

ORIGINAL

IN THE SUPREME COURT OF OHIO

In re:

Joseph Patrick O'Malley, Esq.
PO Box 451244
Westlake, OH 44145

CASE NO. 2012-2070

Respondent,

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

RELATOR'S MOTION TO STRIKE
RESPONDENT'S "OBJECTION TO
THE COURT INCREASING THE
RECOMMENDED SANCTION AND
REQUEST FOR ORAL ARGUMENT"

Relator.

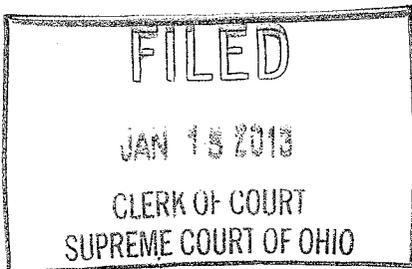
RELATOR'S MOTION TO STRIKE RESPONDENT'S "OBJECTION TO THE COURT
INCREASING THE RECOMMENDED SANCTION AND REQUEST FOR ORAL
ARGUMENT"

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Respondent.

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Now comes relator, Disciplinary Counsel, and hereby submits this Motion to Strike Respondent's "Objection" to the Board of Commissioners' Report and Recommendation.

STATEMENT OF FACTS

On December 13, 2011, the Board of Commissioners on Grievances and Discipline ("board") certified a formal complaint against the respondent, Joseph P. O'Malley. Thereafter, relator and respondent submitted to the panel a fully stipulated case, in which the parties jointly recommended an indefinite suspension with credit for time-served under respondent's interim

felony suspension of August 22, 2011. On December 10, 2012, the board issued its Findings of Fact, Conclusions of Law, and Recommendation (“report”) in which the board adopted the panel and parties’ joint recommended sanction. *Report*, at p. 8.

Pursuant to Gov. Bar. R.V(8)(A), on December 19, 2012, this Court issued an Order to Show Cause (attached hereto as Appendix A) in which it stated, “On consideration thereof, it is ordered by the court that the parties show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered.” (Emphasis added.). Further, the Order to Show Cause, which tracks the language of Gov. Bar R.V(8)(B), explicitly stated:

It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

On January 8, 2013, respondent filed a document entitled “Respondent’s Objection to the Court Increasing the Recommended Sanction and Request for Oral Argument;” however, the document is actually a brief in support of the board’s recommendation. Respondent has no objection to the board’s findings of fact or recommendation. In his brief, respondent asserts, “It is for the above-stated reasons that Respondent strongly concurs with the stipulations of the parties and the findings of the Board, and requests this Court adopt the findings of the board in their entirety.” (Emphasis added.). By its title, it is clear that respondent is not objecting to the board’s report, rather he is attempting—without any authority—to preserve his ability to file objections should this Court increase the sanction recommended by the board and the parties. Respondent’s filing is contrary to Gov. Bar R.V(8)(B) and the Order to Show Cause and should be stricken.

Recognizing that Gov. Bar R.V(8)(B) and the Order to Show Cause limited respondent to filing an objection, it appears respondent simply labeled his brief in the support of the board's report as an "objection" to ensure acceptance upon filing. This Court should not permit respondent to circumvent its rules. To do so would allow respondent to supplement the record below, which closed on November 1, 2012. Since respondent has no objection to the board's report, his "Objection to the Court Increasing Recommended Sanction and Request for Oral Argument" should be stricken.

Similarly, neither Gov. Bar R.V(8)(D) nor the Order to Show Cause provide respondent an opportunity to present oral argument before this Court. Consistent with Gov. Bar R.V(8)(D), the Order to Show Cause explicitly states that oral argument is conditioned upon the filing of objections to the board's report. "After a hearing on the objections, or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be more severe or less severe than said recommendation." (Emphasis added.). Gov. Bar R.V(8)(B) and the Order to Show Cause are clear—without an objection, respondent is not entitled to a hearing before this Court. Finally, S.Ct.Prac.R. 13.04 reinforces Gov. Bar R.V(8)(B) and the Order to Show Cause by stating, "Oral argument will be scheduled and heard after the filing of objections and briefs to a final certified report filed by the Board of Commissioners on Grievances and Discipline, or the Board on the Unauthorized Practice of Law." (Emphasis added). Again, because respondent has not filed an objection to the board's report, he is not entitled to oral argument before this Court.

