bruner

Sworn to and subscribed before me and in my presence this 25th day of January, 2012.


Notary Public

RUTH V. KUCINSKI
Notary Public, State of Ohio, Cuy. Cty.
My commission expires Apr. 3, 2015

EXHIBIT 1

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

IN RE: Complaint Against

Case No. 11-076

Harvey B. Bruner, Esq. (0004829)
55 Public Square, Suite 1600
Cleveland, Ohio 44113

Respondent,

Ohio State Bar Association
Legal Ethics and Professional
Conduct Committee (A Certified
Grievance Committee)
1700 Lake Shore Drive
Columbus, Ohio 43204

Relator.

AMENDED COMPLAINT

FILED

JAN 20 2012

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

Pursuant to Ohio Civil Rule 15, Relator hereby submits this Amended Complaint and avers as follows:

1. Respondent, Harvey B. Bruner, has been admitted to practice law in the State of Ohio since 1974; as such, Respondent is subject to the Ohio Rules of Professional Conduct, the Ohio Rules of Professional Responsibility and the Ohio Rules for the Governance of the Bar.
2. Respondent served as criminal defense counsel in the following cases:
 - A. State of Ohio v. Michael Cox
Crawford County Common Pleas Court Case No. 94-CR-0097;
 - B. State of Ohio v. Shawn Burton
Cuyahoga County Common Pleas Court Case No. 04-CR-150;

C. State of Ohio v. Robert Haidet

Summit County Common Pleas Court Case No. CR-2008-06-2109.

COUNT I – The Michael Cox Matter

3. Respondent was initially contacted by an acquaintance of Mr. Cox, Bruce Bidwell, through a referral from a Videll Shumpert, an incarcerated inmate with Mr. Cox and former employee of Respondent, to file a motion for protective custody.

4. Mr. Cox apparently had some fear for his safety as he had provided testimony against some prison guards following incarceration.

5. Respondent was also retained to file other post-conviction motions, including a motion for judicial relief and a motion for concurrent sentences.

6. Respondent claims the initial agreement was for a flat rate of \$4,000, with \$2,000 being charged up front.

7. There was no discussion concerning an hourly rate.

8. At the time, it was Mr. Bruner's practice to advise clients his fee was non-refundable.

9. After reviewing the file, which included review of pleadings in Crawford and Richland Counties, Respondent requested the additional \$2,000.

10. Respondent filed a motion for shock probation, a copy of which is attached as Exhibit "A".

11. Respondent filed a motion for judicial release, a copy of which is attached as Exhibit "B".

12. Respondent filed a supplemental motion for shock probation, a copy of which is attached as Exhibit "C".

13. On April 3, 2009, Respondent sent Messrs. Cox and Bidwell a letter conceding inaccuracies within the motions and agreeing to conduct additional work. This letter is attached as Exhibit "D".

14. On or about April 8, 2009, Respondent was requested to refund \$2,000. On May 12, 2009, Respondent sent an email, threatening suit if his name was defamed.

15. During his representation, Respondent kept no time sheets, notes or records to document his time spent on this case.

16. In response to the grievance, Respondent created a time log, which is attached as Exhibit "E".

COUNT II – The Shawn Burton Matter

17. Respondent was retained to file several post-conviction motions for relief, including a motion to withdraw guilty plea and a motion for protective custody. These are attached as Exhibits "F" and "G".

18. The motion for a new trial was denied on December 17, 2008 and Respondent was instructed to file a notice of appeal.

19. A notice of appeal and memorandum of jurisdiction were not filed until March 11, 2009. These are attached as Exhibits "H" and "I".

20. During the time the notice of appeal was to be filed, Respondent claims his son had passed away and he was handling three capital murder cases.

21. According to Respondent, the notice of appeal was to have been filed by an associate attorney who he employed, John Mizann.

22. Attached as Exhibit "J" is correspondence from Respondent apologizing for not following up, claiming he was involved in two capital murder cases and was extremely busy.

23. Respondent did attempt to refund \$1,000.

24. During his representation, Respondent kept no time sheets, notes or records to document the time spent on this case.

25. In response to the grievance, Respondent submitted a time log, which is attached as Exhibit "K".

COUNT III – The Robert Haidet Matter

26. On June 30, 2008, Respondent sent Mr. Haidet an invoice, quoting a fee of \$10,000, not to exceed \$15,000 should the matter proceed to trial. A copy of this invoice is attached as Exhibit "L".

27. A payment of \$5,000 was paid up front.

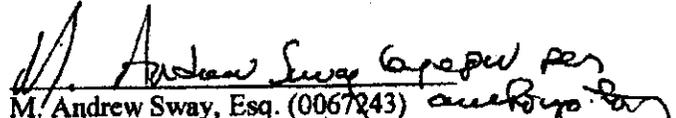
28. On September 8, 2008, Respondent sent Mr. Haidet a letter confirming an agreement whereby Mr. Haidet would pay an additional \$7,500 and nothing else would be charged through the completion of the case. A copy of this letter is attached as Exhibit "M".

