

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

Philip Lucas Proctor

Respondent.

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**CASE NO. 2011-0295
BOARD NO. 09-059**

**RELATOR'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S
MOTION FOR RECONSIDERATION**

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SUPREME COURT OF OHIO

RELATOR'S MEMORANDUM IN OPPOSITION
TO RESPONDENT'S MOTION FOR RECONSIDERATION

Respondent has filed a motion for reconsideration pursuant to S. Ct. Prac. R. 11.2, which specifically precludes respondent from rearguing his case in his motion for reconsideration. See, S. Ct. Prac. R. 11.2 (B) and, e.g., *State ex rel. Gross v. Indus. Comm'n of Ohio*, 115 Ohio St.3d 249, 2007-Ohio-4916, 874 N.E.2d 1162 (O'Connor, J., dissenting). Each and every one of respondent's arguments was previously raised, considered and rejected by the Board of Commissioners on Grievances and Discipline (the "Board") and by this Court. "The standard for reconsideration is nebulous, but we have suggested that we grant such motions when persuaded, 'upon reflection,' to deem our prior decision as having been made in error." *Id.* at 265. The Court's decision, suspending respondent from the practice of law for six months, was not made in error. Respondent is merely restating his previous arguments, suggesting that the Court should consider his arguments in mitigation of the sanction, ordering a lesser sanction of six months, with three months stayed. Respondent obviously persists in his perception of the events that led to his disciplinary case.

In determining the appropriate sanction, the Guidelines for Imposing Lawyer Sanctions indicate that the Board may consider certain mitigating or aggravating factors in favor of recommending a less or more severe sanction. The rule provides that "[i]n striving for fair disciplinary standards, consideration will be given to specific professional misconduct and to the existence of aggravating or mitigating factors." BCGD Proc. Reg. Section 10(A).

An attempt to create new law or a suggestion that one was merely following court procedure or advice from a disciplinary authority, neither of which were proven at the hearing in this matter, does not constitute mitigating evidence. The Board and the Court fully considered the applicable mitigating factors, that respondent had no prior discipline and that he fully cooperated with the disciplinary proceedings, and weighed these factors against the appropriate aggravating factors. The Board and the Court balanced the mitigating factors against the aggravating factors, noting that the two aggravating factors, respondent's "recklessly making false statements impugning the integrity of a judicial officer in at least two court filings and his refusal to acknowledge the wrongful nature of his conduct, as demonstrated by his repeated efforts to undermine his own stipulations with claims that he had reason to believe that the allegations were true - outweighed the mitigating factors." *Disciplinary Counsel v. Proctor*, 2012-Ohio-684, ¶19.

The Court has previously held that in order to determine the appropriate sanction in an attorney disciplinary matter the following factors must be considered: the respondent's conduct, the duties violated, the actual injury caused, the aggravating and mitigating circumstances and the sanctions imposed in similar cases. *Disciplinary Counsel v. Connors*, 97 Ohio St.3d 479, 2002-Ohio-6722, 780 N.E.2d 567. The panel and the Board considered each of these factors, finding that an actual six-month suspension was warranted. In his motion for reconsideration, respondent offers no meritorious reason to deviate from the recommended and imposed sanction.

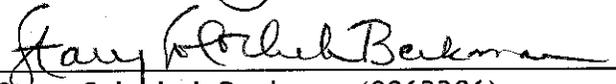
CONCLUSION

For the foregoing reasons, respondent's motion for reconsideration should be denied.

Respectfully submitted,



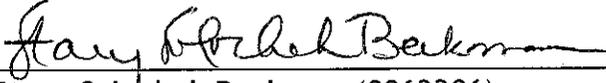
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that Relator's Memorandum in Opposition of Respondent's Motion for Reconsideration was served via U.S. Mail, postage prepaid, upon counsel for Respondent, James S. Adray, Adray & Grna, 709 Madison Avenue, Suite 209, PO Box 1686, Toledo, Ohio 43603-1686, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5th Floor, Columbus, Ohio 43215-3431 this 13th day of March 2012.


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Counsel for Relator