

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel

Relator,

vs.

Scott Allan Pullins

Respondent,

NO. 10-0851

Before the Board of Commissioners
On Grievances and Discipline
Case No. 09-022

**RESPONDENT SCOTT ALLAN PULLINS' REQUEST TO STRIKE COUNTS FIVE,
SIX, AND SEVEN AND FOR SANCTIONS FOR FRIVOLOUS CONDUCT AND
DISCOVERY VIOLATIONS AGAINST RELATOR**

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Attorney & Counselor at Law
110 East Gambier Street, 2nd Floor
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740-392-3505
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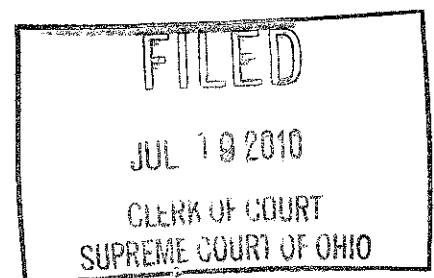
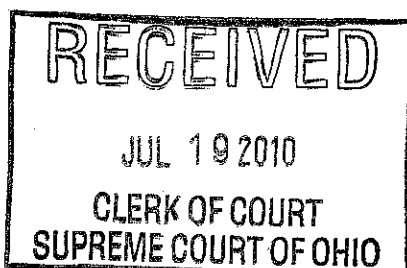
scott@pullinslaw.com
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Respondent – Pro Se

Michael E. Murman, Esq. (0029076)
Edward G. Kagels, Esq. (0025958)
Office of Disciplinary Counsel of the
Ohio Supreme Court
14701 Detroit Ave., #555
Lakewood, Ohio 44107

216-226-6996

Counsel for Relator



Now comes the Respondent, pro se, and requests that this Honorable Court strike Counts Five, Six, and Seven of the Board's Report because of the reasons articulated herein and order sanctions for frivolous conduct and for discovery violations against Counsel for the Relator. A memorandum in support is provided.

Respectfully Submitted,



Scott A. Pullins, Esq. (0076809)
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Respondent – Pro Se

CERTIFICATE OF SERVICE

A copy of this document was served upon counsel for the Relator, Michael Murman and Edward Kagels, 14701 Detroit Av., Suite #555 Lakewood, OH 44107-4109, and Jonathan Marshall, Secretary, The Board of Commissioners on Grievances and Discipline, the Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, Ohio 43215 via first class, regular mail, this 15th day of July 2010.



Scott A. Pullins (0076809)

MEMORANDUM IN SUPPORT

I. COUNSEL FOR THE RELATOR MISLED RESPONDENT & THE PANEL AS TO THE IDENTITY OF WITNESSES FOR THE FINAL HEARING.

Pursuant to agreement, both Relator and Respondent exchanged witness lists prior to the full hearing. In fact, Counsel for the Relator filed a list of his final hearing witnesses with the panel on October 6, 2009. **See Attached Exhibit 1.**

Nonetheless, Respondent was shocked to find at the final hearing that Counsel for the Relator had subpoenaed two additional witnesses and called them to testify. Counsel for the Relator never provided Respondent with either a copy of the subpoenas nor did he inform Respondent of the names of these two additional witnesses, nor did he provide the panel and Respondent with an updated witness list.

This Court has long held that a Prosecutor may be sanctioned for deliberately withholding the names of witnesses from Defendants.

Rebuttal witnesses, as well as witnesses used in the prosecution's case-in-chief, fall within the scope of discovery. Thus, if the prosecution does not provide the name of a rebuttal witness upon a defendant's request for such information, the trial court may impose sanctions on the prosecution.

State v. Finnerty, 45 Ohio St. 3d 104 (Ohio 1989)

Failure to comply with a discovery request for names of witnesses does not automatically result in exclusion of their testimony. The court may order the noncomplying party to disclose the material, grant a continuance in the case or make such other order as it deems just under the circumstances.

State v. Finnerty, 45 Ohio St. 3d 104 (Ohio 1989)

II. COUNSEL FOR THE RELATOR HAS MISLED THIS COURT IN HIS STATEMENTS FILED IN HIS ANSWER BRIEF

On page 3, paragraph 2 of Relator's Answer Brief he states that he learned after Respondent's deposition that Respondent had filed another case on behalf of his family.

