

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

February 3, 2010

[Cite as *02/03/2010 Case Announcements, 2010-Ohio-341.*]

MERIT DECISIONS WITH OPINIONS

2009-0064. Meadows Dev., L.L.C. v. Champaign Cty. Bd. of Revision, Slip Opinion No. 2010-Ohio-249.

Board of Tax Appeals, No. 2007-B-595. Decision reversed and cause remanded.

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

Pfeifer, J., concurs in judgment only.

2009-0849. Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision, Slip Opinion No. 2010-Ohio-253.

Board of Tax Appeals, No. 2008-B-2080. Decision reversed and cause remanded.

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

2009-1118. State ex rel. Sullivan v. Ramsey, Slip Opinion No. 2010-Ohio-252.

Lucas App. No. L-09-1118, 2009-Ohio-2279. Judgment affirmed.

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

2009-1534. Mahoning Cty. Bar Assn. v. DiMartino, Slip Opinion No. 2010-Ohio-247.

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 08-055. The stay of the one-year suspension imposed on Dennis A. DiMartino, Attorney Registration No. 0039270, on July 18, 2007 is lifted, and the one-year suspension is reinstated. In addition, in this case respondent is suspended

from the practice of law in Ohio for six months, to run concurrently with the one-year suspension.

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

MOTION AND PROCEDURAL RULINGS

2008-2047. State v. Palmer.

Hamilton App. No. C-010583, 178 Ohio App.3d 192, 2008-Ohio-4604. This cause came on for further consideration upon the motion of Ohio Public Defender for leave to withdraw as counsel and motion for appointment of counsel.

It is ordered by the court that the motions are granted and that Lynn Maro of Boardman, Ohio, is appointed to represent appellee.

2009-2022. In re Application of Columbus S. Power Co.

Public Utilities Commission, No. 08-917-EL-SSO. This cause is pending before the court as an appeal from the Public Utilities Commission of Ohio. Upon consideration of appellant's motion to suspend Commission orders approving rates and motion to require past collections of retroactive rates to be escrowed,

It is ordered by the court that the motions are denied.

DISCIPLINARY CASES

2007-0319. Mahoning County Bar Assn. v. DiMartino.

On July 18, 2007, this court suspended respondent, Dennis DiMartino, for a period of one year and stayed the suspension on the conditions that respondent commit no further misconduct and serve a one-year monitored probation. On February 3, 2010, in case No. 2009-1534, *Mahoning Cty. Bar Assn. v. DiMartino*, this court suspended respondent for a period of six months, ordered that the stay in this case be revoked, and ordered respondent to serve the six-month suspension in case No. 2009-1534 concurrently with his reinstated one-year suspension in this case. Upon consideration thereof,

It is ordered and adjudged by this court that the stay of the suspension is hereby revoked and respondent, Dennis DiMartino, Attorney Registration No. 0039270, last known address in Youngstown, Ohio, be suspended from the practice of law for a period of one year.

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 respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

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

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 will 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 the Supreme Court Rules for the Government of the Bar of Ohio; (3) respondent complies with this and all other orders of the court; and (4) this court orders respondent reinstated.

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 respondent, 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 the possession or control of respondent;
4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, of respondent's 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 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 respondent 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 Mahoning County 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. All case documents are subject to Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio, which govern access to court records.

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 to respondent's last known address.

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.

2008-0723. Akron Bar Assn. v. Wittbrod.

On July 28, 2009, this court suspended respondent, Harry J. Wittbrod, from the practice of law for a period of six months, stayed the suspension, and placed

respondent on monitored probation for a period of one year, on conditions. It was further ordered that if respondent violated any of the conditions, the stay would be lifted, and respondent would serve the entire six-month suspension. Respondent was ordered to pay board costs in the amount of \$1,319.66. These costs and all accrued interest remain unpaid.

On October 13, 2009, relator, Akron Bar Association, filed a motion for an order to show cause why respondent should not be found in contempt. On December 4, 2009, this court ordered respondent to appear before it on January 12, 2010. Respondent did not appear. Therefore,

It is ordered that respondent is found in contempt. It is further ordered and adjudged by this court that the stay of the suspension is hereby revoked and respondent, Harry J. Wittbrod, Attorney Registration No. 0066021, last known business address in Cuyahoga Falls, Ohio, shall serve the entire six-month suspension imposed in the court's order of July 28, 2009. All terms of that order remain in effect.

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 respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

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

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 the Supreme Court Rules for the Government of the Bar of Ohio; (3) respondent complies with this and all other orders of the court; and (4) this court orders respondent reinstated.

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 respondent, 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 the possession or control of respondent;
4. Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties, of respondent's 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 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 respondent 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 Akron 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. All case documents are subject to Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio, which govern access to court records.

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 to respondent's last known address.

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.

MISCELLANEOUS DISMISSALS

2009-0975. State ex rel. Skillas v. Indus. Comm.

Franklin App. No. 07AP-1064. This cause is pending before the court as an appeal from the Court of Appeals for Franklin County. Upon consideration of appellant's application for dismissal,

It is ordered by the court that the application for dismissal is granted. Accordingly, this cause is dismissed.

2009-2073. State v. Griffin.

Cuyahoga App. No. 91845, 2009-Ohio-4366. This cause is pending before the court as a discretionary appeal and claimed appeal of right. It appears from the records of the court that the appellant has not filed a memorandum in support of jurisdiction, due January 29, 2010, in compliance with the Rules of Practice of the Supreme Court and therefore has failed to prosecute this cause with the requisite diligence. Upon consideration thereof,

It is ordered by the court that this cause is dismissed sua sponte.

2009-2305. State v. Rodriquez.

Cuyahoga App. No. 92231, 2009-Ohio-6101. This cause is pending before the court as a discretionary appeal and cross-appeal and claimed appeal of right. It appears from the records of the court that the appellant has not filed a memorandum in support of jurisdiction for his cross-appeal, due January 22, 2010, in compliance with the Rules of Practice of the Supreme Court and therefore has

failed to prosecute this cause with the requisite diligence. Upon consideration thereof,

It is ordered by the court that the cross-appeal is dismissed sua sponte. The discretionary appeal and claimed appeal of right remain pending.