

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re: Judicial Campaign Complaint :
Against Jeanette Moll, : **Case No. 2012-1186**
: :
Respondent. :
: **PROCEEDINGS BEFORE THE FIVE**
: **JUDGE COMMISSION APPOINTED**
: **PURSUANT TO RULE II, SECTION**
: **5(D)(1) OF THE SUPREME COURT**
: **RULES FOR THE GOVERNMENT OF**
: **THE JUDICIARY OF OHIO, AND**
: **SECTION 2701.11 OF THE OHIO**
: **REVISED CODE**

**COMPLAINANT LYNN RIFE'S MEMORANDUM IN OPPOSITION TO
RESPONDENT'S MOTION FOR SANCTIONS**

David F. Axelrod (0024023)
Counsel of Record
AXELROD TODD LALIBERTE LLP
137 East State Street
Columbus, Ohio 43215
614.545.6307
614.545.6356 (facsimile)
Email: david@axelrodohio.com

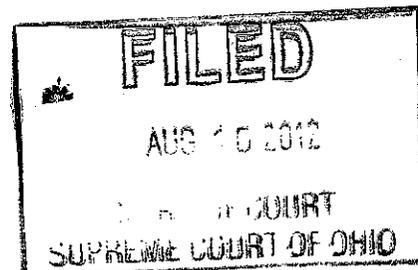
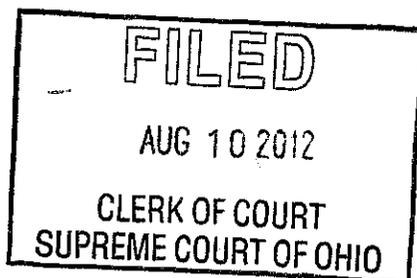
Sue Ann Ruelbach (0022355)
877 Ebner Street
Columbus, Ohio 43206
614.452.0295
sarsar_6@hotmail.com

Attorneys for Complainant Lynn Rife

Jeanette M. Moll
Pro Se
P.O. Box 461
803B Market Street
Zanesville, Ohio 43701
740.297.4700
740.297.7782 (facsimile)

Respondent Pro Se

Steven C. Hollon
Administrative Director and
Secretary to the Commission
The Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431
614.387.9370
614.387.9379 (facsimile)



**COMPLAINANT LYNN RIFE'S MEMORANDUM IN OPPOSITION TO
RESPONDENT'S MOTION FOR SANCTIONS**

Complainant Lynn Rife, by and through her undersigned counsel, respectfully submits this memorandum in opposition to Respondent's motion for sanctions. Respondent seeks sanctions on the ground that she was not served with a copy of Ms. Rife's motion for an enlargement of time. The motion should be denied on multiple grounds, including that this lapse was the result of administrative oversight and nothing more.¹ On the other hand, Respondent fails to advise the Commission that she had actual notice of the motion and advised undersigned counsel that she would not file papers opposing it. Respondent has no evidence that this oversight was for the purpose of delay, harassment or any other improper purpose. Finally, Respondent's claim that she was required to spend time and resources to locate the motion is nonsensical, since, as the Commission knows, the docket sheet and images of documents are linked to the home page of the Supreme Court's website.

For these reasons, and for the additional reasons stated below, Respondent's sanctions motion should be denied.

a. **Respondent had actual notice of the motion; the failure to serve it timely was purely an oversight.**

On July 31, 2012, the Commission ordered that Ms. Rife file her answer to Respondent's objections no later than August 6, 2012. This allowed Ms. Rife only three business days for the preparation of her response. Additionally, her counsel had other papers due in United States District Court on August 6, 2012, and a brief due in the United States Court of Appeals on August 9, 2012. Accordingly, the next

¹ Undersigned counsel will, of course, exercise due diligence to ensure that this oversight is not repeated.

day, August 1, 2012, Ms. Rife filed her motion for enlargement of time. *Affidavit of David F. Axelrod*, sworn to August 9, 2012 and attached as Exhibit A ("*Axelrod Aff.*") at ¶ 2.

Because of the matters described above, and the tight deadline initially imposed by the Commission, the motion was prepared and filed under significant time pressure. Nevertheless, as a courtesy to Respondent, and despite not being required to do so by the Supreme Court Rules of Practice, undersigned counsel contacted Respondent by telephone and solicited her non-opposition to the motion. Counsel specifically informed Respondent of the federal court deadlines described above, and that Ms. Rife would seek an enlargement of time to August 10, 2012 for the filing of her objections and opposition to Respondent's objections. Respondent stated that she would not agree to the motion, but would not file papers opposing it. *Axelrod Aff.* at ¶ 2.

S.Ct. Prac. R. 14.5 provides that sanctions may be imposed if an action is, *inter alia*, prosecuted for delay, harassment, or any other improper purpose. Respondent has not shown that the failure of service was for any of these purposes, and Ms. Rife has shown that it was not.²

Furthermore, in withholding material information from her sanctions motion – Respondent's actual notice of, and conversation with Ms. Rife's counsel concerning, the motion for enlargement of time – Respondent has been, at best, economical with the truth in a manner that the Commission should not condone.

² In addition to these defects, Respondent, a lawyer and former Magistrate, has failed to provide an affidavit or other evidence supporting her sanctions motion, so the Commission has nothing more than her unsworn assertions.

