

No. 2011-0120

IN THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION,
Relator,

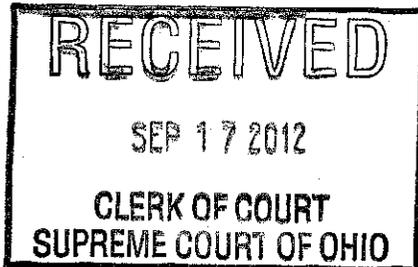
vs.

VLAD SIGALOV,
Respondent.

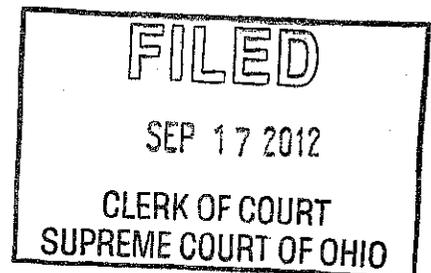
**RELATOR'S MEMORANDUM IN OPPOSITION
TO RESPONDENT'S MOTION FOR RECONSIDERATION**

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IN THE SUPREME COURT OF OHIO

Cincinnati Bar Association
225 East Sixth St.
Cincinnati, OH 45202
RELATOR

Case No. 2011-0120

v.

Vlad Sigalov (#0070625)
1721 Section Rd.
Cincinnati, OH 45237
RESPONDENT

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

A. INTRODUCTION.

On August 28, 2012, this Court permanently disbarred Respondent, Vlad Sigalov, from the practice of law for professional misconduct encompassing fraud, gross neglect, duplicity, incompetence, and the fleecing of clients. *Cincinnati Bar Association v. Sigalov*, Slip Opinion No. 2012-Ohio-3868 ¶94. On September 7, 2012, Respondent filed a Motion for Reconsideration of the Court's Opinion and Order entered on August 28, 2012. The Motion was filed pursuant to S. Ct. Prac. R. 11.2, which does not permit a motion to reconsider an Order. *See*, S. Ct. Prac. R. 11 (B). Therefore the Motion to Reconsider the Court's Order should be denied.

In addition, S. Ct. Prac. R. 11.2 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) (a motion for reconsideration shall not constitute a reargument of the case). "This court has invoked the reconsideration procedures set forth in S. Ct. Prac. R. XI to 'correct decisions that upon further reflection are determined to have been made in error.'" *Buckeye Community Hope Found v. Cuyahoga Falls* (1998), 82 Ohio St.3d 539, 541, 697 N.E.2d 181, 183. *See also*, *State ex rel. Mirlisena v. Hamilton Cty. Bd. of Elections* (1993), 67 Ohio St.3d 597, 622 N.E.2d 329 (reasoning contained in a previous dissenting opinion adopted by a majority of this court pursuant to a motion for reconsideration) and *State ex re. Eaton Corp. v. Lancaster* (1989), 44 Ohio St. 3d 106, 541 N.E.2d 64 (views contained in a previous concurring opinion adopted by a majority of this court pursuant to a motion for "rehearing").

Each 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 Court's decision, permanently disbaring Sigalov from the practice of law, was not made in error. Respondent is merely restating his previous arguments, suggesting that the Court should reconsider his arguments, after having previously rejected them. Respondent raises no new argument, fact or law in his motion; nor does he cite any reason for this Court to engage in "further reflection" of its decision to permanently disbar him. For the following reasons, Respondent's Motion for Reconsideration lacks merit and should be denied.

B. THE COURT RULED ON RESPONDENT'S ALLEGED DUE PROCESS VIOLATIONS IN COUNT III OF THE SECOND AMENDED COMPLAINT, THEREFORE THERE ARE NO GROUNDS TO GRANT A MOTION FOR RECONSIDERATION.

Respondent's main argument is that this Court erred when it did not rule on his due process violation arguments that were raised in his Objections and Brief in Support ("Objections"). Respondent's Motion p. 3. Respondent does not explain which of his due process arguments were not addressed by the Court. As is shown below, the Court **did** rule on all of Respondent's due process arguments.

The first due process argument Respondent raised in his Objections, with regard to Count III, was whether Relator used evidence of fabrication as a new charge against Sigalov during the hearing and if so, whether using the fabrication evidence in that manner amounted to a due process violation. Respondent's Objections p. 10-16. However, the Court **did** address this due process argument:

Sigalov contends that the panel's consideration of the letter violated due process because the complaint gave no notice that the letter's authenticity was at issue. We reject this broad proposition insofar as it is directed toward the portion of Count III that arises from Sigalov's misconduct with the client, but we agree with Sigalov to the extent that it is aimed at the allegations arising from Sigalov's misconduct before the panel.

See Sigalov, ¶43. In fact the Court held that Sigalov's dishonest statements to the panel and relator could not be the basis of a charge of misconduct, because to do so would amount to a due process violation. *Id.* at ¶46. Therefore, not only did the Court consider Sigalov's due process argument, it ruled in his favor.

Respondent also raised in his Objections whether the use of the fabrication evidence for impeachment amounted to a due process violation. This Court **did** address this argument and held that the fabrication evidence was proper as evidence of impeachment:

Procedural due process requires only notice of the charges before the proceedings commence and an opportunity to be heard. It does not require that an attorney charged with misconduct be given notice, prior to presenting false evidence, that if he does present such false evidence, additional evidence will be submitted to the panel to impeach him.

Id. at ¶44. Respondent does not cite any case law or make any argument in his Objections, nor in his Motion for Reconsideration, that the Court's ruling is in error.

