

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

14-2153

In Re:	:	Case No. 2014-060
Complaint against	:	
Albert Duane Shirer Attorney Reg. No. 0062670	:	Findings of Fact,
	:	Conclusions of Law, and
Respondent	:	Recommendation of the
	:	Board of Commissioners on
Medina County Bar Association	:	Grievances and Discipline of
	:	the Supreme Court of Ohio
Relator	:	

FILED
DEC 15 2014
CLERK OF COURT
SUPREME COURT OF OHIO

DISCIPLINE BY CONSENT

- {¶ 1} This matter was submitted to the hearing panel as a Consent to Discipline pursuant to BCGD Proc. Reg. 11.
- {¶ 2} The Consent to Discipline agreement was filed with the Board on November 25, 2014, which was within sixty days of the appointment of a hearing panel on September 29, 2014.
- {¶ 3} By an Entry dated November 26, 2014, the panel chair extended to December 3, 2014 the deadline established by BCGD Proc. Reg. 11 to permit the parties to supplement their Consent to Discipline agreement for the purpose of clarifying the issue of restitution.
- {¶ 4} The parties filed their "Supplement to Consent to Discipline" ("Supplement") with the Board on December 2, 2014.
- {¶ 5} The hearing panel finds that the parties' agreement, as supplemented, conforms to BCGD Proc. Reg. 11.
- {¶ 6} The hearing panel also makes the following findings with respect to the issue of

restitution.

{¶ 7} In their agreement, the parties stipulated that Respondent recently paid the grievant \$800.

{¶ 8} Also in their agreement, the parties mentioned this payment as a mitigating factor, noting Respondent's "timely good faith effort to make restitution or to rectify [the] consequences of [his] misconduct" Consent to Discipline, ¶ 18.

{¶ 9} In their Supplement, however, the parties stipulated that "Respondent did not retain any funds belonging to the Grievant that could be classified as unearned fees" or "as unused expense money." Supplement, ¶¶ 1-2.

{¶ 10} The parties further stipulated in their Supplement that the \$800 payment actually was made by Respondent to the grievant's "new attorney" and that this payment was "intended as compensation to defray the fees or expenses the Grievant has incurred or will incur for her new attorney's corrective actions." *Id.* at ¶ 3.

{¶ 11} Relator's Memorandum indicates that this \$800 "may" represent "the total amount that Grievant owes her new attorney for resolving the retirement benefits issue." Relator's Memorandum, p. 2.

{¶ 12} Because the \$800 was not paid to the grievant but to her new attorney and Respondent had not retained any funds belonging to the grievant that could be classified as either unearned fees or unused expense money, the \$800 payment was not an effort to "make restitution" in the true sense of the word (as the parties suggest in their agreement), but rather was an effort to rectify the consequences of his misconduct, which nonetheless qualifies it as an appropriate mitigating factor.

{¶ 13} In light of the misconduct that Respondent admits, the mitigating factors set forth

in the agreement as clarified above, and the case law cited by the parties, the panel members concur with the parties' agreed sanction of a public reprimand and recommend that the Board accept the agreement as supplemented, including the statement of facts and the agreed violation of DR 6-101(A)(3) [neglect of a legal matter].

BOARD RECOMMENDATION

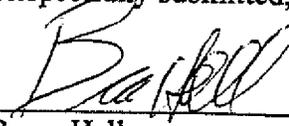
Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 12, 2014. The Board voted to accept and adopt the agreement entered into by Relator and Respondent that sets forth the misconduct and a sanction of a public reprimand. The Board recommends acceptance of the agreement and imposition of the agreed sanction of a public reprimand. The Board further recommends that the costs 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 recommendation as that of the Board.

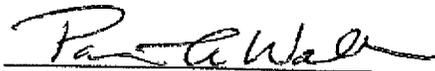


RICHARD A. DOVE, Secretary

Respectfully submitted,



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

FILED

NOV 25 2014

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In re:

:

Complaint Against:

:

Board No. 2014-060

Albert D. Shirer

:

1033 Sunhaven Drive

:

Medina, OH 44256

:

Attorney Reg. No. 0062670

:

CONSENT TO DISCIPLINE

Respondent,

:

Medina County Bar Association

:

(BCGD Proc. Reg. § 11)

Certified Grievance Committee

:

93 Public Square

:

Medina, OH 44256

:

Relator.

:

Relator and Respondent consent to discipline pursuant to Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline

Relator filed a one-count complaint against Respondent Albert D. Shirer, with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio ("Board") which was certified by a probable cause panel on September 3, 2014 and timely answered by Respondent. The hearing panel was appointed on September 29, 2014.

Relator and Respondent now enter into this Consent to Discipline Agreement ("Agreement") pursuant to BCGD Proc. Reg. § 11 and stipulate to the admission of the following facts, exhibits, violation of the Code of Professional Responsibility, sanctions, mitigating and aggravating factors.

Relator and Respondent recognize that the terms of this Agreement are conditioned upon acceptance of this Agreement by the Board and ultimately the Supreme Court pursuant to BCGD Proc. Reg. § 11 and Gov. Bar R. V(8)(D).

I. STIPULATED FACTS

1. Albert D. Shirer is an attorney at law duly admitted in the State of Ohio to the practice of law on May 16, 1994, and is currently employed by the Medina County Clerk of Courts, Medina County, Ohio. Due to holding that position, Respondent is not able to practice in the Medina County Common Pleas Court.
2. In 1995, Respondent was retained by Grievant Marie Ann Johns, now known as Marie A. Wise, to obtain the dissolution of her marriage.
3. The Journal Entry of Decree of Dissolution was entered on July 31, 1995 in Medina County Common Pleas Court, Case No. 95 DR 0304, Mark R. Johns and Marie Ann Johns. Ms. Wise was to receive "fifty percent (50%) of any retirement benefits received from Rexroth Worldwide Hydraulics," and Ms. Wise's attorney was to prepare the Qualified Domestic Relations Order (QDRO).
4. Respondent prepared the QDRO, and sent it to the opposing attorney for review.
5. By letter dated September 27, 1995 the opposing attorney sent the modified QDRO for the Rexroth Worldwide Hydraulics retirement benefits to Respondent.
6. Respondent never filed the QDRO with the Medina County Common Pleas Court, nor did he send the QDRO to the husband's employer that had the pension, Rexroth Worldwide Hydraulics.
7. Recently, Grievant Marie Wise contacted Rexroth Worldwide Hydraulics concerning the retirement benefits and determined that the QDRO had not been filed. Respondent failed to complete the QDRO process.
8. Grievant contacted Respondent concerning the QDRO not having been filed. Respondent advised Grievant that due to his current employment he could not file the QDRO. Respondent gave Grievant the name of an attorney that she could contact.
9. Subsequently, Ms. Wise's new attorney filed the QDRO with the Medina County Domestic Relations Court.
10. The current attorney for Ms. Wise's former husband is disputing that some of the retirement benefits existed at the time of the divorce.
11. Rexroth Worldwide Hydraulics does not have records from the time of the divorce.
12. Respondent has paid \$800 of Grievant's legal expenses.

13. Grievant is currently receiving the court ordered retirement benefits.
14. During Respondent's representation of the Grievant, Respondent violated the Ohio Code of Professional Responsibility DR 6-101 entitled "Failing to Act Competently". Specifically, Respondent violated DR 6-101(A)(3): A lawyer shall not neglect a legal matter entrusted to him.

