

IN THE SUPREME COURT OF OHIO

AKRON BAR ASSOCIATION,)
57 S. Broadway St.)
Akron, OH 44308)

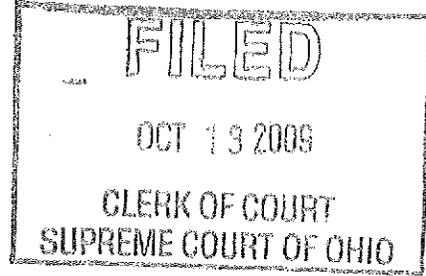
Realtor,)

v.)

THOMAS M. MCNERNEY,)
789 W. Market St.)
Akron, OH 44333)

Respondent.)

CASE NO. 08-2470



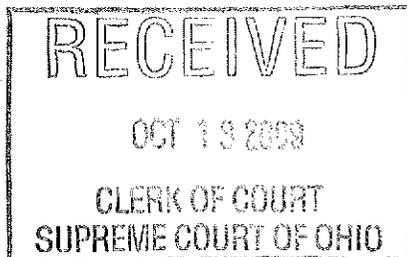
MOTION TO SHOW CAUSE

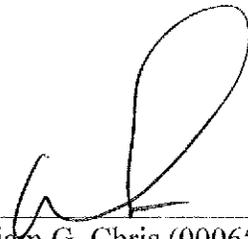
Now comes Realtor, by and through counsel, and submits this Motion to Show Cause. The undersigned has recently discovered and hereby represents to the Court that Respondent is in violation of the Decision of this Court entered on May 28, 2009 requiring Respondent to show compliance with the Ohio Lawyers Assistance Program ("OLAP") and follow all treatment recommendations. A copy of said Decision is attached as Exhibit A. As shown in Exhibit B, attached herein, Respondent has failed to comply with the Decision of the Court by failing to sign and return a recovery contract and continue treatment with OLAP.

Wherefore, as Respondent has failed to comply with the Decision of this Court, Realtor respectfully requests this Court to issue an Order that Respondent show cause why he should not be found in contempt for failure to comply with the Court's order of May 28, 2009.

Respectfully submitted,

AKRON BAR ASSOCIATION, REALTOR





William G. Chris (0006593)
Akron Bar Counsel
57 South Broadway
Akron, Ohio 44308
Telephone No. (330) 253-5007
Facsimile No. (330) 253-2140
E-mail address: wchris@rblp.com

Attorney for Realtor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the forgoing Complaint and Certificate was sent by Regular U.S. Mail, postage prepaid, the 9th day of October, 2009 to:

Attorney Thomas M. McNerney
789 W. Market St.
Akron, OH 44333



William G. Chris (#0006593)
Bar Counsel
57 South Broadway
Akron, Ohio 44308
Telephone No. (330) 253-5007
Facsimile No. (330) 253-2140
E-mail address: wchris@rlblp.com

Attorney for Realtor

RECEIVED

JUN 01 2009

Akron Bar Association

Akron Bar Association,

Relator,

v.

Thomas M. McNerney,

Respondent.

The Supreme Court of Ohio

Case No. 08-2470

FILED

MAY 28 2009

CLERK OF COURT

SUPREME COURT OF OHIO

ON CERTIFIED REPORT BY THE
BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE OF
THE SUPREME COURT

ORDER

The Board of Commissioners on Grievances and Discipline filed its final report in this court on December 24, 2008, recommending that pursuant to Rule V(6)(B)(3) of the Supreme Court Rules for the Government of the Bar of Ohio the respondent, Thomas M. McNerney, be suspended from the practice of law for a period of two years with one year stayed and reinstatement on conditions. Respondent filed no objections to said final report, and this cause was considered by the court. On consideration thereof,

It is ordered and adjudged by this court that pursuant to Gov.Bar R. V(6)(B)(3) and consistent with the opinion rendered herein, respondent, Thomas M. McNerney, Attorney Registration Number 0076108, last known business address in Akron, Ohio, be suspended from the practice of law for a period of two years with the second year stayed on the following conditions: (1) upon respondent's completion of the one-year suspension, his reinstatement shall be subject to the stringent standards and hearing requirement of Gov.Bar R.V(10)(C) through (G) for reinstatement from indefinite suspension; (2) with any petition for reinstatement filed, respondent shall provide proof from his treating medical professionals and the Ohio Lawyers Assistance Program (OLAP) that his alcohol and mental-health problems have been resolved, that he has followed all treatment recommendations, including compliance with his 2008 OLAP contract, and that he is competent to return to the competent, ethical, and professional practice of law; and, (3) upon any reinstatement, respondent shall complete one year of monitored probation pursuant to Gov.Bar R.V(9). It is further ordered that if respondent fails to comply with the terms of the stay and probation, the stay will be lifted and respondent will serve the entire two-year suspension from the practice of law.

It is further ordered that the respondent immediately cease and desist from the practice of law in any form and is hereby forbidden to appear on behalf of another before any court, judge, commission, board, administrative agency or other public authority.

It is further ordered that respondent is hereby forbidden to counsel or advise or prepare legal instruments for others or in any manner perform such services.

It is further ordered that the respondent is hereby 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, the respondent shall verify that the attorney or law

EXHIBIT A

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 respondent be taxed the costs of these proceedings in the amount of \$1,191.51, which costs shall be payable to this court by certified check or money order on or before 90 days from the date of this order. It is further ordered that if these costs are not paid in full on or before 90 days from the date of this order, interest at the rate of 10% per annum shall accrue as of 90 days from the date of this order, on the balance of unpaid board costs. It is further ordered that if costs are not paid in full on or before 90 days from the date of this order, respondent may not petition for reinstatement until costs and all accrued interest, are paid in full.

