ORIGINAL

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, Relator, vs. **Joel David Joseph** Respondent.	: : : : : : : : :	**CASE NO.** **2012-1107**

RELATOR'S MEMORANDUM OPPOSING
RESPONDENT'S "PETITION FOR REHEARING"

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Disciplinary Counsel,	:	
Relator,	:	**CASE NO. 2012-1107**
vs.	:	
Joel David Joseph (0048592)	:	
Respondent.	:	

RELATOR'S MEMORANDUM OPPOSING RESPONDENT'S "PETITION FOR REHEARING"

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. In a decision announced on October 27, 2011, respondent was disbarred in Maryland for committing misconduct including making false statements to various courts in order to further his own interests. *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).

On October 3, 2012, this Court issued a unanimous decision indefinitely suspending respondent from the practice of law in Ohio pursuant to Gov. Bar R.V(11)(F)(4) (reciprocal discipline). *Disciplinary Counsel v. Joseph*, No. 2012-1107. *See* 2012-Ohio-4549. Respondent has now filed a "petition for rehearing."

Respondent's "petition for rehearing" does not mention any of the Rules of Practice of this Court nor does it include the word "reconsideration." Relator's,

Disciplinary Counsel's, examination of the Rules of Practice disclosed nothing that permits respondent to petition this Court for a "rehearing." Nevertheless, given that the petition was accepted for filing, relator hereby responds in opposition to respondent's request.

For the reasons set forth in the following memorandum, relator respectfully urges this Court to reject respondent's "petition for rehearing." [1]

RELATOR'S MEMORANDUM IN OPPOSITION TO RESPONDENT'S "PETITION FOR REHEARING"

Respondent's "petition for rehearing" is devoted primarily to a request for oral argument before this Court. Arguing that "the record is inadequate," respondent claims that an oral argument will satisfy respondent's right to "due process before he is suspended or disbarred." This Court should reject respondent's plea for an oral argument.

In following the mandates of Gov. Bar R.V(11)(F), this Court already afforded respondent every right to due process. In conformance with the Rules for the Government of the Bar of Ohio, relator filed a certified copy of the Maryland court's decision disbarring respondent. 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

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[1] Alternatively, relator urges this Court to strike respondent's "petition for rehearing." "Civ. R.12(F) allows a court to strike any pleading or material determined to be insufficient, redundant, immaterial, impertinent, or scandalous." *State ex rel. Morgan v. New Lexington*, 112 Ohio St.3d 33, 38, 2006-Ohio-6365, 857 N.E.2d 1208 (citation omitted). Respondent's "petition for rehearing" is clearly immaterial and this Court has the discretion to strike it from the record in this case. See, *id.*

shall establish conclusively the misconduct for purposes of a disciplinary proceeding in Ohio." (Emphasis added).

Further following Gov. Bar R.V(11), this Court issued a show cause order to respondent. In choosing to submit a response to the show cause order, respondent had the burden of providing this Court with proof "by clear and convincing evidence" that the Maryland court either lacked jurisdiction over him or that the previously established misconduct warrants "substantially different discipline in Ohio." Gov. Bar R.V(11)(F)(4).

In his response to the show cause order, respondent simply claimed that Maryland's decision to disbar him was "entirely incorrect." Respondent reasserted legal arguments that had been rejected by the Maryland court. Despite his opportunity to do so, at no time did respondent offer this Court "clear and convincing" proof of anything.

Respondent's claim that he was denied "due process of law" should also be rejected by this Court. The very case relied upon by respondent, *In re Ruffalo*, in fact, establishes that contrary to respondent's assertions, he was afforded procedural due process by this Court. *See*, *In re Ruffalo*, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed. 117, 43 O.O.2d 459. (1968). Quoting *Randall v. Brigham*, 7 Wall. 523, 540, 19 L.Ed. 285, the *Ruffalo* Court stated that in an attorney discipline proceeding, due process requires that "notice should be given to the attorney of the charges made and an opportunity afforded him for explanation and defen[s]e." *Id.* at 550.

By virtue of this Court's show cause order, respondent received notice of the charges against him in Ohio and an opportunity to defend himself. See, Gov. Bar R.V(11)(F)(4). Contrary to respondent's assertion, the absence of an oral argument is not a denial of respondent's procedural due process rights.

Respondent's declaration that an oral argument might "save the day" for him overlooks both the fact that his due process rights have not been violated and the fact that he has yet to provide this Court with any evidence that Maryland lacked jurisdiction over him or that he should receive substantially different discipline from this Court. Respondent is clearly mistaken in his contention that the "record is inadequate" and/or that participating in an oral argument would provide him with an opportunity to enhance the record in this case. The "record" of respondent's misconduct was established during the Maryland proceedings. That proceeding also conclusively established respondent's misconduct for purposes of this Court's proceedings. *See* Gov. Bar R.V(11)(F)(5).

Given that respondent's "petition for rehearing" was filed after the announcement of this Court's decision on the merits of this case, the Court may choose to evaluate the "petition" under the standards for reconsideration germane to motions filed under S.Ct.Prac.R. 11.2. Pursuant to this rule and the precedent of this Court, respondent is specifically precluded from rearguing his case in a post-decision motion. See, e.g., *State ex rel. Gross v. Indus. Comm. of Ohio,* 115 Ohio St.3d 249, 2007-Ohio-4916, 874 N.E.2d 1162, ¶ 78 (O'Connor, J., dissenting).

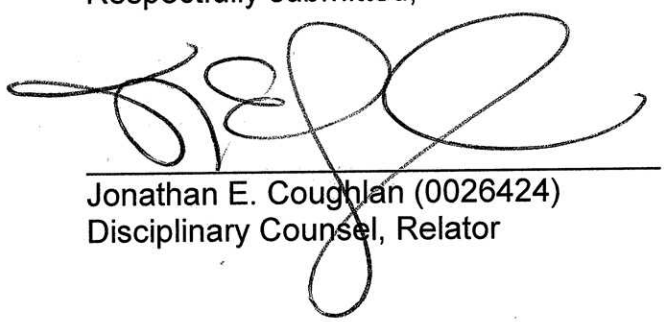
In his "petition for rehearing," respondent has not offered anything to this Court to persuade it that the October 3, 2012 decision was "made in error." Accordingly, any relief sought by respondent pursuant to this "petition for rehearing" should be denied.

CONCLUSION

Respondent's "petition for rehearing" should be denied by this Court. Contrary to respondent's assertions, his right to "due process" does not include the right to appear at an oral argument before this Court. Respondent was provided with more than sufficient procedural due process at every phase of this reciprocal disciplinary proceeding.

This Court's decision should not be reconsidered and respondent's "petition for rehearing" should be overruled for all of the reasons stated herein.

Respectfully submitted,



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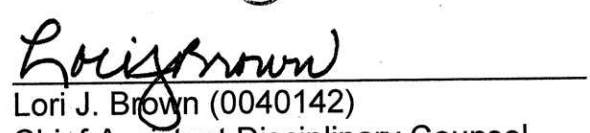

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CERTIFICATE OF SERVICE

I hereby certify that a photocopy of the foregoing "Memorandum Opposing Respondent's "Petition for Rehearing" was served upon respondent, Joel David Joseph, 11950 San Vicente Blvd., Suite 220, Los Angeles, CA 90049, this 18th day of October, 2012.

Lori J. Brown

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