ORIGINAL

THE SUPREME COURT OF OHIO

In re: Complaint against

Percy Squire, Esq.
514 South High Street
Columbus, Ohio 43215

Case No. 2010-2021

Attorney Registration No. (0022010)

Respondent,

vs.

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio, 43215

Relator.

ANSWER BRIEF OF PERCY SQUIRE

INTRODUCTION

This disciplinary proceeding involved five alleged counts of misconduct against the undersigned. According to the Second Amended Complaint, served on the undersigned less than fourteen days before the May 6, 2010 hearing, the undersigned was alleged to have violated the following provisions of the Ohio Rules of Professional Conduct (ORPC).

COUNT 1:

a) Prof. Cond. Rule 1.7 (a) (A lawyer's acceptance of continuation of representation of a client creates a conflict of interest if there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's own persona interest);

b) Prof. Cond. Rule 1.7(b) (A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created unless the affected client gives informed consent, confirmed in writing);

c) Prof. Cond. Rule 1.8(a) (A lawyer shall not enter into a business transaction with a client unless all of the following apply (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the

client and are fully disclosed to the client in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction);

d) Prof. Cond. Rule 1.15(a) (A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property):

e) Prof. Cond. Rule 1.15(c) (A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred);

f) Prof. Cond. Rule 1.16(e) (A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned);

g) Prof. Cond. Rule 8.4(c) (It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and

h) Prof Cond. Rule 8.4(h) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

COUNT 2

a) Prof. Cond. Rule 1.8(a) (A lawyer shall not enter into a business transaction with a client unless all of the following apply: the transaction and the terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed to the client in writing; the client is advised in writing of the desirability of seeking and given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction); and

b) Prof. Cond. Rule 8.4(h) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

COUNT 3

a) Prof. Cond. Rule 8.1(a) (In connection with a disciplinary mater, lawyer shall not knowingly make a false statement of material fact);

b) Prof Cond. Rule 8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation);

c) Prof. Cond. Rule 1.15(a) (A lawyer shall hold property of client that is in a lawyer's possession separate from the lawyer's own property);

d) Prof. Cond. Rule 1.15(a) (A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. For funds, the lawyer shall do all of the following: (2) maintain a record for each client on whose behalf funds are held that sets forth all of the following: the name of the client; the date, amount, payee, and purpose of each disbursement made on behalf of such client; the current balance for such client. (3) maintain a record for each bank account that sets forth all of the following: the name of such account; the date, amount and client affected by each credit and debit; the balance in the account. (4) maintain all bank statements, deposit slips, and cancelled checks for his trust account. (5) perform and maintain a monthly reconciliation of the items contained in this rule;

e) Prof. Cond. Rule 1.15(c) (A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred);

f) Prof. Cond. Rule 1.5(b) (A lawyer shall communicate the basis or rate of the fee and expenses for which the client will be responsible before or within a reasonable time after commencing the representation;

g) Prof. Cond. Rule 1.6(a) (A lawyer shall not reveal information relating to the representation of a client);

h) Prof. Cond. Rule 1.7(a) & (b) (A lawyer's continuation of representation of a client creates a conflict of interest if there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's own personal interests); and

i) Prof. Cond. Rule 8.4(h) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.)

COUNT 4

a) Prof. Cond. Rule 1.5(a) (A lawyer shall not make an agreement for, change or collect an illegal or clearly excessive fee);

b) Prof. Cond. Rule 1.5(e) (Lawyers who are not in the same firm may divide fees only if all of the following apply: (1) the division of fees is in proportion to the services to be performed by each lawyer or each lawyer assumes

joint responsibility for the representation and agrees to be available for consultation with the client; (2) the client has given written consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees is in proportion to the services to be performed by each lawyer or each lawyer assumes joint responsibility for the representation);

c) Prof Cond. Rule 8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and

d) Prof. Cond. Rule 8.4 (h) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

COUNT 5

a) Prof. Cond. Rule 1.8(a) (A lawyer shall not enter into a business transaction with a client unless all of the following apply; the transaction and the terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed to the client in writing; the client is advised in writing of the desirability of seeking and given a reasonable opportunity to seek the advise of independent and legal counsel on the transaction; the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction) and

b) Prof. Cond. Rule 8.4(h) (A lawyer shall not engage in any other conduct that adversely reflects on the lawyer's fitness to practice law).

The undersigned has agreed that he violated certain provisions of the Ohio Rules. Findings of Fact ,Conclusions of Law and Recommendation of the Board of Commissioners on Grievances and Discipline were certified to the Ohio Supreme Court on November 22,2010.Relator has objected to the Board's recommendation of a two year suspension with one year stayed.Accordingly,the undersigned is through this Answer responding to Relator's objection.It is my desire to advise the Court at the outset that I accept full responsibility for my actions.I do not dispute that my conduct was inconsistent with the standards outlined in the Code of Professional Responsibility. However, the undersigned denies any act of misconduct that has caused prejudice or financial loss to a client or any act of fraud, deceit or dishonesty. Moreover, the undersigned maintains that the disciplinary proceeding against him is constitutionally infirm

from a due process standpoint by reason of the role of Ohio Disciplinary Counsel, Mr. Coughlan. The undersigned fully incorporates previously raised arguments concerning disqualification of Mr. Coughlan into this Answer and again request on the grounds set forth at Exhibit A, that this entire proceeding be dismissed.

The claims against the undersigned are the result of a complaint by George M. Riley. A person presently incarcerated having been convicted on September 18, 2009, of the following felonies: two violations of R.C. 2913.024-theft; two violations of R.C. 2913.45 defrauding creditors; and one violation of R.C. 2913.32 criminal simulation.

In the process of investigating the complaint of Mr. Riley, Mr. Coughlan engaged in an unnecessary and wide-ranging investigation into the undersigned's finances, with which I fully cooperated. Notwithstanding this cooperation, Relator did not conduct a thorough investigation and did not review all aspects of the undersigned's business activities. As a result of Relator's limited focus, primarily on the trust account of the undersigned, Relator has presented a distorted view of my activities and failed thereby to carry his burden of proving violations by clear and convincing evidence.

Ohio law states:

> It is fundamental that in disciplinary proceedings, the relator must prove by clear and convincing evidence the facts necessary to prove an ethical violation. Ohio State Bar Assn. v. Reid (1999), 85 Ohio St. 3d 327, 708 N.E.2d 193.

See, Disciplinary Counsel v. Karto ,(20020 94 Ohio St.3d 109.

> In disciplinary proceedings, the relator bears the burden of proving the facts necessary to establish a violation. The complaint must allege the specific misconduct that violates the Disciplinary Rules and relator must prove such misconduct by clear and convincing evidence. Gov. Bar. R. V(6)(J); Disciplinary Counsel v. Jackson (1998), 81 Ohio St.3d 308, 310 691 N.E. 2d 262, 263. "Clear and convincing evidence" has been defined as "that measure or degree of proof which is more than a mere 'preponderance of the evidence,' but not to the extent of such certainty as is required 'beyond a reasonable doubt' in criminal cases, and

> which will produce in the mid of the trier of facts a firm belief or conviction as to the facts sought to be established." Cross v. Ledford (1954), 161 Ohio St. 469, 53 O.O. 361, 120 N.E. 2d 118, paragraph three of the syllabus.

Reid, Supra.

The Second Amended Complaint in this action does not link allegations of specific misconduct to specific violations. Instead the complaint is a hodge podge of factually distorted allegations followed by a shotgun type conclusory paragraph alleging multiple violations, which, given the gravity of a disciplinary proceeding and its impact on my livelihood, should not be acceptable.

The recitation of facts in Relator's Objection is so distorted, if the undersigned had responded to inquires from Relator during the investigation here in similar fashion, I would have been accused of fraud, deceit or dishonesty.

Relator's factual presentation is so erroneous that the undersigned is obliged to restate the events that led to the initial complaint, by Mr. Riley.

This Answer will separate the analysis involving Mr. Riley from the other allegations, Counts 2-5. The latter counts do not involve complaints from clients.

Adverse Influences that Undercut Relator's Proof

Notwithstanding their availability within the subpoena power of the Hearing Panel or exceptions to the Ohio Rules of Evidence that would have made their testimony admissible, Relator failed to call key witnesses in this action with knowledge: George M. Riley, the investigator who twice interviewed Bishop Norman L. Wagner, Patrick M. Prout,; or Curtis Jewell. An adverse inference that the testimony of these key witnesses would not have been supportive of Relator's allegations should be drawn from this failure.

It is well settled that an adverse inference is permitted from the failure to call witnesses if they are peculiarly within a party's power to produce and if their testimony would elucidate the transaction. Wynn v. United States, 13 U.S. App. D.C. 60 397 f. 2d 621, 625 (D.C. Cir. 1967); also Cantrell v. Gray, 786 F. 2d 1163(6th Cir. 1986).

Here Relator alleges serial misconduct by the undersigned, e.g.

1. That I had not made any efforts to repay Mr. Riley until he confronted me on March 1, 2008;
2. That I borrowed funds after Mr. Riley confronted me;
3. That I deceptively told Mr. Riley that I had spent all the funds:
4. That I decided to spend all of my client's funds as rapidly as possible; and
5. That I deceived Bishop Wagner.

Mike Riley was available to testify as was the investigator who interviewed Bishop Wagner. Relator failed to call either person. An inference should be drawn that first, Riley, a convicted felon, would not have supported Relator's case. Relator should have produced his investigator's notes from interviews with both Riley and Bishop Wagner. Relator did produce either for the reason it would have shown that Mr. Riley is not credible and that I did not engage in the conduct outlined in points 1-5 above. Relator also failed to call either Curtis Jewell or Pat Prout. The Panel should draw an inference that the testimony of these four witnesses would have been adverse to Relator's allegations.

This failure is further evidence that relator has not proved these disputed violations by clear and convincing evidence.

COUNT 1

a) Facts

On December 7, 2007, George M. Riley, Anthony F. Riley, Sr., and others, having requested an emergency meeting with the undersigned travelled to the law office of the undersigned to request immediate legal representation.

The December 7, 2007 meeting, which lasted for over four hours, the matters discussed involved immediate representation of George M. Riley and various affiliated entities in connection with claims against Commodore National Bank and bank officers, claims against certain creditors of Riley controlled entities and defense of Anthony F. Riley, Sr. These discussions were conducted in a working environment. Respondent conducted online research into the current status of Riley's various pending legal actions, in Franklin, Licking, and Perry County, Ohio, as well as, actions pending in the State of Colorado. The undersigned, at Riley's request, cleared the entire afternoon and early evening of December 7, 2007, to analyze Riley's circumstances and extend emergency legal assistance and advice.

On December 7, 2007, Mike Riley suggested that he could assist the undersigned in connection with Respondent's broadcasting activities by, reason of Riley's banking resources and family ties in my native hometown of Youngstown, Ohio. Mike Riley, in Anthony Riley's presence, specifically stated that Anthony Riley's net worth exceeded one billion dollars and that the Rileys were related to the prominent Youngstown DeBartolo family. Mike Riley stated his father was a stockholder in a major Florida bank and if my radio and broadcasting interests required financing that the Rileys' relationships would influence these banks to assist. Mike Riley also stated that he had until recently owned and operated Mike Riley Dodge and Chrysler in St. Clairsville, Ohio. The evidence shows that there was no discovery of the possibility of Mike Riley participating, beyond earning a finder's fee, in the acquisition of a radio station. The

discussion was limited to Mike Riley's request to earn a finder's fee in the event he introduced me to a financial institution that ultimately made a loan to my separate radio business.

On December 7, 2007 I was engaged to represent Anthony F. Riley, Sr., George M. Riley, Sr., United Work Services Inc. and related entities.

An engagement letter was executed on December 7, 2007 which provides in pertinent part:

> We have agreed to perform this engagement for a flat fee of $100,000.00. You have paid $25,000.00 today. The balance of $75,000.00 will be paid in installments based upon a mutually agreed schedule with all payments made by February 15, 2008.
>
> Our profession's Rules of Professional Conduct generally permit a law firm to consider the following factors in pricing legal services, in addition to regular hourly rates: the novelty and difficulty of the question involved; the skill required to perform the legal services; the likelihood that acceptance of employment will preclude other employment; the fee customarily charged in the locality for similar services; and the amount involved and results obtained. Time limitations imposed by the client or by other circumstances may also be considered in determining an appropriate fee. Our fee in this matter will be as outlined in the previous paragraph.

In return for writing a $5,000.00 check to Riley's son, Riley paid me $5,000.00 in cash for work performed on December 7, 2007 and as an inducement for Respondent to devote immediate attention to Riley's requirements, given that it was believed to be too late in the day for Riley to wire the required $25,000.00 initial payment.

Unbeknownst to Mike Riley and me the $25,000.00 initial payment was actually wired into my operating account on December 7, 2007. Mike Riley represented to me on December 7, 2007 that the wire would not arrive until December 10, 2007. On December 8, 2007, I discovered that the $25,000.00 wire had actually been transmitted on Friday, December 7, 2007.

Late in the morning on Monday, December 10, 2007, Mike Riley appeared in my law office and stated that the entire complex legal morass that he had spent four hours explaining to me on December 7, 2007, had been resolved. Mr. Riley's statement was false. Mike Riley stated that he wanted me to refund his $25,000.00 initial payment minus amounts owed for work performed.

I informed Mr. Riley that I could not refund the entire $25,000.00 immediately. Based upon the engagement agreement we made on December 7, 2007; the urgent nature of the work required in the criminal matter on behalf of his father and the understanding that he also wanted to attempt to locate financing for my pending radio deal, representations which I relied upon to my detriment, I placed the $25,000.00 into his operating account rather than his trust account, as permitted under Ohio law. See, Opinion 96-4. I advised Mr. Riley that the entire $25,000.00 could not be repaid that day for the reason almost all of the $25,000.00 had been spent. Mr. Riley agreed that the I would refund the entire $25,000.00 on a future date. Mr. Riley than left my office notwithstanding his statement to me that a future payment was acceptable and went to the office of disciplinary counsel and filed a complaint.

A balance of $5,387.44 existed in my operating account on December 10, 2007. This does not account for checks already written against the account or for an automatic withdrawal scheduled for the account.

It was my belief that the arrangement discussed above for future repayment was acceptable to and agreed to by Riley, on December 11, 2007, the day following Riley's visit to my office to request a refund, I sent a facsimile to Riley containing the desired form of a letter of intent along with a copy of the promissory note evidencing the refund to Riley, which Riley had

stated on December 1, 2007, was acceptable. This was done because Riley had stated a future repayment was acceptable.

I did not convert the December 7, 2007 payment of fees into a loan. A promissory note here was issued by me to evidence a refund. There was no loan. I issued Riley a note as evidence of my agreement and obligation to make a refund. I did not convert the amount owed into a loan. Riley expressly agreed to this resolution.

A full cash refund was not made on the due date. The note provided for a 30 day repayment or penalties. I paid Mr. Riley in full on March 12, 2008. In addition, I did not charge Mr. Riley for the 14 hours of work I performed on these matters, including the four hours of work he performed on December 7, 2007 (the work performed was spending a total of five hours in the initial meeting and downloading the docket sheets from each jurisdiction in which Mr. Riley faced charges and analyzing the claims against him), four hours on December 8, 2007 (the work performed was legal research into the grounds that justified moving to quash the subpoenas issued to Anthony Riley, Mike Riley's father, given their advice to me that Anthony's doctor had stated that Anthony was not well enough to be a witness); two hours on December 9, 2007 (work performed was reviewing Mr. Riley's counterclaim against Commodore Bank and analyzing the Perry County action); and three hours on December 10, 2007 (on this day I met with my office staff, reorganized their workload and had entries of appearance prepared for all cases). I also had my staff conduct discussions with Records Deposition Service to make arrangements to get complete copies of the files from Licking County, Franklin County and Perry County. I never charged Mr. Riley for any of the time he worked on Mr. Riley's matters. These amounts would have exceeded any interest due on the cognovit note.

Following Mr. Riley's release from incarceration in connection with one of the matters discussed with me, Mr. Riley inquired about the refund. Riley requested and I agreed to issue a refund check on March 11, 2008 provided Mr. Riley follows the instructions below:

> Dear Mr. Riley:
>
> Enclosed is a post dated check for $25,000.00, which when successfully negotiated will fully satisfy the promissory note at Exhibit A.
>
> It has been agreed that you will not attempt to negotiate the enclosed check no. 957 until I advise you on March 12, 2008, that the funds are available.

Notwithstanding the above and Mr. Riley's statement that he would wait for my to call him, Riley left my office on March 11, 2008 and went directly to my bank to attempt to cash check no. 957.

On March 12, 2008, I expected a wire transfer into my operating account. This is why I instructed Mr. Riley on March 11, 2008, to make no effort to negotiate the March 11, 2008 check until I called him. Mr. Riley disregarded this advice just as he did when he told me he would accept a refund payment on a future date and went to the bank in advance of my call, Riley later claimed the account was closed. The account was not closed and remains an active account today. Later on the 12th of March, Respondent issued a cashier's check for $25,000 to Mr. Riley with the following letter:

> Dear Mr. Riley:
>
> Enclosed herewith is a cashier's check for $25,000.00 which I will release to you as soon as you return to me check no. 957 which I issued on March 12, 2008. All other terms of my March 11, 2008 correspondence remain unchanged.

Relator's factual recitation is distorted. The only evidence here was my testimony. It does not support Relator's summation. Mr. Riley, though available was not called.

b) The Law

Under Prof. Con. Rule 1.7(a). I agreed to and did refund the $25,000 flat fee payment to Mr. Riley. There was no loan involved and no conflict of interest because I agreed to refund the $25,000 flat fee payment. This is not a conflict by a financial arrangement as contemplated by Rule 1.7(a). I was within the conduct allowed under Opinion 96-4 in that I entered into a flat fee arrangement with Mr. Riley which was refunded by me upon request by Mr. Riley.

Prof. Cond. Rule 1.7(b). There was no conflict as explained above. Thus no waiver of conflict is required.

Prof. Cond. Rule 1.8(a). Mr. Riley and I did not enter into a business transaction. We merely entered into a flat fee agreement under which a refund was requested and made. Mr. Riley's only involvement in the radio station was his offer to get a letter of intent for me as an inducement for me to represent Mr. Riley and his entities in the pending matters. It was not the intention of either party to involve Mr. Riley as a participant in the radio station acquisition. See comment 1.8 on page 50 of the Ohio Rules of Professional Conduct which states "it does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5."

