

BEFORE THE SUPREME COURT OF OHIO

LAWRENCE WINKFIELD [0034254]

RESPONDENT

RESPONDENT'S RESPONSE TO RELATOR'S
MOTION FOR RECONSIDERATION

COLUMBUS BAR ASSOCIATION

BOARD CASE NO. 2002-030

RELATOR

OHIO SUPREME COURT NO. 2005-1115

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RELATOR'S MOTION FOR RECONSIDERATION

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I. INTRODUCTION

Relator's motion for reconsideration is an effort to expand its previous arguments and attempt to introduce new claims. For the following reasons respondent would urge this court to deny the motion for reconsideration. The gist of relator's argument is that Supreme Court modified the conditions of probation of respondent attorney. This Court modified its initial order of June 12, 2014 and changed the conditions of that order in this Court's April 15th, 2016 order.

II. THE SUPREME COURT'S DECISION ADOPTING THE PANEL'S DECISION WAS NOT MADE IN "ERROR" AS RELATOR SUGGESTS.

The genesis of Relator's Motion for Reconsideration is that they believe the findings of fact, conclusions of law and recommendations made by the panel and adopted by this Court were made in error. The plain language of the term, "error" is defined as "[a] mistake of law or of fact in a court's judgment, opinion, or order," and "procedure" is defined as either "[a] specific method

or course of action" or "[t]he judicial rule or manner for carrying on a civil lawsuit or criminal prosecution." Black's Law Dictionary (7th Ed. 1999) 1221.

Relator fails to show “an error” of law or fact in their motion. Any error made was made by the relator in their analysis of the law. Relator is under the misapprehension that the panel and Court modified the “terms of probation” as it relates to the respondent. The relator opines that the court made an error in changing the terms of respondent’s probation by having Ohio Lawyer’s Assistance Program monitor respondent’s probation as opposed to an attorney.

In their process of arguing an *error*, relator indicates that “Respondent has repeatedly ignored this court’s orders and caused harm to his clients. Relator’s position was and is that respondent’s license should be suspended in order to protect the public.” P.2 Motion for Reconsideration. “MR p.”. The thrust of relator’s argument is suspension. The arguments made to get the court to reconsider this case is an afterthought.

Relator’s Objection III stated as follows:

This Court should not Modify the Conditions of
Respondent’s Probation as Recommended by the Panel

This Court did not *modify* “conditions of probation” in contravention of Gov.BarR. V (21). Relator in their motion goes on *ad infinitum* about what the requirements are in relationship to Gov. Bar R. V (21). The Court *modified its order of June 12, 2014* by replacing that order with a “modified order”. The proper argument for any motion for reconsideration starts with Gov. Bar. R. V (25) (F)(6), not with Gov.BarR. V (21) as the relator suggests.

Gov. Bar R. V § 25(F)(6) states:

(6) Grant of Petition; Appeal. * * * The Supreme Court shall enter an appropriate order that may include provisions for reimbursement of the costs and expenses incurred in connection with the proceedings. *The order of reinstatement may be subject to conditions the Supreme Court considers appropriate including, but not limited to, requiring the*

petitioner to serve a period of probation under Section 21 of this rule on conditions the Supreme Court determines and requiring the petitioner to subsequently take and pass a regular bar examination of the Supreme Court and take the oath of office.

The operative words in Gov. Bar R. § 25(F)(6) are that the “order of reinstatement may be subject to conditions the Supreme Court *considers appropriate...*”. The Supreme Court in its April 15, 2016 order modified its June 12, 2014 order because the Supreme Court, not the relator, considered the modification “appropriate”.

The Court’s decision as it relates to relator’s position on suspending respondent’s license has nothing to do with a “decision made in error”. The relator is trying to re-argue the decision to not suspend the respondent by arguing that the court made another “error”. Nothing is more telling than relator coming out of the gate with respondent should be suspended. There was not a *scintilla of evidence* that a client of respondent was harmed.

Relator is really upset about that the panel did not do what the relator wanted the panel to do: suspend the respondent.

The question is simple: Can this Court modify an order? The answer is: yes.

III. THE RULES DO SUPPORT ORAL ARGUMENT AND THE CASE LAW SUGGESTED BY RELATOR DOES NOT SUPPORT ORAL ARGUMENT AFTER A PANEL DECISION ON REVOCATION OF PROBATION. THE RELATOR WAIVED ORAL ARGUMENT BY NOT REQUESTING ORAL ARGUMENTS PURSUANT TO S.Ct.Prac.R. 13.04

It appears that the relator is suggesting that the Supreme Court should have ordered an oral argument. Relator then cites half of Gov.BarR. 13.04 based on (A)(1), however (A)(2) clearly indicates that there should be a motion requesting oral arguments

The following is the Supreme Court’s rule on oral arguments:

S.Ct.Prac.R. 13.04. **Oral Argument.** (A) Scheduling (1) 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 Character and Fitness, the Board of Professional Conduct, or

the Board on the Unauthorized Practice of Law. (2) Division (A)(1) of this rule notwithstanding, in cases in which a party files objections to a certified report filed by the Board of Professional Conduct regarding a *petition for reinstatement* or in reciprocal discipline cases, oral argument will not be scheduled; however, the Supreme Court may order oral argument on the merits either sua sponte or in response to a request by either party. *A request for oral argument shall be by motion and filed no later than twenty days after the objections and brief of petitioner or relator.* [Emphasis supplied]

The Supreme Court can order oral arguments *sua sponte* or if a motion is filed no later than twenty days after objections and briefs are filed. There is nothing on the docket to suggest that relator sought or filed a motion for oral arguments when the case was in play, now after a decision not to their liking they want to seek oral arguments. Relator waived the opportunity to do so. The panel had ruled against relator, yet they never requested oral arguments pursuant to the S.Ct. Prac.R 13.04.

