

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

October 13, 2011

[Cite as *10/13/2011 Case Announcements*, 2011-Ohio-5244.]

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## MERIT DECISIONS WITH OPINIONS

**2010-1007 and 2010-1372. State v. Lester, Slip Opinion No. 2011-Ohio-5204.**

Auglaize App. No. 2-10-20. Judgment affirmed.

O'Connor, C.J., and Pfeifer and McGee Brown, JJ., concur.

Lundberg Stratton and O'Donnell, JJ., concur in part and dissent in part.

Lanzinger, J., dissents.

**2010-1707. State v. Troiano, Slip Opinion No. 2011-Ohio-5217.**

Franklin App. No. 10AP-862, 2010-Ohio-3019. Judgment reversed and cause remanded.

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

**2011-0821. Cleveland Metro. Bar Assn. v. Brown, Slip Opinion No. 2011-Ohio-5198.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 10-059. Shawn Javon Brown of Cleveland, Ohio, Attorney Registration No. 0079331, is indefinitely suspended from the practice of law in the state of Ohio.

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

**2011-1015. Disciplinary Counsel v. Williams, Slip Opinion No. 2011-Ohio-5163.** On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 11-011. Joseph Norman Williams, who is currently incarcerated at the Mansfield Correctional Institution, Attorney Registration No. 0037392, is permanently disbarred from the practice of law in Ohio.

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

## **MOTION AND PROCEDURAL RULINGS**

### **2011-1170. Liming v. Damos.**

Athens App. No. 10CA39, 2011-Ohio-2726. This cause is pending before the court as a discretionary appeal and claimed appeal of right. On July 8, 2011, 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. 4.4(A)(4), 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. 4.4(B), nor filed a copy of the court of appeals' order certifying the existence of a conflict as provided by S.Ct.Prac.R. 4.4(C), it is ordered by the court, sua sponte, that appellant inform the court of the status of the motion to certify a conflict, in writing, within fourteen days of the date of this entry, or this court shall proceed to consider the jurisdictional memoranda in this appeal pursuant to S.Ct.Prac.R. 3.6.

### **2011-1575 State ex rel. D.B. v. Oswald.**

This cause originated in this court on the filing of a complaint for a writ of mandamus and prohibition.

Upon consideration of relator's motion for leave to redact portions of Exhibit A to the complaint, it is ordered by the court that the motion is granted. Counsel for relator shall come to the Supreme Court of Ohio Clerk's office and redact all personal identifiers, as defined by Rule 44(H) of the Rules of Superintendence for the Courts of Ohio and Rule 8.6 of the Supreme Court of Ohio Rules of Practice, within ten days of the date of this entry.

## **DISCIPLINARY CASES**

### **2010-2140 Akron Bar Assn. v. Fink.**

This cause is pending before the court upon the filing of a report by the Board of Commissioners on Grievances and Discipline on December 9, 2010. On April 22, 2011, this court remanded this case to the Akron Bar Association for additional investigation and stayed all proceedings before this court. On October 6, 2011, the parties reported that the investigation is complete.

Upon consideration thereof, it is ordered by the court that the stay of proceedings is lifted, and the clerk of court is directed to reactivate this case.

**2011-1283. Akron Bar Assn. v. Walkley.**

On September 27, 2011 respondent filed a motion for leave to file motion to dissolve interim remedial suspension. Upon consideration thereof, it is ordered by the court that respondent is granted leave to file a motion to dissolve interim remedial suspension. Respondent's motion shall be filed within ten days after issuance of this order.

**2011-1325. In re: Application of Whetstone.**

This matter is pending before the court upon the report of the Board of Commissioners on Character and Fitness. On September 27, 2011, applicant, Stephen Grant Whetstone, filed with this court a motion to seal the record in this case.

Upon consideration thereof, it is ordered by the court that the motion is granted. The record in this case, the report of the board, and all documents filed in this case shall be maintained permanently under seal.

**2011-1423. In re: Application of David Paul Poignon.**

This matter is pending before the court upon the report of the Board of Commissioners on Character and Fitness. On September 28, 20011, applicant, Daniel Paul Poignon, filed with this court a motion to seal the record in this case.

Upon consideration thereof, it is ordered by the court that the motion is denied.

**2011-1711 In re: Kenneth Kelly McElroy.**

On October 10, 2011, and pursuant to Rule V(5)(A)(3) of the Supreme Court Rules for the Government of the Bar of Ohio, the Secretary of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio certified to the Supreme Court a certified copy of a judgment entry of a felony conviction against Kenneth Kelly McElroy, an attorney licensed to practice law in the State of Ohio.

Upon consideration thereof and pursuant to Gov.Bar R.V(5)(A)(4), it is ordered and decreed that Kenneth Kelly McElroy, Attorney Registration No. 0070478, last known business address in Cleveland, Ohio, is suspended from the practice of law for an interim period, effective as of the date of this entry.

It is further ordered that this matter is referred to the Disciplinary Counsel for investigation and commencement of disciplinary proceedings.

It is further ordered that respondent immediately cease and desist from the practice of law in any form and is 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, respondent 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 respondent is 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 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 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 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 respondent's possession or control;

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 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 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 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.