

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Appellant,	:	Case No. 2014-1174
	:	
v.	:	On Appeal from the
	:	Cuyahoga County Court of Appeals,
DELTA ROSARIO,	:	Eighth Appellate District
	:	
Appellee.	:	

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MERIT BRIEF OF APPELLANT STATE OF OHIO

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**TIMOTHY J. McGINTY (#0024626)**  
**CUYAHOGA COUNTY PROSECUTOR**  
**MARY H. McGRATH (#0041381) (COUNSEL OF RECORD)**  
**T. ALLAN REGAS (#0067336)**  
Assistant Prosecuting Attorneys  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113  
(216) 443-7872  
[mmcgrath@prosecutor.cuyahogacounty.us](mailto:mmcgrath@prosecutor.cuyahogacounty.us)

**COUNSEL FOR APPELLANT STATE OF OHIO**

**CULLEN SWEENEY (#0077187) (COUNSEL OF RECORD)**  
Assistant Public Defender  
310 Lakeside Avenue, Suite 200  
Cleveland, Ohio 44113  
(216) 443-7583

**COUNSEL FOR APPELLEE DELTA ROSARIO**

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## STATEMENT OF THE CASE AND FACTS

Appellee Delta Rosario was convicted in March 2011 of Aggravated Theft and sentenced to community control sanctions. On June 11, 2014, at Rosario's second community control violation hearing, the trial court found Rosario in violation of sanctions and continued her on community control. (*State v. Rosario*, Case No. CR 11-547091, Journal Entry of 6/17/14). The journal entry reflects that upon signing a cognovits note for costs and fees, the court would terminate Rosario's probation. (Journal Entry of 6/17/14).

At the probation revocation hearing, an assistant prosecuting attorney attempted to represent the State, stating:

MR. CHALOUPKA: And again, assistant county prosecutor Adam Chaloupka maintaining the State of Ohio through the county prosecutor's right to be present and participate in all probation violation hearings.

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(*State v. Rosario*, CR 11-547091, Tr. 3).

The trial court refused to permit the assistant prosecutor to represent the State, stating:

THE COURT: And for all the reasons I've already said and all the other cases, please sit down.

(*State v. Rosario*, CR 11-547091, Tr. 3).

Instead, the trial court recognized the probation officer in attendance as “representing the interest of the State of Ohio.” (*State v. Rosario*, CR 11-547091, Tr. 3). Only the probation officer was permitted to represent the State and address the court.

The State sought leave to appeal this issue in the Eighth District Court of Appeals. The Eighth District denied the State’s motion for leave to appeal in *State v. Rosario*, COA 101558, and the following cases in which the same issue was presented: *State v. Collins*, COA 101557; *State v. Marks*, COA 101559 and 101561; *State v. Jenkins*, COA 101560; *State v. Harris*, COA 101562; *State v. Wiley*, COA 101563, and *State v. Scott*, 101565. This Court has accepted jurisdiction in these cases, *State v. Collins*, Case No. 2014-1200, *State v. Marks*, Case No. 2014-1173, *State v. Jenkins*, Case No. 2014-1175, *State v. Harris*, Case No. 2014-1176, *State v. Wiley*, Case No. 2014-1201 and *State v. Scott*, Case No. 2014-1177, and ordered the appeals held for the decision in this case. As more fully discussed below, this Court has also accepted jurisdiction in the related cases of *State v. Washington*, Case Numbers 2014-1363 and 2014-1368, and ordered the appeals held for the decision in this case.

The trial court’s refusal to permit the assistant prosecutor to represent the State at the probation violation hearing in *Rosario* was in keeping with the court’s standing order issued in *State v. Washington*, CR-10-542057. In *Washington*, the State moved to reopen a probation violation hearing held January 2, 2014. The trial court had not notified the State of the hearing or journalized the scheduling of the hearing on its docket. In response to the State’s motion, the court entered an order barring prosecutors from speaking or

otherwise representing the State at community control sanctions hearings, unless leave of court to appear was sought and granted. (*State v. Washington*, CR-10-542057, Judgment Entry journalized February 14, 2014). In its order, the court further held the State was not entitled to notice of, or an opportunity to be heard at, community control violation or revocation hearings. Instead, the court found that probation officers fully represent all State interests and fulfill all State responsibilities at these hearings.

