

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, ex rel.,  
GREGORY T. HOWARD

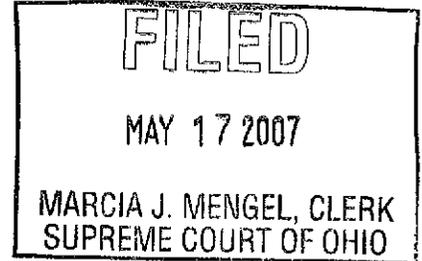
Appellant,

-vs-

SEAWAY FOOD TOWN, INC., et al.,

Appellees.

Case No. 03-1572  
Trial Court Case No. 97AP-860



\*\*\*\*\*

APPLICATION FOR LEAVE TO FILE A VALID ACTION AGAINST JUDGE JOHN  
F. BENDER IN THIS COURT, *INSTANTER*

\*\*\*\*\*

On September 24, 2004, this Court declared Gregory T. Howard, pro-se, a vexatious litigator pursuant to S. Ct. Prac. R. XIV, Section 5(B). Accordingly, Howard must obtain leave of this Court to institute any proceeding, continue any proceeding he instituted, or make any application in this Court. The time for filing an appeal from Judge Bender's January 11, 2006 orders has long ago expired.

Appellant now presents this meritorious application for leave pursuant to R.C. Chapter 2731 for a writ ordering Judge John F. Bender of the Franklin County Court of Common Pleas to vacate his orders of January 11, 2006, as well as directing him to reopen Case No. 05-CVH-01-398 and to proceed to judgment on all pending applications

or motions on file therein. Appellant's application is meritorious and should be granted by this Court.

This pleading constitutes the Complaint of Appellant Gregory T. Howard against Judge John F. Bender of the Franklin County Court of Common Pleas. Appellant wishes to submit a piece of evidence which supports his position in this matter. Appellant attaches the Court's Entry of Recusal/Transfer filed in that Court on January 18, 2006 which supports a finding that Judge Bender acted without all jurisdiction when he filed his orders in the case (Case No. 05-CVH-01-398) on January 11, 2006 and that he is liable for monetary damages for acting without all jurisdiction on that date as well. Judge Bender's January 11, 2006, orders are void because he lacked jurisdiction to proceed to judgment until January 18, 2006 as that is when case was transferred to him by the Administrative Judge of that Court.

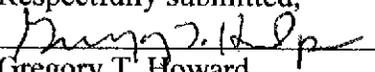
Appellant further complains that Judge Bender has not proceeded to judgment on his numerous motions or filings all which remain pending in that Court. Furthermore, that Judge Bender January 11, 2006 orders are at issue in this Mandamus or Procedendo case and therefore, this Court should issue a writ of mandamus ordering Judge Bender to vacate his orders of January 11, 2006 as well as directing him to reopen Case No. 05-CVH-01-398 and to proceed to judgment on all pending applications or motions on file therein.

#### RELIEF SOUGHT

For the reasons set forth herein, Appellant respectfully requests that this Court grant his meritorious application, permit this case to proceed, instruct the underlying court to proceed to judgment on all pending matters in that court or otherwise finally

adjudicate those remaining issues and therefore, the underlying case must be reopened. Furthermore, this Court should issue sanctions against Judge Bender regarding non-compliance with Canons 1-4(A) of the Code of Judicial Conduct, Sup. R. 40(A) and other applicable legal provisions as well as all other relief this Court shall deem proper and just.