The $25,000 payment to me from Mr. Riley was a portion of the $100,000 flat fee to be paid to Respondent under the agreement. At the time the $25,000 was deposited in my business account, it was myfirms money, subject to refund to Mr. Riley. See Opinion 96-4. There was no requirement to place it into my trust account

The $25,000 was a portion of the $100,000 flat fee agreement and was not an advance payment. Under Opinion 96-4 it is proper for a lawyer enter into a flat fee agreement and to deposit the flat fee payment in his business account. This is exactly what occurred in this matter. Thus, Rule 1.15(c) does not apply.

Prof. Cond. Rule 1.16(e). On December 10, 2007 when Mr. Riley advised me that all matters were resolved and asked for a refund of the $25,000 paid, I promptly refunded the entire $25,000 flat fee by the Promissory Note dated December 10, 2007, which was delivered to Mr. Riley. Mr. Riley stated at the time that this was acceptable. I did not learn he was dissatisfied until I received correspondence from Relator.

I did not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

a) I did not lie to a client or to the Disciplinary Counsel. On December 10, 2007 when Mr. Riley requested a refund of the $25,000 flat fee payment, I stated that the money was spent and the account did not have funds available to refund $25,000 to Mr. Riley, which was the truth. On December 10, 2007 my account had an actual available balance of $2,185.38, which supports the statement that the $25,000 was spent and he did not have $25,000 available to refund to Mr. Riley. See, Respondent Exhibit I.

b) There was never a loan from Mr. Riley to me. Mr. Riley paid the $25,000 portion of the flat fee to me on December 7, 2007 and on December 10, 2007 I issued a $25,000 Promissory Note to Mr. Riley "evidencing my obligation to refund fee paid December 7, 2007." A loan was never contemplated by the parties and none of the documents evidence a loan. In addition, in all communications with the Disciplinary Counsel, I referred to the return of the $25,000 payment to Mr. Riley as a "return of funds or a refund" and never as a loan.

At no time did I engage in conduct or involving dishonesty, fraud, deceit or misrepresentation.

Ohio law on this matter reflected in Opinion 96-4 below:

> The Board has addressed the use of flat fees, but in the context of a flat fee agreement between a law firm and an insurer/third party administrator of group health benefit plans. In Opinion 95-2 (1995), the Board advised that the propriety of a flat fee agreement is based upon a variety of factors. A fixed flat fee is

subject to the restriction in DR 2-106(A) that it not be excessive. A fixed flat fee cannot circumvent the requirement of DR 5-103(B) that clients must remain liable for expenses of litigation. A fixed flat fee agreement must not limit an attorney's duties of competent and zealous representation to each client under DR 6-101 and DR 7-101. *See* Ohio SupCt, Bd of Comm'rs on Grievances and Discipline, Op. 95-2 (1995).

When the payment of a flat fee is in advance of representation, there are additional ethical considerations. Should a flat fee be place into the attorney's business account or should it be deposited into a client trust account? May the fee be nonrefundable?

DR 9-102(A) requires that the identity of all client funds paid to a lawyer or a law firm be preserved by deposit into an identifiable bank account, separate from an account for deposits of the lawyer's or law firm's funds. Funds belonging in part to a client and in part presently or potentially to a lawyer or law firm must be deposited therein as required under DR 9-102(A)(2). These restraints are for the protection of clients.

DR 9-102. PRESERVING IDENTITY OF FUNDS AND PROPERTY OF CLIENT

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.
(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

In this Board's view, DR 9-102(A) does not require that flat fees paid in advance for representation in a criminal matter be placed in a trust account. A flat fee for representation in a matter may be placed into the attorney's business account upon receipt, based upon the agreement between the lawyer and client that the flat fee will be paid in advance of representation. By agreement, the funds are given to the lawyer in exchange for the promise to represent the client in the matter. However, deposit into a business account does not mean that the fee is nonrefundable.

A flat fee paid in advance for representation in a legal matter should not be deemed nonrefundable. Nonrefundable fees paid in advance of representation allow attorneys to keep unearned fees for which a client receives little or no benefit. Nonrefundable advance fees are a problem when there is discharge of a lawyer by a client or when a lawyer withdraws from a case . *See* Cincinnati Bar Ass'n v. Schultz, 71 Ohio St. 3d 383, 384 (1994).

Ethics committees in Ohio disapprove of nonrefundable fee agreements. *See* Ohio State Bar Ass'n, Informal Op. 90-8 (1990); Columbus Bar Ass'n, Op. 5 (1988); Bar Ass'n of Greater Cleveland, Op. 84-1 (1984). *But cf.* Toledo Bar Ass'n, Op. 93-8 (1993) advising that nonrefundability is improper or proper depending upon the fact situation.

Ethics committees in other states have found disfavor with nonrefundable fee contracts in criminal defense representations. *See* Kansas Bar Ass'n, Op. 84-12 (1984), North Carolina State Bar Ass'n, Op. 106 (1991), Virginia State Bar, Op. 646 (1985). In New York, the state's highest court has held that nonrefundable retainers clash with public policy and contravene the Code of Professional Responsibility. *See* In re Cooperman, 83 N.Y. 2d 465, 633 N. E. 2d 1069, 611 N.Y.S. 2d 465 (1994), aff'g 591 N.Y.S. 2d 855 (A.D. 2 Dept. 1993). Among the bar, the issue of nonrefundability attracts attention. *See* Lester Brickman & Lawrence A. Cunningham, Nonrefundable Retainers: A Response to Critics of the Absolute Ban, 64 U. Cin. L. Rev. 11 (Fall 1995); Steven Lubet, The Rush to Remedies: Some Conceptual Questions About Nonrefundable Retainers, 73 N.C.L. Rev. 271 (Nov. 1994); Lester Brickman & Lawrence A. Cunningham, Nonrefundable Retainers Revisited, 72 N.C.L. Rev. 1 (Nov. 1993).

Nonrefundable advance fees contradict the requirement of DR 2-110(A)(3) that "[a] lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned." A nonrefundable advance fee agreement unfairly penalizes a client who discharges a lawyer.

In conclusion, it is proper for a lawyer to enter a flat fee agreement requiring a criminal defendant to pay a fixed amount in advance of representation in a criminal matter. The flat fee agreement must comport with the Ohio Code of Professional Responsibility. Under DR 2-106(A), the flat fee must not be excessive. Under DR 5-103(B), the client must remain ultimately liable for expenses of litigation. Under DR 6-101 and DR 7-101, the flat fee agreement must not interfere with an attorney's duties of competent and zealous

representation to each client. Under DR 9-102, a flat fee paid in advance of representation may be deposited into the lawyer's business account upon receipt pursuant to the agreement between the lawyer and client that the flat fee will be paid in advance of the representation. Under DR 2-106(A) and DR 2-110(A)(3), a flat fee paid in advance of representation in a legal matter should not be deemed nonrefundable.

See, Opinion 96-4.

Given the contradictions between my testimony and the lack of testimony from Mr. Riley, other than stipulated violations, Relator has not proved Count 1 by clear and convincing evidence. Relator's case reduces to construing every inference in the light most unfavorable to me. This tactic is highly questionable given the issues raised in the motion to disqualify Relator.

COUNTS 2 – THE ALLEGED VIOLATION IN COUNT 2 IS ORPC 1.8(e)

The evidence at hearing had nothing to do with ORPC 1.8(e).

a) Curtis Jewell

Relator alleges that the financial arrangement made between the undersigned and Mr. Jewell on March 12, 2009, that is borrowing $30,000.00 violated O.R.P.C. 1.8(e). This allegation is totally unfounded.

O.R.P.C. 1.8(e) provides:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

There is absolutely no evidence to support a violation of ORPC. 1.8(e). ORPC 1.8(e) has nothing to do with the evidence or testimony of Mr. Jewell. This allegation is another example of Relator cavalierly throwing allegations against the proverbial wall to see what will stick. The

allegation here is so frivolous, in any ordinary litigation context it would warrant sanctions under Ohio R. Civ. P. 11.

Count 2 should be dismissed.

In addition Mr. Jewell testified that although the undersigned failed to advise him to seek separate counsel and of a conflict, he would have made the loan anyway and that he was not harmed in any manner by the undersigned.

COUNT 3

Relator's evidence on this Count is the most incomplete and unsupported by the testimony of Antoine Smalls, Mark Lay and the undersigned.

To begin, Relator has confined his theory in this action to ORPC provisions governing attorney trust accounts. This context is not the sole frame of reference to judge my management of Mark Lay's Legal Defense and Welfare Funds. In this connection please review Mr. Lay's Declaration at Exhibit B, which is offered herein by reason of the inability of the undersigned to examine Mr. Lay at his deposition upon oral examination. Mr. Lay's declaration places my relationship with him into its full context, not the limited attorney-client context advanced by Relator.

Courts have long standing stated not every relationship that involves handling another's money or property is a fiduciary one. A fiduciary relationship is personal and context specific. See, DeBlassio v. Merrill Lynch & Co. Case No. 09-CV-318, 2009 WL 2242605 at 29 (S.D. New York, July 27, 2009).

Moreover, where parties do not create their own relationship at high trust, courts should not fashion the stricter duty for them. See, Brinsights, LLC v. Charming Shoppes of Delaware, Inc., Case No. 06 CIV 1745 (CM) 2008 WL 216969, at 8 (S.D. New York, January 16, 2008).

No client has alleged here that any funds were misused, converted or misappropriated. Relator has made this allegation based upon a one dimensional analysis of the undersigned's financial interaction with Mr. Lay from records from my trust account.

Fee Agreement with Mark Lay

I have no written fee agreement with Mark Lay for matters handled following his criminal trial. I recognize that this is not the preferred arrangement for an attorney. It is my ordinary practice to prepare a written engagement letter. The failure to have a written engagement letter however is not a violation of ORPC 1.5(b). ORPC 1.5(b) provides:

> (b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any changes in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly b communicated to the client preferably in writing.

The Restatement of the Law (Third) Governing Lawyers also states a writing, while preferable, is not mandatory according to the Restatement:

> §38. Client-Lawyer Fee Contracts
>
> (1) before or within a reasonable time after beginning to represent a client in a matter, a lawyer must communicate to the client, in writing when applicable rules so provide, the basis or rate of the fee, unless the communication is unnecessary for the client because the lawyer has previously represented that client on the same basis or at the same rate.
>
> (2) The validity and construction of a contract between a client and a lawyer concerning the lawyer's fees are governed by §18.
>
> (3) Unless a contract construed in the circumstances indicates otherwise:
>
> (a) a lawyer may not charge separately for the lawyer's general office and overhead expenses;
>
> (b) payments that the law requires an opposing party or that party's lawyer to pay as attorney-fee awards or sanctions are credited to the client, not the client's lawyer, absent a contrary statute or court order; and
>
> (c) when a lawyer requests and receives a fee payment that is not for services already rendered, that payment is to be credited against whatever fee the lawyer is entitled to collect.

In this case Mr. Lay was aware of my rates. We did not enter into a final agreement concerning fees however there were interim and periodic discussions concerning my fees for work being performed.

According to the Restatement, §44(f):

> When a client does not dispute a lawyer's good-faith claim to a certain amount as a fee then owing, the lawyer may transfer that amount into the lawyer's personal account See also §21, Comment e, discussing when a lawyer may validly endorse a check on which the client is payee. Similarly, if a payment to a lawyer is a flat fee paid in advance rather than a deposit out of which fees will be paid as they become due, the payment belongs to the lawyer (see §38, Comment g). A lawyer holding client funds as an advance fee payment may withdraw them for fees as funds as an advance fee payment may withdraw them for fees as earned, so long as there is no existing dispute about the lawyer's right to do so. In such instances, the lawyer acts rightly in retaining the money even though, for example, the client might later claims the fee was unreasonable (see §§34 & 42) or the advance payment becomes unreasonable in light of later developments (see §38, Comment g; §34, Comment d; 40).

The Restatement also provides in §38(b);

> b. A lawyer's duty to inform a client. Subsection (1) sets forth the lawyer's duty to inform a client of the basis or rate of the fee. Noncompliance with that duty is enforceable through professional discipline and by limiting the lawyer's remuneration to the fair-value standard described in §39. When the client is already aware of the basis or rate of the fee, for example because the client's letter states that the client will pay a specified hourly fee for specific services, the lawyer need not further inform the client. The client should also be informed if the lawyer proposes to use a different basis or rate in the event of settlement, trial or appeal.

In this case Mr. Lay knew what he was being charged by me. See, Lay Declaration, Exhibit B. I do not dispute that my billing records are inadequate, however, Mr. Lay was aware of all funds withdrawn by me from the various trusts. See, Lay Declaration, Exhibit B.

Relator has alleged that there was no indenture associated with the April 2008 Legal Defense Fund. The Indenture for this fund was the indenture drafted on January 29, 2008. Stipulated Exhibit 41. It was the terms of this indenture that I discussed with Mr. Lay and it was

understood the funds would be managed by me, as trustee, according to the terms in stipulated Exhibit 41. See, Lay Declaration.

Relator has also alleged that I received settlement proceeds in April 2008, of which Mr. Lay was unaware and that I failed to prepare a settlement statement and related required financial records.

Relator's allegation is erroneous. Review of Stipulated Exhibit 55 establishes that starting as early as February 7, 2008 mltires@aol.com was copied on all emails to Mr. Hakki concerning the holdback proceeds. mltires@aol.com is Mark Lay's email address that he used after the closing of operations at MDL Capital. Mr. Lay endeavored to start a tire recycling business in his home town following his trial. He used mlires@aol.com as the email address. Stipulated Exhibit 55 also makes clear I was not counsel in connection with the resolution of the ASIL insurance claim.

Relator has questioned the disbursements from my trust account.. I do not dispute the arithmetic within Relator's analysis.

However, Relator attributes payment to me or Mr. Walker as payments to my benefit. This is simply incorrect. In point of fact, on Relator's Exhibit 23 a $4,000.00 payment is shown to Mark Lay. On Relator's Exhibit 21, page 115 that $4,000.00 payment appears to be a payment to me. The transaction is an example of funds being obtained by either me or Mr. Walker and being used for the benefit of Mark Lay. The $4,000.00 transaction here was a cash transfer to Mr. Lay. The actual record of what was done with funds belonging to the Lay Defense and Welfare Funds are Exhibits 22, 23, 24 and 25. To the extent my trust fund records do not mention these exhibits the discrepancy is the result of my commingling of funds or

making payment from my operating account. An example of this is Respondent's Exhibit P, the $25,000.00 payment from my operating account to Blank Rome.

The other discrepancy that has impacted this is that my trust account records were only introduced through March of 2009, while I conducted financial activities on Mr. Lay's behalf well beyond that time until the present.

I admit that my management of Mr. Lay's funds is violative of OPRC 1.15, however, I deny any fraud, deceit or dishonesty.

COUNT 4

Relator introduced no evidence of statements from Bishop Wagner despite sending investigators twice to interview him. I do not dispute that the security agreement I gave to the Bishop had certain provisions that are violative of OPRC. However, the agreement provides that any provision that is contrary to Ohio law is unenforceable. The transaction with Bishop Wagner required me to personally repay Huntington Bank $100,000.00. That was my agreement with The Bishop and prior to his death, the confusion concerning the obligation was cleared when I issued revised documents. See, Exhibit 33. This confusion arose over my recollection concerning the $25,000.00 to be paid to Mike Riley.Relator contends and the Panel agreed that my explanation of the $25,000 lacked credibility.I acknowledge that my explanation changed once attention was called to its problematic nature,however,I did not lie about my deal with Bishop Wagner.Our agreement was that I was responsible for repayment of the entire $25,000.The fact that the original note said $75,000 was a reflection of the receipt by me of $75,000 in loan proceeds .All $100,000 was my responsibilty to repay and the testimony of Mr.Huffman from Huntington Bank at the hearing supported this.I did not lie concerning this issue .

Relator did not present evidence of Bishop Wagner's statements despite sending investigators to interview the Bishop. It is my position that Bishop Wagner's version of events would agree with mine. The Bishop spoke to me after being interviewed and we always agreed concerning what understandings had been reached.

Attached as Exhibit C is a $3.8 Million jury verdict obtained by the undersigned on May 27, 2010, on behalf of Bishop Wagner's nephew's family.Hearing will be held in the Cuyahoga County Court of Appeals on February 9,2011,concerning whther third party officials at Case Western Reserve University have personal exposure for any part of this judgment.

At no time did I agree or attempt to obtain any fee in the Wallace case other than was expressly agreed to in the relevant engagement letter. Relator's allegation concerning the extraordinary fee, while understandable given my initial incorrect explanation is erroneous.

COUNT 5

Pat Prout is former Chief Executive Officer of Bank One, Cleveland, a United States Naval Academy and Harvard Business graduate, and close personal friend. I admit I did not advise Prout Group of a conflict or advise them to seek independent counsel in connection with notes between Prout Group and me. However, every note was repaid timely with interest.

I dispute however whether a transaction with Prout Group, a nonclient, is tantamount to a transaction with Mr. Prout personally.

There is no dispute that Prout Group is a separate legal entity from Mr. Prout personally. All loans were from Prout Group. Mr. Prout, not Prout Group, was my client.

I fully understand that I have a duty to comply with ORPC. I do not suggest by this argument that I am relying on hyper technicalities to circumvent compliance. However, Relator is accusing me of violating numerous hyper technical provisions of ORPC. If I am required to

comply with all technical aspects of ORPC, it seems appropriate for Relator to also comply with technicalities. Prout Group the party with whom all loans were made in Count 5, was not my client.

Aggravation and Mitigation

Relator makes reference to "my financial difficulties" however there is no evidence in the record concerning my finances..

The Rules Governing Disciplinary proceedings state:

(1) Aggravation. The following shall not control the Board's discretion, but may be considered in favor of recommending a more severe sanction:

(a) prior disciplinary offenses:

(b) dishonest or selfish motive;

(c) a pattern of misconduct;

(d) multiple offenses;

(e) lack of cooperation in the disciplinary process;

(f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

(g) refusal to acknowledge wrongful nature of conduct;

(h) vulnerability of and resulting harm to victims of the misconduct;

(i) failure to make restitution.