29. On September 9, 2008, Respondent sent another letter to Mr. Haidet confirming \$4,000 would be paid immediately, with the remaining \$3,500 due "if, at the end of the case, you do not have to go to jail." A copy of this letter is attached as Exhibit "N".

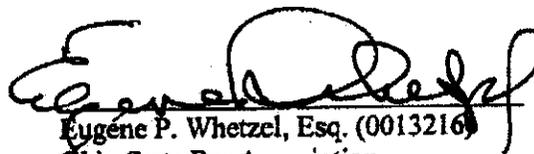
30. As to Counts I, II and III, Respondent has engaged in misconduct that has violated Ohio Rules of Professional Conduct 1.3 (Diligence), 1.4 (Communication) and 1.5 (Fees and Expenses).

WHEREFORE, pursuant to Rule V of the Rules of the Government of the Bar of Ohio, Relator alleges that Respondent has committed, or has engaged in, misconduct within the meaning of §6(A)(k), Gov. Bar Rule V. Therefore, Relator requests the Supreme Court of Ohio discipline Respondent pursuant to Rule V of the Rules for the Government of the Bar of Ohio.

Respectfully submitted,


M. Andrew Sway, Esq. (0067243) *and by order*
Smith, Rolfes & Skavdahl Company, LPA
65 E. State Street, Suite 2000
Columbus, Ohio 43215
(614) 469-7130 - Telephone
(614) 469-7146 - Facsimile
asway@smithrolfes.com


Geoffrey Stern, Esq. (0013119) *and by order*
Kegler, Brown, Hill & Ritter
65 E. State Street, Suite 1800
Columbus, OH 43215
(614) 462-5457 - Telephone
(614) 464-2634 - Facsimile
gstern@keglerbrown.com


Eugene P. Whetzel, Esq. (0013216)
Ohio State Bar Association
P.O. Box 16562
Columbus, Ohio 43216
(614) 487-2050 - Telephone
(614) 485-3191 - Facsimile
gwhetzel@ohiobar.org

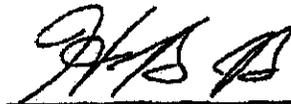
Counsel for Relator

Defendant has filed for judicial release on the Richland County case as he has completed over six years of his seven year sentence.

As Defendant has spent over 10 years, nearly 1/3 of his life incarcerated, Defendant looks forward to the opportunity to become a productive member of society while applying the lessons he has learned from his incarceration.

Wherefore, Defendant respectfully requests that this Honorable Court grant him Shock Probation and suspend further execution of his sentence.

Respectfully submitted,



HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
1600 Illuminating Building
55 Public Square
Cleveland, Ohio 44113
(216) 566-9477
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the following Motion has been forwarded to the following on this 20th day of January, 2009:

Stanley E. Flegm
Prosecuting Attorney
112 E. Mansfield St., Suite 305
Bucyrus, Ohio 44820



HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the following Motion has been forwarded to the following on this 16th day of January, 2009.

**James J. Mayer, Jr.
Prosecuting Attorney
Richland County Prosecutor's Office
38 South Park St.
Mansfield, OH 44902**

**HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
Attorney for Defendant**

IN THE COURT OF COMMON PLEAS
CRAWFORD COUNTY, OHIO

FILED CLERKS OFFICE
2009 FEB 13 AM 10:39
SUE SEEVERS
CLERK OF COURT
CRAWFORD COUNTY

STATE OF OHIO

Plaintiff,

vs.

MICHAEL COX

Defendant.

CASE NOS: 94 CR 0097

JUDGE RUSSELL B. WISE

SUPPLEMENT TO MOTION
FOR SHOCK PROBATION

Now comes Defendant, Michael Cox, by and through counsel, and does hereby file this supplement to his previously filed Motion for Shock Probation.

During Defendant's incarceration, Defendant has provided assistance in the investigations of criminal actions by numerous prison guards at the facility in which he is incarcerated.

In addition, as a result of his assistance his life may now be in danger as long as he remains incarcerated and under the "supervision" of such guards.

Wherefore, Defendant respectfully requests that this Honorable Court grant his motion for shock probation and suspend further execution of his sentence.

Respectfully submitted,

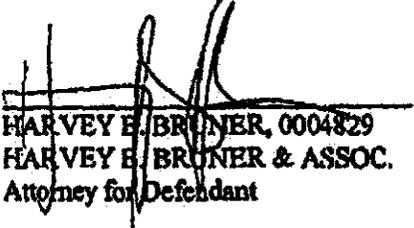

HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
1600 Illuminating Building
55 Public Square
Cleveland, Ohio 44113
(216) 566-9477
Attorney for Defendant



CERTIFICATE OF SERVICE

I hereby certify that the following Motion has been forwarded to the following on this 10th day of February, 2009.

