

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

RECEIVED

MAR 30 2012  
BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

In re:

Complaint against

Richard "Dick" Hackney Ward, Esq.  
The Ward Law Firm, LLC  
119 East Court Street, Suite 308  
Cincinnati, OH 45202-1203

FILED

APR 16 2012

BOARD OF COMMISSIONERS  
ON GRIEVANCES & DISCIPLINE

No. 12 - 0273

Attorney Registration No. (0003016)

COMPLAINT AND CERTIFICATE

Respondent,

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

Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411

Relator.

Now comes the relator and alleges that Richard "Dick" Hackney Ward, an Attorney at Law, duly admitted to the practice of law in the State of Ohio is guilty of the following misconduct:

1. Respondent, Richard "Dick" Hackney Ward, was admitted to the practice of law in the State of Ohio on March 23, 1949. Respondent is subject to the Code of Professional Responsibility, Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.
2. Respondent founded Drew & Ward Co., LPA in 1958 and remained a partner and shareholder until he left in March 2009 to form a new law firm.

John F. "Bud" Koons III

3. John F. "Bud" Koons III was a principal owner of Central Investment Corporation [CIC] and its successor, Central Investment LLC [CI LLC].
4. Respondent and his law firm Drew & Ward Co., LPA began providing legal services to Bud Koons and his various businesses in the early 1970s. Respondent was the primary billing partner and/or supervising attorney for legal services provided to Bud Koons and his various businesses.
5. Beginning in 1985, Bud Koons regularly consulted with Drew & Ward Co., LPA about his estate plan. Drew & Ward Co., LPA drafted wills and revisions to wills for Bud Koons and respondent was named co-executor in Bud Koons' will and held a co-power of attorney over Bud Koons' affairs.
6. Respondent and his law firm prepared and/or also assisted in the preparation of more than two dozen trusts for Bud Koons. Respondent served as a trustee on at least a dozen of these various Koons trusts, including his service as co-trustee of Trust A beginning in 1992.
7. Respondent and Drew & Ward Co., LPA provided additional legal advice and services to Bud Koons and his businesses on taxes, stock valuation, corporate transactions, human resources, real estate, contracts and litigation. Respondent and Drew & Ward Co., LPA also handled Bud Koons' divorces in 1989, 1992 and 2002, antenuptial agreements in 1989 and 1998 and prenuptial agreements in 1990 and 1993.

8. Between the early 1970s and August 2005, respondent and Drew & Ward Co., LPA were paid over \$2 million in legal fees for providing legal services to Bud Koons, CIC and CI LLC.
9. While serving as Bud Koons' attorney, respondent also served on the CIC Board of Directors and the CI LLC Board of Managers.

Richard "Nick" G. Ward

10. In August 2004, respondent's son Richard "Nick" G. Ward was hired as a partner at Drew & Ward Co., LPA.
11. In January 2005, CIC's soft drink and vending businesses were sold to PepsiAmericas in a transaction valued at approximately \$400 million. The entity known as CI LLC was formed to facilitate the transaction and hold the sale proceeds.
12. During this same time period, respondent and Nick Ward provided legal services to CI LLC and respondent served as a member of its Board of Managers. As such, respondent, Nick Ward and Drew & Ward Co., LPA were provided private and confidential details regarding the sale.
13. In February 2005, at the request of Bud Koons, respondent resigned as a member of CI LLC's board and resigned as trustee for most of the trusts for the Koons beneficiaries, including Trust A. However, respondent and Drew & Ward Co., LPA continued to serve

as legal counsel to Bud Koons and CI LLC and respondent continued as co-trustee for the Koons Family Trust and the KRW Trust.

14. On February 28, 2005, respondent entered into a consulting agreement with CI LLC, under which he was to be paid \$250,000 per year for five years. The terms of this agreement required respondent to make himself available to advise CI LLC on business matters and it was agreed that any future legal representation by respondent would be billed separately. Pursuant to the agreement, respondent immediately began receiving payments of \$20,833.34 per month from CI LLC.
15. On March 3, 2005, Bud Koons died.

