

ORIGINAL

IN THE SUPREME COURT OF OHIO

OHIO STATE BAR ASSOCIATION

Case No. 2004-2150

Relator

v.

JOHN ALLEN, et al.

Respondents

**RELATOR'S MEMORANDUM IN OPPOSITION TO
MOTION AND DEMAND TO CEASE ALL ACTIVITIES
OF RESPONDENT JOHN ALLEN**

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Respondent, Pro Se

FILED
 SEP 10 2010
 CLERK OF COURT
 SUPREME COURT OF OHIO

On August 9, Respondent, John Dale Allen, filed a Motion demanding that all proceedings against him cease until his bankruptcy case is finally adjudicated. Respondent's bankruptcy case, *In re: John Dale Allen*, Case No. 10-59631, U.S. Bankruptcy Court, E.D. Ohio, was dismissed on September 8, 2010. See, attached Exhibit A. Accordingly, his Motion and Demand is moot.

Even if it were not moot, however, the filing of a bankruptcy petition does not stay commencement or continuation of an action or proceeding by a governmental unit to enforce its police or regulatory powers. 11 U.S.C. § 362 (b)(4). The express language of § 362 (b)(4) makes it clear that the exception extends to permit an injunction and enforcement of an injunction and to permit the entry of a money judgment, but does not extend to permit enforcement of a money judgment.

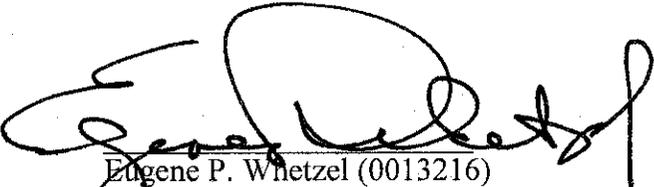
The police or regulatory power exception to the stay has been applied to permit governmental units to pursue state bar disciplinary and unauthorized practice of law proceedings. See *In re Baillie*, 368 B.R. 458, 466 (Bankr. W.D. Pa. 2007); *Ohio State Bar Association v. Dalton*, Slip Opinion No. 2010-Ohio-619. " '[G]overnmental unit' includes a 'department, agency or instrumentality' of a state that carries out a government function." 11 U.S.C. § 101(27); *In re Wade*, 948 F. 2d 1122, 1123 (9th Cir. 1991). The Supreme Court has recognized that "along with [its] broad regulatory power over the practice of law comes 'the concomitant responsibility to protect the public by preventing the unauthorized practice of law.'" *Cleveland Bar Assn. v. CompManagement, Inc.*, 104 Ohio St. 3d 168 (2004). The Supreme Court is an instrumentality of the state that is charged with protecting the public from the unauthorized practice of law. Thus,

the §362(b)(4) exception to the automatic stay applies to proceedings brought against a Respondent by the Supreme Court which issued the Arrest Warrant against Respondent.

It is Relator's understanding that upon the filing of Respondent's bankruptcy petition, all collection efforts with respect to the debt arising from the unauthorized practice of law proceeding against Respondent ceased. The sole purpose of the Arrest Warrant is to punish Respondent for continuing to engage in the unauthorized practice of law in contempt of the December 7, 2005 and July 20, 2010 Orders. Pursuant to the July 20, 2010 Order, Respondent's release from jail is not conditioned upon payment of said debt. Respondent was ordered to serve 30 days with no other conditions attached. Accordingly, the actions of the Supreme Court against Respondent are protected under the § 362 (b)(4) exception to the automatic stay as a governmental unit exercising its police and regulatory powers.

WHEREFORE, based on the foregoing, the Relator prays that Respondent's Motion be denied.

Respectfully Submitted,



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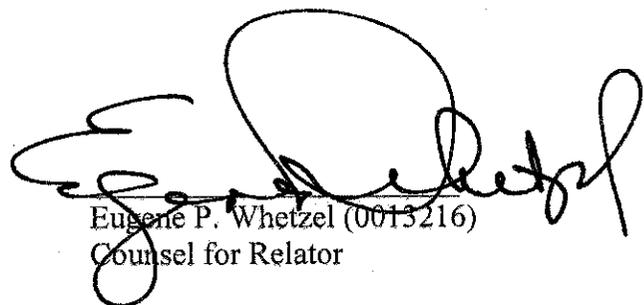
Certificate of Service

I hereby certify that a copy of the foregoing Memorandum in Opposition was served upon the following by ordinary U.S. Mail on this 10th day of September 2010:

John Allen
PO Box 2911
Zanesville, OH 43702

and

Michelle A. Hall, Esq., Secretary
Board on the Unauthorized Practice of Law
The Supreme Court of Ohio
65 South Front Street, 5th Floor
Columbus OH 43215-3431



Eugene P. Whetzel (0013216)
Counsel for Relator

This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



C. Kathryn Preston
C. Kathryn Preston
United States Bankruptcy Judge

Dated: September 08, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	Case No. 10-59631
)	
JOHN DALE ALLEN,)	Chapter 7
)	
Debtor.)	Judge Preston
)	

ORDER GRANTING UNITED STATES TRUSTEE'S MOTION TO DISMISS
(Docket No. 10); ORDER DISMISSING CASE

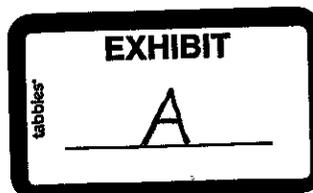
This matter came on for consideration upon the United States Trustee's Motion to Dismiss (Docket No. 10). The Debtor and all parties in interest were served with Notice of the Motion to Dismiss (Docket Nos. 11, 12 and 18). No timely opposition has been filed.

Good cause appearing, therefore:

IT IS HEREBY ORDERED that the United States Trustee's Motion to Dismiss be and it is hereby **GRANTED**.

IT IS FURTHER ORDERED that this case be and it is hereby **DISMISSED**.

IT IS SO ORDERED.



SUBMITTED BY:

Daniel M. McDermott
United States Trustee
Region 9

By: /s/ Pamela Arndt
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COPIES TO:

All Creditors and Parties in Interest

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