**Clifford J. Murphy
Asst. Prosecuting Attorney
112 E. Mansfield St., Ste 305
Bucyrus, OH 44820**


**HARVEY E. BRUNER, 0004829
HARVEY E. BRUNER & ASSOC.
Attorney for Defendant**

Harvey B. Bruner and Associates

COUNSELORS AT LAW
1600 ILLUMINATING BUILDING
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 586-9477

HARVEY B. BRUNER CO., L.P.A.

FACEBOOK: 12881 686-7047

April 9, 2009

Michael Cox
A 440129
c/o Southern Ohio Correctional Facility
P.O. Box 45699
1724 St. Rt. 728
Lucasville, OH 45699

Dear Mr. Cox:

I am writing this letter to you to apprise you of the situation we find ourselves in. Unfortunately after an exhaustive review of the laws I fear that there is nothing left to do on your behalf. I must apologize for the inaccuracies of any past motion, letter or other communication made. Mr. Cox your matter is unusual in both its complexity and breadth of information that is necessary to understand in order to provide work on your behalf.

In order to understand the current position of the cases that you have had I had to search the records in both Crawford and Richland counties. Both of these counties, especially Crawford have online court dockets that are not exactly easy to use or understand. So I had to have all the information from all three cases (2 in Crawford, one in Richland) printed out and had to trace through them to understand at what point in each case we currently were at.

My understanding came to be that the 1994 Crawford case you received 5-25 years and this was originally ordered into execution. A few months later, Mr. Cox, you were granted shock probation and released from prison onto probation. Unfortunately, in 1997 you caught a second case in Crawford county. In that case you were sentenced to four years and the judge took the unusual step of putting the probation on the first case on hold until you completed the time on the second case. You completed the time on the second case, were released and put back on probation on the first case.

In 2002, you caught the Richland county case and were sentenced to 7 years. The judge in Richland also ordered this sentence to be served consecutively to any other sentence. Afterwards, the judge in Crawford county



ordered the 5-26 on the first case into execution. However, since the Richland county judge ordered his sentence into execution first and ordered it consecutive you had to complete that time first, then begin time on the original Crawford case.

When I had finished tracing through this information, you had completed roughly 6 1/4 of the 7 years on the Richland county case. At that point, I made the decision to file for judicial on that case as if it was granted it would do several things: 1) save you the remaining time on that case, 2) begin the time on the original case, and 3) make it more likely that you would be granted shock, judicial, etc. on that first case.

Shortly after filing for judicial on Richland, I filed for shock on Crawford. Unfortunately, both were denied.

After more research, it appears there is nothing more I can do. In reference to R.C. 2929.41 which Mr. Bidwell cites, this does not affect your sentence. While it does say that multiple sentences should be served concurrently it also provides exceptions. Of importance is the exception listed in the very first line "division (E) of section 2929.14."

R.C. 2929.14(E)(4) is the most important section. In short it allows a judge to make a sentence concurrent to another if the offender committed one of the offenses while on community control (aka probation), post release control (aka parole), or if the offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender. As Mr. Cox was on probation at the time the Richland offense was committed, this alone would allow the Richland judge to make his sentence consecutive to any other. In addition, Mr. Cox may have been on post release control from his second Crawford case, and since the Richland case was his third case within 10 years, the judge also could have used his criminal history to make the sentence consecutive.

Recently we have also received an email from Mr. Bidwell (March 26, 2009) containing an article titled "Ohio Criminal Sentencing Commission." While I have been very busy the last few weeks with trials and court appearances across northern Ohio, I now believe I have the time to examine carefully the article and the issues contained in it. Until I have an opportunity to review it and examine the issues it raises I can't give you an assessment of whether it can be of use.

Very truly yours,

Harvey B. Bruner

JDM
CC: Bruce Bidwell

Harvey B. Bruner and Associates

COUNSELORS AT LAW

1800 ILLUMINATING BUILDING
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 588-9477

HARVEY B. BRUNER CO., L.P.A.

FACSIMILE (216) 588-7047

Time and Services Expended re State of Ohio v. Michael Cox

<u>Service</u>	<u>Time Expended</u>
Researching status of cases	1.5
Reviewing numerous letters, e-mails, phone calls	5.0
Motion for Judicial Release	.5
Motion for Shock Probation	.75
Research on shock probation	1.5
Supplement to Motion for Shock Probation	.75
Phone calls to Mr. Cox at SOCF	.5
Research on eligibility for judicial release, (2929.20), ability to have cases run concurrent (2929.41, 2929.14, 2971.03, both old and current) and case law	4.5
Letter to client at SOCF (4/9/09)	.5
<hr/>	
Total Hours Expended	15.5
(x \$350.00/hour)	\$5,425.00



IN THE COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

STATE OF OHIO)	CASE NO. 04 CR 150
)	
Plaintiff)	JUDGE FRED W. CROW III
)	
v.)	
)	MOTION TO WITHDRAW
SHAWN BURTON)	GUILTY PLEA
)	
Defendant)	

COMMON PLEAS COURT
2008 SEP 30 AM 7:36
FILED
CLERK OF COURTS
GALLIA COUNTY OHIO

Now comes the Defendant, Shawn Burton, by and through his counsel, and moves this Honorable Court to withdraw his plea from "Guilty" to "Not Guilty" and have this matter set for trial.

