

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel)	Case No. 2015-1316
)	
Relator)	
)	
vs.)	OBJECTIONS FILED BY
)	RESPONDENT PHILLIPS
)	TO THE BOARD OF PROFESSIONAL
Sam Patrick Cannata and)	CONDUCT REPORT
Gerald Wayne Phillips)	
)	
Respondents)	(Disciplinary Proceedings- Board of
)	Professional Conduct Case No. 14-091)

**OBJECTIONS FILED BY RESPONDENT PHILLIPS TO THE BOARD OF
PROFESSIONAL CONDUCT REPORT**

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Now Comes the Respondent Gerald Wayne Phillips (“Phillips”) who does hereby submits his Objections to the Findings of Fact, Conclusions of Law and Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio (“Board”) together with his Brief In Support (“Objections”) as follows:

INTRODUCTION

The Parties have submitted a significant number of Stipulated Facts together with a number of Stipulated Exhibits to the Board.¹ In addition to the Stipulated Facts and Stipulated Exhibits, the Panel held an abbreviated hearing on June 4, 2015, to get additional testimony, evidence, information and explanation of the facts, circumstances surrounding these facts, and to ask questions of the Respondents concerning their reasons and explanation for their actions and

¹ Reference to these Stipulated Facts shall be to the specific Paragraph Number for each Respondent; Reference to the Stipulated Exhibits shall be to the specific Exhibit Number for each Respondent; Generally, references shall be to the Stipulated Facts and Stipulated Exhibits for Respondent Phillips, although some of these have corresponding paragraphs and numbers as they pertain to Respondent Cannata

conduct.² The hearing was held to assist the panel members in ascertaining the specific violations.³

There has been asserted against Respondent Phillips in the Board's Report three violations: 1) Count I: RPC 7.5 (d) ["Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact"]; 2) Count I: RPC 1.7 (a) (2) ["A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies: 2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by the lawyer's own person interests"]; and 3) Count III: RPC 1.7 (a) (2) ["A lawyer's acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies: 2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person, or by the lawyer's own person interests"]. Furthermore, the Board has made a recommendation of a six (6) month stayed suspension for the Respondent Phillips.

The principal basis for the Respondent Phillips Objections is not the Findings of Fact, which have been substantially stipulated to by the Parties, but the application of the Findings of Facts and the resulting Conclusions of Law arrived at from the Findings of Facts, and the Board's Recommendation of Sanctions. This disciplinary case involves unique issues of law,

² Reference to the Hearing shall be to the Transcript, Page Number;

³ Judge Klatt: "It may have been that Larry dealt with this in terms of why we are even here today, the problem we had with the proposed consent, and I will just speak for myself. Reading the proposed consent I couldn't figure out exactly what the violation was. We have all these complicated facts and the stipulated violations without connecting them up." (Tr. 153)

and novel issues of law, and a complex set of facts in which to apply them.⁴ Respondent Phillips will specifically present his Objections to each of these matters as argued below.

PARTIES

Mr. Phillips has practiced law from on or about June 24, 1980 until present through Phillips & Co. LPA, a professional corporation in which he has been the sole shareholder throughout its entire existence. (Phillips Stipulation 3). Mr. Phillips, through his law practice Phillips & Co. LPA, rendered legal services to BCS during the period between 2009 and May 2011. (Phillips Stipulation 9)

Vista Way Partners, LLC (“Vista Way”) is an Ohio limited liability company. Snider Interests LLC (an entity that, since approximately 2008, was owned by Robin Snider) and Cannata Vista Way LLC (an entity whose beneficial ownership is owned by Jill Cannata) are the members of Vista Way with each having a 50% membership interest. At all relevant times herein, Mr. Cannata and Robin Snider served as managers of Vista Way. [Phillips Stipulation 7 (a)] (See Board 19)⁵

Snider Cannata Property Management LLC (“SCPM”) is an Ohio limited liability company (See Operating Agreement, Phillips Ex.4). Mr. Cannata and Mr. Snider were the members of SCPM with each having a 50% membership interest. They were also co-managers of SCPM. SCPM managed all real properties owned by Vista Way. [Phillips Stipulation 7 (b)] (See Board 19)

Bridgeview Center South LLC (“BCS”) is an Ohio limited liability company. Snider

⁴ The application of the *Dana* test in a disciplinary case, whereas it has been generally applied in disqualification cases; The application of RPC 1.13 with respect to an organization client, and its constituents; A “management deadlock: in a statutory dissolution

⁵ Reference to Board is to the paragraph number in the Findings of Fact, Conclusions of Law, and Recommendation of the Board;

Interests LLC and Cannata-Infinity LLC (an entity whose beneficial ownership is owned by Jill Cannata) are the members of BCS with each having a 50% membership interest. At all relevant times herein, Mr. Cannata and Robin Snider served as managers of BCS. [Phillips Stipulation 7 (c)]

During the mid-1990's, Mr. Cannata and David Snider formed several real estate and property management companies together which owned and operated several parcels of real property in Northeast Ohio. (Phillips Stipulation 5) Robin Snider is David Snider's wife. (Phillips Stipulation 6) In or around January 2008, David Snider legally divested himself of all ownership interest in and management rights to Vista Way, BCS, and Snider Interests, LLC, transferring those ownership/management rights and interests to Robin Snider, his wife. (Phillips Stipulation 8) During 2008, the real estate market suffered a significant downturn which had a significant negative impact on business entities in the real estate market which were owned by Mr. Cannata and/or Jill Cannata, David Snider and/or Robin Snider. (Phillips Stipulation 10)

**COUNT I: RPC 1.7 (a) (2)
(Vista Way Eviction)**

A. Findings of Facts

1) Eviction Proceedings

On July 13, 2012, at 8:38 AM, Mr. Phillips filed a complaint (Phillips Ex. 9) on behalf of Vista Way against SCPM in the Cuyahoga County Court of Common Pleas, Case No. CV 12-786940, alleging breach of a lease agreement between the parties. This litigation is referred to herein as the "Vista Way Eviction." (Phillips Stipulation 12) On July 13, 2012, simultaneously with the filing of the Complaint, Mr. Cannata filed a Waiver of Service (Phillips Ex. 10) on behalf of SCPM acknowledging that SCPM had already received a copy of the Complaint. (Phillips Stipulation 20) (See Board 23)

