

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 30, 2008

[Cite as *09/30/2008 Case Announcements*, 2008-Ohio-4989.]

MERIT DECISIONS WITH OPINIONS

2007-0411. Bartchy v. State Bd. of Edn., Slip Opinion No. 2008-Ohio-4826.

Franklin App. No. 06AP-697, 170 Ohio App.3d 349, 2007-Ohio-300. Judgment reversed and judgment of the trial court reinstated..

Moyer, C.J., and Lundberg Stratton and O'Connor, JJ., concur.

Lanzinger, J., concurs in syllabus and judgment only.

Pfeifer, O'Donnell, and Cupp, JJ., dissent.

2007-2162. Dombroski v. WellPoint, Inc., Slip Opinion No. 2008-Ohio-4827.

Belmont App. No. 06-BE-60, 173 Ohio App.3d 508, 2007-Ohio-5054. Certified question answered in the negative and judgment reversed.

Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.

Pfeifer, J., dissents.

2007-2454. In re K.H., Slip Opinion No. 2008-Ohio-4825.

Lucas App. No. L-06-1376, 175 Ohio App.3d 192, 2007-Ohio-6128. Judgment affirmed.

Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, and Cupp, JJ., concur.

Lanzinger, J., concurs in judgment only.

Pfeifer, J., dissents.

2008-0129. Gibson v. Levin, Slip Opinion No. 2008-Ohio-4828.

Board of Tax Appeals, No. 2007-T-176. Decision affirmed.

Moyer, C.J., and Lundberg Stratton, O'Connor, O'Donnell, Lanzinger, and Cupp, JJ., concur.
Pfeifer, J., dissents.

MOTION AND PROCEDURAL RULINGS

2007-2303. State v. Taylor.

Ashtabula App. No. 2007-A-0018, 2007-Ohio-5912. This cause is pending before the court as an appeal from the Court of Appeals for Ashtabula County. Upon consideration thereof it is ordered, sua sponte, that this cause is no longer held for the decision in *State v. Simpkins*, 117 Ohio St.3d 420, 2008-Ohio-1197, 884 N.E.2d 568.

This cause is now held for the decisions in 2007-0693, *State v. Bloomer*, Fulton App. No. F-06-012, 2007-Ohio-1039, 2007-1415, *State v. Mosmeyer*, Hamilton App. No. C-060747, and 2007-1439, *State v. Barnes*, Portage App. No. 2006-P-0089, 2007-Ohio-3362, and the briefing schedule remains stayed.

2008-0758. Estate of Thompson v. Club Car, Inc.

Richland App. No. 07CA70. This cause is pending before the court as a discretionary appeal. On April 22, 2008, appellant filed a notice that a motion to certify a conflict was pending in the court of appeals and, pursuant to S.Ct.Prac.R. IV(4)(A), this court stayed consideration of the jurisdictional memoranda filed in this appeal. Whereas appellant has neither notified this court that the court of appeals determined that a conflict does not exist as provided by S.Ct.Prac.R. IV(4)(B) nor filed a copy of the court of appeals' order certifying the existence of a conflict as provided by S.Ct.Prac.R. IV(4)(C),

IT IS ORDERED by the court, sua sponte, that appellant show cause within fourteen days of the date of this entry why this court should not proceed to consider the jurisdictional memoranda in this appeal pursuant to S.Ct.Prac.R. III(6).

DISCIPLINARY CASES

2008-1650. Dayton Bar Assn. v. Bursey.

On August 18, 2008, and pursuant to Gov.Bar R. V(5a)(A)(1)(b), relator, Dayton Bar Association, filed with this court a motion for interim remedial suspension pursuant to Gov.Bar R. V(5a), alleging that respondent, Charles E. Bursey, Attorney Registration No. 0073962, last known business address in Centerville, Ohio, has committed numerous violations of the Code of Professional

Responsibility and he poses a substantial threat of serious harm to his clients and the public. Respondent did not file a response.

Upon consideration thereof and pursuant to Gov.Bar R. V(5a)(B), it is ordered and decreed that an interim remedial suspension is immediately entered against respondent and that the suspension be effective as of the date of this entry, pending final disposition of disciplinary proceedings predicated on the conduct threatening the serious harm.

It is further ordered that respondent immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency, or other public authority.

It is further ordered that effective immediately, he is forbidden to counsel or advise or prepare legal instruments for others or in any manner perform legal services for others.