(2) Mitigation. The following shall not control the Boards' discretion, but my be considered in favor of recommending a less severe sanction:

(a) absence of a prior disciplinary record;

(b) absence of a dishonest or selfish motive;

(c) timely good faith effort to make restitution or to rectify consequences or misconduct;

(d) full and free disclosure to disciplinary Board or cooperative attitude toward proceedings;

(f) imposition of other penalties or sanctions;

(g) chemical dependency or mental disability when there has been all of the following:

(i) A diagnosis of a chemical dependency or mental disability by a qualified health care professional or alcohol/substance abuse counselor;

(ii) A determination that the chemical dependency or mental disability contributed to cause the misconduct;

(iii) In the event of chemical dependency, a certification of successful completion of an approved treatment program or in the event of mental disability, a sustained period of successful treatment;

(iv) A prognosis from a qualified health care professional or alcohol/substance abuse counselor that the attorney will be able to return to competent, ethical professional practice under specified conditions.

(h) other interim rehabilitation.

[Section 10 Adopted by the Supreme Court of Ohio, effective June 1, 2000; amended effective February 1, 2003]

Aggravation: I have no prior disciplinary offenses; contrary to Realtor's claim my record here will show that I did not exalt my interests to those of my clients; I have admitted to violations; I have not caused financial injury to anyone, therefore restitution is not an issue; I admit to violations, but deny any actions involving moral turpitude.I accept full responsibility for my actions.

Mitigation: I am an eagle scout, West Point graduate, retired army officer, former judicial clerk, major law firm partner and entrepreneur. I hav faced challenges, however, I have never been convicted of a crime. The claims against me here are serious, however the evidence is insufficient to warrant the extreme sanctions recommended by Relator.

Whatever sanction is imposed, I request it be suspended and stayed pending no further violations of the Rules.

Respectfully submitted,

Percy Squire, Esq. (0022010)
Percy Squire Co., LLC
514 S. High Street
Columbus, Ohio 43215
614-224-6528 Telephone
614-224-6529 Facsimile
psquire@sp-lawfirm.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served via regular

Febuary 8,2011 ,, upon the following:

Jonathan Coughlan
The Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7205
jonathan.coughlan@sc.ohio.gov

Percy Squire, Esq. (0022010)

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

In re:

Complaint against

Percy Squire, Esq.
514 South High Street
Columbus, Ohio 43215

Attorney Registration No. (0022010)

Respondent,

Case No. 09-023

RESPONDENT'S VERIFIED MOTION TO DISQUALIFY RELATOR

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio, 43215

Relator.

Respondent Percy Squire, hereby renews his motion to disqualify disciplinary Counsel Jonathan E. Coughlan or any of his subordinates from further prosecution of this action.

This motion is based upon the fact that an appeal is pending in the United States Court of Appeals for the Sixth Circuit, Case No. 08-4401 wherein the undersigned has argued that Relator's refusal to disclose everyone with whom he communicated concerning his investigation of the spouse of the undersigned, former Franklin County Judge Carole Squire, was a strategy to conceal instructions Relator had received from former Ohio Chief Justice Moyer to investigate former Judge Squire in retaliation for her filing a formal complaint with the Chief Justice critical of the management of juvenile cases in Franklin County, Ohio. Litigation has been ongoing between the parties here since 2005 and a decision from the Sixth Circuit is currently pending.

The undersigned first raised the question concerning Relator's motives in pursuing former Judge Squire' in October 2005. At that time Relator, while under oath refused to disclose the names of everyone to whom he had spoke concerning the investigation of former Judge Squire.

The following exchange occurred in United States District Court for the S.D. Ohio on October 6, 2005:

> MR. SQUIRE: I would like for the court reporter to read it back, please, because I don't want to change it.
> THE COURT: Well, it doesn't matter whether you want to change it or not, Mr. Squire.
> The question to you, Mr. Coughlan, was this: Are you saying that there are people out there who you contacted for information - - and I believe you called them sources, Mr. Squire - - that have not been revealed to the respondent, Judge Squire?
> THE WITNESS: I believe that's correct. I can say for sure, Your Honor, there are people who have talked to us. You just framed it in terms of contact that we contacted.
> THE COURT: That's right.
> THE WITNESS: I believe it's correct that there may be people we've contacted who provided information that didn't turn out to be of any significance, so we've not provided those names. That's correct.
> THE COURT: Proceed Mr. Squire.
> BY MR. SQUIRE:
> Q. What about people who contracted you?
> A. Right. That's what I just said. We did not provided the name of everyone who may have said to us anything about this issue.
> Q. But has not Judge Squire asked you for all those names?
> A. No. She's asked us for who filed the grievance.
> Q. No. Hasn't she asked you –
> MR. STRIGARI: Objection, Your Honor, same basis. He's asking about facts that are relating to the investigation process that he has not waived at this point.
> THE COURT: Overruled.
> MR. SQUIRE: Your Honor, I merely - - thank you.
> THE COURT: I understand. Overruled.
> MR. SQUIRE: I am asking Mr. Coughlan whether he received a request from Judge Squire for the names of all people who either were contacted by the Disciplinary Counsel or contact the Disciplinary Counsel in connection with this investigation.
> THE WITNESS: Absolutely not. We were not requested to provide the names of everybody we talked to, no.

BY MR. SQUIRE:
Q. What were you asked?
A. Well, I would have to see the letters, counsel, and you, apparently, don't want to waive. So I can't precisely say what we were asked, but my understanding is we were asked who filed the grievance, who brought this case to you.
Q. Is it your policy, if someone asks you who contacted you, to in all cases disclose that to the respondent?
A. If a grievance is filed, we notify the respondent who filed the grievance. If it's anonymous, we say, we got an anonymous grievance.

But no. If your question is, do we tell them everybody we talked to, no, not at the investigation stage.
Q. And in the event you refuse to disclose the name of a person that you've talked to and the respondent feels that that is necessary information for them to know in order to meaningfully respond to your letter of inquiry or to your draft complaint, is there a mechanism for the respondent to appeal your refusal?
A. Our investigations are conducted on our part. The respondent doesn't have any procedural rights, that I am aware of, during and investigation.
Q. Do you know of any procedural opportunity for a respondent to petition the board of grievances in advance of the time a probably cause determination is made?
A. No, no more than I would expect in a criminal case. During a police investigation, you don't have a right to challenge it or delay it or demand any other special due process.

See, Exhibit A.

Although Mr. Coughlan stated there was no procedural mechanism to obtain the desired information concerning all individuals with whom Relator communicated, the district court and the Sixth Circuit abstained on grounds that the desired information could be obtained by petitioning the Ohio Board of Commissioners on Grievances and Discipline. When a request for the information was filed by the undersigned with the Board, it was denied. Accordingly, the State proceeding against former Judge Squire was permitted to proceed without Relator ever being required to divulge the names of everyone, potentially including Chief Justice Moyer, to whom he had spoken concerning investigating former Judge Squire.

Following the use of the disciplinary process to smear former Judge Squire during her 2006 reelection campaign, former Judge Squire was suspended for two years. The currently

pending matter before the Sixth Circuit wherein the undersigned has alleged that former Judge Squire was denied due process of law by reason of Relator's refusal to disclose everyone to whom he had spoken concerning his investigation of former Judge Squire, is currently pending. The appeal was submitted to the Sixth Circuit on briefs on April 30, 2010.

The undersigned does not contend that he is free from all impropriety in this action. It is my contention that it is a denial of due process to permit a person who has a stake in the outcome of a pending federal appeal, to employ the investigatory powers of his office as a pretext to go on a fishing expedition into all aspects of my business.

With the exception of the initial Complaint filed against me by a convicted felon with a now known propensity to lie, See, Exhibit B, there are no witnesses complaining against me and there has been no economic loss or injury to anyone.

Relator has used the initial Complaint as a pretext to engage in a ever broadening investigation of all aspects of my operation. This is evidenced by the constant amending of the Complaint on his own volition, not by reason of complaints from third parties. It is totally inappropriate to permit a person with a stake in the outcome of pending litigation to employ the powers of his office against a litigation adversary.

A recent example of such abuse is attached at Exhibit C.

It offends due process and creates a stench of unfairness to simply ignore the fact that I have alleged in open court for the past five years that Mr. Coughlan in effect abused the powers of his office, at the direction of persons whose names he has refused to disclose, in order to smear former Judge Squire during the 2006 general election.

The fairness of this proceeding is gravely damaged by Relator's role here.

"Vindictive prosecution" is prosecution to deter or punish the exercise of a constitutionally protected right. The elements of vindictive prosecution are (1) exercise of a protected right; (2) the prosecutor's "stake" in the exercise of the right; (3) the unreasonableness of the prosecutor's conduct; and presumably, (4) that the prosecution was initiated with the intent to punish the plaintiff for exercise of the protected right. *Futernick v. Sumpter Township*, 78 F.3d 1051 (6th Cir.1996); *United States v. Anderson*, 923 F.2d 450, 453 (6th Cir.), *cert. denied*, 499 U.S. 980 (1991). The relevant inquiry is whether there is realistic likelihood of vindictiveness when one examines the prosecutor's actions in the context of the entire proceeding. *Blackledge v. Perry*, 417 U.S. 21, 27-28 (1974).

To punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort. *See Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). For an agent of the state to pursue a course of action whose objective is to penalize a person's reliance on his protected statutory or constitutional rights is "patently unconstitutional". *United States v. Goodwin*, 457 U.S. 368, 372 n. 4 (1982) (quoting *Bordenkircher*, 434 U.S. at 363). A prosecutor vindictively prosecutes a person when they act to deter the exercise of protected right by the person prosecuted. *Anderson*, 923 F.2d at 453; *United States v. Andrews*, 633 F.2d 449, 453-55 (6th Cir.1980), *cert. denied*, 450 U.S. 927 (1981). "The broad discretion accorded prosecutors in deciding whom to prosecute is not unfettered, and a decision to prosecute may not be deliberately based upon the exercise of protected statutory rights." *United States v. Adams*, 870 F.2d 1140, 1145 (6th Cir.1989) (citations omitted); *Andrews*, 633 F.2d at 453.

Protection afforded by the equal protection clause is not limited to allegations of class-based discrimination. In *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), the Supreme Court recognized that successful equal protection claims may, and have, been brought by a "class

of one", where the plaintiff alleges that he has been intentionally treated differently from others similarly situated, and that there is no rational basis for the different treatment. In *Willowbrook,* the Court referred to earlier cases that recognized equal protection claims sought by a "class of one" where the Plaintiff alleges that he has been intentionally treated differently from others similarly situated and there is no rational basis for the difference in treatment, citing *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Allegheny Pittsburgh Oil Co. v. Commission of Webster Cty.*, 488 U.S. 336 (1989).

A "class of one" plaintiff may demonstrate that a government action lacks a rational basis in one of two ways. First, a "class of one" plaintiff can negate every conceivable basis which might support the government action. *See F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 315 (1993. Alternatively, a "class of one" plaintiff can demonstrate that the challenged government action was motivated by animus or ill-will. *Schroeder v. Hamilton Ch. Dist.*, 282 F.3d 946, 957 (7th Cir.2002) (Posner J., concurring) noting that under equal protection rationality review, a plaintiff can demonstrate that a government action lacks a rational basis by *either* demonstrating that the action was motivated by animus *or* by demonstrating that the action has no rational relation to legitimate state policy. *See also Anderson v. Anderson,* 2000 WL 33126582 at *5 (N.D. Ohio 2000) (unreported) ("The *Olech* and *Summers* holdings, therefore, indicate that Plaintiff can establish a cause of action for selective prosecution alleging that Defendants brought charges maliciously against Plaintiff, by showing similarly situated persons were treated differently or that Defendant lacked a rational basis for its actions.")

Selective enforcement is enforcement intended to discourage or punish the exercise of a constitutional right. In establishing a selective-prosecution claim, a defendant must show that the prosecution had a discriminatory effect and that the prosecution was motivated by a

discriminatory purpose. Fourteenth Amendment to the United States Constitution; *United States v. Tucor Internat'l, Inc.*, 35 F.Supp.2d 1172 (N.D.Cal.1998), *affirmed on other grounds*, 189 F.3d 834 (9th Cir.1999). A defendant must not only show that others similarly situated were not prosecuted, but that prosecution was deliberately based on classification protected under the Equal Protection Clause. *Id.*

Ohio Courts have adopted the two-prong test of *United States v. Berrios*, 501 F.2d 1207, 1211 to determine whether or not there has been selective prosecution under Ohio law. *State v. Flynt*, 63 Ohio St.2d 132, 134 (1980). A defendant alleging selective prosecution must demonstrate "(1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government's discriminatory selection of him for prosecution has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or in the desire to prevent his exercise of constitutional rights." *Flynt,* supra. *See also State v. Getsy*, 84 Ohio St.3d 180, 203 (1998); *State v. Lawson*, 64 Ohio St.3d 336 (1992); *Cleveland v. Bosak*, 104 Ohio App.3d 520, 525 (1995).

Here, the underlying facts reveal I am is being singled out for disciplinary action and that Coughlan is engaged in a fishing expedition. Aside from George Riley there are no complaints against me. The underlying and ongoing history of litigation between the parties helps to illustrate that the conduct at issue in the Second Amended Complaint in this action does not rise to the level of conduct typically acted upon by disciplinary counsel.

A trial court has wide discretion in determining whether to disqualify counsel as part of its duty to supervise members of the bar appearing before it. *Winblad v. Deskins*, 782 N.E.2d 160 (Ohio.App.2.Dist.Montgomery.Co.2002). *See also Luce v. Alcox*, 848 N.E.2d 552

(Ohio.App.10.Dist.Franklin.Co.2006) (trial court has wide discretion in the consideration of a motion to disqualify counsel); *Reason v. Wilsom Concrete Prod., Inc.*, 774 N.E.2d 781 (Ohio.Com.Pl.2002) (court has broad discretion in ruling on a disqualification motion); *Royal Indem. Co. v. J.C. Penney Co.*, 501 N.E.2d 617 (1986) (trial court has the inherent authority to supervise members of the bar appearing before it, and this necessarily includes the power to disqualify counsel in specific cases); *Morgan v. North Coast Cable Co.*, 586 N.E.2d 88 (1992) (trial court has the inherent power to disqualify counsel in specific cases when necessary to protect the interests of the litigants).

A violation of the Disciplinary Rules is not necessary to warrant disqualification. *Morrison v. Gugle*, 755 N.E.2d 404 (Ohio.App.10.Dist.Franklin.Co.2001). In deciding whether continued representation by an attorney is appropriate, the issue is one which concerns the regulation of the practice before the trial court and the protection of the integrity of the proceedings. *Pilot Corp. v. Abel*, Ohio.App.10.Dist.Franklin.Co.2002). The inherent power of the trial court to protect the integrity of its proceedings extends not only to cases involving truly egregious misconduct of counsel, but also to cases involving ethical considerations such as whether counsel must withdraw when counsel will, or should, testify on behalf of the client, or will be called by the opposition to testify. *Jackson v. Bellomy*, 663 N.E.2d 1328 (Ohio.App.10. Dist.Franklin.Co. 1995).

Disqualification may be warranted not only when an attorney actually behaved with impropriety, but also when there is an appearance of impropriety. Disqualification of an attorney, such as for a conflict of interest, should be utilized when there is a reasonable possibility that some specifically identifiable impropriety actually occurred, and where the public interest in requiring professional conduct by an attorney outweighs the competing interest of

allowing a party to retain counsel of his choice. *Carnegie Cos., Inc. v. Summit Properties, Inc.* (Ohio.App.9.Dist.Summit.Co.2009); Rules of Prof.Conduct, Rule 1.7(b).

On their face, the facts describe an underlying history that, at the very least, gives an appearance of impropriety to the prosecution of this action against me. Because of my lawsuit against Disciplinary Counsel, Disciplinary Counsel clearly has a conflict of interest here warranting disqualification. In *City of Maple Heights v. Redi Car Wash*, 554 N.E.2d 929 (OhioApp.1988) for example, the court found that a City prosecutor should be disqualified from further participation in cases against defendant arising from prosecution for operating a business without a certificate of occupancy. The court found that personal animosity between the parties would severely jeopardize the integrity of proceedings. In *Maple Heights*, the prosecutor had filed a 1.1 million dollar libel suit against defendants, and one defendant had filed a grievance against the prosecutor with the local bar association. As in *Maple Heights*, Coughlan should be disqualified due to the history and animosity between the parties as a result of Squire's lawsuit against Disciplinary Counsel.

The integrity of the disciplinary process requires disqualification. In *Disciplinary Counsel v. LoDico*, 833 N.E.2d 1235 (2005) the court stated,

> "The law demands that all counsel foster respect and dignity for those who administer and enforce the law. Conduct that is degrading and disrespectful to judges and fellow attorneys is neither zealous advocacy nor a legitimate trial tactic. Lying to a tribunal and making false accusations against judges and fellow attorneys can never be condoned. Attorneys must advocate within the rules of law and act with civility and professionalism. "Counsel must recognize that in every trial, the integrity of the process is as much at stake as are the interests of the accused."

Id. at ¶ 32, citing *Mayberry v. Pennsylvania*, 400 U.S. 455, 468 (1971) (Burger, C.J., concurring). Here, due to the history between Coughlan and me, the integrity of the process is at stake. The obligation of the tribunal to maintain the integrity of the process is greater than any

obligation to me individually; it encompasses a broader obligation to the entire Ohio Bar and the public generally.

The State of Ohio takes this broad obligation very seriously; Ohio has emphasized its commitment to the highest standards of legal practice and integrity in ways other states have not. For example, Ohio has historically included a "Professionalism" CLE requirement, a requirement not shared by many states. In 1997, the Supreme Court of Ohio adopted A Lawyer's Creed and A Lawyer's Aspirational Ideals, defining a lawyer's professional commitments in extremely broad terms: in terms of relationships not only to clients, but to opposing parties and counsel, to the courts, to other colleagues, to the profession as a whole, and to the public and our system of justice. These broad obligations to the integrity of the process, as well as to me help illustrate the need for disqualification in this case. Lawyers should avoid even the appearance of impropriety, and here there is far more than a mere "appearance." Rule of Professional Conduct 8.4, which states that it is professional misconduct to engage in conduct that is prejudicial to the administration of justice, also applies.