Following the statement, relator learned about another case that respondent filed on behalf of family members. See Page 3 of Relator's Answer Brief.

Relator justifies his actions in filing an amended complaint by implying that he was misled by Respondent through several of these subsequent actions.

In spite of all of respondent's assurances that he had modified his behavior, the amended complaint, filed without request for leave, included the previously dismissed counts despite the court of appeal's ruling. Relator learned that respondent's previously filed affidavit of disqualification filed against Judge Eyster had been overruled. The assurances and remorse displayed at the sworn statement had been undermined by subsequent conduct. See Page 3 and 4 of Relator's Answer Brief.

These assertions by Relator are simply not true.

First, Respondent's case was not filed after Respondent's deposition of October 8, 2008 but long before. In fact, the docket sheet which is found in this case clearly shows that the action was filed on December 20, 2007 nearly a year before Respondent's deposition. But more importantly, Respondent disclosed this case to Relator in his deposition and informed him that a affidavit of disqualification had been filed against Judge Eyster in 2007 and had been denied by the Chief Justice.

We do have one case that still involves an Apple Valley issue that he dismissed. And we took it up on appeal, and that went up on appeal and that was remanded back. And we did early, sometime in late 2007, filed an Affidavit of Qualification which was denied basically because we didn't provide enough substantiation. See Deposition of Respondent at 40:19-25.

Second, Respondent's Amended Complaint in this case was filed on November 10, 2008 and Relator was aware of it long before he filed his first complaint on February 17, 2009. In fact, Relator was provided this information by Judge Eyster when he met with Relator in December of 2008. **See Deposition of Judge Eyster at 6:1-16 and Attached Exhibit 2.**

Respondent respectfully alleges that Relator withheld this matter from the first complaint because he did not want to risk it being dismissed by a probable cause panel. By adding four

additional counts through an amended complaint, Relator was able to bypass the normal probable cause process. In fact, Relator was able to bypass much of the disciplinary review process by inserting this new matter into an amended complaint. The events concerning Respondent's amended complaint make up most of Count Five of the amended complaint and the Board's Report.

Third, the events that make up all of Count Six of the amended complaint occurred between March 9, 2007 and May 25, 2007. Respondent alleges that Relator's counsel was provided this information by Judge Eyster when Relator's counsel met with him in December of 2008. Nonetheless, apparently Relator's counsel did not include this information in his complaint that he filed on February 17, 2009 in order to avoid an investigation and a probable cause panel.

Fourth, the events that make up all of Count Seven of the amended complaint occurred on or around January 12, 2006. In addition, Relator's counsel had a copy of this document prior to his filing for the formal complaint. In fact, Relator's draft complaint sent to Respondent on January 13, 2009 references the document in paragraphs 21 and 22. **See Attached Exhibit 3.** Nonetheless, Relator's counsel did not include this information in his complaint that he filed on February 17, 2009 apparently in order to avoid an investigation and a probable cause panel.

Finally, Relator's counsel also misled this Court when he stated that the facts concerning Count Four and Judge Curran were not known on October 8, 2008.

None of the conduct relating to Judge Curran was known to the special prosecutor when he met with Respondent on October 8, 2008. Its relevance became obvious when Relator learned of Respondent's post October 8, 2008 conduct in the Harmer case... Respondent's conduct, that is the subject of Counts IV and VI of the amended complaint, demonstrated that his apologies were hollow and that he did not recognize the constraints of professional responsibility... See Page 6 of Relator's Answer Brief.

In fact, Relator was aware of these facts in July of 2007 when they received the grievance

from Miriam St. Jean, investigated the matter for nearly a year, and then dismissed the grievance in June of 2008 for lack of probable cause as previously pointed out to this Court.

III. AN AMENDED COMPLAINT MAY NOT ADD MATTER THAT WAS KNOWN AT THE TIME OF THE FILING OF THE ORIGINAL COMPLAINT

As a matter of law, an amended complaint may only include matter that was unknown or overlooked at the time of the filing of the original complaint.

An amended pleading is designed to include matters occurring before the filing of the complaint but either overlooked or not known at the time.

Mork v. Waltco Truck Equipment Co., 70 Ohio App. 3d 458 (Ohio Ct. App., Summit County 1990)

Here, appellants knew of these parties and their significance prior to filing their original complaint. It therefore was not an abuse of discretion to find that it was not appropriate to grant appellants' attempt to add these parties through an amended complaint well into the litigation.