II. STIPULATED EXHIBITS

- EXHIBIT 1:** Decree of Dissolution
- EXHIBIT 2:** Return of QDRO
- EXHIBIT 3:** Docket of Dissolution
- EXHIBIT 4:** Disputed Pension Benefits
- EXHIBIT 5:** QDRO

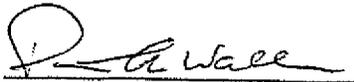
III. STIPULATED VIOLATION AND SANCTIONS

15. Respondent admits one violation of the Ohio Code of Professional Responsibility DR 6-101 entitled "Failing to Act Competently". Specifically, Respondent violated DR 6-101(A)(3): A lawyer shall not neglect a legal matter entrusted to him.
16. Relator and Respondent agree that the sanction should be a public reprimand.

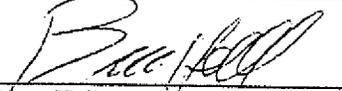
IV. STIPULATED AGGRAVATING AND MITIGATING FACTORS

17. Relator and Respondent stipulate that there are no factors of aggravation as stated in BCGD Proc. Reg. 10(B)(1).
18. Relator and Respondent stipulate the factors in mitigation of BCGD Proc. Reg. 10(B)(2) are: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) timely good faith effort to make restitution or to rectify consequences of misconduct; (d) full and free disclosure to disciplinary Board and cooperative attitude toward proceedings; and (e) good character and reputation.

Respectfully submitted,



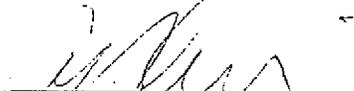
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Consent by e-mail 

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Albert D. Shirer
Ohio Bar No. 0062670
Respondent
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aishirer@hotmail.com

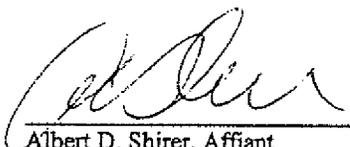
State of Ohio }
 } ss:
County of Medina }

AFFIDAVIT OF ALBERT D. SHIRER

Albert D. Shirer, being first duly sworn and cautioned, who is not under disability, hereby states from his personal knowledge and belief as follows:

1. I am the Respondent in this case now before the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio ("Board") captioned *In Re: Complaint Against: Albert D. Shirer, Respondent, Medina County Bar Association, Certified Grievance Committee, Relator*, Board Number: 2014-060.
2. I was admitted to the practice of law by the Supreme Court of Ohio on May 16, 1994 and am subject to the Ohio Rules of Professional Conduct, the Supreme Court Rules for the Government of the Bar of Ohio, and previously the Code of Professional Responsibility;
3. I admit to the misconduct listed in the stipulations presented to the Board through the Consent to Discipline Agreement ("Agreement") executed between Relator and me which is conditional upon acceptance of the Agreement. The Agreement sets forth all grounds for discipline currently pending before the Board and each stipulation is truthful and constitutes grounds for imposition of sanctions against me;
4. The aggravating and mitigation factors are included in the Consent to Discipline;
5. I agree with the sanction indicated in the Consent to Discipline Agreement ("Agreement");
6. These admissions and those in the Agreement are freely and voluntarily given, without coercion or duress. I am fully aware of the implications of the admissions and agreement on my ability to practice law in Ohio; and
7. I understand the Supreme Court of Ohio has the final authority to determine the appropriate sanction for my misconduct.

FURTHER AFFIANT SAYETH NAUGHT



Albert D. Shirer, Affiant

SWORN TO and subscribed before me on November 24, 2014



Notary Public

My commission expires: Attorney at Law
Comm. Not Expire

Exhibit 1

COMMON PLEAS COURT
IN THE COURT OF COMMON PLEAS
OF JUL 31 AND 51 MEDINA COUNTY, OHIO

In the Matter of:
MARK R. JOHNS
and
MARIE ANN JOHNS

Teresal Robertson
TERESAL ROBERTSON
State of Ohio - Medina Co.
My Commission Expires 11-24-2002

Case No. 95 DR 0304

JUDGE RALPH BERRY

Petitioners.

DECREE OF DISSOLUTION

This matter came on for hearing before the Referee on the
31 day of July, 1995, more than thirty (30)
days and less than ninety (90) days having elapsed after the
filing of the Petition. At that time the parties appeared
personally before the referee and, under oath, testified that
they had voluntarily entered into the Agreement attached to
the Petition, that each Petitioner is satisfied with the terms
of the Separation Agreement and that each Petitioner desires
to have the marriage dissolved.

Upon a review of the testimony of Petitioners, as set
forth, and an examination of the Separation Agreement in
relation thereto, the Court hereby approves the Separation
Agreement submitted by the parties and the copy attached
herewith, marked Exhibit A, and makes it a part of this Decree
as though it were fully set forth herein.

The Court finds that the Petitioners, Mark R. Johns and
Marie Ann Johns, have each been a resident of the State of
Ohio and County of Medina for at least six (6) months
immediately preceding the date of the filing of the Petition
herein.

Exhibit 1

MEDINA COUNTY COURT OF COMMON PLEAS-STATE OF OHIO, MEDINA COUNTY, SS.
I hereby certify that this is a true copy of the original on file in said court.
Witness my hand and the seal of said court at Medina, Ohio this 31
day of July, 1995.
Kathy Fortney
Kathy Fortney, Clerk of Courts
Deputy

The Court finds that the Petitioners were married in Lorain, Ohio on November 20, 1971, and that one child was born issue of said marriage, to wit: Kirk A. Johns, born [REDACTED].

The Court further finds that both Petitioners waived service of summons, being competent to do so.

The Court further finds that the parties hereto acknowledge that Jeffrey L. Bramley, Attorney at Law, represents Mark R. Johns and that Albert D. Shirer, Attorney at Law, represents Marie Ann Johns.

It is therefore, ORDERED, ADJUDGED and DECREED that the marriage existing between the Petitioners be and the same hereby is dissolved, that the parties are hereby relieved from the obligations of their marriage except as hereinafter set forth. Petitioners are ordered to fulfill each and every obligation imposed by the Separation Agreement agreed to by the Petitioners and made a part of this Decree.

H. Ralph A. Berry Jr.
Judge Ralph Berry

APPROVED:

H. Janet Kucera
Referee *mages*

Jeffrey L. Bramley
Attorney for Mark R. Johns
105 West Liberty Street
Medina, Ohio 44256
(216) 723-5400

Albert D. Shirer
Attorney for Marie Ann Johns
805 East Washington St., Suite 110
Medina, Ohio 44256
(216) 723-5297

SEPARATION AGREEMENT

This Agreement made and entered into by and between MARIE ANN JOHNS, hereinafter referred to as "Wife," and MARK R. JOHNS, hereinafter referred to as "Husband":

WITNESSETH:

WHEREAS, MARIE ANN JOHNS and MARK R. JOHNS are husband and wife, having been married at Lorain, Ohio, on the 20th day of November, 1971; and,

WHEREAS, there are no minor children of said marriage;

WHEREAS, unfortunate differences have arisen between the parties and they have separated and are intending to live separate and apart from each other for life, said Husband and Wife desire to, and by these presents, do forever and completely settle and determine:

A. The past, present and future support of each other;

B. The right to any and all property each may have by virtue of their marriage; and,

C. All other benefits and privileges conferred, and all obligations imposed on each by virtue of their marriage relation, or otherwise accruing to either.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and undertakings hereinafter specified, said Husband and Wife agree:

EXHIBIT A

1. SEPARATION. That each shall hereafter continue to live separate and apart from the other, and each shall go his or her own way without direction, control or molestation from the other, the same as though unmarried, and each further agrees not to annoy or interfere with the other in any manner whatsoever.

