

IN THE SUPREME COURT OF OHIO

In re:

**Philip Lucas Proctor, Esq.
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P. O. Box 4803
Newark, Ohio 43058**

Respondent,

vs.

Case No. 2011-0295

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

Realtor.

**MOTION OF
RESPONDENT, PHILIP L. PROCTOR,
FOR RECONSIDERATION**

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MOTION FOR RECONSIDERATION

Respondent requests that the court reconsider the penalty imposed in the Opinion of this Court filed on February 23, 2012, wherein the Court imposed a six month actual suspension against Respondent (see Slip Opinion 2012-Ohio-684).

Respondent suggests that the court order a six month suspension with three months stayed. Gov Bar Rule V, Section 6(B)(3) states that a suspension can be for a period of six to two years, "... subject to a stay in whole or in part." Therefore, even where the court ordered a six month suspension, the court can stay part of the six months. Therefore, a six month suspension with three months stayed would be appropriate here.

In reconsidering the penalty, Respondent requests that the court review the aggravating and mitigating factors and that the Court examine these more completely.

First, the arguments Respondent presented in Objections 1-3 were intended to advance the state of the law in Ohio, and not to undermine the stipulation of recklessness. In making the effort to build a new Ohio law, Respondent requests that this be considered as a mitigation factor because his actions were different than the diatribe observed by the Court in *Disciplinary Counsel v Gardner*, (2003), 99 Ohio St 3d 416, 793 NE 2d 425

Secondly, while it is true that Respondent made his statements in two court filings, he was attempting to follow an established court procedure. Because there was no hearing, any facts that were to be argued on appeal would have to be proffered onto the record first in order to be argued on appeal. While this does not take away the recklessness, there was a singular event from the perspective of procedure.

Third, the Court may have taken away from Oral Argument the feeling that Respondent came up with the idea of what he did completely on his own. However, Respondent's action followed nearly a year of multiple contacts with both the Disciplinary Counsel and the Ohio State Bar Association. Certainly Respondent would not have filed what he did if he had not taken away a feeling from conversations with Disciplinary Counsel that some kind of reporting, beyond to a certified grievance committee, was mandatory. Thus, the influence on Respondent of these contacts, or at least the failure to dissuade Respondent knowing his plans, should be considered in mitigation. While Respondent is responsible for his recklessness, influencing factors should be considered in mitigation of the penalty.

Finally, Respondent requests that the Court continue to consider that Respondent has no prior discipline (admitted in 1989), he fully and freely disclosed information and cooperated with the disciplinary proceedings, and he paid about \$26,000.00 toward the

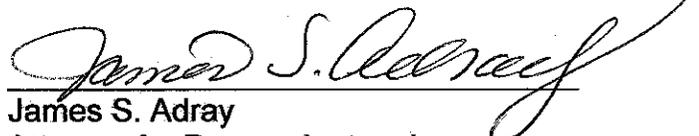
judgment against him.

In conclusion, if this Court accepts all, or at least some, of the mitigating factors presented here, this case seems to be closer to *Akron Bar Assn. v DiCato*, 130 Ohio 3d 394, 2011-Ohio-5796, 985 N.E. 2d 938. In considering a lesser sanction, Respondent states that a six month suspension with three months stayed would be more appropriate for this case. Further, staying part of the six month suspension is permissible under Gov Bar Rule V, Section 6(B)(3).

CONCLUSION

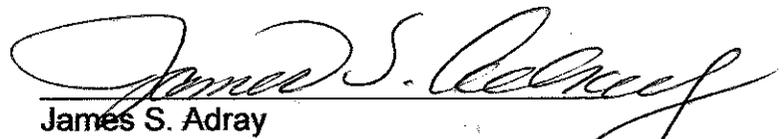
For the reasons discussed above, Respondent requests that the court reconsider as to the penalty and review the mitigation issues presented herein. Respondent suggests that the penalty be six months suspension with three months stayed.

Alternatively, Respondent requests that the Court consider another lesser sanction.


James S. Adray
Attorney for Respondent and
COUNSEL OF RECORD

PROOF OF SERVICE

This is to certify that a copy of the foregoing Motion of Respondent, Philip L. Proctor, for Reconsideration was mailed by ordinary U.S. Mail this 2nd day of March, 2012, upon Jonathan E. Coughlin, Esq., Disciplinary Counsel and Stacy Solochek Beckman, Esq., Assistant Disciplinary Counsel, Office of Disciplinary Counsel of the Supreme Court of Ohio, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215-7411 and Jonathan W. Marshall, Esq., Secretary, Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, 65 South Front Street, 5th Floor, Columbus, OH 43215-3431.


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