Respectfully submitted,

  
Gregory T. Howard

P.O. Box 3096

Toledo, Ohio 43607-0096

Telephone: (419) 450-3408

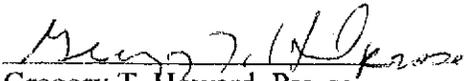
Relator-Appellant, Pro-se

**STATE OF OHIO**

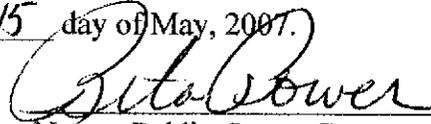
**SS:**

**COUNTY OF LUCAS**

Gregory T. Howard, being duly sworn, according to law, deposes and says that he is the Relator, pro-se herein, and duly authorized in the premises; that he has read the foregoing Application/Pleading, and that the facts stated, and allegations contained therein are true as he verily believes; he further deposes and says that the Common Pleas Court disobeyed the lawful Rules of the Court/Ohio Revised Code by not proceeding to judgment on the relator's pending application/filings according to its rules or laws and improperly found him to be vexatious litigator and improperly decided other related applications without having the benefit of jurisdiction and that this Court must hold an evidentiary hearing on the instant complaint; that Judge Bender was not in compliance with Sup. R. 40(A) for the period of 01-18-2006 through 03-29-2007; it would therefore unduly prejudice me to have this Court deny his pleading, the evidence, the written arguments of this pro-se counsel, and the applicable law, the Relator's application for leave to file a complaint for a writ of mandamus/procedendo to compel Judge Bender to proceed to judgment with respect to his motions and applications for leave to proceed, notwithstanding the unreasonable, unlawful and clearly erroneous vexatious litigator order, issued on January 11, 2006, by the Honorable Judge John F. Bender, the Complaint for a Writ of Mandamus/Procedendo, the Relator's application for leave to file an appropriate an Ohio Civil Rule 60(B)(1) through (5) Motion to Vacate the Court's Journal Entry of Dismissal nunc pro tunc of 01-08-2007, *instanter* and the instant motion to vacate without the Court first holding an evidentiary hearing on this matter has long ago expired; he further deposes and says that the Respondent(s) herein is not in any branch of the military service of the United States.

  
Gregory T. Howard, Pro-se

Sworn to and subscribed before me this 15 day of May, 2007.

  
Notary Public, Lucas County, Ohio  
Notary Public, State of Ohio  
Commission Expires 5/23/07

PROOF OF SERVICE

This is to certify that a copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail this 15<sup>th</sup> day of May, 2007 to:

Eastman & Smith, Ltd.  
C/O Thomas A. Dixon, Esq.  
One Seagate, 24<sup>th</sup> Floor  
Toledo, Ohio 43699-0032

Ohio Attorney General Office  
Shawn M. Wollam, Esq.  
150 East Gay Street, 22<sup>nd</sup> Floor  
Columbus, Ohio 43215

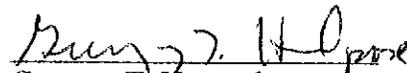
Governor Ted Strickland  
77 High Street, 30<sup>th</sup> Floor  
Columbus, Ohio 43215-6117

The Ohio Attorney General Chief of  
Chief Counsel Staff-Atty Carney  
State Office Tower  
30 East Broad Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43266-0410

The Federal Trade Commission:  
Privacy-Steering-Committee  
Federal-Trade-Commission  
600-Pennsylvania-Avenue, N.W.  
Washington, DC-20580

Judge John F. Bender  
Fax: (614) 462-2462

Attn: Deputy Director, Office of the Executive Director  
Re: Eastman & Smith, et al.  
State of Ohio Office of the Attorney General Complaint #: 327061 & 330421  
Federal Trade Commission Complaint # 10010756 & 10299071  
Comptroller of the Currency #685430

  
Gregory T. Howard  
Appellant-Claimant, pro-se

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Gregory T. Howard,

Plaintiff,

v.

Ohio State Supreme Court,

Defendant.

Case No. 05CVH-01398

Judge John F. Bender

FILED IN COURT  
2005 JAN 11 AM 10:06  
CLERK OF COURTS

**DECISION AND ENTRY**  
**DENYING MOTION OF PLAINTIFF FOR LEAVE TO FILE**  
**A MOTION TO VACATE THE COURT'S ENTRY OF 5/10/2005**  
**Filed November 15, 2005.**

**And**

**DENYING MOTION FOR LEAVE TO FILE**  
**AN ACTION AGAINST A SELF-INSURED EMPLOYER**  
**Filed December 19, 2005**

RENDERED THIS \_\_\_\_\_ DAY OF JANUARY 2006

BENDER, J.

*Plaintiff's November 15, 2005 Motion*

On November 15, 2005, Plaintiff Gregory T. Howard filed a motion for leave to file a motion to vacate the court's entry of May 10, 2005 and to reinstate the instant case. Contemporaneously, Plaintiff proceeded to file without leave his motion to vacate the court's May 10, 2005 entry.

