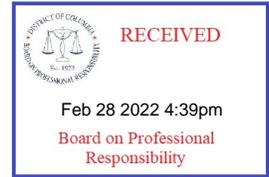


DISTRICT OF COLUMBIA COURT OF APPEALS  
BOARD ON PROFESSIONAL RESPONSIBILITY

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IN RE JOEL D. JOSEPH, : : (Bar No. 447715) : )  
BDN 21-BD-029 : Petitioner. : DDN 2021-D104 )  
A Disbarred Member of the Bar of the )  
District of Columbia Court of Appeals )  
Admitted: December 7, 1973 )  
Disbarment Effective: October 29, 2015 )  
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**PETITIONER’S BRIEF**

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## **I. Introduction.**

The evidence demonstrated that Petitioner was disbarred wrongfully. He was disbarred for claiming that he was a Maryland resident in motions for admission pro hac vice in California six weeks after he traveled there. The Ohio Bar found that Mr. Joseph demonstrated that he did have Maryland residency at that time, that he paid Maryland taxes and had a Maryland driver's license. Exhibit 1.

Whether Petitioner disbarred wrongfully or not, the punishment has been unreasonably severe. No one was harmed by his actions. No clients were harmed. In fact it was only Petitioner's efforts that obtained a \$100,000 settlement for Mr. Wartel in his case. When accused of an offense Petitioner immediately ceased work on the cases.

The evidence proved beyond any doubt that Petitioner has the moral qualifications, competency and learning in the law necessary for reinstatement.

The DC Court of Appeals in *In Re Roundtree*, 503 A.2d 1215 (1985) set the ground rules for reinstatement, "Under our Rules Governing the Bar, this court must decide whether petitioner is "fit to resume the practice of law." D.C. Bar R. XI, § 21(6). To make that determination, we must conclude that she has the "moral qualifications, competency, and learning in law required for readmission," so that her reinstatement would "not be detrimental to the integrity and standing of the Bar, or to the administration of justice, or subversive to the public interest." At 1216.

Petitioner has demonstrated:

1. Moral qualifications
2. Competency
3. Learning in the law

Necessary for reinstatement.

Several issues came up during the hearing that will be addressed in this brief:

1. Residency and Domicile;
2. The definition of a lawyer and who can use that term;
3. Whether Petitioner was Vexatious and What Vexatious means in California;
4. Petitioner's Efforts to Improve the Law

## **II. Residency and Domicile.**

The Ohio Board of Professional Conduct (Exhibit 1) conducted a hearing concerning Petitioner's qualifications for reinstatement to the Ohio Bar. The Ohio Board found that Petitioner met all requirements for reinstatement including moral qualifications, competency and learning in the law. In addition, the Ohio Board found that Petitioner demonstrated that he was indeed a resident of the State of Maryland when he filed petitions in California for admission pro hac vice. The Ohio Board found:

{ 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. (emphasis added).

Exbhiti 1.

The Maryland Court of Appeals stated, "The issue in this case is whether Mr. Joseph was a citizen of Maryland in 2007 when he traveled to California to file a case on behalf of a Vietnam Veteran." The court noted, "The Peer Review Panel in Maryland voted four to three in this case. Apparently, three of [R]espondent's peers believed that he was a resident of

Maryland in 2007, or that Mr. Joseph did not make false statements about his residency. This demonstrates that there was hardly ... “clear and convincing” evidence against [R]espondent.” 31 A3d 137 at 153.

Mr. Joseph was a domiciliary of Maryland beginning in 1980. He remained a domiciliary of Maryland until he married in California in 2008. Joseph filed an administrative complaint on behalf of Arthur Wartell with the Veterans Administration in Washington, D.C. in 2006. Wartell’s claim was denied. Joseph had until March of 2007 to file a complaint in federal court in the Central District of California. Unable to secure local counsel by telephone, he traveled to California in February of 2007.

Joseph, as co-counsel, in March, 2007, filed a motion to proceed pro hac vice in the Central District of California. The Maryland Attorney Grievance Commission claimed Joseph falsely stated in this motion that he was a resident of Maryland.

In *Sáenz v. Roe*, 526 U.S. 489 (1999), the nation’s highest court ruled that States do not have the right to determine who is and who is not a citizen of the state. The Supreme Court ruled:

Citizens of the United States, whether rich or poor, have the right to choose to be citizens “of the State wherein they reside.” U.S. Const. Amdt. 14 Section 1. The states, however, do not have any right to select their citizens. 526 U.S. at 510, 511 (emphasis added).

