

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, : **CASE NO. 2012-1107**
Relator, :
vs. :
Joel David Joseph. : **RELATOR'S ANSWER TO**
Respondent. : **RESPONDENT'S OBJECTIONS**
:
:

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

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Respondent.

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TABLE OF CONTENTS

<u>DESCRIPTION</u>	<u>PAGE NUMBER</u>
Table of Authorities	iii
Introduction	1
Relator's Answer to Respondent's Objections	1
Conclusion	7
Certificate of Service	8

TABLE OF AUTHORITIES

<u>CASE LAW</u>	<u>PAGE NUMBER(S)</u>
<i>12-30-2014 Case Announcements</i> , 2014-Ohio-5734	2
<i>Attorney Grievance Comm. v. Blum</i> , 373 Md. 275, 303, 818, A.2d 219, 236 (2003)	6
<i>Attorney Grievance Comm. of Maryland v. Joseph</i> , 422 Md. 670, 31 A.3d 137 (2011)	1, 5
<i>Disciplinary Counsel v. Bustamante</i> , 100 Ohio St.3d 39, 2003-Ohio-4828, 796 N.E.2d 494	3
<i>Disciplinary Counsel v. Fowerbaugh</i> , 74 Ohio St.3d 187, 1995-Ohio-261, 658 N.E.2d 237	6
<i>Disciplinary Counsel v. Joseph</i> , 133 Ohio St.3d 1221, 2012-Ohio-4550, 977 N.E.2d 657	1
<i>Disciplinary Counsel v. Mitchell</i> , 124 Ohio St.3d 266, 2010-Ohio-135, 921 N.E.2d 634	6, 7
<i>In the matter of the Reinstatement of Joel D. Joseph to the Practice of Law</i> , Misc. Docket AG No. 115	2, 4
<u>OTHER AUTHORITIES</u>	<u>PAGE NUMBER</u>
Gov. Bar R.V(10)	2
Gov. Bar R.V(25)	2
MPRC 3.3(a)(1)	5
MRPC 8.4(c)	5
MRPC 8.4(d)	5

IN THE SUPREME COURT OF OHIO

Disciplinary Counsel, Relator,	:	CASE NO. 2012-1107
	:	
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Joel David Joseph Respondent.	:	RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS
	:	

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

INTRODUCTION

This Court should adopt the Board of Professional Conduct's ("board") recommendation and deny respondent's petition for reinstatement to the practice of law in Ohio based upon his inability to gain readmission in Maryland, as required under this Court's October 3, 2012 order. The board's report is attached hereto as Appendix A.

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

On October 27, 2011, the Maryland Court of Appeals disbarred respondent, based upon his misconduct in California. *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 imposed reciprocal discipline by suspending respondent from the practice of law in Ohio for an indefinite period. *Disciplinary Counsel v. Joseph*, 133 Ohio St.3d 1221, 2012-Ohio-4550, 977 N.E.2d 657, *petition for rehearing denied*, November 28, 2012.

In its order indefinitely suspending respondent, this Court expressly conditioned respondent's reinstatement in Ohio on two factors. First, the Court stated that respondent "will not be readmitted to the practice of law in Ohio until such time as respondent is readmitted to the practice of law in the state of Maryland." *Id.* Second, the Court stated that respondent must petition this Court for reinstatement under Gov. Bar. R.V(10)¹. *Id.*

In April 2014, respondent petitioned the Maryland Court of Appeals for reinstatement; however, on June 18, 2014, the court denied respondent's petition for reinstatement. *In the Matter of the Reinstatement of Joel D. Joseph to the Practice of Law*, Misc. Docket AG No. 115, *motion for reconsideration denied*, August 24, 2014.