State ex rel. Brewer-Garrett Co. v. MetroHealth Sys., 2006 Ohio 5244, P18 (Ohio Ct. App., Cuyahoga County Oct. 5, 2006)

Likewise, a supplemental complaint includes new material that occurred after the filing of the complaint.

Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have since the date of the pleading sought to be supplemented.

Widder & Widder v. Kutnick, 113 Ohio App. 3d 616 (Ohio Ct. App., Cuyahoga County 1996)

The facts embodied in a supplemental complaint must relate to the cause of action set forth in the original complaint, and must be in aid thereof. An entirely new case cannot be introduced in this way.

State ex rel. Dickman v. Defenbacher, 151 Ohio St. 391 (Ohio 1949)

IV. COUNSEL FOR THE RELATOR'S PERSONAL ANIMUS AND MISCONDUCT TOWARDS RESPONDENT SHOULD NOT GO UNNOTICED BY THIS COURT

Just like Justice Pfeifer concluded in *Disciplinary Counsel v. O'Neil*, counsel for the Relator in this case has developed a substantial personal animus toward Respondent. Counsel for the Relator stated that Respondent begrudgingly apologized, a view never adopted by the panel. Relator's counsel has repeatedly characterized Respondent as a "paper terrorist" and as someone who has an "demonstrated an unacceptable disrespect and misunderstanding of the legal process," also views never adopted by the panel.

The board has experience with similar conduct. Elsebeth Baumgartner requested subpoenas to be issued merely to harass individuals with no involvement in cases, made scurrilous and unfounded accusations against judges and other officials, and even attempted to pervert the disciplinary process into what was described by the board as "the next phase of her campaign of, paper terrorism against public officials..."

See Page 6 of Relator's Summation.

Respondent admits virtually all of the facts alleged in the amended complaint but has not admitted that he was wrong or that his actions violate the code and rules governing lawyers. He shows little if any insight into the reasons he is before the board. **See Page 8 of Relator's Summation.**

His behavior and attitude in these proceedings demonstrated a lack of appreciation of the responsibilities and restraint required of an attorney; and his conduct revealed a recalcitrance, and an unacceptable degree of disrespect toward the judiciary. **See Page 10 of Relator's Answer Brief.**

The Relator's counsel stated that Respondent has terrorized the community even though he never produced a single witness, a single document, or a single piece of evidence that even suggested such a theory.

The public, particularly in Knox County, was harmed because a local lawyer seemed to be able with impunity to utilize legal procedures to terrorize his adversaries, in particular by compounding and complicating any dispute in which he or his family met resistance. **See Page 8 of Relator's Summation.**

By manipulating this process, Relator's counsel was able to retain control of these

matters and bypass a review and investigation by Disciplinary Counsel, along with review by a probable cause panel. By doing so Relator's counsel went way far and beyond his mandate to investigate and prosecute the two grievances filed against the Respondent. In fact, his filing of his answer brief is nothing more than a continuation of this manipulation of the disciplinary process.

Relator's counsel knows that the rules do not permit Respondent to reply to his answer brief. As such, Relator's counsel felt free to mislead this Court and introduce new information and theories that have never appeared in the record in his answer brief.

V. THE GRIEVANT AND RELATOR'S COUNSEL ARE USING THE DISCIPLINARY PROCESS IN AN ATTEMPT TO PUNISH THE RESPONDENT

This Court has long held that the primary purpose of the disciplinary process is to protect the public, not to punish the offender. However, the Grievant, who serves as the current Chairman of the Board of Commissioners on Grievances and Discipline has stated on the record that he has never heard of such a standard.

I've been on the Board of Commissioners five and a half years now and that's a standard I've never seen is someone being a danger to the public, so I'm not familiar. See Deposition of Judge Eyster at 43:16-19.

Counsel for the Relator, who is a former Chairman of the Board, also has downplayed this issue on the record.

Objection, again, he tried to explain the dangers, you're trying to present a standard, a strawman that doesn't occur. Protection of the public doesn't mean that you're necessarily a danger to the public. It doesn't equate that we can only discipline those lawyers who present a danger to the public. See Deposition of Judge Eyster at 44:8-16.

