ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,	:	
Relator,	:	
vs.	:	**CASE NO. 2012-0278**
Christopher Thomas Cicero	:	
Respondent.	:	

RELATOR'S REPLY TO RESPONDENT'S MOTION TO REMAND TO BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE FOR RECONSIDERATION OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION AND TO EXTEND OR VACATE BRIEFING SCHEDULE

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Although this Court is capable of addressing respondent's concerns, relator has no objection to respondent's motion to remand the case to the Board of Commissioners on Grievances and Discipline (the "board"). Respondent's sole basis for remand is that the board[1] relied on an erroneous transcript which indicated that respondent admitted during the disciplinary hearing to quoting Rife a legal fee. The corrected transcript confirmed that respondent did not admit to quoting Rife a legal fee. Respondent's characterization of the corrected transcript as a "significant development" is absurd, given the overwhelming evidence of respondent's misconduct.

The sole issue before the board was whether Rife was respondent's prospective client. In its report, the board found:

> Prof Cond. R. 1.18(a) provides that "[a] person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client." The panel concludes that relator has proved by clear and convincing evidence that respondent discussed with Rife the possibility of client-lawyer relationship. [sic]. The evidentiary basis for this conclusion is at least the following: (1) that

[1] Relator's reference to the "board" includes the three member panel.

> respondent admitted it in his email messages to Coach Tressel; (2) that respondent admitted at the panel hearing that he quoted Rife a legal fee; (3) the testimony of Rife; and (4) the corroborating testimony of Palmer that Rife told him that he had discussed representation with respondent and that respondent had quoted [Rife] a fee of $10,000. (Emphasis added.).

Report, ¶35.

The corrected transcript indicates that respondent, while testifying at the disciplinary hearing, did not admit to quoting Rife a legal fee. Consequently, instead of citing "at least" four bases for concluding that Rife was respondent's prospective client, the board, on remand, will presumably cite "at least" three. As evidenced by the board's report, its mention of respondent's admission during the hearing was but one of several factors supporting Rife's status as respondent's prospective client. Even without respondent's admission, the evidence that Rife was respondent's prospective client was overwhelming. In other words, the corrected transcript should have no impact on the board's recommendation.

Respondent's emails to Coach Tressel confirmed beyond any doubt that respondent viewed Rife as a prospective client.

> [Respondent] described the specifics of the items that had been seized by the government and specifically identified Rife as a prospective client, stating: "If he retains me, and he may, I will try to get these items back that the government now wants to keep for themselves* * *." Relator's Ex. 2.

Report, ¶30.

At the disciplinary hearing, respondent admitted that his email message to Coach Tressel "read in such a way as to refer to Rife as the client who might retain him rather than anyone else." Id. at ¶31.

> On April 16, 2010, respondent sent his third e-mail to Coach Tressel. In that message, he disclosed further information about Rife, stating that Rife "really is a drug dealer," that Rife is "in really big trouble," and that Rife "wanted my opinion" about the government's

> best offer for a plea deal. Significantly, he stated, "I have to sit tight and wait to see if he retains me, but at least he came in last night to do a face-to-face with me."

Id. at ¶32.

In addition to respondent's incriminating emails, the board also found that respondent gave Rife legal advice. Id. at ¶24. "Respondent advised Rife that if the government believed the material had been purchased with drug money, Rife would not be able to get the memorabilia back." Id. at ¶26. "Respondent did say during the meeting that 'You've got two choices. You can either sit in the county jail for a long period of time, or you can start cooperating with the federal government and become a snitch.'" Id. at ¶27.

The board also cited Rife's testimony as further support of its finding that Rife was respondent's prospective client. Id. at ¶35. On the other hand, the board found respondent's testimony during the disciplinary hearing "was at times disingenuous and not credible." Id. at 44.

Finally, the board specifically found that Rife's lawyer, Stephen Palmer, corroborated Rife's testimony. Id. at ¶35.

> Mr. Palmer testified that Rife returned to Palmer's office on April 17, 2010 to discuss the issue of whether to take a plea deal or to do a contested trial. Rife told Palmer that he had spoken to a number of attorneys including respondent, and further that respondent had quoted Rife a fee of $10,000 for representing him in the criminal matter.

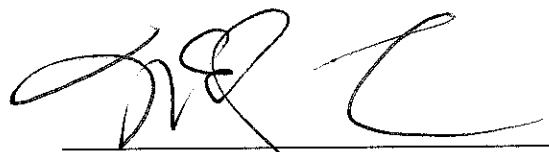
Id. at ¶22.

The corrected record simply negates the board's finding that respondent <u>admitted</u> during the disciplinary hearing to quoting Rife a legal fee. It does not negate the board's finding that respondent quoted Rife a $10,000 legal fee or that Rife was respondent's prospective client.

CONCLUSION

Although relator believes the corrected record will have no impact on the board's recommendation, relator does not oppose respondent's request for remand to the board.

Respectfully submitted,



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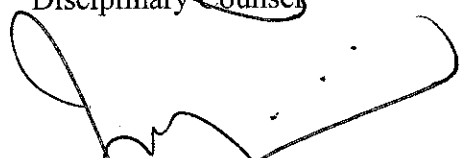

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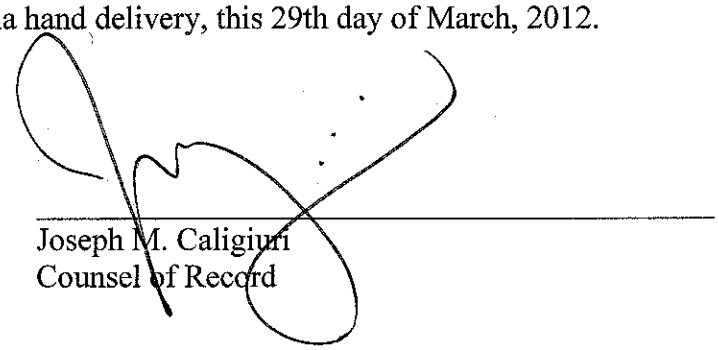
CERTIFICATE OF SERVICE

A copy of the foregoing *Relator's Reply To Respondent's Motion To Remand To Board Of Commissioners On Grievances And Discipline For Reconsideration Of Findings Of Fact, Conclusions Of Law And Recommendation And To Extend Or Vacate Briefing Schedule* has been served upon : Alvin Earl Mathews, Esq., Bricker & Eckler LLP, 100 S Third Street, Columbus, OH 43215, Counsel for respondent; Karl Herbert Schneider, Esq., Maguire & Schneider, 250 Civic Center Drive, Suite #500, Columbus, OH 43215, Counsel of Record for Respondent; via regular U.S. mail, postage prepaid, and Richard A. Dove, Esq., Secretary to The Board of Commissioners On Grievances And Discipline, Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431, via hand delivery, this 29th day of March, 2012.



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