

ORIGINAL

IN THE SUPREME COURT OF OHIO

<b>Disciplinary Counsel,</b>	:	<b>CASE NO. 2013-0999</b>
	:	
Relator,	:	
	:	
vs.	:	
	:	
<b>Eric Charles Deters, Esq.</b>	:	
	:	
Respondent.	:	

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**RELATOR'S REPLY TO RESPONDENT'S RESPONSE  
TO THE ORDER TO SHOW CAUSE**

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Respectfully submitted,

Office of Disciplinary Counsel  
*Scott J. Drexel, Disciplinary Counsel Designate\**  
 Relator

**FILED**  
 JAN 17 2014  
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 SUPREME COURT OF OHIO

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**INTRODUCTION**

Respondent, Eric Charles Deters, was admitted to the practice of law in the state of Kentucky on October 10, 1986 and in Ohio on May 11, 1987. By judgment entry filed May 23, 2013, the Kentucky Supreme Court imposed a 60-day suspension from the practice of law upon respondent. Under Gov. Bar R.V(11)(F)(1), relator provided the Clerk of Court with a copy of Kentucky's order, prompting this Court to issue an order to show cause on June 21, 2013. Respondent filed a response to the order to show cause informing this Court that the Kentucky order had been stayed pending reconsideration. Consequently, on July 15, 2013, this Court stayed the reciprocal disciplinary proceedings in Ohio until the stay issued by the Kentucky Supreme Court had expired. On August 29, 2013, the Kentucky Supreme Court denied respondent's motion for reconsideration and reinstated the original 60-day suspension. *Kentucky Bar Ass'n. v. Deters*, 406 S.W.3d. 812 (2013), reconsideration denied August 29, 2013. Consequently, on October 31, 2013, this Court lifted the stay and issued a second order to show

cause on November 7, 2013. On November 27, 2013, respondent replied to the order to show cause. On January 8, 2014, this Court granted leave for relator to reply to respondent's response to the order to show cause. The following is relator's reply.

### MEMORANDUM

Gov. Bar R.V(11)(F)(4)(a) states, “[T]he Supreme Court shall impose the identical or comparable discipline imposed in another 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; (ii) That the misconduct established warrants substantially different discipline in Ohio.” As evidenced by his response, respondent cannot meet his burden; consequently, this Court should impose the 60-day suspension.

Respondent is not alleging a lack of jurisdiction or fraud; rather, he argues that an *alleged* lack of procedural due process in the Kentucky disciplinary proceedings warrants substantially different discipline (i.e. no discipline) in Ohio. On its face, respondent’s argument is out of rule. The second criteria in Gov. Bar R.V(11)(F)(4)(a)—that the misconduct established warrants substantially different discipline in Ohio—requires an analysis of the *actual* misconduct, not the disciplinary proceedings in which the conduct was established. Nowhere in respondent’s brief does he discuss the misconduct that formed the basis of his suspension in Kentucky. Rather, respondent focuses on *alleged* procedural irregularities in the Kentucky disciplinary process and argues—unpersuasively—that such irregularities warrant substantially different discipline in Ohio. Because respondent cannot meet his burden of proof, this Court should honor Kentucky’s suspension and impose the identical suspension in Ohio.

Even if this Court were to assume that respondent's arguments fall within the parameters of the rule, he still would not be entitled to relief. In his first argument, respondent alleges he was denied due process when the Kentucky Board of Governors denied respondent's motion requesting the presence of a court reporter and videographer during the *board* stage of the disciplinary proceedings. *Resp. Brief*, p. 4. Respondent posits that his inability to have the proceedings preserved violated his due process rights. However, the Kentucky Supreme Court considered respondent's argument and summarily rejected it, holding:

The Court sees no prejudice in this practice as it relates to this Court's review of the matter. When this Court undertakes review of a disciplinary proceeding, whether at the party's urging under SCR 3.370(7) or the Court's own motion under SCR 3.370(8), it is not bound as it would be in a pure appeal. The Court is not required to defer to the findings of fact or conclusions of law of the trial commissioner or the Board. Rather, in disciplinary proceedings, those entities act as administrative agents of this Court to produce a record and a recommendation.

Once this Court undertakes review of a case, it "shall enter such orders or opinion as it deems appropriate on the entire record." SCR 3.370(8). Thus, the demeanor and actions of the Board and Bar Counsel are not relevant. This Court instead decides the case *de novo* itself based on the record developed below. Any potential unfairness shown by a Board member or by Bar Counsel is alleviated by this Court's independent review of a lawyer's alleged misconduct.

*Deters*, 406 S.W.3d at 819. Despite respondent's argument to the contrary, he was provided sufficient due process throughout each phase of the Kentucky disciplinary proceedings. In fact, the Kentucky Supreme Court noted that respondent waived the hearing before the Trial Commissioner, opting instead to submit a brief in which he argued that his conduct did not violate the ethical rules. *Id.* at 8. In his response to this Court's order to show cause, respondent concedes that under Kentucky SCR 3.350, any hearing before a Trial Commissioner would have

been recorded.<sup>1</sup> *Resp. Brief*, p. 7. Respondent cannot claim a due process violation after choosing not to participate in the proceeding that would have produced the record he now claims he was denied.

After electing not to participate in the hearing before the Trial Commissioner, respondent appealed the Commissioner's finding to the Board of Governors, which agreed to review the matter *de novo*. Respondent participated fully at the board level, then appealed the board's findings to the Kentucky Supreme Court, where he was again permitted to brief the issues. *Deters*, 406 S.W.3d at 819. The procedural posture of respondent's disciplinary case proves he was afforded ample due process at every stage of the proceedings.

