

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

May 23, 2002

MOTION AND PROCEDURAL RULINGS

1999-0570. DeRolph v. State.

Perry C.P. No. 22043. Pursuant to its Order on Motion for Reconsideration, entered November 16, 2001, this court appointed Howard S. Bellman as a Master Commissioner for purposes of presiding over a settlement conference and conducting settlement negotiations among the parties. This court entered into an Agreement for Services with the Master Commissioner, pursuant to which the Master Commissioner was entitled to reimbursement for reasonable and necessary travel expenses as provided in the Supreme Court of Ohio Travel Regulations, and reimbursement for other reasonable and necessary expenses related to negotiation sessions and conferences. The court's November 16, 2001 Order on Motion for Reconsideration provided that the Master Commissioner's expenses, as authorized by the court, would be charged as costs and divided equally by the parties.

By letters filed February 25, 2002; March 25, 2002; April 16, 2002; and May 17, 2002, the Master Commissioner submitted statements and certifications in which he documented claimed expenses totaling \$10,122.45. Having reviewed the requested reimbursement for expenses,

IT IS ORDERED by the court that the parties pay the Master Commissioner's expenses as follows:

Appellees, Dale R. DeRolph et al.	\$5,061.22
Appellants, State of Ohio et al.	\$5,061.22

IT IS FURTHER ORDERED by the court that, on or before June 6, 2002, each party shall make payment to the Master Commissioner and file a notice with the Clerk of this court certifying that payment has been made.

By separate orders entered April 19, 2002, the court ordered payment of fees and professional services claimed by the Master Commissioner.

2001-1678. Luckenbill v. Midwestern Indemn. Co.

Darke App. No. 01CA1536. This cause is pending before the court on the certification of conflict by the Court of Appeals for Darke County. Upon consideration of the motion of amicus curiae, Ohio Academy of Trial Lawyers, for leave to participate in oral argument scheduled for June 4, 2002,

IT IS ORDERED by the court that the motion of amicus curiae, Ohio Academy of Trial Lawyers, to participate in oral argument be, and hereby is, granted, and amicus curiae shall share the time allotted to appellants.

2001-2072. State v. Adams.

Trumbull C.P. No. 00CR700. This cause is pending before the court as a death penalty appeal from the Court of Common Pleas of Trumbull County. Upon consideration of appellant's motion for extension of time to transmit the record,

IT IS ORDERED by the court that the motion for extension of time to transmit the record be, and hereby is, granted, and the time for transmitting the record is extended to July 12, 2002. No further extensions will be granted.

2002-0138. State ex rel. Dayton-Walther Corp. v. Indus. Comm.

Franklin App. No. 01AP-179. This cause is pending before the court as an appeal from the Court of Appeals for Franklin County. Upon consideration of the joint motion for extension of time to file appellant's merit brief pending settlement pursuant to S.Ct.Prac.R. XIV(6)(C),

IT IS ORDERED by the court that the motion for extension of time be, and hereby is, granted, and appellant's merit brief is due on or before August 1, 2002.

DISCIPLINARY CASES

2000-0759. Darke Cty. Bar Assn. v. Brumbaugh.

On October 25, 2000, this court suspended respondent, Philip J. Brumbaugh, a.k.a. Philip James Brumbaugh, for a period of two years and stayed the suspension on conditions. The court further ordered respondent to pay board costs in the amount of \$2,425.00, on or before January 23, 2001, and ordered that if costs were not paid on or before January 23, 2001, respondent may be found in contempt and suspended from the practice of law until such costs, including all accrued interest, were paid in full. On August 22, 2001, the court ordered the respondent to show cause within twenty days why he should not be found in contempt for failure to

comply with the court's October 25, 2000 order. Respondent did not respond to the show cause order. On consideration thereof,

IT IS ORDERED AND ADJUDGED by this court that respondent, Philip J. Brumbaugh, a.k.a. Philip James Brumbaugh, Attorney Registration No. 0022652, last known business address in Greenville, Ohio, be and hereby is, found in contempt for failure to comply with the court's October 25, 2000 order, and is suspended from the practice of law until he purges himself by complying fully.

IT IS FURTHER ORDERED that the respondent, Philip J. Brumbaugh, a.k.a. Philip James Brumbaugh, 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 respondent surrender his certificate of admission to practice to the Clerk of this court on or before 30 days from the date of this order and that his name be stricken from the roll of attorneys maintained by this court.

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, 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 the 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 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 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 his suspension and his 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 his 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 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 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 on or before 30 days from the date of this order, respondent surrender his attorney registration card for the 2001/2003 biennium.

IT IS FURTHER ORDERED that respondent shall keep the Clerk, the Darke 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.

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 Attorney Registration Office.

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.

2001-1013. In re Resignation of Silver.

On affidavit of resignation from practice of law of Jerome Silver and report filed under seal by Disciplinary Counsel. Resignation accepted without designation.

2001-1715. In re Resignation of Coombs.

On affidavit of resignation from practice of law of Robert J. Coombs and report filed under seal by Disciplinary Counsel.

Resignation accepted with designation.

Cook, J., not participating.

2002-0583. Columbus Bar Assn. v. Smith.

On April 10, 2002, and pursuant to Gov.Bar R. V(5a)(A)(1)(b), relator, Columbus Bar Association, filed with this court a motion for interim remedial suspension pursuant to Gov.Bar R. V(5a), alleging that respondent, Charles E. Smith, a.k.a. Charles Eddie Smith, has committed numerous violations of the Code of Professional Responsibility and poses a substantial threat of serious harm to the public. Respondent did not file a response to the motion.

Upon consideration thereof and pursuant to Gov.Bar R. V(5a)(B), it is ordered and decreed that an interim remedial suspension be immediately entered against Charles E. Smith, a.k.a. Charles Eddie Smith, Attorney Registration No. 0023633, last known business address in Columbus, Ohio, 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 Charles E. Smith, a.k.a. Charles Eddie Smith, 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 be 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, 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 his suspension and his 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 his place;

2. Regardless of any fees or expenses due him, 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 Columbus 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 Attorney Registration Office.

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

2002-0454. State v. Easley.

Franklin App. No. 01AP-31, 2001-Ohio-3976. This cause is pending before the court as a discretionary appeal and a claimed appeal of right. It appears from the records of this court that appellant has not filed a memorandum in support of jurisdiction, due May 17, 2002, in compliance with the Rules of Practice of the Supreme Court and therefore has failed to prosecute this case with the requisite diligence. Upon consideration thereof,

IT IS ORDERED by the court that this cause be, and hereby is dismissed, sua sponte.

MEDIATION REFERRALS

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

2002-0645. State ex rel. Gibson v. Indus. Comm.

Franklin App. No. 01AP-769.

2002-0793. State Emp. Relations Bd. v. State ex rel. Tritt.

Franklin App. No. 01AP-751.

2002-0828. PMX Corp. v. Zaino.

Board of Tax Appeals, Nos. 00-M-1, 99-M-941 and 99-M-942.