On July 13, 2012, at 8:42 a.m., four minutes after the complaint was filed, Respondent Cannata filed an answer on behalf of SCPM without the consent of Mr. Snider, admitting certain allegations in the complaint and denying other allegations. The answer admitted breach of the lease by SCPM and that SCPM owed rent to Vista Way. (Phillips Ex. 11; Phillips Stipulation 21) (See Board 24)

Respondents Phillips and Cannata jointly submitted to the judge a stipulated judgment entry to sign, evicting SCPM employees and managers from the Leased Premises, thus effectively evicting Mr. Cannata and Mr. Snider from the Leased Premises as managers of SCPM. (Phillips Stipulation 22; Phillips Ex. 12) The proposed judgment entry dealt with only the issue of possession of the property and reserved for later disposition the issues of compensatory damages, costs, and reasonable attorneys' fees. (Phillips Ex. 12) Because Judge O'Donnell was unavailable to sign the Stipulated Judgment Entry submitted by Mr. Phillips and Mr. Cannata, it was forwarded to Judge McMonagle for signature pursuant to the court procedures. Judge McMonagle, the judge presiding over the corporate dissolution discussed in Count III, did not sign the Stipulated Judgment Entry. (Phillips Stipulation 23) The Vista Way Eviction proceeding was dismissed on July 18, 2012, five (5) days after it was filed based upon a resolution by Mr. Snider and Mr. Cannata concerning the Leased Premises. (Phillips Ex. 13; Phillips Stipulation 24) (See Board 25, 27)

Respondent Cannata filed the SCPM answer and the proposed stipulated judgment entry without the consent of Mr. or Mrs. Snider. The operating agreement of SCPM provided that the members had "equal rights in the management of the business". (Phillips Ex. 4) Respondent Cannata conceded at the hearing that consent was required (Tr. 105-106) (Board 26)

2) **Representation-Client**

Mr. Phillips filed the complaint in the Vista Way Eviction proceeding at the request of Mr. Cannata, the co-manager of Vista Way, who Mr. Phillips believed had authority to pursue such relief on behalf of Vista Way. (Phillips Stipulation 14) SCPM was never a client of Mr. Phillips. (Phillips Stipulation 15) (See Board 22)

Vista Way owned property at 9555 Vista Way, Garfield Heights, Ohio 44125, and leased a portion of that property to SCPM (referred herein as the “Leased Premises”). (Phillips Stipulation 16) SCPM maintained at the Leased Premises all of its management files, computer network and computer files for all of the properties it managed, including properties owned by Vista Way and BCS. (Phillips Stipulation 17) (See Board 19)

During the business dispute, Respondent Phillips did not represent either Mr. Snider or Mr. Cannata. Mr. Snider and Mr. Cannata had separate counsels. Respondent told them, that he didn’t want any part of the business divorce. Respondent Phillips stayed out of it. Respondent did not provide any representation to any party in any capacity. (Tr. 52-53). Respondent Phillips did not represent the owners, Mr. Cannata or Mr. Snider. Respondent Phillips felt that he was representing the entity, Vista Way. Respondent Phillips stayed out of the squabble. Mr. Cannata and Mr. Snider has separate counsels. They had separate counsel on their bankruptcy issues, a Richard Baumgart. Respondent Phillips was not involved in the bankruptcy issues. Respondent Phillips isolated himself, and attempted to put up a firewall in the sense of the business dispute. (Tr. 58-60) Respondent Phillips viewed his client as the organization, Vista Way (Tr. 57-58) Respondent Phillips, independent judgment for Vista Way was not influenced by his co-counsel relationship in light of the fact, that at the time of the business divorce he had not received any income from the co-counsel relationship in over nine (9) months, and it was inactive.

3) Irreparable Harm and Injury

By July 2012, the Sniders and the Cannatas were involved in a bitter dispute over the control and management of the Cannata/Snider enterprises. As part of the dispute, the Sniders had unilaterally locked Respondent Cannata out the premises, had removed the company server and the records from the premises, and allegedly withdrew approximately \$160,000 from various company bank accounts, all without the consent of Respondent Cannata. SCPM had not paid rent to Vista Way for 43 months. (Tr. 52-54, 86-87; 90-92; 102-107; 114) (Board Par. 20)

4) Authority

Respondent Phillips primary contact with the Cannata/Sniders entities has always been Respondent Cannata. Respondent Phillips believed that Respondent Cannata, as co-manager of Vista Way had authority to pursue such relief on behalf of Vista Way. (Phillips Stipulation 14) (Board 22) Respondent Phillips relied upon applicable statutory authority for Mr. Cannata's authority. No action or transaction is void or voidable if the action or transaction is fair to the company at the time such action and transaction is authorized or approved by a member or manager, ORC Section 1705.31 (A) (1) (c). Every manager of the company is an agent of the company for purpose of its business and the acts of a manager for carrying on the business of the company binds the company, ORC Section 1705.25 (B) (1).

5) Course of Action

Mr. Cannata felt it necessary as co-manager of Vista Way to pursue the Vista Way Eviction to prevent any further harm to Vista Way. (Phillips Stipulation 18) The Vista Way Eviction proceeding would have had the effect of evicting both Mr. Cannata and Mr. Snider from the Leased Premises. (Phillips Stipulation 19) Respondent Phillips viewed his client as the organization, Vista Way (Tr. 57-58) When Vista Way approached Respondent Phillips, one of the members depleted

the bank account of Vista Way by \$92,400, took all of the management records, computer server, and accounting records, and put Vista Way in jeopardy of defaulting on its mortgage, and one could not operate the businesses and manage all of the properties. Respondent Phillips took the appropriate action and filed the Vista Way Eviction. (Tr. 57-58; 56-57; 58-60)

B. Conclusions of Law

1) Organization Client

In the present case, Vista Way, was Respondent Phillips client. Respondent Phillips never represented SCPM. Pursuant to RPC 1.13 (a) Respondent Phillips owed his allegiance to the organization not to its constituents, *Stanley vs. Bobeck* (2009) 2009-Ohio-5696, Par. 15 (citing RPC 1.13 (a), and applying that “A lawyer employed or retained by an organization owes allegiance to the organization and not to any constituent or other person connected with the organization.”), *New Destiny Treatment Center, Inc. vs. Wheeler* (2011) 129 OS 3rd 39, Par. 27 (holding that “However, in this case, the putative client is a corporate entity, and an attorney employed or retained by a corporation represents the corporation acting through its constituents; the attorney does **not** owe allegiance to a stockholder, director, officer, or other person connected with the corporation”). In pertinent part RPC 1.13 (a) provides as follows:

“A lawyer employed or retained by an organization represents the organization acting through its constituents. A lawyer employed or retained by an organization owes allegiance to the organization and not to any constituent or other person connected with the organization. The constituents of an organization include its owners and its duly authorized officers, directors, and employees”.

