

ORIGINAL

# IN THE SUPREME COURT OF OHIO

Disciplinary Counsel,

Relator,

vs.

Joel David Joseph

Respondent.

CASE NO.  
2012-1107

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

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**FILED**  
SEP 11 2012  
CLERK OF COURT  
SUPREME COURT OF OHIO

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## RELATOR'S REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW CASE

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### INTRODUCTION

Respondent, Joel David Joseph, was admitted to the practice of law in the state of Ohio on March 14, 1980. Respondent was admitted to the Maryland Bar on April 1, 1981. On October 27, 2011, respondent was disbarred in Maryland for lying about his residence so that he could practice in California on a pro hac vice basis without having to pass the bar examination there. *Attorney Grievance Comm. of Maryland v. Joseph*, 422 Md. 670, 31 A.3d 137 (2011), *cert. denied*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1812, 182 L.Ed.2d 620 (2012).<sup>1</sup>

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<sup>1</sup> Although reserved for imposition upon lawyers who have committed the most serious misconduct, disbarment in Maryland is not permanent. See, e.g. *In re Meyerson*, 190 Md. 671, 676, 59 A.2d 489 (1948). See also Md.Rule 16-781. Accordingly, respondent may petition for reinstatement in Maryland. The process that follows such a petition for reinstatement mirrors that of a petition for reinstatement following an indefinite suspension in Ohio. See, Gov. Bar R.V(10)(E). See, also *In re Murray*, 316 Md. 303, 305, 558 A.2d 710 (1989) (reinstatement may occur only when a petitioner has demonstrated by clear and convincing evidence of his conduct over a period of time, that he has been rehabilitated, and that he is legally competent).

Pursuant to Gov. Bar R.V(11)(F), relator, Disciplinary Counsel, obtained a certified copy of the Maryland disbarment order and filed it with the Clerk of this Court. This Court issued a show cause order to respondent on July 16, 2012 and on August 7, 2012, respondent submitted a response to the show cause order.

On August 15, 2012, this Court ordered respondent to “file an amended response to order to show cause that contains a certificate of service[.]” Respondent filed an amended response to the show cause order on August 20, 2012. Relator’s review of the two responses indicates that respondent made a few minor changes to the amended response and added a certificate of service.

On August 30, 2012 this Court granted leave for relator to file a reply to respondent’s response to the order to show cause. Now comes relator and hereby submits his reply to respondent’s amended response to the order to show cause.

### MEMORANDUM

As set forth above, respondent was admitted to the practice of law in the state of Ohio on March 14, 1980. Respondent was admitted in Maryland on April 1, 1981. Respondent is currently a resident of California.<sup>2</sup>

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<sup>2</sup> Respondent has failed the California bar examination at least four times. Respondent took the February 2008, July 2008, February 2009, and July 2010 examinations. After learning of his failing scores, respondent filed lawsuits against the State Bar of California making various constitutional claims including age discrimination. See, e.g. *Joseph v. State Bar of California*, No. B221236, 2010 WL 3566642 (September 15, 2010) and *Joseph v. State Bar of California*, No. CV 11-6598, 2012 WL 1802090 (May 16, 2012). In the 2010 decision, California’s Second District Court of Appeals made the following observation: “For the sake of completeness, we will address the remaining arguments raised in Joseph’s appellate brief. We cannot do so, however, without pointing out our distaste of his inflammatory and unsubstantiated comments that are

Notably and despite his 1980 admission to the practice of law in Ohio, it was not until February 2012, after he was disbarred in Maryland and after he failed the California bar examination, that respondent registered to practice law in Ohio. Further, at the time of his February 2012 registration, respondent was suspended from the practice of law in Ohio for failing to file a Certificate of Registration and pay the appropriate fees by December 1, 2005.

Ultimately, on February 16, 2012, seven years after his Ohio suspension and without disclosing his Maryland discipline to this Court, respondent applied for reinstatement.<sup>3</sup> Respondent's Ohio license was reinstated on February 24, 2012. Respondent is registered as "active" in Ohio for the 2011-2013 biennium.<sup>4</sup>

Pursuant to the mandates of Gov. Bar R.V(11)(F), respondent's response to the show cause order was to be limited to providing this Court with proof "by clear and convincing evidence" that the Maryland court either lacked jurisdiction over him or that the misconduct established warrants "substantially different discipline in Ohio." Gov. Bar R.V(11)(F)(4). Respondent's response does not mention either of the foregoing requirements. Instead, respondent provides his version of the "facts," claims that the Maryland court's determination was "entirely incorrect and not based on substantial

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peppered throughout those briefs. Such remarks were unnecessary and unprofessional, and an experienced attorney should know better."

