

**IN THE SUPREME COURT OF OHIO**

<b>Disciplinary Counsel,</b>	:	<b>Case No. 14-1905</b>
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<b>Relator,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>Angela Rochelle Stokes,</b>	:	
	:	
<b>Respondent.</b>	:	
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**RESPONDENT’S MOTION TO RESTRICT FROM PUBLIC ACCESS RESPONDENT’S FORTHCOMING MOTION FOR MODIFICATION AND ALL EXHIBITS ATTACHED THERETO**

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Now comes the Respondent, The Honorable Angela Rochelle Stokes, and pursuant to Sup. R. 45(E), hereby moves this Honorable Court to restrict from public access Respondent’s Forthcoming Motion for Modification and its Exhibits, which Respondent is prepared to file on Tuesday, January 20, 2015, which is Respondent’s request modify this Honorable Court’s Order, dated December 18, 2014, granting Relator’s Motion for an Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a).

Respondent respectfully asserts that clear and convincing evidence exists in support of this request, and as such, respectfully requests that this Honorable Court grant her Motion to Restrict from Public Access the anticipated filing of Respondent’s Motion for Modification and all of its Exhibits. Further reasons in support of this Motion are more fully set forth in the Brief in Support attached hereto and incorporated herein.

## **BRIEF IN SUPPORT**

Respondent's Motion for Modification and its Exhibits, which Respondent is prepared to file on Tuesday, January 20, 2015, contains large amounts of confidential/ privacy sensitive information including, but not limited to, copies of the Clerk of Courts case files and/or Probation/Psychiatric Reports related to such files. Respondent anticipates submitting many of these documents to this Honorable Court so that it has full and complete information about various incidents alleged by Relator in its Motion for Immediate Interim Remedial Suspension. It was necessary for Respondent to discuss this information and attach the various Exhibits to her Motion so that this Court would have the necessary information to evaluate the alleged conduct, which has formed the basis of Relator's Motion for Immediate Interim Remedial Suspension, and this Honorable Court's December 18, 2014 Order granting the same.

Many of the arguments set forth in Respondent's forthcoming Motion for Modification contain possible personal identifiers, confidential information and/or other sensitive information. Given that said information compromises large sections of the argument sections of the instant Motion, redacting the information pursuant to S.Ct.Prac.R. 3.12(B) would defeat the purpose of the information's inclusion within the present Motion altogether. As such, Respondent requests that this Honorable Court employ its discretion under Sup.R. 45(E) to restrict public access to Respondent's forthcoming for Motion and all of the Exhibits attached thereto.

## **LAW & ARGUMENT**

This Honorable Court should grant Respondent's Motion to Restrict From Public Access the forthcoming Respondent's Motion for Modification and its Exhibits because, on balance, the presumption of public access is outweighed by the large amounts of information contained within the Motion and its Exhibits that is exempt from public disclosure under state law, public

disclosure could violate individuals' privacy rights and interests, and removal from public access is the least restrictive means available to protect these interests.

Sup.R. 45(E) provides in pertinent part:

(1) Any party to a judicial action or proceeding or other person who is the subject of information in a case document may, by written motion to the Court, request that the Court restrict public access to the information or, if necessary, the entire document. Additionally, the Court may restrict public access to the information in the case document or, if necessary, the entire document upon its own Order. The Court shall give notice of the motion or Order to all parties in the case. The Court may schedule a hearing on the motion

(2) A Court shall restrict public access to information in a case document or, if necessary the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following (a) Whether public policy is served by restricting public access; (b) Whether any State, Federal, or common law exempts the document or information from public access; (c) Whether factors that support restriction of public access exists, including risk of injury to persons, individual privacy rights and interest, proprietary business information, public safety, and fairness of the adjudicatory process.

(3) When restricting public access to a case document or information in a case document pursuant to this division, the court shall use the least restrictive means available including but not limited to the following: (a) Redacting the information rather than limiting public access to the entire document.

Under Sup.R. 45, there is a presumption of public access to court records. Sup.R. 44(B) provides that a "court record" means both a case document and administrative document. Sup.R.

44(C) provides in part that:

- (1) "Case document" means a document and information in a document submitted to a court or filed with a clerk of court in a judicial action or proceeding, including exhibits, pleadings, motions, orders, and judgments, and any documentation prepared by the court or clerk in the judicial action or proceeding, such as

journals, dockets, and indices, subject to the exclusions in division (C)(2) of this rule.

- (2) The term "Case document" does not include the following:
- (a) A document or information in a document exempt from disclosure under state, federal, or the common law;
  - (b) Personal identifiers, as defined in division (H) of this rule;
  - (c) A document or information in a document to which public access has been restricted pursuant to division (E) of Sup.R. 45;
  - (d) Except as relevant to the juvenile's prosecution later as an adult, a juvenile's previous disposition in abuse, neglect, and dependency cases, juvenile civil commitment files, post-adjudicatory residential treatment facility reports, and post-adjudicatory releases of a juvenile's social history;
  - (e) Notes, drafts, recommendations, advice, and research of judicial officers and court staff;
  - (f) Forms containing personal identifiers, as defined in division (H) of this rule, submitted or filed pursuant to division (D)(2) of Sup.R. 45;
  - (g) Information on or obtained from the Ohio Courts Network, except that the information shall be available at the originating source if not otherwise exempt from public access.

R.C. § 2947.06, regarding testimony in mitigation of sentencing, presentence investigation reports and psychological reports provides in part that:

- (A) (2) The provisions of section 2951.03 of the Revised Code shall govern the preparation of, the provision, receipt, and retention of copies of, the use of, and the confidentiality, nonpublic record character, and sealing of a presentence investigation report prepared pursuant to division (A) (1) of this section.