2. REAL ESTATE. The parties presently own jointly the marital residence located at 3154 N. Park Lane, Medina, Ohio. The parties agree that the present market value of said marital residence is approximately \$165,000.00. The approximate amount due on the mortgage is the sum \$101,000.00.

Wife has recently signed a purchase agreement for the purchase of a condominium and expects to move into the same by June 1, 1995. However, Wife may choose to remain in the marital residence until December 31, 1995, or until the same is sold, whichever is earlier. While Wife remains at the marital residence, she will pay for all utilities and maintenance. Husband will pay fifty percent (50%) of all necessary repairs. Husband will pay the next six (6) months' taxes if the marital residence is not sold when the taxes become due. Husband will also pay Five Hundred Dollars (\$500.00) per month toward the house payment, beginning on the next payment date after the dissolution or divorce decree becomes final. Husband will pay the premiums for the homeowner's insurance until the marital residence is sold.

Upon sale of the house, the net profits will be split equally. The net profits for the purposes of this Agreement shall be defined as the amount remaining after deduction of all expenses of sale, including, but not limited to, escrow fees, document preparation, recording fees, conveyance fees or any other expenses of Husband and Wife as seller.

Should Wife not remain in the marital residence, then Husband may live in the same, but will then be responsible for all utilities, maintenance, necessary repairs, taxes, insurance and the mortgage payments.

The parties hereto also own a time-share condominium on Paradise Island, Bahamas. Wife hereby agrees to quit-claim to Husband all her interest in said time-share. Husband shall assume and pay all indebtedness on said time-share, and shall indemnify and hold Wife harmless for the same.

3. PERSONAL EFFECTS AND POSSESSIONS. Each of the parties hereto will retain as his or her sole property all personal possessions consisting of clothing, jewelry, tools, and personal belongings and effects which each of them now owns, whether purchased or received by way of gift, except as provided elsewhere herein. Husband relinquishes all ownership rights to Wife of the family dog, Abbey.

4. HOUSEHOLD FURNITURE, GOODS, ETC. The parties hereto have previously divided all household goods and furniture.

5. INTANGIBLE PERSONAL PROPERTY. The savings account No. [REDACTED] on deposit at Old Phoenix National Bank in the approximate amount of \$32,000.00 in the joint names of the parties shall be divided as follows: Husband shall receive \$12,000.00, and the balance of approximately \$20,000.00 shall be received by the Wife. Checking account No. [REDACTED] on deposit with Old Phoenix National Bank in the approximate amount of \$6,000.00 of which Husband shall receive \$2,000.00 and Wife shall receive the balance.

6. TAX RETURNS. The parties' 1994 federal and state returns have previously been filed separately and any refunds will be retained by each party. The parties agree to cooperate in the filing of federal, state and local income tax returns for 1995 income, either jointly or as married filing separately, and to file in the manner which will result in the greater overall tax savings.

7. SPOUSAL SUPPORT. Husband agrees to pay Wife the sum of Three Hundred Dollars (\$300.00) per month for thirty-six (36) months as spousal support beginning on the date the dissolution or divorce becomes final. Wife hereby agrees to waive any other spousal support payments to which she may be entitled.

8. RETIREMENT. Each party agrees to relinquish any right they may have to share in the other's retirement benefits,

except that Husband agrees to pay Wife fifty percent (50%) of any retirement benefits received from Rexroth.

9. NON-USE OF OTHER'S CREDIT AND INSTALLMENT OBLIGATIONS

Neither Husband nor Wife shall hereafter incur any debts or obligations upon the credit of the other and each shall indemnify and save the other absolutely harmless of any debt or obligation so charged or otherwise incurred.

Each party agrees to pay any obligation they may have incurred during their marriage. All joint credit card debts of the parties are paid in full.

10. AUTOMOBILES

Husband shall maintain possession of the 1994 Volvo leased in his name. Husband shall pay any debts incurred thereon. Wife shall maintain possession and use of the 1985 Honda Civic titled in her name. Husband agrees to pay the auto insurance on the same until October 1, 1995. Except as stated herein, the parties shall hereafter

hold each other harmless and indemnify the other as to all expenses and debts associated with the ownership or use of such vehicles including, but not limited to, the cost of insurance, maintenance and repairs.

11. LEGAL FEES

Each party shall bear the cost of their own attorneys legal fees. However, if either Husband or wife should default in the performance of any term or provision of this Agreement and the non-defaulting party deems it necessary to engage counsel and institute legal proceedings to effect or

compel performance of any provision of this Agreement, in such event, the court hearing such proceeding shall be empowered and authorized to fix reasonable attorney's fees for the legal services rendered in and on behalf of such complaining party in such proceedings and the defaulting party agrees to pay the legal services so determined.

12. MUTUAL RELEASE. Except as herein provided, each party releases and discharges completely and forever the other from any and all rights of past, present and future support, division of property, right of dower, right to act as administrator or executor in the estate of the other, right of distributive share in the other's estate, right of exemption in the estate of the other, or any other property rights, benefits, or privileges accruing to either party by virtue of said marriage relationship or otherwise, whether the same are conferred by statutory law or the common law of Ohio, or any other state or of the United States. It is the understanding between the parties that this Agreement, except as otherwise provided herein, forever and completely adjusts, settles, disposes of and completely terminates any and all rights, claims, privileges, and benefits that each now has or each may have reason to believe each has against the other, arising out of said marriage relationship or otherwise, and whether same are conferred by the laws of the State of Ohio or of any other

state of the United States which are now, or which may hereafter be, in force and effect.

13. LAW APPLICABLE. All of the provisions of this Agreement shall be construed and enforced in accordance with the applicable laws of the State of Ohio.

14. FULL UNDERSTANDING. Each party fully understands all of the terms herein set forth and that all of said terms represent and constitute the entire understanding between them and that each has read this Agreement and finds the same to be in accordance with his or her understanding, and each does hereby voluntarily execute this Agreement and affix his or her signature hereto in the presence of the witnesses indicated below.

This Agreement is not executed in consideration of a dissolution. It shall not be construed as a consent to any dissolution or "alimony only" proceeding now pending or which may hereafter be instituted.

15. ADVICE OF COUNSEL. Both Husband and Wife acknowledge that they have the right and opportunity to seek advice of legal counsel of their own choosing and that they are entering into this Agreement voluntarily of their own free will.

16. MODIFICATION. This Agreement shall not be altered, changed, or modified, except that it be done in writing, signed by both parties, and any accrued and unpaid installments for the support and maintenance of Wife which

might become due may be modified by the court as it may deem just and fair.

17. INCORPORATION INTO DIVORCE, DISSOLUTION OR ALIMONY DECREE. If either Husband or Wife should institute an action for divorce, dissolution of marriage, or for alimony only, in this state or elsewhere, this Agreement shall be disclosed and presented to the court in such proceeding with the request that it be adjudicated to be fair, just and proper, that this Agreement and all of its terms and provisions shall therein be adopted by said court and embodied in and made a part of the order of said court and the final decree entered in such proceeding.

