

ORIGINAL

IN THE SUPREME COURT OF OHIO

CLEVELAND METROPOLITAN BAR)
ASSOCIATION CERTIFIED GRIEVANCE)
COMMITTEE,)

CASE NO. 2011-2110

Relator,)

v.)

JOHN LOUIS LEMIEUX,)

Attorney Registration No. 0073494)
Respondent.)

RELATOR'S OPPOSITION TO JOHN L. LEMIEUX'S MOTION TO REDACT ORDER

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Respondent

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RELATOR’S OPPOSITION TO JOHN L. LEMIEUX’S MOTION TO REDACT ORDER

I. INTRODUCTION

Relator Cleveland Metropolitan Bar Association (“Relator”) opposes John L. Lemieux’s Motion to Redact Order because the Rules for the Government of the Bar required Relator to publicly file its December 18, 2011 Motion for Interim Remedial Suspension, and any challenge to the private nature of the proof used should have been raised a year ago. Moreover, Mr. Lemieux waived his privacy rights for the medical information at issue, *i.e.*, his substance abuse, when he: (1) used his substance abuse as a defense and publicly filed multiple documents detailing his substance abuse; (2) signed an authorization relating to his substance abuse; and (3) waited almost fourteen months to complain of the disclosure of his substance abuse. Each of these reasons provides an independent basis to deny Mr. Lemieux’s Motion to Redact Order.

Together, they call for a swift decision denying it.

II. LAW AND ARGUMENT

First and foremost, the Rules for the Government of the Bar (“Rule”) required Relator to publicly file its Motion for Interim Remedial Suspension (“Relator’s Motion”) and all evidence supporting it. Rule 5, Section 11(E)(2)(a) states that “[f]rom the time a complaint has been certified to the Secretary of the Board by a probable cause panel, the complaint and *all subsequent proceedings in connection with the complaint shall be public.*” (emphasis added.) Additionally, Rule 5, Section 5a(A)(1)(b) states that Relator “*shall include*, in its motion [for interim remedial suspension], proposed findings of fact, proposed conclusions of law and other *information in support of the requested order. Evidence relevant to the requested order shall be attached to or filed with the motion.*” (emphasis added.)

Relator’s Complaint against Mr. Lemieux was certified and filed on October 10, 2011. It was replete with references to his addiction and psychiatric hospitalization. Mr. Lemieux filed his Answer on November 3, 2011 and nowhere in it does he challenge the repeated references to his drug use and abuse. On December 18, 2011, Relator filed its Motion for Interim Remedial Suspension. The Motion was directly connected to Relator’s Complaint, based on Mr. Lemieux’s substance abuse, and it was triggered by a recent failed drug test—one that occurred while these disciplinary proceedings were pending. All of these pleadings and motions were filed in accordance with the Rules for the Government of the Bar, which required Relator to publicly file them. *See* Rules cited *supra*. What is now being challenged was filed properly at the time. Mr. Lemieux should not now be heard to complain over a year later. Thus, Mr. Lemieux’s Motion should be denied.

But even if the proceedings were deemed private, Mr. Lemieux waived his privacy rights related to his substance abuse. Rule 5, Section 11(E)(1)(b) (an attorney can waive the privacy of disciplinary proceedings);¹ *accord, In re Disciplinary Counsel v. Deborah P. O'Neill*, 75 Ohio St.3d 1436 (1996). Here, by publicly filing multiple documents detailing his substance abuse and asserting his substance abuse as a defense/mitigating factor in this case. Mr. Lemieux publically admitted to the very issues he now claims are private. Mr. Lemieux also used these very issues and his supposed recovery to oppose Relator's Motion for Interim Remedial Suspension:

Respondent has, admittedly, a history of substance abuse. From January 2011 until March 2011, respondent was in a treatment facility on the recommendation of Paul Caimi, regional director of OLAP. There was a brief relapse in April 2011...The instant Motion for Interim Remedial Suspension is based on a one-day relapse on 14 October 2011. Respondent tested positive on a random drug test the following Monday, 17 October 2011...Based on respondent's admission of the relapse, over two months ago, his candor and cooperation throughout this disciplinary process, efforts toward recovery and lack of prior disciplinary history, it is respectfully requested that this Motion be denied and the existing grievance procedure permitted to continue.

(Mr. Lemieux's Response to Relator's Motion for Interim Remedial Suspension is attached hereto as Exhibit A.)² Mr. Lemieux also admitted to his substance abuse in the parties' Joint Motion for Outpatient Clinical Assessment of John Louis Lemieux, which was publicly filed. With these examples of affirmative statements by Mr. Lemieux, he has therefore waived any

¹ Relator acknowledges that the waiver referenced in the Rule applies before proceedings reach the level of a certified complaint. But the waiver concept applies with equal force after proceedings have been filed.