The Board found a violation of RPC 1.7 (a) (2) because “Respondent Phillips’ personal relationship with Respondent Cannata materially limited his objectivity toward the Snider Family which owned 50 percent of both the plaintiff and defendant” (See Board 28). The Board found a violation contrary to RPC 1.13 (a) because of an allegiance to the Snider Family.

Furthermore, since there was substantial injury to the organization, Vista Way, Respondent Phillips was obligated to act and to do what was necessary in the best interest of the organization, Vista Way. In pertinent part RPC 1.13 (b) provides as follows:

“If a lawyer for an organization knows or reasonably should know that its constituent’s action, intended action, or refusal to act 1) violates a legal obligation to the organization, or 2) is a violation that reasonably might be imputed to the organization and that is likely to result in substantial injury to the organization, then the lawyer shall proceed as is necessary in the best interest of the organization. When it is necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer shall refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law.”

This section makes it clear, however, that when the lawyer knows or reasonably should know, that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is a violation of the law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. (See RPC 1.13 (b), Comment No. 3) Respondent Phillips acted in the best interest of Vista Way in filing the Vista Way Eviction.

Respondent Phillips primary contact with the Cannata/Snidars entities has always been Respondent Cannata. Respondent Phillips believed that Respondent Cannata, as co-manager of Vista Way had authority to pursue such relief on behalf of Vista Way. (Phillips Stipulation 14), (Board 22) Mr. Cannata felt it necessary as co-manager of Vista Way to pursue the Vista Way Eviction to prevent any further harm to Vista Way. (Phillips Stipulation 18) Respondent Phillips followed the principles of “up the ladder” reporting and followed the directions of Mr. Cannata. (See RPC 1.13 (b), Comment No. 4)When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer’s province. (See RPC 1.13 (b), Comment No. 3)

Respondent Phillips explained to Respondent Cannata, his representation of the organization, Vista Way, as his client, and the limitations of his representation regarding adverse interests. The Vista Way Eviction proceeding would have had the effect of evicting both Mr. Cannata and Mr. Snider from the Leased Premises. (Phillips Stipulation 19) Respondent would not have filed the Vista Way Eviction unless it would have evicted, all managers and employees, including both Mr. Cannata and Mr. Snider, and it was limited to the issue only of possession, the restitution of the Leased Premises. (Tr. 56-57) Such conditions were pursuant to RPC 1.13 (d). In pertinent part RPC 1.13 (d) provides as follows:

“In dealing with an organization’s directors, officers, employees, members, shareholders, or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization’s interests are adverse to those of the constituents with whom the lawyer is dealing”.

Respondent Phillips made these conditions and limitations mandatory.

Does RPC 1.13 apply to the Vista Way Eviction? Did the Board consider RPC 1.13? Should this Court adopt the Board’s recommendation of a violation of RPC 1.7 (a) (2)? All of these questions and issues are for this Court’s consideration and ruling.

2) Four Factor Test

Respondent Phillips contends that the application of the facts to RPC 1.7 (a) (2) must be made upon a four (4) factor test. In pertinent part RPC 1.7 (a) (2) provides as follows:

RPC 1.7 (a) (2) [“A lawyer’s acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies: 2) there is a substantial risk that the lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person, or by the lawyer’s own person interests”].

The first factor is the “substantial risk” factor. Substantial as defined is as follows:

“Substantial” when used in reference to degree or extent denotes a matter of real importance of

great consequence, RPC 1.0 (m). Respondent Phillips allegiance was to the organization, Vista Way. Was Respondent Phillips actions and conduct subject to a “substantial risk” to this allegiance? The second factor is the “lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client”, the appropriate course of action factor. One must evaluate what course of action was considered, recommended, and carried out on behalf of the client. Respondent Phillips undertook the appropriate action for his organization client, Vista Way, and filed the Vista Way Eviction, to protect his client Vista Way. The third factor is whether the “lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client”, will be “materially limited”, the material limitation factor. The mere possibility of subsequent harm does not, itself, require disclosure and consent. The critical questions are: 1) whether there is a difference in interests between the client and lawyer, or between two client exists or is likely to arise, and 2) if it does, whether this difference in interests will materially interferes with the lawyers’ independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of any affected client., (See RPC 1.7, Comment No. 14) Respondent Phillips undertook the appropriate action in the best interests of the organization. RPC 1.13 (b). Was Respondent Phillips independent judgment concerning the course of action materially interfered with? The fourth factor is whether the “lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client”, will be “materially limited”, by the lawyers responsibilities to another client, former client, third party, or by the lawyer’s own personal interests, the relationship factor. Respondent Phillips allegiance was to the organization, Vista Way. Did another client, third party or the lawyer’s own personal interests materially interfered with the lawyer’s independent professional judgment in carrying out the appropriate course of action?

Should have the Board applied this four factor analysis? Should this four factor analysis be applied to a RPC 1.7 (a) 2) violation? Should this Court adopt this four factor test for a violation under RPC 1.7 (a) (2)? These are all questions for this Court's consideration and decision.