18. EXECUTION OF NECESSARY DOCUMENTS. Each party shall execute any and all documents and perform any and all acts which may be required and necessary to carry out and effectuate any and all purposes and provisions herein set forth.

19. LIFE INSURANCE. So long as Husband has any obligation for the payment of spousal support to the Wife, Husband shall maintain and keep in full force and effect a policy or policies of insurance which will, upon death of the Husband, pay to the Wife a net amount equal to the declining aggregate spousal support amount which would have been paid over the thirty-six month term of the spousal support as agreed in paragraph 7 herein. Husband's obligation to

maintain such insurance shall cease upon the termination of his obligation under this Agreement to pay spousal support. The parties further agree to maintain all policies of life insurance currently in effect on their respective lives and shall maintain their son and natural child, KIRK A. JOHNS, as the sole beneficiary thereof.

20. WARRANTY AS TO FINANCIAL STATEMENTS. Husband and Wife have furnished to their respective counsel, financial information reflecting the parties' financial condition as of the date of the execution of this Agreement and the parties understand that they have arrived at the settlement set forth in this Agreement on the basis of, and in light of, the information set forth in such financial statements. Husband and Wife represent to each other that such financial statements correctly, accurately, and fully reflect their respective financial condition as of the date of the execution of this Agreement.

IN WITNESS WHEREOF, the parties have affixed their signatures this 26 day of May, 1995, to three (3) copies of this Agreement, each of which constitutes an original.

Signed in the Presence of: APPROVED:

4 Ladies Survey
Christine

J. B.
John

Marie Ann Johns

Mark R. Johns

JOHNS1:C:5/26/95

Exhibit 2

WILLIAMS & BATCHELDER, JOHNSON, BUX & BRAMLEY

ATTORNEYS AT LAW

105 WEST LIBERTY STREET

P.O. BOX 334

MEDINA, OHIO 44258

C. NEVADA JOHNSON, JR.
WM. G. BATCHELDER III
ROBERT J. BUX*
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SENIOR COUNSEL
WM. G. BATCHELDER, JR.
FRANK HEATH (1852-1931)
JOHN A. WEBER (1895-1958)
HAROLD L. WILLIAMS (1807-1881)
*ALSO MEMBER OF
FLORIDA BAR

September 27, 1995

Albert D. Shirer, Esq.
805 East Washington Street, Suite 110
Medina, Ohio 44256

Re: In Re: Mark R. Johns and Marie Ann Johns
(Case No. 95 DR 0304) Medina County Court
of Common Pleas

Dear Al:

Enclosed you will find the executed Quality Domestic Relations Order regarding Rexroth retirement benefits. Please note the change I made at the bottom of page two.

Kindly forward to me a time-stamped copy of the Order once filed.

Sincerely,

Jeffrey L. Bramley

JLB:jmt

Enclosures (2)

J:SHIRER

Exhibit 2

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
MEDINA COUNTY, OHIO

In the Matter of
Dissolution of Marriage of:

Case No. 95DR0304

MARK R. JOHNS

JUDGE RALPH BERRY JR.

and

JUDGMENT ENTRY
QUALIFIED DOMESTIC RELATIONS
ORDER (ODRO)

MARIE ANN JOHNS

This cause is before the Court for determination of rights and orders regarding the interests of the parties in the Rexroth Corporation Woldwide Hydraulics, Mobile Hydraulics Division deferred vested pension benefit payable to Mark R. Johns upon his reaching the age of sixty five (65) years in the form of a life annuity.

The Court being advised that the parties have agreed hereto pursuant to the Separation Agreement and Order of July 31, 1995 in this matter, the Court hereby finds and orders the following:

1. Mark R. Johns is a former participant and has vested unmatured benefits in the Rexroth vested pension benefit life annuity sponsored by Rexroth Corporation and he should be referred to hereinafter as "Participant." Marie Ann Johns shall hereinafter be referred to as "Alternate Payee."
2. The parties were married in Lorain, Ohio on November 20, 1971 and that one child was born issue of said marriage, to wit: Kirk A. Johns, born [REDACTED].
3. The parties having been married more than one year, the Alternate Payee is entitled to be considered a "surviving spouse" pursuant to IRC 417(d).
4. The parties, by separate entry, incorporating this entry by reference, have been awarded a Decree of Dissolution.
5. The Court recognizes the right of Alternate Payee to receive benefits otherwise payable to Participant as this order relates to the provision of spousal support payments.
6. No benefits have been previously assigned from Participant's interest to another Alternate Payee under another order which has been determined to be a Qualified Domestic Relations Order (QRDO).

Judgment Entry
QDRO
Johns Dissolution
Case No. 95DR0304
Page Two of Four Pages

7. The parties and the Court intend this order to meet the requirements of ERISA 206(d)(3) and IRC 414(p) and qualify as a QDRO.

8. The name, mailing address, and Social Security Number of Participant is

Mark R. Johns
1984 Silver Lake Rd.
Arlington Hts., Illinois 60004
Social Security No. [REDACTED]

9. The name, mailing address, and Social Security Number of the Alternate Payee is

Marie Ann Johns
53 Pinewood Drive
Medina, Ohio 44256 Social Security No. _____

The Court orders as follows:

(1) From the benefits otherwise attributable or payable to Participant, the Alternate Payee shall receive directly from the Rexroth Corporation Worldwide Hydraulics, Mobile Hydraulics division, deferred vested pension benefit the following benefits:

- a. Said benefit is described as a "life annuity";
- b. Said benefit is calculated by the Plan Administrator as of July 31, 1995 as being Five hundred Thirty Seven and 81/100s Dollars (\$537.81) per month;
- c. Alternate Payee shall receive fifty percent (50%) of the monthly payment the Participant is entitled to receive;
- d. Said benefit payments are receivable by the Alternate Payee upon the Participant's reaching the age of sixty five (65) years;

(2) In the event Participant dies before the commencement of benefits, Alternate Payee shall be entitled as "surviving spouse" to a pre-retirement survivor annuity or such other benefit provided to the surviving spouse under the plan, limited however to the benefits listed in paragraph (1) c. above.

Judgment Entry
QDRO
Johns Dissolution
Case No. 95DR0304
Page Three of Four Pages

(3) In the event Participant becomes disabled before retirement or before reaching early retirement age, and if Participant's benefits become payable to him at that time, then Alternate Payee's benefits shall also become payable in the same manner as benefits are paid to the Participant as described in paragraph (1)c. as specified above.

(4) In the event Participant elects early retirement and Social Security supplement is paid for early retirement, then any increase in payment made to Participant during the period when such supplement is being paid shall not be taken into account in computing the Alternate Payee's percentage benefit.

(5) In the event the plan terminates before commencement of benefits to Alternate Payee, such benefits shall be paid to Alternate Payee in the same manner that benefits are made payable to participant, other participants and beneficiaries under the termination rules of the plan.

(6) In the event Alternate Payee predeceases the Participant before his benefits pursuant to paragraph (1) become payable, Alternate Payee's benefits shall be paid to the person or persons named by Participant as beneficiary, and in default of designation to Kirk A. Johns.

(7) Alternate Payee hereby designates Albert D. Shirer, Attorney at Law, 805 E. Washington Street, Suite 110, Medina, Ohio 44256 as her representative to receive all notices from the Plan Administrator until such time as the administrator has confirmed that this order meets the requirements of the plan as a qualified order.