Upon taking the plea, the trial court judge must determine that the plea is knowing, voluntary, and intelligent which is ascertained by addressing the defendant personally in court on the record. *McCarthy v. United States*, 394 U.S. 459 (1969); *Boykin v. Alabama*, 395 U.S. 238 (1969). See also Criminal Rule 11. Usually then, courts will not disturb the guilty plea after sentencing unless a specific circumstance such as ineffective assistance of counsel (*Hill v. Lockhart*, 474 U.S. 52 (1985)), failure to keep the plea bargain (*Santobello v. New York*, 404 U.S. 257 (1971)), or prosecutorial misconduct are present.

In reviewing a claim for prosecutorial misconduct, an appellate court must determine: (1) whether the prosecutor's actions were improper; and (2) if so, whether the prosecutor's remarks prejudicially affected the substantive rights of the defendant. *State v. Smith* (1984), 14 Ohio St.3d 13, 14, citing *United States v. Dorr* (C.A.5.1981), 636 F.2d 117, 120. The analysis must focus on "the fairness of the trial, not the culpability of the prosecutor." *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, ¶ 231, citing *Smith v. Phillips* (1982), 455 U.S. 209, 219. The prosecutor's conduct cannot serve as grounds for a new trial unless such conduct



deprives the defendant of a fair trial. *State v. Keenan* (1993), 66 Ohio St.3d 402, 405.

In addition, if the prosecutor does not keep the bargain, the court must decide whether the circumstances require specific performance of the plea agreement or whether the defendant should be granted an opportunity to withdraw their guilty plea. *Santobello v. New York*, 404 U.S. 257 (1971).

In the case at hand, the Defendant claims that the State represented to him that the victim/victim's family were in agreement to Defendant pleading guilty and that they would testify that the Defendant should only receive five (5) years on each count of rape. Then, after this representation to the Defendant, he reasonably relied upon the prosecutor's statements and this induced him to enter into the bargain. After pleading guilty, the victim and victim's family demanded from the judge to give Defendant life in jail and to let him rot in prison. As a result, the judge took this into consideration and gave the Defendant a harsher sentence than was originally contemplated.

Of course, Defendant knows that the judge does not have to follow the prosecutor's recommendation, however, the judge does take the victim's statements into consideration when determining an appropriate sentence. ("The overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense.") O.R.C 2929.11 (A). If the prosecutor would be allowed to knowingly misrepresent false information that would induce the Defendant to rely on that false information, this would create a manifest injustice. This especially creates a manifest

injustice since the judge takes the victim's statements into consideration when determining an appropriate sentence.

Defendant maintains that the victim's statements had a material impact upon the judge when determining an appropriate sentence for the Defendant. Therefore, not only did the prosecutor fail to keep the bargain, but he also engaged in prosecutorial misconduct when he knowingly misrepresented to the Defendant that the victims were in agreement of the five-year per count arrangement. It was misconduct because the prosecutor's actions were improper and this had a substantial prejudicial effect upon the Defendant in affecting his right to enter a knowing, voluntary, and intelligent plea.

In addition, Defendant wishes to withdraw his plea of "guilty" on the grounds of ineffective assistance of counsel. Ineffective assistance of counsel undercuts the assumption of an intelligent choice among the defendant's alternatives on the advice of counsel. To prevail on an ineffective assistance of counsel claim, however, a Defendant must prove that but for counsel's errors, the defendant probably would not have pled guilty and would have instead insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). In addition, "there must be a determination as to whether there has been a substantial violation of any of defense counsel's essential duties to his client. Next . . . there must be a determination as to whether the defense was prejudiced by counsel's ineffectiveness." *State v. Lytle* (1976), 48 Ohio St.2d 391.

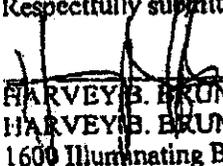
Furthermore, "To prove an ineffective assistance claim, [a defendant] must show that: (1) counsel's performance was deficient to the extent that "counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment[.]" and (2) "the deficient performance prejudiced the defense." *Strickland v. Washington* (1984),

466 U.S. 668, 687. To demonstrate prejudice, [a defendant] must prove that "there exists a reasonable probability that, were it not for counsel's errors, the result of the trial would have been different." *State v. Bradley* (1989), 42 Ohio St.3d 136.

In the present case, Defendant's first attorney was solely concerned with Defendant's money that he received from his mother's insurance plan. While this may seem insignificant, Defendant alleges this substantially affected Attorney's ability to make sound decisions in Defendant's best interests. Attorney's sole preoccupation with when and how he would be paid was a significant factor in what the Defendant should or should not do in deciding whether to plea.