Maryland Circuit Court Judge Dugan found that Mr. Joseph lost his Maryland domicile in early 2007. That decision was not Judge Dugan’s to make. (In fact Dugan never made this decision. He copied *verbatim* the proposed findings of fact and conclusions of law of Maryland Bar Counsel). Joseph selected to remain a citizen of Maryland, and kept his voting address there.

The Circuit Court adopted verbatim the recommendations of the Attorney Grievance Commission, and mistakenly ruled that respondent had not submitted proposed finding of fact and conclusions of law. The Maryland Court of Appeals remanded the matter to the Circuit Court to consider respondent's proposed findings that had indeed been filed in a timely fashion.

The Circuit Court ignored the Court of Appeals order, and again adopted *verbatim* the proposed findings of fact and conclusions of law of the Attorney Grievance Commission. The Court of Appeals accepted the Circuit Court's findings of fact and conclusions of law, even though they were a rubber-stamped, word-for-word copy of the Attorney Grievance Commission's proposed findings.

One should wonder about the care that Judge Dugan took reviewing the proposed findings, while completely ignoring respondent's proposed findings. U.S. Supreme Court Justice John Paul Stevens recently criticized Chief Justice Earl Warren who had copied paragraphs from one party's brief. Justice Stevens said, "I was surprised to find that Warren's opinion had copied several paragraphs from the solicitor general's brief in the case . . . . Needless to say, that discovery made me wonder about the care that the chief justice took, not just in writing opinions, but also in editing the work of his law clerks in which he had no special interest." *Five Chiefs: A Supreme Court Memoir*, John Paul Stevens, Little Brown & Co, 2011, at 97.

The Circuit Court in this case did not copy just a few paragraphs from the Attorney Grievance Commission's "brief," it copied the entire document *verbatim*. not even give the appearance of impartiality, by failing to reference any of Mr. Joseph's proposed findings of fact or conclusions of law.

The Maryland courts' finding that respondent misrepresented his domicile is entirely false and not based on substantial evidence. The fact that respondent was registered to vote in

Maryland in 2007 is sufficient basis for respondent to have been able to claim Maryland domicile. The Ohio Board of Professional Conduct agreed with Mr. Joseph, that he demonstrated that he was a resident of Maryland at the time in question. In any event, the Ohio Board's finding support Mr. Joseph's claim that he stated he was a resident of Maryland in good faith.

As a matter of law, respondent was a Maryland citizen at all relevant times. The United States Supreme Court has ruled, "it has long been settled that residence and citizenship were wholly different things within the meaning of the Constitution and the laws defining and regulating the jurisdiction of the circuit courts of the United States; and that a mere averment of residence in a particular state is not an averment of citizenship in that state for the purposes of jurisdiction." *Steigleder v. McQuesten*, 198 U.S. 141 (1905). In that case the plaintiff claimed citizenship from Massachusetts even though she lived in Washington State. The Supreme Court held, "the plaintiff was, for many years prior to the commencement of the action, a citizen of Massachusetts, and that her residence in the state of Washington, at and before the suit was brought, is not shown to be otherwise than temporary, without any fixed purpose to abandon citizenship in Massachusetts. So far as appears from the record, she was, when the suit was brought, a citizen of Massachusetts." 198 U.S. 141.

The facts before this court are quite similar to that of the *Steigleder* case. Mr. Joseph did not give up his citizenship in Maryland in 2007, certainly not in March of 2007 when the first pro hac vice case was filed.

Mr. Joseph did not intentionally violate any rule. He acted in good faith at all times. He was disciplined for not maintaining a physical residence in Maryland. This logic allows a wealthy practitioner to maintain two residences, and avoid a disciplinary problem, while a less

wealthy one is subject to discipline of the harshest type.

### III. Who Who is a Lawyer or an Attorney?

According to *Black's Law Dictionary*, a "LAWYER. A person learned in the law;"

*Blacks Law Dictionary*, Revised Fourth Edition, West Publishing Co.

The United States Department of Justice refers to law school graduates as attorneys:

Since 1953, the Attorney General's Honors Program has been recognized as the nation's premier entry-level federal *attorney* recruitment program. The Honors Program attracts candidates from hundreds of law schools across the country representing a broad cross-section of experiences and interests. Selections are made based on many elements of a candidate's background, including a demonstrated commitment to government service, academic achievement, leadership, journal, moot court and mock trial experience, clinical experience, past employment, and extracurricular activities that relate to the work of Justice and the relevant component. The *Department of Justice seeks high caliber attorneys* to advance its mission and welcomes applications from candidates whose backgrounds reflect the Nation's rich diversity.