COUNT III: RPC 1.7 (a) (2)
(Count Three – 96th Street Foreclosure and BCS Dissolution)

A. Findings of Facts

(The 96th Street Foreclosure Litigation)

1) Limited Engagement

96th Street Development LLC (“96th Street”) is an Ohio limited liability company composed of the following members: Cannata-96th Street LLC (41.67%); Fisher Family Partners (33.3%); and David Snider (25%). (Phillips Stipulation 25) 96th Street’s operating manager is Mr. Cannata. (Phillips Stipulation 26) On or about March 3, 2009, Mr. Phillips was retained by 96th Street to provide legal services for 96th Street with respect to its default on its Mortgage with Bank of America. (Phillips Ex. 14) (Phillips Stipulation 27) Also on or about March 3, 2009, 96th Street retained Mr. Phillips to prepare and record mortgages for money owed on intercompany accounts to, among other entities, Vista Way, Snider Interests, LLC, BCS and the Jill K. Cannata Trust. (Phillips Stipulation 28) On or about March 11, 2009 Phillips prepared the above-referenced mortgages and filed them with the Cuyahoga County Recorder’s Office, on March 26, 2009 as Instrument No. 200903260591. (Phillips Stipulation 29) On or about November 10, 2009, Bank of America filed a foreclosure case against 96th Street in the Cuyahoga County Common Pleas Court Case, No. 09 CV 709391, and captioned Bank of America vs. 96 Street Development LLC et al, (referred to herein as the “96th Street Foreclosure Litigation”). (Phillips Stipulation 31) Pursuant to his engagement with 96th Street, Mr. Phillips entered an appearance on behalf of, among others,

96th Street, BCS, Vista Way, Snider Interests, LLC and the Jill K. Cannata Trust in the 96th Street Foreclosure Litigation. (Phillips Stipulation 33) (Tr. 35-37, 61-63) (Board 35)

On or about February 2, 2010, Mr. Phillips filed an Answer and Cross Claims on behalf of, among others, 96th Street, BCS, Vista Way, Snider Interests, LLC and the Jill K. Cannata Trust in the 96th Street Foreclosure Litigation. (Phillips Stipulation 34) The cross-claims asserted the mortgage security interests of the recorded mortgages in Instrument No. 200903260591 for BCS, Vista Way, Snider Interests, LLC and the Jill K. Cannata Trust. (Phillips Stipulation 35) (See Board 35)

2) Cessation Representation

On or about December 31, 2010, the mortgages for BCS and Vista Way were paid and released as fully satisfied as evidenced by Instrument No. 201209280558 and Instrument No. 201209280559 (Phillips Ex. 16). (Phillips Stipulation 36) On or about December 31, 2010, the mortgages for Snider Interests, LLC and the Jill K. Cannata Trust were written off and charged as capital contributions due to the fact that they were erroneously listed as intercompany accounts when they should have been capital contributions by the members. (Phillips Ex. 15) Thus the mortgages should not been issued as reflected by the balances on Exhibit 15. (Phillips Ex. 15) (Phillips Stipulation 37) (See Board 36)

On or about August 2012, Mr. Phillips was informed of the fact that the above-referenced mortgages were fully satisfied and paid, that the errors noted above were corrected, and the corrected account balances were properly reflected on the 96th Street books. (Phillips Stipulation 38) On or about September 25, 2012, the cross claims for BCS, Vista Way, Snider Interests, LLC and the Jill K. Cannata Trust were voluntarily dismissed in the 96th Street Foreclosure Litigation. (Phillips Ex. 17) (Phillips Stipulation 39) As of September 25, 2012, Mr. Phillips no longer

appeared as counsel of record on behalf of BCS, Vista Way, Snider Interests, LLC and the Jill K. Cannata Trust in the 96th Street Foreclosure Litigation. (Phillips Stipulation 40) As of September 25, 2012, BCS, Vista Way, Snider Interests, LLC and the Jill K. Cannata Trust were no longer parties to the 96th Street Foreclosure Litigation. (Phillips Stipulation 41) (See Board 36)

3) Withdrawal-Termination

Mr. Phillips continued to represent 96th Street in the 96th Street Foreclosure Litigation until his withdrawal as counsel on December 21, 2012 (Phillips Ex. 18). (Phillips Stipulation 42) (Board 36)

4) Lack of Client Confidences

The intercompany accounts amounts for Snider Interests and the Jill K. Cannata Trust were erroneously listed as intercompany accounts when they should have been member capital contributions, thus there were not loans by them. (See Exhibit 15) (Phillips Stipulation 30)

A preliminary title report was filed along with the complaint listing the mortgagees of 96th Street, including BCS, Vista Way, Snider Interests, LLC and the Jill K. Cannata Trust, all of whom were named as Defendants in the 96th Street Foreclosure Litigation as parties having an interest in the 96th Street Property. (Phillips Stipulation 32) Respondent Phillips did not get any confidential information to file the Cross-claims other than what was filed as public records, the recorded mortgages. Respondent Phillips had a limited engagement, and the information he received was limited. (Tr. 63-65)

(The BCS Corporate Dissolution)

1) Statutory Dissolutions Proceedings

On June 27, 2012, Mr. Phillips filed on behalf of Cannata Infinity LLC under ORC Section 1705.47 to statutorily dissolve BCS. The complaint for dissolution was filed in the Cuyahoga

County Common Pleas Court, Case No. CV-12-785850 (referred to herein as the “BCS Statutory Dissolution I Litigation”). (Phillips Stipulation 43) The BCS Statutory Dissolution I Litigation was, pursuant to ORC Section 1705.43 (A) (5), and 1705.47 (B), brought by Cannata Infinity LLC, a 50% member of BCS, naming as a defendant Snider Interests LLC, the other 50% member of BCS. In lay terms, Cannata Infinity LLC was seeking a corporate divorce with the other BCS owner, Snider Interests. (Phillips Stipulation 44) On July 9, 2012, David Snider, Robin Snider and Snider Interests, LLC filed a statutory dissolution proceeding of their own to dissolve, among others, the following limited liability companies: BCS, Vista Way, and SCPM. That action, due to a management deadlock, was brought pursuant to R.C. 1701.91(A)(4), and was filed in the Cuyahoga County Common Pleas Court, Case No. 12 CV 786574 (referred to herein as the “BCS Statutory Dissolution II Litigation”). The complaint named as parties Mr. Cannata, Snider Interests, LLC, SCPM, BCS, Cannata Infinity LLC, Vista Way, Cannata Vista Way, LLC, and other parties. (Phillips Stipulation 47) (See Board 37, 39)

