

ON COMPUTER-ALM

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

05-2030

IN RE: RICHARD A. OLIVITO

Case No. 1:06-mc-65

ORDER

Respondent Richard A. Olivito has opted to challenge the imposition of a suspension from the practice of law in this Court in conformity with the Ohio Supreme Court's suspension of Respondent's privilege to practice law in the state courts entered on July 26, 2006. Respondent has had two opportunities to address this Court in support of his contention that the discipline imposed by the Ohio Supreme Court is excessive. He has submitted voluminous documents in support of that contention, as well as, an assortment of other material impugning the fairness and integrity of the Mahoning County Bar Association and the chairperson of the panel of the Board of Commissioners on Grievances and Discipline that heard this matter.

The Ohio Supreme Court Disciplinary Counsel appeared at the second hearing in the person of John Coughlan to clarify the process and the position of the Ohio Supreme Court in this matter.

**FILED**  
FEB 05 2007  
MARCIA J. MENGEL, CLERK  
SUPREME COURT OF OHIO

Standard of Review

The Model Rules of Disciplinary Enforcement as adopted by this Court and specifically Rule II (D) (1), (2), (3) and (4) provide that this Court "shall impose the

identical discipline [imposed by the Ohio Supreme Court] unless the respondent-attorney demonstrates, or this Court finds, that upon the face of the record upon which the

I certify that this is a true and correct copy of the original filed in my Office on 2/1/2007  
JAMES BONINI, CLERK  
BY: *[Signature]*  
Deputy Clerk  
DATE: 2/2/2007

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discipline in another jurisdiction is predicated it clearly appears:

1. that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
2. that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or
3. that the imposition of the same discipline by this Court would result in grave injustice; or
4. that the misconduct established in (sic) deemed by this Court to warrant substantially different discipline.”

The Rule does not contemplate a review de novo or further evidentiary proceedings, rather this Court reviews the existing record before the Ohio Supreme Court.

#### Analysis

This Court has reviewed the materials submitted by Respondent including an assortment of snippets from various media outlets and, in particular, the brief filed by Respondent's former counsel, Max Kravitz, in the Ohio Supreme Court. The Court notes that while this matter has been pending, Respondent filed a motion for reconsideration of the “order suspending his state law license,” which was denied by the Ohio Supreme Court on October 4, 2006. See Mahoning Cty. Bar Assn. v. Olivito, 111 Ohio St. 3d 1418, 854 N.E. 2d 1095, 2006 - Ohio-5083 (Ohio Oct. 04, 2006). Moreover, the United States District Court for the Northern District of Ohio has determined the discipline imposed upon Respondent by the Ohio Supreme Court should likewise be imposed upon Respondent by that Court. See Attorney Disciplinary Order No. 2006-70 (NDOH

November 14, 2006). The Court also notes that Mr. Coughlan, during the second hearing, advised this Court, without objection, that Respondent faces at least two additional disciplinary complaints that have yet to be resolved. Mr. Coughlan stated that until those matters are resolved, Respondent's privilege to practice law in the State of Ohio will not be reinstated.

The Court concludes that Respondent has failed to show good cause for this Court to refuse to adopt the discipline previously imposed upon Respondent by the Ohio Supreme Court. The procedure was not so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, nor was there such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject. The Court concludes further that the imposition of the same discipline by this Court would not result in grave injustice nor does this Court find that the misconduct established warrants a substantially different discipline.

Although Respondent has implied and inferred that certain conflicts of interest or personal animus may have played a part in the resolution of this matter in the State disciplinary process, the Court notes that at no time during the State proceedings did Respondent seek to disqualify any participant acting to prosecute the disciplinary complaint nor has he adduced any additional evidence before this Court that places the integrity of the State process in doubt.

Thus, this Court **ORDERS** that Richard A. Olivito shall be indefinitely suspended

from the practice of law before this Court; that the name of Richard A. Olivito be stricken from the roll of attorneys admitted to practice law before the United States District Court for the Southern District of Ohio, pursuant to Gov. Bar R. V, Sec. 6(B) (3) of the Supreme Court Rules for the Government of the Bar of Ohio, and Rule II of the Model Federal Rules of Disciplinary Enforcement adopted by this Court on February 5, 1979. He is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before this Court. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law in this Court. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each and all of the rights, privileges and prerogatives customarily accorded to a member in good standing of the Bar of this Court.

**IT IS FURTHER ORDERED** that the Respondent, Richard A. Olivito, surrender his certificate of admission to practice in this Court to the Clerk of this Court, forthwith, and that his name be stricken from the roll of attorneys maintained by this Court. It is further ordered that on or before March 1, 2007, the Respondent shall:

1. Notify all clients being represented in pending matters in this Court 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 in this Court any papers or other property pertaining to the clients, 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. Regarding any actions pending in this Court, 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 possession or control of Respondent;

4. Notify opposing counsel in pending litigation in this Court, in the absence of counsel, the adverse parties, of his disqualification to act as an attorney after the effective date of this Order;

5. All notices required by this Order shall be by certified mail and shall contain a return address where communications may thereafter be directed to Respondent;

6. File with the Clerk of this Court an affidavit showing compliance with this Order and Proof of Service of Notices required therein. Such affidavit shall set forth the address where the affiant may receive communications and the Clerk shall be kept advised of any change of address;

7. Retain and maintain a record of the various steps taken by Respondent pursuant to this Order.

**IT IS FURTHER ORDERED** that the Clerk of this Court issue certified copies

of this Order to the Disciplinary Counsel of the Supreme Court of Ohio, to the Clerks of the Supreme Court of the United States and the United States Court of Appeals for the Sixth Circuit, to the National Discipline Data Bank and to its Divisional Offices.

8. Readmission to practice before this Court shall require the filing of an application for reinstatement with James Bonini, Clerk of Court, Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Room 260, Columbus, Ohio 43215. The application shall include an affidavit from Respondent that the Ohio Supreme Court has reinstated him to the practice of law in Ohio and that he is in good standing with that Court.

Upon receipt of the application, the Clerk shall refer the application to the Chief Judge of this Court, who may require the Respondent to take the next available bar examination for admission to practice in this Court. Additionally, the Chief Judge may require Respondent to appear in person to demonstrate clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice law before this Court and that his resumption of the practice of law will not be detrimental to the integrity and standing of the bar or to the administration of justice, or subversive of the public interest. Should the Court find the attorney unfit to resume practice before this Court, the application shall be dismissed. No application for reinstatement shall be filed within one year following an adverse judgment upon an application for reinstatement filed by or on behalf of the same attorney.

If the attorney is found fit to resume practice before this Court, the judgment shall reinstate him, provided that, if the attorney has been suspended for two years or more,

reinstatement is conditioned upon the attendance of the attorney at a Federal Court Practice Seminar. A copy of the Certificate of Training for successfully completing the Federal Court Practice Seminar should accompany the application for reinstatement. Registration in the Court's CM/ECF system will also be required.

All attorneys admitted to practice in this Court are required to submit a written notice of a change of business address and/or email address to the Clerk upon the change in address.

If the attorney has been suspended for five years or more, reinstatement may also be conditioned upon furnishing proof of competency and learning in the law, which proof may include certification by the bar examiners of a state or other jurisdiction of the attorney's successful completion of an examination for admission to practice subsequent to the date of suspension.

IT IS SO ORDERED.

DATE: February 1, 2007

/s/Sandra S. Beckwith  
Sandra S. Beckwith, Chief Judge  
United States District Court