In addition, Attorney should have withdrawn from the case, as Attorney represented the man who allegedly killed Defendant's brother. Attorney also represented many people who Defendant testified against while Defendant served as a Deputy Sheriff. Defendant strongly believes Attorney was prejudiced against Defendant in persuading Defendant to plead guilty. Defendant realizes it is difficult to write to this Honorable Court and persuade you of how prejudicial and ineffective Attorney was. However, Defendant is confident that he can prove that Attorney's errors towards Defendant was a substantial factor in Defendant forced into pleading guilty.

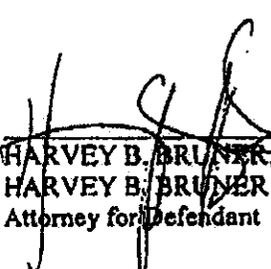
Respectfully submitted,


HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
1600 Illuminating Building
55 Public Square
Cleveland, Ohio 44113
(216) 566-9477
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that the following Motion has been forwarded to the following on this the 26 day of Sept, 2008.

ERIN G. ROSEN
Special Assistant Prosecuting Attorney
30 East Broad Street
14th Floor
Columbus, Ohio 43215


~~HARVEY B. BRUNER, 0064829~~
HARVEY B. BRUNER & ASSOC.
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

STATE OF OHIO)
)
 v.)
)
 SHAWN BURTON) MOTION TO STAY IN PROTECTIVE
) CUSTODY

FILED
CLERK OF COURTS
GALLIA COUNTY, OHIO
2008 SEP 30 AM 7:34
COMMON PLEAS COURT

Now comes the Defendant, Shawn Burton, by and through his counsel, and moves
this honorable Court to keep Defendant, Shawn Burton, in protective custody. A
protective custody order is normally granted where the defendant can show that there is a
substantial risk of being harmed or killed by other prisoners. In the instant matter,
Defendant, Shawn Burton, was formerly a Deputy Sheriff who frequently made arrests
and testified against many current inmates. In addition, the case was a rape case that was
highly publicized because of Defendant's status as Deputy Sheriff. Thus, all these factors
together put Defendant in a position where he faces a substantial risk of imminent bodily
harm or death. Thus, the Defendant requests that this Court keep Defendant's protective
custody order in place.

Respectfully submitted,

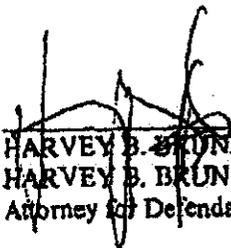
HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
1660 Illuminating Building
55 Public Square
Cleveland, Ohio 44113
(216) 566-9477
Attorney for Defendant



CERTIFICATE OF SERVICE

I hereby certify that the following Motion has been forwarded to the following on this the 25th day of Sept, 2008.

ERIN G. ROSEN
Special Assistant Prosecuting Attorney
30 East Broad Street
14th Floor
Columbus, Ohio 43215


HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
Attorney for Defendant

IN THE COURT OF COMMON PLEAS
GALLIA COUNTY, OHIO

STATE OF OHIO

Plaintiff,

vs.

SHAWN BURTON

Defendant.

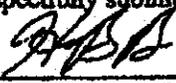
) LOWER COURT CASE NO.
) 04 CR 150
)
)
)

) APPELLATE CASE NO.
) 09 CA 5
)

) NOTICE OF APPEAL
)
)
)

Notice is hereby given that Defendant Shawn Burton, appeals to the Court of Appeals, Fourth Appellate District, Gallia County, Ohio, from the judgment of the Court of Common Pleas for Gallia County, Ohio, entered on or about December 17, 2008,

Respectfully submitted,


HARVEY B. BRUNER, 0064829
1600 Illuminating Building
55 Public Square
Cleveland, Ohio 44113
(216) 566-9477
Attorney for Defendant Burton

FILED
CLERK OF COURTS
GALLIA COUNTY, OHIO

09 MAR 11 AM 10:41



CERTIFICATE OF SERVICE

I hereby certify that the following Notice of Appeal has been forwarded to the following on this 10th day of March, 2009.

ERIN G. ROSEN
Special Assistant Prosecuting Attorney
Gallia County
Ohio Attorney General's Office
150 East Gay Street, 18th Floor
Columbus, OH 43215



HARVEY B. BRUNER, 0004829
Attorney for Defendant Burton

IN THE COURT OF APPEALS
 FOURTH JUDICIAL DISTRICT OF OHIO
 CUYAHOGA COUNTY

09 MAR 11 AM 10:41
 COURT OF APPEALS

STATE OF OHIO

Plaintiff-Appellee

vs.

