

# The Supreme Court of Ohio

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## CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

July 15, 2003

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### MOTION AND PROCEDURAL RULINGS

**2002-2241. State v. Monroe.**

Franklin C.P. No. 01CR042118. This cause is pending before the court as a death penalty appeal from the Court of Common Pleas of Franklin County. Upon consideration of appellant's motion for stay of execution pending disposition of his appeal by this court,

IT IS ORDERED by the court that the motion for stay of execution be, and hereby is, granted.

**2003-0829. State ex rel. Shandrow v. Roger Corp.**

Franklin App. No. 02AP-342. This cause is pending before the court as an appeal from the Court of Appeals for Franklin County. Upon consideration of appellant's motion for extension of time to file merit brief 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 4, 2003.

**2003-1129. State v. Perdue.**

Mahoning App. No. 00CA244. This cause is pending before the court as a discretionary appeal from the Court of Appeals for Mahoning County. Upon consideration of appellant's motion for stay of court of appeals' judgment,

IT IS ORDERED by the court that the motion for stay be, and hereby is, denied.

Resnick and F.E. Sweeney, JJ., dissent.

## APPEALS ACCEPTED FOR REVIEW

### **2003-0423. RPM, Inc. v. Oatey Co.**

Medina App. Nos. 3282-M and 3289-M, 2003-Ohio-367.

Moyer, C.J., F.E. Sweeney and O'Connor, JJ., dissent.

### **2003-0510. Mazza v. Am. Continental Ins. Co.**

Summit App. No. 21192, 2003-Ohio-360. Discretionary appeal allowed on Propositions of Law I and II only. Proposition of Law I is held for the decision in 2002-0610, *Geren v. Westfield Ins. Co.*, Lucas App. No. L-01-1398, 2002-Ohio-1230; Proposition of Law II is held for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903; briefing schedule stayed.

Resnick, Pfeifer and Lundberg Stratton, JJ., dissent.

Discretionary cross-appeal denied.

### **2003-0641. Buckley v. Wintering.**

Franklin App. No. 02AP-511. Discretionary appeal allowed on Propositions of Law II and III only.

Lundberg Stratton and O'Donnell, JJ., concur but would allow all propositions of law.

O'Connor, J., concurs but would allow all propositions of law and hold for 2003-0302 and 2003-0362, *Taylor v. Kemper Ins. Co.*, Cuyahoga App. No. 81360, 2003-Ohio-177, and 2002-0932, *Westfield Ins. Co. v. Galatis*, Summit App. No. 20784, 2002-Ohio-1502.

Moyer, C.J., concurs but would hold Proposition of Law II for 2002-0610, *Geren v. Westfield Ins. Co.*, Lucas App. No. L-01-1398, 2002-Ohio-1230, and Proposition of Law III for *Taylor*.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

### **2003-0664. Modzelewski v. Yellow Freight, Inc.**

Summit App. No. 21205, 2003-Ohio-827.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

### **2003-0671. Richard v. Nationwide Mut. Ins. Co.**

Franklin App. No. 02AP-140, 2003-Ohio-1179. Discretionary appeal allowed and cause held for decision in 2002-2138, *Saunders v. Mortensen*, Erie App. No. E-02-008, 2002-Ohio-6244; and briefing schedule stayed.

Resnick, F.E. Sweeney and Pfeifer, JJ., dissent.

## APPEALS NOT ACCEPTED FOR REVIEW

### **2003-0177. Tilton v. Cockfield.**

Cuyahoga App. No. 80333, 2002-Ohio-6808.

F.E. Sweeney and Pfeifer, JJ., dissent.

Moyer, C.J., dissents and would hold the cause for the decision in 2002-0579, *Burkhart v. CNA Ins. Co.*, Stark App. No. 2001CA00265, 2002-Ohio-903.

### **2003-0793. Engelskirger v. Wadsworth.**

Medina App. No. 02CA0040M, 152 Ohio App.3d 132, 2003-Ohio-1291.

Moyer, C.J., Resnick and Lundberg Stratton, JJ., dissent.

### **2003-1026. In re Rinaldi.**

Allen App. No. 10274, 2003-Ohio-2562.

Moyer, C.J., O'Connor and O'Donnell, JJ., dissent.

## DISCIPLINARY CASES

### **2000-0761. Disciplinary Counsel v. Gettys.**

This cause came on for further consideration upon the filing of an application for reinstatement by respondent, Robert Patrick Gettys, Attorney Registration No. 0032534, last known business address in Covington, Kentucky.

The court coming now to consider its order of October 25, 2000, wherein the court, pursuant to Gov.Bar R. V(6)(B)(3), suspended respondent for a period of two years with the second year stayed and placed respondent on probation for two years with conditions, finds that respondent has substantially complied with that order and with the provisions of Gov.Bar R. V(10)(A). Therefore,

IT IS ORDERED by this court that Robert Patrick Gettys, be and hereby is, reinstated to the practice of law in the state of Ohio.

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 publication be made as provided for in Gov. Bar R. V(8)(D)(2), and that respondent bear the costs of publication.

