

No. 2011-0120

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION,
Relator,

vs.

VLAD SIGALOV,
Respondent.

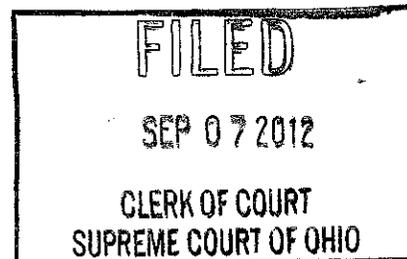
RESPONDENT VLAD SIGALOV'S MOTION FOR RECONSIDERATION OF
THIS COURT'S AUGUST 28, 2012 OPINION
AND ITS AUGUST 28, 2012 ORDER

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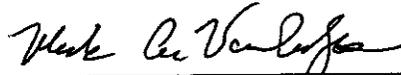
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Pursuant to S.Ct. Prac. R. 11.2, Respondent Vlad Sigalov ("Respondent" or "Sigalov") respectfully moves this Court to reconsider its August 28, 2012 Opinion in *Cincinnati Bar Ass'n v. Sigalov*, Slip Opinion No. 2012-Ohio-3868, as well as its August 28, 2012 Order. The reasons for this request are set forth more fully in the accompanying Memorandum in Support.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Introduction

On August 28, 2012, this Court adopted the Board of Commissioners on Grievances and Discipline's (the "Board") Findings of Fact, Conclusions of Law, and Recommended Sanction of Disbarment for Respondent. *See Sigalov*, 2012-Ohio-3868, ¶ 6. In addressing Count III of Relator the Cincinnati Bar Association's ("Relator") Second Amended Complaint, the Court stated: "Because even without the evidence of fabrication the record amply supports by clear and convincing evidence the panel's finding that Sigalov violated Prof. Cond. R. 8.4(c), we need not address the constitutionality of the panel's distinction between bringing a new charge against Sigalov and using Sigalov's attempts to conceal his misconduct to impeach his credibility." *See id.* at ¶ 48.

Significantly, however, the violation that this Court determined had been proven by clear and convincing evidence -- Respondent "telling the client that he had not received notice of the hearing when he in fact had" -- was not the Prof. Cond. R. 8.4(c) misconduct that Relator alleged in its Second Amended Complaint. *See id.* at ¶ 28; Second Amended Complaint at ¶ 43(e). And, as this Court reiterated in its Opinion, Relator "cannot bring a new Prof. Cond. R. 8.4(c) charge of dishonesty" when "the requisite notice was lacking." *See Sigalov*, 2012-Ohio-3868, ¶ 47. Thus, Respondent respectfully requests that this Court reconsider its August 28, 2012 Opinion and Order so that it may address the constitutional issues raised in Respondent's Objections and Brief in Support Thereof to the Findings of Fact, Conclusions of Law, and Recommendations of the Board ("Objections").

II. Argument

In Count III, “[t]he panel found that Sigalov had violated Prof. Cond. R. 8.4(c) in two ways: by telling relator and the panel that he had notified the client of the new hearing when he had not and by telling the client that he had not received notice of the hearing when in fact he had.” *See Sigalov*, 2012-Ohio-3868, ¶ 28. Ultimately, this Court found that Relator’s “complaint did not charge Sigalov with dishonest statements to the panel.” *See id.* at ¶ 47. As a result, “the requisite notice was lacking, and relator cannot bring a new Prof. Cond. R. 8.4(c) charge of dishonesty” based on such conduct. *See id.*

With respect to the remaining Prof. Cond. R. 8.4(c) allegation of misconduct found by the Panel, however, this Court stated that “even without the evidence obtained on recall, the record contains clear and convincing evidence of Sigalov’s dishonesty with his client, which is more than sufficient to support the panel’s finding on this count.” *See id.* at ¶ 28. Thus, the Court concluded:

[W]e need not address the constitutionality of the panel's distinction between bringing a new charge against Sigalov and using Sigalov's attempts to conceal his misconduct to impeach his credibility. This is consistent with our mandate that "[c]ourts decide constitutional issues only when absolutely necessary." *State ex rel. Essig v. Blackwell*, 103 Ohio St.3d 481, 2004 Ohio 5586, 817 N.E.2d 5, at ¶ 34, quoting *State ex rel. DeBrosse v. Cool*, 87 Ohio St.3d 1, 7, 1999 Ohio 239, 716 N.E.2d 1114 (1999). And because Sigalov's fabrication of evidence¹ does not enter into our Rule 8.4(c) violation analysis, his constitutional due process claim does not affect our ruling.