<sup>3</sup> Respondent's failure to self-report is discussed later in this memorandum.

<sup>4</sup> As of February 2012, respondent registered as "inactive" in the state of Ohio for the 11 consecutive registration bienniums occurring from 1985 and 2005.

evidence," asserts that he "did not intentionally violate any rule;" and, reiterates the various "citizenship" arguments that were rejected by the Maryland court.<sup>5</sup>

Now comes relator and hereby submits that respondent's misconduct clearly warrants discipline in Ohio.<sup>6</sup> Respondent's misconduct and this Court's prior decisions establish that at least the same discipline imposed by the Maryland court should be imposed by this Court. Moreover, considering the aggravating factors, permanent disbarment in Ohio is warranted.

As determined by the Maryland Court of Appeals, respondent's misconduct included multiple instances of deceit and fraudulent conduct. The court held that respondent's conduct "was dishonest, misleading, prejudicial to the administration of justice, and beyond excuse." *Joseph*, 422 Md. at 707, 31 A.3d 137. Respondent "was not candid in his application[s] for admission pro hac vice filed in California state and federal courts." *Id.* at 685. Respondent's knowing and intentional "dishonest and deceptive conduct was prejudicial to the administration of justice because it was 'likely to bring the legal profession into disrepute[.]'" *Id.* at 686.

The Maryland court concluded that during Respondent's fraudulent efforts to obtain pro hac vice status in various California courts, he committed multiple violations of three of Maryland's Rules of Professional Conduct: Rule 3.3(a)(1) (a lawyer shall not

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<sup>5</sup> As set forth in Gov. Bar R.V(11)(F)(5), "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."

<sup>6</sup> By order dated June 18, 2012, respondent was disbarred by the United States Supreme Court. *In the Matter of Joel David Joseph*, \_\_ U.S. \_\_, 132 S.Ct. 2794, 183 L.Ed.2d 659 (2012). On July 20, 2012, respondent's license to practice law in the United States District Court for the Northern District of Ohio was indefinitely suspended pending reinstatement in Maryland. *In the Matter of Joel D. Joseph*, Attorney Disciplinary Order 2012-30, Case No. 1:12-at-00012 (July 20, 2012).

knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer), Rule 8.4(c) (it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), and Rule 8.4(d) (it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice).<sup>7</sup> The court also found that there were no mitigating circumstances. *Id.* at 707.

Respondent's numerous acts of deceit and misrepresentation coupled with making false statements to a tribunal and engaging in conduct that was prejudicial to the administration of justice, necessitates the imposition of an actual suspension from the practice of law in Ohio. "When an attorney exhibits a pattern of abusing legal procedures, be it for his own gain or for his client's advantage, an actual suspension from the practice of law is called for." *Disciplinary Counsel v. Stafford*, 131 Ohio St.3d 385, 2012-Ohio-909, 965 N.E.2d 971, ¶70.

"A lawyer who engages in a material misrepresentation to a court \* \* \* violates, at a minimum, the lawyer's oath of office that he or she will not 'knowingly \* \* \* employ or countenance any \* \* \* deception, falsehood, or fraud.'" *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 190, 658 N.E.2d 237 (1995). "Such conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer." *Id.*

As determined by the Maryland court, respondent engaged in repeated acts of "intentional dishonest conduct." *Joseph*, 422 Md. at 707. To wit, the court stated:

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<sup>7</sup> The three Maryland rules violated by respondent are identical to the applicable Ohio Rules of Professional Conduct.

There was clear and convincing evidence that Respondent left Maryland on January 31, 2007, traveled to California with the intent to reside there, and attempted to practice law in that state by making false or misleading statements in his [three] pro hac vice applications. As of this date, Respondent had no ties to any property in Maryland.”

*Id.*, 422 Md. at 699. “Intentional dishonest conduct is closely entwined with the most important matters of basic character to such a degree as to make intentional dishonest conduct by a lawyer almost beyond excuse.” *Attorney Grievance Comm. of Maryland v. Vanderlinde*, 364 Md. 376, 418, 773 A.2d 463 (2001).