Respondent also raised as a due process violation whether Relator "never alleged in its Second Amended Complaint" that Respondent violated Cond. R. 8.4(c) by not telling his client about the new hearing date. Respondent's Objections p. 14. Respondent raises in his Motion for Reconsideration the same arguments he raised in his Objections, that is, that the Rule 8.4(c) dishonesty charge did not state as an example of this violation the dishonesty in telling his client there was no hearing date, when in fact, Sigalov knew the hearing date. *See* Respondent's Objections p. 14; Motion for Reconsideration p. 5. This Court **did** address Respondent's argument and held that the original complaint, which he received more than a year before the hearing, clearly put Sigalov on notice that "his failure to inform the client of the rescheduled hearing date was at issue in this case." *See Sigalov*, ¶45. The Second Amended Complaint states, "Respondent did not mail a copy of the notice to Mr. Beriashvili, but did send him a letter notifying him of the hearing date two weeks before the hearing. *Mr. Beriashvili did not receive the letter.* Second Amended Complaint, ¶34; *Sigalov*, Footnote 2 (emphasis added).

This Court ruled squarely on the due process claim: "There is no question that Sigalov was on notice that the failure to inform the client was at issue in this case, and no procedural due process right is violated by the panel's pursuit of that claim." *Sigalov*, ¶45. What is required is "fair notice as to the reach of the grievance procedure" *In re Ruffalo* (1968), 390 U.S. 544, 522. This Court found fair notice was given. Finally, this Court held that "[b]ecause Sigalov's

fabrication of evidence does not enter into our Rule 8.4(c) violation analysis, his constitutional due process claim does not affect our ruling. Instead, our decision on the third count is premised on Sigalov's misconduct relating to his client." *Sigalov*, ¶48.

C. RESPONDENT OFFERS NO GROUNDS FOR THE COURT TO RECONSIDER ITS DUE PROCESS ARGUMENTS WITH REGARD TO COUNTS V AND VII.

Respondent states, in one sentence, that other constitutional deficiencies were alleged by Respondent in his Objections with regard to Count V. Respondent's Motion p. 6. Respondent does not explain why the Court should "further reflect" on the constitutional deficiency argument in Count V. Respondent argued that the panel should not have permitted Relator to amend Count V of its Second Amended Complaint to state specifically state the disciplinary rules violated. The gist of Respondent's due process objection respecting this amendment is that Respondent claims he was not given fair notice of the conduct that Relator claims warranted discipline. However, it is clear that the facts were not amended, only the reference to the disciplinary rules. The Court found there was clear and convincing evidence that DR 1-102(A)(4), 6-102(A)(3), 7-101(A)(1), 7-101(A)(2) and 7-101 (A)(3) and Prof. Cond. R. 1.2(a), 1.3, 1.4(a), 1.16(a)(3), and 8.4(c) were violated. *Sigalov*, ¶56. Respondent raises no argument or law or facts that would cause the Court to consider that its ruling was in error.

Finally, Respondent argues in two sentences that in Count VII, the Court's consideration of evidence of forgery as evidence of aggravation is a due process violation. Respondent never raised a due process violation with regard to this claim in its Objections. Nor does Respondent explain it in its Motion for Reconsideration. In fact, the Court did not rely on evidence of the forgery as an aggravating factor. *See Sigalov*, ¶80-91. While the Board stated such evidence could be considered "in connection with mitigation and/or aggravation" there is no indication the Board relied on the forgery evidence for either. *See Board's Findings of Fact* p. 29-31. Finally,

even if the Panel, the Board or this Court had used evidence of forgery as an aggravating factor, such a decision would not be a due process violation. This Court has held that evidence of uncharged conduct may be considered as an aggravating circumstance without violating due process. *Columbus Bar Assn. v. Farmer*, 111 Ohio St.3d 137, 2006-Ohio-535 (while due process precluded finding a violation on the basis of the misrepresentations made to disciplinary counsel during the investigation, the court considered the misrepresentations as an aggravating circumstance when deciding what sanction to impose); *Disciplinary Counsel v. Cox*, 113 Ohio St. 3d 48, 2007-Ohio-979 (submission of false statements during disciplinary process may be considered as an aggravating factor). *See also*, BCGD Proc. Reg. 10 (B)(1), which lists as an aggravating factor that can be considered, “submission of false evidence, false statements, or other deceptive practices during the disciplinary process.”

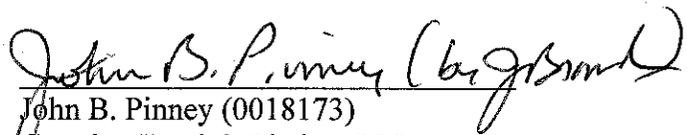
Having offered no grounds for the Court to “further reflect” on whether its decision was in error, the Motion for Reconsideration should be denied.

CONCLUSION

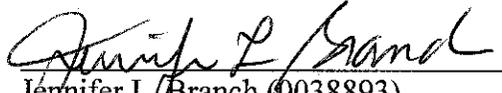
For the foregoing reasons, Relator respectfully requests that the recommendation of the Board that, based on his remarkable record of fraud and deceit, Respondent Vlad Sigalov, be permanently disbarred from the practice of law in the State of Ohio.

Dated: September 14, 2012

Respectfully submitted,



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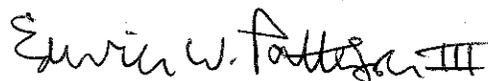
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CERTIFICATE OF SERVICE

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