The State sought leave to appeal, which the Eighth District Court of Appeals granted. *State v. Washington*, Case Numbers 101039 and 101040.

Once the Eighth District accepted the State's appeals, the trial court abandoned its February 14, 2014 order in *Washington*. The court notified the State of a pending probation violation hearing and allowed the State to speak and participate in the hearing without seeking leave to appear. Due to the court's abandonment of its February 14, 2014 order, the parties moved to voluntarily dismiss the appeals. On April 4, 2014, the Eighth District granted the parties' motion to dismiss.

Once the appeals were dismissed, however, the trial court reversed course and reinstated its February 14, 2014 blanket policy of barring assistant prosecutors from representing the State at probation hearings. At an April 24, 2014 hearing in *State v. Washington*, the court barred an assistant prosecutor from speaking, or otherwise representing the State, stating:

You're not here representing anybody. I don't know who you're representing, but you're not representing anybody. \* \* \* \* He [defense counsel] doesn't determine

who the parties are, the Court does. And you're not one of the parties to this action.

*State v. Washington*, CR 535298, 542057, Motion hearing of April 24, 2014, Tr. 11-12.

The State attempted to appeal this issue again in *Washington* however, the Eighth District denied the State's motions for leave to appeal. *State v. Washington*, Case Nos. 101406 and 101407. The State sought reconsideration and *en banc* consideration; those motions were denied on July 21, 2014 and July 9, 2014, respectively.

The trial court went further. Once the transcript was prepared in a February 28, 2014 probation violation hearing in *State v. Washington*, the court entered an order finding the court reporter inaccurately reflected the representation of the parties on the cover page of the transcript and ordered the cover page changed to reflect that Probation Officer Victoria Boyd, not the assistant prosecutor, represented the State at the violation hearing. *State v. Washington*, CR 535298 and 542057, Journal Entry of April 23, 2014.

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On June 13, 2014, the Cuyahoga County Prosecutor filed a Petition and Complaint for Writ of Mandamus in Case No. 2014-0993, seeking a writ of mandamus ordering the trial court to provide notice to the County Prosecutor of community control violation hearings and allow the Prosecutor to be heard as the representative of the State. This Court granted the trial court's motion to dismiss and dismissed the complaint. *State of Ohio ex rel. Timothy J. McGinty, Cuyahoga County Prosecuting Attorney v. The Honorable John D. Sutula, Cuyahoga County Court of Common Pleas*, Case No. 2014-0993, entry of November 5, 2014.

On October 6, 2014, the State sought this Court's jurisdiction to resolve the identical issue in *State v. Diamond*, 2014-1712, 2014-1714 and 2014-1721, *State v. Wimbush*, 2014-1717 and 2014-1776, *State v. Melton*, 2014-1716, *State v. Turner*, 2014-1715, and *State v. Stewart*, 2014-1725. This Court has not made a ruling in those cases.

In November 2014, the Eighth District granted the State's leave to appeal the identical issue as presented in these cases in *State v. Heinz*, 8<sup>th</sup> Dist. No. 102178. In December, 2014, the Eighth District granted leave to appeal the identical issue in *State v. Wheeler*, 8<sup>th</sup> Dist. Nos. 102182 and 102183. Those appeals remain pending.

## LAW AND ARGUMENT

### PROPOSITION OF LAW I:

**The State of Ohio is a party to community control sanctions violation and revocation proceedings and the County Prosecutor, as the State's legal representative, is entitled to notice of and an opportunity to be heard at these hearings.**

A trial court judge has held the State, as represented by the Prosecuting Attorney, is not a party to community control violation and revocation hearings in the State's criminal cases. Rather, the court has found that probation officers, non-lawyer court employees, are the sole representative of the State at such hearings. As such, prosecuting attorneys may not speak or otherwise provide legal representation on behalf of the State at the hearings. The trial court's actions are contrary to law.