Counsel for the Relator objected strenuously and argued repeatedly throughout nearly every deposition and was disrespectful while Respondent presented his case to the panel. In fact, Respondent asked Mr. Murman during the depositions if he was acting as Judge Eyster's

personal attorney. During the hearing, the Panel Chairman admonished counsel for the Relator for making noise and being disrespectful during Respondent's case.

Even the fact that Mr. Murman has characterized himself as a "Special Prosecutor" to the Relator is telling on his attitude and beliefs toward this proceeding. An attorney disciplinary proceeding is not a prosecution and Respondent is not accused of a crime. More importantly, Disciplinary Counsel has never characterized outside attorneys retained by them as "Special Prosecutors" but as "Special Counsel."

There is no specific authorization for the appointment of Special Counsel, nor is there a bar to appointment of Special Counsel. Gov.Bar R. V, Section 3(B)(2) provides:

"Assistant Disciplinary Counsel and staff in the Office of Disciplinary Counsel shall serve at the pleasure of the Disciplinary Counsel. The Disciplinary Counsel may appoint assistants as necessary who shall be attorneys admitted to the practice of law in Ohio and who shall not engage in the private practice of law while serving in that capacity. The Disciplinary Counsel shall appoint staff as required to satisfactorily fulfill the duties of the Office of Disciplinary Counsel." (Emphasis added.)

Gov.Bar R. V, Section 4(E) allows Disciplinary Counsel to hire "an independent investigator, auditor, examiner, assessor, or other expert." While not provided specifically, these two sections, especially the language allowing the appointment of "staff" and "experts" support the appointment of Special Counsel.

Disciplinary Counsel v. O'Neill, 75 Ohio St. 3d 1498 (Ohio 1996)

The title of "Special Prosecutor" however, looks more damaging to the public. That is likely why the Grievant and Mr. Murman have worked so diligently to encourage coverage of this case in the local media. In fact, numerous front page stories on this case have appeared in the local newspaper and other media outlets, most of them initiated by Mr. Murman and quoting him prominently as the "Special Prosecutor".

Respectfully, as a former chairman and member of the board of commissioners, Mr. Murman should know better. His actions throughout call into question the legitimacy of this entire proceeding.

Respondent respectfully requests that this Court strike Counts Five, Six, and Seven of the amended complaint and the Board's Report, strike Relator's answer brief, and sanction the Special Prosecutor for his various improper actions that have been shown herein. Thank you.

BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
OF THE SUPREME COURT OF OHIO

In Re: Amended Complaint against

No. 09-022

Scott A. Pullins, Esq. (0076809)

Respondent,

Relator's Final Hearing
Witness List

Michael E. Murman, Esq. (0029076)
Special Prosecutor to the
Disciplinary Counsel

Relator.

Witness

Judge Otho Eyster

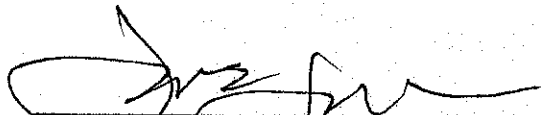
Judge Thomas P. Curran

John C. Thatcher

Carol Garner

David Lashley

Kelly Wellman


Michael E. Murman, Esq. (0029076)
Special Prosecutor to the Disciplinary
Counsel
The Supreme Court of Ohio
Relator,

CERTIFICATE OF SERVICE

A copy of the foregoing Relator's Final Hearing Witness List was served upon the Respondent, Scott A. Pullins, Esq., by mailing a copy thereof to him by ordinary mail, postage prepaid, and by email attachment, at: Scott A. Pullins, Esq., Scott A. Pullins, LTD, LPA, 110 East Gambier Street, P.O. Box 1186, Mount Vernon, Ohio 43050-1186; and scott@pullinslaw.com, this 6 day of October 2009.


Michael E. Murman, Esq.

MURMAN & ASSOCIATES

ATTORNEYS AT LAW

November 10, 2008

PERSONAL AND CONFIDENTIAL

Scott A. Pullins, Esq.
Scott A. Pullins, Ltd., LPA
110 East Gambier Street
P.O. Box 1186
Mount Vernon, OH 43050-1186

RE: Scott A. Pullins, Esq.
ODC File No. A7-0684

Dear Mr. Pullins:

This is to follow up on some of the things we discussed when we met on October 8, 2008.

