

**BEFORE THE SUPREME COURT OF OHIO**

|                                   |   |   |
|-----------------------------------|---|---|
| <b>In re:</b>                     | : |   |
| <b>CINCINNATI BAR ASSOCIATION</b> | : | <b>Sup. Ct. Case No. 2016-0260</b><br><b>Board Case No.: 2014-098</b> |
| <b>Relator</b>                    | : |   |
| <b>vs.</b>                        | : | <b>RESPONDENT'S OBJECTIONS</b>  |
| <b>JOHN WESCHE HAUCK</b>          | : | <b>TO FINDINGS OF FACT,</b>   |
| <b>Att. Reg. No. 0023153</b>      | : | <b>CONCLUSIONS OF LAW, AND</b>  |
|                                   | : | <b>RECOMMENDATIONS OF THE</b>   |
| <b>Respondent</b>                 | : | <b>BOARD OF PROFESSIONAL</b>  |
|                                   | : | <b>CONDUCT</b>  |

**RESPONDENT JOHN WESCHE HAUCK'S OBJECTIONS  
TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION  
OF THE BOARD OF PROFESSIONAL CONDUCT OF THE  
SUPREME COURT OF OHIO**

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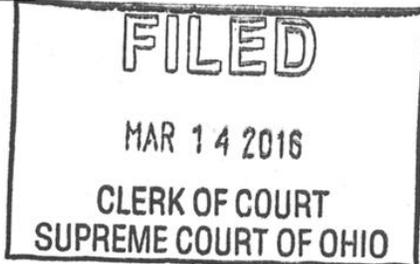
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### III. STATEMENT OF THE CASE

#### A. Procedural Posture

This Grievance action was heard on October 20 and 21, 2015 in Columbus before a panel of three attorneys. The Board of Professional Conduct filed its certified report and recommendations in the Grievance action on February 16, 2016 with the Supreme Court of Ohio. The Supreme Court, in turn, issued an Order to Show Cause on February 23, 2016. **Respondent Hauck** filed these Objections on March 14, 2016, which is 20 days from the Order to Show Cause.

#### B. Statement of Facts

The Grievance action arises from **Respondent Hauck's** writing a letter dated March 3, 2014 to a retired attorney named Edmund S. Lee, III, and his sending a copy of that letter to Mr. Lee's wife, Mrs. Jeanne K. Lee. The letter was intended to encourage the Lee family to reconcile with their son, Mr. Richard D. Ellison. Mr. Ellison had been alienated and estranged from his parents for more than ten years prior to that time.

The letter to Mr. Lee is marked **Exhibit 4** in Relator's Exhibits. A separate cover letter and a mailing envelope prepared to Mrs. Lee is marked **Exhibit 5** in Relator's Exhibits. The letter was largely composed by **Respondent Hauck's** protégé, Mr. Ellison, but it was signed and fully adopted, as his own writing, by **Respondent Hauck**. Both Respondent Hauck and Mr. Ellison collaborated for several months to prepare the letter, in advance of mailing it on March 3, 2014.

The letter dated March 3, 2014 contains at the top of the first page, but nowhere on subsequent pages, the name and title, "John W. Hauck / Attorney at Law." However, **Respondent Hauck** included the following explicit disclaimer in the third paragraph of the letter:

*Before I continue, however, I should clarify that although I am an attorney, I'm not acting in that capacity here. I am writing strictly as a friend and a Christian who wants to help.*

**Respondent Hauck** learned from his protégé, Mr. Ellison, well before the letter dated March 3, 2014 was issued, that both Mr. Lee and Mrs. Lee were named as protected persons in a Civil Protection Order that had been issued in the Hamilton County Court of Domestic Relations on or about August 11, 2010. The CPO is marked **Exhibit 3** in Relator's Exhibits. It was issued in Case No. DV1000910. Mr. Ellison talked about the CPO quite a bit with **Respondent Hauck**, but never showed a copy to him. [Trans. 100:20 - 101:10] Instead, Mr. Ellison emphasized that the order first entered against him, while he was still in the penitentiary at London, had been for a one year CPO, whereas he later received an order (from the second hearing on the CPO) that lengthened the term to five years.

**Respondent Hauck** repeatedly emphasized to **Relator CBA** and to the Panel that he does not practice law in Domestic Relations Court. **Respondent Hauck** has not handled a termination of marriage nor any other case in which a TPO or CPO might be involved in Domestic Relations Court since representing a client in a "knock down-drag out" divorce case ending after five years in 1990. That was his last case of any import. **Respondent Hauck** does not know the law nor the procedures in Domestic Relations, and would be foolhardy (as is being alleged in this current case!) even to go near that court system. [**Resp, Exh 1**, page 3 bottom]

The strategy in writing the instant letter was simple: Mr. Lee, as an attorney at law, could easily have evaluated the desire of the Lee family either to resume communications with Mr. Ellison, or to continue to avoid him. It was hoped that Mr. Lee *informally* could call or otherwise respond to **Respondent Hauck** as to whether he and his wife, Mr. Ellison's blood mother, had any interest

in reconsidering or modifying the CPO. The last paragraph of the letter made such a request. If the Lees had *interest* in revisiting the CPO, then *the request* was for Mr. Lee to file a Motion with the Court. *Respondent Hauck* says nothing about his filing a Motion, nor Mr. Ellison possibly filing a Motion, in the letter. If Mr. Lee decided not to respond, then presumably nothing more would be accomplished in any family reconciliation. [*Resp. Exh. 1*, pp 3-4]

That was the extent of the intended communication. A preliminary request to determine whether further discussions, and legal action in court, was appropriate.

*Respondent Hauck* learned much later, however, well after the grievance action was filed, that Mr. Lee, to whom the letter had been addressed, had deceased on September 24, 2010. [*Resp. Exh. 10*] This was fully two years and five months prior to the letter being written. Thus Mr. Lee was a phantom recipient of the letter, if at all. He had died at the age of 84. Likewise, Mrs. Lee was then in her late 80s in age, and she was not called by *Relator CBA* as a witness in the grievance action. She was the only “protected person” who was living at the time the letter to Mr. Lee was written.

As a result of the CPO being in existence, and the letter being issued to Mr. Lee, and Mrs. Lee going to the local police, *Repondent Hauck’s* protégé, namely Mr. Ellison, was arrested and charged with a Violation of a Protection Order. His criminal case is found at *Relator’s Exh. 2*. Mr. Ellison was sentenced to 90 days in jail, which he served with good time credit.

*Respondent Hauck* was in more shock than anyone, except perhaps Mr. Ellison, at his friend being arrested and charged with a criminal offense. [Trans. 355:1-8] And this came after Mr. Ellison had served six years at the London Penitentiary after trying, in an improper and ultimately illegal

manner, to visit his parents at their house to discuss the family schisms. And then almost four more years had passed, with no communication within the family, following his release upon parole.

Thus the informal attempt to determine whether the parties were open to communication in 2014 was an abysmal failure. And it has resulted in tremendous hardship to the many persons and professionals involved. **Respondent Hauck** does take full responsibility for his actions and the resulting hardship on all persons. He is especially saddened and remorseful that his friend, Mr. Ellison, ended up serving an additional 90 days in jail, after having spent 6 years in the penitentiary, for attempting to talk with his family. [Trans. 66:7-15] Oh yes. I almost forgot. Mr. Ellison is “mentally ill” and a convicted felon, and thus not deserving of sympathy from anyone else besides perhaps myself.

**C. Legal issues in these Objections:**

First, **Respondent Hauck** has consistently asserted that he assisted Mr. Ellison, and that he signed the letter dated March 3, 2014, solely as a *friend*, and not as Mr. Ellison’s legal representative. The panel of three attorneys, and the Board, found by clear and convincing evidence to the contrary, namely that **Respondent Hauck** acted at all relevant times as an attorney at law for Mr. Ellison, and that he represented Mr. Ellison as a legal “client” in his communications to the Lee family. The Board found that **Respondent Hauck** was obligated, as a result, to fulfill the duties and obligations to Mr. Ellison imposed by the Code of Professional Responsibility, which, the Board found, **Respondent Hauck** failed to do.

**Respondent Hauck** asserts, or at least raises the issue, that as a matter of law Mr. Ellison was not a “client” and that **Respondent Hauck** had no duty, as an attorney, to investigate the CPO ahead of time.

Second, and very closely related to the first issue, the Board asserted in its certified filing that **Respondent Hauck** lacked credibility, in particular, on the issue of whether or not he had possessed, looked at, or otherwise even viewed the CPO marked as **Exhibit 3** in Relator's Exhibits. [The CPO is attached hereto in the Appendix.] The Board found that **Respondent Hauck** was knowledgeable and understanding of the relevant prohibitions in the CPO **before** he issued the letter to the Lees dated March 3, 2014. Thus the Board found by clear and convincing evidence that **Respondent Hauck** had breached his duty - as an attorney - to adhere to the terms and conditions of the CPO in representing Mr. Ellison. All of these allegations - and now findings - are denied by **Respondent Hauck**,

Third, the Board found that **Respondent Hauck** committed an illegal act by aiding and abetting Mr. Ellison in violating the prohibitions in the CPO. **Respondent Hauck** does not dispute the finding of fact that he aided and abetted Mr. Ellison in writing the letter dated March 3, 2014, and that it caused Mr. Ellison to be found guilty of a criminal violation. The issue is what is the law applicable to such "aiding and abetting." The Board cites no supporting law in its certified filing. **Respondent Hauck** sets forth the law on "aiding and abetting" in injunctive actions.

Fourth and finally, the Board declined to rule upon the merits of a **Motion to Dismiss** that was timely filed and briefed by both parties on the issue of the constitutionality of the **Civil Protection Order [Relator's Exh. 3]** that was issued pursuant to **R. C. Section 3113.31**, which was used to prosecute Mr. Ellison and which forms the basis, for the most part, for the grievance action against **Respondent Hauck**. The Board overruled the **Motion to Dismiss** by Entry dated December 17, 2015, stating that it did not have jurisdiction to rule upon the constitutionality of state statutes. Thus **Respondent Hauck** raises this issue again, in a long legal argument, as part of these Objections.

Most of the Rule violations found against *Respondent Hauck* in this grievance action stem from the writing and issuing of the letter dated March 3, 2013. The letter writing was found to be a violation of *Prof. Cond. R. 1.1 - Competence* - and of *Prof. Cond. R. 8.4(b) - Illegal Act*. *Respondent Hauck* objects to these findings and conclusions of law. In addition, *Respondent Hauck* objects to the related findings of violations of *Prof. Cond. R. 8.4 (c) and (d)*, namely that *Respondent Hauck* engaged in dishonesty, fraud, deceit and misrepresentation, and that *Respondent Hauck* did engage in conduct that is prejudicial to the administration of justice. *Respondent Hauck* does not dispute, however, nor does he raise as part of these Objections, the finding that he violated *Prof. Cond. R. 5.5 - Practicing Under Suspension*, as he was not timely in registering from biennium to biennium.

#### IV. OBJECTIONS AND BRIEFS ON THE MERITS

##### FIRST OBJECTION.

***THE EVIDENCE OF RECORD DOES NOT SUPPORT THE BOARD'S FINDING OF FACT NOR CONCLUSION OF LAW THAT RESPONDENT HAUCK UNDERTOOK MR. ELLISON'S LEGAL REPRESENTATION AT ANY RELEVANT TIME.***

##### **Brief in Support:**

The specific facts on the issue of no attorney representation are fairly simple and are not controverted. *Respondent Hauck* never provided a letter, a contract, nor other writing of any kind to Mr. Ellison that suggested, or much less stated, that he was a "client" or that *Respondent Hauck* was communicating to Mr. Lee in a legal capacity. The effort was to ask Mr. Lee if *he* would be willing to take legal action. *Respondent Hauck* never *said* nor *wrote* to anyone, at *any* time, that

he was Mr. Ellison's attorney. This includes the letter written March 3, 2014. Likewise, Mr. Ellison never provided a letter, contract nor other writing to **Respondent Hauck**, nor made any statement of any kind, that suggested, much less stated, that he was retaining, hiring, or otherwise employing **Respondent Hauck** to act in a legal capacity on his behalf. Or that he thought **Respondent Hauck** was his attorney.

