ORIGINAL

THE SUPREME COURT OF OHIO

DAYTON BAR ASSOCIATION, Relator, v. **JOHN JOSEPH SCACCIA,** Respondent.	: : : :	Case No. 2015-1628 (Practice of Law Case) **OBJECTIONS OF RESPONDENT TO RECOMMENDATION OF BOARD OF PROFESSIONAL CONDUCT**

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Respondent, by and through counsel, hereby objects to the Recommendation of the Board of Professional Conduct of the Supreme Court of Ohio that Respondent be suspended from the practice of law for a period of eighteen months, with the final six months of the suspension stayed on conditions. Instead, Respondent asks this Court to impose upon him a suspension that would run fully concurrent from the beginning of the most recently imposed sanction imposed by the Court. Respondent asks that this Court grant him the opportunity to work with a mentor to develop and implement an effective compliance policy and program in his practice to address and remedy the practice of law and financial issues that have brought him before this Court.

This case is Respondent's third disciplinary case involving four separate complaints by Relator filed over a three year period of time. The first case involved two complaints that were eventually consolidated into a single case; the first complaint was filed in 2012 and referred to by the Board as "the Mound clients," and the second complaint was filed in 2013 and referred to by the Board as "the Grider the Willis matters." While this first consolidated case was pending before the Board, Relator filed another complaint in February, 2014, referred to as "the Elghouati and Brewer matters." On October 2, 2014, this Court suspended Respondent in the first case for one year, with six months of the suspension stayed. *Dayton Bar Assn. v. Scaccia*, 141 Ohio St. 3d, 35, 2014-Ohio-4278. While the second case was pending, and while Respondent was serving his suspension in the first case, Relator filed the present complaint in January, 2015, referred to as "the Marco Smith matter." On June 25, 2015, this Court suspended Respondent in the second case for one year, with six months of the suspension stayed, and ordered that the second suspension run concurrent with the first. *Dayton Bar Assn. v. Scaccia*, 143 Ohio St. 3d 144, 2015-Ohio-2487.

Respondent has served an actual suspension from the practice of law for over one year, the length of his first suspension. The one year suspension in the second case will run until June 25, 2016, at which point Respondent will have been suspended for 20 months. Were the Court to adopt the Board's recommendation in the present case, depending upon the starting point of the recommended 18 month suspension, the net effect could be that Respondent will have served an actual suspension from the practice of law for over three years. Respondent objects to the Board's recommendation as resulting in a sanction too severe for the circumstances of his situation.

In support of a more severe sanction, the Board cites this Court's decision in *Akron Bar Assn. v. DeLoach*, 143 Ohio St. 3d 39, 2015-Ohio-494. However, DeLoach engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation for falsely recreating client letters in an attempt to defend herself during a disciplinary investigation, and did not submit any actual character evidence. *Akron Bar Assn. v DeLoach, supra,* ¶15-16. The Court sanctioned DeLoach, who had not yet served any actual suspension from the practice of law, to a two year suspension with one year stayed on conditions.

Further, undisputed evidence was presented to the Board that Respondent's conduct coincided with a host of personal health and family issues including a Vitamin D deficiency since 2012 that was not diagnosed until 2015 that led to absentmindedness, inattention to detail, and at times Respondent "literally falling asleep." In addition, Respondent's minor daughter had complications following brain surgery and his elderly mother had a protracted illness before her death. The Board rejected these matters as mitigating factors because Respondent did not demonstrate a specific cause and effect between these circumstances and a particular act of misconduct on a particular day. The Board also criticized Respondent for not having presented

more than the undisputed evidence he did present. Respondent objects that the Board set an unrealistic and unattainable standard for him to meet when presenting evidence in support of mitigating factors. Because each disciplinary case is unique, the Board and this Court may consider *any* factor relevant to determination of the sanction to be imposed. *Disciplinary Counsel v. Zapor*, 127 Ohio St. 3d 372, 2010-Ohio-5769. Respondent's personal health and family issues are at a minimum relevant to his unique situation, and set him apart from other cases where attorneys received less severe sanctions than what is recommended against Respondent.

As in Respondent's previous cases before the Court, the Board found that the present case did NOT involve a dishonest or selfish motive, and the Board found evidence of good character and reputation. These mitigating factors were not present in the *DeLoach* case. Until his first suspension, Respondent had been successfully practicing law in Ohio for over three decades, since 1983. He served as Dayton City Prosecutor and later as the Dayton City Law Director. In *Toledo Bar Assn. v. Royer*, 133 Ohio St.3d 545, 2012-Ohio-5147, the Court noted Royer's long legal career with an absence of a prior disciplinary record and that Royer's problems were due to bad time management and record keeping. The Court should likewise recognize Respondent's long legal career with an absence of prior discipline before the filing of the multiple complaints by Relator during the past three years. With no evidence of a habitual pattern of misconduct until generally the onset of Respondent's personal health and family issues, the Court should be satisfied that the actual suspension Respondent has already served is more than sufficient to assuage any doubts about his ability to return to the practice of law, on a probationary status with monitoring and mentoring.

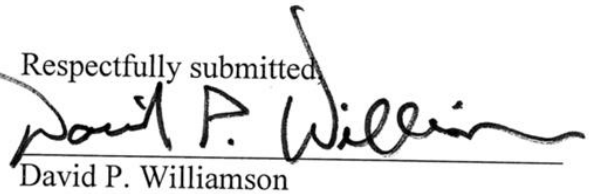
Respondent also objects to the Board's determination that his late attempts to comply with opposing counsel's discovery requests were somehow "intentional." Testimony was

undisputed at the hearing that Defendant's counsel had sent discovery requests before her client and other defendants had even been served, and that Respondent was awaiting the scheduling by the trial court of a pretrial conference to establish case deadlines. Even after the Motion to Compel had been granted, Respondent attempted to comply, albeit late and incomplete. However, such a failed attempt does not amount to a complete disregard for the process or the trial court's order that would otherwise raise the conduct to "intentional."

The Prof. Cond. R. 3.4(c) finding should be set aside, or in the alternative, this Court should consider the particular circumstances of Respondent's conduct in mitigation of his sanction, as compared with the few other similar cases cited by the Board. The attorney in *Akron Bar Assn. v. Shenise*, 143 Ohio St. 3d 134, 2015-Ohio-1548, consciously chose not to attend a court hearing. The attorney in *Disciplinary Counsel v. Stafford*, 128 Ohio St. 3d 446, 2011-Ohio-1484, made misrepresentations to opposing counsel. There are no similar examples of "intentional" conduct by Respondent.

Respondent asks this Court to recognize his long legal career, the special personal circumstances that he faced during the period of his misconduct combined with the challenges faced by solo practitioners generally, and the over one year actual suspension from the practice of law that he has already served.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served by regular U.S. Mail this **2nd** day of **November, 2015**, upon Brian D. Weaver, Attorney for Relator, Dayton Bar Association, 5822 Jennysim Place, Dayton, Ohio 45415.

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