² Mr. Lemieux served his Response on Relator, but apparently did not file it with the Supreme Court of Ohio as it does not appear on the docket and is not referenced in the Court's December 23, 2011 Order. Perhaps this is why Mr. Lemieux now states that the "suspension was not contested." (*See, Lemieux's Motion to Redact Order.*)

privacy rights related to his substance abuse.

Mr. Lemieux also waived his privacy rights by signing an “appropriate release form” through his contract with the Ohio Lawyer’s Assistance Program (“OLAP”), which authorized the disclosure of his medical information, including his substance abuse. (*See*, Paul Caimi’s December 6, 2011 Affidavit and the OLAP contract attached thereto, both of which were filed as Exhibit 1 to Relator’s Motion for Interim Remedial Suspension.) The medical information in Relator’s Motion was either provided to Relator by Mr. Lemieux’s OLAP Monitor, Paul Caimi, pursuant to this authorization, or gleaned from publicly filed documents—Relator’s Complaint and Mr. Lemieux’s Answer.

Additionally, Mr. Lemieux’s Motion to Redact Order is untimely and his objections are therefore waived. Relator filed its original Complaint, which contains most of the information at issue, on October 10, 2011. Relator filed its Motion for Interim Remedial Suspension on December 18, 2011 and its Amended Complaint on June 25, 2012. Relator served all of these filings on Mr. Lemieux and they are available to the public as required by the Rules for the Government of the Bar. In this fourteen month period, Mr. Lemieux filed various pleadings and motions in this case, participated in multiple conferences with the Panel of Commissioners and communicated regularly with undersigned counsel. Not once did Mr. Lemieux complain of his substance abuse or psychiatric hospitalization being made public. Thus, Mr. Lemieux long since waived his right to complain of this issue.

III. CONCLUSION

Mr. Lemieux’s Motion to Redact Order is barred by the plain language of the Rules for the Government of the Bar, and even if it were not, Mr. Lemieux repeatedly waived any privacy rights in this case. Mr. Lemieux’s Motion to Redact Order should therefore be denied.

Respectfully submitted,



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PROOF OF SERVICE

I hereby certify that a copy of the foregoing was sent by U.S. Mail, postage prepaid, this 7th day of December, 2012 pursuant to Civ.R. 5(B)(2)(c) to:

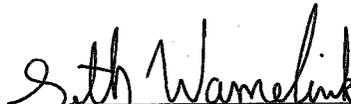
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THE SUPREME COURT OF OHIO

Cleveland Metropolitan Bar Assoc.

Relator

Case No.: 11-2011

V

John Louis Lemieux

RESPONSE

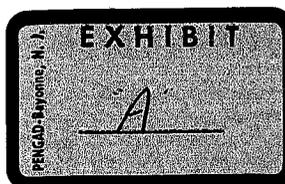
Respondent

This matter is set within the context of existing grievances. All of the grievances date from November of 2010. Respondent has had no prior history of discipline before November of 2010. Respondent has, admittedly, a history of substance abuse . From January 2011 until March 2011, respondent was in a treatment facility on the recommendation of Paul Caimi, regional director of OLAP. There was a brief relapse in April of 2011. From April of 2011, Respondent slowly returned to the practice of law, cautiously. Respondent began daily telephone check in for random drug testing and verification of AA meetings. Individual counseling has also been suggested, although respondent's lack of health insurance has complicated and delayed matters.

The instant Motion for Interim Remedial Suspension is based on a one- day relapse on 14 October 2011. Respondent tested positive on a random drug test the following Monday, 17 October 2011. Respondent candidly admitted to the relapse, submitted to the drug test, continued with A.A. meetings, continued reporting for random drug tests and redoubled working towards recovery. Respondent did not disappear and was back at work the following week.. At no time were the rights of Respondent's clients in any danger. There have been no complaints about respondent's professional performance since his return in April of this year. Despite a relatively demanding caseload, no new disciplinary issues have arisen from the October relapse. The public is in no substantial danger of harm. Since the incident in October, Respondent has done some of the best work of his entire career. I offer the following cases:

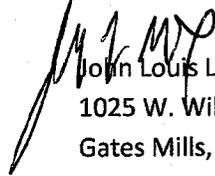
State v Cardona	11 CR 553716	11/15/11
State v Kertis	11 CR 550315	11/09/11
State v Mclaurin	11 CR 552295	12/12/11
State v Williams	11 CR 553728	11/28/11

Among the allegations found within the instant complaint is the allegation that Respondent has refused to enter a treatment facility. In this case, O.L.A.P. insists on one particular treatment center in Tampa, Florida. Respondent has not refused. Medical Insurance is, again, the problem. To that end, respondent has secured health insurance and intends to complete the specified program in this coming year.



Based on respondent's admission of the relapse, over two months ago , his candor and cooperation throughout this disciplinary process , efforts toward recovery and lack of prior disciplinary history, it is respectfully requested that this Motion be denied and the existing grievance procedure be permitted to continue.

RESPECTFULLY SUBMITTED



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12/19/11

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