This court's May 10, 2005 order declared Plaintiff to be a vexatious litigator, requiring him to apply to this court before instituting legal proceedings. Plaintiff's motion to vacate is based largely on his claim that the court's May 10, 2005 order is void because it is based on a statute which has been repealed. While it is true that the May

Appendix F  
EX.1

10, 2005 decision refers to various sections of R.C. 2323.54, and that R.C. 2323.54 has been repealed, the references to R.C. 2323.54 are clearly typographical errors, albeit repeated ones. The court's analysis precisely tracks the various sections of R.C. 2323.52. Accordingly, the court will issue a nunc pro tunc entry correcting these typographical errors.

This court "shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of common pleas, \* \* \* unless the court of common pleas that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application." Upon review, the court finds that there are not reasonable legal grounds for this motion. Accordingly, Plaintiff's motion for leave to file a motion to vacate the court's May 10, 2005 entry is overruled.

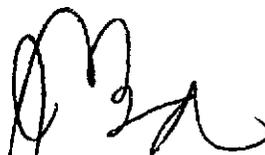
*Plaintiff's December 19, 2005 Motion*

In his December 19, 2005 motion, Plaintiff seeks leave to file an action against his former employer, claiming that his former employer "harassed" him in retaliation for filing a mandamus action in the Tenth District Court of Appeals, Case No. 97AP-860. Plaintiff submits a letter to him from the Bureau of Workers' Compensation, which Plaintiff claims supports his need to file another lawsuit.

Plaintiff states he seeks to file a claim pursuant to R.C. 4123.90. A claim pursuant to R.C. 4123.90 "shall be forever barred unless filed within one hundred eighty days immediately following the discharge, demotion, reassignment, or punitive action taken, and no action may be instituted or maintained unless the employer has received

written notice of a claimed violation of this paragraph within the ninety days immediately following the discharge, demotion, reassignment, or punitive action taken." Plaintiff's mandamus action was filed in 1997. Plaintiff has not alleged that he gave the required notice within 90 days of the allegedly retaliatory action, as he must before he can sue under the statute. Further, Plaintiff has not alleged that he sought to file the action within 180 days of the allegedly retaliatory action, as he must in order to sue under the statute. Plaintiff has not demonstrated there are reasonable grounds for his application to proceed. His application is therefore overruled.

**SO ORDERED.**



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John F. Bender, Judge

Copies to:

Gregory T. Howard  
P.O. Box 3096  
Toledo, Ohio 43607-0096  
Plaintiff pro se

Rene L. Rimelspach, Esq.  
Assistant Attorney General, Constitutional Offices  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215  
Counsel for Defendant Supreme Court of Ohio

Franklin County Prosecutor's Office  
373 South High Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215

Supreme Court of Ohio  
65 South Front Street, 8<sup>th</sup> Floor  
Columbus, Ohio 43215

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Gregory T. Howard,

Plaintiff,

v.

Ohio State Supreme Court,

Defendant.

Case No. 05CVH-01-398

CLERK OF COURTS

2005 JAN 11 AM 10:05

FILED  
FRANKLIN COUNTY COURT

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**NUNC PRO TUNC  
FINAL JUDGMENT ENTRY AND ORDER**

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This cause came before the court for consideration of Defendant Supreme Court of Ohio's Motion to Dismiss Plaintiff's Complaint and corresponding Counterclaim, seeking only to have Plaintiff declared a "vexatious litigator." The court, being fully advised, in a Decision rendered April 28, 2005, finds that the Supreme Court of Ohio's Motion to Dismiss and Counterclaim is **WELL-TAKEN** and is therefore **GRANTED** in its entirety.

Furthermore, pursuant to R.C. §2323.52, the State of Ohio has defended against the habitual and persistent vexatious conduct of Plaintiff Gregory T. Howard in various courts across the state. Thus, this Court hereby specifically finds that Howard is a "vexatious litigator" within the meaning of the statute, and intends that the prohibitions contained in R.C. §2323.52 shall operate to the fullest extent. Pursuant to R.C. §2323.52, Howard has repeatedly engaged in vexatious conduct in various civil actions he has brought, including but not limited to those against the Supreme Court of Ohio, as a pro se plaintiff. This Court finds that Howard's conduct has overwhelmingly not been warranted under existing law and has not been supported by a good-faith argument for an extension, modification, or reversal of existing law.