- a. **The trial court's orders and actions violate R.C. 309.08 and deprive the State, a party involved, of substantial rights protected by due process.**

The trial court's order in *State v. Washington*, CR-10-542057, (Case Numbers 2014-1363 and 2014-1368) applied to this and other cases, ignores the Prosecuting Attorney's statutory duty under R.C. 309.08 to prosecute, on behalf of the State, all complaints, suits, and controversies in which the State is a party.

R.C. 309.08 provides, in part, as follows:

**309.08 Powers and duties of prosecuting attorney; organized crime task force membership; rewards for information about drug-related offenses**

(A) The prosecuting attorney may inquire into the commission of crimes within the county. *The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code, and other suits, matters, and controversies that the prosecuting attorney is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals.* In conjunction with the attorney general, the prosecuting attorney shall prosecute in the supreme court cases arising in the prosecuting attorney's county, except for those cases required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code.

R.C. 309.08(A) (emphasis added).

Violation hearings have been held to be within the purview of "complaints, suits, and controversies." "A violation of community-control sanctions, by virtue of a subsequent felony arrest, is certainly within the concept of 'complaints, suits, and controversies' in which the state remains an interested party." *State v. Young*, 154 Ohio App.3d 609, 798 N.E.2d 629, 2003-Ohio-4501, ¶ 7, citing *State v. Ferguson* (1991), 72 Ohio App.3d 714, 716, 595 N.E.2d 1011. Revocation hearings remain suits in which the State is

a party, and therefore Ohio's prosecutors may attend and participate. *Young, supra*. See also *Roberts v. Ross*, 680 F.Supp.1144, 1146 (S.D. Ohio 1987) (There is nothing in R.C. 2951.08 that prevents a prosecutor from seeking a warrant to arrest a probation violator because R.C. 309.08 requires that prosecutor prosecute "all complaints, suits, and controversies in which the state is a party. . .").

Moreover, the State has the burden of proof at revocation hearings to establish a violation and revoke community control sanctions by "substantial" evidence. *State v. Lenard*, 8th Dist. No. 93373, 2010-Ohio-81. The trial court's refusal to provide to the prosecuting attorney notice of the hearings and an opportunity to be heard is a violation of due process. This fixed rule precludes the State from legal representation at these hearings and prevents the State from meeting its burden of proof.

**b. The trial court's action of requiring probation officers, non-lawyer court employees, to replace assistant prosecutors, the State's legal representatives, at community control violation and revocation hearings violates the doctrine of separation of powers.**

The trial court's insistence that probation officers are the "representatives" of the State at community control hearings ignores the basic governmental structure in which those probation officers work. "R.C. 2301.27 allows courts of common pleas to appoint probation officers, fix their salaries, and supervise their work." *State ex rel. Hillyer v. Tuscarawas Cty. Bd. Of Commrs.*, 70 Ohio St3d 94, 100, 637 N.E.2d 311 (1994). The trial court, however, has replaced prosecutors with non-lawyer court employees to represent the State's interests and fulfill the State's duties at violation and revocation hearings.

Further, violation and revocation hearings may evolve into sentencing hearings. In the event community control is terminated, the defendant may be immediately released or sentenced to prison, with no notice provided to the State or victims.

The trial court's order violates the doctrine of separation of powers by supplanting the role of executive-branch prosecutors with judicial branch probation officers. Ohio's prosecutors represent the concerns of the community in any suit in which the State is a party. R.C. 309.08. "It is inherent in our theory of government 'that each of the three grand divisions of the government, must be protected from the encroachments of the others, so far that its integrity and independence may be preserved \* \* \*.' " *State v. Hochhausler*, 76 Ohio St.3d 455, 463, 668 N.E.2d 457 (1996), quoting *S. Euclid v. Jemison*, 28 Ohio St.3d 157, 159, 503 N.E.2d 136 (1986), and *Fairview v. Giffie*, 73 Ohio St. 183, 187, 76 N.E. 865 (1905). "The separation-of-powers doctrine requires that each branch of government be permitted to exercise its constitutional duties without interference from the other two branches of government." *State ex rel. Dann v. Taft*, 109 Ohio St.3d 364, 372, 2006-Ohio-1825, 858 N.E.2d 472. It must be remembered, that "[t]he reason the legislative, executive, and judicial powers are separate and balanced is to protect the people, not to protect the various branches of government." *State ex rel. Bray v. Russell*, 89 Ohio St.3d 132, 135, 729 N.E.2d 359 (2000).