SHAWN BURTON

Defendant-Appellant

APPEALS CASE NO.
 09 CA 5

TRIAL COURT CASE NO.
 04 CR 150

MEMORANDUM OF
 JURISDICTION OR, IN THE
 ALTERNATIVE, MOTION
 FOR DELAYED APPEAL

Now comes Defendant-Appellant, Shawn Burton by and through the undersigned counsel, and pursuant to this Court's order, submits this Memorandum of Jurisdiction.

Under App. R. 4(A) "A party shall file the notice of appeal required under App.R. 3 within thirty days of the later of entry of the judgment"

The entry being appealed is the "Journal Entry Denying Defendant's Motion to Withdraw His Guilty Plea" journalized December 17, 2008. Attached Exhibit 'A.' Thirty days from such date as required by rule is January 17, 2009. However, January 17, 2009, fell on a Saturday which makes the following weekday the day for filing, App. R. 14(A) ("The last day of the period so computed shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday").

Such date was Monday, January 19, 2009, which was Martin Luther King Jr. Day, a legal holiday. Therefore, the next available day was Tuesday, January 20, 2009. That was the date of the inauguration of President Barack Obama. Counsel is aware that numerous businesses and some government offices remained closed that day due to the



significance of the inauguration of the nation's first African American president. Counsel is unaware if this Court was closed or closed early that day, but if this Court did then that would push the day back one more day to January 21, 2009.

On January 21, 2009, Defendant's "Motion for Extension of Time to File Notice of Appeal" was filed requesting additional time to file the Notice of Appeal. See Attached Exhibit 'B.' This motion was filed since attaching a certified copy of the judgment entry being appealed is required and Defendant was not in possession of such document.

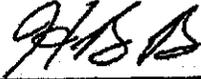
Finally, Defendant sent the Motion by mail and such documents are regarded as filed on the date of mailing or three additional days are allowed for receipt of documents traveling through the mails. (Defendant notes the date of mailing would have been either Friday, January 16, or Saturday, January 17 if the documents were deposited after the daily mail pick up on Friday. In either scenario the documents would not have arrived on the 19th due to the legal holiday described above.)

Once Defendant's counsel was in possession of a certified copy of the judgment entry, the notice of appeal was sent to the Court and filed.

Therefore, Defendant's appeal should be allowed.

In the alternative, Defendant submits this Motion for Leave to File Appeal for all the reasons cited above in addition to the reasons cited in the earlier filed "Motion for Extension of Time to File Notice of Appeal" attached as Exhibit 'B.'

Respectfully submitted,

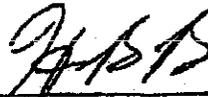


HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
55 Public Square, Suite 1600
Cleveland, Ohio 44113
(216) 566-9477
Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

I hereby certify that the following Motion has been forwarded to the following on this 10th day of March, 2008:

Erin G. Rosen
Special Assistant Prosecuting Attorney
Gallia County
Ohio Attorney General's Office
150 East Gay Street, 18th Floor
Columbus, OH 43215



HARVEY B. BRUNER, 0004829
HARVEY B. BRUNER & ASSOC.
Attorney for Defendant-Appellant

Harvey B. Bruner and Associates

COUNSELORS AT LAW
1500 ILLUMINATING BUILDING
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 566-9477

HARVEY B. BRUNER CO., L.P.A.

FACSIMILE (216) 566-7047

September 26, 2008

Mr. Shawn E. Burton
#486-377
S.O.C.F.
P.O. Box 45699
Lucasville, OH 45699

Re: State of Ohio v. Shawn Burton

Dear Mr. Burton:

Enclosed are copies of the Motion to Withdraw Guilty Plea and Motion to Remain in Protective Custody, which I have filed on your behalf. Of course, I will keep you apprised of the rulings.

I received your transcript and file from Mr. Tyack. Right now I am engaged in a capital murder trial (as you know by now), but I do have an associate going through your file and transcripts.

As soon as I receive the statement from Larry Henry, I will send a copy to you. We should have that statement within the next couple of weeks.

I am very sorry that I am not always at the office to take your calls. I've had two murder trials almost in a row, both capital cases, which is unusual.

Be assured that we are working on your case. Of course, if you call me when I am at the office, I will be glad to talk to you.

Very truly yours,


Harvey B. Bruner

HBB/vas
Enclosures



Harvey B. Bruner and Associates

COUNSELORS AT LAW
1500 ILLUMINATING BUILDING
35 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 566-9477

HARVEY B. BRUNER CO., L.P.A.

FACSIMILE (216) 696-7047

Time and Services Expended on Shawn Burton

<u>Service</u>	<u>Time Expended</u>
Read and review documents filed by Mr. Burton and any responses and decisions of Court	3.0 hours
Review of transcript	1.0
Motion to Withdraw Guilty Plea	3.5
Second Motion to Withdraw Guilty Plea	2.0
Motion to Stay in Protective Custody	1.0
Research for appeal	6.5
Read Local Rules of Court, phone calls of inquiry, obtain documents, etc.	2.0
Drafting appeal documents	4.0
Memorandum of Jurisdiction	1.5
Visit client at S.O.C.F.	4.5

Total Hours Expended	29.0
(x \$300.00/hour)	\$ 8,700.00
Paid by Client to Date	<u>\$ 7,500.00</u>
Balance Due	\$ 1,200.00



Harvey B. Bruner and Associates

COUNSELORS AT LAW

1600 ILLUMINATING BUILDING
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 566-8477

HARVEY B. BRUNER CO., L.P.A.