On July 16, 2012, Case Nos. 12 CV 786574 and 12 CV 785850 were consolidated (and are referred herein collectively as the “BCS Statutory Dissolution Litigation”). (Phillips Stipulation 48) On August 6, 2012, the Court ordered the appointment of a receiver for BCS. (Phillips Stipulation 50) On October 3, 2012, the court granted Snider Interests, LLC’s Motion to disqualify Mr. Phillips from serving as counsel for Cannata Infinity, LLC in the BCS Statutory Dissolution Litigation. (Stipulation 51) (See Board 39, 41)

2) Management Deadlock

Cannata Infinity, LLC, through Mr. Cannata, authorized the filing of the BCS Statutory Dissolution I Litigation due to the BCS management deadlock affecting the operation of BCS, including the sale of real property owned by BCS. (Phillips Stipulation 45) All of the parties to

the BCS Statutory Dissolution Litigation acknowledged that there was a management deadlock affecting BCS, due to the deadlock between the 50% ownership and management interests in BCS, thus mandating statutory dissolution. See *Sapienza vs. Material Engineering and Technical Support Services Corporation* 2011-Ohio-3559 (where there is no doubt that the parties are in a complete management deadlock, dissolution is mandatory and required by statute). (Phillips Stipulation 49) (See Board 37)

3) Satisfaction Mortgages

On June 27, 2012, when Mr. Phillips filed the BCS Statutory Dissolution I Litigation, he was still counsel of record in the 96th Street Foreclosure Litigation for, among others, BCS and Snider Interests, LLC. By June 27, 2012, the BCS and Snider Interests, LLC mortgages that had been asserted in the 96th Street Foreclosure Litigation had been released as fully satisfied and paid or written off. (Phillips Stipulation 46)

B. Conclusions of Law

1) Dana Test

The Courts have established the proper test to be used in evaluating a disqualification based upon a conflict of interest alleged violation of the Code of Professional Conduct. The *Dana* Test is the well settled and established principle of law used to determine whether disqualification is necessary based upon a conflict of interest, which is a three part test: 1) the existence of a past attorney-client relationship between the party seeking disqualification and the attorney it seeks to disqualify; 2) the subject matter of those relationships are substantially related; and 3) the acquisition of confidential information by the attorney from the party seeking disqualification which is of the nature and kind to prejudicially harm the party in the subsequent litigation. *Dana Corporation v. Blue Cross Blue Shield* (1990) (6th Cir.) 900 F. 2nd 882, *Carr v.*

Acacia Country Club Company (2009) 2009-Ohio-628, Par. 19. In order for a conflict of interest to exist the three part test of the *Dana* Test must be satisfied. The second prong and third prong of the *Dana* test must be satisfied.

The third prong of the *Dana* test, is the “acquisition of prejudicial harmful client confidences” factor. The only information Respondent Phillips received in the 96th Street Foreclosure Litigation was from 96th Street, the recorded mortgages that Respondent Phillips prepared for 96th Street. This information, the recorded mortgages, are public records, none of it was confidential. Nothing was asserted on behalf of 96th Street for its mortgagees other than the recorded mortgages. In the absence of the assertion of these recorded mortgages in the 96th Street Foreclosure Litigation, the mortgagees’ mortgage interests would have been honored since they were public records filed in the Cuyahoga County Recorder’s Offices. The 96th Street Foreclosure Litigation involved only the 96th Street property. A preliminary title report was filed which listed the mortgagees of 96th Street, and all of these mortgagees were named as Defendants in the 96th Street Foreclosure Litigation as parties having an interest in the 96th Street property including Snider Interests LLC whose mortgage was erroneous. Was there any confidential information exchanged which could be used to prejudicially harm Snider Interests LLC or BCS in the subsequent litigation, the BCS Statutory Dissolution Litigation?

The second prong of the *Dana* test is the “substantially related matter” factor. Ohio Rules of Professional Conduct, Terminology 1.0 (n) “Substantially related matter” denotes one that involves the same transaction or legal dispute, or **one in which there is a substantial risk that confidential factual information that would have been obtained in the prior representation of a client would materially advance the position of another client in a subsequent matter.**

Are the two cases, the 96th Street Foreclosure and the BCS Statutory Dissolution “substantially related matters”? As argued above the 96th Street Foreclosure Litigation can be “substantially related matter” to the BCS Statutory Dissolution Litigation if there was confidential information acquired in the 96th Street Foreclosure Litigation which could be used in the subsequent litigation, the BCS Statutory Dissolution Litigation, to prejudicially harm Snider Interests LLC or BCS, in the BCS Statutory Dissolution Litigation.

Furthermore, the “substantially related matter” factor can be met if the same transaction or legal dispute are involved in the 96th Street Foreclosure Litigation and the BCS Statutory Dissolution Litigation. Ohio Rules of Professional Conduct, Terminology 1.0 (n) “Substantially related matter” **denotes one that involves the same transaction or legal dispute**, or one in which there is a substantial risk that confidential factual information that would have been obtained in the prior representation of a client would materially advance the position of another client in a subsequent matter.

Ohio Rules of Professional Conduct, Terminology 1.0 (m) “Substantial” when used in reference to degree or extent denotes a matter of real importance or great consequence. The meaning of “substantial relation” can be found by looking at the plain meaning of “substantial” defined in Ohio Rules of Professional Conduct 1.0 (m) and as defined in the American Heritage Dictionary: it is defined as “considerable in importance, value, degree, amount or extent”. Relation is defined as “a logical or natural association between two or more things”. Taken together, the plain meanings of the phrase implies that the two cases “must have a clear connection.” *Phillips vs. Haidet* (1997) 119 O App 3rd 322, 327

These definitions articulates the “substantial relationship test”. Matters are substantially related if there is “commonality of issues” between the two cases. Matters are substantially

related when there is a “clear connection” between the subject matter of the former representation and that of the subsequent representation. *Litigation Management, Inc. vs. Bourgeois* (2009) 182 O App 3rd 742, Par. 16, *Phillips vs. Haidet* (1997) 119 O App 3rd 322, 327 (holding that the plain meaning of substantially related means that the two cases must have a clear connection), *Kala vs. Aluminum Smelting & Refining Co. Inc.* (1998) 81 OS 3rd 1.

The 96th Street Foreclosure Litigation cannot be substantially related to the BCS Statutory Dissolution Litigation, if there are no “commonality of issues”. Does the issue of default and foreclosure against 96th Street involve the issue of management deadlock in the BCS Statutory Dissolution? Are these two separate and distinct issues?