R.C. § 2951.03, regarding presentence investigation reports in felony cases provides in that:

- (D)(1) The contents of a presentence investigation report prepared pursuant to this section, section 2947.06 of the Revised Code, or Criminal Rule 32.2<sup>1</sup> and the contents of any written or oral summary of a presentence investigation report or of a part of a presentence investigation report described in division (B)(3) of this section are confidential information and are not a public record.

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<sup>1</sup> Crim.R. 32.2 provides: In felony cases the court shall, and in misdemeanor cases the court may, order a presentence investigation and report before imposing community control sanctions or granting probation.

(3) Except when a presentence investigation report or a written or oral summary of a presentence investigation report is being used for the purposes of or as authorized by Criminal Rule 32.2 or this section, division (F)(1) of section 2953.08, section 2947.06, or another section of the Revised Code, the court or other authorized holder of the report or summary shall retain the report or summary under seal.

Further, Ohio's public record statute R.C. § 149.43(A)(1) excludes from the definition of "public records," "records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions."

Therefore, although probation reports and presentence investigation reports are arguably case documents within Sup.R. 44(B) they are specifically excluded in Sup. R. 44(C)(2)(a) because all such reports are exempt from disclosure under ORC § 2951.03(D)(1) and (2) and ORC 149.43(A)(1).

Many Ohio courts recognize that probation reports, presentence investigation reports and the records pertaining to probation proceedings or relied on to compile such reports are confidential. *State ex rel. Mothers Against Drunk Drivers v. Gosser*, 20 Ohio St. 3d 30, 32, fn. 2, 485 N.E.2d 706 (1985); *In re Special Grand Jury Investigation Concerning Organic Techs.*, 74 Ohio St. 3d 30, 656 N.E. 2d 329 (1995); *State, ex rel. Hadlock v. Polito*, 74 Ohio App.3d 764, 767, 600 N.E.2d 709 (Eighth Dist. Cuy Cty.1991); *State ex rel. Normand v. Wilkinson*, 1995 Ohio App. LEXIS 5257, 1995 WL 705204, Franklin App. No. 95APE05-563, (Nov. 28, 1995); *See also State ex rel. Lipschutz v. Shoemaker*, 49 Ohio St.3d 88, 551 N.E.2d 160 (1990) (holding that documents the parole board may have reviewed are also exempt from disclosure as they "pertain to parole proceedings"); *Curtis v. Ohio Adult Parole Auth.*, 2006-Ohio-15 (10<sup>th</sup> Dist. 2006) (holding that records including medical reports relied upon by a parole authority were documents pertaining to parole proceedings and therefore not not public records subject to

inspection under R.C. 149.43(A)(1)). In *State, ex rel. Hadlock v. Polito, supra*, the Eighth District Court of Appeals, applying the logic of *Lipschutz*, held that records pertaining to probation proceedings or relied on to compile a presentence report are not a public record.

In the present matter, it is respectfully asserted that all personal identifiers, probation reports, presentence investigation reports and all records relied on to compile such reports including psychiatric, psychological or other medical reports contained within Respondent's Motion and its Exhibits are exempt from disclosure under Sup.R. 44(C)(2)(a) – (b), R.C. § 2951.03(D)(1) and (2) and R.C. 149.43(A)(1).

In addition, Respondent respectfully asserts that restricting public access to the anticipated filing of Respondent's Motion for Modification and its Exhibits is the least restrictive means available to protect the privacy interests of the various individuals discussed therein. While redacting information such as personal identifying numbers would normally be sufficient, many of Respondent's anticipated substantive arguments require discussion of confidential information pertaining to various individuals. This information includes, but is not limited to, the discussion of probation reports, psychiatric reports, pre-and post sentencing reports, probation updates and the underlying information relied upon for each.

Respondent has made all reasonable efforts to redact any and all personal identifying information, including, but not limited to, social security numbers and driver's license numbers, contained within Respondent's Motion for Modification and its Exhibits. However, as mentioned above, redacting entire portions of Respondent's arguments which discuss these matters would prevent the Respondent from fully articulating her arguments because she would not be able to present the full facts and background which refute the Relator's allegations.

For instance, to respond to the Relator's allegations concerning the number of court appearances that individuals had before the Respondent, it is necessary to utilize pre-sentence reports, probation reports, and/or psychiatric reports to determine the reasons behind the various court dates.

As such, the most expeditious and thorough way, and surely the least restrictive way, to protect any potential privacy rights and interests of individuals who are the subject of the various case files and Probation/Psychiatric Reports and other confidential/ privacy sensitive documents is to restrict public access to Respondent's anticipated Motion for Modification and all of its Exhibits.

WHEREFORE, Respondent, The Honorable Angela R. Stokes, respectfully requests that this Honorable Court grant her Motion to Restrict from Public Access her Motion for Modification, and all Exhibits attached thereto, which Respondent anticipates filing on Tuesday, January 20, 2015, which is Respondent's request to modify this Honorable Court's Order, dated December 18, 2014, granting Relator's Motion for an Immediate Interim Remedial Suspension Under Gov. Bar R. V(5a).

Respectfully Submitted,



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**CERTIFICATE OF SERVICE**

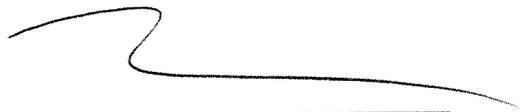
A copy of the foregoing **RESPONDENT'S MOTION TO RESTRICT FROM PUBLIC ACCESS RESPONDENT'S FORTHCOMING MOTION FOR MODIFICATION AND ALL EXHIBITS ATTACHED THERETO** has been filed via e-filing with the Supreme Court of Ohio and a service copy e-mailed this 20<sup>th</sup> day of January, 2015 to:

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