

IN THE SUPREME COURT OF OHIO

IN RE:

Cleveland Bar Association
1301 E. Ninth St., Second Level
Cleveland, Ohio 44114

Relator,

v.

Carl G. McMahon, Esq.
28616 Lincoln Road
Bay Village, Ohio 44140

Respondent.

Board of Commissioners on Grievances
and Discipline

Case No. 06-2260

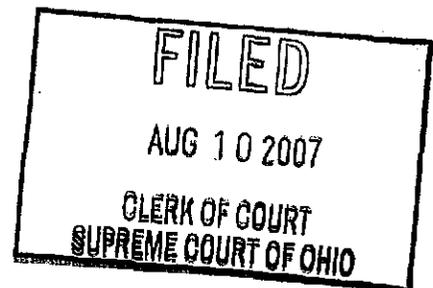
RELATOR CLEVELAND BAR ASSOCIATION'S RESPONSE IN
OPPOSITION TO RESPONDENT'S MOTION FOR RECONSIDERATION

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insurance carrier in violation of DR 1-102(A)(4) and DR 7-102(A)(5). *Id.* at ¶ 23. The Board found that McMahon's admitted misconduct violated the Code of Professional Responsibility, McMahon did not object to this determination, and this Court concurred. Instead, McMahon argued to this Court that the Board's recommendation of a six month stayed suspension for his violations of the Code of Professional Responsibility was not appropriate – he requested that this Court impose a public reprimand based on mitigating factors and precedent as his sanction. *See Respondent's Objections to Recommendations of the Board of Commissioners*, at pgs. 6 – 8. After the parties submitted briefs on the appropriate measure of sanctions for McMahon, this Court heard oral arguments of the parties on that issue. This Court was not asked to make a determination as to the merits of this case with respect to the propriety of the disciplinary violations found by the Board. Only the appropriateness of the sanctions recommended by the Board were at issue here.

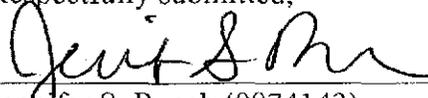
II. Ohio Supreme Court Rules of Practice Make Clear Respondent's Motion is Not Permitted.

McMahon's motion for reconsideration is not permitted under the Rules of Practice of the Supreme Court of Ohio. Rule XI provides that motions for reconsideration "shall not constitute reargument of the case" and limits the circumstances in which such motions can be filed. Sup. Ct. R.Prac. XI(2)(A). McMahon's motion should be dismissed because it is not made with respect to any of the following: (1) the Supreme Court's refusal to grant jurisdiction to hear a discretionary appeal; (2) the *sua sponte* dismissal of a case; (3) the granting of a motion to dismiss; or (4) a decision on the merits of a case. *See* Sup. Ct. R.Prac.XI(2)(A)(1) – (4). While it is obvious that the motion was not filed pursuant to any of the categories listed in subsections (A)(1) – (3), it also was not made with respect to subsection (A)(4) since the Court's decision was not a decision on the merits of the case. McMahon's request for reconsideration is nothing

more than an attempt to reargue the issue this Court already decided – the appropriate measure of sanctions in light of McMahon's admitted misconduct and the presence of mitigating factors.

Because McMahon's motion does not satisfy any of the limited and narrow circumstances necessary for this Court to reconsider a decision, it should be denied.

Respectfully submitted,



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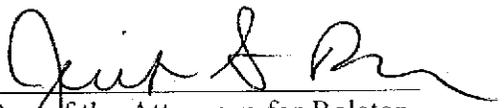
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CERTIFICATE OF SERVICE

A copy of the foregoing Relator Cleveland Bar Association's Response in Opposition to Respondent's Motion For Reconsideration was served by FedEx this 9th day of August, 2007, on the following:

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One of the Attorneys for Relator