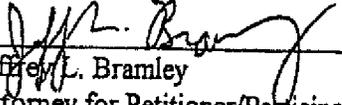
It is further ORDERED that nothing herein shall be construed to require alteration of the amount or form of benefits payable under the Rexroth Corporation Worldwide Hydraulics, Mobile Hydraulics Divisions deferred vested pension benefit life annuity.

Judgment Entry
QDRO
Johns Dissolution
Case No. 95DR0304
Page Four of Four Pages

The Court retains jurisdiction to amend this order for the purpose of meeting any requirements to create, conform, and maintain this order as a Qualified Domestic Relations Order pursuant to the Retirement Equity Act of 1984.

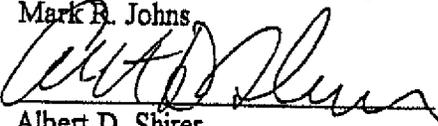
JUDGE

Approved:



Jeffrey L. Bramley
Attorney for Petitioner/Participant

Mark B. Johns



Albert D. Shirer
Attorney for Petitioner/Alternate Payee
Marie Ann Johns

Exhibit 3

General Index Case Detail

Case Information

<u>Case #</u>	<u>Type</u>	<u>Title</u>	<u>Subtype</u>	<u>Status</u>	<u>Filed</u>	<u>Judge</u>
95DR0304	Dom Relations	IN THE MATTER OF: MARK R. JOHNS AND MARIE ANN JOHNS	DISS MAR WITH CHILD	DISPOSED	6/8/1995	RALPH A BERRY JR.

Party Information

<u>Type</u>	<u>Name</u>	<u>Active</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Attention</u>	<u>Phone #</u>	<u>Associations</u>
PEA	BRAMLEY, JEFFREY L	True	105 W LIBERTY ST	MEDINA	OH	44256	WILLIAMS AND BATCHELDER LLP	(330) 725-6666	JOHNS, MARK R. [PET]
APT	JOHNS, MARIE ANN	True	3154 N. PARK LANE	MEDINA	OH	44256			SHIRER, ALBERT D. [APA]
PET	JOHNS, MARK R.	True	3154 N. PARK LANE	MEDINA	OH	44256			BRAMLEY, JEFFREY L [PEA]
APA	SHIRER, ALBERT D.	True	805 E. WASHINGTON STREET SUITE 110	MEDINA	OH	44256		(330) 723-5297	JOHNS, MARIE ANN [APT]

Charge Information

<u>Code</u>	<u>Charge</u>	<u>Sentences</u>
-------------	---------------	------------------

Filing Information

<u>Date</u>	<u>Title</u>	<u>Notes</u>	<u>Document</u>
7/31/1995	COST BILL FILED	FILING: COST BILL FILED	No Document
7/31/1995	ADDENDUM WITHHOLDING NOTICE	FILING: ADDENDUM WITHHOLDING NOTICE	No Document
7/31/1995	NOTICE TO INCOME PROVIDER	FILING: NOTICE TO INCOME PROVIDER	No Document
7/31/1995	DECREE OF DISSOLUTION FILED. 730/310	FILING: DECREE OF DISSOLUTION FILED. 730/310	No Document
7/31/1995	MAGISTRATE'S DECISION	FILING: MAGISTRATE'S DECISION	No Document
6/8/1995	Converted Civil Cost		No Document
6/8/1995	PETITION FOR DISSOLUTION WWAIVER OF SERVICE AND SEPARATION	FILING: PETITION FOR DISSOLUTION WWAIVER OF SERVICE AND SEPARATION AGREEMENT; AND ACKNOWLEDGEMENT FILED.	No Document

Exhibit 3

Exhibit 4

PALECEK, MCILVAINE, HOFFMANN & MORSE CO., L.P.A.

**ATTORNEYS AT LAW
273 MAIN STREET, SUITE 200
WADSWORTH, OHIO 44281-1494**

**THOMAS E. PALECEK
JAMES R. MCILVAINE
LINDA HOFFMANN
MARY JO MORSE
THOMAS J. MORRIS**

BRADLEY J. PROUDFOOT

**TELEPHONE
330-334-1536
MEDINA
330-723-1580
FACSIMILE
330-334-7806**

www.pmhmlaw.com

July 22, 2014

Justin C. Miller
3443 Medina Road, Suite 101-E
Medina, OH 44256

Bosch QDRO Compliance Team
c/o QDRO Consultants
371 Pearl Road
Medina, OH 44256

Re: Mark R. Johns and Marie Ann Johns
Qualified Domestic Relations Order March 17, 2014 regarding Bosch Savings
Incentive Plan

Dear Attorney Miller and QDRO Consultants:

We continue to seek information regarding my client's prior account balances and are in the unfortunate position of trying to prove a negative, that is that there was not a 401(k) plan in existence in 1995 at the time of the dissolution decree and, therefore, no 401(k) benefit is legally available to Marie Ann Johns. At this time I can provide a copy of the October 2004 correspondence announcing the institution of the Bosch Retirement Income Program Incentives Plan (see paragraph 2) and an effective date for the new Bosch Savings Incentive Plan of January 1, 2005 (last paragraph, page 2). Finally I enclose the December 31, 2003, statement of the then existing "Star Plan" showing a December 31, 2003, year end balance of \$22,102.80.

After your review of these documents, Mr. Miller please advise whether you will consent to vacating the previous Qualified Domestic Relations Order as it relates to the 401(k) plan. I understand under this plan administrator QDRO Consultants, that due to a change of record keepers, the current plan administrator is prohibited from retroactive assignments beyond April 1, 2007, and recommends as an alternative resolution negotiation of a modified percentage or dollar amount due to this restriction on the valuation date.

Exhibit 4

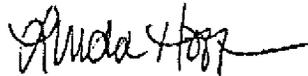
Justin C. Miller
Bosch QDRO Compliance Team
July 22, 2014
Page 2

Based with the documentation that my client had a nominal balance available in the Star Plan prior to the January 1, 2005 establishment of the Bosch Savings Incentive Plan, I am requesting consent to vacate the existing March 17, 2014, QDRO as to the Bosch Savings Incentive Plan. Lacking this consent, I will have no option but to request the court to vacate the order based on this information.

I continue to seek additional information from the Legal Department of Bosch Corporation. However, due to the request for such dated records, research and compliance to respond has been difficult.

I look forward to your prompt response.

Very truly yours,



Linda Hoffmann
Attorney at Law

LH:pls
Enclosures

ROBERT BOSCH CORPORATION

**BOSCH**Telephone: (708) 865-6200
Fax: (708) 865-61302000 South 28th Avenue
Broadview, Illinois 60155-4594Mailing Address:
P.O. Box 4601
Carol Stream, IL 60197-4601

October 2004

Last week, you should have received a letter announcing the new Bosch Retirement Income Program. Today, I am pleased to provide additional information on our new retirement program.

The new *Bosch Retirement Income Program* has two parts: the Bosch Pension Plan and an enhanced 401(k) savings plan called the Bosch Savings Incentive Plan. These plans will replace your current pension and 401(k) savings plans, respectively.

This new program was designed to:

- Ensure our costs and liabilities are manageable, predictable and determinable with a reasonable degree of certainty
- Provide a meaningful retirement benefit that is competitive in the marketplace
- Maintain a common plan structure that removes barriers to internal transfers and is efficient to administer.