Therefore, it is hereby **ORDERED** that Howard is prohibited from doing any of the following without first obtaining leave of this Court to Proceed:

1. Howard shall not institute any legal proceeding, nor make any application, other than an application to this Court for leave to proceed under division (F) of R.C. §2323.52, in the Ohio Court of Claims, or in any county court of common pleas, municipal court, or other county court of Ohio.
2. Howard shall not continue in any legal proceeding that he has instituted in the Ohio Court of Claims, or in any court of common pleas, municipal court, or other county court of Ohio prior to the date of the Entry of this Order.
3. Howard shall not institute a legal proceeding in any court of appeals, or continue any legal proceeding already instituted in a court of appeals prior to entry of this order, other than an application for leave to proceed under division (F) of R.C. §2323.52.

Pursuant to R.C. §2323.52(E), this Order shall remain in force indefinitely.

Pursuant to R.C. §2323.52(F), only this Court may grant Howard leave for institution or continuance of, or making an application in, legal proceedings in the Ohio Court of Claims, or in any court of common pleas, municipal court, or any county court in Ohio. This court will only grant such leave if it is satisfied that the proceedings or application are not an abuse of process of the court in question, and that there are reasonable grounds for the proceeding or application. If leave is granted, it will be in the form of a written order by this Court. Pursuant to R.C. §2323.52(D)(3), only the relevant court of appeals may grant Howard leave to institute or continue an action in the relevant court of appeals.

Additionally, if Howard requests this Court to grant him leave to proceed as described in R.C. §2323.52(F), the period of time commencing with the filing with this Court of an application for the issuance of an order granting leave to proceed and ending with the issuance of

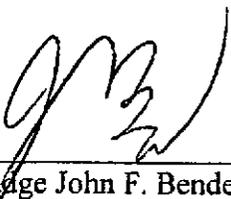
an order of that nature shall not be computed as part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

Pursuant to R.C. §2323.52(G), no appeal by Howard shall lie from a decision of this Court if this Court denies Howard, under R.C. §2323.52(F), leave for the institution or continuance of, or the making of an application in, legal proceedings in the Ohio Court of Claims or in any court of common pleas, municipal court, or county court in Ohio.

Pursuant to R.C. §2323.52(H), the Franklin County Common Pleas Clerk of Courts shall immediately send a certified copy of this order to the Ohio Supreme Court for publication in a manner that the Supreme Court determines is appropriate and that will facilitate the clerk of the Court of Claims and clerks of all courts of common pleas, municipal courts, or any county courts in Ohio in refusing to accept pleadings or other papers submitted for filing by Howard if he has failed to obtain leave under R.C. §2323.52(F) to proceed.

Pursuant to R.C. §2323.52(I), whenever it appears by suggestion of the parties or otherwise that Howard has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from this court, the court in which legal proceedings are pending shall immediately dismiss the proceeding or application of Howard.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Judge John F. Bender

Submitted by:

/s/  
\_\_\_\_\_  
Rene L. Rimelspach (0073972)  
Counsel for Defendant, Supreme Court of Ohio

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

Gregory T Howard  
Plaintiff.

87094F17

-vs-

Ohio State Supreme Court  
Defendant.

Case No. 05 CV-398

**ENTRY  
RECUSAL/TRANSFER**

I hereby recuse myself from the above-styled cause for the following reason:

When I was an Assistant Prosecutor, I was counsel of record in a former case brought by Mr. Howard, against the County.

I hereby request that this case be reassigned by the Administrative Director to another judge of the Franklin County Court of Common Pleas.

Pat Sheeran 11/20/05  
Judge

COMM. FRANKLIN COUNTY  
FRANKLIN COUNTY COURT  
CHIO  
06 JAN 18 PM 3:48  
CLERK OF COURTS - CV

Recusal is approved. Said case is ordered transferred to Judge Bender.

It is further ordered that Case No. 05CVH-03-3069, styled BZ MANAGEMENT -vs- CRAMBETH VAID ET AL be transferred from Judge Bender to Judge Sheeran as a replacement for the recused case.

R. Hagan 1-13-06  
Administrative Judge

Amended Case Scheduling Order: YES \_\_\_\_\_ NO X

cc: Judges

EX "2"

**OFFICE OF DISCIPLINARY COUNSEL v. KUBILUS, JUDGE.**

[Cite as *Disciplinary Counsel v. Kubilus*, 101 Ohio St.3d 29, 2003-Ohio-6610.]