It is further ordered that he is hereby divested of each, any, and all of the rights, privileges, and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that before entering into an employment, contractual, or consulting relationship with any attorney or law firm, the respondent shall verify that the attorney or law firm has complied with the registration requirements of Gov.Bar R. V(8)(G)(3). If employed pursuant to Gov.Bar R. V(8)(G), respondent shall refrain from direct client contact except as provided in Gov.Bar R. V(8)(G)(1) and from receiving, disbursing, or otherwise handling any client trust funds or property.

It is further ordered that pursuant to Gov.Bar R. X(3)(G), respondent shall complete one credit hour of continuing legal education for each month or portion of a month of the suspension. As part of the total credit hours of continuing legal education required by Gov.Bar R. X(3)(G), respondent shall complete one credit hour of instruction related to professional conduct required by Gov.Bar R. X(3)(A)(1) for each six months or portion of six months of the suspension.

It is further ordered that respondent shall not be reinstated to the practice of law in Ohio until (1) respondent complies with the requirements for reinstatement set forth in the Supreme Court Rules for the Government of the Bar of Ohio, (2) respondent complies with this and all other orders issued by this court, (3) respondent complies with the Supreme Court Rules for the Government of the Bar of Ohio, and (4) this court orders respondent reinstated.

It is further ordered, sua sponte, by the court that within 90 days of the date of this order, respondent shall reimburse any amounts that have been awarded by the Clients' Security Fund pursuant to Gov.Bar R. VIII(7)(F). It is further ordered, sua sponte, by the court that if, after the date of this order, the Clients' Security

Fund awards any amount against the respondent pursuant to Gov.Bar R. VIII(7)(F), the respondent shall reimburse that amount to the Clients' Security Fund within 90 days of the notice of such award.

It is further ordered that on or before 30 days from the date of this order, respondent shall:

1. Notify all clients being represented in pending matters and any co-counsel of respondent's suspension and consequent disqualification to act as an attorney after the effective date of this order and, in the absence of co-counsel, also notify the clients to seek legal service elsewhere, calling attention to any urgency in seeking the substitution of another attorney in respondent's place;
2. Regardless of any fees or expenses due, deliver to all clients being represented in pending matters any papers or other property pertaining to the client, or notify the clients or co-counsel, if any, of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining such papers or other property;
3. Refund any part of any fees or expenses paid in advance that are unearned or not paid, and account for any trust money or property in his possession or control;
4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of his disqualification to act as an attorney after the effective date of this order, and file a notice of disqualification of respondent with the court or agency before which the litigation is pending for inclusion in the respective file or files;
5. Send all such notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent;
6. File with the Clerk of this court and the Disciplinary Counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of notices required herein, and setting forth the address where the affiant may receive communications; and
7. Retain and maintain a record of the various steps taken by respondent pursuant to this order.

It is further ordered that respondent shall keep the Clerk, the Dayton Bar Association, and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Office of Attorney Services.

It is further ordered that the Clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(8)(D)(1), that publication be made as provided for in Gov.Bar R. V(8)(D)(2), and that respondent bear the costs of publication.

Lundberg Stratton, J., dissents.

2008-1691. Disciplinary Counsel v. Fletcher

On August 25, 2008, the Board of Commissioners on Grievances and Discipline filed a final report in the office of the Clerk of this court pursuant to BCGD Proc.Reg. 11(D), in which it accepted the agreement entered into by the relator, Disciplinary Counsel, and the respondent, Peter F. Fletcher. The agreement set forth the misconduct and the agreed, recommended sanction of a suspension for a period of six months with the entire suspension stayed on conditions. The board recommended that the agreement be accepted. The court, sua sponte, issued an order waiving the issuance of a show cause order and this matter was submitted to the court on the report and record filed by the board. On consideration thereof,

It is ordered by the court, sua sponte, that the recommended sanction is rejected. Pursuant to Gov.Bar R. V(8)(D), this cause is remanded to the Board of Commissioners on Grievances and Discipline for further proceedings and consideration of a more severe sanction. It is further ordered, sua sponte, that proceedings before this court in this case are stayed until further order. Costs to abide final determination of the case.

It is further ordered, sua sponte, that all documents filed with this court in this case shall meet the filing requirements set forth in the Rules of Practice of the Supreme Court of Ohio, including requirements as to form, number, and timeliness of filings.

Pfeifer and Lanzinger, JJ., dissent.

MEDIATION REFERRALS

The following case has been referred to mediation pursuant to S.Ct.Prac.R. XIV(6):

2008-1843. State ex rel. Bogan v. Indus. Comm.
Franklin App. No. 07AP-606, 2008-Ohio-3826.