This packet includes more information about the new retirement program and how it compares to your current retirement program. You can also use these resources to learn more about managing and saving for your retirement years. Please take the time to review these materials carefully.

- *Welcome brochure.* This brochure provides an overview of the Bosch Retirement Income Program and explains why Bosch is making these changes.
- *Learn brochure.* This brochure describes how the Bosch Pension Plan and the Bosch Savings Incentive Plan work.
- *Act brochure.* This brochure outlines what you need to do now to get the maximum possible benefit from the Bosch Retirement Income Program.
- *How the Bosch Pension Plan Compares to Your Current Pension Plan.* This document is required by Section 204(h) of the Employee Retirement Income Security Act of 1974 (ERISA) when a retirement plan is amended. It explains how the new pension plan compares to your current pension plan and contains examples that show how the new pension plan may affect your total pension plan benefit.

This is an ideal time to review your savings and investment strategy to make sure it meets your retirement income needs. You should take the time to review these materials and share them with members of your family and/or your personal financial planner or advisor. I also encourage you to attend an associate meeting to learn more about this program and get answers to your questions. Look for announcements at your worksite providing dates, times and locations.

Sincerely,

Robert B. Curamina
Senior Vice President, Corporate Human Resources

Helping Build Your Future

Bosch's commitment to quality and excellence extends not only to the products we offer to our customers, but also to the compensation and benefit programs we offer to you. We continually strive to provide programs that are flexible, competitive and comprehensive. With Bosch's benefits, you can evaluate your options and select the choices that make sense for you and your family. At the same time, we must offer programs that support our business goals and help us stay competitive.

Over the past two years, we have reviewed our overall benefit program and found ways to manage costs while maintaining quality. We introduced a common health care platform for all salaried and non-union associates in the U.S. Thanks to this program, we have achieved our cost management objectives — while maintaining the quality of your coverage.

We are now introducing a new retirement program for all Bosch salaried and non-union associates in the U.S. that is designed to achieve similar objectives. The new program is called the Bosch Retirement Income Program, and it is designed to provide you with a meaningful benefit while helping Bosch to manage its costs. With this program, you will have more control over your investments. This means you will also have more personal responsibility for using the program to your full advantage — and taking action to maximize your retirement savings.

The *Bosch Retirement Income Program* will become effective on January 1, 2005. It consists of a new pension plan called the Bosch Pension Plan and an enhanced 401(k) savings plan called the Bosch Savings Incentive Plan. If you are a full-time or part-time associate eligible to participate in the current pension and 401(k) plans, you are immediately eligible to participate in these new plans.

The Changing Nature of Retirement Today

Now that you have learned about the Bosch Retirement Income Program, let us take a moment to consider the nature of retirement today. The retirement landscape is changing — for companies and you. As you consider how you can take full advantage of the retirement benefits Bosch is offering to you, it might be helpful to think about these issues:

- Today's workers want more flexibility to tailor their company-provided retirement benefits to fit their needs and goals. They also want more control over how funds are invested.
- The average worker is not likely to spend his or her entire career with one employer — or even two or three employers. As a result, more and more people are looking for companies that offer portable retirement programs that are easy to transfer from job to job.
- Most people underestimate their retirement income needs. Financial experts say 80% or more of pre-retirement income is needed each year to maintain one's current standard of living during retirement.

In addition to meeting associates' changing needs, Bosch also needs to manage its operating cost to remain a viable and profitable company. To help achieve these objectives, Bosch is introducing a retirement program that ensures that our costs and liabilities are manageable, predictable and determinable with a reasonable degree of certainty. The new retirement program also provides you with a meaningful retirement benefit that is competitive in the marketplace. Remember, this new program shifts Company dollars from the current pension plan to the enhanced 401(k) savings plan — giving you more responsibility for your financial future. This brochure outlines what you need to do now to get the maximum possible benefit from the program.

Exhibit 5

COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS
DOMESTIC RELATIONS DIVISION
MEDINA COUNTY, OHIO

14 MAR 17 AM 11:41

FILED
DAVID B. WAGSWORTH
MEDINA COUNTY
CLERK OF COURTS

MARK R. JOHNS

Case No. 95DR0304

Petitioner

Judge: MARY KOVACK

v.

QUALIFIED DOMESTIC
RELATIONS ORDER
(Bosch Pension Plan)

MARIE ANN JOHNS

Respondent

This matter came to be heard on July 31, 1995 before Magistrate Janet Kleckner. Pursuant Section 8 of Exhibit A to the Divorce Decree signed by the Honorable Judge Ralph A. Berry, Jr., this Qualified Domestic Relations Order (hereinafter "QDRO") shall address the distribution of 50% of Mark R. John's retirement accounts, vested from the initial date of employment until the date the Parties' Decree of Dissolution was entered on July 31, 1995.

IT IS HEREBY ORDERED AS FOLLOWS:

Effect of This Order as a Qualified Domestic Relations Order: This Order creates and recognizes the existence of an Alternate Payee's right to receive a portion of the Participant's benefits payable under an employer-sponsored defined contribution plan that is qualified under Section 401 of the Internal Revenue Code (the "Code") and the Employee Retirement Income Security Act of 1974 ("ERISA"). It is intended to constitute a Qualified Domestic Relations Order ("QDRO") under Section 414(p) of the Code and Section 206(d)(3) of ERISA.

Participant Information: The name, last known address, social security number and date of birth of the plan "Participant" is:

Name: Mark Randall Johns ("Participant")

Address: 330 Parkside Drive - Simpsonville, NC 29681

Social Security Number: ~~xxx-xx-1~~

Birth Date: 7/20/49

Alternate Payee Information: The name, last known address, social security number and date of birth of the "Alternate Payee" is:

Name: Marie Wise f/k/a Marie Johns ("Alternate Payee")

Address: 5058 Ruby flats Drive - Wimauma, FL 33598

Social Security Number: ~~xxx-xx-1~~

Exhibit 5

Birth Date: 1/25/51

Alternate Payee's Attorney Information:

Name of Attorney: Justin C. Miller, Esq.

Address: 3443 Medina Road, Suite 101-E - Medina, OH 44256

Phone: 330-952-1780

The Alternate Payee shall have the duty to notify the plan administrator in writing of any changes in his/her mailing address subsequent to the entry of this Order.

Plan Name: The name of the Plan to which this Order applies is the *Bosch Pension Plan* (hereinafter referred to as "Plan"). Further, any successor plan to the Plan or any other plan(s), to which liability for provision of the Participant's benefits described below is incurred, shall also be subject to the terms of this Order. Also, any benefits accrued by the Participant under a predecessor plan of the employer or any other defined benefit plan sponsored by the Participant's employer, where liability for benefits accrued under such predecessor plan or other defined benefit plan has been transferred to the Plan, shall also be subject to the terms of this Order.

Any changes in Plan Administrator, Plan Sponsor or name of the Plan shall not affect Alternate Payee's rights as stipulated under this Order.

Pursuant to State Domestic Relations Law: This Order is entered pursuant to the authority granted in the applicable domestic relations laws of the State of Ohio.

For Provision of Marital Property Rights and/or Spousal Support: This Order relates to the provision of Marital Property Rights to the Alternate Payee as a result of the Order of Divorce between Participant and Alternate Payee.

