

## The Supreme Court of Ohio

Disciplinary Counsel,

Case No. 2012-1107

Relator

v.

## PETITION FOR REHEARING

Joel David Joseph,

Respondent.

Respondent hereby petitions this court for a rehearing and immediate vacation of the order suspending him from the practice of law entered on October 3, 2012. There was no hearing in this case, no oral argument or other opportunity for respondent to present his case.

This lack of a hearing has deprived respondent of his right to practice law in Ohio without due process of law.

The United States Supreme Court has ruled that attorneys are entitled to due process before he is suspended or disbarred. *In Re Ruffalo*, 390 U.S. 544 (1968) 390 U.S. 544. The Supreme Court ruled:

Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. *Ex parte Garland*, 4 Wall. 333, 380; *Spevack v. Klein*, 385 U.S. 511, 515. **He is accordingly entitled to procedural due process**, which includes fair notice of the charge (emphasis added). 390 U.S. at 550.

Due process includes the right to orally appear before the court. The record is inadequate and in order to protect the due process rights of respondent, oral argument is essential.

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Justice William J. Brennan observed:

[O]ften my whole notion of what a case is about crystallizes at oral argument. This happens even though I read the briefs before oral argument . . . . Often my idea of how a case shapes up is changed by oral argument . . . . Oral argument with us is a Socratic dialogue between Justices and counsel.” Robert L. Stern, et al., *Supreme Court Practice: For Practice in the Supreme Court of the United States* 671 (2002) (quoting Harvard Law School Occasional Pamphlet No. 9, 22-23 (1967)).

Justice Antonin Scalia asserts that he uses oral argument “[t]o give counsel his or her best shot at meeting my major difficulty with that side of the case. ‘Here’s what’s preventing me from going along with you. If you can explain why that’s wrong, you have me.’” Hon. Joseph W. Hatchett & Robert J. Telfer, III, *The Importance of Appellate Oral Argument*, 33 *Stetson L. Rev.* 139, 142 (2003) (quoting Stephen M. Shapiro, Questions, Answers, and Prepared Remarks, 15 *Litigation* 33 (Spring 1989) (in turn citing *This Honorable Court* (WETA television broadcast 1988)).

A hearing and oral argument allows judges to probe the depth of counsel’s arguments and positions, to test counsel’s conviction and belief in his own assertions, and to satisfy the judge’s own intellectual curiosity.

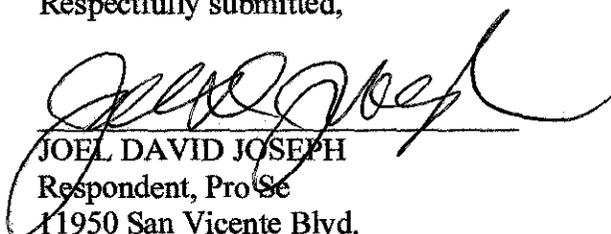
Judge Richard A. Posner of the Seventh Circuit noted, “the value of oral argument to judges is very high. Oral argument gives judges the chance to ask questions of counsel. It also provides a period of focused and active judicial consideration of the case.” *The Federal Courts: Challenge and Reform*, Harvard University Press, Cambridge, Ma., 1999 at 161.

Judge Joel Dubina of the Eleventh Circuit Court of Appeals has noted, “I have seen cases where good oral argument compensated for a poor brief and saved the day for that litigant. I have

also seen effective oral argument preserve the winning of a deserving case.” *From the Bench: Effective Oral Advocacy*, 20 *Litigation* 3, 3-4 (Winter, 1994).

For all of these reasons, the petition for rehearing should be granted, oral argument should be scheduled, and respondent should be reinstated to the Ohio Bar nunc pro tunc.

Respectfully submitted,



JOEL DAVID JOSEPH  
Respondent, Pro Se  
11950 San Vicente Blvd.  
Los Angeles, CA 90049  
(310) 623-3872  
JoelDJoseph@Gmail.com

Dated: October 9, 2012

CERTIFICATE OF SERVICE

I certify that I have mailed a copy of this revised response this 9<sup>th</sup> day of October, 2012 to  
Lori Brown, Disciplinary Counsel, 250 Civic Center Drive, Suite 325, Columbus, Ohio 43215.



JOEL D. JOSEPH