Mr. Ellison was by no means *misled* or *deluded* into thinking that **Respondent Hauck** was his attorney in the letter writing campaign. Mr. Ellison drafted the letter himself, in his own words and style, with Mr. Hauck merely providing feedback and responses to what Mr. Ellison had drafted. Mr. Ellison was well educated, knowledgeable, and well experienced in business, but of low moral standing in the eyes of his family and the law. Thus he wanted a "third party" (such as **Respondent Hauck**, an attorney) to communicate to his family, in particular to Mr. Lee, the head of the family, believing that they might listen to such an objective person, since they had otherwise ignored Mr. Ellison for many years. [Trans. 341-345]

Both Mr. Ellison and **Respondent Hauck** testified before the Panel that they were acting as friends in the letter writing campaign, and that there was no attorney-client relationship nor legal representation of any sort. [Trans. 347:9-24, 348:1-12] This point goes to the issue of credibility that the Panel expressed in its findings, asserting at many places in the decision that they just did not believe **Respondent Hauck** on much of what he was testifying. They did not believe that an otherwise licensed and capable attorney would try to do a favor for a forlorn neighbor, as a friend, to see if his family would accept him back as a son. They did not believe that **Respondent Hauck** would write, or much less sign the letter composed by another, when he had not reviewed a known CPO in Domestic Relations Court. And most important, they did not understand - from a human

point of view - why **Respondent Hauck** would sign a letter that showed that Mr. Ellison still harbored bitterness and resentment from his past punishment, even though at the same time he tried to apologize and to make amends in the same letter. Oh yes. I almost forgot again. He was “mentally ill” and a convicted felon, and thus not deserving of understanding from anyone else besides perhaps myself.

Mr. Ellison wrote the letter dated March 3, 2015. Mr. Hauck merely provided editing services to Mr. Ellison, and then signed the letter. It was a “big brother” approach in many ways. [Off the record - **Respondent Hauck** was a big brother to individual handicapped kids for many years in the Big Brothers-Big Sisters organization.] The task was to encourage Mr. Ellison to vent his anger *before* putting it in writing. To write in more soothing and calm tones. To express remorse and apology and to ask for forgiveness. Over several months, Mr. Ellison was able to compose such a letter. Thus it turned out as a “mixed” letter - some old resentments surfacing, which I repeatedly urged him to put behind him, and some fresh, positive expressions of wanting to make a new start with the family.

The letter is written in lay person’s terms. There is no legal analysis, no legal citation, nor any “legal argument” in the letter. There is no negotiating. Mr. Ellison is a design engineer by profession, and thus he is educated and sophisticated. He obviously, from the content of the letter, is fairly articulate and a good writer. Mr. Ellison contrived the entire content of the letter. Since he wrote the letter, he included at **Respondent Hauck’s** request the following explicit disclaimer of representation on the first page:

*Before I continue, however, I should clarify that although I am an attorney, I’m not acting in that capacity here. I am writing strictly as a friend and a Christian who wants to help.*

Finally, when **Respondent. Hauck** later talked by phone with Mr. Ellison in jail, after Mr. Ellison had been charged with a criminal offense, all of the conversations are replete with reminders by **Respondent Hauck** that he was *not* Mr. Ellison's attorney, and that the Public Defender's Office would provide him adequate representation on the criminal charge. [See Respondent's **Exhibit 9**].

The Public Defender assigned to represent Mr. Ellison in Municipal Court, Case No. C/14/CRB/6115 tried to assert an attorney-client privilege between **Respondent Hauck** and Mr. Ellison as a defense strategy. The effort was to prevent the State from calling **Respondent Hauck** as a witness for the prosecution. But such effort failed for the defense. Respondent's **Exhibit 6** is the State's legal argument, in the criminal case, that **Respondent Hauck** at no time was acting as Mr. Ellison's attorney.

The law on what constitutes an attorney-client relationship is set forth in **Cuyahoga County Bar Ass'n v. Hardiman**, 100 Ohio St. 3d 260; 2003-Ohio-5596; 798 N.E.2d 369; 2003 Ohio LEXIS 2814. The Ohio Supreme Court holds at P8 of the Opinion that an attorney-client relationship need not be formed by an express written contract or by the full payment of a retainer, but may be created by implication based upon the conduct of the parties and the reasonable expectations of the person seeking representation.

Most of the cases that follow **Cuyahoga County Bar Ass'n** involve situations where the attorney has assessed a retainer fee, and/or has indicated that he would undertake certain legal work for a client, and/or he actually undertakes the legal work after part-payment of a fee has been made. In the **Cuyahoga County Bar Ass'n** case itself, for example, one prospective client named Moore paid \$1,500 of an agreed fee of \$3,500 to attorney Hardiman, who reviewed with Moore the legal steps he would take to investigate and prepare his appeal. The attorney then failed to take any

action before the appeal time ran. Another prospective client named White paid no retainer fee to Mr. Hardiman, but the attorney nevertheless prepared answers to interrogatories for Mr. White, and then, after both the client and the attorney failed to appear for trial, assisted Mr. White in preparing a motion for relief from judgment. Both of these situations are clear examples of *promises of representation* made and broken by an attorney, *legal fees* assessed by an attorney, and/or *legal work performed* by an attorney, all of which gave the prospective client the wrong impression that the attorney was hired and working for their best interest. These cases are totally inapplicable, on their facts, to the instant grievance action against *Respondent Hauck*.

The Ohio Supreme Court's opinion is worth reviewing in *Cleveland Bar Association v Compmanagement, Inc.* 111 Ohio St. 3d 444; 2006 Ohio 6108; 857 N. E. 2<sup>nd</sup> 95; 2006 Ohio LEXIS 3401. The issue in that case was the extent to which certain non-attorney administrators were engaged in the unauthorized practice of law in handling worker's comp claims. The Court at P49 states that the "ever-evolving definition of the practice of law" allows a non-attorney to perform any act that aids in the administration of a claim "as long as the act does not involve legal analysis, skill, citation, or interpretation [of the law]."

Thus, in the instant case, *Respondent Hauck* did not provide, in signing the letter for Mr. Ellison, any "legal service" such as "legal analysis, skill, citation, or interpretation [of the law]." Instead, Mr. Ellison, a layman, wrote the letter. He set forth his lay objectives - to be free of the restraining order and to reunite with his family - and he did not cite any law nor any authority other than just plain fairness and decency. He asked that his step-father, Mr. Lee, consider filing any Motion that would be appropriate. Any well-educated lay person in such a situation could have written the letter.

The Court's opinion also is worth reviewing in *Loran County Bar Association v Zubaidah*, 140 Ohio St. 3d 495; 2014-Ohio-4060; 20 N.E.3d 687; 2014 Ohio LEXIS 2331. At P48 the Court states, "Generally, a person who sends a character-reference letter to a judge on behalf of another person is not engaging in the unauthorized practice of law." Later, the Court remarks at P50 that "permissible conduct" is "endorsing a person's character, advocating a social issue generally, advancing personal interests, or providing nonlegal advice to a family member."

*Respondent Hauck* did not represent Mr. Ellison in a legal capacity at any time. Mr. Ellison was not his "client" but was merely his friend. Nevertheless, harm did come to Mr. Ellison, even as a friend, as a result of *Respondent Hauck* assisting him in the letter writing campaign. *Respondent Hauck* would urge the Court to be sensitive to making a finding that *Respondent Hauck* was "practicing law" or was "representing" Mr. Ellison as a "client" in the instant case, or many other attorneys may be implicated in adverse ways in their otherwise admirable civic endeavors or in their assistance to friends in need. Finger pointing and accusations abound when consequential damages occur.

## SECOND OBJECTION

***THE EVIDENCE OF RECORD DOES NOT SUPPORT THE BOARD'S CONCLUSION OF LAW THAT RESPONDENT HAUCK COMMITTED A CRIMINAL ACT BY AIDING AND ABETTING MR. ELLISON IN PREPARING AND ISSUING THE LETTER DATED MARCH 3, 2014.***

### Brief in Support:

The basic facts on the issue of *Respondent Hauck's* possible liability for violating the CPO dated August 11, 2010 are fairly simple and are not controverted. *Respondent Hauck* was a

“*non-party*” to the Domestic Relations Order issued in 2010 [ Relator’s *Exhibit 3*, in Appendix]. *Respondent Hauck* was *not served* with a copy of the Order. He was *not shown* a copy of the Order at any time - by any person, including Mr. Ellison - prior to the prosecution of Mr. Ellison in Municipal Court for violating the Order. He did *not get* a copy of the Order, did *not attempt to access* the Order, and, most important, *Respondent Hauck* did *not know* the specific contents of the Order prior to the prosecution of Mr. Ellison.

*Respondent Hauck* does admit to knowing the existence of the CPO, and that it was effective for five years beginning 2010. [Resp. Exh. 1, page 3] Mr. Ellison mentioned the CPO many times, and the whole point of the letter to Mr. Lee was to see if it could be modified or rescinded.

Finally, in fairness to the Panel, the Panel found that *Respondent Hauck* did in fact see the actual CPO at some point before March 3, 2014, based upon the dialogue between *Respondent Hauck* and Mr. Ellison in one of the jail calls. The dialogue is found at *Relator’s Exh. 9(a)* 5.17 - 6.10, and is cited at P 18 and again in P 34 of the Findings and Conclusions filed February 16, 2016. In the dialogue, through a jail phone, Mr. Ellison comments that *Respondent Hauck* had previously reviewed the CPO, whereas *Respondent Hauck* does not acknowledge the truth of the comment, but says “I don’t want to get in to the legalities.”

Mr. Ellison at the Panel hearing on October 21, 2015 denied even making phone calls from the Justice Center, even though counsel for *Relator CBA* confronted him with *Rel. Exh. 9a-d*. Thus Mr. Ellison avoided any suggestion that he showed the CPO to *Respondent Hauck*. [Trans. 394-396] In the last analysis, these denials did nothing more than undermine his overall credibility on

the stand. But neither did the denials provide clear and convincing evidence of the true facts of the matter.

Given the evidence regarding the CPO, and the writing of the letter on March 3, 2014, the issue is what is the law of “aiding and abetting” in a case of this sort? The law applicable to someone charged as a “nonparty aider and abetter” of another person who violates a Civil Protection Order is found in *Midland Steel Products Co. v International Union United Automobile, Aerospace and Agricultural Implement Workers of America, Local 486; Tate et al*, 61 Ohio St. 3d 121; 573 N.E.2d 98; 1991 Ohio LEXIS 1565. This case was decided in 1991 and has been followed by a multitude of Appellate Courts since that time. The holding is found at Page 126 [HN5] as follows:

***We hold that a court’s order is binding on a nonparty aider and abetter under Civ. R. 65(D) only to the extent the nonparty had actual notice of the terms of the order by personal service or otherwise. The appellants, other than Tate, were bound by the June 2 TRO pursuant to Civ.R. 65(D) only to the extent they had actual notice of its terms.***

Why is actual notice necessary to enforce any sort of a Rule 65(D) order? The Court explained that a court’s order is an “order” only to the extent of its terms. To know an order, therefore, one must know its terms. Thus a nonparty to an injunction order is bound to observe its restrictions only when the terms of those restrictions become known to such person, and such person thereby comes within the class that is intended to be restrained. *Ibid.*, 126 [HN3, HN4]. Thus, a nonparty’s general knowledge of a TRO is not sufficient to cause him to be liable for a violation, but only if he has specific knowledge of the terms of the order. *Ibid.*, 126 [HN2]

The Court of Appeals in a number of districts have followed and applied the *Midland Steel Products* case. But practically all the decisions that deal with the enforcement of TROs and CPOs involve the actual parties to the equitable proceedings, and not “nonparty aiders and abettors.” The Appellate Courts, nevertheless, have employed the same strong language about “*mandatory due process safeguards*” in the issuance of CPOs, and the need for *actual notice* on those alleged to be in violation of such equitable orders. See *State v. Conner*, 192 Ohio App.3d 166; 2011-Ohio-146; 948 N.E.2d 497; 2011 Ohio App: LEXIS 126. Likewise, Appellate Courts have emphasized that actual notice requires more than general knowledge under Civ. Rule 65(D). See *City of Toledo v Lyphout*, 2009-Ohio-4956; 2009 Ohio App. LEXIS 3904; also, *Ball v Flowers*, 2014-Ohio-653; 2014 Ohio App. LEXIS 643.