### **2002-0720. Toledo Bar Assn. v. Cook.**

Upon consideration of the motion for admission pro hac vice of Robert H. Golden and Armand D. Kunz to appear on behalf of respondent, filed by James F. Hadley,

IT IS ORDERED by the court that the motion be, and hereby is, granted.

**2002-1131. Disciplinary Counsel v. Washington.**

This cause came on for further consideration upon the filing by respondent, Dale Washington, of a Motion to Waive Costs, Accrued Costs with Condition Attached. Upon consideration thereof,

IT IS ORDERED by the court that the motion be, and hereby is, denied.

**2003-0658. In re Resignation of Gibson.**

On April 11, 2003, respondent, Robert Allen Gibson, Attorney Registration No. 0034081, last known business address in Cincinnati, Ohio, who was admitted to the bar of this state on the 11th day of May, 1981, submitted an Affidavit of Resignation and Authorization and Release pursuant to Gov.Bar R. V(11)(G)(1). The affidavit and authorization and release were referred to Disciplinary Counsel pursuant to Gov.Bar R. V(11)(G)(2). On June 3, 2003, Disciplinary Counsel filed under seal its report with this court in accordance with Gov.Bar R. V(11)(G)(2). Upon consideration thereof,

IT IS ORDERED by the court that pursuant to Gov.Bar R. V(11)(G)(3), Robert Allen Gibson's resignation as an attorney and counselor at law be accepted as a resignation with disciplinary action pending. It is further ordered that his Certificate of Admission to the bar of Ohio be, and the same hereby is, ordered cancelled and that the name of Robert Allen Gibson be stricken from the roll of attorneys of this court.

IT IS FURTHER ORDERED AND ADJUDGED that from and after this date all rights and privileges extended to Robert Allen Gibson to practice law in the state of Ohio be withdrawn; that henceforth Robert Allen Gibson shall cease to hold himself forth as an attorney authorized to appear in the courts of this state; that he shall not attempt, either directly or indirectly, to render services as an attorney or counselor at law to or for any individuals, corporation, or society, or in any way perform or seek to perform services for anyone, no matter how constituted, that must, by law, be executed by a duly appointed and qualified attorney within the state of Ohio.

IT IS FURTHER ORDERED that Robert Allen Gibson desist and refrain from the practice of law in any form, either as principal or agent or clerk or employee of another, and hereby is forbidden to appear in the state of Ohio as an attorney and counselor at law before any court, judge, board, commission or other public authority, and hereby is forbidden to give another an opinion as to the law or its application or advise with relation thereto.

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 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 resignation 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 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 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 until such time as he fully complies with this order, 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.

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.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

**2003-0732. In re Resignation of Spencer.**

On April 24, 2003, respondent, Scott W. Spencer, Attorney Registration No. 0019945, last known business address in Columbus, Ohio, who was admitted to the bar of this state on the 13th day of May, 1985, submitted an Affidavit of Resignation and Authorization and Release pursuant to Gov.Bar R. V(11)(G)(1). The affidavit and authorization and release were referred to Disciplinary Counsel pursuant to Gov.Bar R. V(11)(G)(2). On June 3, 2003, Disciplinary Counsel filed under seal its report with this court in accordance with Gov.Bar R. V(11)(G)(2). Upon consideration thereof,

IT IS ORDERED by the court that pursuant to Gov.Bar R. V(11)(G)(3), Scott W. Spencer's resignation as an attorney and counselor at law be accepted as a resignation with disciplinary action pending. It is further ordered that his Certificate of Admission to the bar of Ohio be, and the same hereby is, ordered cancelled and that the name of Scott W. Spencer be stricken from the roll of attorneys of this court.

IT IS FURTHER ORDERED AND ADJUDGED that from and after this date all rights and privileges extended to Scott W. Spencer to practice law in the state of Ohio be withdrawn; that henceforth Scott W. Spencer shall cease to hold himself forth as an attorney authorized to appear in the courts of this state; that he shall not attempt, either directly or indirectly, to render services as an attorney or counselor at law to or for any individuals, corporation, or society, or in any way perform or seek to perform services for anyone, no matter how constituted, that must, by law, be executed by a duly appointed and qualified attorney within the state of Ohio.

IT IS FURTHER ORDERED that Scott W. Spencer desist and refrain from the practice of law in any form, either as principal or agent or clerk or employee of another, and hereby is forbidden to appear in the state of Ohio as an attorney and

counselor at law before any court, judge, board, commission, or other public authority, and hereby is forbidden to give another an opinion as to the law or its application or advise with relation thereto.

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 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 resignation 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 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 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 until such time as he fully complies with this order, 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.

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.

Moyer, C.J., Resnick, F.E. Sweeney, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur.

### **MISCELLANEOUS DISMISSALS**

#### **2003-0719. State v. Lentz.**

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 July 11, 2003, in compliance with the June 11, 2003 order of this 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.

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

### **MEDIATION REFERRALS**

The following cases have been returned to the regular docket pursuant to S.Ct.Prac.R. XIV(6)(E):

#### **2003-0865. State ex rel. Josephson v. Indus. Comm.**

Franklin App. No. 02AP-823, 2003-Ohio-1673.

**2003-0960. State ex rel. Sanor Sawmill, Inc. v. Indus. Comm.**

Franklin App. No. 02AP-880, 2003-Ohio-2413.