The March 22, 2005 Letter

16. Shortly after Bud Koons' death, respondent and/or Nick Ward began gathering and reviewing Bud Koons' personal and business information related to Trust A and Trust B.
17. These two trusts were created by the parents of Bud Koons and his sister Mary Lou Cundall -- Trust A for the Koons heirs and Trust B for the Cundall heirs. Respondent served as co-trustee for Trust A from 1992 until February 2005 with Attorney Jim Ryan. Respondent and Attorney Jim Ryan had also been nominated by Bud Koons to serve as his successor co-trustees for Trust B.
18. After Bud Koons' death, respondent allowed Nick Ward unrestricted access to the confidential client files and/or trust files of CI LLC, CIC and Bud Koons. Respondent

and/or Nick Ward then relied upon this confidential information to draft a letter to Attorney Ryan.

19. Respondent's letter to Ryan alleged that Trust A had an estimated value of \$27 million and Trust B had an estimated value of \$750,000. Respondent further concluded that this alleged disparity was due to bad acts by Bud Koons and suggested that causes of action for negligence and fraud existed against Bud Koons' estate and current and former trustees for Bud Koons' trusts to recover these assets.
20. Respondent's letter to Ryan concluded by suggesting that he and Ryan accept their appointment as trustees for Trust B "in order to quietly resolve the situation" to avoid a lawsuit and "notoriety" that would be "severely damaging."
21. The confidential information gathered during Nick Ward's review of Bud Koons' client files and trust documents, and the resulting alleged concerns about the value of the trusts, formed the basis for a lawsuit Nick Ward would subsequently file against Koons estate on behalf of the Cundall heirs.

#### Current Client and Personal Interest Conflicts of Interest

22. From August 2004 through February 2005, respondent, Nick Ward and Drew & Ward Co., LPA staff completed substantial legal work for Bud Koons, CIC and/or CI LLC and billed for over \$127,000 in legal services.

23. The work completed by respondent and Nick Ward included legal work on personal, corporate, estate and tax planning matters for Bud Koons and his businesses.
24. From Bud Koons' death on March 3, 2005 through May 25, 2005, respondent, Nick Ward and Drew & Ward Co., LPA staff continued to complete substantial legal work for the estate of Bud Koons and/or CI LLC.
25. After Bud Koons' death, respondent and Nick Ward billed Bud Koons' estate and/or CI LLC over \$20,000 for legal services. These services were billed at an hourly rate of \$285 for respondent and an hourly rate of \$210 for Nick Ward. At the same time, respondent was also receiving a monthly \$20,833 consulting fee from CI LLC.
26. Work completed by respondent, Nick Ward and other Drew & Ward Co., LPA staff after Bud Koons' death included legal work for Bud Koons' estate, various Koons trusts and CI LLC.
27. On August 3, 2005, the final Drew & Ward Co., LPA bill for legal services provided to the estate of Bud Koons was paid by CI LLC.
28. Beginning no later than March 16, 2005, Nick Ward began providing legal services to Michael Cundall, the son of Betty Lou Cundall and the nephew of Bud Koons. These services were focused on developing the lawsuit Nick Ward subsequently filed on behalf of Cundall in March 2006 against the estate of Bud Koons.

29. Between March 16 and May 25, 2005, respondent, Nick Ward and/or Drew & Ward Co., LPA staff completed over 230 hours of legal work for Michael Cundall on issues related to Trust B. Nick Ward's time records and other documents show that he completed legal work for Cundall related to Trust B multiple days every week. For example:

- No later than March 18, 2005, Nick Ward initiated contact with Cundall to discuss concerns about alleged mismanagement of Trust B. Around this same time, Nick Ward contacted Cundall's sister, Sara Cundall Kersting to discuss the same issue.
- Respondent billed Bud Koon's estate for his time spent on drafting the March 22, 2005 letter to Ryan and a subsequent meeting with Ryan, as detailed in paragraphs 16-21. Nick Ward billed Cundall for his contribution to this same work.
- In March and April 2005, Nick Ward conducted research to determine whether Drew & Ward Co., LPA could file a lawsuit regarding the Trust A and B "disparity."
- In early April 2005, Nick Ward travelled to Florida to meet with Cundall and his brother, Peter Cundall. During these meetings, Nick Ward advised both Cundalls of the "disparity" between Trust A and B and the "need" to address this issue.
- On April 5, 2005, Nick Ward sent a letter to Cundall memorializing the terms of his representation and the contingency fee agreement with Cundall. In this letter Nick Ward agreed to investigate the alleged mismanagement of Trust B, "ascertain the extent of any provable shortfall . . . increase your share of any

disbursement, and then negotiate a settlement or file an action on your behalf.”

The contingency fee ranged from 10 to 25 percent, depending on the time and effort expended by Nick Ward. Cundall executed this agreement.

- On April 22, 2005, Nick Ward sent a second letter to Cundall memorializing the terms of his representation and the contingency fee agreement with Cundall.

This agreement is the same as the April 5, 2005 version, except for one addition.

Nick Ward advises Cundall that if respondent agreed to serve as successor co-trustee for Trust B, Nick Ward would represent both respondent [as trustee] and Cundall.

- Nick Ward advised respondent in May 2005 that he was going to file a lawsuit against Bud Koons' estate on behalf of Cundall.
- In April and/or May 2005, Nick Ward began work assisting Cundall in purchasing assignments of the interests of other Cundall family members in Trust B.

30. A Drew & Ward Co., LPA pre-bill for services to Bud Koons' estate and CI LLC in March 2005 further reveals the extent of the adverse overlapping representation. The pre-bill shows 20 hours recorded by Nick Ward for speaking with Cundall and “review of fraud actions” as being initially recorded as services provided to Bud Koons' estate and/or CI LLC. After an internal review, respondent transferred these entries to the billing account of Cundall.



31. In and about March through July 2005, respondent, Nick Ward and Drew & Ward Co., LPA were simultaneously representing Cundall, Bud Koons' estate and CI LLC in matters which were adverse.

Complaint to Appoint a Successor Trustee

32. Respondent and Nick Ward made a presentation about the representation of Cundall at a Drew & Ward Co., LPA partner meeting on August 2, 2005. According to the meeting minutes, respondent and Nick Ward both spoke and the representation was referred to as "a new matter which could create a conflict of interest."
33. On September 2, 2005, Nick Ward, as a member of Drew & Ward Co., LPA, filed a complaint seeking to have Cundall named as successor trustee for Trust B. The appointment of a trustee was necessary, because in April 2005, respondent and Attorney Ryan declined to serve in this capacity.
34. On the same date, respondent and Nick Ward signed a document entitled "Withdrawal as Representation Of You As Trustee Your Consent For Me To Proceed On Behalf Of Michael K. Cundall."
35. This document advises respondent "due to your long-time personal representation of Bud [Koons] and the potential for allegations of conflict, I feel that it is appropriate at this time for you to independently consult with an attorney regarding your potential conflicts of interest as well as conflicts that others could allege exist for the firm."

36. Through this document, Nick Ward requested respondent "to consent to [Nick Ward's] representation of [Cundall] since, under some possible scenarios, his and your interests could be viewed as adverse." By signing this document, respondent purportedly waived the conflict of interest created by his prior role as trustee for Trust A.
37. At a September 6, 2005 Drew & Ward Co., LPA shareholders and directors meeting, respondent and Nick Ward again spoke about the Cundall representation. According to the meeting minutes, Nick Ward advised all those present that he had "consulted with several attorneys. . . who had opined that they saw no material conflict at this stage of the case." During the meeting, respondent spoke in support of the Cundall representation.
38. At the October 4, 2005 Drew & Ward Co., LPA shareholders and directors meeting, Nick Ward was asked to prepare a memorandum about his representation of Cundall, and on or about November 14, 2005, Nick Ward presented this document to the partners of Drew & Ward Co., LPA. In the memorandum, Nick Ward incorrectly concluded that there was no disqualifying conflict in the firm's representation of Cundall in a "breach of fiduciary duty" lawsuit "against Bud Koons' executor and successor trustees."
39. In Nick Ward's memorandum, he further misleadingly asserted that he never had an attorney-client relationship with Bud Koons, despite the thousands of dollars in fees billed by Nick Ward and Drew & Ward Co., LPA.
40. In support of his assertion of no attorney-client relationship, Nick Ward stated in his memorandum that "[Bud Koons] and I never met one-on-one to discuss anything" and "I

never had, and I don't know that the firm ever had, any knowledge of true market valuations for the stock."