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, 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 Gov.Bar R.V(10)(C) through (G); (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 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 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 the 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 Akron Bar Association, and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

It is further ordered that on or before 30 days of the date of this order respondent shall surrender the attorney registration card for the 2007/2009 biennium.

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.

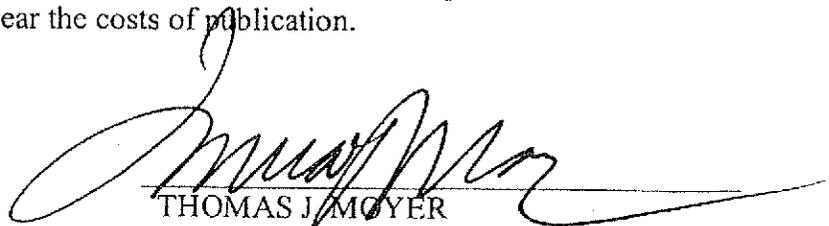
It is further ordered, sua sponte, that service shall be deemed made on respondent by sending this order, and all other orders in this case, by certified mail to the most recent address respondent has given to the Office of Attorney Services.

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.

I HEREBY CERTIFY that this document is a true and accurate copy of the entry of the Supreme Court of Ohio filed 5/28/09 in Supreme Court case number 08-2428

In witness whereof I have hereunto subscribed my name and affixed the seal of the Supreme Court of Ohio on this 28th day of May, 20 09

by David D. Reche CLERK OF COURT
Deputy


THOMAS J. MOYER
Chief Justice

IN THE SUPREME COURT OF OHIO

AKRON BAR ASSOCIATION,
57 S. Broadway St.
Akron, OH 44308

Realtor,

v.

THOMAS M. MCNERNEY,
789 W. Market St.
Akron, OH 44333
Respondent.

CASE NO. 08-2470

EXHIBIT B

AFFIDAVIT OF JACQUELINE M. FORCINA

The undersigned, having been having been first duly sworn and cautioned in accordance with law, states the following:

1. That my name is Jacqueline Forcina, and I am the Grievance Director for the Akron Bar Association.
2. That as the Grievance Director, I am custodian of records of the Certified Grievance Committee of the Akron Bar Association.
3. The following documents, true and accurate copies of which are attached as, are in the records of the Akron Bar Association pertaining to the grievances against Thomas M. McNerney:

July 17, 2009 email from Scott R. Mote, Executive Director of the Ohio Lawyers Assistance Program (OLAP), advising the Akron Bar Association that Thomas M. McNerney has never entered into a contract with OLAP attached as Exhibit B-1. Further, Mr. Mote was unaware that Thomas M. McNerney was representing himself as

being under an OLAP contract.

4. These records have been kept in the course of the regularly conducted business activity of the Certified Grievance Committee of the Akron Bar Association. It is the regular practice of the Certified Grievance Committee of the Akron Bar Association to make and keep such documents in the manner in which they appear in the records.
5. That I am familiar with the Decision of the Ohio Supreme Court entered on May 28, 2009, in the case of the Akron Bar Association v. Thomas M. McNerney, Case No. 08-2470, which required Thomas M. McNerney to show compliance with the Ohio Lawyers Assistance Program ("OLAP") and follow all treatment recommendations.
6. That Thomas M. McNerney has failed to comply with the May 28, 2009 Decision of the Court by failing to show compliance with OLAP, failing to sign and return a recovery contract and failing to continue treatment with OLAP.

FURTHER AFFIANT SAITH NAUGHT.

Jacqueline M. Forcina

 Jacqueline M. Forcina

STATE OF OHIO)
)
 COUNTY OF SUMMIT)

SUBSCRIBED AND SWORN TO BEFORE ME in my presence on this 7th day of

October, 2009.

Linda M. Foster

 Notary Public

My Commission Expires: April 9, 2011



Linda M. Foster 5
 Resident Summit County
 Notary Public, State of Ohio
 My Commission Expires:

Jackie Forcina

From: Scott R. Mote [smote@ohiolap.org]
Sent: Friday, July 17, 2009 7:44 AM
To: Jackie Forcina
Cc: Megan R. Robertson; Paul Caimi; Receptionist; Stephanie S. Krznarich
Subject: Thomas M. McNerney

Dear Jackie:

I write to follow up on our July 16 telephone conversation.

OLAP has had no contact with McNerney since July 16, 2008. We had some telephone conversations with him in July, 2008, and sent him a recovery contract to sign and return, but we never received the signed counterpart/copy. I was not aware that he was representing himself as being under OLAP contract until I read the Supreme Court's May 28, 2009 decision.

McNerney is not under contract with OLAP, despite his testimony.

Please advise should you have any questions.

Scott

Scott R. Mote, Esq.
Executive Director
Ohio Lawyers Assistance Program, Inc.
1650 Lake Shore Drive, Ste. 375
Columbus, Ohio 43204-4991
Tel. 614-586-0621
Tel. 800-348-4343
Fax 614-586-0633
smote@ohiolap.org
www.ohiolap.org

This email and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material protected by HIPPA legislation (45 CFR Parts 160 & 164) and/or by Ohio RC Sec. 5122.31, which prohibit making any further disclosures of the information without the specific and informed release of the patient/client, his or her authorized representative, or as otherwise permitted by law. A general authorization for release of information is NOT sufficient for this purpose. If you are not the intended recipient or the person responsible for delivering this email to the intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing or copying of this email is strictly prohibited. If you have received this email in error, please notify the sender by replying to this email and then delete the email from your computer.

No virus found in this incoming message.

Checked by AVG - www.avg.com

Version: 8.5.392 / Virus Database: 270.13.20/2249 - Release Date: 07/19/09 17:59:00

EXHIBIT B-1

10/1/2009