

ORIGINAL

IN THE SUPREME COURT OF OHIO

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Supreme Court Case No. 2015-2000

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**Respondent's Answer Brief to
Relator's Objection to the Board of Professional Conduct Report and Recommendation**

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IN THE SUPREME COURT OF OHIO

Roger Stephen Kramer :
Respondent :
 : **Supreme Court Case No. 2015-2000**
 :
Office of Disciplinary Counsel :
Relator : **Respondent's Answer Brief**

BRIEF IN SUPPORT

I. PROCEDURAL AND BRIEF FACTUAL SUMMARY

In September 2012, the Cuyahoga County Inspector General sent a letter and the Report of Investigation of Inspector General the Cleveland Metropolitan Bar Association's Certified Grievance Committee. *Trans p 262, lines 3-8.*

The Cuyahoga County Inspector General's Office also referred the matter to the Cuyahoga County Prosecutor's Office. *Trans p 177, lines 4-7.*

The Cleveland Metropolitan Bar Association's Certified Grievance Committee, through its then Assistant Counsel ("CMBA's Assistant Counsel"), conducted an investigation of the Inspector General's grievance. *Trans p 262, lines 3-8.*

The CMBA's Assistant Counsel testified at the Hearing that she did all of the following:

- communicated with the Inspector General's Office; *Trans p 263, lines 16-20.*
- communicated with the Cuyahoga County Prosecutor's Office; *Trans p 262, lines 12-15.*
- sent a Letter of Inquiry to Respondent; *Trans p 263, lines 21-23.*
- acknowledged part of the 2013 response letter on behalf of Respondent included

that Respondent had worked through his lunch hour as the reason for the difference between the garage records and the time Respondent was claiming;

Trans p 262, lines 2-7.

The Cleveland Metropolitan Bar Association's Certified Grievance Committee then reviewed the information and sent a dismissal letter. *Trans p 264, lines 8-11.* The Cleveland Metropolitan Bar Association's Certified Grievance Committee then determined to exercise its discretion, believed that the situation amounted to an employer/employee disciplinary matter; and "The Committee does not believe that further disciplinary action is warranted." *Trans p 266, lines 17-25; p 266, line 1.*

The Inspector General was given her right of appeal of the dismissal. *See Respondent's Exhibit E.* The Inspector General did **not** exercise her right of appeal. *Trans p 149, lines 11-17.*

On **October 17, 2013**, the Board received an "anonymous" grievance letter which included the Report of the Investigation of Inspector General. The letter and the Report of Investigation of Inspector General was referred to Relator. *Respondent's Motion to Dismiss.*

On April 13, 2015 Respondent's first discovery request was sent to Relator. *See Exhibit 1 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On May 15, 2015, Respondent's counsel received a package of documents from Relator in response to Respondent's April 13, 2015 discovery request. *See Exhibit 3 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On May 19, 2015, Respondent's counsel sent a letter via both email and Regular U.S.

Mail to Relator requesting documents that were originally requested on April 13, 2015 and **not** included in the May 15 package. *See Exhibit 3 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On August 3, 2015, Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing was filed.

On August 6, 2015, the Hearing Panel Chair conducted a Pre-Trial Conference on Respondent's Motions.

On August 11, 2015, the Hearing Panel Chair conducted another Pre-Trial Conference on the discovery issues.

On August 18, 2015, Relator sent via email to Respondent's counsel Relator's Exhibit List with Exhibits. Included with Relator's Exhibit List and Exhibits was Relator's Exhibit 6, Cuayhoga County Agency of Inspector General Compelled Witness Statement/'Garrity' Warning.

Also on August 18, 2015, Respondent's counsel received a package from Relator, which contained Relator's cover letter, a **June 2, 2014** letter from Shelley Davis to Relator, and a compact disc (CD).

On August 19, 2015, Respondent's counsel deposed the Inspector General Byrd, Shelley Davis and Rebecca Keck. Each of the witnesses produced documents on August 19, 2015 pursuant to Subpoena Duces Tecum.

The Panel Hearing was held in Cleveland on August 25 and 26, 2015.