Despite his failure to comply with this Court's October 3, 2012 order requiring readmission in Maryland before becoming eligible for reinstatement in Ohio, on October 8, 2014, respondent filed his petition for reinstatement in Ohio under Gov. Bar R.V(10). While his petition was pending, respondent filed a Motion to Revise Order Suspending Respondent from the Practice of Law, ("Motion to Revise"), asking this Court to revise its October 3, 2012 order by removing the requirement that he be readmitted in Maryland before being reinstated in Ohio. On December 30, 2014, this Court denied respondent's motion to revise. 12-30-2014 *Case Announcements*, 2014-Ohio-5734.

On two separate occasions now, this Court has informed respondent that he must be readmitted in Maryland before being reinstated in Ohio. Despite the Court's clear mandate, respondent continued with his petition for reinstatement before the board. Not surprisingly, the board recommended that respondent's petition for reinstatement be denied, based upon respondent's clear failure to comply with this Court's October 3, 2012 order, its subsequent denial of respondent's motion to revise, and its precedent. Report at 13, 23.

¹ Effective January 1, 2015, Gov. Bar R.V(10) became Gov. Bar. R.V(25).

The board's decision was a foregone conclusion. Given respondent's noncompliance with this Court's October 3, 2012 reciprocal discipline order, the board could not recommend reinstatement. To do so would have undermined this Court's authority, especially since the Court had just recently denied respondent's motion to revise. Moreover, this Court's holding in *Disciplinary Counsel v. Bustamante*, 100 Ohio St.3d 39, 2003-Ohio-4828, 796 N.E.2d 494, precluded the board from recommending reinstatement. In *Bustamante*, this Court reciprocally disciplined an attorney by imposing an indefinite suspension after he had been disbarred in Florida. *Id.* at ¶ 3. The Court conditioned respondent's reinstatement in Ohio on his being readmitted to the practice of law in Florida. *Id.* In denying respondent's petition for reinstatement, the Court stated:

As previously noted, our order of March 26, 1997, specifically required that respondent submit evidence of his reinstatement to the practice of law in Florida. Respondent has failed to make, or even to attempt, any such showing. In fact, his petition gives us no reason to suppose that he has so much as *applied* for reinstatement in Florida. Moreover, respondent does not request to be exempted from the requirement that he be reinstated in Florida before being reinstated in Ohio. He simply ignores the entire issue.

Id. at ¶ 5.

In his objections, respondent attempts—as he did before the board—to differentiate the case at bar from *Bustamante*. And while it is true that *Bustamante*'s suspension resulted from a criminal conviction and that restitution remained unpaid, the common thread between respondent's case and *Bustamante* is the failure to abide by the Court's order requiring readmission in the jurisdiction that issued the original discipline. Respondent further attempts to distinguish *Bustamante* by pointing to the fact that, unlike the lawyer in *Bustamante*, he “has applied for reinstatement in Maryland.” And although respondent has a *second* petition for reinstatement pending in Maryland, he fails to mention in his objections that the Maryland Court of Appeals denied his first petition for reinstatement *and* his subsequent motion for

reconsideration. *In the Matter of the Reinstatement of Joel D. Joseph to the Practice of Law*, Misc. Docket AG No. 115, *motion for reconsideration denied*, August 24, 2014.

Since Maryland is the jurisdiction most familiar with respondent's misconduct, this Court should continue its deference to Maryland's process. This is especially true considering Maryland Bar Counsel's response to respondent's first petition for reinstatement, which was admitted into evidence during respondent's reinstatement hearing in Ohio:

On at least one occasion, since his disbarment, Petitioner falsely represented that he was an "Attorney at Law" with an office in California. On or about April 19, 2013, Petitioner wrote a letter to an individual with whom he had a legal dispute. Petitioner wrote on the letterhead which contained the designation "Attorney at Law" and suggested that Petitioner maintained an office for the practice of law in California, a jurisdiction in which he has never been admitted to practice. A copy of this letter is attached hereto as exhibit B.

Relator's Exhibit 2.

In his objections, respondent claims this Court does not have to "require admission in Maryland if Maryland denied respondent due process of law, or if the Maryland Courts were unduly harsh." Resp. Obj. at p. 4. Respondent's assertions have no merit and must fail.