#### **Eligibility Requirements**

Eligibility is limited to graduating law students and recent law school graduates who entered judicial clerkships, graduate law programs, or qualifying legal fellowships within 9 months of law school graduation and who meet additional eligibility requirements. [https://www.justice.gov /Careers/ Legal Careers](https://www.justice.gov/Careers/LegalCareers) (emphasis added).

Ever since Mr. Joseph passed the District of Columbia Bar in 1973 he has been licensed to practice in at least one state or federal court. Now he is admitted and in good standing in the United States Court of Appeals for the Second Circuit and for the Seventh Circuit.

### IV. Petitioner Has Never Been Vexatious of Filed a Frivolous Motion or Pleading

As Petitioner testified, he has never been vexatious nor filed a frivolous case or motion. Transcript at 122. Mr. Joseph has always practiced law as the late, great, Congressman John Lewis

said, "Never, ever be afraid to make some noise and get in good trouble, necessary trouble." Rev. Jesse Jackson, no shrinking violet, recommended to the Maryland Bar that Mr. Joseph be reinstated:

I have known Joel D. Joseph for more than twenty-five years. I collaborated with him on several books, including my book on the death penalty titled Legal Lynching.

I know Mr. Joseph as one who has represented a number of indigent clients and has lent his legal skills to organizations and people who serve the public interest I think that Mr. Joseph's work in drafting and helping the passage of legislation like the Country of Origin Labeling Act" and the "American Automobile Labeling Act". co-sponsored by Maryland Senator Barbara Mikulski and former Congressman Kwesi Mfume is most representative of his commitment to working for the benefit of the public.

I strongly recommend that you and the members of the Court enter an order granting Mr. Joseph re-admission to the Maryland Bar. I am confident that Joseph will return as a valuable member of the legal profession. Exhibit 2.

Mr. Joseph has advanced the law in several regards. His significant cases are enumerated in Exhibit 16. While he did not win all of his cases, no attorneys do unless they only take easy cases. He established the right to consumers to sue when the country of origin on a product is false or inaccurate. *Kwikset v. Superior Court*, 51 CAL. 4TH 310, 246 P.3D 877, 120 CAL. RPTR. 3D 741 (California Supreme Court, 2011). Even as a law student he brought a case that gave bicyclists the right to sue the District of Columbia for unsafe roads. *Joseph v. District of Columbia*, *Joseph v. District of Columbia*, 366 F. Supp. 757 (1973). He convinced a court to strike down rules under the Hatch Act. *Joseph v. United States Civil Service Commission*, 554 F.2d 1140 (D.C. Cir. 1977).

Mr. Joseph litigated in his own name to advance the Made in the USA Foundation's goals of informing consumers of the country of origin of products. These cases were all brought after

he established the right of consumers to file such suits in the *Kwikset* case. It is certainly neither vexatious nor frivolous to attempt to enforce federal law. Joseph's cases against CVS and Nordstrom, criticized by Bar Counsel, were an attempt to enforce 19 U.S.C. §1304, which provides that every product that is imported must have its country of origin on the product and its label. Why does this not apply to drugs sold by CVS?

California's "Vexatious" law has such a broad definition of vexatious that nearly every attorney in the state who litigates could be considered vexatious (However the law only applies to pro se plaintiffs, not lawyers). This overbroad law provides:

Section 391 provides: "As used in this title, the following terms have the following meanings:

"(a) 'Litigation' means any civil action or proceeding, commenced, maintained or pending in any court of this State.

"(b) 'Vexatious litigant' means any person:

"(1) Who, in the immediately preceding seven-year period has commenced, prosecuted or maintained in propria persona at least five litigations other than in a small claims court that have been (i) finally determined adversely to him; or (ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing;

A leading law review article, *Screening Out Innovation: The Merits of Meritless Litigation* by Alexander A. Reinert, Indiana Law Journal, Vol 89, 1191 (2014), notes that "Courts and legislatures often conflate meritless and frivolous cases when balancing the desire to keep courthouse doors open to novel or unlikely claims against the concern that entertaining ultimately unsuccessful litigation will prove too costly for courts and defendants."

Petitioner's claims were neither meritless nor frivolous. Further, the court that ruled Joseph vexatious in California misapplied the law.

