

No. 2011-0120

IN THE SUPREME COURT OF OHIO

**CINCINNATI BAR ASSOCIATION,
Relator,**

vs.

**VLAD SIGALOV,
Respondent.**

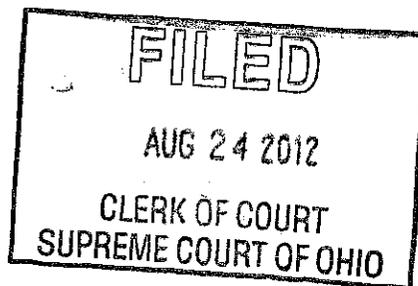
**RESPONDENT VLAD SIGALOV'S OPPOSITION TO
RELATOR'S MOTION FOR LEAVE TO FILE ADDITIONAL
AUTHORITY IN SUPPORT OF RECOMMENDATIONS OF THE
BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE**

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On August 16, 2012, Relator the Cincinnati Bar Association ("Relator") moved for Leave to File Additional Authority in Support of the Recommendations of the Board of Commissioners on Grievances and Discipline ("Motion for Leave"). The "additional authority" submitted by Relator was the Supreme Court of Washington's August 2, 2012 decision captioned *In the Matter of the Disciplinary Proceeding Against Simmerly*, Case No. 200, 983-2, 2012 WL 3129140 (Wash. 2012).

As set forth in Relator's Motion for Leave, "the Supreme Court of Washington in the *Simmerly* case disbarred a Washington attorney largely due to his misconduct during the disciplinary process in which he was found to have involved 'making false representations and fabricating evidence' during the disciplinary process." (*See* Motion for Leave at 3). According to Relator, "the rule in Ohio should be no different than it is in Washington . . ." (*See id.*). Thus, Relator contends, *Simmerly* "lends further support for the recommendation of the Board in this case" that Respondent Vlad Sigalov ("Respondent") should be disbarred from the practice of law. (*See id.* at 3-4).

In reality, the Supreme Court of Washington's decision in *Simmerly*, which of course is not binding on this Court, provides no support whatsoever for the Board's recommendation that Respondent be disbarred. In fact, the *Simmerly* decision actually highlights the constitutional deficiencies of Relator's prosecution and is entirely consistent with Respondent's Objections and Brief in Support Thereof to the Findings of Fact, Conclusions of Law, and Recommendations of the Board of Commissioners on Grievances and Discipline ("Objections").

Notably, the Washington State Bar Association in *Simmerly* "charged [the attorney] with 36 counts of ethical violations for [his] practices: 34 related to his misuse of client funds, one related to his failure to cooperate, and one related to his misrepresentation and fabrication of evidence during the investigation. See *Simmerly* at ¶ 3 (emphasis added). According to the *Simmerly* court, "[t]he most egregious count involve[d] making false representations and fabricating evidence during the disciplinary process." See *id.* at ¶ 1 (emphasis added).

In stark contrast, Relator in the present case never actually alleged (in any version of its Complaint) that Respondent deceived the bar association or "fabricated" anything. Instead, Relator first claimed that Respondent committed this new allegation of misconduct after he had already testified and after Relator had rested its case. (See Objections at 11). As the United States Supreme Court has held, such an attempt to amend a complaint in a disciplinary proceeding after an accused attorney has testified simply does not comport with due process. See *In re Ruffalo* (1968), 390 U.S. 544, 550-51.

Moreover, Relator acknowledges in its Motion for Leave that "[a] particularly important factor in the Board's recommendation for disbarment . . . was Respondent's

submission of false evidence, his preparation of false documents, and his own false testimony before the hearing panel during the disciplinary proceedings.” (See Motion for Leave at 3).¹ Indeed, Relator’s unpled, secondary allegation was apparently so significant that it caused the Board to find Respondent guilty of misconduct that was never even alleged in the Second Amended Complaint. (See Objections at 14) (The Board determined that Respondent violated Prof. Cond. R. 8.4(c) [Honesty] based on “his statements to the Bar Association and the Panel that he had provided notice of the new master hearing to Beriashvili when he did not . . .” even though no such allegation can be found in any version of Relator’s Complaint).

Obviously, an attorney accused of misconduct is “entitled to procedural due process, which includes fair notice of the charge.” See *In re Ruffalo*, 390 U.S. at 550. Thus, the “absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive[s] [an accused attorney] of procedural due process.” See *id.* at 552; see also *Cuyahoga County Bar Ass’n v. Judge*, 96 Ohio St. 3d 467, 2002-Ohio-4741, ¶ 4, 776 N.E.2d 21; *Columbus Bar Ass’n v. Farmer*, 111 Ohio St.3d 137, 2006-Ohio-5342, ¶ 25, 855 N.E.2d 462; *Disciplinary Counsel v. Simecek*, 83 Ohio St.3d 320, 322, 1998-Ohio-92, 699 N.E.2d 933 (1998).

These fundamental principles were never addressed in *Simmerly* because the attorney there was given “fair notice” that he was being charged with, and could be disbarred for, his misrepresentations and fabrication of evidence. Respondent, on the other hand, was not even aware that he was being called upon to defend similar allegations until after he had already testified and after Relator had rested its case. For

¹ As explained in the Objections, Relator failed to prove by clear and convincing evidence that Respondent committed any such misconduct. (See Objections at 16-21).

these reasons, Respondent respectfully requests that this Court deny Relator's Motion for Leave.

Respectfully submitted,



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CERTIFICATE OF SERVICE

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