Therefore, the only conclusion to reach from these cases, starting with *Midland Steel Products* and continuing with the multitude of Appellate Court cases that have followed it, is that a “nonparty aider and abetter” to a CPO is entitled to the same Due Process notice of the *actual terms* of the order as is a party to the CPO. Short of that, the CPO is not enforceable against whomever has no actual knowledge of its terms.

For these reasons, there is a legal issue as to whether *Respondent Hauck* can be prosecuted in criminal court as an “aider and abetter” when he was not a party to the Domestic Relations proceedings in which the CPO was issued, and was not positively served with the CPO at any time subsequent to the Domestic Relations proceedings.

As one final note, the State of Ohio obtained a grant of immunity for *Respondent Hauck* pursuant to Hamilton County Case No. M1400442 in exchange for *Respondent Hauck* testifying against Mr. Ellison at his trial in Case No. C/14/CRB/6115. [See Respondent’s *Exhibits 4 and 5.*]

No research is included here on the effect of such a grant of immunity on the current grievance case proceedings. The assumption is that it is not relevant.

### **THIRD OBJECTION**

***THE BOARD WAS IN ERROR TO OVERRULE RESPONDENT'S MOTION TO DISMISS, BY ENTRY DATED 12/17/2015, THAT CHALLENGES THE CONSTITUTIONALITY OF THE CIVIL PROTECTION ORDER UTILIZED TO DISCIPLINE RESPONDENT HAUCK, SAID ORDER BEING ISSUED PURSUANT TO A VALID LEGISLATIVE ENACTMENT, R. C. 3131.31, BUT VIOLATING THE FIRST AMENDMENT AND DUE PROCESS CLAUSES OF THE UNITED STATES AND OHIO CONSTITUTIONS.***

#### **Brief in Support:**

### ***I. Introduction***

The *Answer of Respondent Hauck* in the instant case, which was filed on or about February 2, 2015, sets forth a number of Affirmative Defenses to the validity of the *Civil Protection Order (CPO)* that was issued by the Hamilton County Court of Domestic Relations on August 11, 2010. The CPO was issued pursuant to *R. C. 3113.31*. The CPO formed the basis for the prosecution of Mr. Ellison, and it has now served as the basis for the current grievance action against *Respondent Hauck*. [*Relator's Exh. 3*, attached as *Appendix*]

Procedurally, *Respondent Hauck* made a *Motion to Dismiss* at the conclusion of his *Pre-Hearing Brief*, at page 12, filed on October 13, 2015. Thereupon, at the Panel hearing on October 20-21, 2015, the Panel Chairman ordered the parties to submit Memoranda on the constitutional issue raised in the *Pre-Hearing Brief*, to be filed after the conclusion of the Panel hearing.

The Panel overruled the *Motion to Dismiss* by *Entry* dated December 17, 2015. The basis for the overruling was the Board's assertion that it has no jurisdiction - from the Ohio Supreme Court pursuant to Gov. Bar R. V(2)(A) and (B) - to rule upon the constitutionality of state statutes. The Panel did not reach the merits of the *Motion to Dismiss*.

*Respondent Hauck* objects to the Board's denial of his *Motion to Dismiss* on the ground that the law is well established in Ohio that the Supreme Court has authority in a disciplinary action, and as part of that disciplinary action, to rule upon the constitutionality of any statute or of any judicial or attorney code of conduct. In the following disciplinary action, the Supreme Court held that the *Ohio Judicial Code of Conduct, Canon 4.3(A)*, was unconstitutional as a violation of the First Amendment to the United States Constitution. *In re Judicial Campaign Complaint Against O'toole*, 141 Ohio St. 3d 355; 2014-Ohio-4046; 24 N.E.3d 1114; 2014 Ohio LEXIS 2329. This same case, by the way, is certainly applicable to the following argument (in this brief) that when the State attempts to regulate "content-based" speech, as in a judicial campaign, there is a presumption of unconstitutionality of the regulation, and it must be examined under a standard of strict scrutiny. Any restriction on such speech must be shown to be the least restrictive means among the alternatives available, and it must be narrowly tailored. [P 20, HN8]

The Supreme Court has followed the same approach in two other disciplinary cases: *Christensen v. Board of Comm're on Grievances & Discipline of Supreme Court* (1991), 61 Ohio St. 3d 534; 575 N. E. 2d 790; 1991 Ohio LEXIS 2115. *In re Judicial Campaign Complaint Against Stormer* (2013), 137 Ohio St. 3d 449; 2013-Ohio-4584; 1 N.E. 3d 317; 2013 Ohio LEXIS 2331; 2013 WL 5746134.

**Respondent Hauck** will now recite (below), in condensed version, the content of the **Motion to Dismiss** that was filed with the Board on November 12, 2015, and which was dismissed by the above referenced **Entry** on December 17, 2015, and the content of a **Supplemental Memorandum in Support of Motion to Dismiss of Respondent Hauck: Constitutional Issue**, which pleading was proffered to the Board on November 30, 2015, but which was stricken by the Board as untimely filed by its Order dated December 2, 2015.

The most important of the constitutional issues raised by **Respondent Hauck** in this disciplinary action are the protections of **Free Speech** and **Due Process**. These protections are found in both the Constitutions of the United States of America and of the State of Ohio. The protection of “speech” is even stronger in the Ohio Constitution, Article I, Section II, than in the federal protection, reading as follows: “Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech. ...” **Office of Disciplinary Counsel v. Gardner**, 99 Ohio St. 3d 416, 420; 2003 Ohio 4048; 793 N. E. 2d 425; 2003 Ohio LEXIS 2123.

The subject of the Free Speech and Due Process analysis will be the Civil Protection Order, Form 10-014, **Relator Exh. 3**, attached hereto in the Appendix. But the analysis must begin with the enabling statute, namely **R. C. 3113.31**. This discussion follows.

## **II. Ohio Revised Code 3113.31 - Domestic violence definitions - hearings**

**Subpart (A)(1) of R. C. 3113.31 - definition of “Domestic violence”**

The General Assembly's definition of Domestic Violence is exactly what it says in its title and in its Subsections: *Actual violence, injury* and/or the *danger of further, imminent violence and injury*, in a household. If a perpetrator uses words, or "speech," to threaten further imminent violence and injury, then that speech is not protected by the First Amendment.

The case law is extensive on the well-recognized exceptions to protected speech: See *State v. Kronenberg*, 2015-Ohio-1020; 2015 Ohio App LEXIS 961, HN 10 (telephone harassment, especially when it amounts to a criminal violation, is not protected by the First Amendment); *Snell v. Village of Bellville*, 2011 U. S. Dist. LEXIS 1263367, \*17 (threats in repeated letters are not protected speech).

Presumably, however, the General Assembly did not intend to infringe upon "*protected speech*" in drafting its prohibitions against Domestic Violence. Nothing in the statute prevents a person from speaking in civil terms and tones to another family or household member.

*Subpart (E)* of the statute sets forth specific sanctions that may be imposed by a trial court upon a finding of "domestic violence." The first paragraph of *Subsection (E)(1)* authorizes a trial court to issue Civil Protection Orders (CPOs), that have as their objective "to bring about a *cessation of domestic violence* (emphasis added)." Presumably the remedy and the protection set forth in any given CPO is comparable to the actual Domestic Violence that has occurred or which is threatened to occur in the family or household unit. Or the remedy might be broader, depending upon statutory construction of the subsection.

Specifically, *R. C. 3113.31(E)(1)* sets forth eight (8) subparagraphs that authorize Orders to be issued on a variety of domestic matters. Looking at the eight (8) subparagraphs together, the only authorized sanction that specifically refers to speech, in the most liberal construction possible,

is the reference in (E)(1)(a) that a respondent “*refrain from abusing*” the family or household members. The word “abusing” or its noun “abuse” is not defined in the Domestic Relations statutes, but the extensive case law interprets the word in its broad, common sense meaning. In other words, it is circumstance dependent. But it certainly does *not* include protected speech.

Subparagraph (h) contains an open-end authorization for a Court to grant “*other relief that the court considers equitable and fair,*” but it provides *as examples* the use of a family motor vehicle, and the apportionment between the parties of household and family personal property. *These are all matters that relate to the division of family property.* There is no mention of a restriction on communication in this subparagraph.

Presumably, therefore, the General Assembly did not intend to infringe upon “protected speech” in drafting its authorized sanctions for trial courts to impose “to bring about a cessation of domestic violence.” Nothing in Subsection (E)(1) prevents a person from speaking in civil terms and tones to another family or household member, regardless of the amount of “domestic violence” that might have occurred in the same household.

In sum, *R.C. 3113.31(E)(1)* says nothing about a Court being authorized to proscribe a respondent’s *speech, writing, or other reasonable communication*. When read in its entirety, there is no infringement on “protected speech” in the statute. The prohibition is on *threatening force* against a family or household member that *places* the other in *fear* and which causes the recipient to believe he or she will suffer *imminent serious physical harm*. Also, the prohibition is on “*abusing*” a family or household member, with “abuse” defined as any conduct or unprotected speech that hurts, treats badly; mistreats, employs insulting, coarse or bad language, or that scolds

harshly or reviles. These sanctions contain no restriction on “protected speech,” and cannot be rationalized to do so under the Constitution.

### ***III. Civil Protection Order***

Now let’s turn to the Civil Protection Order forms that are authorized by the Ohio Supreme Court to be used, and which are regularly employed, by trial courts in the State. It is easiest simply to look at ***Relator’s Exhibit 3***, namely the Exparte Order of Protection dated July 28, 2010 and the Final Appealable Order dated August 11, 2010. Both are printed on a standard form at Domestic Relations Court that sets forth a plethora of possible sanctions for a Magistrate to impose.

Clearly, under any rule of statutory construction, it is beyond comprehension in applying ***R. C. 3113.31*** that the local Domestic Relations Court ***also*** was empowered to add the ***following two Paragraphs*** that relate to the proceedings in 2010 and to the current disciplinary action:

> Paragraph 7: ***“Respondent shall not have any contact with the protected persons ... [including, but not limited to] telephone, fax, e-mail, voice mail, delivery service, writings, or communications by any other means in person or through another person. ...”***

> Paragraph 10: ***“Respondent shall not cause or encourage any person to do any act prohibited by this order.”***

In short, nothing in Paragraph 7 above was authorized by the Ohio legislature. Although an Advisory Committee on Domestic Violence may have approved the prohibitions, and the Supreme Court may have adopted its recommendations to issue Superintendence Rule 10.01, nevertheless the prohibitions are of a completely different nature, sort and extent from what is set forth in O.R.C. Section 3113.31(E). The prohibitions infringe on “protected” speech to an

intolerable extent. Families in distress should at least be able to communicate with one another. The CPO issued in the current case has prohibited this.