At the Panel Hearing, Ann Gerhart testified about Respondent:

He sometimes ran at lunch, yes ... in Cleveland you can only run

about half the year ... if there is ice and stuff he didn't run. I don't think he ran when it was raining. I don't think he ran everyday. I recall ... *Trans p 237, lines 19-23* he had a little office and I could see his back and he would sit there with a V8 sometimes. **He never ate.** People would go to lunch across the street, he **never** went to lunch with anybody as far as I know. He sat there with his V8 or he ran. *[Emphasis Added] Trans p238, lines 1-8.*

I ARGUMENT

Proposition of Law No. 1

Exercise of Respondent's Constitutional Due Process Rights is NOT a basis for Increased Disciplinary Sanction

Respondents in Ohio's Disciplinary System have Constitutional Rights to Due Process of law under both the Ohio and the United States Constitutions. A Respondent's Constitutional Rights to Due Process encompass both procedural due process and substantive due process.

In addition, Prof. Cond. R 3.1, Meritorious Claims and Contentions, sets forth the ethical obligations of the lawyer/advocate. Comment [1] to Prof. Cond. R. 3.1 succinctly sets forth the lawyer/advocate's ethical obligations:

The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, **in determining proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.** *[Emphasis Added] Prof. Cond. R 3.1, Comment [1].*

There were a number of legal procedural issues in this case. Those issues included:

- A. Whether a dismissal of a grievance by a certified grievance committee which is not appealed by the grievant is final and whether another disciplinary agency must give the dismissal full faith and credit
- B. Whether the constitutional protections of *Garrity v. State of NJ*, 385 U.S.493 apply in Ohio's Disciplinary System
- C. Whether Relator's failure to timely provide discovery warranted the filing of an emergency summary judgment motion, or in the alternative, a motion in limine
- D. Respondent's right to make a full record and to protect the record for possible appeal

Relator, in support of its argument for an increased disciplinary sanction, argues that Respondent challenged "relator's case from the moment it opened its investigation, to filing a motion for summary judgment, a motion for a directed verdict, and a motion to dismiss – all of which prompted the board to conclude that 'These motions also suggest respondent never believed he did anything wrong.' *Board Report* ¶ 35; *Relator's Objections* page 10.

Relator's argument for an increased sanction relies on the Motion practice on behalf of Respondent. Relator supports this argument with the Board's finding that because of the Motion practice on behalf of Respondent, Respondent failed to acknowledge wrongdoing.

As set forth above, Respondent's counsel as lawyer/advocate had an ethical obligation to use legal procedure for the fullest benefit of the client's cause. Thus, Respondent's counsel as lawyer/advocate engaged in Motion practice to protect Respondent's substantive and procedural Due Process Rights.

In Respondent's Counsel's closing arguments, Respondent's counsel stated:

And so the record is clear, the motion practice is mine. My client should not suffer if there is anything out of my motion practice that has angered the Panel or the Board. I wear the jacket for that. I'm the lawyer. It's my responsibility. I wear the jacket.

This statement reinforces the ethical obligation set forth in Prof. Cond. R. 3.1 and Respondent's Constitutional Rights to both procedural and substantive Due Process through Motion practice.

Because Respondent's lawyer/advocate was protecting Respondent's rights through Motion practice, both Relator and the Board argue that Respondent has failed to accept responsibility for his actions and should be sanctioned more severely. For the reasons that follow, Relator's and the Board's argument fail.

A. Whether a dismissal of a grievance by a certified grievance committee which is not appealed by the grievant is final and whether another disciplinary agency must give the dismissal full faith and credit

Ohio's disciplinary case law is silent as to whether a dismissal of a grievance by a certified grievance committee which is not appealed by the grievant is final. Likewise, Ohio's disciplinary case law is silent as to whether another disciplinary agency must give the dismissal of a grievance by another disciplinary agency full faith and credit.

On January 30, 2015 Respondent's Motion to Dismiss was filed based upon Civ.R.12(b)(1), (B)(2) and (B)(6) and Gov. Bar R V. This was one of the legal procedure motions filed by Respondent's lawyer/advocate for the fullest benefit of the client's cause and to protect the record.