41. However, in the same memorandum Nick Ward acknowledged that after Bud Koons' death, he reviewed confidential information on stock valuation contained in file materials from one of Bud Koons' divorces.
42. Respondent reviewed Nick Ward's memo before he provided it to the law firm partners; expressed his strong support for Nick Ward's conclusion that a conflict of interest did not exist; and advocated for his law firm partners to agree to allow Nick Ward to file the Cundall breach of fiduciary lawsuit against Bud Koons' estate.
43. On November 23, 2005, Cundall was appointed by the court as successor trustee for Trust B.

#### The Cundall Lawsuit

44. On January 10, 2006, at a Drew & Ward Co., LPA partners and shareholders meeting, respondent and Nick Ward led a discussion of the Cundall representation. Both incorrectly advised those present that there was no conflict of interest which would prohibit the representation of Cundall. As a result, the representation was approved by the law firm.
45. The January 10, 2006 partner meeting minutes further indicate that Nick Ward agreed that he would "take complete financial responsibility for any out of pocket or related expenses concerning any malpractice claims" related to the Cundall representation.

46. On February 14, 2006, respondent submitted a letter of resignation as trustee of the Koons Family Trust and the KRW Trust and as a member of the Voting Committee for the Koons Family Trust. However, this resignation was not effective until March 20, 2006.
47. On or about February 27, 2006, Nick Ward and Cundall entered into a "modified fee contract." Under the terms of this agreement, Nick Ward's contingency fee was increased to "50% of amounts recovered" from the soon-to-be-filed Cundall lawsuit, with all costs being paid by Nick Ward.
48. On March 3, 2006, Nick Ward, acting as a member of Drew & Ward Co., LPA, filed a "Complaint for Tortious Breach of Fiduciary Duty, Constructive Trust, Declaratory Judgment, Accounting and Related Relief" on behalf of Cundall seeking \$300 million in damages. [Cundall lawsuit]
49. The Cundall lawsuit alleged that defendants Bud Koons and U.S. Bank breached their fiduciary duties as trustees and accused longtime Drew & Ward Co., LPA client Bud Koons of "self deal[ing]," "coercion, overreaching and undue influence." The essence of the lawsuit was that the CIC stock previously sold by the Cundall heirs to CIC in 1984 had been grossly undervalued through the improper actions of Bud Koons.
50. The goal of the Cundall lawsuit was to undo the estate plan which respondent and Drew & Ward Co., LPA had helped devise for Bud Koons and reallocate millions of dollars away from Bud Koons' heirs to Cundall's family.

51. The Cundall lawsuit named the children and grandchildren of Bud Koons and Betty Lou Cundall, the representatives for the estate of Bud Koons and the successor trustees for Koons' various trusts as defendants. As such, CI LLC executives Keven Shell, Michael Caudill, William Martin II, Richard Caudill, CI LLC Board member Scott Elliot and CI LLC outside counsel Jack Donson were named as defendants. As a result:

- Five of the Cundall lawsuit defendants were both CI LLC officers and the people with whom respondent agreed to consult with pursuant to the February 2005 CI LLC consulting agreement.
- Twenty-three of the Cundall lawsuit defendants are Koons and/or Cundall heirs and beneficiaries of the various trusts at issue. Respondent and/or his law firm previously drafted these trusts and/or formerly served as trustee and/or formerly held the authority to appoint a successor trustee for the trusts for these same beneficiary/defendants.
- Six of the Koons defendants were also beneficiaries of the Koons Family Trust and/or the KRW Trust. As a result, Nick Ward and Drew & Ward Co., LPA filed suit against six trust beneficiaries, while respondent was serving as trustee for those same trusts.
- At the time the Cundall lawsuit was filed, Drew & Ward Co., LPA held the power to appoint a successor co-trustee and/or held the power to nominate an independent voting committee member for the trusts for seven of Bud Koons' grandchildren. These same grandchildren were named as defendants in the Cundall lawsuit.