#### ***IV. Rules of Superintendence***

The Ohio Supreme Court has approved and adopted a large array of Civil Protection Orders pursuant to the Rules of Superintendence. Specifically, ***Superintendence Rule 10.01*** sets forth the standard CPO forms that all Domestic Relations divisions of the Courts of Common Pleas should utilize in adjudicating civil “Domestic violence” cases. This includes the particular Form that the Hamilton County Domestic Relations Court issued in 2010 in Case No. DV1000910 [***Relator’s Exhibit 3***]. And which was re-issued (in very similar form) in 2015 [***Respondent’s Exhibit 7***].

It is not appropriate in this Objection to review the judicial, legislative and administrative history of Superintendence Rule 10.01. The Supreme Court relied upon a request from the General Assembly in 1994 to prescribe the forms to be utilized to implement ***R. C. 3113.31***. The Court appointed a Domestic Relations Task Force that subsequently made recommendations back to the Court as well as to the General Assembly. A Standard Forms Committee provided the final recommendations to the Court, which the Court adopted effective January 1, 1998.

The point for this Objection is that the General Assembly never codified any legislation beyond ***R. C. 3113.31*** in this long process of creating CPO forms. The Supreme Court did adopt the forms as a Rule of Superintendence, and later adopted Civil Rule 65.1 to regulate procedures in issuing CPOs. But the legal effect of Superintendence Rule 10.01 is something short of a statute.

This has been made clear by the Supreme Court itself, and by subsequent appellate courts. The Supreme Court in ***State v. Singer*** (1977), 50 Ohio St. 2d 103, 362 N.E.2d 1216, at page 110,

stated that “The Rules of Superintendence are not designed to alter basic substantive rights....” In a criminal case, the Court held that its Rules of Superintendence would apply if statutes do not, but that the Rules of Superintendence would be “certainly subservient to, if inconsistent with, constitutional mandates.”

Many other courts in Ohio have subsequently identified the limited force and effect of the Rules of Superintendence as follows:

... whereas rules of procedure adopted by the Supreme Court require submission to the legislature, rules of superintendence are not so submitted and, hence, are of a different category. They are not the equivalent of rules of procedure and have no force equivalent to a statute. They are purely internal housekeeping rules which are of concern to the judge of the several courts but create no rights in individual defendants.

*State v. Gettys* (1976), 49 Ohio App.2d 241, 243, 360 N.E.2d 735. See also, *In Re; A.P.D. Minor Child*, 2014 Ohio 1632, P13, *Larson v. Larson*, 2011-Ohio-6013, \*P13; 2011 Ohio App. LEXIS 4919, \*\*7.

The conclusion from all of this: The form used by the Domestic Relations Court in Hamilton County to issue a CPO in 2010 was not authorized by the General Assembly in the same formal manner in which a codified statute is recognized and given authority. Since the form raises questionable constitutional issues, another issue is whether it even authorized by the legislature to be used. Or whether it is consistent with the legislative intent. The intent not to infringe upon free speech.

## ***V. Protected Speech***

The CPO issued in Case No. DV1000910 in 2010 by the Hamilton County Domestic Relations Court, with regard to Paragraph 7 in the CPO, constituted a “prior restraint” on free

speech which is highly disfavored under the United States Constitution. Prior restraints carry a heavy presumption of unconstitutionality. They are subject to strict scrutiny by all courts of law.

A case comparable to the current still-pending case against Mr. Ellison, Case No. DV1000910, is *In Re Marriage of Suggs*. This case was decided by the Supreme Court of Washington, 152 Wn. 2d 74; 93 P.3d 161; 2004 Wash. LEXIS 459. It cites U.S. Supreme Court law throughout its holding. The trial court issued an order for protection against a lady named Mrs. Suggs, under an anti-harassment statute, which restrained her from “knowingly and willfully making invalid and unsubstantiated allegations or complaints to third parties which are designed for the purpose of annoying, harassing, vexing or otherwise harming Andrew O. Hamilton and for no lawful purpose.”

The Court began its analysis of the *Suggs* case by quoting the U. S. Supreme Court on the definition of “prior restraint,” as follows:

“[A]dministrative and judicial orders forbidding certain communications when issued in advance of the time that such communications are to occur.” M[elville B.] Nimmer, Nimmer on Freedom of Speech [: A Treatise on the Theory of the First Amendment] s 4.03, p. 4-14 (1984) ... Temporary restraining orders and permanent injunctions - i.e., court orders that actually forbid speech activities - are classic examples of prior restraints. *Alexander v. United States*, 509 U.S. 544, 550, 113 S. Ct. 2766, 125 L. Ed. 2d 441 (1993). [Found at HN9]

The Washington Supreme Court went further to emphasize that prior restraints carry a heavy presumption of unconstitutionality [ HN 10, citations omitted ], that an order issued in the area of First Amendment rights must be couched in the narrowest terms that will accomplish the pin-pointed objective permitted by constitutional mandate and by the essential needs of the public order, and that the State may not employ means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. [ HN 12, citations omitted ].

The Washington Supreme Court held that the anti-harassment order issued by the trial court was an unconstitutional prior restraint on speech because it lacked the specificity demanded by the United States Supreme Court for prior restraint on unprotected speech. The Court emphasized that the line between protected and unprotected speech is very fine, and what may appear to be valid and substantiated speech to Mrs. Suggs may later be found to be invalid and unsubstantiated to a court. Or vice versa. Because it was unclear as to what Mrs. Suggs could say or not say, the Court found that the order could chill all of her speech. The Court concluded, “Chilling is intolerable in the first amendment context.” [HN 13 - 15]

On top of that, the Court remarked that the chilling of Mrs. Suggs’ speech was “exacerbated by the fact that many of the incidents that Hamilton based his antiharassment order on pertain[ed] to the efforts of Suggs and her husband to address what they perceive[d] [was] Hamilton’s harassment.” [HN 15]

Many other U. S. Supreme Court cases have applied the same “strict scrutiny” standard of review to First Amendment issues, when statutes are overly broad. *McCullen v Coakley*, 134 S.Ct. 2518, 189 L. Ed. 2d 502, 2014 U. S. LEXIS 4499; *United States v. Playboy Entertainment Group*, 529 U.S. 803, 120 S. Ct. 1878, 146 L. Ed. 2d 865 (2000); and *Sable Communications of Cal. v. FCC*, 492 U.S. 115, 109 S. Ct. 2829, 106 L. Ed. 2d 93 (1989).

#### ***(A) U.S. Supreme Court and Ohio Supreme Court decisions***

The Washington Supreme Court defined the concept of “prior restraint” of the press and other media in *In Re Marriage of Suggs*. (2004), 152 Wn. 2d 74; 93 P.3d 161; 2004 Wash. LEXIS 459. See page 81, HN 9 of the opinion. This definition of “prior restraint,” however, was taken

from a series of cases previously decided by the U. S. Supreme Court. The high court defined the term “prior restraint” in *Alexander v. United States*, 509 U.S. 544, 550, 113 S. Ct. 2766, 125 L. Ed. 2d 441 (1993). Likewise, the Ohio Supreme Court adopted the same definition of “prior restraint” in *City of Seven Hills v. Aryan Nations* (1996), 76 Ohio St. 3d 304, 307; 667 N.E. 2d 942; 1996 Ohio LEXIS 589 at HN7.

The U.S. Supreme Court and the Ohio Supreme Court have set forth the basic “rules” of when a State is permitted to infringe upon free speech in several cases following the decision in *Alexander*. For the purpose of this grievance action, three “rules” may be set forth as follows.

**1) Clear and Present Danger:** The Ohio Supreme Court at page 308 [HN 10] of *City of Seven Hills, supra*, repeats the U. S. Supreme Court’s admonition in other cases that “speech cannot be prohibited because it risks inciting others to violence unless there is a *clear and present danger* of imminent violence or lawlessness” (*emphasis added*). The U.S. Supreme Court had set forth the standard of “clear and present danger” in the earlier case of *Carroll v. President & Comm’Rs of Princess Anne* (1968) 393 U.S. 175, 180; 89 S. Ct. 347; 21 L. Ed. 2d 325, 351.

Two CPOs have been issued against Mr. Ellison, in the Hamilton County case, in the past five years. First in 2010, and then in 2015. Mr. Ellison, however, has shown no “clear and present danger” to anyone in this entire period of time. Mr. Ellison had shown no misconduct, no threats or harassing, and no “misdeeds” or “misstatements” of any kind on all occasions.

**2) Limited Duration and Extent of Prohibition:** The U. S. Supreme Court in *Carroll* (1968) strongly suggested another closely-related constitutional principle applicable to all restraining orders, and thus to the domestic relations case in Hamilton County, and to the instant grievance action. This principle relates to the *duration of any restraining order*. In order to

“couch a restraining order in the narrowest of terms,” and to “accomplish the pin-pointed objective” of the constitutional mandate when weighed against the needs of the public order, the Court in *Carroll* stated that a restraining order should not be of any longer duration than necessary to accomplish the public objective. The Court agreed with the Maryland Appellate Court that the imposition of a ten day TRO was reasonable to regain the public safety following the assembly of a white supremacist rally in the town of Princess Anne, but that a ten month injunction would likely be a constitutional violation, as no “clear and present danger” was likely to exist for such an extended period of time. *Ibid.* pp 178-179.

The same principle of “minimal duration” when infringing on free speech was later set forth by the U. S. Supreme Court in *Southeastern Promotions, Ltd. v. Conrad.* (1974), 420 U. S. 546, 560; 95 S. Ct. 1239; 43 L. Ed. 2d 459 HN 7. This was another case cited by the Court in *Suggs.* Whenever there is a prior restraint of free speech, the U.S. Supreme Court stated at 560, HN 7 that “First, the burden of instituting judicial proceedings, and of proving that the material is unprotected, must rest on the censor. Second, any restraint prior to judicial review can be imposed only for a specified brief period and only for the purpose of preserving the status quo. Third, a prompt final judicial determination must be assured.”

In the instant case, the Court of Domestic Relations in Case No. DV1000910 imposed a flat *five-year restraint* of free speech upon Mr. Ellison in 2010, when he was still in prison [*Relator's Exh. 3*]. Then in August, 2015, just before the Panel hearing in the instant grievance action, the same Court extended the CPO for another five years, effective through to August 5, 2020 [*Respondent's Exh. 7*]. Mr. Ellison had shown no misconduct, no threats or harassing, and no “misdeeds” or “misstatements” of any kind on both occasions.

It is difficult to believe that the Ohio General Assembly enacted **R. C. 3113.31** to authorize trial courts to impose permanent injunctions upon respondents. To the contrary, the statutory language in Section (A)(1)(b) speaks to the danger of a respondent, who otherwise has not already acted out, of committing “imminent” physical harm to another. The statute says nothing about the danger or likelihood of a respondent committing harm in the future. Section (D)(1) authorizes temporary orders to be issued at ex parte hearings, but only if there is a showing of “immediate and present danger” of domestic violence in the family or household. Finally, section (E)(1) authorizes the court to issue a protection order only “to bring about a cessation of domestic violence.” It does not authorize a court to try to maintain a cessation of domestic violence into the indefinite future. Practically all of the courts in Ohio that have construed the Domestic Violence statutes, without citing them at great length, hold them to be applicable only to present or imminent danger.

Further, a CPO is not a preliminary injunction under Civil Rule 65(B). It is not a permanent injunction. At the most it is a more informal, but still enforceable, temporary restraining order. Thus the “boilerplate” language found in the standard forms used for CPOs, which language has not been directly enacted by the legislature, should be restricted to the highest extent from infringing on fundamental rights such as the freedom of speech.

Further, to add insult to injustice, both of the civil protection orders in 2010 and in 2015 were entered without Mr. Ellison being present in court, even though in both instances he filed Motions for Continuances that were ignored and summarily overruled by the Magistrates.