First, this Court cannot overlook the fact that respondent *unsuccessfully* challenged this Court's imposition of reciprocal discipline in 2012 on these very same grounds. The time to attack Maryland's disbarment has long-since passed. The only question before this Court is whether respondent should be reinstated to the practice of law in Ohio. And given his inability to gain readmission in Maryland, the answer is no.

Second, Maryland did not deny respondent due process. Although respondent fails to identify the due process violation, one can only assume respondent is referring to his tired argument that the judge who presided over his disciplinary hearing copied "verbatim" the proposed findings of the Maryland bar counsel. Consistent with his inability to admit wrongdoing, respondent ignores the fact that the Maryland Court of Appeals addressed this issue

in its 18-page decision—initially by remanding the matter—then again in its *de novo* review and decision.

On remand, Judge Dugan “reviewed the record, and subsequently issued an order reaffirming the previous findings of fact and conclusions of law.” *Attorney Grievance Comm. of Maryland v. Joseph*, 422 Md. at 696. In its *de novo* review, the Maryland Court of Appeals again considered—and rejected—respondent’s argument.

A judge hearing an attorney grievance matter does not need to meld together his or her own opinion, taking bits and pieces of each party’s proposed findings of fact and conclusions of law, but may adopt one party’s filing in its entirety, as long as it accurately reflects the judge’s independent factual findings, proven by clear and convicting evidence at the hearing, and the legal conclusions flowing therefrom.

Id.

The procedural history of respondent’s disciplinary case establishes beyond any doubt that respondent was afforded due process. He participated in the Maryland disciplinary hearing, filed objections, had the case remanded, and argued before the Maryland Court of Appeals. *Id.* Respondent’s obsession regarding Judge Dugan’s adoption of bar counsel’s proposals is simply a red herring aimed at deflecting attention away from respondent’s intentional and dishonest conduct². Rather than admit misconduct, respondent continues to impugn Judge Dugan’s credibility, claiming in his objections that Judge Dugan “rubber stamped” bar counsel’s findings. Respondent’s inability to admit wrongdoing continued during his opening statement before the board:

I believe that I was wrongfully suspended from the Maryland Bar and the Ohio Bar more than two years ago. And this suspension was based on reciprocal treatment

² The Maryland Court of Appeals found that respondent misrepresented his residency status to the California state and federal courts, the California State Bar, and his co-counsel, Brewer and Moss, in violation of MPRC 3.3(a)(1) (a lawyer shall not knowingly make a false statement of material law or fact to a tribunal); 8.4(c) (A lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and 8.4(d) (A lawyer shall not engage in conduct that is prejudicial to the administration of justice). *Attorney Grievance Comm. of Maryland v. Joseph*, at 699.

because of my discipline in Maryland.

This was all based on the actions of Judge Dugan, who was a lower court judge in Montgomery County, Maryland, who heard the case. He adopted verbatim the proposed findings of the Maryland Disciplinary Counsel.

Tr. p. 8.

At the end of the hearing, respondent stated, "They knew that judge [Dugan] didn't consider my findings because they ordered him to consider them and then he still--Judge Dugan still didn't consider what I had filed." *Id.* at p. 32. Respondent simply cannot—and will not—accept the fact that the Maryland Court of Appeals' adoption of Judge Dugan's findings was more likely a reflection upon respondent's lack of credibility than on Judge Dugan or the Maryland disciplinary process.