Civ. R. 12(G) and 12(H) provides that if a party fails to make a motion asserting 12(B) claims, then the defenses and objections are waived. The filing of Respondent's Motion to Dismiss on January 30, 2015 were to protect Respondent's rights.

The arguments propounded in Respondent's Motion to Dismiss included: (1) Gov. Bar R.

V, Section 27(A) requires the Board and hearing panels to follow the Ohio Rules of Civil Procedure; (2) Gov. Bar R. V, Section 9(C)(1) as amended effective January 1, 2015 and its predecessor, Gov. Bar R. V, Section 4(C), required the Cleveland Metropolitan Bar Associations' Certified Grievance Committee to review matters filed with it and authorized the Cleveland Metropolitan Bar Associations's Certified Grievance Committee to use its discretion whether to file formal disciplinary charges; (3) when a grievant does not exercise its right of appeal the dismissal is final pursuant to Gov. Bar R. V, Section 4(I)(5); (4) a dismissal by a certified grievance committee which is not appealed should be given full faith and credit by other disciplinary agencies; (5) to permit Relator's prosecution of Respondent to continue created a "loop-hole to the literal reading of Gov. Bar R. V." *Respondent's Motion to Dismiss page 13, last paragraph*; such that the practical effect of this loop-hole is that an attorney may be investigated by multiple disciplinary agencies for the same alleged acts. *See Respondent's Motion to Dismiss.*

As part of its investigation of the Inspector's General's letter and Report of Investigation of Inspector General received by the Cleveland Metropolitan Bar Association's Certified Grievance Committee (*Trans p 263, lines 3-8*), the CMBA's Assistant Counsel, on behalf of the Certified Grievance Committee: (1) communicated with the Inspector General's office (*Trans p 263, lines 16-20*), (2) communicated with the Cuyahoga County Prosecutor's Office (*Trans p 262, lines 12-15*); (3) sent a Letter of Inquiry to Respondent (*Trans p 263, lines 21-23*); and (4) received the letter of response filed on behalf of Respondent (*Trans p 263, lines 24-25, p 264 line 1*). The response letter included information that Respondent had worked through his lunch hour as the reason for the difference between the garage records and the time he was claiming

(*Trans p 264, lines 2-7*). The Cleveland Metropolitan Bar Association then reviewed the matter and sent a dismissal letter. (*Trans p 264, lines 8-11*). The CMBA's Assistant Counsel further testified by reading from Respondent's Exhibit D, dismissal letter:

The Committee has decided to exercise its discretion and dismiss the grievance. The Committee believes the situation amounts to an employer/employee disciplinary matter and that Mr. Kramer has already been sanctioned by the loss of his employment. The Committee does not believe that further disciplinary action is warranted. *Trans p 266, lines 17-25; p 267, line 1.*

The CMBA's Assistant Counsel further testified that Gov. Bar R. V, Section 9(C) authorized the Committee's action. *Trans p 267, lines 2-8*. The CMBA's Assistant Counsel further testified that this was the opinion of the Certified Grievance Committee at that time. *Trans p 267, lines 9-13.*

In this case, the Inspector General was given notice of her right of appeal of the dismissal by the Cleveland Metropolitan Bar Association's Certified Grievance Committee. *Respondent's Exhibit E*. The Inspector General chose **not** to exercise her right of appeal. *Trans p 149, lines 11-17*). The question to be resolved are these: is the dismissal by the Cleveland Metropolitan Bar Association Certified Grievance Committee final and should other disciplinary agencies give this dismissal full faith and credit?

A motion which is required under Civ. R 12 (G) and (H) to protect Respondent's rights should **not** be a basis for increasing the disciplinary sanction against Respondent.

The facts and circumstances of this case presents a unique opportunity for the Court to decide whether a dismissal by a certified grievance committee which is **not** appealed by the grievant should become final and should be given full faith and credit by another disciplinary

agency.

This issue, finality and full faith and credit of certified grievance committee dismissals which are not appealed by the grievant, has ramifications far beyond Respondent's case. This issue of finality and full faith and credit affects the present and future operation of Ohio's Disciplinary System.