**3) Opportunity to Participate in Hearings:** The discussion of free speech leads to the next constitutional violation that the Court identifies in *Carroll*, which is a trial court’s failure to provide a reasonable opportunity to a respondent to attend hearing(s) on his TRO. Or even to be

heard on his TRO, if a writing is filed. In *Carroll*, the U. S. Supreme Court held, in part, that the 10 day TRO against the white supremacist group, although reasonable in time length, had to be set aside along with the 10 month injunction because the 10 day order had been obtained ex parte, without sufficient notice to the white supremacist group to allow them to attend and to defend in court. *Ibid.*, 180 and HN 1.

Likewise, in the Domestic Relations case in Hamilton County, Mr. Ellison was still in prison when the first CPO was issued in 2010, but was released within a couple of weeks thereafter. The prison was in London, Ohio. His correspondence to the Magistrate was ignored. At the time of the second CPO in 2015, Mr. Ellison stated that he was afraid to go to court until after the first CPO had expired, because he might be in violation of the still existing CPO. Thus he missed that hearing by a margin of two weeks. All of this was explained in his timely Motions, all of which were denied. [See *Respondent's Exh. 8*]

The *Carroll* court observed as follows: “ There is a place in our jurisprudence for ex parte issuance without notice, of temporary restraining orders of short duration, but there is no place within the area of basic freedoms guaranteed by the First Amendment for such orders where no showing is made that it is impossible to serve or to notify the opposing parties and to give them an opportunity to participate.” (emphasis added) *Ibid.* Page 180 HN 1.

The Franklin County Court of Appeals admirably dealt with a case involving the right to participate in *Martin v. Martin*, 2013-Ohio-5703, 2013 Ohio App. LEXIS 5984. The case provides a clear example of how a respondent should be included in a full hearing, if at all possible, even if a short continuance is necessary to assure such participation. In *Martin*, the petitioner filed for renewal of a consent CPO. A hearing date was set for December 3, 2012. After two short

continuances to gain service of process upon respondent, counsel for respondent appeared in the case on December 19, 2012. Thereupon counsel objected to any further continuance of the case, but, nevertheless, the trial court continued the case for a full hearing on February 5, 2013. The trial court noted “a pending criminal case against appellant constituted good cause for continuing the date of the full hearing on the civil protection order.” *Ibid.*, P 17, HN 10. A full hearing was conducted on the continued date.

Many appellate courts and others in Ohio have observed, over the years, that parties appear pro se in “domestic violence” civil proceedings to a far greater extent than in most other legal proceedings. If a court anticipates serving a large number of pro se parties, then the court might consider accommodating a pro se respondent to a higher degree, or at least to the same degree as may be enjoyed by a represented party, on procedural issues. This is not done in the large majority of cases in certain courts. Instead, the effort is not much more than to “run them through like a herd of cattle.”

### ***(B) An Example from Indiana***

There are so few cases of “pure speech” that come to a Magistrate in Domestic Relations Court, no doubt, that it is difficult to find them reported. The cases before most Magistrates usually consist of mixed behavior, namely abusive conduct combined with abusive language. Thus the “innocent” cases are likely very few and far between. And they don’t get appealed.

For example, *Respondent Hauck* was able to find in Ohio three cases that involved no abusive conduct, and thus no imminent danger to safety, but which did involve abusive language, or a pattern of stealth combined with abusive language. In each case the abusive language was deemed sufficient to warrant the issuance of a CPO. These are the three cases:

*State v. Kronenberg*, 2015-Ohio-1020, 2015 Ohio App. LEXIS 961 (where the respondent, a past girlfriend of the petitioner, was convicted of telecommunications harassment in addition to violating a CPO, due to her calling respondent 50 to 100 times per day); *Lundin v Niepsuj*, 2014-Ohio-1212, 2014 Ohio App. LEXIS 1173 (where the respondent was convicted of menacing by stalking in addition to violating a CPO, due to his “pattern of conduct” in monitoring the estranged family members, which did “probably cause” their mental distress); and *Snell v Village of Bellville*, (Nor. Dist. Ohio, Eastern Div.), 2011 U.S. Dist. LEXIS 126367 (where the respondent was convicted of disorderly conduct for sending letters that were deemed threatening, with “veiled threats,” to his ex-wife and the children).

The Court of Appeals of Indiana, however, recently applied First Amendment principles of free speech protection to a case in which a CPO had been issued for “mixed behavior-speech” violations of the public peace. The case is *Mentink v Downing*, 2013 Ind. App. Unpub. LEXIS 320. In *Mentink*, the respondent displayed racist and/or anti-Semitic statements or images on his car windshield and on bumper stickers. The petitioner, who was Jewish, complained to the condominium association. Thereupon the respondent began to antagonize the petitioner, and on one occasion took a baseball bat out of his car and shook it at petitioner. Petitioner then alleged in court that the respondent was stalking her, which offense is included in the Indiana statutes prohibiting “domestic violence.”

The Court of Appeals for Indiana affirmed the issuance of a CPO with the following language at page 9:

Downing claims the issuance of the protection order violates his First Amendment right of free speech. By its boilerplate terms under the Civil Protection Order Act, the

protection order enjoins Mentink “from threatening to commit or committing acts of stalking against” Downing, prohibits him from “harassing, annoying, telephoning, contacting or directly or indirectly communicating with” Downing, and orders Mentink to “stay away from” Downing’s residence, school, and/or place of employment. Appellant’s App. Pp 4-5. Mentink’s threatened and actual spitting behavior and threatening conduct are not protected speech. However, we hold that to conform with the freedoms protected by the First Amendment, as offensive as a reasonable person might find the material posted in his vehicle and on his vehicle by way of bumper stickers, Mentink remains free to express himself in that manner.

## ***VI. Conclusion and Prayer***

***Respondent Hauck*** prays that the Court find the Civil Protection Order issued in this case, namely ***Rel. Exh. 3***, attached hereto in the Appendix, be declared in violation of the First Amendment and the Due Process Clauses of the United States and of the Ohio Constitutions, to the extent to which said CPO improperly and unconstitutionally exceeds the legislative intent found in R. C. 3113.31, and for a dismissal of the grievance action against ***Respondent Hauck***. The charges of an ethical violation against him, based on his supposed violation of ***Rel. Exh. 3***, and/or his assistance to Mr. Ellison in violating said CPO, have no merit.

#### FOURTH OBJECTION.

***THE EVIDENCE OF RECORD OF RESPONDENT'S ADMITTED VIOLATIONS OF THE CODE OF PROFESSIONAL CONDUCT DOES NOT SUPPORT THE BOARD'S RECOMMENDED SANCTION OF AN INDEFINITE SUSPENSION, AN EVALUATION BY THE OHIO LAWYERS' ASSISTANCE PROGRAM, A PETITION FOR REINSTATEMENT, AND TO PAY COSTS.***

#### **Brief in Support:**

When I was a young attorney, newly out of law school, a well-respected Judge in Common Pleas Court told me his theory of sentencing. The Judge served a long career first in Municipal Court and then in Common Pleas Court in Hamilton County. We all respected him, both for his keenness of mind, his general fairness in deciding cases, and for his openness in criminal cases to share his thoughts on sentencing with both attorneys.

The Judge, who shall remain nameless, and who has since retired, said that any sentence that he imposed must contain some jail time, even if short, to serve as "retribution." Some jail was necessary in every case. This, in the Judge's mind, was satisfying the need for "retribution." Punishment. Not just probation or some other rehabilitative alternative, which might also be ordered, but straight out punishment. The Judge gradually eased up on his sentencing policy as the years passed, and as the local jails became not just crowded but over-crowded, and more sentencing alternatives became available (from Home Incarceration to Drug Court to DUI Court to a Mental Illness Docket, etc....). But the concept of "retribution" in sentencing never left my mind.

Although many sentencing alternatives have been devised over the past thirty years, so as to help reduce the rate of incarceration both locally and at the State level, the overall character and tendency of the criminal justice system in Southwest Ohio has not changed to any appreciable

extent. Nor has the thinking of the legislature. Jail is the first thought in many cases, unless and to the extent that some acceptable alternative is urged upon the prosecutor and the Judge. (This is where a good defense attorney earns his pay!) The character of the system is "authoritarian" at the least. Under this thinking, "social order" is the first priority. Everything else is a lesser priority.

This theme of "authoritarian" thinking applies to the several legal cases, over a period of time, that resulted from Mr. Ellison making an uninvited visit to his parents' house, and his trying to talk with them about family problems, in 2004. Judicial discretion, in each and every one of his cases, was exercised, first and foremost, in an "authoritarian" manner. Probation, rehabilitation, not to mention just plain compassion, have been avoided every time.

The pattern began in 2004 when Mr. Ellison was arrested and charged with Aggravated Burglary, Kidnapping and other charges resulting from his "visiting" his parents' house one evening. The Public Defender told him, after several months of pretrial custody, that she had worked out a plea bargain with the Prosecutor by which the Judge would decide "between zero and six years" jail time for the offenses. (Sentencing in the case was prior to the change in the law that made jail time a "presumption" on F(1) and F(2) convictions.) The Prosecutor subpoenaed the parents to the courtroom for sentencing. The Prosecutor stated their position on sentencing as wanting counseling for their son, not more jail time. [*Resp. Exh. 8*, p. 3 and attached transcript - 63:1-18] The Judge, nevertheless, imposed the six year jail term. The Judge was entirely within his discretion in sentencing Mr. Ellison as he did.

The pattern started to take more shape in 2010 when the parents applied to Domestic Relations Court, while their son was still in prison, just before his release, for a CPO. The basis was the mother's subjective "fear," after six years, that Mr. Ellison would still be a danger to her. This

is despite the kindly letters that Mr. Ellison had sent her from prison, wanting to make amends. The Magistrate in Domestic Relations granted the CPO without Mr. Ellison being present in court, or even able to be present. The Magistrate, and then the Judge, were entirely within their discretion in ruling upon the Petition for CPO when Mr. Ellison was properly served but failed to appear. [*Rel. Exh. 3*, attached as Appendix]

Then *Respondent Hauck* and Mr. Ellison combined to address a letter to Mr. Lee on March 3, 2014. Mr. Lee was deceased, but Mrs. Lee took the letter to the police. Mr. Ellison was charged with a first degree misdemeanor. The Prosecutor demanded the maximum sentence in any “plea bargain,” and, after a plea to an attempt, the Judge imposed the maximum 90 days. Both the Prosecutor and the Judge were acting within their range of permissible discretion. [*Rel. Exh. 2*]

What is the reason for such “authoritarian” treatment of Mr. Ellison over the last twelve years? And now for prosecuting his attorney to the fullest in the letter writing campaign?

Oh yes. I almost forgot a third time. Mr. Ellison was “mentally ill” and a convicted felon. Thus he did not deserve understanding from anyone within the system. Nor would any attorney who tried to assist him, and who made a mistake in how to approach his remaining family, be deserving of any leniency. Lock them all up, and throw away the key!

*Respondent Hauck* asserts that the whole system of “retribution” got out of control in the Ellison cases. And in the current disciplinary action. Obviously, as brought out by Dr. Beech in his report and testimony, *Respondent Hauck* has a Christian motivation to assist the needy and destitute. But Christian motivation is different from consciously intending to break the law in not following the correct procedures in Domestic Relations Court. The Panel was so perplexed by the

case that throughout their decision are comments about **Respondent Hauck's** lack of truthfulness and the incredibility of his writing a letter, or signing over a letter composed by a mentally ill felon.