Both parties and members of BCS, Cannata Infinity LLC, and Snider Interests LLC in their individual respective cases claimed and admitted that there was a management deadlock, due to the 50% ownership in BCS and 50% management interests in BCS. The parties admitted to the need of the statutory dissolution. In fact the parties in the BCS Statutory Dissolutions admitted to the **sole issue of management deadlock**. The **only** issue to be decided in the BCS Statutory Dissolution Litigation, whether there is management deadlock was admitted to and there was **no** need of any evidentiary hearing on this sole issue. *Calliccoat vs. Calliccoat* (1994) 73 O Misc 2nd 38 (holding that when it is clear that there is deadlock of the directors and shareholders, the dissolution is required and mandated by law, thus nothing remains to be determined, as dissolution is required by the statute), *Sapienza vs. Material Engineering and Technical Support Services Corporation* (2011) 2011-Ohio-3559 (holding that when there is no doubt that the parties are in a complete management deadlock, dissolution is mandatory and required by the statute).

The 96th Street Foreclosure Litigation can only be substantially related to the BCS Statutory Dissolution Litigation, if there are “close connections”. Are there any logical connections between a foreclosure action involving 96th Street Development and the statutory dissolution of BCS? Are these totally two separate distinct issues which are not logically connected and are not naturally connected? The BCS Statutory Dissolution are special statutory proceedings and involve the **sole issue** of the management deadlock in BCS. BCS in the BCS Statutory Dissolutions is only a nominal party and is not a real party interest. The real parties in interests are the members of BCS.

Did the Board considered the *Dana* test? Was the *Dana* test applied? Is the *Dana* test the appropriate test for violations under RPC 1.7 (a) (2)? Applying the *Dana* test, was there a violation under RPC 1.7 (a) (2)? Is the *Dana* test only for disqualification purposes? These are questions for the Court’s consideration. decisions, and rulings.

2) **Four Factor Test**

Respondent Phillips contends that the application of the facts to RPC 1.7 (a) (2) must be made upon a four (4) factor test. In pertinent part RPC 1.7 (a) (2) provides as follows:

RPC 1.7 (a) (2) [“A lawyer’s acceptance or continuation of representation of a client creates a conflict of interest if either of the following applies: 2) there is a substantial risk that the lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer’s responsibilities to another client, a former client, or a third person, or by the lawyer’s own person interests”].

The first factor is the “substantial risk” factor. This factor is evaluated by the second and third prong of the *Dana* test. The second factor is the “lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client”, the appropriate course of action factor. One must evaluate what course of action was considered, recommended, and carried out on behalf of the client. This factor is evaluated by the second and third prong of the *Dana* test. In

present case, Respondent Phillips clearly acted appropriately in asserting the cross claims of the mortgagees in the 96th Street Foreclosure Litigation pursuant to his limited engagement.

Likewise, Respondent Phillips clearly acted appropriately in filing the BCS Statutory Dissolution due to the mutual agreement of all the members of a “management deadlock”, the sole issue in the statutory dissolution. The third factor is whether the “lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client”, will be “materially limited”, the material limitation factor .This factor is evaluated by the second and third prong of the *Dana* test. The fourth factor is whether the “lawyer’s ability to consider, recommend, or carry out an appropriate course of action for that client”, will be “materially limited”, by the lawyers responsibilities to another client, former client, third party, or by the lawyer’s own personal interests, the relationship factor. This factor is considered under the first prong of the *Dana* test. There existed a prior attorney-client relationship. While, Respondent Phillips was still counsel of record for Snider Interests, LLC, the mortgage for Snider Interests LLC for an intercompany debt of 96th Street had been written off and charged as a capital contribution prior to Respondent Phillips filing the BCS corporate dissolution case on June 27, 2012. (See Board 44).

Should have the Board applied this four factor analysis? Should this four factor analysis be applied to RPC 1.7 (a) 2) violation? Should this Court adopt this four factor test for a violation under RPC 1.7 (a) (2)? These are all questions for this Court’s consideration and decision.

Count I: RPC 7.5 (d)

Findings of Fact

In May 2009, Respondent Phillips and Respondent Cannata executed the co-counsel agreement. (Phillips Ex. 5). They entered into a written co-counsel agreement which covered the

division of fees on co-counsel cases and provided that each would maintain their separate practices of law in their separate offices and that nothing about the co-counsel relationship shall “establish any of kind of other relationship, including without limitation a partnership, a professional association, or a law firm.” Because of his business contacts, Respondent Cannata was able to attract legal business that required more legal experience and expertise than he possesses as a young attorney. (Tr. 92). So he began to refer certain matters to Respondent Phillips to act as his co-counsel. Respondent Phillips agreed to co-counsel on several cases because, among other things, he would be able to act as a mentor to Respondent Cannata. They shared fees in co-counsel cases approximately as follows: in 2009 (\$80,000), 2010 (\$40,000), and 2011 (\$20,000), totaling about \$140,000 in fees. Roughly speaking, Respondent Phillips share would have been approximately about half of these amounts. The last check for the co-counsel cases came in during September 2011, over nine months before the business divorce. This income was not substantial and was merely secondary income to Respondent Phillips. They did not share any fees in 2012, 2013 and 2014, when Cannata Phillips LPA LLC was formally dissolved. (Tr. 40-51, 71, 92-94; Phillips Ex. 5, Ex. 8) (Board 13, 17)

At the same time they filed Articles of Organization for a limited liability company called Cannata Phillips LPA, LLC, (Phillips Ex. 7). One of the purposes of filing this document was to provide public notice to prevent the exposure of Respondent Phillips to potential liabilities based upon either an expressed, implied or apparent authority of Respondent Cannata to other than their joint co-counsel clients. (Tr. 42-43) Respondent Cannata created a website for Cannata Phillips LPA, LLC. (Phillips Ex. 6) Respondent Cannata purpose in creating the website was to attract co-counsel clients, the fees from which would be divided according to the co-counsel agreement. (Tr. 93-94) The website is no longer in use and Cannata Phillips LPA LLC has been

dissolved. (Phillips Stipulation 11) (Board 17) The Parties have stipulated that this caused no apparent confusion, damage, or harm to any individual or entity (Tr. 94) (See Board 18). The web site was not used for advertising and no one contacted Mr. Cannata or Mr. Phillips through the website (Tr. 48-50; Tr. 92-94)