Amount of Alternate Payee's Benefit Based on a "Percentage" of Participant's Accrued Benefit as of the date of divorce: This Order assigns to Alternate Payee an amount equal to the actuarial equivalent of 50% of the Participant's Accrued Benefit under the Plan as of July 31, 1995, and as may be further adjusted to incorporate any actuarial adjustments necessary for early commencement, optional benefit forms or the adjustment of payments to the life expectancy of the alternate payee.

In addition to the above, the Alternate Payee shall not receive a pro-rata share of any post-retirement cost of living adjustments or other economic improvements made to the Participant's benefits on or after the date of his/her retirement. Such pro-rata share shall be calculated in the same manner as the Alternate Payee's share of the Participant's retirement benefits is calculated pursuant to this Section.

Commencement Date and Form of Payment to Alternate Payee: The Alternate Payee may elect to commence his/her benefits under the Plan as of the earliest retirement date on which the Participant is eligible to commence benefits under the Plan. The Alternate Payee may elect to receive his/her benefits in any one of the allowable benefit options permitted under the terms and provisions of the Plan, other than a Qualified Joint & Survivor Annuity with his/her current spouse as the beneficiary.

The form of benefit elected by the Alternate Payee is to be based on the life expectancy of such Alternate Payee. Any actuarial adjustment which might be necessary to convert Alternate Payee's benefits to one based on his/her lifetime should be applied to the Alternate Payee's benefits.

Further, should any early commencement reduction be necessary in the event that the Alternate Payee commences his/her benefits prior to Participant's Normal Retirement Date, then such reduction shall be applied to Alternate Payee's benefits based on the Plan's definition of actuarial equivalence, in effect at the time that benefits to the Alternate Payee commence.

Death of the Participant: In the event the Participant predeceases the alternate payee either before or after her benefit commencement date, his/her death will have no effect on the Alternate Payee's right to receive his/her assigned share of the benefits.

Death of Alternate Payee: In the event the Alternate Payee predeceases the Participant prior to the commencement of his/her benefits, the Alternate Payee's portion of Participant's benefits, as stipulated herein, shall be forfeited. Should the Alternate Payee predecease the Participant after his/her benefit commencement date, then such remaining benefits, if any, shall be paid in accordance with the form of benefit elected by such Alternate Payee.

Savings Clause: This Order is not intended, and shall not be construed in such a manner as to require the Plan:

- (a) to provide any type or form of benefit option not otherwise provided under the terms of the Plan;
- (b) to require the Plan to provide increased benefits determined on the basis of actuarial value; or
- (c) to require the payment of any benefits to the alternate Payee that are required to be paid to another alternate payee under another order that was previously deemed to be a QDRO.

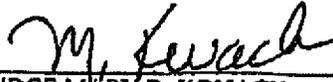
Certification of Necessary Information: All payments made pursuant to this Order shall be conditioned on the certification by the Alternate Payee and the Participant to the Plan Administrator of such information as the Plan Administrator may reasonably require from such parties to make the necessary calculation of the benefit amounts contained herein.

Tax Treatment of Distributions Made Under This Order: For purposes of Sections 402(a)(1) and 72 of the Internal Revenue Code, any Alternate Payee who is the spouse or former spouse of the Participant shall be treated as the distributee of any distribution or payments made to the Alternate Payee under the terms of this Order, and as such, will be required to pay the appropriate federal income taxes on such distribution.

Continued Jurisdiction: The Court shall retain jurisdiction with respect to this Order to the extent required to maintain its qualified status and the original intent of the parties as stipulated herein.

Correcting or Terminating Payments: The Plan will retain any rights it may have under its terms to suspend or terminate payments to Alternate Payee and Participant provided that either Participant or Alternate Payee may contest such suspension or termination through any administration remedies available under the Plan. Payments by the Plan pursuant to this Order will be without prejudice to any right the Plan has under applicable law to seek recoupment or offset for overpayment. If the Plan pays

one party a portion of the other party's benefits under the Plan and this Order, the party receiving the overpayment will return that portion to the Plan, which in turn, will pass that portion on to the other Party.



JUDGE MARY R. KOVACK

Submitted by:



Justin C. Miller, Esq (0083276)
Counsel for Marie Ann Johns n/k/a Marie Ann Wise
3443 Medina Road, Suite 101-E
Medina, Ohio 44256
(330) 952-1780 Phone
(330) 952-1779 Fax
justin@millerlegalohio.com
www.millerlegalohio.com

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

FILED

NOV 25 2014

BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE

In re: :
Complaint Against: : **Board No. 2014-060**
Albert D. Shirer :
Respondent, : **Memorandum in Support of**
: **Public Reprimand**
Medina County Bar Association :
Certified Grievance Committee :
Relator. :

The Relator, Medina County Bar Association Certified Grievance Committee, recommends that the Respondent be publicly reprimanded for a single violation of DR 6-101(A)(3). Respondent has admitted that he neglected a legal matter entrusted to him. Respondent failed to file an agreed Qualified Domestic Relations Order (QDRO) with the Medina County Domestic Relations Court and with the entity that administered the pension. As a result, Respondent's client has incurred stress, aggravation and increased legal fees in the client's efforts to remedy the situation that Respondent has put her in.

FACTS

Specifically, in 1995, Respondent was retained by Grievant Marie Ann Johns, now known as Marie A. Wise, to obtain the dissolution of her marriage. The Journal Entry of Decree of Dissolution was entered on July 31, 1995 in Medina County Common Pleas Court, Case No. 95 DR 0304, Mark R. Johns and Marie Ann Johns. Ms. Wise was to receive fifty percent (50%) of any retirement benefits received from Rexroth Worldwide Hydraulics, and Ms. Wise's attorney, Respondent, was to prepare the QDRO. Respondent prepared the QDRO and sent it to the opposing attorney for review. By letter dated September 27, 1995, the opposing attorney sent

the modified QDRO for the Rexroth Worldwide Hydraulics retirement benefits to Respondent. Respondent never filed the QDRO with the Medina County Common Pleas Court nor did he send the QDRO to the husband's employer. After Ms. Wise found out that the QDRO had not been filed, Ms. Wise's new attorney filed the QDRO with the Medina County Domestic Relations Court. The current attorney for Ms. Wise's former husband is disputing that some of the retirement benefits existed at the time of the divorce.

Respondent has paid \$800 of Grievant's legal expenses, which may be the total amount that Grievant owes her new attorney for resolving the retirement benefits issue.

Respondent admits one violation of the Ohio Code of Professional Responsibility DR 6-101(A)(3): A lawyer shall not neglect a legal matter entrusted to him.

Relator and Respondent stipulate that the factors in mitigation of BCGD Proc. Reg. 10(B)(2) are: (a) absence of a prior disciplinary record; (b) absence of a dishonest or selfish motive; (c) timely good faith effort to make restitution and to rectify consequences of misconduct; (d) full and free disclosure to disciplinary Board and cooperative attitude toward proceedings; and (e) good character and reputation. Further, there are no aggravating factors.

SANCTIONS FOR VIOLATION OF DR 6-101(A)(3)

The Ohio Supreme Court considers duties violated, actual or potential injury, attorney's mental state, and the aggravating and mitigating factors listed in BCGD Proc. Reg. 10 when determining the proper sanction for attorney misconduct. *Cuyahoga Cty. Bar Assn. v. Leneghan*, 117 Ohio St.3d 103, 2008-Ohio-506, 881 N.E.2d 1241, ¶10. Based on those elements, a public reprimand is suggested as the proper sanction in this case.