52. A central issue in the Cundall litigation was the proper value of the CIC stock when it was purchased from the Cundalls by Bud Koons in 1984. Respondent and/or Drew & Ward Co., LPA had represented Bud Koons in two prenuptial agreements, three divorces and two antenuptial agreements, advised Bud Koons on how to appropriately value gifts of CIC stock made to the trusts set up for his children and grandchildren and prepared detailed gift tax worksheets concerning the valuation of CIC stock, which were used to prepare IRS gift tax returns. As such, respondent and/or Drew & Ward Co., LPA had previously gained privileged and confidential knowledge about the value of the CIC stock during prior representation of Bud Koons.

53. In the Cundall lawsuit, Nick Ward alleged that "CIC had been sold for about \$400 million." However, the actual total sale price was never publicly disclosed and the figure reported in the media was \$340 million. Respondent and Nick Ward provided legal services to Bud Koons and/or CIC and/or CI LLC related to the sale and were privy to the total confidential sale price. As such, Nick Ward improperly used this confidential information to the detriment of Bud Koons, CIC and CI LLC.

54. Shortly after filing the Cundall lawsuit, Nick Ward began work on an amended complaint and respondent and/or other Drew & Ward Co. attorneys assisted Nick Ward with this work. On March 24, 2006, Nick Ward, acting as a member of Drew & Ward Co., LPA, filed a first amended complaint for the Cundall lawsuit.

55. On April 11, 2006 in response to the Cundall lawsuit, CI LLC President Keven Shell wrote to respondent asking for him to explain his "relationship with the Drew & Ward law firm."
56. In his April 28, 2006 reply, respondent advised Shell that "I have no secrets from you." He further falsely stated "I have no stake in son Nick's Cundall case" and "I have stayed away from it and do not intend to participate in it henceforth."
57. By a letter dated June 2, 2006, CI LLC terminated its consulting contract with respondent because respondent "filed a \$300 million lawsuit against . . . the very individuals to whom you are required to provide consulting services." At that time, respondent had been paid \$312,500.10 under the contract.
58. In a response dated June 27, 2006, respondent misleadingly advised Shell "I have no interest in that case. Nobody at Drew & Ward has any interest in that matter. It is strictly Nick's project." Respondent further advised Shell that if the consulting contract was not reinstated in 10 days he would "seek appropriate redress."
59. On or about June 1, 2006, legal counsel for the estate of Bud Koons requested that Nick Ward and Drew & Ward Co., LPA withdraw from representation of Cundall due to a conflict of interest, and provided a copy of a disqualification motion which would be filed if withdrawal did not occur.
60. On or about July 7, 2006, Nick Ward presented his Drew & Ward Co., LPA partners with a memorandum in response to the Koons disqualification motion. In his memorandum, Nick Ward made several false and/or misleading assertions:

- Attorney Jack Donson fired respondent and their law firm in mid-February 2005, on behalf of Bud Koons.
- From late March 2005 forward, Drew & Ward Co., LPA “essentially did no work for Central Investment or Bud’s estate.”
- “I never represented Bud.”

61. On July 27, 2006, representatives for the estate of Bud Koons filed a motion to disqualify Drew & Ward Co., LPA and Nick Ward from representing Cundall.
62. On October 13, 2006, Cundall signed a conflict of interest waiver document drafted by Nick Ward. In this document, Nick Ward advised Cundall of a possible conflict created by respondent’s five year \$1,250,000 consulting contract with CI LLC, but advised Cundall that the contract would not impact his representation of Cundall.
63. On October 16, 2006, a hearing was held on the Cundall lawsuit. During the hearing, respondent sat with Nick Ward at counsel table and provided input to Nick Ward, as if he were co-counsel in the Cundall lawsuit court proceedings.
64. On October 20, 2006, Nick Ward, acting as a member of Drew & Ward Co., LPA, filed a motion for leave to file a Second Amended Complaint in the Cundall lawsuit.
65. On January 5, 2007, the trial court in Cundall lawsuit granted the defendant’s motions to dismiss based upon a failure of the plaintiffs to tender consideration, expiration of the statute of limitation and lack of personal jurisdiction. Cundall appealed this dismissal.



