

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2006, the foregoing was served on all counsel of record via the Court's CM/ECF system.

/s Albert G. Lin

Albert G. Lin

IV. Methodology

A. Sources of information

I have reviewed the following materials:

- Text of 11/17/06 email to county boards of election
- Transcript of telephone call with chambers 11/17/06
- Portions of the record in the above case dated prior to email
- Motion of Deft Blackwell for Order to Show Cause Doc 63
- Memorandum of Attorney Chandra Doc 64
- Reply Memorandum of Deft Blackwell Doc. 65
- Professional Responsibility materials

B. Process

I reviewed the documentation, reviewed relevant literature and relied on my years of practice to prepare this report. The opinions expressed in this report are held to a reasonable degree of professional certainty.

V. Opinion

The email sent by Mr. Chandra to the 87 County Boards of Election did not violate any provision of the Code of Professional Responsibility.

DR 7-104 deals with a lawyer's communication with one of adverse interest. It prohibits a lawyer, during the course of his or her representation of a client, from communicating on the subject of the representation with a party he or she knows to be represented by a lawyer in a matter, unless he or she has the prior consent of the lawyer representing the party or is authorized by law to do so.

The disciplinary rule further prohibits giving advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of his or her client.

In this case Mr. Chandra did not, by communicating with county boards, communicate "with a party." The Boards of Election are not parties in the litigation but have a separate existence from the Secretary of State. Indeed, the Ohio Attorney General has opined in Directive 2005-01 that county boards of elections are separate bodies from the Secretary of State, with their own statutory powers and duties, including responsibilities that require the exercise of discretion. Also, the county boards are not governmental "parties" under DR 7-104(A)(1) since the county boards have no authority to bind the Secretary of State and cannot settle this litigation. This position supported by Board of Commissioners on Grievances and Discipline Opinion 92-7, which characterized

restricting ex parte communications with all government employees and officials as impractical.

Likewise, Mr. Chandra did not violate DR 7-104(A)(2) because there is no indication that the interests of the county boards are consistent with those of the Secretary of State. Indeed, Mr. Chandra followed DR 7-104(A)(2) by advising the county boards to confer with their own counsel. Finally, Mr. Chandra's actions were consistent with the commentary to the recently adopted Ohio Rules of Professional Conduct 4.3 (effective February 1, 2007), which allows a lawyer who is communicating with a sophisticated, unrepresented person (such as a county board official) to explain the lawyer's view of the legal issues so long as the lawyer explains he or she represents an adverse party.

Respectfully submitted,



/s/ Alvin E. Mathews, Jr.

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ALVIN E. MATHEWS, JR., ESQ.
Lane, Alton & Horst, LLC
175 South Third Street, 7th Floor
Phone: (614) 233-4715
Facsimile: (614) 228-0146
E-Mail: amathews@lah4law.com

EXPERIENCE:

Lane, Alton & Horst, LLC, Partner (2002-present); Associate (1997 -2002). Practice includes civil litigation; legal malpractice; legal ethics and professional responsibility defense and consultation; and administrative law.

Assistant Disciplinary Counsel, Office of Disciplinary Counsel (1991 - 1997). Presenting over 60 attorney discipline and judicial ethics cases before the Board of Commissioners on Grievances and Discipline and the Supreme Court of Ohio; Assistant Ohio Attorney General (1989-1991); Assistant County Prosecutor, Montgomery County Ohio (1987-1989).

RECENTLY REPORTED CASES:

Columbus Bar Association v. Ross, 107 Ohio St. 3d 354; 2006 Ohio 5; Disciplinary Counsel v. Holland, 106 Ohio St. 3d 372, 2005 Ohio 5322; Disciplinary Counsel v. Gerren (2005), 103 Ohio St. 3d 21; Medina County Bar Association v. Carlson (2003), 100 Ohio St. 3d 134; Disciplinary Counsel v. Mills (2001), 93 Ohio St. 3d 407; Columbus Bar Association v. Winkfield (2001), 91 Ohio St. 3d 364; Chirila v. Chiropractic Board (2001), 145 Ohio App. 3d 589; In re: Judicial Campaign Complaint Against Runyan (1999) 95 Ohio Misc.2d 62; In re: Judicial Campaign Complaint Against Hein (1999), 95 Ohio Misc. 2d 31.

EDUCATION:

Miami University, Oxford, Ohio - Bachelor of Arts, 1984, Deans List; Ohio Northern University - Juris Doctorate, 1987; National Moot Court Team; National Privacy Law Team; Appellate Advocacy Award; American Jurisprudence Award, Trial Practice.

PROFESSIONAL AND COMMUNITY ACTIVITIES:

Association of Professional Responsibility Lawyers; American Bar Association; Ohio State Bar Association (Council of Delegates, 2004-Present); Columbus Bar Association (Judicial Screening Committee, 2003-Present); and presenter at continuing legal education seminars on legal ethics and professional responsibility; Author- *Legal Malpractice in Ohio: the Defense Perspective*, Ohio Association of Civil Trial Attorneys Quarterly Review, 2002, among other publications; Miami University Alumni Board (2005-09); Board of Trustees Greater Columbus Habitat for Humanity.

BAR ADMISSION:

Ohio Bar, 1987; the United States District Court, Southern District of Ohio, 1988; the United States Court of Appeals, Sixth Circuit, 1998.

Expert Testimony and Reports

1. Burger v. Cardinal Health, Inc. et. al, United States District Court, Southern District of Ohio, Case No. 2:04-cv-575.
2. Jones v. Baker & Hostetler, LLP, et. al, Cuyahoga County Court of Common Pleas, Case No. CV 03 518194.
3. Columbus Bar Association v. Reginald A. Cooke, Board of Commissioners on Grievances and Discipline, Case No. 03-095