Traditionally, where there is a potential conflict of interest, the trial court must hold an evidentiary hearing and issue findings of fact when determining if the improper appearance can be overcome. *See Kala v. Aluminum Smelting & Refining Co., Inc.*, 688 N.E.2d 258 (1998). At the very least, if the Amended Complaint is not dismissed and Mr. Coughlan is not disqualified, the factfinder should hold an evidentiary hearing on the issue of disqualification.

The United States Supreme Court in, Pottawattamie County, Iowa, et al. v. Curtis W. McGhee, Jr., et al., Case No. 08-1065, argued November 4, 2009, observed that a prosecutor neither is, nor should consider himself to be, an advocate, citing Buckley v. Fitzsimmons 509 U.S. 259 (1993).

A prosecutor will be disqualified as an "interested party" if the prosecutor has a financial or improper personal stake in the outcome of a proceeding. The Supreme Court in Young v. United States, ex rel., Vuitton et Fils S.A. 481, U.S. 787 (1987), addressed the propriety of appointing a private party's lawyer as the prosecuting attorney in a related contempt proceeding, and held that "the beneficiary of a court order may not be appointed to undertake contempt prosecutions for alleged violations of that order." 481 U.S. at 790.

The Court emphasized that a prosecuting attorney:

> is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whole interest, therefore, in a... prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape nor innocence suffer.

Id. at 803 (quoting Berger v. United States, 295 U.S. 78, 988 (1935)).

The traditional dichotomy in function between police who gather evidence and prosecutors who evaluate its usefulness for prosecution is salutary because it enhances the reliability of the evidence that prosecutors ultimately present in judicial proceedings – or at lease that is the goal. The more deeply invested a prosecutor becomes in an investigation, especially an overzealous or dishonest one, the less likely will his prosecutorial review of the evidence be truly independent. (emphasis added). Where a prosecutor chooses, or is required to take on investigative functions, prosecutors should serve as objective fact finders, not as advocates. Here, Relator is behaving like an advocate and he has a personal stake in the outcome by reason of the pending litigation in which he has been implicated

"The Due Process Clause imposes...limits on the partisanship of administrative prosecutors. Prosecutors are also public officials; they too must serve the public interest. Berger v. United States, 295 U.S. 78, 295 U.S. 88 (193). In appropriate circumstances, the Court has

made clear that traditions of prosecutorial discretion do not immunize from judicial scrutiny cases in which the enforcement decisions of an administrative prosecutor, like Relator, were motivated by improper factors or where otherwise contrary to law. See, Dunlop v. Bachowski, 421 U.S. 560, 421 U.S. 567, n. 7, 421 U.S. 568-574 (1975). Rochester Telephone Corp. v. United States, 307 U.S. 125 (1939). [Footnote 11] Moreover, the decision to enforce – or not to enforce – may itself result in significant burdens on a defendant or a statutory beneficiary, even if he is ultimately vindicated in an adjudication. Cf. 2 K. Davis, Administrative Law Treatise 215-256 (2d ed. 1979). A scheme injecting a personal interest, financial or otherwise, into the enforcement process may bring irrelevant or impermissible factors into the prosecutorial decision, and, in some contests, raise serious constitutional questions. See, Bordenkircher v. Hayes, 434 U.S. 357, 434 U.S. 365 (1978): cf. 28 U.S.C. §528. See, Marshall v. Jerrico, Inc., 446 U.S. 238 (1980).

Here, an action was filed against Relator for his refusal to divulge the names of everyone to whom he had spoken concerning the institution of disciplinary charges against former Judge Squire.

Following dismissal by the district court the Sixth Circuit affirmed this dismissal. In its opinion the Sixth Circuit stated:

> Judge Squire argues that she was denied the opportunity to raise her due process challenged at the precomplaint stage of the state proceeding. She claims that Coughlan's alleged refusal to provide her with the names of all persons spoken to in the course of the investigation deprived her of a meaningful opportunity to respond at a critical predeprivation stage of the disciplinary process. Coughlan, on the other hand, testified that the names of all potential witnesses were provided to Judge Squire. He conceded, however, that she was not provided with the names of every single person contacted in connection with the investigation of her alleged misconduct. Addressing this allegation, Coughlan testified that Judge Squire did not in fact ask for the names of all persons contacted, but asked only for the names of the persons who filed the grievances.

> At oral argument, counsel for Judge Squire emphasized that there were no explicit instructions in either the Bar Rules or the Judiciary Rules for raising constitutional claims at the precomplaint stage of the process. Because there were no explicit procedures in place, the reasoning goes, there was no adequate opportunity for Judge Squire to raise her claim. Judge Squire is correct in pointing out that there are no such procedures contained the Rules. All absence of explicit procedures however, does not establish that Judge squire had an inadequate opportunity to raise her claim. The dispositive fact in this case is that judge Squire has not shown that Coughlan would have refused to consider her constitutional challenge. See, Fieger, 74 F.3d at 747.

See, Squire v. Coughlan, 469 F.3d 551 (6th Cir. 2006).

As a result of state disciplinary proceedings, during which Judge Squire's request for the names of everyone to whom Relator had spoken was denied, Judge Squire was defeated for reelection and suspended. Upon institution of reciprocal federal proceedings, Judge Squire stated the following:

> The primary focus of the analysis concerning what occurred during the state-conducted proceeding should be on the key parties: Ohio Chief Justice Moyer, Franklin County Domestic Relations Administrative Judge Jim Mason, the Ohio disciplinary counsel, Jonathan Coughlan. The reason the focus should be on these individuals is due to their personal involvement in Ohio's disciplinary system. Moreover, the focus should be on these individuals for the reason the statutory provisions cited by former Judge Squire above, that is 31 U.S.C. §3730 (h) and Ohio Revised Code, 4113.52, are implicated here due to former Judge Squire having transmitted the report of misconduct, (R.13, Amended Response, Ex. A, Report of Misconduct) to Chief Justice Moyer, a mere thirty give days prior to the Ohio disciplinary counsel, under the auspices of the Ohio Supreme Court, initiating a disciplinary investigation against former Judge Squire, which Judge Mason counseled the complainant to file.[1]
>
> Former Judge Squire was entitled to know whether there had been communications between Justice Moyer and Judge Mason concerning Judge Squire's Report of Misconduct. It was their refusal of all involved at every stage of the state proceeding to permit discovery of even inquiry into the nature, timing and substance of communications, if any, between Chief Justice Moyer and Judge Mason that inflicts the state proceeding with the stench of unfairness and

[1] Among other things, the Report of Misconduct sent by former Judge Squire to Chief Justice Moyer on August 27, 2004, stated that in violation of state law elected Franklin County Judges were not presiding over juvenile cases, that in violation of state law retired or visiting judges were being utilized to perform duties that voters had elected sitting judges to perform, that Judge Mason stated he was aware that Franklin County Domestic Relations judges were "shirking" their responsibility to hear juvenile cases, and that Administrative Judge Mason was giving unlawful instructions to court staff to interfere with former Judge Squire's docket and staff.

corruption and provides the basis for the deprivation of due process of law claim here.

Former Judge Squire was the only democrat among five judges that comprised the Franklin County Domestic Relations bench. Chief Justice Moyer and Judge Mason are both Republicans. There two have a long history. In point of fact, under Justice Moyer's administration, for years Judge Mason served as Secretary to the Ohio Board of Commissioners on Discipline and Grievances. The two were also colleagues on the Ohio Tenth District Court of Appeals. During his deposition in this action Judge Mason stated that he served on several committees with Chief Justice. Suffice it to say Judge Mason's judicial carrier has been materially aided by Chief Justice Moyer. The two men are well-acquainted with one another.

It is the extent to which Chief Justice Moyer and Judge Mason collaborated against, conspired or targeted Judge Squire for disciplinary action in response to her Report of Misconduct and for reelection defeat that is relevant here.

The federal inquiry into the above allegations is still pending before the Sixth Circuit. Relator has a direct interest in this inquiry by reason of the allegation that Judge Squire was entitled to know whether Relator received any instructions or direction from Chief Justice Moyer in retaliation for her letter to Justice Moyer concerning Franklin County Domestic Relations Count or by reason of Judge Mason's encouragement of mass complaint filings against former Judge Squire.

Relator has never provided the information requested by former Judge Squire and stated that discovery of this nature is unavailable in advance of the filing of a formal complaint. A proposition directly at odds with the position taken during the Squire v. Coughlan case when he stated an adequate state means existed to obtain the desired information.

Relator wrongly stated in response to the initial motion to disqualify that the undersigned believes that a "vast conspiracy" resulted in the suspension of former Judge Squire (emphasis added). On the contrary, I allege a very limited and focused three-person conspiracy- Chief Justice Moyer, Judge Mason and Relator. (Emphasis added).. Despite Relator's statement that the allegation is "patently absurd and highly offensive, he has not responded or otherwise denied it and he has never provided the names of all persons to whom he spoke.

Here Relator has personally investigated this matter and also now desires to serve as prosecutor. He has, through use of my integrity and honor against me, gone on an extravagant fishing expedition and added multiple counts, with the curious argument that I concealed the existence of promissory notes that are favorable to me to deceive or mislead him. Relator's expression of being highly offended is evidence that he is not detached and dispassionate about this scurrilous campaign to destroy my livelihood. While the Relator may be offended, the arguments that I have raised should be viewed against the backdrop of a disproportionately high number of Black lawyers being investigated and suspended by Relator's office. Unfortunately our county has a long history of unfairness to Blacks by prosecutors. Relator should be reminded of the following: disparate enforcement..."destroys the appearance of justice and thereby casts doubt on the integrity of the judicial process." McCleskey v. Kemp, 481 U.S. 279, 346 (1987) (quoting Rose, 443 U.S. at 555-56).

I respectfully request appointment of an independent counsel.

Respectfully submitted,

Percy Squire, Esq. (0022010)
Percy Squire Co., LLC
514 S. High Street
Columbus, Ohio 43215
614-224-6528 Telephone
614-224-6529 Facsimile
psquire@sp-lawfirm.com

VERIFICATION

I have read the foregoing motion and believe it to be true to the best of my knowledge, information and belief.

Percy Squire

NOTARY PUBLIC

Percy Squire appeared before me May 5, 2010, and did swear and confirm that the above statement which he signed in my presence is true to the best of his knowledge, information and belief.

Notary Public

CAROLYN PIERRE-LOUIS
Notary Public, State of Ohio
My Commission Expires 01-23-2012

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was served via email, May 5, 2010, upon the following:

Jonathan Coughlan
The Supreme Court of Ohio
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7205
jonathan.coughlan@sc.ohio.gov

Judge Arlene Singer
singer@co.lucas.oh.us

Panel Members:
gmorton@lakecountyohio.gov
sjsieg@earthlink.net

Percy Squire, Esq. (0022010)

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF OHIO

EASTERN DIVISION

- - -

CAROLE R. SQUIRE, :

Plaintiff, : Case No. C-2-05-922

vs. :

JONATHAN E. COUGHLAN, et al., : HEARING

Defendant. :

- - -

TRANSCRIPT OF PROCEEDINGS

October 6, 2005

- - -

In the above-captioned cause, before the Honorable Gregory L. Frost, Judge.

- - -

APPEARANCES:

ON BEHALF OF THE PLAINTIFF: Frank m. Strigari, Esq.
Holly J. Hunt, Esq.
Richard Coglianese, Esq.

ON BEHALF OF THE DEFENDANT: Percy Squire, Esq.

I-N-D-E-X

- - -

Thursday Afternoon Session
October 6, 2005
5:08 p.m.

- - -

IN OPEN COURT:

THE COURT: At this time, Mr. Miller, would you call the case?

COURTROOM DEPUTY CLERK: C-2-05-922, Carole R. Squire versus Jonathan E. Coughlan, et al.

THE COURT: That is the newly filed complaint. Thank you.

Let the record reflect that Carole R. Squire, the Plaintiff in this matter, is present, being represented by Percy Squire, her counsel.

Mister -- well, Counsel for the Defendant, you'd better identify yourself and who is here on your behalf, because I'm not sure who they are.

MR. STRIGARI: Your Honor, my name is Frank Strigari. I'm the Assistant Attorney General here on behalf of the Disciplinary Counsel.

THE COURT: Yes, and those who are there on your behalf?

MS. HUNT: Your Honor, I'm Holy Hunt, also from the Attorney General's Office, on behalf of the Disciplinary

Counsel.

THE COURT: What's your name?

MS. HUNT: Holly Hunt, H-U-N-T.

THE COURT: Thank you, ma'am.

MS. BROWN: I'm Lori Brown. I'm a named defendant in this matter.

THE COURT: You're Lori Brown. Okay. Thank you.

I'm going to try to get my papers organized here.

Mr. Strigari, we, at our informal discussion that we

had, pursuant to the rules of this court, we had some thoughts that Mr. Coughlan will be present to testify. Is it my understanding he's not present?

MR. STRIGARI: Your Honor, Mr. Coughlan is currently on his way to the court. He's stuck in traffic. There is a lot of traffic in the downtown area.

MS. BROWN: He was in front of the Supreme Court.

MR. STRIGARI: So if you would like to, for the Court's indulgence --

MS. HUNT: Broad and High has been closed down for some time. We're not aware of what reason, but it's been blocked off completely.

THE COURT: It's a plot, apparently. Okay.

MS. BROWN: Apparently.

THE COURT: Mr. Strigari, go on.

MR. STRIGARI: Because of that, we have no estimation

on when Mr. Coughlan will be here. It could be any minute. But, for the record, of course, we do have Ms. Brown, who is here, who can testify in regards to this matter.

THE COURT: In regards, specifically, to the issues we discussed; is that correct, Mr. Strigari?

MR. STRIGARI: That is correct.

THE COURT: Oh, good. Well, then we won't have to wait on Mr. Coughlan then.

All right. Again, I want to set the stage. What has happened is a complaint was filed this afternoon at 1:32, and in that complaint there is also a request for a temporary restraining order. Along with the complaint was a verified motion by the Plaintiff, Carole Squire, for a temporary

restraining order. Pursuant to the local rules of this court, the Court conducted an informal discussion with Counsel, Percy Squire and Mr. Strigari, in chambers, and it became rather evident during that rather lengthy discussion that a hearing may need to be conducted with regard to one small area in dispute, and that one small area involving the Younger Doctrine.

And Mr. Coughlan has shown up. Thank you, Mr. Coughlan. We are sorry to rush you down here, but it didn't seem like we had much choice.

MR. COUGHLAN: I apologize, Judge. It's bad traffic out there.

THE COURT: That's what I've heard. We heard it's a plot, but, anyway -- so, what I requested of Mr. Strigari is that we have a hearing.

I only allowed 45 minutes to get ready for the hearing, but that's because of how late it is this afternoon.

And, Mr. Strigari, you have succeeded in getting Mr. Coughlan here, who apparently now will be testifying as opposed to the other named defendant, Lori Brown. Is that correct?

MR. STRIGARI: That's correct, Your Honor.

THE COURT: Mr. Coughlan, would you come forward and be sworn, please?

COURTROOM DEPUTY CLERK: Mr. Coughlan, please raise your right hand. Do you solemnly swear the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?

THE WITNESS: I do.

COURTROOM DEPUTY CLERK: You may be seated, sir, on

the witness box here.

THE COURT: Mr. Coughlan, would you state your full name and spell your last name?

THE WITNESS: Jonathan Edward Coughlan, C-O-U-G-H-L-A-N.

THE COURT: Thank you, Mr. Coughlan.

And, Mr. Strigari, if you have some questions you wish to proceed with concerning the issues in hand, you may

proceed.

Mr. Squire, I will permit you to ask questions. If you want to call it cross-examination, that's fine. I don't --

MR. SQUIRE: Thank you, Your Honor.

THE COURT: I don't care that we need to stand on some procedural issue in that way, but then the Court may very well have some questions to ask.

Mr. Strigari, you may proceed on direct.

- - -

JONATHAN EDWARD COUGHLAN,
having been duly sworn, was
examined and testified as follows:

- - -

DIRECT EXAMINATION

BY MR. STRIGARI:

Q. Good afternoon, Mr. Coughlan. Would you state your name for the record? Can you please inform the Court what your position is?

A. I'm the Disciplinary Counsel of the Supreme Court of Ohio.

Q. And as the Disciplinary Counsel for the Supreme Court of Ohio, what are your duties in that capacity?

A. Our office is charged, under Rule V of the Rules for the Government of the Bar of Ohio, with investigating and prosecuting judges and lawyers for ethical violations.

Q. Are you familiar with the current case that's before this

court at this moment, Mr. Coughlan?

A. Yes.

Q. And can you please discuss with us your familiarity with this Court?

THE WITNESS: Your Honor, before I proceed, Rule V, 11(e), provides a privacy right to the respondent, in our proceeding the Respondent Judge Squire. I don't think I should proceed unless that is waived.

BY MR. STRIGARI:

Q. So you're saying, under the Gov. Bar Rule V, you're unable to actually talk about the facts unless the respondent actually waives the right to actually allow you to disclose those facts?

A. That's correct.

THE COURT: Mr. Squire, there has been a request for a waiver of the confidentiality issue. Well, before you waive it, I want to make sure you're doing so knowingly, voluntarily and intelligently. And, specifically, there is a newspaper reporter in the back of the courtroom.

MR. SQUIRE: Your Honor, I would not recommend that my client waive confidentiality in light of the nature, limited nature, of this proceeding that was outlined by the Court at the outset. The question here has to do with whether or not the third prong of Younger has been satisfied, whether there is a textually demonstrable remedy available under the procedures administered by Mr. Coughlan. There really is no need to get

into the details of the complaint.

THE COURT: Mr. Squire, where did you come up with "textually demonstrable"? I didn't think I ever used that wording when we were in our informal conference.

MR. SQUIRE: Your Honor, I used "textually demonstrable" because we are alleging that Mr. Coughlan has acted pursuant to established state procedures, namely the rules.

THE COURT: Right.

MR. SQUIRE: So I'm suggesting, Your Honor, that with respect to the question of whether or not a respondent has the prerogative of directly petitioning the Board of Grievances in advance of a probable cause determination I am suggesting there should be a textually demonstrable expression within the rules to that effect in order for Younger to be satisfied.

I'm just saying -- I'm restating what I believe to be the law, Judge.

THE COURT: I understand that. Regardless of that --

MR. SQUIRE: Yes, sir.

THE COURT: -- I'll make that determination --

MR. SQUIRE: Absolutely, Your Honor.

