

**THE SUPREME COURT OF OHIO**

**Disciplinary Counsel** :  
**Relator** :  
**v.** : **Case No. 2012-1107**  
**Joel David Joseph** :  
**Respondent** :

**RESPONDENT’S REPLY TO RELATOR’S ANSWER**

Relator’s answer is disappointing and disturbing for several reasons. The Relator jumps to several false conclusions and does not seek justice. Seeking justice is seeking the truth. The Relator seeks merely to rubber-stamp the erroneous decisions made by the courts of Maryland. The truth is that respondent did not intentionally mislead any court and that his disbarment was excessive punishment.

At page 4 of its answer the Relator states, “Since Maryland is the jurisdiction most familiar with respondent’s misconduct . . .” Relator then goes on to state what respondent allegedly did in California. Maryland is not the jurisdiction most familiar with my “misconduct.” All of the alleged misconduct took place in California. Further, although respondent was a member of the Maryland bar, he practiced mostly outside of the state of Maryland.

California is the jurisdiction most familiar with my alleged misconduct. Did the California bar charge me with any offense, including the unauthorized practice of law in the State of California? The answer is no.

I have been a member of the Ninth Circuit Court of Appeals for many years. The Ninth Circuit is based in California. Did the Ninth Circuit impose reciprocal discipline, or any discipline on respondent? The answer is no.

Relator then states, also on page 4, that “respondent fails to identify the due process violation . . .” Respondent identified the due process violation clearly enough for relator to “assume” that it was the verbatim copying by the Circuit Court judge.

But, in addition, the Circuit Court did not have “clear and convincing evidence” that respondent was not a Maryland resident at the relevant times in question. Clear and convincing evidence is defined in *In re Chappell* (1938), 33 N.E.2d 393, 397, as “that degree of proof which will produce in the mind of the court a firm belief or conviction of the truth of the charges and specifications sought to be established.” *Cross v. Ledford* (1954), 161 Ohio St. 469. Clear and convincing evidence is that measure or degree of proof that is more than a mere preponderance of the evidence.

The Board of Professional Conduct, at paragraph 7, stated that respondent (petitioner) presented evidence that demonstrated he held a Maryland driver’s license and filed income tax returns during the time in question. At a minimum this demonstrates that respondent had reason to believe that he was still a resident of the State of Maryland. With these reasons to believe that I was still a resident of Maryland, I did not **intentionally** make a false statement to the California court. In fact, Relator did not object to this and did not introduce any evidence to the contrary. Therefore, the entire argument of Relator that respondent **intentionally** made a false statement has no basis in fact.

It is difficult to believe that a judge could find that there was “clear and convincing” evidence that relator was a resident of California when he had produced substantial evidence that relator was a resident of Maryland. Payment of taxes in the state is substantial and compelling evidence that respondent was a resident of Maryland.

On page six the Relator states that “Respondent simply cannot—an 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.” This is another quantum leap by the Relator, giving the impression that respondent somehow lacks credibility. This is making up facts out of whole cloth.

Relator also states that disbarment was not unduly harsh. Disbarment for making an unintentional false statement is comparable to the death penalty for jay walking. Even if I was wrong about my residency, it was unintentional. Three plus years’ suspension for an unintentional mistake is undeniably unduly harsh.

### **Conclusion**

The *Bustamante* decision is not controlling here for several reasons. This case is distinguishable because petitioner was not convicted of a crime, no one was injured by petitioner, and because petitioner has applied twice to the Maryland Court of Appeals for readmission to the bar. Further, the Ohio Supreme Court has right to regulate the practice of law in the State of Ohio and to amend, alter or change the terms and conditions of any earlier ruling. The Board of Professional Conduct found that Mr. Joseph is fully qualified to practice law, and that it was the earlier ruling of this court regarding readmission to Maryland that is his only barrier to being readmitted.

In light of the reliance of the Maryland Court of Appeals on the “findings” of one judge who rubber-stamped the proposed findings of counsel for the disciplinary committee, and considering the findings of the Board of Commissioners that respondent had substantial evidence that he was a resident of the State of Maryland at the time in question, this court should reinstate Mr. Joseph to the bar of the state of Ohio.

Respectfully submitted,

/Joel D. Joseph/

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Certificate of Service

I certify that I have emailed a copy of this memorandum to Disciplinary Counsel for the State of Ohio this 26<sup>th</sup> day of May, 2015.

/Joel D. Joseph/

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Joel D. Joseph