Conclusions of Law

This issue presents some novel ethical issues for a co-counsel relationship. Can co-counsels created a web site for their co-counsel cases? Can co-counsels operate their co-counsel relationship as an entity? The existence of the web site and the use of a limited liability company for their co-counsel relationship was the basis for the violation of RPC 7.5 (d). Does the fact of creating a web site for Cannata Phillips LPA LCC, and the formation of Cannata Phillips LPA LLC for their co-counsel relationship constitute a violation of RPC 7.5 (d) absence any prejudicial harm to the public? The Parties have stipulated that this caused no apparent confusion, damage, or harm to any individual or entity (Tr. 94) (See Board Par. 18). At most this is a technical violation, and without knowingly willful conduct and actions does it constitute misconduct? The misconduct of neither Respondent was committed knowingly, and no person or entity was damaged as a result of their violations. (Board 48) These are all questions and issues for the Court's consideration, ruling and decision.

RECOMMENDED SANCTIONS

Findings of Facts

Among the factors considered by the panel in making its recommended sanctions are the ethical duties violated, the injuries caused by the misconduct, the mental state of Respondents at the time of the misconduct, the need to protect the public, the aggravating and mitigating factors,

and the sanctions imposed by the Supreme Court in similar cases. The panel has, in making its recommended sanctions considered each Respondent separately. (Board 47)

The misconduct of neither Respondent was committed knowingly, and no person or entity was damaged as a result of their violation. The conflict of interest were limited to two cases. The formation of Cannata Phillips LPA LLC was not intended to mislead. Any violation of RPC 7.5 (d) caused no apparent confusion, damage or harm to any individual or entity. (Board 48)

With respect to Respondent Phillips, the parties stipulated as mitigating factors, the absence of a prior disciplinary record, the full and free disclosure to the disciplinary Board and a cooperative attitude, and his good character and reputation. Respondent Phillips submitted 21 character letters from clients, friends, and colleagues attesting to his character and reputation for honesty, trustworthiness, and professional skills. (Phillips Ex. 19) The panel finds as further mitigating factors the absence of a dishonest motive, and the Respondent acknowledge the wrongful nature of his actions and conduct. (Tr. 16-18; 32-34; 38-39; 57-58; 73-74) (Board 50)

Conclusions of Law

It was quite apparent from the Board consideration of the appropriate sanction that the Board struggle with its decision. The Board ultimately recommended that a six (6) month stayed suspension was appropriate.

When imposing sanctions, the Board and Court considers the duties violated, whether any injury resulted from the misconduct, the respondent's mental state, sanctions in similar cases and the aggravating and mitigating factors set forth in Gov. Bar Rule V, Section 13(B). *See e.g. Cleveland Bar Assn. v. McMahon*, 114 Ohio St. 3rd 331, 2007 Ohio 3673. Here, Mr. Phillips did not act with a selfish or dishonest motive; has no prior disciplinary record; has acknowledged

wrongdoing; has demonstrated remorse; has a good professional character and reputation; has cooperated throughout these proceedings; has not caused any prejudicial harm; and took steps to minimize or rectify the misconduct. *See e.g. Columbus Bar Assn. vs. Mangan* (2009), 123 Ohio St.3d 250, 2009 Ohio 5287 ¶17 (imposing a public reprimand in a case involving conflicts of interest by a 30 year practitioner with an abundance of mitigating factors present); *Ohio State Bar Assn. v. Wick*, 116 Ohio St.3d 193, 2007 Ohio 6042 ¶ 10 (public reprimand for violating DR 5-105(B) [now RPC 1.7], citing comparable cases involving conflict of interest violations resulting in a public reprimand).

The respondent in *Mangan* violated DR 5-105(C) [now RPC 1.7] and DR 6-101(A)(2) based upon his multiple representation of family members in a foreclosure action without adequately communicating with all of his clients, failing to ascertain their interests, and failing to obtain their informed consent⁶. The mitigating factors in *Mangan* included: 1) no prior disciplinary record, 2) lack of dishonest or selfish motive, 3) cooperation in the disciplinary proceedings, and 4) good character and reputation. The Court in *Mangan* reasoned that “Respondent’s lack of any enmity, his hereto unblemished professional record, his established good character and reputation, and his cooperation in these proceedings persuade us that a warning will suffice in this case.” *Mangan, supra* at ¶17.

The following mitigating factors exist here with respect to Mr. Phillips:

- 1) The absence of a prior disciplinary record; Mr. Phillips has been duly licensed to practice law in the State of Ohio since 1977, and during these 37 years of practice he has no prior disciplinary record. (Phillips Stipulation 2) (See Board 50)
- 2) The absence of a dishonest or selfish motive; (See Board 50)

⁶ *Mangan* did involve multiple violations around a common set of facts and transactions;

- 3) The full and free disclosure to the disciplinary Board and cooperative attitude; (See Board 50)
- 4) The good character and reputation of the Respondent Phillips; (Phillips Ex. 19, 21 character letters, from clients, friends, and colleagues attesting to his character and reputation for honesty, trustworthiness, and professional skills.) (See Board 50)
- 5) A timely good faith effort was made to rectify the misconduct, including Mr. Phillips' withdrawal from the 96th Street Foreclosure Case⁷;
- 6) The Vista Way Eviction was dismissed five (5) days after it was filed;
- 7) Mr. Phillips legal representation of BCS and Snider Interests LLC in the 96th Street Foreclosure Litigation ceased;
- 8) Mr. Phillips legal representation in the BCS Statutory Dissolution was non-adversarial given that all the parties agreed that dissolution was required based upon management deadlock,
- 9) Although named as a defendant in the BCS Statutory Dissolution, BCS was only as a "nominal party";
- 10) The absence of any prejudicial harm.

Based upon the foregoing, and the information set forth in the Stipulation of Facts and the testimony and evidence presented at the hearing, this Court should consider a public reprimand as an appropriate recommended sanction.

