

IN THE SUPREME COURT OF OHIO

ORIGINAL

Disciplinary Counsel,

Relator,

vs.

John Peter Antony

Respondent.

CASE NO. 2012-1181

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

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On September 6, 2012, this Court filed an Order imposing a reciprocal 90-day suspension upon respondent. On September 14, 2012, respondent filed a Motion for Reconsideration of this Court's September 6, 2012 Order to which relator now responds.

LAW AND ARGUMENT

“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*, 82 Ohio St.3d 539, 541, 697 N.E.2d 181, 183 (1998) (citation omitted). This Court should not reconsider its decision suspending respondent from the practice of law for two reasons.

First, respondent has not shown good cause to reconsider the decision to impose a reciprocal 90-day suspension. “[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.” Gov. Bar R. V(11)(F)(5). This rule further provides that 30 days after notifying the disciplined attorney, this Court “shall impose the identical or comparable discipline imposed in the other jurisdiction, unless the attorney proves either of the following by clear and convincing evidence: (i) [a] lack of jurisdiction or fraud in the other jurisdiction’s disciplinary proceeding; [or] (ii) [t]hat the misconduct established warrants substantially different discipline in Ohio.” *Id.*

This Court received a final decision from the Supreme Court of Florida conclusively establishing respondent’s misconduct and suspending him from the practice of law. This Court then issued a show cause order notifying respondent that it would impose reciprocal discipline unless he provided clear and convincing evidence as to why the Court should not impose

reciprocal discipline. When respondent failed to respond in the time permitted, the Court imposed a reciprocal 90-day suspension as mandated by Gov. Bar R. V(11)(F)(4)(a).

Respondent concedes that he failed to file a timely response to the show cause order, and claims that his failure to do so is excusable neglect. (Mot. for Recons. ¶7.) Specifically, respondent states that he is suffering severe financial difficulty and that he attempted to file a response by facsimile, which the clerk of this Court allegedly rejected. *Id.* at ¶¶2-7.

Respondent had 20 additional days to file his response and waited to the last day possible to submit his response – allegedly by facsimile. Relator does not make light of any financial problem respondent may be experiencing; however, the timely filing of a response by regular U.S. mail was likely not cost prohibitive. Accordingly, “excusable neglect” did not prevent respondent from filing a timely response; it was more likely a lack of timely preparation that caused it.

Second, although the issue was never addressed by this Court and is not properly a matter for reconsideration, respondent has not provided clear and convincing evidence in opposition to the imposition of a reciprocal 90-day suspension. To prevent the imposition of reciprocal discipline, respondent was required by Gov. Bar R. V(11) to show by clear and convincing evidence a lack of jurisdiction or fraud in the Florida disciplinary proceeding or that his misconduct warranted substantially different discipline in Ohio. Respondent has not accomplished either of those things.

Respondent does not dispute Florida’s jurisdiction but offers a theory suggesting that the Florida disciplinary proceedings were fraudulent due to the Florida bar’s purported original intent not to sanction him and motivated by an animus towards out-of-state attorneys. (Mot. for Recons. ¶¶9-11.) Respondent fails to offer clear and convincing evidence of any agreement that

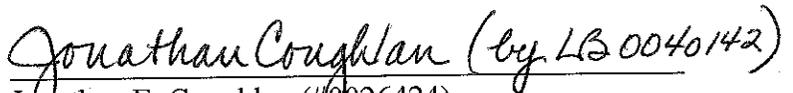
supersedes the final adjudication by the Supreme Court of Florida. Moreover, respondent offers no proof that his prosecution was motivated by an animus towards out-of-state attorneys.

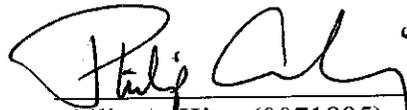
Respondent's motion for reconsideration fails to cite any Ohio authority suggesting that a 90-day suspension is too harsh in light of his misconduct in Florida. In fact, the motion for reconsideration makes no mention of the circumstances surrounding respondent's misconduct upon which his Court might have reassessed the sanction. In toto, respondent's motion for reconsideration fails to provide this Court with clear and convincing evidence of a lack of jurisdiction or fraud in the other jurisdiction's disciplinary proceeding or that the misconduct established warrants substantially different discipline in Ohio. See Gov. Bar R.V(11)(5).

CONCLUSION

In sum, respondent offers neither a valid reason for this Court to reconsider the imposition of reciprocal discipline, nor provides clear and convincing evidence to justify the imposition of a sanction different from the 90-day suspension imposed by Florida. Therefore, relator respectfully requests that this Court issue an order denying respondent's motion for reconsideration.

Respectfully submitted,


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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Relator's Memorandum in Opposition to Respondent's Motion for Reconsideration* was mailed to John Peter Antony, Esq. at 1 Katherine Court, Highland Heights, KY 41076, by regular U.S. mail on September 24, 2012.


Philip A. King
Counsel of record for relator