Interestingly, respondent requests an oral argument only if this Court "entertains an increase in the penalty." Respondent is not entitled to any advanced warning regarding this Court's deliberations; consequently, his request for oral argument should be denied.

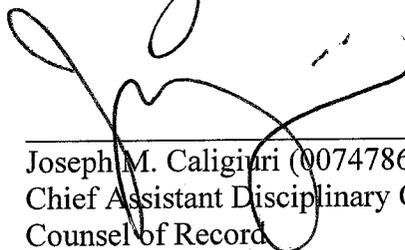
CONCLUSION

Respondent is in complete agreement with the board's report. There is no objection to it; consequently, this Court should strike respondent's "Objection to the Court Increasing Recommended Sanction and Request for Oral Argument" and deny his request for oral argument.

Respectfully submitted,



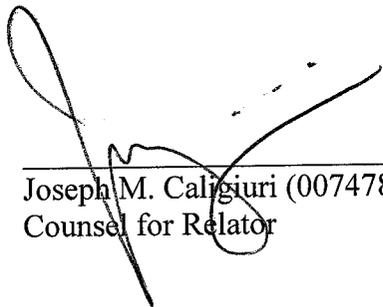
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Relator's Motion to Strike Respondent's "Objection to the Court Increasing the Recommended Sanction and Request for Oral Argument" was served via U.S. Mail, postage prepaid, upon respondent's counsel, Larry Holliday James, Esq., Crabbe, Brown, & James, LLP, 500 S. Front St., Suite 1200, Columbus, OH 43215, and via e-mail at ljames@cbjlawyers.com, and upon Richard A. Dove, Secretary, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5th Floor, Columbus, Ohio 43215, via hand delivery, this 15th day of January, 2013.



Joseph M. Caligiuri (0074786)
Counsel for Relator

FILED

DEC 19 2012

CLERK OF COURT
SUPREME COURT OF OHIO

The Supreme Court of Ohio

Disciplinary Counsel,
Relator,

Case No. 2012-2070

v.
Joseph Patrick O'Malley,
Respondent.

ORDER TO SHOW CAUSE

The Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio filed a final report in the office of the clerk of this court. In this final report the board recommends that pursuant to Rule V(6)(B)(2) of the Supreme Court Rules for the Government of the Bar of Ohio respondent, Joseph Patrick O'Malley, Attorney Registration Number 0060087, be indefinitely suspended from the practice of law with credit for time served under the interim felony suspension imposed on August 22, 2011, with reinstatement subject to conditions. The board further recommends that the costs of these proceedings be taxed to respondent in any disciplinary order entered, so that execution may issue.

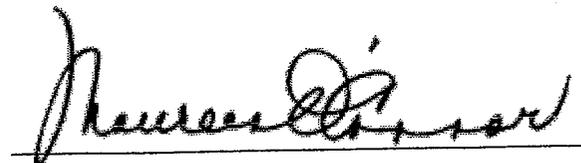
On consideration thereof, it is ordered by the court that the parties show cause why the recommendation of the board should not be confirmed by the court and the disciplinary order so entered.

It is further ordered that any objections to the findings of fact and recommendation of the board, together with a brief in support thereof, shall be due on or before 20 days from the date of this order. It is further ordered that an answer brief may be filed on or before 15 days after any brief in support of objections has been filed.

After a hearing on the objections, or if no objections are filed within the prescribed time, the court shall enter such order as it may find proper which may be the discipline recommended by the board or which may be more severe or less severe than said recommendation.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings and further that unless clearly inapplicable, the Rules of Practice shall apply to these proceedings. All documents are subject to Rules 44 through 47 of the Rules of Superintendence of Ohio which govern access to court records.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, to respondent's last known address.



Maureen O'Connor
Chief Justice

Appendix A