### The Malpractice Lawsuit

66. On February 20, 2007, Keven Shell, Richard Caudill, William P. Martin, II, Michael S. Caudill, D. Scott Elliott and CI LLC filed a lawsuit against respondent, Nick Ward and Drew & Ward Co., LPA [malpractice lawsuit]. The plaintiffs sued in their capacity as representatives of Bud Koons' estate and/or as a successor trustees for one of Bud Koons' numerous trusts.
67. The malpractice lawsuit made claims for attorney malpractice, breach of fiduciary duty, replevin, conversion and breach of contract, related to respondent's consulting agreement with CI LLC.
68. On the same date, respondent and Nick Ward signed an agreement indemnifying the other shareholders of Drew & Ward Co., LPA. Under this agreement, respondent and Nick Ward took personal responsibility for any loss or damage arising from any malpractice litigation related to the Cundall lawsuit and/or respondent's consulting agreement with CI LLC.
69. After the malpractice lawsuit was filed against Drew & Ward Co., LPA, a few of the law firm clients expressed concerns. To justify the actions of Drew & Ward Co., LPA and expose the allegations of misconduct against Bud Koons, respondent provided copies of his March 22, 2005 letter to his neighbors and/or to various Drew & Ward Co., LPA clients.

70. On December 28, 2007, the court of appeals issued a decision in the Cundall lawsuit which affirmed the dismissal of US Bank as a defendant. The court of appeals reversed the dismissal with regard to the other defendants and remanded the Cundall lawsuit back to the trial court. The defendants then filed an appeal with the Supreme Court of Ohio.
71. On December 6, 2008, Nick Ward and Cundall entered into an "Updated Modified Fee Contract" which indicates that the February 27, 2006 fee agreement "has become a hybrid agreement, rather than a pure contingency contract, due to certain fee and costs paid by Michael K. Cundall that were not contemplated when that contract was signed" and indicated that their fee agreement "will be equitably adjusted upon receipt of any settlement or judgment."
72. At the time of this fee agreement modification, Nick Ward and/or Drew & Ward Co., LPA had been paid over \$237,000 in attorney fees by Cundall for the Cundall lawsuit representation.
73. The collection of these substantial hourly attorney fees in this contingency fee matter is ethically improper. This arrangement is contrary to the shared risk of non-recovery a 50 percent contingency fee agreement requires.
74. On December 10, 2008, Nick Ward and Cundall entered into an "Addendum" to their fee agreement which acknowledges that Nick Ward was representing Cundall personally and as a trustee for Trust B and advised Cundall that probate court approval may be necessary for any contingency fee payment related to trustee-related legal work.

75. In or about March 2009, respondent and Nick Ward left Drew & Ward Co., LPA and formed The Ward Law Firm, LLC.
76. On June 4, 2009, the Supreme Court of Ohio issued a decision in the Cundall lawsuit and found that all claims against the remaining defendants were barred by the statute of limitations.
77. On June 29, 2009, the malpractice lawsuit against respondent, Nick Ward and Drew & Ward Co., LPA was dismissed in return for a \$5 million settlement payment, except for the claim against respondent for breach of the consulting agreement.
78. On the same date, the trial court granted summary judgment in favor of the plaintiffs and found that respondent "had breached his consulting agreement with CI LLC by suing all of the officers and managers of CI LLC" because "there was simply no decision maker left at CI LLC for [respondent] to consult with after the Cundall lawsuit was filed."
79. On January 8, 2010, the trial court found that the date of respondent's breach of the consulting contract was March 22, 2005, the date of respondent's letter to Ryan as described in paragraphs 16-21.
80. The court further found that respondent "began assisting his son Nick Ward with the preparation of the claims that were subsequently filed in the Cundall lawsuit" as of March 22, 2005. The court found "the uncontroverted evidence is that [respondent] and Nick Ward spent months throughout 2005 trying to get their law firm to approve the filing of the Cundall lawsuit." The court ordered respondent to repay CI LLC \$250,008 plus interest. Respondent appealed this decision to the court of appeals.