THE COURT: -- I guess, at a later time. What you're suggesting is you don't need to have a waiver because we shouldn't be getting into issues that are confidential?

MR. SQUIRE: This is purely procedural, Your Honor. The question is where within the rules is the question that you

posed to us up there answered either affirmatively or negatively.

THE COURT: Just a second.

You may wish to consult with counsel. Mr. Strigari, do you wish to?

MR. STRIGARI: Brief indulgence, please.

THE COURT: Sure.

(Whereupon, there was a brief interruption.)

THE COURT: Mr. Strigari?

MR. STRIGARI: Thank you, Your Honor. At this point, we cannot really get a full understanding of what the procedure is that is involved with Gov. Rule V if we do not adequately have the information and the facts relevant to the particular case in front of us for Mr. Coughlan to give a thorough understanding to this Court of the procedure that has occurred throughout this investigation over the past year.

MR. SQUIRE: May I respond, Your Honor?

THE COURT: You may.

MR. SQUIRE: Your Honor, this is a situation where they're saying the remedy will kill the patient, and I am suggesting that this Court, in the exercise of its equitable power, can craft a means to divine the answer to the limited issue that has to be determined under Younger without

accomplishing through the back door what we've come here to ask not be accomplish through the front door. It just makes no sense for her to come in here and waive confidentiality when the whole purpose of the TRO is to avoid that.

And the point that the Court raised with counsel in advance -- and I'm not trying to put words in Your Honor's

mouth --

THE COURT: I understand.

MR. SQUIRE: -- was that -- I wrote the question down, Judge -- is there a mechanism by which someone may request of the board the identity of witnesses. That was -- that's verbatim what you said upstairs, Your Honor. When I --

THE COURT: I believe you wrote it down correctly.

MR. SQUIRE: I wrote that down, Your Honor. When I said "textually demonstrable," I'm asking where in the rules -- we're talking due process. How else would she have notice?

THE COURT: Slow down. Slow down. Don't get on your soap box and closing argument yet. You're a little bit ahead of yourself.

MR. SQUIRE: I'm sorry, Your Honor. My point is, Judge, fortunately, Judge Squire isn't dealing with these rules every day. The Disciplinary Counsel is. The Disciplinary Counsel should be able to tell us -- when a person is subjected to this process, there should be some way that they're given notice of what their prerogatives are. It should be in the

rules.

THE COURT: You keep saying that, and I'm going to tell you right now I don't necessarily agree with the way you are framing the question, Mr. Squire.

MR. SQUIRE: Right, Your Honor.

THE COURT: But let's get away from your textually demonstrative issue and get on to the confidential matter.

I believe, Mr. Coughlan, that you can proceed on the procedural matters without a waiver of confidentiality. If it comes down to a point where you can demonstrate to me that

there are certain things that are certainly confidential, we'll do it in a private manner.

So, Mr. Strigari, proceed with your questions along the lines that we discussed in the chambers.

BY MR. STRIGARI:

Q. Mr. Coughlan, can you please explain to the Court the process from the time the Disciplinary Counsel receives a grievance filed with your office, please?

A. The process that we undertake?

Q. Yes, sir.

A. We receive the grievance. We confirm that it, in fact, alleges some sort of allegation against a lawyer or a judge in the State of Ohio.

THE COURT: You receive a grievance and -- I'm sorry to stop you right there.

THE WITNESS: Uh-huh.

THE COURT: But in the brief time we had to get you here and get ready to go with this hearing, I pulled off of a website the grievance form.

THE WITNESS: Right.

THE COURT: Are you saying that it is filed on that type of a form?

THE WITNESS: It can be, Your Honor. It doesn't have to be.

THE COURT: That's not the only way?

THE WITNESS: That's correct. It can be a letter from someone. Typically what we see probably ninety-five percent of the time is some sort of communication in writing to us saying, Here is what I say happened with this lawyer or

judge.

THE COURT: Okay.

THE WITNESS: We are not limited in that fashion, however. We are authorized to investigate those matters which come to our attention. So that, for example, if I read in the newspaper that a lawyer has been indicted, I don't need somebody to file a grievance. I will conduct an investigation.

Another example which may be appropriate here is a situation where we are conducting an investigation of a previously filed grievance and somebody says something that draws our attention to a new issue. That may be something we

then investigate.

THE COURT: Without --

THE WITNESS: Based on --

THE COURT: Without a written complaint?

THE WITNESS: Without a written complaint. Primarily, we operate on written complaints, but we're not limited to that.

THE COURT: All right. Proceed. I'm sorry I interrupted.

THE WITNESS: That's all right.

So we then open a file if we can identify a lawyer who's an Ohio lawyer or judge and a grievant we can talk to, or if it's a matter that comes to our attention, we proceed with an investigation.

What happens internally is, if it's brought to us on paper as a traditional grievance, a memo is done on that matter. It comes to my attention.

The memo says one of two things: We should

investigate this because it raises an ethics issue or we don't need to investigate this because it's a legal, not an ethics, issue.

If I agree with that memo, I sign off on it. If it's a memo that says it doesn't need to be investigated and I agree, we dismiss on intake. That's called a DOI. A letter goes out within two to four weeks to the grievant saying,

Sorry, you raised a legal issue; seek your legal remedies.

If it's a matter that we think does possibly raise an ethics issue, colorably, on the four corners of the document, we then open it for investigation. I assign it to a lawyer to investigate it. That lawyer's responsibility is to conduct an investigation, talk to witnesses, get documents, find out whether or not there is evidence of a violation of the code or the cannons and, if so, come and talk to me about what we're going to do next if that evidence is there.

If there is insufficient evidence, which is the majority of the time, we dismiss the investigation; that's the end of it; it remains confidential.

If the conclusion is that there is merit to the accusations, there is evidence -- and the rules require clear and convincing evidence -- excuse me -- substantial evidence of a violation -- we then prepare a complaint. I review the complaint. We make changes to it as we need to. This is after we've done a full investigation.

The primary focus of the investigation is talking to or corresponding with the lawyer or judge who is the subject of it saying, Here is what we've been informed of; tell us what you think happened; tell us your side of it.

Sometimes we have to get transcripts. Sometimes we have to get court documents, sometimes bank records, but we are always in communication with the respondent saying, Here is

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where we are with our investigation; answer these questions.

The ultimate objective is is there substantial evidence of a violation? And if that answer is yes, we prepare a draft complaint. The draft complaint, per Rule V, is sent to the respondent -- last attempt to convince us why we shouldn't file -- and an offer for them to supply us with something that we will send with the complaint to the board for probable cause review.

We not only send the complaint to the board, we also send a packet called a Summary of Investigation, which will be the underlying documents we've accumulated -- might be affidavits, might be transcripts, might be investigator's summaries -- with the complaint to the board.

If the respondent has supplied us something in answer to the draft complaint, we'll supply that, too. So all of that goes to the board, a three-member panel of the board. And tomorrow they're meeting, so there will be three-member panels; maybe more than one -- I don't know -- depending on how many complaints they have. They'll review those and make a probable cause determination.

If they find probable cause, they will do what we call certify the complaint. At that point, it's public. If they choose to say, "No, we don't certify it, there is not probable cause," it remains confidential, and that's it. It's over. We have the right to appeal that decision, ask the full

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board to review the three-member panel review or decision.

THE COURT: Either way?

THE WITNESS: Either way.

THE COURT: Either way, probable cause to certify it or not?

THE WITNESS: Right.

THE COURT: Okay.

THE WITNESS: So, if it's certified, if the complaints that we've submitted for tomorrow's meeting are certified -- and we'll find out Monday or Tuesday -- those are then litigations against those lawyers or judges that go forward before another separate three-member panel of the board on an evidentiary basis. The first thing that happens --

THE COURT: Different three members than for the probable cause hearing?

THE WITNESS: Has to be a separate three-member panel. Has to be three members from an appellate district other than the respondent's. So, if it were somebody in Collier County is a respondent, it couldn't be anybody from that appellate district on the three-member hearing panel or for the probable cause panel. So, those are restrictions.

The first thing that happens after it's certified is the respondent is given an opportunity to answer, and then we engage in discovery, and we follow the civil rules of procedure. We do depositions. We do interrogatories, demands

for production, all sorts of the typical discovery stuff. We engage in that. It's all done through that process.

The chair of the hearing panel, that has to be a lawyer or judge -- there are lay members of the board -- will have a pretrial conference, telephone pretrial conference, two to three months down the road after the complaint is certified to see where we are, what is going on, set up a schedule for a hearing and whether or not the complaint is going to be amended, where we are on the deposition schedule, etcetera. And then we go to a hearing.

I can keep going if you wish.

THE COURT: Well, and at that hearing both sides are represented by counsel, subpoenas can be issued, cross-examination occurs and so on, right?

THE WITNESS: Uh-huh. I've done regular trials, Your Honor, and it is a trial in all respects except it's to a three-member panel.

THE COURT: Thank you.

Mr. Strigari, you may proceed with any further questions.

BY MR. STRIGARI:

Q. Mr. Coughlan, what is the relationship of the Disciplinary Counsel with the board?

A. We are the prosecutors, if you will. The board is, in fact, the trial bench and the probable cause finders.

Q. So are you two independent agencies?

A. We are separate, independent agencies. If you talk to people around the country that do judicial discipline, there's such a thing as a one-tier system, and there's such a thing as a two-tier system. We're a two-tier, which I think is much better because we're separate from the board. It is as though

we're the county prosecutor and they're the trial judge.
Q. And just one follow-up on, after the complaint is actually certified to the board, did you say that the respondent has the ability to cross-examine any witnesses at the actual three-panel hearing itself?
A. Absolutely. I had a hearing involving a judge recently. It was a 19-day hearing, and every witness we put up there I or my co-counsel direct examined and they cross-examined.
Q. And does that include the actual individuals making any sort of accusations against the respondent themselves?
A. Sometimes it's the people who bring it to us. Sometimes it's not. We have cases where we don't ever call as a witness the person who first brought it to our attention because they don't have firsthand information.

The example I just mentioned of the 19-day trial, there were, I think, seven or eight judges that brought that to our office's attention. None of them had firsthand information. Only a few of them testified on side issues.
Q. But the respondent does have the opportunity to

cross-examine any witness that they choose to during that hearing?
A. Correct. And they can bring in for a pretrial deposition any witness or any potential witness.

MR. STRIGARI: That's all I have, Your Honor. Thank you.

Actually --

THE COURT: Just a second. Just a second. He might have some other questions.

MR. STRIGARI: Thank you.

THE COURT: Mr. Strigari, do you have any further questions?

MR. STRIGARI: Your Honor, I would like to just briefly talk to Mr. Coughlan about any sort of correspondence or responses that Judge Squire may have actually filed in the investigation process.

THE COURT: The contents, or simply that there were some?

MR. STRIGARI: That there actually were some.

THE COURT: Proceed.

BY MR. STRIGARI:

Q. Mr. Coughlan, during the investigation of Judge Squire, did you receive any written responses or any sort of communications from her?

A. Yes. We sent Judge Squire several letters, and she

responded on several occasions, numerous occasions.

Q. And those several letters that you sent her, what was the context, or where was the case at procedurally, or the investigation at procedurally?

A. Well, I'm comfortable saying that we sent her what we call a letter of inquiry initially, and everything that we start with, we always do that, which sets forth, Here is the issues we're interested in having you answer.

Some of those letters -- generically speaking, some of those letters may actually have attached a grievance because we've received a grievance. Some of those letters may simply be a statement that it's come to our attention -- something has come to our attention; we need you to address this issue; it looks like a possible ethics problem. Either form, but I know

those letters are used.

And, also, I know that Judge Squire received what we call LOIs, I know she got subsequent letters from our office, and that she also wrote to us.

Q. Are you able to testify as to the responses that were in those actual letters?

A. I haven't reviewed them recently. I can tell you that today I looked at my computer database which showed letters sent to her and letters received from her, but I didn't read each of those letters.

Q. Would someone from your office be able to testify as to

the contents of those actual letters?

A. Well, it's possible that there is a member of my staff who would have more familiarity with the content of the letters, but I doubt if anybody would know the exact content of all of them because there's quite a few.

Q. Would anyone be able to testify as to those matters, or are those confidential? Is that confidential information?

A. At this point, I would consider them private. I think the Judge has waived as to the existence of letters to put that in issue in this lawsuit, but beyond that I don't think we should go.

MR. STRIGARI: Your Honor, because, obviously, we are here on the extraordinary relief that the Plaintiff is seeking in this matter and because this is a court of equity, whether it's a matter of calling Judge Squire to the stand to testify as to those facts, we believe that the responses and the contents of those responses is information that would be helpful to determine whether or not she had a meaningful

opportunity, which is what she is claiming that she did not have here.

THE COURT: Whether you wish to call the judge or not is entirely up to you. I couldn't say whether you -- I can't tell you whether you want to do that or not. That's entirely up to you, but I have a question of this witness along these lines that I want to ask and that I don't believe involves

confidentiality but goes directly to the issue here involved.

Mr. Coughlan, during any of the correspondence that you received from Judge Squire, did she request the names of the complainants?

THE WITNESS: Yes, she did.

THE COURT: And were they provided to her?

THE WITNESS: To the extent that we had names of grievants, which I'll call them grievants, she was provided that information.

It was also explained that there was one particular matter for which there was no set person who had filed a grievance. It was something that came to our attention.

I think that is the rub that we are facing here, that that's not understood.

THE COURT: Is that what Count 1 is all about?

THE WITNESS: That's correct.

THE COURT: Okay, because that is specifically what was mentioned in my informal conference: that at least as to Count 1, maybe more but at least as to Count 1, that name has not been provided. Are you trying to tell, or are you telling this Court, Mr. Coughlan, that there is no name to provide?

THE WITNESS: There is no name to provide, Judge. At

best, we would be guessing as to maybe some people who brought some things to our attention we then pursued and then developed into Count 1, but nobody filed a grievance that is the basis of Count 1.

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THE COURT: All right.

With regard to any and all other counts -- and I don't even care to know how many other counts there are -- if a name is associated with any of the allegations, were they provided?

THE WITNESS: Yes. And I can also indicate the names of the people who would support the allegations in both counts are detailed in the complaint. It's a 50-page document.

THE COURT: Okay. What do you mean the names are detailed in each count?

THE WITNESS: Well, each count has a factual predicate and it alleges certain activities. The people involved are named.

THE COURT: I see.

THE WITNESS: So anybody that is a potential witness is presently known.

THE COURT: Well, potential witness or person who filed the grievance?

THE WITNESS: Correct, both.

THE COURT: Either way?

THE WITNESS: Right. The complaint doesn't say this person filed the grievance, typically, but when we know of a grievant that has identified themselves, that's provided in the LOI, the very first document that goes to the respondent

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saying, Answer because attached is a grievance.

THE COURT: And if you get multiple grievants filing grievances, --

THE WITNESS: Uh-huh.

THE COURT: -- you continue to supply that information to the respondent?

THE WITNESS: As long as we think it's something we need to have answered. If we get ten grievances and eight we don't think merit investigation of an ethics issue, we're just going to dismiss them.

THE COURT: I understand that. Yeah. The DOIs?

THE WITNESS: Right. So long as we feel it needs to be answered, we will supply that to the respondent, saying, Here is what this person says, tell us your side of it.

THE COURT: Okay.

Mr. Strigari, anything further?

MR. STRIGARI: Nothing further, Your Honor. Thank you.

THE COURT: Mr. Squire, cross-examination.

MR. SQUIRE: Thank you, Your Honor.

- - -

CROSS-EXAMINATION

BY MR. SQUIRE:

Q. Mr. Coughlan, you're not testifying here to this Court that you've provided Judge Squire with the names of all sources

of human intelligence, so to speak, in connection with these proceedings, are you?

A. No.

Q. No. There are people who you talked to who you relied upon whose names have not been disclosed to Judge Squire, isn't that correct?
A. No.
Q. Then why did you respond "no" to my previous question?
A. Because there are people we've talked to who we have not disclosed. I'm not saying that there are people who we've talked to and relied upon who we've not disclosed.
THE COURT: That was the second part of your question.
BY MR. SQUIRE:
Q. That's right. There are people that you've talked to that you did not provide to her, isn't that correct?
MR. STRIGARI: Objection, Your Honor. It was previously decided by Your Honor that this is information that relates to the actual specifics of the case, and because of the confidentiality that plaintiff is not seeking to waive at this point, we feel that this line of questioning is inappropriate.
THE COURT: Mr. Squire?
MR. SQUIRE: Your Honor, I am not asking him who he spoke to. I am merely asking whether there are people who he spoke to that, when requested, he did not disclose those names

to Judge Squire. I'm not asking what they said or anything else. I am merely asking whether there were people who he spoke to in the course of this investigation.
THE COURT: The objection is overruled. Proceed.
THE WITNESS: The way you just phrased it was a different question than you asked me. Can you ask your question again?

MR. SQUIRE: I would like for the court reporter to read it back, please, because I don't want to change it.

THE COURT: Well, it doesn't matter whether you want to change it or not, Mr. Squire.

The question to you, Mr. Coughlan, was this: Are you saying that there are people out there who you contacted for information -- and I believe you called them sources, Mr. Squire -- that have not been revealed to the respondent, Judge Squire?

THE WITNESS: I believe that's correct. I can say for sure, Your Honor, there are people who have talked to us. You just framed it in terms of contact that we contacted.

THE COURT: That's right.

THE WITNESS: I believe it's correct that there may be people we've contacted who provided information that didn't turn out to be of any significance, so we've not provided those names. That's correct.

THE COURT: Proceed, Mr. Squire.

BY MR. SQUIRE:

Q. What about people who contacted you?

A. Right. That's what I just said. We did not provide the name of everyone who may have said to us anything about this issue.

Q. But has not Judge Squire asked you for all those names?

A. No. She's asked us for who filed the grievance.

Q. No. Hasn't she asked you --

MR. STRIGARI: Objection, Your Honor, same basis. He's asking about facts that are relating to the investigation process that he has not waived at this point.

THE COURT: Overruled.

MR. SQUIRE: Your Honor, I merely -- thank you.

THE COURT: I understand. Overruled.

MR. SQUIRE: I am asking Mr. Coughlan whether he received a request from Judge Squire for the names of all people who either were contacted by the Disciplinary Counsel or contacted the Disciplinary Counsel in connection with this investigation.

THE WITNESS: Absolutely not. We were not requested to provide the names of everybody we talked to, no.