Finally, and contrary to respondent's assertions, Maryland's sanction was not unduly harsh. As the Maryland Court of Appeals noted, "This Court has held that ordinarily, disbarment is the sanction for intentional dishonest conduct." *Attorney Grievance Comm. of Maryland v. Joseph*, 422 Md. at 707, citing *Attorney Grievance Comm. v. Blum*, 373 Md. 275, 303, 818 A.2d 219, 236 (2003). The court continued, "Respondent's conduct in this case lacked candor, was dishonest, misleading, prejudicial to the administration of justice, and beyond excuse. There are no mitigating circumstances." *Id.*

Like Maryland, Ohio does not tolerate dishonest conduct toward a tribunal. "A lawyer who engages in a material misrepresentation to a court * * * violates, at a minimum, the lawyer's oath of office that he or she will not 'knowingly * * * employ or countenance any * * * deception, falsehood, or fraud. *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261, 658 N.E.2d 237. "Such conduct strikes at the very core of a lawyer's relationship with the court and with the client. Respect for our profession is diminished with every deceitful act of a lawyer." *Id.* Moreover, this Court has imposed similar discipline against a lawyer for

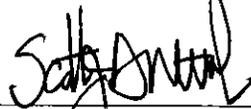
engaging in deceitful conduct toward a tribunal. In *Disciplinary Counsel v. Mitchell*, 124 Ohio St.3d 266, 2010-Ohio-135, 921 N.E.2d 634, this Court, upon a motion for default, indefinitely suspended Donald Mitchell after he attempted to represent a minor while his law license was suspended, then misrepresented his identity and the status of his license to the juvenile court magistrate. *Id.* at ¶ 3-5.

Maryland neither denied respondent due process, nor imposed an unduly harsh sanction.

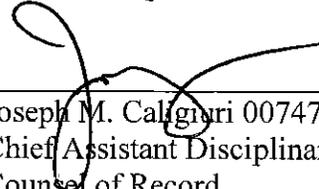
CONCLUSION

This Court has twice put respondent on notice that it will not reinstate him until he is readmitted in Maryland. After this Court denied respondent's motion to revise, he had the option of withdrawing his petition for reinstatement in Ohio; however, he proceeded in the face of this Court's unambiguous order of October 3, 2012, its denial of respondent's motion to revise, and its holding in *Bustamante*. Respondent has provided no justification for this Court to alter its requirement that respondent be readmitted in Maryland before being reinstated in Ohio; consequently, this Court should adopt the board's recommendation and deny respondent's petition for reinstatement, thus continuing its deference to Maryland's disciplinary process.

Respectfully submitted,



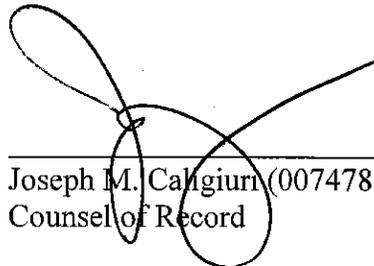
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the **RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS** was served upon respondent, Joel David Joseph, by e-mail transmission at madeinusafoundation@gmail.com, and joeldjoseph@gmail.com, and to Richard Dove, Secretary, Board of Professional Conduct, by e-mail transmission, this 26th day of May, 2015.



Joseph M. Caligiuri (0074786)
Counsel of Record

BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO

In re: :
Reinstatement of : Board Case No. 2014-082
Joel David Joseph : SCO Case No. 2012-1107
Attorney Reg. No. 0048592 :
Petitioner : Findings of Fact,
Disciplinary Counsel : Conclusions of Law, and
Relator : Recommendation of the
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio

ON PETITION FOR REINSTATEMENT TO THE PRACTICE OF LAW

{¶1} This matter was heard on February 19, 2015 in Cleveland, upon the petition of Joel David Joseph for reinstatement to the practice of law pursuant to Gov. Bar R. V, Section 25.¹ The case was heard by a panel consisting of Sanford E. Watson, Lawrence A. Sutter III, and David L. Dingwell, chair. None of the panel members resides in the district in which the petitioner now resides or resided at the time of his suspension.

{¶2} The petitioner appeared *pro se*. Stacy Solochek Beckman appeared on behalf of Relator.