81. On December 15, 2010, the court of appeals affirmed the decision of the trial court with regard to respondent's breach of the consulting agreement. Specifically, the court of appeals found that:

- Respondent "breached the agreement when he aided the preparation of litigation adverse to CI LLC's interests and then concealed his conduct from CI LLC."
- Respondent "played a key role in preparing the Cundall litigation."
- Respondent "kept [his] actions secret from CI LLC."
- Respondent's April 28, 2006 letter to CI LLC was "misleading" and "dissembling."

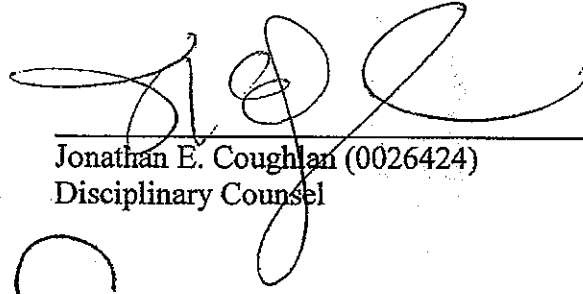
82. In April 2011, the Supreme Court of Ohio declined jurisdiction to hear respondent's appeal of the court of appeals decision regarding the consulting agreement.

83. Respondent's conduct violates the Code of Professional Responsibility: DR 1-102 (A)(4) [a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation]; DR 1-102 (A)(5) [a lawyer shall not engage in conduct that is prejudicial to the administration of justice]; DR 1-102 (A)(6) [a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law]; DR 4-101(B)(1) [a lawyer shall not knowingly reveal a confidence or secret of his client]; DR 4-101(B)(2) [a lawyer shall not knowingly use a confidence or secret of his client to the disadvantage of his client]; DR 4-101(B)(3) [a lawyer shall not knowingly use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure]; DR 5-101(A)(1) [except with consent of a client after full disclosure, a lawyer shall not accept employment if the exercise of professional judgment on behalf of

the client will be or reasonably may be affected by the lawyer's financial and personal interests]; DR 5-105(A) [a lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by acceptance of the proffered employment]; Rule 1.6(a) [a lawyer shall not reveal information relating to the representation of a client] and Rule 1.9(c)(2) [a lawyer who has formerly represented a client shall not shall not reveal information relating to the representation].

### CONCLUSION

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



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



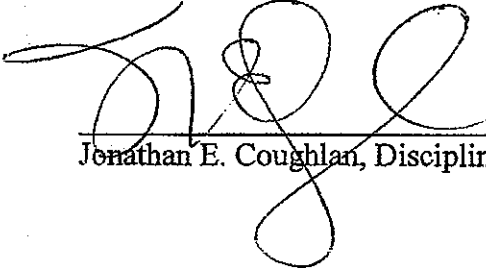
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Robert R. Berger (0064922)  
Senior Assistant Disciplinary Counsel  
250 Civic Center Drive, Suite 325  
Columbus, Ohio 43215-7411  
614.461.0256

**CERTIFICATE**

The undersigned, Jonathan E. Coughlan, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Robert R. Berger is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: MARCH 30, 2012



Jonathan E. Coughlan, Disciplinary Counsel

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

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

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

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

(9) Service. Upon the filing of a complaint with the Secretary of the Board, the relator shall forward a copy of the complaint to the Disciplinary Counsel, the Certified Grievance Committee of the Ohio State Bar Association, the local bar association, and any Certified Grievance Committee serving the county or counties in which the respondent resides and maintains an office and for the county from which the complaint arose.