BY MR. SQUIRE:

Q. What were you asked?

A. Well, I would have to see the letters, Counsel, and you, apparently, don't want to waive. So I can't say precisely what

we were asked, but my understanding is we were asked who filed the grievance, who brought this case to you.

Q. Is it your policy, if someone asks you who contacted you, to in all cases disclose that to the respondent?

A. If a grievance is filed, we notify the respondent who filed the grievance. If it's anonymous, we say, We got an anonymous grievance.

But no. If your question is, do we tell them everybody we talked to, no, not at the investigation stage.

Q. And in the event you refuse to disclose the name of a person that you're talked to and the respondent feels that that is necessary information for them to know in order to meaningfully respond to your letter of inquiry or to your draft complaint, is there a mechanism for the respondent to appeal your refusal?

A. Our investigations are conducted on our part. The respondent doesn't have any procedural rights, that I am aware of, during an investigation.

Q. Do you know of any procedural opportunity for a respondent to petition the board of grievances in advance of the time a probable cause determination is made?

A. No, no more than I would expect in a criminal case. During a police investigation, you don't have a right to challenge it or delay it or demand any other special due process.

MR. SQUIRE: Thank you very much, Your Honor. I have no other questions.

THE COURT: Mr. Strigari, anything further?

MR. STRIGARI: One second, Your Honor.

THE COURT: Thank you.

(WHEREUPON, there was a brief interruption.)

MR. STRIGARI: Nothing else, Your Honor.

THE COURT: Thank you.

I have a few questions, Mr. Coughlan. I'm sorry to keep you any later, but let's --

THE WITNESS: No problem, Judge.

THE COURT: Let's try to get this finished.

Do you have a policy that you redact names on grievances?

THE WITNESS: No. Now, let me say one thing with connection with that. If a grievance is filed with us and the person is identified and then they put in there, "But I want to file this anonymously," we will honor that request until a court orders us otherwise. So, partially, yeah. It's possible

that we would not supply a name if that comes in at the grievant's request.

THE COURT: Do you know whether that has occurred in this case?

THE WITNESS: It has not.

THE COURT: Has not?

THE WITNESS: Has not.

THE COURT: All right. There is, under the Gov. Bar Rule V, Section -- you know these better than I do, I assume -- Section 4(d)(1), you can go to the board and ask for an extension of time for your investigation, I believe, you file with the secretary of the board or something?

THE WITNESS: Correct. We actually have a 365-day window within which to complete our investigation. During that 365 days, we're supposed to complete it at different stages, and, if we don't complete it, say, at 60 days or whatever, then we have to ask for more time to complete our investigation.

THE COURT: Right. And you do that by doing what?

THE WITNESS: We just write a letter to the board explaining where we are and why we need more time.

THE COURT: And that would be the same procedure you utilize when you are directing -- under 4(h) directing an inquiry concerning a procedural question, because there is something in there about --

THE WITNESS: Well, there is something in there that allows us to ask the secretary of the board a question, a procedural question. I don't think we've ever utilized that provision.

THE COURT: Okay. Is there anything that would

prevent Judge Squire from writing a letter to the secretary of the board?

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THE WITNESS: No, nothing at all. She is free to do so. As I mentioned, once they get, the respondent gets, the draft complaint, they can respond to that. That response goes with the draft complaint to the board, and that's happened here.

THE COURT: Right.

THE WITNESS: I've seen situations where they filed a motion to the board at that stage requesting dismissal. I don't think, you know, it's preferable, but I've seen that happen.

THE COURT: It's been done?

THE WITNESS: It's been done.

THE COURT: Whether proper or not, it's been done?

THE WITNESS: Correct.

THE COURT: Okay. In light of my questions -- and I don't want to foreclose any questions -- Mr. Strigari, do you have anything further?

MR. STRIGARI: Nothing further, Your Honor.

THE COURT: Thank you.

Mr. Squire, anything further?

MR. SQUIRE: I have nothing further, Your Honor.

THE COURT: Thank you.

Mr. Coughlan, you may step down.

(Whereupon, the witness was excused.)

THE COURT: Do you, Mr. Strigari, intend to call

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anyone else at this time?

MR. STRIGARI: We rest our case, Your Honor.

THE COURT: Thank you, Mr. Strigari.

Mr. Squire, do you intend to present any testimony at this time?

MR. SQUIRE: No, Your Honor, I do not.

THE COURT: All right. Well, then, the Court -- you know, I could ask you guys for a lot of oral argument, but we've had a lot of oral argument informally already. But if you would give me about four or five minutes to collect my thoughts, I may have an order for you already. So just give me a short recess of four minutes or five.

Thank you.

MR. STRIGARI: Thank you, Your Honor.

THE COURT: I'm sorry. One other question. I had twice in my notes to ask about it and I didn't.

We're back on the record. Mr. Strigari, there was an issue that you raised in the -- maybe I raised part of it, but I think you raised it -- I know you raised it up in the informal conference. You were questioning why we waited until the last minute to file this. Is that correct?

MR. STRIGARI: For Mr. Squire filing it.

THE COURT: Yes.

MR. STRIGARI: I don't believe that I was questioning why it took him so long to.

THE COURT: I thought you did on the basis of laches or something. Is that not what you were doing?

MR. STRIGARI: That must have been the rationale. I

was asking the question of why to the Court up in the chambers, yes, Your Honor.

THE COURT: Okay. I remember.

But, Mr. Squire, do you remember that discussion?

MR. SQUIRE: I do not, Your Honor.

THE COURT: Okay. I must have dreamed it. Thank you.

(Whereupon, a recess was taken at 5:46 p.m., and the proceedings reconvened at 6:00 p.m.)

- - -

IN OPEN COURT:

THE COURT: Ladies and gentlemen, I apologize. They turn off the air conditioning in this building promptly at 4:00. If it's feeling hot in here, it is.

Because of the urgency of this whole matter and because of the fact that the board is meeting tomorrow, I thought it better that I rule from the bench and make some what I consider to be minor observations on the evidence and on my consideration of the motion filed, then follow up tomorrow with a written decision.

First of all, after listening to the testimony and after reviewing the Younger Doctrine -- that is, the Younger

Abstention Doctrine -- I believe that I don't have any jurisdiction to hear this case to begin with, although there is no formal mechanism provided for -- there is nothing that excludes the rules, no formal mechanism provided for the rules and nothing that's excluded by the rules that permits this type of contact with the board. And, apparently, from Mr. Coughlan's testimony, there has been past practices of motions

filed and acted upon by the board.

Oh! And I wanted to go through the three requirements of the Younger Doctrine, and I left them in there. Just get me the paperwork in there, and I'll go through those here in a second just for the purposes of the record.

But, to be honest with you, based upon my reading of the Younger Doctrine and the testimony that's just been presented here today, I don't believe this Court has jurisdiction to act. But let's assume I had jurisdiction to act.

I believe we would have a tough -- well, actually, I believe there is a serious question as to whether the plaintiff has met her burden in proving the necessary requirements for the TRO. Specifically, two places I believe the plaintiff has is found lacking, first of all on the substantial likelihood of success on the merits and secondly on the fact that the plaintiff has not met her burden on the showing of irreparable harm in this case.

And, Mr. Squire, you make a good argument, and I guess your argument kind of goes along in this manner. You're equating the public disclosure of this ethics complaint with a due process violation affecting your client's property interest, the property interest being the harm that may come to your client in the -- in the, or your client vis-a-vis the electorate. But this Court finds that the motion fails to present a substantive link between those two by any stretch of the imagination.

Now, Mr. Coughlan, you testified that you don't -- that the respondent is not provided any procedural rights

during the investigative process, and you don't believe, I guess, that they should be provided any procedural rights, but then you went on to describe several procedural rights that they have. And I believe that they do have certain procedural rights, and, so, I probably disagree with you in that respect, but, from the standpoint of what has been shown here, the evidence does not indicate that there was any nondisclosure of witnesses or grievants, that there was not -- I want to make sure -- I'm getting a double negative, maybe a triple negative, in here.

The evidence does not indicate that there was any nondisclosure -- that's it -- any nondisclosure of witnesses or grievants being used in the probable cause proceeding. The evidence indicates that no one asked to remain anonymous

specifically in this proceeding, and it appears that -- from what I can tell, it appears that Plaintiff, Ms. Squire, did not ask for the specific names, and there was no contrary testimony or evidence presented to that effect, although this Court accepts the testimony of Mr. Coughlan that all of the grievants are listed in the draft complaint and all -- and most of the witnesses upon whom -- no -- all of the witnesses upon whom they will rely are listed in that complaint.

I wanted to go back to the Younger Abstention Doctrine. As we all know, there are three factors, or three requirements, that I must find: first, that there is an ongoing state judicial proceeding -- and obviously there is that; that those proceedings must implicate important state interest. And, again, I think it's beyond debate that that is true, but I don't believe that the plaintiff has proved that

there is not an adequate opportunity in the state proceedings to raise a constitutional challenge, and the plaintiff has that burden in this case.

So, all in all, and to be honest with you, if I can raise it on my own, I would almost say that there is some laches involved here, but I don't think that's necessarily dispositive of this case.

So this Court does not believe it has jurisdiction, but should it even find that there was jurisdiction, I don't believe that this Court could issue a TRO on the state of the

record and the pleadings as they are at this time.

The Court will follow up with an order tomorrow morning to that effect, but I wanted to get it out to you guys as soon as possible.

Mr. Squire?

MR. SQUIRE: Your Honor, I would beg the Court's indulgence because I perhaps misunderstood. I thought when you said you were going to take a break that you were going to give us an opportunity for closing argument.

THE COURT: No. No. To be honest with you, I said that we've argued this enough up in chambers. I was asking for your indulgence just to get my thoughts together on my decision. But you, apparently, rise to make an argument.

MR. SQUIRE: Well, Judge, I mean, you've ruled. There is not much point in me making the argument, but simply --

THE COURT: That would be my thought, Mr. Squire.

MR. SQUIRE: You made references to certain things in the record, Your Honor, that Mr. Coughlan talked about

documents that he had in his database, a couple of which I had here that I wanted to bring to the Court's attention.

THE COURT: I asked you if you wished to present any testimony or evidence, and you said no.

MR. SQUIRE: No. I wanted to present no testimony, Your Honor. I wanted to bring these documents to your

attention. He was asked whether he had correspondence from Judge Squire, and he said he checked his database before coming over here and that he didn't know specifically, but I had copies of two such letters where she specifically asked for the identities of these people, and I felt it was important to the Court's determination of this matter to have these records available to you in terms of to determine whether or not we had met our disclosure, but I would just simply say --

THE COURT: Here is what I'm going to allow you to do, Mr. Squire.

MR. SQUIRE: All right.

THE COURT: I'm going to allow you to proffer those, but I have to tell you I thought I made it specifically clear on the record that if you wished -- that you were given an opportunity to present testimony and/or evidence, but you may proffer.

MR. SQUIRE: I would like to present Plaintiff's Exhibits 1 and 2.

THE COURT: Okay.

MR. SQUIRE: January 7th letter.

THE COURT: We're going to call them Defendant's proffered Exhibits 1 and 2.

MR. SQUIRE: 1 and 2, Your Honor, letter from Judge

Squire to Mr. Coughlan requesting the names of any person making referrals, and a letter November 24th of 2004 from Judge

Squire to Lori Brown basically requesting the same information, the identities of any persons.

THE COURT: Any persons what, now?

MR. SQUIRE: It says here, "Please advise by whom were the issues of concern brought to the attention of the Supreme Court of Ohio Disciplinary Counsel."

And this one says, "This letter is to request that any and all referrals involving the undersigned, including the name of any persons making any such referrals to the Disciplinary Counsel, be faxed to my attention," the specific thing that we're alleging here that was asked for and wasn't provided.

So these were letters that are part of the database that Mr. Coughlan referred to, and I would like to proffer them for the record.

THE COURT: You may proffer them. The Court will accept the proffer. The Court won't accept them as testimony, or as evidence, at this time, but let me make sure you understand something, Mr. Squire. And I seem to have some squirming from that side of the room. So let me put that at ease over there before you squirm yourselves out of the courtroom.

That which you have just now proffered I don't believe contradicts his testimony.

MR. SQUIRE: Okay, Judge.

THE COURT: But go on if you wish to make another argument.

MR. SQUIRE: The only thing I was going to say, Judge, there were several points that I wanted to make in advance of you ruling. I mean, I respect the Court's ruling. The ruling is what it is, but I would just ask the judge, given the nature of this proceeding -- we've had a hearing here, albeit in an expedited hearing. The Court has decided that it is not going to issue an injunction, but I would suggest that, given the nature of what's occurred here procedurally -- that this isn't a TRO, it's a preliminary injunction hearing -- normally TROs are issued ex parte. When we have a hearing of this nature, I would just ask that this court at this time consider granting a stay of the refusal to grant the TRO, and I understand the Court is going to rule, but, as I've indicated, this is a matter of most gravity to my client. And, again, I respect the Court's ruling, but I would move for a stay at this time, and I would just ask that the Court characterize this as a ruling on a preliminary injunction.

Thank you, Judge.

THE COURT: Thank you. Well, first of all, no. This is a ruling on the motion for the TRO. There is no motion for a preliminary injunction before the Court at this time.

Mr. Squire, I appreciate your tenacity. I really do. You don't give up, and that's a quality that I appreciate, but

your request for a stay is denied at this time.

All right, gentlemen and ladies. Thank you very much. This matter is adjourned.

(Whereupon, the proceedings were concluded at 6:16

p.m.)

- - -

C-E-R-T-I-F-I-C-A-T-E

I, Denise N. Errett, Official Court Reporter, certify that the foregoing is a true and correct transcription of my stenographic notes taken of the proceedings held in the afore-captioned matter on October 6, 2005, before the Honorable Gregory L. Frost, Judge.

Denise N. Errett, RPR-CM
Official Court Reporter

DATE: January 16, 2006

- - -

DENISE N. ERRETT
Official Court Reporter
U. S. District Court
85 Marconi Boulevard, Rm. 260
Columbus, OH 43215
Telephone: 614-719-3029
SSN: 290-56-2862

Date: January 23, 2006

Percy Squire
Squire & Pierre-Louise
Attorneys at Law
65 E. State Street, Suite 200
Columbus, OH 43215

IN RE: Carole Squire vs. Jonathan Coughlan, et al.
Case No. C-2-05-922 - Transcript of proceedings held on October 6, 2005, before the Honorable Gregory L. Frost
Page 38

TRANSCRIPT OF PROCEEDINGS:
42 pages @ $3.30 per page = $138.60

TOTAL DUE: $ 138.60

I certify that the transcript fees charged and page format used comply with the requirements of this court and the Judicial Conference of the United States.
Denise N. Errett

Thank you!

search

[No Menu inside the Offender Search.]

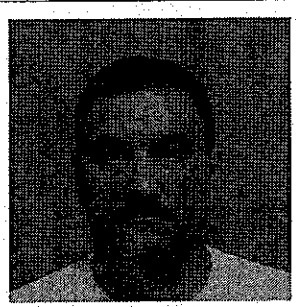
Ohio Department of Rehabilitation and Correction Offender Search Detail

<< Search Page

Your search only returned one record.

GEORGE M RILEY SR

Number:	A587757
DOB:	08/14/1963
Gender:	Male
Race:	White
Admission Date:	09/18/2008
Institution:	Chillicothe Correctional Institution
Status:	INCARCERATED



Victim Info | Ohio Revised Code | Pre-S.B. 2 Felony Sentencing Chart | S.B. 2 Felony Sentencing Chart

Offense Information

THEFT **Committing County:** LICKING	**Counts:** 1 **Admission Date:** 09/18/2008	**ORC:** 2913.02 4 **Degree of Felony:** Third	Victim Info
DEFRAUD CREDITOR **Committing County:** LICKING	**Counts:** 1 **Admission Date:** 09/18/2008	**ORC:** 2913.45 4 **Degree of Felony:** Third	Victim Info
THEFT **Committing County:** LICKING	**Counts:** 2 **Admission Date:** 09/18/2008	**ORC:** 2913.02 4 **Degree of Felony:** Fourth	Victim Info
DEFRAUD CREDITOR **Committing County:** LICKING	**Counts:** 2 **Admission Date:** 09/18/2008	**ORC:** 2913.45 4 **Degree of Felony:** Fourth	Victim Info
CRIMINAL SIMULATION **Committing County:** LICKING	**Counts:** 1 **Admission Date:** 09/18/2008	**ORC:** 2913.32 4 **Degree of Felony:** Fourth	Victim Info

Sentence Information

Stated Prison Term:	4 years and 11 months
Expiration Stated Term:	08/06/2013

Notes

The above information may not contain a complete list of sentencing information for each offender.

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Business

GoOcean 'dream' a nightmare

By Michael Levensohn
Times Herald-Record
Published: 2:00 AM - 05/28/08

It's been nearly a year since GoOcean announced plans to build a $120 million water park in Goshen. The project has been buffeted by scandal, much of it the result of an unwitting alliance with a two-time felon.

GOSHEN — The would-be savior of the GoOcean Water Park and Resort came to town in late March and spun a tale.

Mike Riley had been installed as chief executive officer of GoOcean just days before. He and GoOcean founder Liliana Trafficante came to Goshen to meet with the sellers of a 120-acre site just off Exit 124 of Route 17.

Since last summer, Trafficante has touted the property as the future site of a $120 million water park that would also fulfill her life's goal of providing jobs and housing to foster children making the transition to independent living.

She made a $14 million offer on the land in September, but never went to contract.

"There was never any money," said Ed Arace, a partner with landowner 124 Goshen Partners and former Hudson Valley regional vice president of Empire State Development.

Trafficante, a Manhattanite, spent most of the past decade trying to establish a water park in various towns around New York state. Before coming to Goshen, she pursued sites in Chester and Woodbury, as well as one near Lake Placid, but failed to come up with the money to buy the land.

Along the way, she ran up seven-figure debts and strung along investors waiting for some return on their money.

Riley promised to change all of that.

In a meeting at the Goshen Diner, Riley told his story first to a newspaper reporter, and then to representatives of the property owner.

Riley, 44, said he was the son of Nancy DeBartolo, of the San Francisco-49ers DeBartolos, and that his family made its fortune building malls and hauling trash.

Riley mentioned his private jet. He said he had Jeb Bush on speed-dial and Bill Gates' lawyer on retainer.