Preserving issues in a case which have broad application to the entire disciplinary system in Ohio should **not** result in an increased sanction for Respondent.

B. Whether the Constitutional protections in *Garrity v. State of N.J.*, 385 U.S. 493 apply in Ohio's Disciplinary System

Ohio's disciplinary case law is silent as to whether the Constitutional protections in *Garrity*, apply to Ohio's disciplinary cases.

On or about August 21, 2015, Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine was filed. The arguments propounded in Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine included: Relator's Exhibit 6, "Cuyahoga County Agency of Inspector General Compelled Witness Statement/ 'Garrity Warning'", and argued that *Garrity* should be made applicable to Ohio's Disciplinary System. The Motion also pointed out Relator's late production of documents and the surprise production by Relator's witnesses of 30 additional documents.

Relator's Exhibit 6, "Cuyahoga County Agency of Inspector General Compelled Witness Statement/'Garrity Warning' was **first** produced to Respondent on **August 18, 2015** via email between 5:17pm and 5:25pm (a mere 7 days prior to trial) as part of Relator's Exhibit List and Exhibits. *Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion*

in Limine.

The next day, on August 19, 2015 , during the Deposition of 3 of Relator's witnesses, 30 additional documents were **first** produced to Respondent. Respondent's right to a full and fair hearing was hampered by the late production of the *Garrity* materials and the late production of the other documents.

The fundamental precept of *Garrity* is since a government employee during an employment investigation can be coerced into giving a statement, that statement given during the employment investigation cannot be used against the employee in a criminal prosecution. The rationale for the holding in *Garrity* is that since the government employee faces employment sanction (up to and including losing their job) for failing to give a statement during the employment investigation, this is coercion in violation of the employee's Constitutional Rights.

Whether statements given during an employment investigation pursuant to *Garrity* are precluded from use in Ohio's Disciplinary System is an unresolved issue in Ohio's Disciplinary System.

This issue has ramifications far beyond Respondent's case, since a decision on this issue affects the operation of Ohio's Disciplinary System.

Preserving issues in a case which have broad impact to the entire disciplinary system should **not** result in an increased sanction for Respondent.

C. Whether Relator's failure to timely provide discovery warranted the filing of an emergency summary judgment motion, or in the alternative, motion in limine

On April 13, 2015, Respondent's counsel sent an email with 11 specifically enumerated

discovery requests to Relator. *Exhibit 1 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.* Relator was asked whether Relator would accept the email as Respondent's discovery request or "whether I will need to provide you with a formal Respondent's First Request for Production of Documents and Other Tangible Things?" *Exhibit 1 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.* Relator responded via email and stated, *inter alia*,: "I will be happy to provide you with the information requested. You do not need to serve formal discovery." *Exhibit 2 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On May 15, 2015, Respondent's counsel received a package of documents from Relator in response to Respondent's April 13, 2015 discovery request. *Exhibit 3 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On May 19, 2015, Respondent's counsel sent a letter to Relator via both email and Regular U.S. Mail, outlining the missing information and documents which were originally requested on April 13, 2015 and **not** produced in the May 15 package. *Exhibit 3 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On July 7, 2015, Respondent's counsel sent an email to Relator renewing the discovery requests and attaching all prior discovery requests. *Exhibit 5 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On July 21, 2015, Respondent's counsel sent a letter via facsimile to Relator again

renewing discovery demands and informing Relator that if Relator failed to produce the requested discovery by Wednesday, July 29, 2015, Respondent's counsel would file a Motion to Compel pursuant to Civ. R. 37. *Exhibit 6 to Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing.*

On August 3, 2015 Respondent's Motion to Compel Production of Documents and Other Tangible Things and Motion to Continue Hearing was filed.

On August 6, 2015, the Hearing Panel Chair conducted a Pre-Trial Conference on Respondent's Motions.

During the August 6, 2015 Pre-Trial Conference, Relator represented that he would be sending to Respondent's counsel **all** documents that Relator would be submitting as evidence at the Hearing. During the August 6, 2015 Pre-Trial Conference, Relator **for the first time** disclosed the identities of the 3 witnesses that Relator intended to call at the Hearing.

Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine.

On August 11, 2015, a second Pre-Trial Conference was held on the discovery issues.

Relator represented during the August 11, 2015 Pre-Trial Conference that he provided Respondent's counsel via email the documents discussed during the August 6 Pre-Trial. Relator also represented that on Friday, August 7, 2015 he provided to Respondent's counsel via email handwritten notes from 2 of Relator's witnesses; which documents became Relator's Exhibit 7.

Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine.

Relator also represented during the August 11, 2015 Pre-Trial Conference that he had supplied to Respondent's counsel **all** of the documents and information requested by Respondent's counsel. Relator further represented during the August 11, 2015 Pre-Trial

Conference that he had supplied to Respondent's counsel **all** of the documents and information that he intended to use as Exhibits at the Hearing. *Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine.*

On August 18, 2015, Respondent's counsel received Relator's Exhibit List and Exhibits. August 18, 2015 was the **first** time Relator's Exhibit 6, "Cuyahoga County Inspector General Compelled Witness Statement 'Garrity Warning'", was provided to Respondent's counsel. *Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine.*

Also on August 18, 2015, Respondent's counsel received a package from Relator which contained Relator's cover letter, a **June 2, 2014 letter** from Shelley Davis to Relator, and a compact disc (CD). Again, this was the **first time** these documents were disclosed to Respondent's counsel. *Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine.*

Receipt on August 18, 2015 of Relator's Exhibit 6, "Cuyahoga County Inspector General Compelled Witness Statement "Garrity Warning" triggered the inquiry of whether Ohio's disciplinary case law had decided whether the Constitutional protections in *Garrity* apply in Ohio's Disciplinary System. Since Ohio's disciplinary case law is silent on this issue, in order to preserve this issue for the record, a motion in limine would need to be filed as provided by Ohio law, the motion would need to be renewed at trial and objections made when evidence on this issue was attempted to be presented.

The timing of the filing of Respondent's Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine was predicated on the 11th hour disclosure of the documents. On August 21, 2015, Respondent's Emergency Motion for Summary Judgment, or in the

alternative, Motion in Limine was filed.

As set forth above, the issue of whether statements made during an employment interview pursuant to *Garrity*, are precluded from use in Ohio's Disciplinary System is an unresolved issue in Ohio's Disciplinary System. This issue has ramifications beyond Respondent's case, since a decision on this issue affects the operation of Ohio's Disciplinary System. The mechanism to preserve this issue for the record is to file a motion and to make the appropriate objections at trial.

D. Respondent's right to make a full record and to protect the record for possible appeal

Any party in any legal proceeding has a right to make a full record and to protect the record for possible appeal. Part of the function of the lawyer/advocate is to make the record and to protect the record.

As set forth above, both Relator and the Board want to sanction Respondent for motion practice designed to make a full record and to protect the record for possible appeal.

Both Relator and the Board cite to the Civ. R. 50, Motion for Directed Verdict/Motion to Dismiss to support their conclusion that Respondent failed to acknowledge wrongdoing. As set forth above, both Relator and the Board cite to motion practice on behalf of Respondent to support their conclusion.

Given the legal procedure issues in this case, the making of a Motion for Directed Verdict/Motion to Dismiss protected the record, just as the Motion to Dismiss and Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine were made to preserve issues and to protect the record. The making of these Motions **was not** a failure to acknowledge

wrongdoing, but was a procedural mechanism to make a full record, to protect the record and to protect Respondent's Ohio and Federal Constitutional Rights.

Proposition of Law No. 2

Respondent Did Accept Responsibility and Express Remorse

Merriam Webster's Dictionary simply definition of remorse: "a feeling of being sorry for doing something bad or wrong in the past: a feeling of guilt."

Respondent testified on direct exam:

I should not have handled the time I worked for the Board of Revision the way I did. Growing up in the profession and working for governmental agencies as I have I was advised do your job, do it well. It was never instructed on a paid lunch hour. It was just something that everybody had lunch. On the days that I didn't go workout I stayed in the building and worked. So, I didn't think anything of it. Some of my recordkeeping is sloppy. Really sloppy. And what my motivation was I can't tell you, but it wasn't to cheat the County. It wasn't to get something for nothing. And as you can see by our final analysis, I was over the amount of time that I was required to work by 16 hours.