See id. at ¶ 48.

¹ With respect to the alleged fabrication of evidence, the Court stated: “When Sigalov offered no evidence in response [to being recalled and questioned about his letterhead], relator concluded that the letter was a fabrication designed to cover up Sigalov’s failure to notify the client of the new hearing date.” *See Sigalov*, 2012-Ohio-3868, ¶ 32. Yet, this new allegation of misconduct was the subject of extensive discovery and additional depositions. And Mr. Sigalov did, in fact, present “evidence in response.” *See Objections* at 16-21.

But “Sigalov’s misconduct relating to his client[,]” upon which this Court’s “decision on the third count is premised[,]” was never alleged in Relator’s Second Amended Complaint to be a violation of Prof. Cond. R. 8.4(c). *See id.* Indeed, the Prof. Cond. R. 8.4(c) misconduct found by the Panel and upheld by this Court bears no resemblance to what was alleged by Relator in the version of the Complaint Respondent used to prepare his defense.

<p align="center"><u>Prof. Cond. R. 8.4(c) Violation Alleged By Relator In Its Second Amended Complaint</u></p>	<p align="center"><u>Prof. Cond. R. 8.4(c) Violation Found By The Panel And Upheld By This Court</u></p>
<p>“[Respondent] lying to Mr. Beriashvili continually between <i>July 2007 and February 2008</i> regarding having filed an <i>appeal</i>, and by lying to Mr. Beriashvili when he returned the <i>appeal</i> filing fee regarding the judge being unable to do anything with the <i>appeal</i>.” <i>See</i> Second Amended Complaint at ¶ 43(e) (emphasis added).</p>	<p>“[Respondent] not telling Beriashvili, between <i>April and June 2007</i>, that the <i>hearing</i> date had been rescheduled and saying he had not received notice of the <i>hearing</i> date when, in fact, he had received such notice.” <i>See</i> Objections at Appx., A-18 (emphasis added).</p>

Of course, Relator’s Complaint in this case was required to “allege the *specific misconduct that violates the Disciplinary Rules* and relator must prove such misconduct by clear and convincing evidence.” *See Findlay/Hancock County Bar Ass’n v. Filkins*, 90 Ohio St. 3d 1, 3, 2000-Ohio-491, 734 N.E.2d 764 (2000) (emphasis added). Simply put, the “specific misconduct” that Relator alleged was a violation of Prof. Cond. R. 8.4(c) in Count III was not that Respondent “continually lied to the client

by telling him that he had not received notice of a rescheduled hearing date, when in fact he had.” See *Sigalov*, 2012-Ohio-3868, n. 3; Second Amended Complaint at ¶ 43(e).

Moreover, these constitutional deficiencies are not limited solely to Count III. For example, the Panel permitted Relator to Amend Count V of its Second Amended Complaint and insert new allegations of misconduct after the March 23-24 hearings. See Objections at 21-23. And in Count VII, the Panel “stated that it would have found a violation of Prof. Cond. R. 8.4(c) for forging the client’s signature if the complaint had provided notice of any such charge.” See *Sigalov*, 2012-Ohio-3868, ¶ 72. Despite the fact that the only Prof. Cond. R. 8.4(c) claim in Count VII was dismissed, the Panel nevertheless considered the uncharged allegations of forgery “in connection with mitigation and/or aggravation.” See Objections at Appx., A-29.

Based on the foregoing, Respondent submits that it is, in fact, necessary for this Court to reconsider its decision and address the constitutional arguments set forth in his Objections. The United States Supreme Court has held that 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 *In re Ruffalo*, 390 U.S. 544, 552 (1968) (emphasis added). This fundamental safeguard cannot be circumvented simply by considering uncharged allegations of misconduct for “credibility” or “aggravation” purposes.

III. Conclusion

For any and all of the foregoing reasons, Respondent Vlad Sigalov respectfully requests that this Court reconsider its August 28, 2012 Opinion and its August 28, 2012 Order.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been duly served upon the following by regular U.S. Mail this 6th day of September, 2012:

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