FACSIMILE (216) 888-7047

Mr. Robert Haidet
1825 Seattle St.
Cuyahoga Falls, OH 44221

Re: State of Ohio v. Robert Haidet

June 30, 2008

Fee for Legal Representation	-	\$10,000.00 (to \$15,000.00)
Retainer	-	\$ 5,000.00
		<hr/>
Balance Due	-	\$ 5,000.00 (to \$10,000.00)

We accept MasterCard, VISA and American Express



Harvey B. Bruner and Associates

COUNSELORS AT LAW

1600 ILLUMINATING BUILDING
85 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 586-9477

HARVEY B. BRUNER CO., L.P.A.

FACSIMILE (216) 586-7047

September 8, 2008

Mr. Robert Haidet
1825 Seattle Street
Cuyahoga Falls, OH 44221

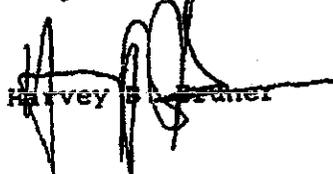
Re: State of Ohio v. Robert Haidet

Dear Bob:

Please be advised that upon the receipt of \$7,500.00 from you, your bill will be paid in full, and there will be no other fees charged to you. I will represent you in this case from beginning to end with no further fees due from you.

If you have any questions, please call me.

Very truly yours,


Harvey B. Bruner

HBB/vas



Harvey B. Bruner and Associates

COUNSELORS AT LAW
1800 ILLUMINATING BUILDING
55 PUBLIC SQUARE
CLEVELAND, OHIO 44113
(216) 566-9477

HARVEY B. BRUNER CO., L.P.A.

FACSIMILE (216) 566-7647

September 9, 2008

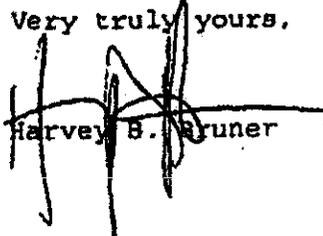
Mr. Robert Haidet
1825 Seattle Street
Cuyahoga Falls, OH 44221

Re: State of Ohio v. Robert Haidet

Dear Bob:

Pursuant to our conversation today, be advised that I will accept \$4,000.00 now, and if, at the end of your case, you do not have to go to jail, you will pay the balance of \$3,500.00.

Very truly yours,


Harvey B. Bruner

HBB/vas

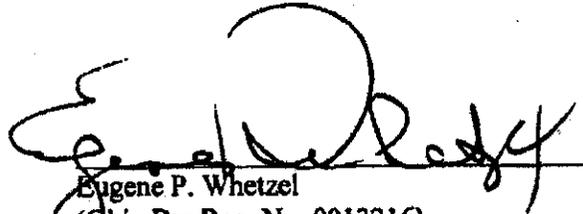


Certificate of Service

I certify that a copy of this Amended Complaint was sent by ordinary U. S. mail, postage prepaid, on this 20th day of January, 2012, to:

1. Richard C. Alkire
Richard C. Alkire Co., LPA
6060 Rockside Woods Blvd., Suite 250
Independence, OH 44131-2335,

Counsel for Respondent, Harvey B. Bruner; and
2. Richard A. Dove, Secretary
Board of Commissioners on Grievances and Discipline
of the Supreme Court of Ohio
65 South Front Street, Fifth Floor
Columbus, Ohio 43215-3431.



Eugene P. Whetzel
(Ohio Bar Reg. No. 0013216)

EXHIBIT 2

Scheduled Restitution Payments

Harvey Bruner, Esq.

Bd. of Comm. Case No. 11-076

Date of Payment	Cox	Burton	Haidet	Total Paid
Feb. 15, 2012	\$ 500.00	\$ 1,000.00	\$ 500.00	\$ 2,000.00
March 15, 2012	\$ 500.00	\$ 1,000.00	\$ 500.00	\$ 2,000.00
April 15, 2012		\$ 1,000.00	\$ 1,000.00	\$ 2,000.00
May 15, 2012		\$ 1,500.00	\$ 500.00	\$ 2,000.00
June 15, 2012		\$ 2,000.00		\$ 2,000.00
July 15, 2012		\$ 2,000.00		\$ 2,000.00
Total Paid:	\$ 1,000.00	\$ 8,500.00	\$ 2,500.00	\$ 12,000.00

Payment will be made from Respondent's counsel's IOLTA account made payable to each grievant in the amounts and on the dates specified above.