{¶3} On October 3, 2012, Petitioner was indefinitely suspended from the practice of law by the Supreme Court of Ohio in accordance with the reciprocal discipline provisions of former Gov. Bar R. V, Section 11(D). *Disciplinary Counsel v. Joseph*, 133 Ohio St.3d 1221, 2012-Ohio-4550. This was based upon the October 27, 2011 order of the Court of Appeals of Maryland disbaring Petitioner.

¹ Effective January 1, 2015, the Supreme Court amended Gov. Bar R. V and the Board's Procedural Regulations. This report distinguishes between the former and current versions of Gov. Bar R. V and the Procedural Regulations, as appropriate.

{¶4} The disbarment in Maryland was not permanent. Therefore, Petitioner's reinstatement to the practice of law in Ohio was expressly conditioned upon reinstatement to the practice of law in the state of Maryland.

{¶5} Petitioner's disbarment in Maryland was based upon a determination by the Court of Appeals of Maryland that Petitioner made misrepresentations in 2007 regarding his state of residence when applying to appear *pro hac vice* in legal proceedings pending in California Superior Court.

{¶6} According to California Superior Court rules, residents of California are not eligible to appear as counsel *pro hac vice*. The Maryland Court of Appeals determined that Petitioner falsely represented to the California courts that he was a resident of Maryland when in fact he was a resident of California.

{¶7} Petitioner presented evidence at the hearing in this matter that demonstrated that he held a Maryland driver's license and that he had filed income tax returns in the state of Maryland during the time period in which the Maryland Court of Appeals determined that he was a resident of the state of California.

{¶8} Petitioner's argument for reinstatement is premised upon his contention that the Maryland Court of Appeals decision disbarring him deprived Petitioner of due process of law. According to the decision of the Maryland Court of Appeals, Judge Joseph A. Dugan "overlooked" Petitioner's proposed findings of fact and conclusions of law that were submitted in defense of the Maryland disciplinary proceeding. The Maryland Court of Appeals thereafter remanded the case to Judge Dugan who then issued an order reaffirming the previous findings of fact and conclusions of law. Judge Dugan's decision adopted all of the disciplinary authority's proposed findings of fact

and conclusions of law in its entirety. See, October 27, 2011 Opinion and Decision of the Court of Appeals of Maryland. See also, Verified Petition of Joel D. Joseph at p. 3.

{¶9} Petitioner filed a verified petition for reinstatement to the practice of law on October 8, 2014. Pursuant to former Gov. Bar R. V, Section 10, Petitioner requested the Court to reinstate him to the practice of law. The petition was verified by an accompanying affidavit.

{¶10} The petition states that Petitioner has sought reinstatement in Maryland and will continue to do so. However, at the time of the hearing of this matter, it was undisputed that Petitioner had not yet been reinstated by Maryland to the practice of law.

{¶11} The burden is on Petitioner to show by clear and convincing evidence that he should be reinstated to the practice of law. Petitioner must establish that he possesses all of the mental, educational, and moral qualifications that were required of an applicant for admission to the practice of law at the time of his original admission, and that he is now a proper person to be readmitted to the practice of law in Ohio, notwithstanding the previous disciplinary action. Petitioner must also show by clear and convincing evidence that he has complied with the continuing legal educational requirements as prescribed by Gov. Bar R. X, Section 3(G).

{¶12} Additionally, based upon the order of suspension, Petitioner must show that he has complied with the order of the Supreme Court of Ohio stating that he has been reinstated to the practice of law in the state of Maryland.

{¶13} Based on the evidence presented, the panel unanimously finds that Petitioner has satisfied all of the requirements for reinstatement to the practice of law in Ohio, except one. Petitioner has still not been reinstated to the practice of law in the State of Maryland. Therefore, the panel is unable to recommend that Petitioner be reinstated to the practice of law in the state of Ohio.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶14} Petitioner was admitted to the practice of law in the state of Ohio on March 14, 1980.