He said the GoOcean complex would be even grander than Trafficante had envisioned, with time shares, an RV park and a 500-room hotel in addition to the water park. He said he would complete the $14 million land purchase in a matter of days, and then move on to sites in Florida, Ohio and West Virginia.

Riley was accompanied by Charles Hunter — he's with "The Riley Group," said Riley — who clutched a suitcase that Trafficante would later say appeared to be full of cash.

Riley said the delays and confusion that had surrounded the project since last summer stemmed from Trafficante's involvement with untrustworthy characters. She'd been taken advantage of by previous lenders, he explained.

"There have been a lot of promises prior to this," Riley said. "Now there are facts."

The facts

Eight days before he showed up in Goshen, George M. Riley pleaded guilty to seven felony theft and fraud charges in Licking County, Ohio.

Over several years, Riley had forged documents and committed other frauds to obtain financing on several vehicles, an RV and a mortgage for a home in St. Clairsville, Ohio, said Licking County prosecutor Ken Oswalt.

The house has since been foreclosed on, and the RV and several of the vehicles repossessed, Oswalt said. Riley could be sentenced to as much as 17½ years in state prison, and Oswalt is seeking restitution of about $300,000 to cover the deficiencies on the loans.

It was not Riley's first run-in with the law. In December, Riley pleaded guilty to a felony theft charge in Eagle County, Colo., stemming from a 2004 business deal with a local gravel company.

He avoided prison in that case by paying $509,697 in restitution.

Devil in the details

Trafficante ousted Riley in April, after she found out about his background.

Before he left, though, Riley sold Trafficante on a site for a second water park. The 70-acre property is in St. Clairsville, Ohio, a city of 5,000 near the West Virginia border.

It's the same city where Riley had purchased the house with the fraudulent mortgage, and an area where he has deep roots.

The property is owned by members of the Fatula family, longtime associates of the Rileys. George Riley's mother — the one he claimed was a DeBartolo — is actually the Fatulas' housekeeper.

At Riley's urging, Trafficante signed a contract to buy the land for $8 million — several times its value — without visiting the site or meeting the Fatulas.

She claims she'd arranged a meeting with Ashton Fatula, the 18-year-old who handled much of the negotiation, but the meeting was nixed when Fatula's school trip to New York City was canceled.

Ashton Fatula admits Trafficante got duped, but claims he did nothing wrong.

"The piece of property she is buying obviously is not worth $8 million, but she had the time to do her due diligence," said Fatula, who suggested the land's value might be $2 million or $3 million.

Family feud

There's been some infighting in the Fatula clan in recent years.

In 2006, George Fatula sued his son, Rusty, and grandson, Ashton, claiming they conspired to steal his tent and awning business in Wheeling, W.Va., while George Fatula was in the hospital being treated for cancer.

Mark Blevins, a lawyer in Wheeling who represented George Fatula in the lawsuit, claims Ashton and Rusty committed a variety of other frauds, from stealing George Fatula's land to passing a phony check at a Lamborghini dealership.
He detailed his concerns in letters to the U.S. Attorney's Office and several local and state law-enforcement agencies, but none has taken the case.
"Rusty and Ashton go around this area bragging that they're bulletproof," Blevins said. "And they are."
Ashton Fatula blamed his uncle for instigating the lawsuit, which he said his grandfather dropped after getting out of the hospital. He accused Blevins of carrying out a baseless vendetta against his family.
"I was brought up on fraud charges, and they were dropped because there was nothing there," Fatula said.

Patience runs out

Trafficante counts Riley as the fourth "scammer" she's encountered while trying to develop the water park.
"I've met a series of George Rileys," said Trafficante, who claims that the $14 million offer on the Goshen land fell through because the lender she met through Craigslist was really a con artist. She said she's recently hired a security specialist to vet future business associates.
"Nobody's real until the money's in the bank. That's what I've learned," she said.

Trafficante claims she's lined up a hedge fund that has promised $30 million in funding for the water park, but she refuses to divulge its name.
"She continues to lie and say she has this money, but it never surfaces," said Ashton Fatula.
Last week, Trafficante said she hopes to renegotiate the purchase price on the Ohio land and move forward. Two days later, she said she won't go through with the deal, because her lawyers believe the Fatulas' deed on the property may be fraudulent.
"If she doesn't come up with money soon, my next step is going to be litigation, because I'm through playing with her," Ashton Fatula said.
"If you're surrounded by scam artists, then most likely you are one, in my book," he said.

'Obligation to investors'

Trafficante claims the handful of legitimate investors in GoOcean have put up about $800,000. But the total of all claims and judgments against her and her businesses runs into the millions of dollars.
In a recent conference call, several investors pressed Trafficante to return their money. She promised to pay them back when the hedge fund money comes in. It's a promise she has made repeatedly, in e-mails and phone calls, over the past few years.
"She makes up this scam, for lack of a better phrase, where if she can get 10 or 15 grand, she can get access to more money," said Kelly Bigham, who loaned Trafficante $5,000 three years ago. "Of course, it was just a big song and dance."
Bigham said it wasn't worth it to hire a lawyer over a $5,000 debt.
"She told me the money I gave her could be written off as a charitable donation," he said.
Trafficante's cell phone rings constantly these days with calls from investors and lenders. She understands why people don't believe her when she tells them, yet again, that the money is coming.
Her dream, she said, has become a burden.
"I'm stuck. I have an obligation to investors," Trafficante said.
To fulfill that obligation, she plans to return to the place that gave GoOcean its name.
"My great hope is that we can get everything going with Goshen," Trafficante said.
In April, a lawyer for 124 Goshen Partners sent Trafficante a letter asking her to stop contacting the partners and to take photos of the property off GoOcean's Web site.
"There's absolutely no deal. There's no contract, no nothing," said Arace.
Trafficante acknowledges she has a credibility problem, but she isn't willing to give up on her dream.
"There's other land in Goshen if this doesn't work out," she said.
mlevensohn@th-record.com

Mortgage Fraud Blog is the premier website for news and information on mortgage fraud and real estate fraud throughout the United States.

Rachel Dollar, the editor of Mortgage Fraud Blog, is an attorney and Certified Mortgage Banker who handles litigation for lending institutions and secondary market investors. She is an author and a nationally recognized speaker on the topic of mortgage fraud. Ms. Dollar is a shareholder with the law firm of Smith Dollar, PC, is licensed to practice law in California and maintains offices in Santa Rosa, California. Email Ms. Dollar

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- 2 Women Indicted for Falsifying Loan Applications

Tuesday, June 26, 2007

Florida Man Indicted for Fraud

George M. Riley Sr., 43, Tampa Springs, Florida, formerly Hebron, Connecticut, was indicted on 14 felonies in Licking County Common Pleas Court, including robbery, theft, fraud and engaging in a pattern of corrupt activity charges. According to media reports, he also is under indictment on other charges in Franklin County, Florida and Colorado.

Riley allegedly misappropriated investment money, provided false information on a mortgage loan application, and obtained loans under false pretense.

It is alleged that **Riley** misrepresented facts to procure a mortgage loan for a residence located at **300 Johnet Drive, St. Clairsville**, and the sale and financing of a 2002 Dodge Ram from **A&B Auto Sales**, Bellaire, to the same woman.

According to media reports, **Riley** owned or was involved with several businesses in Hebron: **American Aggregate Corp. USA, MC Riley Properties, United Waste, MCS Co. Inc., Ireland Equipment Co.** and **Eagle Industries**.

Riley misappropriated $500,000 given to him as an investment in a company by a couple. **Riley** also stole more than $100,000 from **Manhattan Mortgage Co.**, and fraudulently obtained a loan for more than $100,000 from **Commodore Bank**.

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Posted by Staff Reporter on 06/26/07 at 04:25 AM
Mortgage Fraud Locations • Florida • Total comments: (10) (0) Trackbacks •

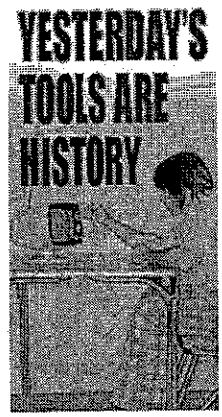
1. A man by the name of R Foy Phillips fraudulently obtained my mother's (Della Kelly) land, yet I never discovered whether he did prison time or had to pay restitution for it. My mother owned land at 6315 Theall Road, Houston, TX. He was supposed to be pay her approx. $1000.00 per month to her, along with royalty. R Foy Phillips and his company purchased the land from her at $177,000. When it was time to sign the contract, which was a huge stack of documents, and in which my mother did not realize she needed an attorney for this transaction, he had slid a special warranty deed or a quit claim deed within the paperwork and had used the sign here stickers so she would know where to sign. Being that the stack was so large, she signed everywhere there was a sign here sticker. Unfortunately, not knowing, she had just signed away her land. He paid her the $1000 per month for a year, re-sold the 6315 Theall land (2.5 acres) to someone else and then filed bankruptcy so he could not be touched. How about that? My mother had this land for many, many years, only to be swindled out of it. He not only did this thing to her, he did it to several of our neighbors.

   Posted by Michelle Kelly on 06/26 at 09:11 AM

2. It amazing that there are so many cases exactly like this. You would think that people would get the hint that crime doesn't pay.

   Posted by havensofmanhattan on 06/26 at 11:35 AM

3. I see an awful lot of help and assistance for lenders and brokers but what about the folks who were misled by unscrupulous brokers with these adjustable Mtges? My own personal situation is such that I suspect is indicative of many people now in trouble! We were told that our 1/7/10 ARM was unmodifiable (ie payments fixed at various amounts for the first, and second through seventh years. Nothing was mentioned about negative amortization, or the consequences of its 110% Cap. Indeed we were assured that there were non. I read the mortgage statements each month and sure enough the first few did not



Today's News

Some Sources require Registration.

New York Tops Nation In Mortgage Fraud
InvestmentNews
New York has earned the dubious honor of being the nation's leader in mortgage fraud last year, according to a report from the LexisNexis Mortgage Asset Research Institute.

Two Men Charged with Fraud Relating to Sale of Prior Lake Condos
Savage Pacer
Two Prior Lake men and a California man each were charged with 15 counts of fraud in federal court April 21 for allegedly scamming lenders out of $3.1 million.

How Widespread Mortgage Fraud Toppled the U.S. Housing Market
Real Estate Channel
Last July, Manhattan D.A. Robert Morganthau announced an indictment of the principals in a press release which declared that "AFG's business model was focused solely on defrauding the lending banks of millions of dollars."

Warning: Mortgage Fraud Ahead
Philadelphia Daily News
The FBI estimates that between $4 billion and $6 billion is lost annually in mortgage fraud schemes.

Mortgage Fraud: Understanding And Avoiding It
San Francisco Chronicle
Fraud in its simplest form is deliberate misrepresentation and deception.

18 Arrested in SF Bay Area Mortgage Fraud Case
Mercury News
Federal authorities have arrested 18 people in the San Francisco Bay area in a $10 million mortgage fraud case.

Courtview 2000

General Inquiry

New

Summary | Parties | Events | Dockets | Fields | Notes | Disposition

CRIMINAL - Summary

2007 CR 00342 STATE OF OHIO vs. RILEY SR, GEORGE M

Prelim Case Nbr

DEFENDANT

Full Name RILEY SR, GEORGE M

D.O.B 08/14/1963

Address

City/State/Zip

Attorney(s)
MCKENNA, TIM, P.O.
SHAMANSKY, SAMUEL

Jurisdiction LICKING COMM(PLEAS

Case Information

Degree of Off. Felony 1st Degree

Offense Date 01/01/2002

Arrest Date

Officer

Complainant

Prosecutor OSWALT, KENNE

Judge SPAHR, JON RAY

Additional Fields

Case Comments

Case Attributes

Number 2007 CR 00342

Filed 06/25/2007

Status OPEN

Incomplete ☐

Charge(s)

Charge	Action Code	Indict Charge	Amd Charge	Disposition Code
1	ENGAGING PAT. OR CORR. ACT-2923.32			
2	ROBBERY-2911.02			

3	GRAND THEFT-2913.02GT
4	DEFRAUDING CREDITORS
5	AGGRAVATED THEFT - 2913.02A2
6	DEFRAUDING CREDITORS
7	GRAND THEFT-2913.02GT
8	DEFRAUDING CREDITORS
9	CRIM SIMULATION-2913.32
10	AGGRAVATED THEFT - 2913.02A2
11	DEFRAUDING CREDITORS
12	AGGRAVATED THEFT - 2913.02A2
13	AGGRAVATED THEFT - 2913.02A2
14	DEFRAUDING CREDITORS

Dispatch Politics

Governor hits back at Inspector General

Attorney for state's top cop calls sting report 'scurrilous'

Tuesday, May 4, 2010 2:53 AM

BY JOE HALLETT AND MARK NIQUETTE

THE COLUMBUS DISPATCH

Scurrying to stamp out a smoldering scandal before it becomes a wildfire, Gov. Ted Strickland and an attorney for his top public-safety administrator questioned the veracity of an investigation into an aborted sting at the Governor's Residence.

Yesterday, Strickland strongly rejected allegations in a report by state Inspector General Thomas P. Charles that Public Safety Director Cathy Collins-Taylor lied under oath, saying "she's done nothing wrong."

And Collins-Taylor's attorney, Charles "Rocky" Saxbe, went a step further, calling Charles' report so "scurrilous" and containing such "fabrications" to arrive at a predetermined outcome that Charles' office is the one that should be investigated.

Saxbe portrayed Charles as bitter about the administration's handling of State Highway Patrol matters, charging he used the Governor's Residence investigation as "a platform for him to pursue a personal agenda."

The attack on Charles and his investigation came four days after the inspector general concluded in a 48-page report that Collins-Taylor and a top patrol officer lied under oath about a decision to halt a Jan. 10 sting at the Governor's Residence. The sting was to catch a courier dropping off contraband for an inmate working at the residence.

The report said the key factor in canceling the operation was to avoid politically embarrassing the governor, who is running for re-election this year. It further states that during sworn interviews with the inspector general's office, "Collins-Taylor did not tell the truth about

Gov. Ted Strickland, from left, and attorney Charles "Rocky" Saxbe, reject the report submitted by Inspector General Thomas P. Charles. Saxbe said Charles is pursuing a personal agenda through his report.

RELATED STORY

- Inmate program at Governor's Residence 'off course'

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her decision to shut down the operation, nor was she truthful about the timing of her decision."

But Strickland said, "I don't think she lied under oath. ... I think in terms of the timing of that decision, that's well open to question."

Charles, the chief state government watchdog for nearly 12 years spanning the administrations of two Republican and one Democratic governor, said he stands behind his investigation.

"Let the public read it and make their own determination," Charles said, declining to comment on the assertions made by Strickland and Saxbe.

The governor said he continues to support Collins-Taylor's confirmation to her cabinet post.

Although she was appointed Sept. 18, Strickland's office mistakenly failed to submit her appointment and four others to the Senate for approval. Collins-Taylor's confirmation hearing is expected later this month.

A number of Republican senators have said they would have trouble voting to confirm Collins-Taylor based on the allegations that she lied under oath.

"I would hope that they would move ahead with the confirmation, ask whatever questions they need to ask and make a decision," Strickland said.

Saxbe said he would provide his "reflections on what the record says" to Sen. Timothy J. Grendell, the Chesterland Republican who heads a committee that has been examining alleged interference in patrol investigations. Saxbe said he hopes Charles will testify "on the misrepresentations and falsehoods contained in his report."

Among the "incredible flaws throughout" the report, Saxbe said, depositions contradict Charles' claim that the sting "was safe, well-planned and routine." Moreover, Collins-Taylor clearly stated to investigators that she meant Strickland when she referred to potential embarrassment for "the boss," and did not obfuscate, as the report implied.

Saxbe said Charles, 67, a retired 31-year veteran of the patrol, "is consumed with his own power," portraying him as bitter about various decisions, including Strickland's appointment of Col. David Dicken as the patrol superintendent. Charles wife, Bridgette, is a patrol captain. Charles had recommended her boss for the superintendent's job.

Saxbe said Collins-Taylor has no plans to resign: "My expectation is she's a fighter and she's not going to allow these kinds of scurrilous accusations to stand. They are fabrications."

The governor said he would accept her resignation if it were offered, but when asked whether there had been any discussions about that, he replied, "Absolutely none."

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Today's political news

- Turnout light as Ohioans go to polls
- U.S., Iran lob verbal bombs at nuke talks
- U.S. puts its nuke stockpile at 5,113
- The majority might already have spoken
- State's Latino commission criticizes Arizona law
- Ohio's new chief justice
- Inmate program at Governor's Residence 'off course'
- Governor hits back at Inspector General
- Gahanna rejects home for mentally ill
- Full pay promised to cancer patient seeking to use donated leave
- Dublin loses bid to get refund for land taken for Rt. 33 interchange
- City eases rule for parking lots
- Officials to consider land bank, stopping truancy suspensions, social activists told

"Of course, she can make whatever decision she wants to make, but I want to be very clear: I support her thoroughly," the governor said. "She's a good person, (and) I think she's done nothing wrong."

jhallett@dispatch.com
mniquette@dispatch.com

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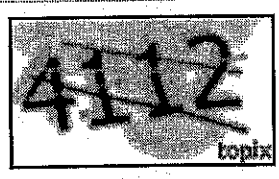

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BEFORE THE BOARD OF COMMISSIONERS
ON GRIEVANCES AND DISCIPLINE
THE SUPREME COURT OF OHIO

In re:	:	
	:	
Percy Squire,	:	Case No. 09-023
	:	
Respondent.	:	

DECLARATION OF MARK D. LAY

In accordance with the provisions of Title 28 U.S.C. §1746, I, Mark D. Lay, declare under penalty of perjury that the following is based on personal knowledge and true to the best of my knowledge, information and belief:

1. I am preparing this declaration for the reason when my deposition upon oral examination was taken on April 21, 2010, Mr. Squire was not present either in person or by telephone. I answered all questions asked truthfully however, by reason of the failure to show actual documents to me a number of my answers were incomplete because I could not remember details. I have now reviewed these documents and desire through this declaration to provide the Panel a complete statement of my relationship and financial arrangements with Mr. Squire.