EXHIBIT 3

CRIMINAL RETAINER CONTRACT

_____ hereby retains **Harvey B. Bruner Co., L.P.A.** to appear as his/her counsel and to prepare and file in court all necessary pleadings and to defend the charges against _____ for the alleged crime of _____ the Common Pleas Court, _____ County. As compensation for his services _____ agrees to pay a fee of \$ _____, payable

on or prior to the final pre-trial. Should the above fee **NOT BE PAID PRIOR TO THE FINAL PRE-TRIAL, CLIENT AND THE ACCUSED AGREES AND PERMITS** counsel to withdraw from representation. All parties also agree that counsel may withdraw where the accused commits deceit, dishonesty, fraud, lying to counsel or anything detrimental to the conduct of the attorney-client relationship. In the event that counsel withdraws or is discharged, fees for services shall be charged at the following rate: 1) In court \$450.00 per hour 2) Out of court \$375.00 per hour. All phone calls shall be charged on the basis of ¼ hour increments, whether a full ¼ hour was used. Travel time is also included in the hourly rate. The above hourly rates are based upon Mr. Bruner's combined years of experience, specialization, training and practice and level of professional attainment.

The above fee of \$ _____ is to be calculated on the above hourly rate. **IN NO EVENT** shall the fee charged exceed the said fee of \$ _____ even if hourly rate for total services performed exceed said fee. The retainer is to be paid in advance to ensure counsel's availability and is "earned upon receipt". However, if counsel does not complete the representation specified herein, client may be entitled to a refund of all or part of the fee represented by this retainer.

The above fee **DOES NOT** include any of the following: 1) additional trial of this case 2) any appeals regardless of the court. This fee **DOES NOT** include: any new charges or cases resulting from new or different facts that are not included in this case or post conviction motions. A federal case is not included in this fee contract.

Any and all post plea, post sentence or post conviction representation is **NOT** included in this fee, and it must be contracted for separately. **THERE ARE ABSOLUTELY NO PROMISES OR GUARANTEES AS TO THE OUTCOME AND/OR SENTENCE AS A RESULT OF EITHER A TRIAL OR PLEA.**

In consideration of the above representation, _____ agrees to reimburse counsel for any and all out-of-pocket expenses as they come due and for the reasonable cost of investigation for which the sum of \$ _____ is advanced.

I have paid \$ _____ as a retainer upon the signing of this contract and agree to pay the balance, if any is due, as follows: Balance of \$ _____ due one week prior to final pre-trial.

DISPOSITION OF THE ABOVE CASE, WHETHER BY PLEA OR BY TRIAL, WILL ONLY BE MADE WITH THE CONSENT OF THE CLIENT. NO PROMISES OR GUARANTEES AS TO THE OUTCOME AND/OR SENTENCE ARE BEING MADE OR REPRESENTED BY COUNSEL. I HAVE READ AND FULLY UNDERSTAND THIS CONTRACT AND AGREE THAT THE HOURLY RATE QUOTED ABOVE IS REASONABLE FOR THIS COUNSEL.

WITNESS _____ CLIENT _____

WITNESS _____ CLIENT _____

CERTIFICATE OF SERVICE

A copy of the foregoing Agreement of Relator and Respondent Regarding
Consent to Discipline has been mailed by ordinary U.S. mail this 30th day of
January, 2012 to:

Geoffrey Stern, Esq. Counsel for Relator
Kegler, Brown, Hill & Ritter
65 East State Street, Suite 1800
Columbus, OH 43215-4295

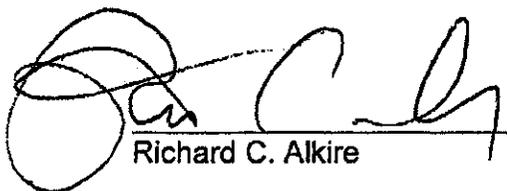
M. Andrew Sway, Esq. Counsel for Relator
Smith, Rolfes & Skavdahl Co., L.P.A.
65 E State St Suite 2000
Columbus, OH 43215

Eugene P. Whetzel, Esq. Counsel for Relator
Ohio State Bar Association
P. O. Box 16562
Columbus, OH 43216

The Hon. Lee H. Hildebrandt, Jr. Panel Chair
First District Court of Appeals
230 East Ninth Street, 12th Floor
Cincinnati, OH 45202

Roger S. Gates, Esq. Panel Member
Butler County Prosecuting Attorney's Office
315 High Street, 11th Floor
Hamilton, OH 45011

Mr. Alvin R. Bell Panel Member
618 West Lake Court
Findlay, OH 45840



Richard C. Alkire

Attorney for Respondent

LAW OFFICE OF
Richard C. Alkire Co., L.P.A.
250 Spectrum Office Building • 6060 Rockside Woods Boulevard • Independence, Ohio 44131-2335
(216) 674-0550 • Fax: (216) 674-0104