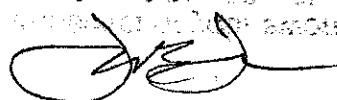
You should have received a copy of the transcript of your sworn statement. The items that you said you would send me are detailed on pages 63 to 66. Please do not delay. In particular, the materials from OLAP and your mental health providers should be sent to me as soon as practical.

It is still my intention make a filing decision in time for the December meeting of the Board of Commissioners on Grievances and Discipline. Your former lawyer had waived the non-jurisdictional time limits for grievance investigations to permit time for he and you to provide mitigation evidence, including the sworn interview. If you are experiencing difficulty in getting the reports completed and in my hands and need more time, please send me a letter requesting additional time and expressly waiving any and all time limits for completion of my investigation and filing with the Board.

If you have done anything since the interview that you think I should know about, put that information into some written form and send it to me. As I stated in the interview, I am considering meeting with the grievants before making the final filing decision. I assume from your consent on the record that you have no objection to me sharing the transcript of your sworn statement with Judge Eyster. If I am mistaken or you have changed your mind, let me know at once.

Thank you for your cooperation.

Very truly yours,



Michael E. Murman
Special Disciplinary Counsel

MURMAN & ASSOCIATES

ATTORNEYS AT LAW

January 13, 2009

VIA REGULAR US MAIL AND CERTIFIED MAIL
PERSONAL AND CONFIDENTIAL

Scott A. Pullins, Esq.
Scott A. Pullins, Ltd, LPA
110 East Gambier Street, Suite 5
P.O. Box 1186
Mount Vernon, Ohio 43050-1186

RE: Notice of Intent to File
Our File No. A7-0684

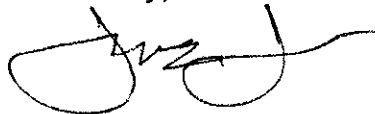
Dear Mr. Pullins:

Enclosed is a draft copy of a formal Complaint that I, as Special Prosecutor to Disciplinary Counsel, intend to file with the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio for review by the Probable Cause Panel.

Pursuant to Gov. Bar R. V(4)(I)(2), you have the right to review these allegations and provide a response to my office prior to my filing of the formal Complaint. If you wish to respond to any of these allegations in the proposed formal Complaint, your response should be received in my office by January 23, 2009.

Please be advised that any response you wish to provide to me is separate and apart from the formal Answer you may be required to file under Gov. Bar V(6)(I)(E), if you receive notice from the Board of Commissioners that a formal Complaint has been certified.

Sincerely,



Michael E. Murman,
Special Prosecutor to Disciplinary Counsel

MEM:na
Enclosure (draft complaint)



BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT OF OHIO

In re:

Complaint against

Scott Allan Pullins
110 East Gambier Street, Suite 5
P.O. Box 1186
Mount Vernon, OH 43050

No.

D R A F T

Attorney Registration No. (0076809)

Respondent,

COMPLAINT AND CERTIFICATE

(Rule V of the Supreme Court Rules
for the Government of the Bar of
Ohio.)

Michael E. Murman, Special Prosecutor
to Disciplinary Counsel
14701 Detroit Ave., Suite 555
Lakewood, Ohio 44107

Relator.

Now comes the relator and alleges that Scott Allan Pullins, an attorney-at-law duly admitted to the practice of law in this state of Ohio, is guilty of the following misconduct:

1. Respondent, Scott Allan Pullins, was admitted to the practice of law in the state of Ohio on November 10, 2003.
2. Respondent is subject to the Rules of the Government of the Bar, the Code of Professional Responsibility, and the Ohio Rules of Professional Conduct.
3. Respondent and his wife, Kathryn Elliot Pullins, are residents of Apple Valley, Ohio.

4. Kathryn Pullins was a member of the Apple Valley Property Owners' Association ("AVPOA") board until her removal on or about April 6, 2006.

COUNT I

5. On or about January 17, 2006, respondent initiated an action seeking a civil protection order on his own behalf, as well as on behalf of his wife, his child, and his wife's parents, against Carl F. Holmes, president of the AVPOA board, in the Knox County Court of Common Pleas. *Scott A. Pullins, et al. v. Carl F. Holmes*, Case No. 06ST010022. Judge Otho Eyster is the presiding judge of the Knox County Court of Common Pleas.

6. Respondent's action arose out of an incident that occurred at an AVPOA board meeting in early January 2006. At that meeting, respondent and Holmes were involved in a physical altercation.