The relator is complaining about not having oral arguments on a case that is ruled upon. They now want oral arguments on a “motion for reconsideration” there is absolutely nothing in the rules to warrant oral arguments for a case where there weren’t any oral arguments in the first place.

Relator has not demonstrated what they would have said in oral arguments that was not covered in their objections filed with the Supreme Court.

IV. GUIDANCE IS NOT NEEDED REGARDING GOV.BARR. V (21) (I) BECAUSE NOTHING WAS DONE TO GOV.BARR. 21 AS INDICATED ABOVE.

This is not the forum to re-do Gov.BarR. V (21). The rules are clear, rarely does the entity pursuing a claim make an argument that a rule is unclear when they file under the rule. It would be similar to a prosecutor filing a conspiracy charge against a defendant and then the prosecutor claiming they don’t understand the statute. Now, relator wants the Supreme Court to make a rule “in the event of another violation by respondent of the conditional reinstatement order or at any

other time during what would now be a five-year probationary period”. MR p. 5. With statements like that it is no wonder why the panel and the Supreme Court took monitoring out of the hands of the relator.

The relator never went over the conditions of probation with the monitor. The relator never gave the monitor guidance. The monitor never read the decision. Then when anyone is critical the relator wants to state that the person critical is picking on the monitor. A good, effective, knowledgeable, caring and concerned monitor is essential to the process. If anything, there should be some type of vetting process for monitors, the relators and the respondent in order to get the best use of the time that is being put into the process. We understand that the monitor is, in essence, volunteering and utilizing his valuable time. Based on the testimony heard and knowledge of the monitor it can unquestionably be said that if the monitor had guidance, been on probation, had done a monitoring prior to this case or had any reasonable instruction from relator the monitor would have done an excellent job and we would not be here. Nothing in the monitor’s background suggests otherwise.

The motion for reconsideration should not be an attempt to clarify as suggested by the relator. The rules are clear.

This Court, based on the filings of the relator modified their order of June 12, 2014 placing the respondent on probation. The question is could the Ohio Supreme Court issued the initial order of June 12, 2014 as the order that it issued on April 15, 2016? The answer is yes. The conditions issued on April 15, 2016 could very well have been issued on June 12, 2014. As such there is nothing precluding this Court from “modifying” an order to that which the Court could have done on June 12, 2014.

Gov. Bar R. V § 25(F)(6) states:

(6) Grant of Petition; Appeal. If the final report recommends granting the petition, any person or organization referred to in division (B)(3) of this section shall have twenty days from the receipt of notice of filing of the report to file objections to the recommendations and a brief in support of the objections. The Supreme Court shall enter an appropriate order that may include provisions for reimbursement of the costs and expenses incurred in connection with the proceedings. *The order of reinstatement may be subject to conditions the Supreme Court considers appropriate including, but not limited to, requiring the petitioner to serve a period of probation under Section 21 of this rule on conditions the Supreme Court determines and requiring the petitioner to subsequently take and pass a regular bar examination of the Supreme Court and take the oath of office.*

The Court was not under any obligation to place the respondent on probation when he was initially reinstated on June 12, 2014. According to “the law” the Court could have subjected the respondent to “conditions the Supreme Court considers appropriate including, but not limited to, requiring the petitioner to serve a probation period under Section 21 of this rule on conditions the Supreme Court determines”. The Court is now deeming that the appropriate conditions is the condition that the Court now puts in its April 15, 2016 order. Relator is confused and under the misapprehension that the Court cannot modify their June 12, 2014 order. Relator cannot state any law, rule or decision which precludes the Ohio Supreme Court from modifying an order.

The law allows the panel to make a recommendation. The panel recommended that the Ohio Supreme Court modify its order. The Ohio Supreme Court modified its order. There is no error.

V. CONCLUSION

Relator has not made the proper showing that would demonstrate that the Supreme Court made an error of law or fact. The tone of the motion for reconsideration clearly shows that the relator disagrees with the decisions. The same arguments were made in relator’s initial objections that are made in the motion for reconsideration. The fact that relator never asked for oral arguments

clearly demonstrated that they waived arguments. Even if there was no waiver, relator has not demonstrated any mistakes made by the Supreme Court.

Wherefore, the respondent would request that this Court deny the motion for reconsideration.

Respectfully submitted,

/s/ Geoffrey L. Oglesby
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Attorney for Respondent

CERTIFICATE OF SERVICE

I certify that, on May 5, 2016 I have served the following by sending a copy of the foregoing response to the following, by ordinary U.S. Mail, postage prepaid and electronically.

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