Furthermore, despite his attack upon Kentucky's process, respondent acknowledges that Ohio employs a similar process. In Ohio, Gov. Bar R.V requires that any hearing before the panel be transcribed by a court reporter; however, there is no such requirement for proceedings before the board—a fact respondent concedes in his brief. *Resp. Brief*, p.7 fn 1; Gov. Bar R.V(6)(F), (J). Consequently, respondent's argument that the alleged denial of due process in Kentucky warrants substantially different discipline in Ohio makes no sense in light of the fact that Ohio provides for the same procedural safeguards as Kentucky.

In conjunction with his "due process" argument, respondent also argues that his November 27, 2013 filing of a Petition for a Writ of Certiorari in the United States Supreme Court provides a basis for this Court to stay the imposition of reciprocal discipline. "Substantially different discipline' could also mean delaying imposition of discipline until resolution of the petition in the U.S. Supreme Court. In any event, this Court should avoid a

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<sup>1</sup> Kentucky SCR 3.350 states, "The proceedings before the Trial Commissioner shall be electronically reported and immediately filed with the Disciplinary Clerk."

miscarriage of justice by imposing discipline prematurely.” *Resp. Brief*, p. 9. Yet respondent acknowledges that the filing of a Writ of Certiorari in the United States Supreme Court is not grounds for staying the imposition of reciprocal discipline. *Id.*; *Disciplinary Counsel v. Hine*, 80 Ohio St.3d 448, 687 N.E.2d 420 (1997). Furthermore, after respondent filed his response to this Court’s order to show cause, the United States Supreme Court denied his Petition for a Writ of Certiorari, thus rendering his argument moot and alleviating any concern that this Court might impose discipline prematurely.<sup>2</sup>

In challenging the provisions governing reciprocal discipline, respondent has been unable to meet his burden of proof; consequently, this Court should impose reciprocal discipline by suspending respondent from the practice of law in Ohio for 60 days.

### CONCLUSION

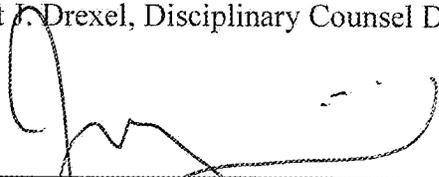
“Under Gov. Bar R. V(11)(F)(3), the only ground for a stay of reciprocal discipline proceedings in Ohio is a showing that the sanction has been stayed in the disciplining state.” *Hine*, at 449. On August 29, 2013, the Kentucky Supreme Court denied respondent’s motion for reconsideration and reinstated the original 60-day suspension. Left with no alternative, respondent filed a Petition for a Writ of Certiorari in the United States Supreme Court; however, as of January 13, 2014, that too was denied. Respondent has not established by clear and convincing evidence that there was a lack of jurisdiction or fraud in Kentucky or that his misconduct warrants substantially different discipline in Ohio. Consequently, relator urges this Court to impose reciprocal discipline by suspending respondent from the practice of law in Ohio for 60 days.

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<sup>2</sup> Attached as Appendix A is a printout from [www.supremecourt.gov](http://www.supremecourt.gov) showing the United States Supreme Court’s January 13, 2014 denial of respondent’s Petition for a Writ of Certiorari.

Respectfully submitted,

Office of Disciplinary Counsel  
Scott J. Drexel, Disciplinary Counsel Designate\*



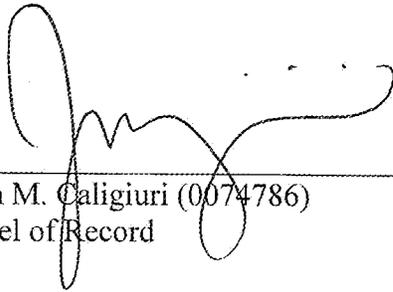
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\* Admitted in California, application pending in Ohio.

### CERTIFICATE OF SERVICE

I hereby certify that a photocopy of the foregoing Relator's Response to Respondent's Reply to the Order to Show Cause has been served via U.S. Mail, upon Charles Lester, counsel for respondent, P.O. Box 75069, Ft. Thomas, Kentucky, 41075-0069; and by e-mail transmission to [cteljr@fuse.net](mailto:cteljr@fuse.net) and by hand delivery to Richard Dove, Board of Commissioners on Grievances and Discipline, 65 South Front Street, 5<sup>th</sup> Floor, Columbus, Ohio, 43215, on January 17, 2014.



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Joseph M. Caligiuri (0074786)  
Counsel of Record



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No. 13-660  
 Title: Eric C. Deters, Petitioner  
 v.  
 Kentucky Bar Association  
 Docketed: December 3, 2013  
 Lower Ct: Supreme Court of Kentucky  
 Case Nos.: (2012-SC-00666-KB, 2012-SC-000667-KB)  
 Decision Date: May 23, 2013  
 Rehearing Denied: August 29, 2013

-----Date-----      -----Proceedings and Orders-----  
 Nov 27 2013      Petition for a writ of certiorari filed. (Response due January 2, 2014)  
 Dec 11 2013      Waiver of right of respondent Kentucky Bar Association to respond filed.  
 Dec 24 2013      DISTRIBUTED for Conference of January 10, 2014.  
 Jan 13 2014      Petition DENIED.

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