7. On January 17, 2006, Judge Eyster denied the request for an ex-parte order and scheduled a full hearing on respondent's motion for February 3, 2006.

8. The hearing on respondent's motion was continued on two occasions. First, on January 20, 2006, a motion to continue the February 3 hearing was filed, which the court granted, rescheduling the hearing for February 16, 2006.

A second motion to continue was filed on January 31, 2006. The court granted this motion as well, rescheduling the hearing for March 3, 2006.

9. On February 21, 2006, prior to the court hearing on respondent's petition, respondent filed an affidavit of disqualification against Judge Eyster with the Supreme Court of Ohio.

10. Respondent's affidavit of disqualification contained numerous accusations against Judge Eyster. For example, in the affidavit, respondent asserted that:

- (a) Judge Eyster ignored his motion for an ex parte hearing;
- (b) Judge Eyster ignored his request for an oral hearing;
- (c) Other local attorneys informed respondent that Judge Eyster routinely refuses to hold ex parte hearings and rarely grants permanent protection orders;
- (d) Judge Eyster characterized Kathy Pullins, respondent's wife's, request in a separate matter as "totally reckless" and "without any merit whatsoever;"
- (e) Respondent had filed three separate formal complaints against Judge Eyster with relator's office;
- (f) Judge Eyster refused to follow Ohio law and the Ohio Civil Rules of Procedure; and,
- (g) Judge Eyster was biased and prejudiced against respondent.

11. On January 23, 2006, respondent filed a grievance against Judge Eyster in relator's office. The grievance was dismissed on March 20, 2006, with no finding of misconduct by Judge Eyster.

12. Respondent has filed no other grievances against Judge Eyster in relator's office, but in his defense asserts that the January 23, 2006 grievance related to three accusations against Judge Eyster.

13. Respondent's affidavit of disqualification was denied by the Supreme Court of Ohio on March 16, 2006.

14. Any grievance filed by respondent against any person, including Judge Eyster, is confidential and remains confidential unless and until either the individual about whom the grievance is lodged waives the confidentiality or a formal complaint is filed with and certified by the Board of Commissioners on Grievances and Discipline.

15. At the time that respondent filed the affidavit of disqualification, Judge Eyster had not waived confidentiality regarding any grievance filed in relator's office, and no formal complaint had ever been filed against Judge Eyster with the Board of Commissioners on Grievances and Discipline.

16. Respondent's conduct as alleged in Count I, by including the above-referenced statements in the affidavit of disqualification, violated the Code of Professional Responsibility, specifically: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; DR 1-102(A)(5) [a lawyer shall not engage in conduct prejudicial to the administration of justice]; DR 1-102 (A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law]; DR 7-106(C)(6) [in appearing in his professional capacity before a tribunal, a lawyer shall not engage in undignified or discourteous conduct which is degrading to a tribunal]; DR 8-102(B) [a lawyer shall not knowingly making a false accusation against a judge]; and, Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme

importance. Judges and Justices, not being wholly free to defend themselves, are peculiarly entitled to receive the support of lawyers against unjust criticism and clamor.]

17. Respondent's conduct as alleged in Count I, by disclosing the filing of a confidential grievance, violated Gov. Bar R. V (11)(E).

COUNT II

18. Respondent has, on several occasions other than that described in Count I, made accusations against Judge Eyster.

19. For example, on February 1, 2006, respondent filed a report and recommendation with the Knox County Court of Common Pleas in his capacity as guardian ad litem in the *Cotton v. Cotton* case, Case No. 04-DC-070153.

20. In the report, respondent asserted, among other things, that:

- (a) "On July 13, 2005, as is his custom, Judge Otho Eyster refused to hold an Ex Parte Hearing and similarly denied the request for an Ex Parte Protection Order";
- (b) "Apparently Judge Eyster does not agree with this portion of Ohio law [Ohio Revised Code Section 2903.214 (D)(1)] so he routinely ignores it";
- (c) "On July 21, 2005, despite the voluminous evidence of Mr. Williams predisposition to commit physical and sexual violence against women and children, Judge Eyster found that there was insufficient evidence of domestic violence in this case";

- (d) "In my years of practicing law and working with appointed and elected officials, this is the worst example that I have ever seen of negligence and incompetence in carrying out the duties of a public official"; and,
- (e) "Unfortunately, Judge Otho Eyster and this Court have failed her [Mrs. Cotton] significantly in her time of greatest need".