*Judges — Misconduct — Public reprimand — Failing to uphold integrity and independence of the judiciary — Failing to respect and comply with the law at all times and act in a manner that promotes public confidence in the integrity and impartiality of the judiciary — Failing to hear and decide assigned matters — Permitting others to convey the impression that they are in a special position to influence the judge.*

(No. 2003-1518 — Submitted October 20, 2003 — Decided December 31, 2003.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 03-004.

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**Per Curiam.**

{¶1} Respondent, Richard Joseph Kubilus, Attorney Registration No. 0014766, has been a judge of the Canton Municipal Court since January 1, 1993. Each morning, every judge of the Canton Municipal Court drafts an entry on the case jacket for each defendant who has been arrested overnight for violating a previous sentence or order of the judge. The case jackets are then given to the arraignment judge, who reads the entry to each defendant in open court.

{¶2} On six occasions from August 2000 through April 2001, six defendants previously sentenced by respondent were arrested for failing to follow court orders and were brought before the municipal court during respondent's temporary absence. Under respondent's standard procedure, when criminal defendants who had failed to abide by court orders were arrested and brought to court during respondent's absence, he would have his administrative assistant create an entry on the case jacket for the arraignment judge to hold the defendant

in jail until a jail review hearing could be held when respondent returned. The administrative assistant is not a judge, magistrate, or attorney.

{¶3} In another instance, respondent's administrative assistant signed respondent's name on an Ohio Bureau of Motor Vehicles form following an administrative suspension of a driver's license of a defendant previously convicted by respondent. The administrative assistant informed respondent that she had signed his name on the form, and he advised her that that was acceptable.

{¶4} In a final matter, on February 26, 2002, respondent's administrative assistant was given a request from the sheriff under R.C. 2947.151 for a reduction in a defendant's jail sentence. Without consulting respondent, the administrative assistant wrote "denied" on the request form and filed it with the clerk. When the administrative assistant returned to the courtroom, she advised respondent what she had done, and he confirmed that she had acted appropriately.

{¶5} On January 29, 2003, relator, Disciplinary Counsel, filed a complaint charging respondent with having violated several Canons of the Code of Judicial Conduct. After respondent answered the complaint, the parties filed stipulations, and the matter was referred to a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court.

{¶6} The panel found the facts as previously set forth and concluded that respondent's conduct violated Canon 1 (judge shall uphold the integrity and independence of the judiciary), Canon 2 (judge shall respect and comply with the law and shall at all times act in a manner that promotes public confidence in the integrity and impartiality of the judiciary), Canon 3(B)(1) (judge shall hear and decide matters assigned to the judge), and Canon 4(A) (judge shall not permit others to convey the impression that they are in a special position to influence the judge) of the Code of Judicial Conduct.

{¶7} In mitigation, the parties stipulated that respondent discontinued the practice of allowing his administrative assistant to create arraignment hearing

entries immediately upon being informed by relator that this practice was inappropriate. Respondent also has no prior disciplinary record and fully cooperated with relator's investigation. Respondent testified that his administrative assistant never exercised her independent judgment about penalties or sanctions during the pertinent period.

{¶8} The panel adopted the stipulated sanction and recommended that respondent be publicly reprimanded. The board adopted the findings, conclusions, and recommendation of the panel and further recommended that the costs of the proceedings be taxed to respondent.

{¶9} We adopt the findings, conclusions, and recommendations of the board. As the board determined, other courts have held that a public reprimand is an appropriate sanction for a judge or magistrate committing comparable misconduct. See *In re Seal* (Miss.1991), 585 So.2d 741 (judge received public reprimand and fine of \$500 for conduct that included allowing clerical personnel to adjudicate certain traffic cases); *In re Wyatt* (1988), 295 S.C. 34, 367 S.E.2d 22 (magistrate publicly reprimanded for misconduct that included allowing office employees to sign warrants without properly swearing in affiants); see, generally, Annotation, Removal or Discipline of State Judge for Neglect of, or Failure to Perform, Judicial Duties (1991), 87 A.L.R.4<sup>th</sup> 727, 756-757, Section 10. Under the circumstances here, we agree that a public reprimand is warranted.

{¶10} Respondent is hereby publicly reprimanded. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, F.E. SWEENEY, PFEIFER, LUNDBERG STRATTON,  
O'CONNOR and O'DONNELL, JJ., concur.

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Jonathan E. Coughlan, Disciplinary Counsel, and Robert R. Berger,  
Assistant Disciplinary Counsel, for relator.

SUPREME COURT OF OHIO

George D. Jonson, for respondent.

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