But if I had to do it all over again I wouldn't have done it the way I did. I would have gone to my supervisor and asked. But nobody ever said anything about it and I didn't think anything of it because I was getting the job done. I was doing it. *Trans p 308, lines 22-25; Trans p 309, lines 1-19.*

Respondent testified on cross-examination by Relator:

Q Sitting here today you don't believe you did anything wrong.

A No, No, what I did was wrong. *Trans p 317, lines 8-12.*

Respondent further testified on cross-exam by Relator:

I did wrong. I shouldn't have entered the improper time. Did I do it with the intention of stealing from the government. No. *Trans p 324, lines 19-21.*

Respondent testified in response to the Hearing Panel Chair's question:

Q And that wrong is – that wrong I guess is that you were a sloppy bookkeeper?

A Well, I was wrong in a couple of ways. Number one, I was wrong that I was a sloppy bookkeeper; number two, that I neglected to advise my supervisor that this is what I was doing when I worked and stayed in for lunch. I should have dealt with that up front . . . *Trans. p 354, lines 14-19*

Respondent's testimony is an acknowledgment of his wrong doing and a further acknowledgment that if he could do it all over again, he would not do it the same way.

Respondent did show remorse.

Relator argues that *Cleveland Bar Assn. v. Cleary*, 93 Ohio St.3d 191, 2001-Ohio-1326, (Board made an actual finding that Cleary made false and deceptive statements to the Hearing Panel) justifies actual time-off for Respondent in this case.

First, there was NO finding by the Hearing Panel or the Board that Respondent made false and deceptive statements to the Hearing Panel. Second, Relator argued for an actual 1-year suspension from the practice of law at the hearing in this case.

Neither the Hearing Panel nor the Board accepted Relator's argument for an actual suspension from the practice of law.

Respondent respectfully requests that any suspension ordered be stayed in its entirety.

CONCLUSION

The exercise of Respondent's Constitutional Rights to Due Process is **not** a basis for increasing the sanction to be imposed on Respondent.

The use of procedural mechanisms (Motion to Dismiss, Motion to Compel Production of

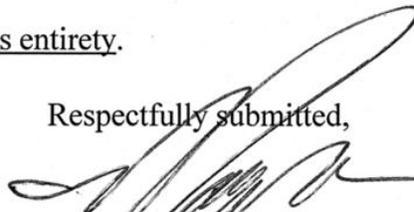
Documents and Other Tangible Things and Motion to Continue Hearing, Emergency Motion for Summary Judgment, or in the alternative, Motion in Limine, and Motion for Directed Verdict) by Respondent's lawyer/advocate to make a record and to preserve those issues for the record should **NOT** be a basis for imposing an increased disciplinary sanction.

The facts and circumstances of this case presents an unique opportunity for the Court to decide issues not addressed in prior Ohio disciplinary case decisions and which have broad impact on the entire disciplinary system in Ohio. Those issues include:

- A Whether a dismissal of a grievance by a Certified Grievance Committee which is not appealed by the grievant is final and whether another disciplinary agency must give the dismissal full faith and credit;
- B Whether the Constitutional protections in *Garrity v. State of N.J.*, apply in Ohio's Disciplinary System;
- C Whether the exercise of Respondent's Due Process Rights by using Ohio's Civil Rules to make a full record and to protect the record for possible appeal is a basis for increasing the disciplinary sanction imposed upon a respondent.

For the reasons set forth in this Brief, Respondent respectfully requests that any suspension ordered be stayed in its entirety.

Respectfully submitted,



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PROOF OF SERVICE

I, Mary L. Cibella, Counsel for Respondent, Roger Stephen Kramer, Esq., do hereby certify that on February 15th, 2016, a copy of Respondent's Answer Brief to Relator's Objection to Board of Professional Conduct's Recommendation was served as follows:

Via Overnight Federal Express to:

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