21. As further example, on January 12, 2006, respondent filed an affidavit of disqualification with the Supreme Court seeking to have Judge Eyster disqualified in a civil lawsuit initiated by Complete Comfort Systems against respondent, his wife, Kathy Pullins, and his father-in-law. *Complete Comfort Systems, Inc., v. Scott Pullins, et al.*, Knox County Court of Common Pleas Case No. 05-BR-080348, Supreme Court Case No. 06-AP-2.

22. On February 2, 2006, the Supreme Court granted respondent's request and ordered Judge Eyster disqualified from presiding over the matter.

23. Respondent's conduct as alleged in Count II, by making the above-referenced statements in the affidavit of disqualification, violated the Code of Professional Responsibility, specifically: DR 1-102(A)(5) [a lawyer shall not engage in conduct prejudicial to the administration of justice]; DR 1-102 (A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law]; DR 7-106(C)(6) [in appearing in his professional capacity before a tribunal, a lawyer shall not engage in undignified or discourteous conduct which is degrading to a tribunal]; and, Gov. Bar R. IV(2) [it is the duty of the lawyer to maintain a respectful attitude toward the courts, not for the sake of the temporary

incumbent of the judicial office, but for the maintenance of its supreme importance. Judges and Justices, not being wholly free to defend themselves, are peculiarly entitled to receive the support of lawyers against unjust criticism and clamor.]

COUNT III

24. On April 3, 2006, respondent initiated a lawsuit on behalf of his wife, Kathryn Pullins, and his father-in-law, Stephen Elliot, in the Knox County Court of Common Pleas against the board members of the AVPOA, the manager of AVPOA and AVPOA. *Kathryn Elliot Pullins, et al., v. Carl F. Holmes, et al.*, Case No. 06IN040168.

25. Additionally, respondent filed a motion for a temporary restraining order, supported by an affidavit purportedly executed by Kathy and notarized by respondent.

26. Respondent purported to notarize the signature on the release, but did not certify that Kathy had "personally appeared" before him and signed the affidavit. Kathy did not sign the affidavit, rather respondent signed Kathy's name. Respondent's purported notarization was false.

27. Nowhere on the affidavit did respondent indicate that he was signing Kathy's name.

28. Respondent's conduct as alleged in Count III violated the Code of Professional Responsibility, specifically: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation]; and, DR 1-102 (A)(6) [a lawyer shall not engage in any other conduct that adversely reflects on his fitness to practice law].

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and the Code of Professional Responsibility, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.

Michael E. Murman (0026076)
Special Prosecutor to
Office of Disciplinary Counsel
Supreme Court of Ohio
14701 Detroit Avenue, Suite 555
Lakewood, Ohio 44107
Telephone (216) 228-6996
Facsimile (216) 226-9011

CERTIFICATE

The undersigned, Michael E. Murman, Special Prosecutor to the Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that I am duly authorized to represent relator in the premises and have accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: Type Month, Day, Year

Michael E. Murman, Special Prosecutor to
Disciplinary Counsel

Gov. Bar R. V, § 4(l) Requirements for Filing a Complaint.

(1) Definition. "Complaint" means a formal written allegation of misconduct or mental illness of a person designated as the respondent.

* * *

(7) Complaint Filed by Certified Grievance Committee. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by a Certified Grievance Committee shall be filed in the name of the committee as relator. The complaint shall not be accepted for filing unless signed by one or more attorneys admitted to the practice of law in Ohio, who shall be counsel for the relator. The complaint shall be accompanied by a written certification, signed by the president, secretary, or chair of the Certified Grievance Committee, that the counsel are authorized to represent the relator in the action and have accepted the responsibility of prosecuting the complaint to conclusion. The certification shall constitute the authorization of the counsel to represent the relator in the action as fully and completely as if designated and appointed by order of the Supreme Court with all the privileges and immunities of an officer of the Supreme Court. The complaint also may be signed by the grievant.

(8) Complaint Filed by Disciplinary Counsel. Six copies of all complaints shall be filed with the Secretary of the Board. Complaints filed by the Disciplinary Counsel shall be filed in the name of the Disciplinary Counsel as relator.

(9) Service. Upon the filing of a complaint with the Secretary of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and

any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.