

ORIGINAL

IN  
THE SUPREME COURT OF OHIO

<b>Disciplinary Counsel,</b>	:	
Relator,	:	<b>CASE NO. 2012-0644</b>
v.	:	
<b>Robert Leon Schwartz,</b>	:	
Respondent.	:	

---

**RELATOR'S MOTION TO STRIKE EXHIBITS 2 THROUGH 6 ATTACHED TO  
RESPONDENT'S OBJECTION TO THE BOARD OF COMMISSIONERS' REPORT  
AND RECOMMENDATIONS**

---

**Jonathan E. Coughlan (0026424)**  
Disciplinary Counsel  
Relator

**Philip A. King (0071895)**  
Assistant Disciplinary Counsel  
**Counsel of Record for Relator**  
Office of Disciplinary Counsel of  
The Supreme Court of Ohio  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
Telephone (614) 461-0256

**Robert Leon Schwartz (0000818)**  
Respondent, *pro se*  
#04890-061  
Federal Prison Camp  
Unit A-1  
P.O. Box 6000  
Ashland, KY 41105-6000

**FILED**  
JUN 15 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

IN

THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator

Robert Leon Schwartz

Respondent

:  
:  
:  
:  
:  
:

CASE NO. 2012-0644

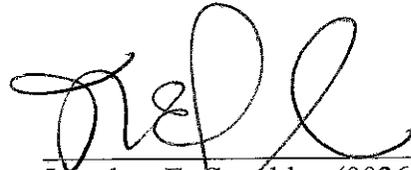
---

**RELATOR'S MOTION TO STRIKE EXHIBITS 2 THROUGH 6 ATTACHED TO  
RESPONDENT'S OBJECTION TO THE BOARD OF COMMISSIONERS' REPORT  
AND RECOMMENDATIONS**

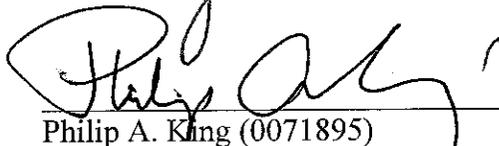
---

Relator, Disciplinary Counsel, requests that this Court strike Exhibits 2 through 6 attached to Respondent's Objection to the Board of Commissioners' Report and Recommendations. The attached memorandum supports relator's motion.

Respectfully submitted,



Jonathan E. Coughlan (0026424)  
Relator



Philip A. King (0071895)  
Assistant Disciplinary Counsel  
Counsel of Record for Relator  
Office of Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
614.461.0256

## MEMORANDUM

On May 15, 2012, Respondent filed an Objection to the Report and Recommendation of the Board of Commissioners and Grievances and Discipline (“Objections”) to which he attaches the following exhibits:

Exhibit 2 – Thomas J. Bonasera, Expert Opinion;

Exhibit 3 – US Department of Justice Letter;

Exhibit 4 – Hamilton County Probate Court Motion of Fiduciaries to Approve Distribution and Make Restitution;

Exhibit 5 – Letters of Character, Exhibit M; and

Exhibit 6 – DVD Presentation of Charitable Intent and Work.

Relator, for the reasons below, moves this Court to strike these exhibits.

Regarding Exhibits 2 through 4 and 6, relator acknowledges that this Court views objection briefs in disciplinary cases as merit briefs and not pleadings for purposes of a motion to strike, pursuant to Civ. R. 12(F). Nonetheless, this Court, noting that Gov. Bar Rule V has no provision for the introduction of evidence in a brief filed in this Court, has struck additional evidence attached to a brief where the proponent failed to demonstrate the existence of exceptional circumstances to admit it at that “late stage of the proceedings.” *See Disciplinary Counsel v. Squire*, 130 Ohio St.3d 368, 2011-Ohio-5578, 958 N.E.2d 914. Here, respondent attaches Exhibits 2 through 4 and 6 to his Objections in an attempt to admit them into evidence. However, respondent did not introduce these exhibits into evidence during the disciplinary hearing and he has not demonstrated the existence of exceptional circumstances to admit them now that the matter is before the Court. Therefore, in line with the *Squire* case, the Court should strike Exhibits 2 through 4 and 6 attached to respondent’s Objection brief.

Second, relator objects to the admission of Exhibits 2 through 4 and 6 into evidence at this time for lack authentication. “The requirement of authentication or identification is a condition precedent to admissibility of evidence and can be satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Evid. R. 901. Authenticity is demonstrated through extrinsic evidence unless the material is self-authenticating, pursuant to Evid. R. 902. Here, respondent does not offer any extrinsic evidence to establish the authenticity of Exhibits 2 through 4 and 6 and these exhibits are not the self-authenticating kind. As a result, respondent has not met his evidentiary burden regarding Exhibits 2 through 4 and 6 and the Court should not admit them into evidence at this time.

Third, the attachment of Exhibits 2 through 4 and 6 to respondent’s Objection brief is not allowed by the rules of this Court, and therefore, these exhibits should be accordingly stricken. Rule 6.2(B)(5)(a) – (g) of the Rules of Practice of the Supreme Court lists the documents that must be included in the appendix of respondent’s brief. None of these exhibits is among those listed in S.Ct. Prac. R. 6.2(B)(5)(a) – (g). Accordingly, the Court should strike Exhibits 2 through 4 and 6 as impertinent and beyond the Practice Rules of the Court.

As for Exhibit 5, relator submits that it is not among the documents to be including in the appendix and likewise should be stricken as beyond the scope of S.Ct. Prac. R. 6.2(B)(5)(a) – (g). Moreover, in the interest of judicial economy, it is appropriate for a court to strike material from the record that merely duplicates material already in the record. *See State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 38, 2006-Ohio-6365, 857 N.E.2d 1208 (a court may strike any pleading or material determined to be redundant). Exhibit 5 attached to respondent’s Objection brief is such duplication and is identical to respondent’s Exhibit M introduced into evidence at the hearing in this matter. Accordingly, Exhibit 5 should be stricken as redundant.

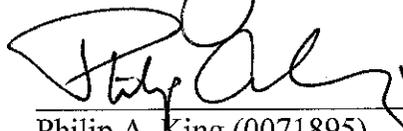
**CONCLUSION**

Wherefore, relator respectfully requests that this Court issue an order striking Exhibits 2 through 6 attached to respondent's Objection brief from the record.

Respectfully submitted,



Jonathan E. Coughlan (0026424)  
Relator



Philip A. King (0071895)  
Assistant Disciplinary Counsel  
Counsel of Record for Relator  
Office of Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
614.461.0256

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing answer brief was served via U.S. Mail, postage prepaid, upon respondent at the Federal Prison Camp, Unit A-1, P.O. Box 6000, Ashland, KY 41105-6000, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, at 65 S. Front Street, 5<sup>th</sup> Floor, Columbus, Ohio 43215, on June 15, 2012.



Philip A. King  
Counsel for Relator