



IN THE SUPREME COURT OF OHIO

**Disciplinary Counsel,** : **CASE NO. 2011-1190**  
:   
Relator, :   
:   
vs. :   
:   
**David Marlborough Lynch.** :   
:   
Respondent. :

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**RELATOR'S REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CAUSE**

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Now comes relator, and hereby replies to respondent's response to the order to show cause issued by the Ohio Supreme Court on July 25, 2011.

On July 8, 2011, as required by Gov. Bar R. V(11)(F)(1), relator forwarded a certified copy of an Agreement for Discipline by Consent and an Order re Agreement for Discipline by Consent issued by the presiding disciplinary judge of the Supreme Court of Arizona in which respondent received an admonition for an act of misconduct which occurred in Arizona.

In his response, respondent raises three issues. First, respondent attempts to relitigate the facts. Second, respondent argues that because an admonition is not a sanction available in Ohio, reciprocal discipline is not appropriate. Lastly, respondent argues that because Ohio Disciplinary Counsel previously reviewed the identical issues as those in the Arizona case, and exercised its prosecutorial discretion in not pursuing the matter further, reciprocal discipline is inappropriate.

Gov. Bar R. V(11)(F)(5) makes it very clear that the facts concerning an attorney's misconduct may not be relitigated in the context of a reciprocal discipline action:

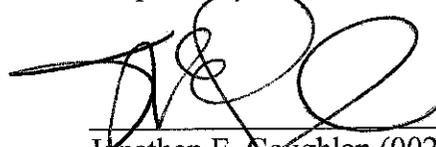
In all other respects, a final adjudication in another jurisdiction that an attorney has been subjected to

discipline shall establish conclusively the misconduct for purposes of a disciplinary proceeding in Ohio. Id.

Gov. Bar R. V(11)(F)(4)(a)(ii) provides that the Court shall impose the identical or comparable discipline imposed in another jurisdiction unless the misconduct warrants a substantially different discipline in Ohio. The fact that a particular sanction is not available in Ohio does not preclude the court from ordering that sanction or something else. See e.g. *Disciplinary Counsel vs. Jewett*, 103 Ohio St.3d., 74, 2004-Ohio-4440 (three-year suspension (unavailable in Ohio) by the U.S. tax court likewise imposed on respondent in Ohio; *Disciplinary Counsel vs. Witt*, 106 Ohio St.3d. 1210, 2005-Ohio-4981 (lawyer suspended in Connecticut until payment of a client security fund fee; Ohio suspends until respondent reinstated in Connecticut). Thus, the fact that the sanction of an admonition is not available in Ohio does not preclude the court from taking any action it so chooses.

Lastly, the Office of Disciplinary Counsel in Ohio has prosecutorial discretion whether or not to file a disciplinary complaint even if probable cause exists. Gov. Bar R. V(4)(C). While the Office of Disciplinary Counsel in Ohio chose not to pursue this matter further, Arizona took a different approach. Relator thus leaves the determination as to whether or not to impose reciprocal discipline to the sound discretion of the Court.

Respectfully submitted,



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Jonathan E. Coughlan (0026424)  
Disciplinary Counsel



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**CERTIFICATE OF SERVICE**

A copy of the foregoing Relator's Reply to Respondent's Response to Order to Show Cause has been served upon David Marlborough Lynch, David Marlborough Lynch, Esq., 29311 Euclid Avenue, Suite 200, Wickliffe, Ohio, 44132, and to Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio, 43215, via regular U.S. mail, postage prepaid, this 13th day of September, 2011.



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Carol A. Costa  
Counsel of Record