

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS

August 25, 2011

[Cite as *08/25/2011 Case Announcements*, 2011-Ohio-4228.]

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## MERIT DECISIONS WITH OPINIONS

**2009-1064, 2009-1065, 2009-1067, 2009-1071, and 2009-1072. Martin Marietta Magnesia Specialties, L.L.C. v. Pub. Util. Comm., Slip Opinion No. 2011-Ohio-4189.**

Public Utilities Commission, Nos. 08-893-EL-CSS, 08-145-EL-CSS, 08-146-EL-CSS, 08-67-EL-CSS, 08-254-EL-CSS. Orders reversed.

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

**2010-2265. Toledo Bar Assn. v. Scott, Slip Opinion No. 2011-Ohio-4185.**

On Certified Report by the Board of Commissioners on Grievances and Discipline, No. 10-016. Robert Bernal Scott, Attorney Registration No. 0073411, is suspended from the practice of law in Ohio for two years with the final 12 months stayed on conditions.

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

## MOTION AND PROCEDURAL RULINGS

**1998-2542. State v. Treesh.**

Lake App. No. 1995-L-057. This cause came on for further consideration upon appellee's motion to set execution date.

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

It is further ordered that Frederick Treesh's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility, or in his

absence, by the Deputy Warden, on Wednesday, March 6, 2013, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Lake County.

**1999-0905. State v. Smith.**

Richland C.P. No. 98CR601D. This cause came on for further consideration upon appellee's motion to set execution date.

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

It is further ordered that Steven T. Smith's sentence be carried into execution by the Warden of the Southern Ohio Correctional Facility, or in his absence, by the Deputy Warden on Wednesday, May 1, 2013, in accordance with the statutes so provided.

It is further ordered that a certified copy of this entry and a warrant under the seal of this court be duly certified to the Warden of the Southern Ohio Correctional Facility and that said Warden shall make due return thereof to the Clerk of the Court of Common Pleas of Richland County.

**2011-1235. Fireman's Fund Ins. Co. v. Hartford Acc. and Indemn. Co.**

Certified Question of State Law, United States District Court, Northern District of Ohio, Western Division, No. 3:03-cv-7168. Upon consideration of the motions for admission pro hac vice of Todd C. Jacobs, Jacob W. Harrell, and Paul A. Sheldon, it is ordered by the court that the motions are granted.

**DISCIPLINARY CASES**

**2010-0150. Cleveland Metro. Bar Assn. v. Hernick.**

On March 4, 2010, this court issued an order granting Cleveland Metropolitan Bar Association's Motion to Compel Discovery and Motion to Compel Attendance at Deposition. The order required respondents Norm Hernick, Law Online, Inc., and A Divorce Fast, Inc., to fully comply with the Request for Production of Documents as described by the Order to Compel Discovery issued by the Board on the Unauthorized Practice of Law and required respondent Norm Hernick to submit to an oral deposition. On March 31, 2011, this court issued an order granting movant's Motion for Order to Show Cause why respondent should not be held in contempt for failing to comply with the March 4, 2010 order. Respondent did not file a timely response. On June 10, 2011, movant filed a motion for

sanctions. Respondent did not file a timely response. On July 21, 2011, respondent filed a motion to strike the motion for sanctions.

Upon consideration thereof, it is ordered by the court that respondent's motion to strike the motion for sanctions is denied. Respondent is found in contempt for failing to comply with the court's March 4, 2010 order requiring respondent to comply with the requests for production of documents, to submit to oral deposition, and to pay reasonable attorney fees incurred in obtaining the March 4, 2010 order of this court. It is further ordered that Norm Hernick shall serve ten days in jail for his failure to comply with the court's orders. Respondent may purge this jail time by fully complying with all orders of this court and paying all monetary sanctions and costs that have been imposed by this court.

It is further ordered that a warrant be issued for Norm Hernick's arrest to the Sheriff of Cuyahoga County and to the sheriffs of such other counties as the contemnor may frequent.

It is further ordered that movant's motion for sanctions is granted. Respondent shall pay all reasonable expenses and attorney fees incurred by the Cleveland Metropolitan Bar Association in obtaining this order.

**2010-1462. Mahoning Cty. Bar Assn. v. Jones.**

On December 16, 2010, this court suspended respondent, James S. Jones, from the practice of law for a period of six months and stayed the suspension on the condition that respondent commit no further misconduct and pay the costs of these proceedings in the amount of \$1,827.35. Respondent has not paid board costs ordered by the court. On May 20, 2011, this court issued an order to show cause why respondent should not be found in contempt and suspended for failure to comply with the court's order. Respondent did not file a response to the show cause order.

Upon consideration thereof, it is ordered and adjudged by this court that respondent James S. Jones, Attorney Registration No. 0064099, last known address in Boardman, Ohio, is found in contempt for failure to comply with the court's December 16, 2010 order.

It is further ordered that the previously imposed stay of the six-month suspension is revoked and that respondent shall serve the entire six-month suspension imposed on December 16, 2010, as a period of actual suspension, until costs and all accrued interest are paid in full.

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 pays the board costs, including any and all accrued interest, (2) 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 respondent shall immediately:

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 cocounsel, 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 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.

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

#### **2011-1016. Disciplinary Counsel v. Motylinski.**

On June 16, 2011, 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, Michael Motylinski. The agreement set forth the misconduct and the agreed, recommended sanction of a six-month suspension with the entire six months stayed. 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 hereby ordered by the court that the recommended sanction is rejected. It is further ordered that, pursuant to Gov. Bar R. V(8)(D), this cause is remanded to the Board of Commissioners on Grievances and Discipline for further proceedings to consider whether to wait to impose a sanction until the respondent returns to active registration status. Proceedings before the court in this case are stayed until further order of this court. Costs are to abide final determination of the case.

### **MISCELLANEOUS DISMISSALS**

#### **2011-1114. State ex rel. Parker v. Russo.**

Cuyahoga App. No. 96722, 2011-Ohio-2667. The records of this court indicate that appellant has not filed a merit brief, due August 22, 2011, in compliance with the Rules of Practice of the Supreme Court and therefore has failed to prosecute this cause with requisite diligence.

Upon consideration thereof, it is ordered by the court that this cause is dismissed