Given the aggravating factors present in this case as well as a complete lack of remorse and a lack of mitigation evidence, respondent’s misconduct warrants permanent disbarment. As this Court stated in *Disciplinary Counsel v. Lentz*, 120 Ohio St.3d 431, 2008-Ohio-6355, 900 N.E.2d 167, at ¶33, “[d]isbarment is the only appropriate sanction for respondent’s multiple acts of dishonesty and his callous disregard of responsibility to his clients, the judicial system, and the legal profession.”

In aggravation, respondent was suspended from the practice of law in Ohio on December 2, 2005 for failing to register. This Court has repeatedly recognized previous attorney-registration suspensions as prior disciplinary offenses pursuant to BCGD Proc. Reg. 10(B)(1)(a). See, e.g. *Akron Bar Assn. v. Paulson*, 112 Ohio St.3d 334, 2006-Ohio-6678, 859 N.E.2d 932.

Albeit unintentionally, the Maryland decision also provides this Court with further evidence of respondent’s predisposition for deceitful conduct. Although the following instance of respondent’s deceit was unrecognized by the Maryland court, in the May 10, 2007 pro hac vice application that respondent signed under penalty of perjury in the *Wartell* case, respondent falsely claimed that he was “barred only in Maryland.”

Respondent's claim that he was "barred only in Maryland" is false. In the same 2007 application, respondent also falsely claimed that he was "not currently suspended or disbarred in any court." At the time he signed the sworn statement respondent was admitted in Ohio and suspended from the practice of law in Ohio.<sup>8</sup>

In further aggravation, it is evident that although required to do so pursuant to Gov. Bar R.V(11)(F)(1), respondent did not provide "timely written notification" to relator within 30 days of the issuance of the Maryland court's disciplinary order.<sup>9</sup> In fact, respondent never provided relator with any written notification. Relator learned of the Maryland order from the Attorney Grievance Commission of Maryland. As set forth in Gov. Bar R.V(11)(F)(6), respondent's failure to report may enhance this Court's disciplinary sanction.

Respondent committed additional misconduct in November 2011 – after he was disbarred in Maryland and before his Ohio license was reinstated. According to a "Cease and Desist Notice" issued to respondent by the State Bar of California, on November 4, 2011, respondent entered into an agreement to represent a client at an oral argument before the Ninth Circuit Bankruptcy Appellate Panel. Respondent appeared before the appellate panel on November 16, 2011. In its "Cease and Desist Notice," the state bar warned respondent that there was "probable cause to believe you

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<sup>8</sup> It appears that respondent was admitted to the bar in the District of Columbia in December 1973. Despite relator's efforts, relator has been unable to determine the existence or status of respondent's D.C. license.

<sup>9</sup> Respondent also violated Ohio Prof. Cond. R.8.3(a) (a lawyer who possesses unprivileged knowledge of a violation of the Ohio Rules of Professional Conduct that raises a question as to any lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform a disciplinary authority empowered to investigate or act upon such a violation).

have engaged in the unauthorized practice of law by providing legal services to another and/or by holding yourself out as being entitled to provide legal services to another.”

Finally and as set forth above, despite his admission to the practice of law in Ohio, it was not until 32 years after his admission that respondent first registered to practice in Ohio. All of respondent’s efforts to “clean up” his registration status occurred after he was disbarred in Maryland. On February 16, 2012, at a time when his Ohio license had been suspended for almost seven years and without disclosing his Maryland disbarment to this Court, respondent applied for reinstatement. Obviously misled by his lack of disclosure, respondent’s Ohio license was reinstated by this Court on February 24, 2012 and he is now registered as “active.”

### CONCLUSION

For all of the reasons set forth in the foregoing memorandum, this Court should impose reciprocal discipline upon respondent. In consideration of what is essentially an indefinite suspension imposed by the Maryland court and in light of the many aggravating factors, respondent should be disbarred in the state of Ohio.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I hereby certify that a photocopy of the foregoing Reply has been served via U.S. Mail, upon Joel David Joseph, 11950 San Vicente Blvd., Suite 220, Los Angeles, CA 90049, on this 11<sup>th</sup> day of September, 2012.

*Lori Brown*

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