This is consistent with a line of cases imposing a "public reprimand" for violations of conflict of interests, when such mitigating factors exist as the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, full and free disclosure to the disciplinary Board and

⁷ See *Cleveland Metropolitan Bar Assn. v. Leiken* (2014), 2014-Ohio 5220, ¶4 (recognizing the mitigation factor of withdrawal along with other mitigating factors)

cooperative attitude, and a good character and reputation of the Respondent. *See e.g. Columbus Bar Assn. vs. Mangan* (2009), 123 Ohio St.3d 250, 2009 Ohio 5287 ¶ 17 (imposing a public reprimand in a case involving conflicts of interest by a 30 year practitioner with an abundance of mitigating factors present). *See also Ohio State Bar Assn. v. Wick*, 116 Ohio St.3d 193, 2007 Ohio 6042 ¶ 10 (public reprimand for violating DR 5-105(B) [now RPC 1.7], citing comparable cases involving conflict of interest violations resulting in a public reprimand); *Cincinnati Bar Assn. v. Schmalz*, (2009) 123 Ohio St.3d 130, 2009 Ohio 4159 [public reprimand for violating RPC 1.7(a)(2)], *Mahoning County Bar Association v. Reid* (2004) 102 Ohio St. 2nd 402, ¶13 (public reprimand for violating DR-105(B) [now RPC 1.7], *Disciplinary Counsel v. Jacobs* (2006) 109 Ohio State 3rd 252 ¶ 8 (public reprimand for violating DR 5-105(B) [now RPC 1.7], *Toledo Bar Association v. Tolliver* (1992) 62 Ohio State 3rd 462, (public reprimand for violating DR 5-105(B) and DR5-105(C) [now RPC 1.7], *Toledo Bar Association v. Gabriel* (1991) 57 Ohio State 3rd 18 (public reprimand for violating DR 5-105(A), DR 5-105(B) and DR5-105(C) [now RPC 1.7], *Stark County Bar Association v. Phillips* (1989) 45 Ohio State 3rd 286 (public reprimand for violating DR 5-105(B) [now RPC 1.7], *Cleveland Metropolitan Bar Association v. Leiken* (2014) 2014-Ohio 5220, ¶ 5 (public reprimand for violating RPC 1.7 and RPC 1.9), *Disciplinary Counsel v. Detweiler* (2010) 127 Ohio State 3rd 73 [public reprimand for violating RPC 1.7(a)(2)]

The panel found as an aggravating fact that each Respondent committed multiple violations. (Board 49) This aggravating factor should be minimized. The misconduct of neither Respondent was committed knowingly, and no person or entity was damaged as a result of their violation. The conflict of interest were limited to two cases. The violations centered on a common nucleus of facts, the business divorce of the Cannatas and Sniders, they were

interrelated and clearly connected as a single set of facts⁸. There were not multiple violations over a period of time. (Tr. 9, 11, 132-133, 135-136) In addition in the present case, the facts were extremely complex and were clearly not straightforward and not the typical text book case scenario, there were complex multiple arrangements due to the inter-relationships of multiple entities and parties. (Tr. 9, 11, 132-133, 135-136) The formation of Cannata Phillips LPA LLC was not intended to mislead. Any violation of RPC 7.5 (d) caused no apparent confusion, damage or harm to any individual or entity. (Board 48)

The Board should consider the “totality of the circumstances” including the mitigating factors when deciding the appropriate sanction. This is consistent with a line of cases for violations of conflict of interests, when such mitigating factors exist as the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, full and free disclosure to the disciplinary Board and cooperative attitude, and a good character and reputation of the Respondent. *Leiken, supra*. Any sanction should be consistent with the purpose and intent of the Rules of Professional Conduct, which presuppose that “whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all of the circumstances, such as the willfulness and seriousness of the violation, extenuating factors, and whether there have been previous violations.” RPC, Preamble, Comment No. 19.

The panel is convinced by the testimony than neither Respondent poses a risk of committing further misconduct. (See Board 52). However, the panel is especially impressed that the mitigating factors predominate over the aggravating factors and that neither Respondent is likely to commit further misconduct. (See Board 59) Based upon the totality of the

⁸ The Parties Stipulations did not contain any stipulation for an aggravating factor of multiple violations, apparently viewing the violations coming from a common set of facts and common nucleus;

circumstances, especially the excellent professional reputation of the Respondent Phillips, he contends that public reprimand would be the most appropriate sanction for a 37 year practicing attorney with no prior disciplinary record., and excellent letters of reference.

Conclusion

Respondent Phillips respectfully request that this Court reviewed the Objections, and considered the issues of law, and the Conclusions of Law as argued by Respondent Phillips and make a decision according to the correct state of the law, and the application of the facts to such law⁹. Respondent Phillips respectfully request that based upon the totality of the circumstances, especially the excellent professional reputation of the Respondent Phillips, that this Court should consider a public reprimand as the most appropriate sanction for a 37 year practicing attorney with no prior disciplinary record, and excellent letters of reference. The Court in *Mangan* reasoned that “Respondent’s lack of any enmity, his hereto unblemished professional record, his established good character and reputation, and his cooperation in these proceedings persuade us that a warning will suffice in this case.” *Mangan, supra* at ¶17.

Respondent Phillips has accepted full responsibility for his actions and conduct and errors of judgment. Respondent Phillips had submitted a joint recommendation of violations and sanctions for the panel consideration at the hearing. The ultimate decision on violations and sanctions are for this Court.¹⁰

⁹ Throughout Respondent Phillips 37 years as an attorney he has argued and advocated the scholarly aspects of the law in many cases including a large number of cases before the Ohio Supreme Court, it is with this commitment to the law, that he has presented these legal issues;

¹⁰“Notwithstanding the submission of the rule violations, the parties are reminded that each rule violation alleged in the complaint must be supported by clear and convincing evidence. Neither this Panel nor the Board is bound to accept stipulated rule violations that are not supported by sufficient evidence” (Tr. 5); The document stipulating to a recommended sanction is not binding upon the Panel, the Board, or the Court (Tr. 14)

Respectfully submitted,

/s "Gerald W. Phillips"

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Objections were served by ordinary mail and email delivery on the 1st day of September, 2015 upon Counsel for Relator, Donald Scheetz, and Counsel for Respondent Cannata, Kimberly Vanover Riley, at the addresses contained on the cover page.

/s "Gerald W. Phillips"

Gerald W. Phillips (0024804)

Pro Se Respondent Phillips