2. I engaged Mr. Squire to represent me on June 15, 2007. Our initial understanding was that Mr. Squire would be paid a flat fee of $75,000.00 for handling my defense in N.D. Ohio Case No. 1:07 CR 339, a federal action in United States District Court in which I was accused of investment adviser fraud and mail fraud. I agreed to pay Mr. Squire $25,000.00, upon execution of the June 15, 2007 engagement letter and the balance, $50,000.00 by June 30, 2007.

EXHIBIT
B

3. The full $75,000.00 was paid however, it was paid over time by reason of the many demands on me at the time given the impact my indictment had on business revenue at my company MDL Capital. Mr. Squire worked with me to assure that I was represented despite the slow initial payments.

4. The trial in N.D. Ohio 1:07 CR 339 began on October 15, 2007. The jury returned its verdict on October 30, 2007.

5. I was sentenced on July 8, 2008, and remanded immediately to the custody of the United States. I was not given any time to place my personal affairs in order. I did not expect to be required to go directly from my sentencing to incarceration. This abrupt change left me vulnerable to numerous business and financial problems.

6. Prior to engaging Mr. Squire, MDL Capital and I had been involved in multiple lawsuits arising from claims of negligence in relation to management of a hedge fund, the MDL Active Duration Fund (ADF) that I had started in Bermuda in May 2002. My original engagement as an investment adviser for the State of Ohio began in 1998. I had no problems in connection with investment advisory services provided to the State of Ohio Bureau of Workers Compensation (OBWC) until issues were raised concerning ADF

7. Although I had been a investment adviser for OBWC, in 2002 when I set up ADF, I was not an investment adviser for OBWC. OBWC became an investor in ADF, but unlike in previous instances, in connection with ADF, OBWC was an investor, I was the investment advisor to ADF and ADF, not OBWC, was my client. This distinction is critical to my defense and appeal in the criminal case for the reason the prosecution

against me was predicated in large measure on theories concerning duties owed to clients and fiduciary relationships.

It was through Mr. Squire's research and diligence that we learned of the decision in Goldstein v. Securities and Exchange Commission, 451 F. 3d 873 (D.C. Cir. 2006) one of the key cases that establishes my innocence of the criminal claims against me.

8. By reason of the very close manner in which Mr. Squire and I had begun to work, we established a very close relationship of trust, separate and apart from the attorney-client relationship.

9. I asked Mr. Squire and he agreed to oversee all legal issues against me which he agreed to do. We did not enter into new engagement letters in writing. however, it was understood that Mr. Squire was entitled to be paid. We agreed that I would pay as I could, but we would settle the fee issue after my acquittal.

10. Over time both between and after my criminal trial, I was confronted with a host of legal matters. Set forth below is a list of the matters Mr. Squire undertook on my behalf, on the above terms:

a. Amtrust Bank v. Mark Lay, et al, 15th Judicial Circuit Palm Beach Fl., 5020080-CA-038492;
b. Dollar Bank Federal Savings Bank v. Mark D. Lay, et al., Ct. of Common Please, Allegheny County, PA, GD-09-8142;
c. Dollar Bank Federal Savings Bank v. Mark D. Lay, et al., Ct. of Common Please, Allegheny County, PA, GD-09-8139;
d. Dollar Bank Federal Savings Bank v. Mark D. Lay, et al., Ct. of Common Please, Allegheny County, PA, GD-09-8143;
e. MDL Capital Management Inc., et al. v. Federal Insurance Company, U.S. Dist. Court W.D. PA. 05-CV-1369 consolidated with 06-CV-0389;
f. Securities and Exchange Commission v. MDL Capital Management, Inc., et al., U.S. D.C. W.D. PA;
g. The Ohio Bureau of Worker's Compensation v. MDL Active Duration Fund, et al., U.D. Dist. Ct. S.D. Ohio E.D., 2:05-CV-00673;

h. Trafalgar Condominium Assoc., Inc., v. Toni Lay, et al., 15th Judicial Circuit, Palm Beach, FL, 203007 CV 022659;
i. United States of America v. Mark D. Lay, U.S. Court. of Appeals, Sixth Circuit, 08-3892;
j. United States of America v. Mark D. Lay, U.S. district court for N.D. Ohio, E.D., 1:07-CR-339;
k. MDL v. Federal Ins. Co.., Third Circuit Appeal, 08-3647;
l. All activity related to obtaining a pardon from former President George W. Bush;
m. All activity related to raising funds for my legal defense and welfare fund; and
n. All activity related to management of my personal affairs which due to my sudden and unexpected incarceration I have not been able to address personally.

11. The State of Ohio sued me civilly in federal court in Columbus, Ohio on July 11, 2005. In August 2007 my counsel in this case State of Ohio v. MDl, et al, S.D. Ohio Case NO. 2:05-cv-673, Patton & Boggs, and Lane, Alton & Horst, LLC, withdrew as counsel.

12. I was left facing a criminal trial and was without civil trial counsel by reason of this withdrawal.

13. Prior to their withdrawal I had paid hundreds of thousands of dollars to Patton, Boggs in legal fees. Patton & Boggs bill was $1,387,335.00. Other counsel who I had engaged was K.L. Gates who was paid $396,512.00 Buchanan and Ingersoll $98,791.00 and most recently Blank Rome roughly $300,000.00 of which roughly $100,000.00 has been paid.

14. In the course of my experience as Chief Executive Officer of MDL Capital, as a Wall Street employee and entrepreneur, I have attained great familiarity with law firms and their billing practices.

15. I have personal familiarly with the work performed on my behalf by Mr. Squire. Although I do not agree with the claim of Mr. Coughlan that Mr. Squire has billed,

converted or otherwise benefited from an additional $100,000.00 from trusts established for my legal defense and welfare, if he had, the total he would have been paid for three years of very intensive activity on my behalf would have been $175,000.00.

16. Mr. Squire has not been paid that amount, but I am completely comfortable based upon the time and attention and care that he has devoted to my personal welfare and welfare of my family that he is owed many times $175,000.00.

17. By reason of the unfairness of the outcome of my criminal trial, Mr. Squire agreed to undertake representation of me on all the matters listed above.

18. Mr. Squire undertook these matters based on a verbal agreement that if he stuck with my throughout this ordeal, I would see that he is fully compensated when I am released. In the meantime, Mr. Squire was authorized to work with Mr. Antoine Smalls, a co trustee and me to receive interim payment through the Legal Defense and Welfare Funds set up on my behalf. A primary purpose of these Funds was the payment of legal fees.

19. Although I do not, nor have ever controlled the disposition of these funds, Mr. Smalls and Mr. Squire always advised me of activities related to fund expenditures. I have reviewed all expenditures by Mr. Squire from the various financial holdings he managed on my behalf, both from records shown to me by Mr. Squire and those presented by Mr. Coughlan. Mr. Coughlan's claim that Mr. Squire misused or converted money due to me is incorrect. I have reviewed this carefully with both Mr. Smalls and Mr. Squire. Although I did not make ultimate decisions over the disposition of these funds, I was consulted and advised concerning all expenditures.

20. During the three years that Mr. Squire has represented me he has never charged me any expenses, i.e. lodging, travel, mileage, etc. He has always advanced the expenses from his fees, with one exception for a rental car.

21. Mr. Squire was authorized to withdraw money from the funds established on my behalf. There was no need for him to seek anyone's approval. There was no disagreement between me and Mr. Squire concerning what he was owed and he has never been paid the full value of his services. I trust Mr. Squire and have ratified, confirmed and approved his handling of these funds.

22. There was never any agreement or requirement for Mr. Squire to place funds on my accounts into his law firm trust account. The decision to place the funds into his trust account was exclusively his.

23. In April 2008, MDL, not me personally, received a final distribution of insurance proceeds from Case No. 2:05-cv-1396- AJS MDL Capital Management, Inc. v. American International Specialty Life Ins. Comp. et al., W.D.PA. The final distribution came in April 2008, four months before Mr. Squire at my request entered an appearance in this W.D. PA case on my behalf.

24. The funds received $113,228.18 were issued at MDL's request, to a Legal Defense and Welfare Fund on my behalf. It was MDL who received these funds, not me personally. The Legal Defense and Welfare Fund was set up by Mr. Squire. These funds were not settlement proceeds in Mr. Squire's hands.

25. The MDL v. AISL, case was settled in January 2006, more than two years before Mr. Squire entered his appearance in August 2008.

26. MDL, the recipient of the holdback insurance proceeds, not settlement funds, directed that the funds be used as agreed in the original for my legal defense. The agreement states:

> Section 2(C) of the Settlement Agreement shall be amended to read in its entirely as follows: The Parties agree that one hundred twenty-five thousand dollars ($125,000) of the Settlement Proceeds shall be reserved for purposes of any legal fees and expenses incurred by the Bermuda Directors during the Appeal Period for: (i) third-party discovery relating to the Ohio Litigation, (ii) responding to any Government Action, and (iii) the defense of the Bureau's Jurisdictional Appeal (collectively, the "Holdback Proceeds"). The Holdback Proceeds shall be held in reserve in accordance with Paragraph 1 of the Settlement Agreement for the duration of the Appeal Period (the "Holdback Period"), that the Holdback Period may be extended to the completion of any Government Action if the relevant entity or agency confirms to MDL and the Bermuda Directors that the Government Action has not been completed as of the expiration of the Holdback Period. Upon the expiration of the Holdback Period, the Bermuda Directors shall return any remaining Holdback Proceeds to MDL Capital.
>
> See, Stipulated Exhibit 55.

27. The funds transferred to Mr. Squire on April 24, 2008, roughly $113,228.18 were the holdback proceeds owed to MDL, not me. MDL placed these funds into a Welfare Fund, although the funds were under the terms of the above provision exclusively for legal fees.

28. The funds were to be managed by Mr. Squire on the same terms as had been contemplated when he drafted the Indenture for Eileen Rappaport and Cheryl Marrow in January 2008.

29. Mr. Squire had exclusive control of these funds. He consulted with me on their expenditure, but he made the ultimate decisions. How the funds were expended was entirely up to Mr. Squire, but he always kept me informed. In my opinion, there was no requirement for him to place the funds into his trust account.

30. The same arrangements applied to the $280,000.00 Mr. Squire received in June 2008, although at that time, at Mr. Squire's request, Antoine Smalls was added as a co trustee.

31. The April 2008 funds were not settlement proceeds. Mr. Squire was not counsel in the MDL v. AISL case until two years after the settlement was completed. Perhaps when the funds were transferred from the Bermuda directors to MDL they were settlement funds, but when MDL authorized the funds to be sent to Mr. Squire at that point they were no longer settlement funds. I had full knowledge of this transaction and Mr. Squire's communications with Adam Hakki, Counsel for the directors. If these were settlement funds presumably Mr. Squire would have been entitled to one third the total or roughly $38,000.00.

32. I have reviewed Mr. Squire's bank records, the allegations against him, the exhibits provided by Mr. Coughlan and discussed these issues with both Mr. Smalls and Mr. Squire. Mr. Squire has managed all funds on my behalf in a better than expected manner. He has been totally loyal, honest and forthright with me.

33. I have no complaints concerning Mr. Squire's management of funds for my benefit. He continues to assist me financially.

34. At a time when all the other lawyers that I dealt with required payments in advance, stopped work and have bombarded me with pressure for payment and retainers, Mr. Squire has focused on the injustice visited upon me by my wrongful criminal prosecution. The recent opinion in Skilling v. United States is evidence of the injustice.

35. In Skilling,

a. The *Skilling* opinion 561 U. S. _____(2010) highlights what the government's burden of proof is in a prosecution under 28 U.S.C. § 1341 for mail fraud, one of the offenses that I was charged with. *Skilling* makes it clear that an essential element in a mail fraud prosecution is evidence of some form of gain or enrichment to the defendant. In point of fact, *Skilling* states:

> Enacted in 1872, the original mail-fraud provision, the predecessor of the modern-day mail- and wire-fraud laws, proscribed, without further elaboration, use of the mails to advance 'any scheme or artifice to defraud.' *See McNally v. United States*, 483 U. S. 350, 356 (1987). In 1909, Congress amended the statute to prohibit, as it does today, 'any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises.' §1341 (emphasis added); see id., at 357–358. Emphasizing Congress' disjunctive phrasing, the Courts of Appeals, one after the other, interpreted the term "scheme or artifice to defraud" to include deprivations not only of money or property, but also of intangible rights.

Id. (emphasis added) *Skilling* goes on to discuss the elements of a honest services fraud claim versus other frauds. The Court focuses on the requirement for symmetry, in a standard mail fraud case, that is "the victim's loss of money or property supplied the defendant's gain, with one the mirror image of the other.' *Id.*

b. In this case it is undisputed that I did not realize any gain as a result of an alleged misuse of the mails. The victim, the Ohio Bureau of Workers Compensation (OBWC), losses were due to unsuccessful attempts by me to recoup losses through increased use of leverage. In some instances

gains resulted from the use of increased leverage. In other instances losses occurred from its use. In no instance, however, did I realize any money or property from the use of allegedly excessive leverage.

c. Likewise, I have received no compensation from OBWC by reason of trading activity or volume. All of my fees were paid by the Active Duration Fund (ADF), not the OBWC. I received no compensation from OBWC for ADF trades.

d. The absence of any gain of any nature by me is fatal to a mail fraud prosecution. *Skilling* emphasizes this point.

e. The use of excessive leverage was not a scheme to defraud. It was an investment strategy that failed. The purpose and intent of the strategy was not of a nature that will support a mail fraud prosecution. *See Skilling (citing, United States v. Bloom*, 149 F. 3d. 649, 655 (7th Cir. 1998) and *United States v. Panarella*, 277 F.3d 678, 692 (3rd Cir. 2002) (requires that a defendant act in pursuit of private gain)).

f. *Skilling* determined that a 28 U.S.C. § 1346 prosecution requires as "offense conduct" evidence of either bribery or kickbacks and that the ambit of a criminal statute should be resolved in favor of lenity. *Rewis v. United States*, 401 U.S. 808 (1971). The "offense conduct" in my case, a 28 U.S.C. § 1341 prosecution, according to *Skilling*, the conduct must include an element of gain at the expense of a victim, here OBWC.

g. In this case the gain element is totally lacking. In point of fact, the District Court states at p. 23 of my sentencing memorandum. Case no. 1:07 CV-00339- DOD:

> As the Court undertakes a study as to the seriousness of the offense and the need to impose the sentence that promotes respect for the law and provides just punishment for the defendant's conduct, the defendant's sentencing memorandum reviewing the defendant's past history including his past business, is relevant. The defendant recites the fact that he opened his business known as MDL Capital in 1994 beginning only with a telephone and receptionist and built the business into a highly successful venture, employing over 40 people. His counsel contends that he 'became one of the nations better recognized financial commentators, appearing regularly on MSNBC and on business related shows. His opinions were reflected frequently in the Wall Street Journal. He was selected as the Entrepreneur of the Year in Pittsburg by the accounting firm of Ernst & Young.' Continuing, his counsel recite the fact that the Long Fund (or the Core Fund) made money as did the state of Ohio generally. His counsel contend 'the fact is that the circumstances of the market developed in a way never before experienced. Looking back in hindsight, as the Court can do, *it seems obvious that he should have stopped following the investment strategy he had in place.* But at the time, *no one had ever seen an instance in which rising bond prices would not lead to a devaluation of existing bonds.* But that is precisely what happened in this time frame. *It was the first time in economic history of the United States that that occurred*, and his strategy failed, and because of the leverage, failed dramatically.'
>
> * * *
>
> It seems apparent that the defendant had not lost any monies for any clients in the management of the MDL investments until the defendant began excessive over-leveraging with the ADF. It appears

> from his past experiences with Mellon Bank and PNC that it was not the first time defendant took great risks in the belief that he could recoup his losses. The Court notes that the defendant, born in 1963, actively pursued a good education and did not demonstrate criminal tendencies. The defendant has no criminal record. The defendant appears to have been a responsible father. *It does not appear to the Court that the defendant was motivated to gain more income by his management of the ADF.*

Id. (emphasis added)

h. As the District Judge indicated, there was no evidence whatsoever that the mails were used by me in any scheme to defraud another or to generate gain for myself. *Skilling* makes it clear the absence of this element is fatal to a mail fraud prosecution. The mailing of trade confirmation slips by third parties that document specific transactions, did not result in any gain or benefit to me.

i. Aside from the clarification provided by *Skilling* in relation to mail fraud prosecutions, *Skilling* also explains that Constitutional error occurs where a jury is instructed on alternative theories of guilt and returns a general verdict that may rest on a legally invalid theory.

j. In this case, the jury was instructed in connection with each of the four counts on alternative theories of liability. In each instance here, the jury was permitted to find that I was an investment adviser without any requirement to also determine whether I was an investment adviser to the alleged victim, or whether the victim was an investor as distinguished from my client. The jury was also permitted to determine that the OBWC

was my client, a determination which *Goldstein vs SEC*, 451 F.3d 873 (D.C. Cir. 2006) states, is a determination for the Court, not for the jury.

36. Here Mr. Squire has remained focused on my innocence. He has worked with me consistently to avoid my entire life's work from being lost due to a wrongful criminal conviction.

37. Mr. Squire has not only been my attorney, he has been a friend and trusted confidant. He has committed no wrong against me. I listened to Mr. Coughlan's allegations however, based upon my own knowledge and investigation I have determined that all Legal Defense and Welfare funds used or received by Mr. Squire were utilized appropriately with the approval in advance of Mr. Smalls and with my knowledge.

38. It is requested that any claims against Mr. Squire be dismissed.

Mark D. Lay

63384349

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

BRIAN WALLACE, ADMIN.
Plaintiff

BISWANATH HALDER ETAL
Defendant

Case No: CV-06-591169

Judge: DICK AMBROSE

JOURNAL ENTRY

81 DISP.JURY TRIAL - FINAL

05/27/10 - COURT CHARGED THE JURY. PARTIES PRESENTED CLOSING ARGUMENTS. JURY DELIBERATES. JURY RETURNS VERDICT IN FAVOR OF THE PLAINTIFF AND AGAINST THE DEFENDANT, BISWANATH HALDER, IN THE AMOUNT OF $3,800,000.00. INTEREST SHALL RUN ON THE VERDICT AT THE STATUTORY RATE FROM THE DATE OF JUDGMENT. FINAL. THERE IS NO JUST REASON FOR DELAY.
COURT COST ASSESSED TO THE DEFENDANT(S).

Judge Signature 05/27/2010

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05/27/2010

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EXHIBIT
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