The Panel's skepticism over **Respondent Hauck's** entire case was likely enhanced and inflamed by Mr. Ellison's confused testimony. It did border on the incredulous at times. Mr. Ellison testified that he was not sure of whether even he, much less **Respondent Hauck**, had reviewed the CPO prior to writing the letter on March 3, 2014. [Trans 385 - 394]. He denied making any calls whatsoever from the jail to **Respondent Hauck**, despite being shown **Rel. Exh. 9a-d**, and he suggested that the Prosecutor might have fabricated the transcripts of the calls. [Trans. 394 - 397]. Finally, Mr. Ellison spent considerable time explaining that in the car drive up to Columbus, the morning he testified, he had not talked about the facts of the case at all with **Respondent Hauck**, except for one minor detail. [Trans. 426 - 430] All of this left Mr. Ellison, in the last analysis, with very little credibility. The assumption could have been that he had prepped and/or planned to deny or avoid any and all testimony potentially damaging to **Respondent Hauck**.

On the other hand, Mr. Ellison was a lay person being asked to recall events, none of which were in writing (except the CPO and the letter), from more than two years previous. Nobody "prepped" him for his testimony. He simply came and testified. And he showed high confusion and a lack of full understanding over his own case in Municipal Court, and what his Public Defender was trying to do for him, when asked about his own case. [Trans. 362:06 - 364:01] So what is a Panel to think of the entire defense? Oh yes. I almost forgot. Despite his gentlemanly appearance, does mental illness affect a person on the witness stand?

A large part of the current Objections, therefore, is simply to make one last effort to explain and to justify, at least in part, what occurred in the letter writing campaign. The Panel and the

Board expressed a lack of understanding as to why these events even occurred. Obviously they were skeptical of everything they heard. Nevertheless, they say in their certified filing that the evidence was clear and convincing to them.

**Respondent Hauck** states that the legal problems to Mr. Ellison and to himself resulting from the letter writing campaign may have boiled down to lack of competence on his part. Either as an attorney or as a friend of Mr. Ellison. Take your pick. A lack of competence to understand that in any human endeavor that may have legal consequences, an attorney must 1) clearly state that he represents a given individual, or else not allow his name or position to be utilized in the matter, and 2) assuming that he decides to represent the individual in the matter, then fully research the law - either substantive or procedure - before taking any action on the matter. This is a standard rule that all attorneys should have ingrained. A corollary to this rule is for an attorney to be even more careful, and more protective of self and others, in doing **any** work whatsoever, even as “a favor,” in an area of law in which he has little knowledge or experience.

Now, given the mistake that **Respondent Hauck** made in writing the letter dated March 3, 2014, and given the high or at least normal “cognitive” evaluation from Dr. Beech on his legal ability [**Rel. Exh. 10**, 5,7], and finally, given his ready admission that ascertaining and following the black and white law comes before matters of faith when practicing law, **Respondent Hauck** questions the extent to which two years of “warehouse time,” and the need to pass an evaluation program before reinstatement, are truly necessary for anyone involved in this case. Does Christian faith wear off, or otherwise dissipate, over a period of two years when not practicing law?

There was a danger to Mr. Ellison in our writing the letter of March 3, 2014, a danger which was fulfilled in his doing 90 days of jail time (on top of the previous six years). Nevertheless, Mr.

Ellison is still close friends, and very appreciative to **Respondent Hauck**, for everything the latter has done for him. How can this be said? The proof is in the fact that Mr. Ellison, with one day's official notice on October 20, 2014, agreed to come to Columbus to testify for **Respondent Hauck** the next day, on October 21, 2014, without subpoena, which he did, and without preparation for his testimony or payment of more than his gas and parking expense. [Trans 143:3-12; 426 - 428] His testimony was not mentioned (at any length) in the Panel's report. Mr. Ellison sat in the back of the hearing room, after completing his testimony, with leave from all parties, to listen to the end of the case.

Nevertheless, there have been spiritual benefits both to Mr. Ellison and to myself from knowing and working with each other over the past several years. What spiritual benefits? We are good friends. My point is that friendship, especially with the needy, is good.

This, in turn, leads **Respondent Hauck** to conclude this section on Sanctions by repeating a passage from the Gospel of John that recently was read in church. The reason for repeating the Gospel passage is to emphasize to the Court that, although **Respondent Hauck** recognizes the law of Ohio comes first and foremost in the practice of law, and must be strictly followed in all instances, nevertheless, where discretion is allowed in the practice of law, or in sentencing, one should be compassionate before being authoritarian. In such instances, when discretion is allowed, one is not to be blamed, but perhaps commended, for following one's Christian beliefs. The following passage is from John 8:1-1:

Now early in the morning Jesus came again into the temple, and all the people came to Him; and He sat down and taught them. Then the scribes and Pharisees brought to Him a woman caught in adultery. And when they had set her in the midst, they said to Him,

“Teacher, this woman was caught in adultery, in the very act. Now Moses, in the law, commanded us that such should be stoned. But what do you say?” This they said, testing Him, that they might have something of which to accuse Him. But Jesus stooped down and wrote on the ground with His finger, as though He did not hear.

So when they continued asking Him, He raised Himself up and said to them, “He who is without sin among you, let him throw a stone at her first.” And again, He stooped down and wrote on the ground. Then those who heard it, being convicted by their conscience, went out one by one, beginning with the oldest even to the last. And Jesus was left alone, and the woman standing in the midst. When Jesus had raised Himself up and saw no one but the woman, He said to her, “Woman, where are those accusers of yours? Has no one condemned you?”

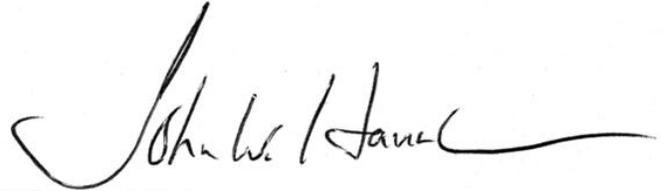
She said, “No one, Lord.”

And Jesus said to her, “Neither do I condemn you; go and sin no more.”

## V. CONCLUSION

There are legal issues in these Objections that need to be addressed, not just for the sake of the parties in the current case, but also for better defining the law of the State of Ohio. There is a need for compassion in this case not yet shown by any of the local jurisdictions mentioned in the Objections. **Respondent Hauck** prays the Court will use its best discretion in judging these Objections, and will either reverse and dismiss the most grievous charges against **Respondent Hauck**, or will reduce the sanction to a more fair and tolerable penalty. In addition, **Respondent Hauck** is of very modest financial means, and he prays that the costs of this proceeding be remitted.

*Respondent Hauck* notes that *Relator CBA* made a considerable investment in retaining Dr. Beech for an examination, narrative report, and his testimony, all of which was not useful in determining any of the relevant issues in the case. *Respondent Hauck* admitted and even proclaimed to *Relator CBA*, well before it considered hiring Dr. Beech, the same general conclusion later reached by Dr. Beech: Namely, that Christian motivation is important to *Respondent Hauck*.

A handwritten signature in cursive script, reading "John W. Hauck", written in black ink. The signature is positioned above a horizontal line.

---

**John W. Hauck, Esq.**  
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Milford, OH, 45150  
513/ 621-0805 Office/cell  
(No Fax)  
[attyhauck@fuse.net](mailto:attyhauck@fuse.net) E-mail

**VI. CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **RESPONDENT JOHN WESCHE HAUCK'S OBJECTIONS TO THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF THE BOARD OF PROFESSIONAL CONDUCT OF THE SUPREME COURT OF OHIO** has been served upon the following parties, by and through their counsel of record, by ordinary U.S. mail on this 14 day of March, 2016.

**Edwin C. Patterson, III, Esq.** [1 copy]  
General Counsel, Cincinnati Bar Assoc.  
225 East Sixth Street, 2<sup>nd</sup> Fl.  
Cincinnati, Ohio, 45202

**Richard J. Goldberg, Esq. (0005979)** [1 copy]  
2662 Madison Road  
Cincinnati, Ohio 45208

**Beth I. Silverman, Esq. (0032199)** [1 copy]  
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Respondent



---

**John W. Hauck (# 0023153)**  
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Milford, OH, 45150  
513/ 621-0805 Office/cell  
(No Fax)  
attyhauck@fuse.net E-mail

# ***APPENDIX***

**Hamilton County Court of Domestic Relations: Case No. DV1000910**  
***Order of Protection (aka Civil Protection Order or CPO)***  
Entered August 11, 2010

**WARNING CONCERNING THE ATTACHED  
DOMESTIC VIOLENCE PROTECTION ORDER** Warrants Copy

**NOTE:** Rules of Superintendence 10.01 and 10.02 require this Warning to be attached to the **FRONT** of all civil and criminal domestic violence protection orders issued by the courts of the State of Ohio. **TO BE USED WITH FORMS 10.01-H, 10.01-I, 10.01-J, and 10.02-A.**

**WARNING TO RESPONDENT / DEFENDANT**

Violating the attached Protection Order is a crime, punishable by imprisonment or fine or both, and can cause your bond to be revoked or result in a contempt of court citation against you.

This Protection Order is enforceable in all 50 states, the District of Columbia, tribal lands, and U.S. Territories pursuant to the Violence Against Women Act, 18 U.S.C. Section 2265. Violating this Protection Order may subject you to federal charges and punishment.

As a result of this order or consent agreement, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. Section 922(g)(8). If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

Only the Court can change this order. The Petitioner/Alleged Victim cannot give you legal permission to change this order. If you go near the Petitioner/Alleged Victim, even with the Petitioner's/Alleged Victim's consent, you may be arrested. If you and the Petitioner/Alleged Victim want to resume your relationship you must ask the Court to modify or terminate this Protection Order. Unless the Court modifies or terminates this order, you can be arrested for violating this Protection Order. You act at your own risk if you disregard this WARNING.

**WARNING TO PETITIONER / ALLEGED VICTIM**

You **cannot** change the terms of this Order by your words or actions. Only the Court can allow the Respondent/Defendant to contact you or return to your residence. This order **cannot** be changed by either party without obtaining a written court order.

**NOTICE TO ALL LAW ENFORCEMENT AGENCIES AND OFFICERS**

The attached Protection Order is enforceable in all jurisdictions. Violation of this Protection Order, regardless of whether it is a criminal or civil Protection Order, is a crime under R.C. 2919.27. Law enforcement officers with powers to arrest under R.C. 2935.03 for violations of the Ohio Revised Code must enforce the terms of this Protection Order as required by R.C. 2919.26, 2919.27 and R.C. 3113.31. If you have reasonable grounds to believe that Respondent/Defendant has violated this Protection Order, it is the preferred course of action in Ohio under R.C. 2935.03 to arrest and detain Respondent/Defendant until a warrant can be obtained. Federal and State Law prohibit charging a fee for service of this order.

**COPY**

EXHIBIT  
Relator

3

**FORM 10-A: PROTECTION NOTICE TO NCIC**

(Required fields appear in bold print)

- Initial NCIC Form
- Modification of Previous Form

**FULL/FINAL**

SUBJECT NAME ELLISON RICHARD DAVID  
(LAST) (FIRST) (M.I.)

ADDRESS L.O.C.I. LONDON OH 43140-0000

PHYSICAL DESCRIPTION: HGT 6' 03" WGT 175lb. HAIR BRO EYES BRO RACE W SEX M

721143

**NUMERICAL IDENTIFIER (NOTE: Only ONE of the 4 numerical identifiers is needed.)**

- 1. SSN
  - 2. DOB 05/09/1949
  - 3.\* DRIVER LICENSE NO. STATE EXPIRATION YR.
  - 4.\* VEHICLE LICENSE NO. STATE EXPIRATION YR. LICENSE TYPE
- (\* If #3 or #4 is used as numerical identifier, entire line MUST be completed.)

**BRADY DISQUALIFIERS:**

(Pursuant to 18 U.S.C. 922(g)(8), a "yes" response to all three Brady questions disqualifies the subject from purchasing or possessing any firearms, including a rifle, pistol, revolver, or ammunition.)