{¶15} At the hearing, Petitioner testified that although he petitioned for reinstatement in the state of Maryland, that petition was denied, and he has not been reinstated to the practice of law in the State of Maryland. Hearing Tr. 21.

{¶16} The October 3, 2012 order of the Supreme Court of Ohio expressly conditions Petitioner's reinstatement to the practice of law in Ohio upon first being reinstated to the practice of law in the state of Maryland.

{¶17} Following the filing of Petitioner's Verified Petition in this matter, but prior to the hearing, Petitioner filed a motion with the Supreme Court of Ohio to reconsider its October 3, 2012 order setting forth the condition of first being reinstated to the practice of law in the state of Maryland.

{¶18} On December 30, 2014, the Supreme Court of Ohio denied Petitioner's motion to reconsider. See, *Disciplinary Counsel v. Joseph*, 141 Ohio St.3d 1424, 2014-Ohio-5734.

{¶19} The Supreme Court of Ohio has now twice determined that Petitioner must first be reinstated to the practice of law in the State of Maryland as an express condition of his reinstatement to the practice of law in the state of Ohio.

{¶20} The Supreme Court of Ohio has previously held in reciprocal discipline cases that the failure to be reinstated in the reciprocal jurisdiction, when such is a condition to reinstatement to the practice of law in Ohio, is grounds to deny a petition for reinstatement in Ohio. *In re Bustamonte*, 100 Ohio St.3d 39, 2003-Ohio-4828 at ¶6.

{¶21} Although the panel believes that Petitioner has satisfied all other requirements to be reinstated to the practice of law in the state of Ohio, and would not otherwise hesitate to recommend his reinstatement, the panel must be mindful of the express condition ordered by the Supreme Court of Ohio that has not been satisfied by Petitioner.

{¶22} Based on the foregoing, the panel determines by clear and convincing evidence that: (1) Petitioner possesses all of the mental, educational, and moral qualifications that were required of an applicant for admission to the practice of law in Ohio at the time of his original admission; (2) Petitioner has complied with the continuing legal education requirements of Gov. Bar R. X, Section 3(G) and has complied with the order of the Supreme Court with the sole exception of obtaining reinstatement in the state of Maryland; and (3) Petitioner has not been reinstated to the practice of law in the state of Maryland, and thus is not a proper person to be readmitted to the practice of law in Ohio based solely upon the condition of reinstatement that was ordered by the Supreme Court of Ohio on October 3, 2012 and reaffirmed on December 30, 2014.

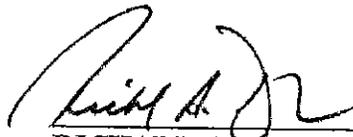
PANEL RECOMMENDATION

{¶23} The panel unanimously recommends that Petitioner not be readmitted to the practice of law in Ohio.

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 25, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on April 10, 2015. The Board adopted the findings of fact, conclusions of law, and recommendation of the panel and recommends that the reinstatement petition of Joel David Joseph be denied. The Board further recommends that the cost of these proceedings be taxed to Petitioner.

Pursuant to the order of the Board of Professional Conduct
of the Supreme Court of Ohio, I hereby certify the foregoing
Findings of Fact, Conclusions of Law, and Recommendation as
those of the Board.

A handwritten signature in black ink, appearing to read "Richard A. Dove", written over a horizontal line.

RICHARD A. DOVE, Director

**THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO
STATEMENT OF NECESSARY EXPENSES**

Case Number	14-082		Amount
Vendor	Disciplinary Counsel v. Joseph, Joel David		
CenturyLink			\$2.25
	Vendor Total		\$2.25
David Dingwell			\$141.50
	Vendor Total		\$141.50
Fincun-Mancini			\$291.30
	Vendor Total		\$291.30
Postage			\$6.48
	Vendor Total		\$6.48
Sanford Watson			\$136.00
	Vendor Total		\$136.00
Supreme Court Deposit			(\$500.00)
	Vendor Total		(\$500.00)
	Grand Total		\$77.53