Public reprimands have been previously imposed on attorneys who have engaged in violations of DR 6-101(A)(3) more harmful to the clients than the misconduct of Respondent.

See, e.g., *Id.* at ¶13 and 18. In *Leneghan*, respondent filed an appeal for the grievant, but did nothing more. *Id.* at ¶7. The Supreme Court determined that Respondent's neglect cost his client the opportunity to challenge the criminal conviction. *Id.* at ¶13.

Leneghan had no prior disciplinary record and did not act from a selfish and dishonest motive, both mitigating factors. However, Leneghan failed to acknowledge his wrongdoing. *Id.* at ¶14. Ultimately, the Supreme Court imposed a public reprimand for Leneghan's violation of DR 6-101(A)(3). *Id.* at ¶18.

Like in *Leneghan*, the present Respondent has no prior disciplinary record and did not act from a dishonest or selfish motive. However, unlike the Respondent in *Leneghan*, the Respondent in this case has timely made a good faith effort to make restitution, provided full and free disclosure, and exhibited a cooperative attitude toward the disciplinary proceedings. Further, the consequences of the present Respondent's misconduct were not as dire as in *Leneghan*. Therefore, it is reasonable that the present Respondent would also receive the least severe sanction available, a public reprimand.

In *Disciplinary Counsel v. Dundon*, the attorney was publicly reprimanded for professional misconduct including a violation of DR 6-101(A)(3) for neglecting a client matter, failing to regularly communicate with the client, and failing to timely respond to requests for a refund of the attorney fees. 129 Ohio St.3d 571, 2011-Ohio-4199, 954 N.E. 2d 1241, at ¶22. There were no aggravating factors present. The mitigating factors were that the respondent had no disciplinary record, had not acted with a dishonest or selfish motive, had acknowledged his wrongful conduct, had cooperated during the disciplinary process, and had made full restitution to his client. Further there seemed to be little risk of repetition of danger to the public as the misconduct only involved one client and Dundon had closed his law practice. *Id.* at ¶9 and 29.

Similarly, in the present case, there are no aggravating factors present, and several similar mitigating factors. Further, like in *Dundon*, there seems to be little risk of repetition of danger to the public since the present misconduct also involved a single client and the Respondent is not in the private practice of law. The *Dundon* sanction of a public reprimand is appropriate for the present Respondent.

In *Johnson* there was only misconduct in a single client matter. Several mitigating factors were present (no prior disciplinary record, no evidence of a selfish motive, candidly cooperated during the disciplinary proceedings, admitted the ethical breaches, and expressed deep remorse for the consequences to the client). *Cuyahoga Cty. Bar Assn. v. Johnson*, 123 Ohio St.3d 65, 2009-Ohio-4178, 914 N.E. 2nd 180, ¶11. The respondent failed to respond to court filings, failed to appear in court on a client's behalf, and failed to advise the client that she had no professional liability insurance. *Id.* at ¶2. Johnson neglected a series of responsibilities toward the client and made no restitution. *Id.* at ¶12. Despite that, Johnson received a public reprimand. *Id.* at ¶15.

The subject Respondent's misconduct was not as great as that in *Johnson* and there were no aggravating factors. As was also shown by the two previously cited cases, *Leneghan* and *Dundon*, the appropriate sanction in this case is a public reprimand. *Johnson*, *Leneghan* and *Dundon* engaged in misconduct more injurious to their clients than that of the present Respondent and/or had aggravation factors which the present Respondent does not have and they received public reprimands for violating DR 6-101(A)(3).

SANCTIONS FOR VIOLATION OF PROF. COND. RULE 1.3

The Rules of Professional Conduct corresponding violation to DR 6-101(A)(3) is Prof. Cond. R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client). There

have been public reprimands imposed on attorneys who have engaged in multiple acts of misconduct in violation of Prof. Cond. Rule 1.3. See, e.g., *Columbus Bar Assn. v. Bhatt*, 133 Ohio St.3d 131, 2012-Ohio-4230, 976 N.E.2d 870.

In *Bhatt*, the court imposed a public reprimand on the respondent for neglecting two client matters, failing to keep those clients reasonably informed, and failing to notify them that respondent's professional liability insurance lapsed. *Bhatt* at ¶2 and 19. One of the acts of misconduct involved Bhatt's failure to submit an agreed journal entry in a custody matter. *Id.* at ¶13. The custody case was dismissed and grievant and her son were unable to obtain custody or visitation with the grievant's grandchild. *Id.* at ¶14. That misconduct was similar to Respondent's misconduct.

Bhatt did not have any prior discipline, cooperated in the disciplinary proceedings, acknowledged wrongdoing, had no selfish or dishonest motive, and had a reputation for good character. No aggravating factors were present. However, in *Bhatt* there were multiple acts of misconduct and two clients were harmed. Unlike in *Bhatt*, the present case involves only a single act of misconduct with a single client. As Bhatt received a public reprimand, the Respondent in the present case should receive a public reprimand.

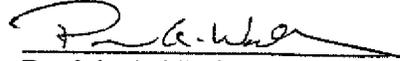
In *Trumbull Cty. Bar Assn. v. Rucker*, the Supreme Court imposed a public reprimand as a sanction for multiple acts of misconduct. 134 Ohio St.3d 282, 2012-Ohio-5642, ¶1 and 6. Rucker neglected a client matter, failed to reasonably communicate with a client, failed to deposit a client's funds in an interest-bearing client trust account, and charged the client a "nonrefundable" fee without advising the client in writing that the client may be entitled to a refund of the fee. *Id.* at ¶1.

Rucker had the same mitigating factors and lack of aggravating factors as in the present case. *Id.* at ¶4. As the *Rucker* court imposed a public reprimand for more than one count of misconduct, so should a public reprimand be imposed when there is only one act of misconduct as in the present case.

Lastly, in *Toledo Bar Assn. v. Hetzer*, Hetzer had committed multiple violations of the Rules of Professional Conduct by (1) improperly deducting his legal fee from funds he held in trust for a client and the client's spouse, (2) failing to safeguard the remaining escrowed funds, (3) failing to timely deposit client funds into the trust account, (4) failing to reconcile the trust account on a monthly basis, and (5) failing to maintain accurate accounting statements of the client trust account. 137 Ohio St.3d 572, 2013-Ohio-5480, ¶1. Hetzer had similar mitigating factors and no aggravating factors, as in this case. Despite having multiple ethical violations, Hetzer received a public reprimand. *Id.* at ¶15. Unlike in *Hetzer*, *Rucker* or *Bhatt*, the present case involves only a single act of misconduct with a single client rather than several acts of misconduct and/or multiple clients injured.

A public reprimand would be the appropriate sanction for Respondent whether the case law under the Code of Professional Responsibility or the case law under the Rules of Professional Conduct is analyzed.

Respectfully submitted,

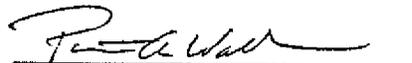


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CERTIFICATE OF SERVICE

On the 24th day of November, 2014 this Memorandum in Support of Public Reprimand was mailed by U.S. Mail to Bruce Hall, Bruce Hall Co., LPA, 229 West Liberty Street, Medina, Ohio 44256.



Patricia A. Walker