- Does order protect an intimate partner or child(ren)?  YES  NO
  - Did subject have opportunity to participate in hearing regarding order?  YES  NO
  - Does order find subject a credible threat or explicitly prohibit physical force?  YES  NO
- IS THE SUBJECT BRADY DISQUALIFIED?  YES  NO

CASE / ORDER NO. DV1000910 (15 DIGIT MAXIMUM)

COURT ORIGINATING AGENCY IDENTIFIER Hamilton County, Ohio Domestic Relations  
(9 DIGIT ORI ASSIGNED BY NCIC)

- R.C. 2903.213  R.C. 2903.214  R.C. 2151.34 NAME OF JUDGE Elizabeth B Mattingly
- R.C. 2919.26  R.C. 3113.31

DATE OF ORDER 08/10/2010 EXPIRATION OF ORDER 08/10/2015  
(IN R.C. 2919.26 CASES, NONEXP MAY BE USED)

**TERMS AND CONDITIONS OF ORDER (Mark all that are applicable):**

- 01 The subject is restrained from assaulting, threatening, abusing, harassing, following, interfering, or stalking the protected person and/or the child of the protected person.
- 02 The subject shall not threaten a member of the protected person's family or household.
- 03 The protected person is granted exclusive possession of the residence or household.
- 04 The subject is required to stay away from the residence, property, school, or place of employment of the protected person or other family or household member.
- 05 The subject is restrained from making any communication with the protected person, including but not limited to, personal, written, or telephone contact, or their employer, employees, or fellow workers, or others with whom the communication would be likely to cause annoyance or alarm the victim.
- 06 The subject has visitation or custody rights of the children named in this order.
- 07 The subject is prohibited from possessing and/or purchasing a firearm or other weapon.
- 08 See the Miscellaneous Field for comments regarding the specific terms and conditions of the order.  
Miscellaneous comments: SEE PARAGRAPH 18 OF ORDER FOR STAY-AWAY EXCEPTION.
- 09 The protected person is awarded temporary exclusive custody of the children named.

**LIST ALL PROTECTED PERSONS (Total of 9 allowed, may attach additional forms; SSN is NOT necessary if DOB is given):**

PROTECTED PERSON LEE JEANNE K  
(LAST) (FIRST) (MI) DOB: 04/28/1926 SSN: RACE: SEX:

PROTECTED PERSON LEE EDMOND III  
(LAST) (FIRST) (MI) DOB: 03/26/26 SSN: RACE: SEX:

PROTECTED PERSON (LAST) (FIRST) (MI) DOB: SSN: RACE: SEX:

Authorized by (signature) [Signature]  
(circle one) Judge/Magistrate

Date 08/10/2010

**COPY**

OHP  
DATA  
ONLY  
#EPO

MIS/

**COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO**

Respondent ordered to  
 **VACATE**  
residence. (See box #2  
under provisions)

**Order of Protection**

Per ORC 3113.31(F)(3), this order is indexed at

Case No **DV1000910** **E253737**

Judge Elizabeth B Mattingly  
Magistrate Judith A Levy

LAW ENFORCEMENT AGENCY WHERE INDEXED

County **HAMILTON** State **OHIO**

PHONE NUMBER

**FINAL APPEALABLE ORDER**  
**DOMESTIC VIOLENCE CIVIL PROTECTION ORDER**  
**(CPO) FULL HEARING (R.C. 3113.31)**  
 **WITH SUPPORT ORDER**

**PETITIONER:**

**PERSON(S) PROTECTED BY THIS ORDER**

**Jeanne K Lee**

First Middle Last

v.

**ENTERED**  
**AUG 11 2015**

Petitioner: Jeanne K Lee DOB: 04/28/1926  
Petitioner's Family or Household Member(s) (May attach additional form):

Edmond Lee III DOB: 03/26/26  
DOB: \_\_\_\_\_  
DOB: \_\_\_\_\_  
DOB: \_\_\_\_\_

**RESPONDENT:**

**Richard David Ellison**

First Middle Last

Relationship to Petitioner: SON  
Address where Respondent can be found:  
L.O.C.I.

**RESPONDENT IDENTIFIERS**

|                             |      |               |     |
|-----------------------------|------|---------------|-----|
| SEX                         | RACE | HT            | WT  |
| M                           | W    | 6' 03"        | 175 |
| EYES                        | HAIR | DATE OF BIRTH |     |
| BRO                         | BRO  | 05/09/1949    |     |
| DRIVERS LIC NO. & EXP. DATE |      | STATE         |     |
|                             |      |               |     |

Distinguishing Features \_\_\_\_\_

LONDON OH 43140-0000

**WARNING TO LAW ENFORCEMENT: RESPONDENT HAS FIREARMS ACCESS – PROCEED WITH CAUTION**

(Violence Against Women Act, 18 U.S.C. 2265, Federal Full Faith & Credit Declaration: Registration of this form is not required for enforcement.)

**THE COURT HEREBY FINDS:**

That it has jurisdiction over the parties and subject matter, and the Respondent will be provided with reasonable notice and opportunity to be heard within the time required by Ohio law. Additional findings of this order are set forth below.

**THE COURT HEREBY ORDERS:**

That the above named Respondent be restrained from committing further acts of abuse or threats of abuse against the Petitioner and other protected persons named in this order. Additional terms of this order are set forth below.

The terms of this order shall be effective until 08/10/2015 unless earlier modified or dismissed by this court.

**WARNINGS TO RESPONDENT: See the warnings page attached to the front of this Order.**

This proceeding came on for a hearing on 08/10/2010 before the Court and the *Ex parte* Order filed on 07/28/2010. The following individuals were present: Petitioner. Respondent was not present. Respondent was personally served with notice of this action on 08/02/2010 and filed an answer to the petitioner on 08/10/2010.

The Court hereby makes the following findings of fact: Petitioner and her husband, Edmond Lee III have justifiable cause to be in fear of serious imminent physical harm from Respondent should he not be restrained from contact.

The Court further finds by a preponderance of the evidence: 1) that the Petitioner or Petitioner's family or household member(s) are in danger of or have been a victim of domestic violence, as defined in Ohio Revised Code 3113.31(A), committed by Respondent; and 2) the following orders are equitable, fair, and necessary to protect the persons named in this order from domestic violence.

**ALL OF THE PROVISIONS CHECKED BELOW APPLY TO THE RESPONDENT**

1. **RESPONDENT SHALL NOT ABUSE** the protected persons named in this Order by harming, attempting to harm, threatening, following, stalking, harassing, forcing sexual relations upon them, or by committing sexually oriented offenses against them: [NCIC 01 and 02]
2. **RESPONDENT SHALL IMMEDIATELY VACATE** the following residence: \_\_\_\_\_
3. **EXCLUSIVE POSSESSION OF THE RESIDENCE** located at **104 FIELDSTONE DR TERRACE PARK, OH 45174-0000** is granted to **Jeanne K Lee** Respondent shall not interfere with this individual's right to occupy the residence including, but not limited to canceling utilities or insurance, interrupting phone service, mail delivery, or the delivery of any other documents or items. [NCIC 03]
4. **RESPONDENT SHALL SURRENDER** all keys and garage door openers to the above residence at the earliest possible opportunity after service of this Order to the law enforcement agency that serves Respondent with this Order or as follows \_\_\_\_\_.
5. **RESPONDENT SHALL NOT ENTER** or interfere with the residence, school, business, place of employment, or child care providers of the protected persons named in this order, including the buildings, grounds and parking lots at those locations. Respondent may not violate this order even with the permission of a protected person. [NCIC 04]
6. **RESPONDENT SHALL STAY AWAY FROM PETITIONER** and all other protected persons named in this order, and not be present within 500 feet or \_\_\_\_\_ (distance) of any protected persons wherever protected persons may be found, or any place the Respondent knows or should know the protected persons are likely to be, even with Petitioner's permission. If Respondent accidentally comes in contact with protected persons in any public or private place, Respondent must depart *immediately*. This order includes encounters on public and private roads, highways, and thoroughfares. [NCIC 04]
7. **RESPONDENT SHALL NOT HAVE OR INITIATE ANY CONTACT** with the protected persons named in this Order or their residences, businesses, places of employment, schools, day care centers, or child care providers. Contact includes, but is not limited to, telephone, fax, e-mail, voice mail, delivery service, writings, or communications by any other means in person or through another person. Respondent may not violate this order even with the permission of a protected person. [NCIC 05]
8. **RESPONDENT SHALL IMMEDIATELY SURRENDER POSSESSION OF ALL KEYS TO THE FOLLOWING MOTOR VEHICLE:** \_\_\_\_\_, to the law enforcement agency that served Respondent with the Order or as follows \_\_\_\_\_ and Petitioner is granted exclusive use of this motor vehicle.
9. **RESPONDENT SHALL NOT REMOVE, DAMAGE, HIDE, OR DISPOSE OF ANY PROPERTY OR PETS** owned or possessed by the protected persons named in this Order. Personal property shall be apportioned as follows: \_\_\_\_\_.
10. **RESPONDENT SHALL NOT CAUSE OR ENCOURAGE ANY PERSON** to do any act prohibited by this order.
11. **RESPONDENT SHALL NOT POSSESS, USE, CARRY, OR OBTAIN ANY DEADLY WEAPON.** Respondent shall turn over all deadly weapons in Respondent's possession to the law enforcement agency that serves Respondent with this Order or as follows: \_\_\_\_\_.
- Any law enforcement agency is authorized to take possession of deadly weapons pursuant to this paragraph and hold them in protective custody until further Court order. [NCIC 07]

12. PARENTAL RIGHTS AND RESPONSIBILITIES ARE TEMPORARILY ALLOCATED AS FOLLOWS: [NCIC 09]

\_\_\_\_\_ This order applies to the following child(ren): \_\_\_\_\_.

13. VISITATION ORDERS DO NOT PERMIT RESPONDENT TO VIOLATE THE TERMS OF THIS ORDER.

(A) Respondent's visitation rights are suspended; or

(B) As a limited exception to paragraph 6, temporary visitation rights are established as follows: [NCIC 06]

\_\_\_\_\_ This order applies to the following child(ren): \_\_\_\_\_.

14. LAW ENFORCEMENT AGENCIES including but not limited to \_\_\_\_\_ are ordered to assist Petitioner in gaining physical custody of the child(ren) if necessary.

15. RESPONDENT SHALL SUPPORT the protected persons named in this Order as follows: \_\_\_\_\_

16. RESPONDENT MAY PICK UP CLOTHING and personal items from the above residence only in the company of a uniformed law enforcement officer within 7 days of the filing of this Order. Arrangements may be made by contacting: \_\_\_\_\_.

17. RESPONDENT SHALL NOT USE OR POSSESS alcohol or illegal drugs.

18. IT IS FURTHER ORDERED [NCIC 08] RESPONDENT SHALL NOT BE IN VIOLATION OF THIS ORDER MERELY BECAUSE SHE/HE IS WITHIN 500 FEET OF THE PROTECTED PERSON(S) WHILE ATTENDING COURT ORDERED OR AGREED UPON COUNSELING AND/OR MEDIATION SESSIONS OR SCHEDULED COURT PROCEEDINGS FOR WHICH RESPONDENT IS EITHER A PARTY OR A SUBPOENAED WITNESS.

19. RESPONDENT SHALL COMPLETE THE FOLLOWING COUNSELING PROGRAM: \_\_\_\_\_

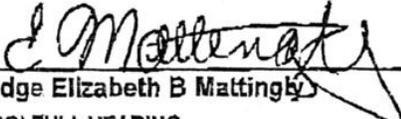
Respondent shall contact this program \_\_\_\_\_ days after receiving this Order and immediately arrange for an initial appointment. The counseling program is requested to provide the Court a written notice when Respondent attends the initial appointment, if the Respondent fails to attend or is discharged, and when Respondent completes the program. Respondent is required to sign all necessary waivers to allow the court to receive information from the counseling program.