A vexatious litigant is defined as one who has brought five unsuccessful cases in the past seven years. California Code of Civil Procedure, Section 391(b). The courts have ruled that this applies only to cases brought in a California state court. *Roston v. Edwards*, 127 Cal.App.3d 842 (1982) 179 Cal. Rptr. 830 (Court of Appeal, Fourth District, Division 2).

The *Roston* court ruled: “We hold that the phrase ‘court of this state’ in section 391, subdivision (a), refers only to California state courts, and not to federal courts sitting in California, and the litigation finally determined in section 391, subdivision (b)(2), must have been a civil action or proceeding in a California state court. 127 Cal.App. 3d at 848.”

The *Roston* court ruled that cases brought out of state, or in federal court, do not count towards the five cases of the vexatious litigation statute. Since Joseph only brought two unsuccessful cases in California state courts, he is not a vexatious litigant. CVS cited cases from other jurisdictions and from a California federal Court. CVS also includes a case in which Mr. Joseph was a defendant. The California Supreme Court ruled that being a defendant in a case does not trigger the Vexatious Litigation Statute. *John v. Superior Court*, 63 Cal. 4<sup>th</sup> 91 (Cal. 2016) and thus does not count toward the necessary five unsuccessful cases necessary to brand a litigant “vexatious.”

CVS included these cases in their “five” cases to comply with the statute:

*Cuneo v. Joseph* (Joseph did not even bring this case), 428 Fed. Appx. 6 (D.C. Cir. 2011); *Joseph v. California State Bar*, No. 12-56141 (9th Cir. 2014); and *Joseph v. Costco*, No. 16-55370 (9th Cir. 2017). Because these cases cannot be included under the Vexatious Litigation Statute, the finding that Joseph was vexatious was erroneous.

## V. A Lawyer's Duty to Improve the Legal System

A lawyer has a duty to suggest improvements to the judicial system. Model Rules of Professional Conduct, American Bar Association. See also *Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century*, Ben W. Heineman, Jr. William F. Lee, David B. Wilkins, Published by the Center on the Legal Profession at Harvard Law School. Quite frankly, most lawyers do not suggest improvements to the legal system.

The ABA's model rules provide:

6. As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession.”

Petitioner has gone above and beyond this duty, in his work and publications. He has written four editions of *Black Mondays: Worst Decisions of the Supreme Court* that seeks to improve the law. He has written two federal and one California statute that have been enacted into law. His book on the Israeli Supreme Court compares Israeli and American law and suggests improvements to the American legal system.

His litigation on behalf of holocaust victims (*Rosner v. United States*, 231 F. Supp 2d 212 (S.D. Fla. 2002)) achieved compensation of \$22.5 million for holocaust survivors. As mentioned, his first case, *Joseph v. District of Columbia, supra*, was a ground-breaking case for bicyclists' rights. While he was unsuccessful in *Federal Employees for Nonsmokers Rights v. United States*, 598 F.2d 310 (D.C. Cir. 1979), he set the stage for cases against tobacco use.

As mentioned, he brought the landmark case of *Kwikset v. Superior Court, supra*, that allowed consumers to sue when there was a false representations of the country of origin of a product. He also represented scores of American craftsmen who had their works copied

illegally. See e.g. *Candle Factory, Inc. v. Trade Associates Grp., Ltd.*, 23 F. App'x 134 (4th Cir. 2001).

In summary, Petitioner was extremely active in actions to improve the legal system and to protect the rights of those who would not otherwise be represented.

## V. Conclusion

Petitioner meets all the qualifications under *In Re Roundtree, supra*, for readmission to the bar. He is ethical, competent, experienced and well-trained.

The Ohio Board of Professional Conduct, Exhibit 1, found Mr. Joseph to be qualified to be reinstated in Ohio:

{ 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;

The District of Columbia does not require attorneys to be reinstated in Maryland to be reinstated in D.C.

Petitioner has demonstrated that he will make an excellent addition to the bar of the District of Columbia. See e.g. Exhibit 2, letter from Rev. Jesse Jackson. For all of these reasons, the Petition for Reinstatement should be granted.

Respectfully submitted,

/Joel D. Joseph/

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JOEL D. JOSEPH

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## Certificate of Compliance

This document complies with the length and format requirements of Board Rule 19.8(c) because it contains 3,218 words, double-spaced, with one-inch margins, on 8 1/2 by 11-inch paper. I am relying on the word-count function in Microsoft Word in making this representation.

/Joel D. Joseph/

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JOEL D. JOSEPH

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