This violates the spirit if not the letter of Ohio Rule of Professional Conduct 3.3 (“Candor toward the tribunal”). Official Comment 2 to the rule states:

This rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client’s case with persuasive force. Performance of that duty ... is qualified by the advocate’s duty of candor to the tribunal.

See also Official Comment 3 to Rule 3.3 (“There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation”).

As Ms. Rife shows in her opposition to Respondent’s objections, this lack of candor continues a pattern that began with Respondent’s testimony before the hearing panel. The Commission should take account of this pattern in deciding this and all other aspects of this matter.

b. Respondent’s claimed expenditure of resources is nonsense.

Respondent seeks to be reimbursed for alleged her expenditure of time and resources to investigate, locate and download Ms. Rife’s motion for an enlargement of time. It boggles the imagination that accomplishing these tasks could have taken her more than five minutes.

First, Respondent has submitted no evidence of any expenditure of resources because she cannot credibly do so. As explained above, undersigned counsel spoke directly to Respondent by telephone, in advance, and informed her that the motion would be filed, and described its contents. *Axelrod Aff.* at ¶ 2. After that – as Respondent, a lawyer and former Magistrate surely knew – obtaining a copy of the motion required only that she visit the Ohio Supreme Court website. As the Commission knows, on the Supreme Court’s home page is a link to the docket sheet

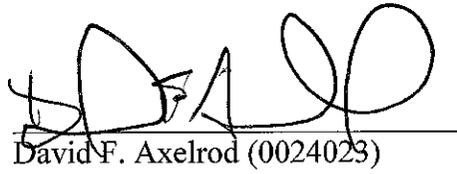
in this case, which states in boldface type, "In re Judicial Campaign Complaint Against Moll." See <http://sc.ohio.gov/default.asp>. One click on that link leads to the docket sheet, and a second click produces a copy of the document.

This claim does not withstand scrutiny.

CONCLUSION

WHEREFORE, Complainant Lynn Rife respectfully urges that Respondent's sanctions motion be denied.

Respectfully Submitted,



David F. Axelrod (0024023)

Counsel of Record

AXELROD TODD LALIBERTE LLP

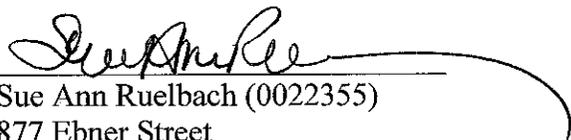
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Email: david@axelrodohio.com



Sue Ann Ruelbach (0022355)

877 Ebner Street

Columbus, Ohio 43206

614.452.0295

sarsar_6@hotmail.com

Attorneys for Complainant Lynn Rife

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Complainant Lynn Rife's Memorandum in Opposition to Respondent's Motions for Sanctions has been served, this 10th day of August, 2012, by regular United States Mail, on the following:

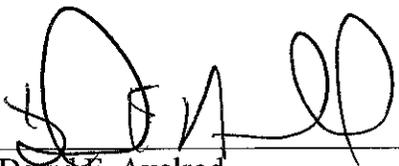
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Respondent Pro Se

Steven C. Hollon
Administrative Director and Secretary to the
Commission
The Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215-3431

D. Allan Asbury, Esq.
Administrative Counsel
The Supreme Court of Ohio
Office of the Administrative Director
65 South Front Street
Columbus, Ohio 43215-3431

Additionally, true and accurate copies of the foregoing have also been served this 10th day of August, 2012, by facsimile on Respondent at 740.297.7782, and by email on Mr. Asbury at a.asbury@sc.ohio.gov.



David F. Axelrod

EXHIBIT A

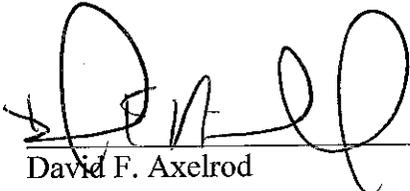
AFFIDAVIT OF DAVID F. AXELROD

STATE OF OHIO)
 ss:
COUNTY OF FRANKLIN)

DAVID F. AXELROD, being duly sworn, deposes and says:

1. I am an attorney at law, duly admitted to practice before the courts of the states of Ohio, New York and New Jersey. I was first admitted to practice in Ohio in 1978, when I was a law clerk for United States District Judge David S. Porter, in Cincinnati, Ohio. I am a former Trial Attorney for the United States Department of Justice, and former Assistant United States Attorney for the Southern District of Florida. After returning to Ohio in 1991, I was a partner in the law firm of Vorys, Sater, Seymour and Pease LLP, and later, a Director in Deloitte Financial Advisory Services LLP. I am presently a partner in Axelrod Todd Laliberte LLP. I hold a Martindale-Hubbell peer reviewed rating of AV® Preeminent™ for ethical standards and legal ability.

2. I have read Complainant Lynn Rife's Memorandum in Opposition to Respondent's Motion for Sanctions, to which this affidavit is attached, and am familiar with its contents. All statements in that document are true and accurate to the best of my knowledge, information and belief.


David F. Axelrod

Subscribed and sworn to before me this 10th day of August, 2012.


Notary Public



WILLIAM M. TODD
Attorney At Law
Notary Public, State of Ohio
My commission has no expiration date
2012 08 03 P.C.