Respondent is ordered to appear before Judge/Magistrate \_\_\_\_\_, on \_\_\_\_\_ at \_\_\_\_\_ m., to review Respondent's compliance with this counseling order. Respondent is warned: If you fail to attend the counseling program you may be held in contempt of court. If you fail to appear at this hearing, the court may issue a warrant for your arrest.

20. IT IS FURTHER ORDERED that the Clerk of Court shall cause a copy this Order to be delivered to the Respondent as required by law. The Clerk of Court shall also provide certified copies this Order to Petitioner upon request. This Order is granted without bond. Under state and federal law, the Clerk shall not charge any fees for filing, issuing, registering, or serving this protection order.

21. ALL OF THE TERMS OF THIS ORDER REMAIN IN FULL FORCE AND EFFECT FOR A PERIOD OF FIVE YEARS FROM ISSUANCE, OR UNTIL 08/10/2015 unless earlier modified or dismissed by order of this Court. Except for paragraphs 12, 13, 14, and 15 above, this order survives a divorce, dissolution of marriage, or legal separation. Until this order is delivered to Respondent, the terms of the *Ex parte* CPO remain in effect.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge Elizabeth B Mattingly

**NOTICE TO RESPONDENT: THE PERSONS PROTECTED BY THIS ORDER CANNOT GIVE YOU LEGAL PERMISSION TO CHANGE OR VIOLATE THIS ORDER. IF YOU VIOLATE ANY TERMS OF THIS ORDER, EVEN WITH THE PROTECTED PERSON'S PERMISSION, YOU MAY BE ARRESTED. ONLY THE COURT CAN CHANGE THIS ORDER. IF THERE IS ANY REASON WHY THIS ORDER SHOULD BE CHANGED, YOU MUST ASK THE COURT TO CHANGE IT. YOU ACT AT YOUR OWN RISK IF YOU DISREGARD THIS WARNING.**

**NOTICE OF FINAL APPEALABLE ORDER**

Copies of the foregoing Order, which is a final appealable order, were mailed by ordinary U.S. mail

or hand-delivered to the parties indicated on the

11 day of August, 2010

By: **Patricia Clancy**  
Clerk of Courts

**TO THE CLERK:**

**COPIES OF THIS ORDER SHALL BE DELIVERED TO**

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Petitioner     | <input type="checkbox"/> Attorney for Petitioner |
| <input checked="" type="checkbox"/> Respondent     | <input type="checkbox"/> Attorney for Respondent |
| <input type="checkbox"/> Counseling Program: _____ |  |

The Hamilton County Sheriff's Office

Police Department Where Petitioner Resides:  
\_\_\_\_\_

Police Department Where Petitioner Works:  
\_\_\_\_\_

CSEA \_\_\_\_\_

Other: \_\_\_\_\_

**COPY**

COURT OF COMMON PLEAS  
DIVISION OF DOMESTIC RELATIONS  
HAMILTON COUNTY, OHIO

| For Court Use Only                  |  |
|-------------------------------------|--|
| Prior Filing Yes _____ No <u>56</u> |  |
| E# _____                            |  |
| Case # DR _____                     |  |
| Judge _____ Mag _____               |  |
| Case # DV _____                     |  |
| Judge _____ Mag _____               |  |
| XPAR _____ FULL _____               |  |
| CAGR _____ DISM _____               |  |
| Order Effective Until _____         |  |

DV1000910

JEANNE R. LEE  
Petitioner  
104 FIELDSTONE DR.  
Address  
TERRALE PARK, OH 45174  
City, State, Zip Code

Date Of Birth: 4-28-26  
v.

RICHARD ELLISON  
Respondent  
L.O.C. 1  
Address  
LONDON, OH 43140  
City, State, Zip Code

Date Of Birth: 5-9-49

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

PETITION FOR DOMESTIC VIOLENCE  
CIVIL PROTECTION ORDER (R.C. 3113.31)

Notice to Petitioner: Throughout this form,  
check every  that applies.

Do NOT write your address at left or below if  
you are requesting confidentiality. Please provide an  
address where you can receive notices from the Court.

1. Petitioner is a family or household member of Respondent, and a victim of domestic violence and seeks relief on  
Petitioner's own behalf. The relationship of Petitioner-to Respondent is that of:

- Spouse of Respondent
- Former spouse of Respondent
- The natural parent of Respondent's child
- Other relative (by blood or marriage) of Respondent/ Petitioner who has lived with Respondent at any time

- Child of Respondent
- Parent of Respondent
- Foster Parent
- Person "living as a spouse of Respondent" defined as:
  - now cohabiting;
  - or cohabited within five years prior to the alleged act of domestic violence

FILED  
 2010 JUL 28 A 9:14  
 PATRICIA H. CLANCY  
 CLERK OF COURTS  
 HAMILTON COUNTY, OH

2. Petitioner seeks relief on behalf of the following family or household members:  
HOW RELATED TO

| NAME              | DATE OF BIRTH | PETITIONER | RESPONDENT | RESIDES WITH |
|-------------------|---------------|------------|------------|--------------|
| EDMUND SILFEE III | 9-26-26       | WIFE       | IT HUSBAND | WIFE         |
|                   |               |            |            |              |
|                   |               |            |            |              |
|                   |               |            |            |              |

PROCESS SERVER  
 CLERKS FEES  
 SECURITY FOR COST  
 DEPOSITED BY 2999  
 FILED CODE DO

3. Respondent has engaged in the following act(s) of domestic violence (MUST describe the acts as fully as possible, add additional pages if necessary):

ON OCT. 10, 2004 RICHARD WAS WAITING (UNLITATED) IN OUR HOME. HE HAD DISCONNECTED THE PHONE. WE ASKED HIM TO LEAVE - MY HUSBAND STARTED FOR THE GARAGE DOOR WHEN RICHARD KNOCKED HIM DOWN TO THE FLOOR, KICKING HIM & BEATING HIM WITH HIS FISTS. I THOUGHT HE WAS GOING TO KILL HIM, SO I TRIED TO PULL HIM OFF, HE GRABBED MY ARM, TWISTING AND

4. Petitioner requests that the Court grant relief under Ohio Revised Code 3113.31 to protect the petitioner and or the family or household members named in this petition from domestic violence by granting a civil protection order that:

- (a) Directs Respondent not to abuse Petitioner and the family or household members named in this Petition by harming, attempting to harm, threatening, following, stalking, harassing, forcing sexual relations upon them, or by committing sexually oriented offenses against them.
- (b) Requires Respondent to leave and not return to or interfere with the following residence and grants Petitioner exclusive possession of the residence: \_\_\_\_\_
- (c) Divides household and family personal property and directs Respondent not to remove, damage, hide, or dispose of any property or funds that Petitioner owns or possesses.
- (d) Temporarily allocates parental rights and responsibilities for the care of the following minor children and suspends Respondent's visitation rights until a full hearing is held (include names and birth dates of the minor children):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (e) Establishes temporary visitation rights with the following minor children and requires visitation to be supervised or occur under such conditions that the Court determines will insure the safety of Petitioner and the minor children (include names and birth dates of the minor children):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (f) Requires Respondent to provide financial support for Petitioner and the other family or household members named in this Petition.
- (g) Requires Respondent to complete batterer counseling, substance abuse counseling, or other counseling as determined necessary by the Court.
- (h) Requires Respondent to refrain from entering, approaching, or contacting (including contact by telephone, fax, e-mail, and voice mail) the residence, school, business, and place of employment of Petitioner and the family or household members named in this Petition.
- (i) Requires Respondent to permit Petitioner or other family or household member to have exclusive use of the following motor vehicle: \_\_\_\_\_
- (j) Includes the following additional provisions: \_\_\_\_\_

BRUISING IT. HE THEN ORDERED MY HUSBAND AND MYSELF TO  
SIT ON THE LIVING ROOM COUCH. MY HUSBANDS ARM WAS BLEEDING  
(RICHARD)  
SO HE LET ME TEND TO IT. ~~HE~~ THEN PULLED OUT A SCRIPT THAT  
HE HAD WRITTEN AND MADE US ANSWER HIM. WHEN WE  
TRIED TO REASON WITH HIM - HE WOULD GET UP AND COME  
TOWARD US - HIS FACE CHANGED AND GOT RED. WE BACKED  
DOWN - AT ONE POINT HE GOT SOME O.J. FROM THE KITCHEN,  
AND I SAID TO MY HUSBAND "WE CAN'T REASON WITH HIM,  
WE'LL JUST TELL HIM WHAT HE WANTS TO HEAR. HE FINALLY  
LEFT - BUT WE HAD SEE HIS BRIEFCASE - WHICH CONTAINED  
NOT ONLY THE SCRIPT, BUT 2 PRS. OF HANDCUFFS, DUCT TAPE,  
AND A CHANGE OF CLOTHING. THIS SCARED ME, BECAUSE  
IN 1982 OUR DAUGHTER CINDY WAS MURDERED, AND THE  
FIRST THING HER KILLER DID, WAS TO CHANGE HIS CLOTHES.  
(RICHARD)  
HE FINALLY LEFT, AND I CALLED THE TERRACE PARK POLICE.  
PREVIOUS TO THIS EVENT - RICHARD HAD BEEN HARASSING ALL  
THE FAMILY BY WRITING THREATENING NEWS LETTERS ABOUT EACH  
PERSON IN THE FAMILY, AND MAILING THEM TO ALL OF OUR NEIGHBORS.  
RICHARD MAILED LETTERS ALSO TO 250 POST OFFICE BOXES  
IN HAMPTON, CT., AND AS A RESULT OF THIS, MY DAUGHTER ANNE RUSSO  
LOST A LOT OF HER BUSINESS, WHICH SHE STILL HAS NOT MADE UP

COPY

- 5. Petitioner further requests that the Court issue an *ex parte* (emergency) protection order under Ohio Revised Code 3113.31(D) and (E) and this Petition.
- 6. Petitioner further requests that the Court issue no mutual protection orders or other orders against Petitioner unless all of the conditions of Ohio Revised Code 3113.31 (E) (4) are met.
- 7. Petitioner further requests that if Petitioner has a victim advocate, the Court permit the victim advocate to accompany Petitioner at all stages of these proceedings as required by Ohio Revised Code 3113.31(M).
- 8. Petitioner further requests that the Court grant such other relief as the Court considers equitable and fair.
- 9. Petitioner lists here all present court cases and pertinent past court cases (including civil, criminal, divorce, juvenile, custody, visitation, and bankruptcy cases) that relate to the Respondent, you, your children, your family, or your household members:

| CASE NAME | CASE NUMBER | COURT/COUNTY | TYPE OF CASE | RESULT OF CASE |
|-----------|-------------|--------------|--------------|----------------|
|           |             |              |              |                |
|           |             |              |              |                |
|           |             |              |              |                |

I hereby swear or affirm that the answers above are true, complete and accurate to the best of my knowledge. I understand that falsification of this document may result in a contempt of court finding against me which could result in a jail sentence and fine, and that falsification of this document may also subject me to criminal penalties for perjury under Ohio Revised Code 2921.11.

*Deanne K. Lee*  
 SIGNATURE OF PETITIONER

Sworn to and subscribed before me on this \_\_\_\_\_ day  
 of \_\_\_\_\_

Address where Petitioner can be contacted:  
104 FIELDSTONE DR.  
TERRACE PARK, OH 45177

\_\_\_\_\_  
 NOTARY PUBLIC

Signature of Attorney for Petitioner (if applicable)

NOTARY PUBLIC  
 Sworn to and subscribed before me on this 28 day of \_\_\_\_\_, 2010.

*Patricia Clancy*  
 Patricia Clancy

Name

Address

Attorney Registration Number

Phone Number

Clerk of the Common Pleas of Hamilton County,  
 By *[Signature]*  
 Deputy Clerk