As stated above, it is the State's burden of proof at revocation hearings to establish a violation and revoke community control sanctions by "substantial" evidence. *Lenard*,

2010-Ohio-81. By its actions, the trial court has delegated the State's evidentiary burden of proof to non-lawyer employees of the court itself. No explanation as to how court employees may constitutionally do so has been provided, as none exists.

**c. Barring prosecutors from being heard at community control violation, revocation and sentencing hearings without leave of court affects a substantial right of the State protected by due process.**

As set forth above, revocation hearings are within the purview of "complaints, suits, and controversies" which the State is a party; therefore prosecutors may attend and participate. *Young, supra*. Mandating that a prosecutor may not speak at a hearing to which the State is a party unless granted leave by the court constitutes an arbitrary blanket policy, which are disfavored and have been found to be an "abdication of judicial responsibility." *Jones, supra*, ¶ 18. In *Jones*, the Sixth District cited cases in which this Court reversed various trial court fixed policies including one entered by the trial court refusing to accept pleas the day of trial. *See State v. Switzer*, 8th Dist. Cuyahoga No. 93533, 2010-Ohio-2473.

Finally, not only does the trial court's policy violate due process, such a fixed rule deprives the prosecutor from an opportunity to represent the victims, whose interests cannot be protected by the probation officer.

## CONCLUSION

For the foregoing reasons, Appellant State of Ohio respectfully requests that this Honorable Court:

1) Reverse the trial court's standing order and hold the State of Ohio is a party to community control sanctions violation and revocation proceedings and, therefore, the Prosecuting Attorney is entitled to notice and an opportunity to be heard at the hearings.

In the alternative:

2) Reverse the Eighth District Court of Appeal's order denying the State's motion for leave to appeal (*State v. Rosario*, Case No. 101558, entry of July 3, 2014) and order the Eighth District to accept this appeal to resolve this recurring issue.

Respectfully submitted,

**TIMOTHY J. McGINTY**  
**CUYAHOGA COUNTY PROSECUTOR**

---

/s Mary H. McGrath

**MARY H. McGRATH (#0041381)**

**COUNSEL OF RECORD**

**T. ALLAN REGAS (#0067336)**

Assistant Prosecuting Attorneys

The Justice Center, 8<sup>th</sup> Floor

1200 Ontario Street

Cleveland, Ohio 44113

(216) 443-7872

(216) 443-7806 *fax*

[mmcgrath@prosecutor.cuyahogacounty.us](mailto:mmcgrath@prosecutor.cuyahogacounty.us) *email*

**CERTIFICATE OF SERVICE**

A copy of the foregoing Merit Brief of Appellant State of Ohio has been sent by regular U.S. Mail or electronic service this 20<sup>th</sup> day of January, 2015, to Cullen Sweeney, assistant public defender, 310 Lakeside Avenue, Suite 200, Cleveland, Ohio 44113, attorney of record for appellee Delta Rosario.

**/s Mary H. McGrath**  
**MARY H. McGRATH (#0041381)**  
Assistant Prosecuting Attorney

ORIGINAL

NO. 14-1174

IN THE SUPREME COURT OF OHIO

APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 101558

STATE OF OHIO

Appellant

vs.

DELTA ROSARIO

Appellee

NOTICE OF APPEAL OF APPELLANT STATE OF OHIO

Counsel for Appellant

**TIMOTHY J. McGINTY (#0024626)**  
**CUYAHOGA COUNTY PROSECUTOR**  
**T. ALLAN REGAS (#0067336)**  
**MARY H. McGRATH (#0041381)**  
**ASSISTANT PROSECUTING ATTORNEYS**  
1200 Ontario Street, 8<sup>th</sup> Floor  
Cleveland, Ohio 44113  
(216) 443-7800

Counsel for Appellee

**THOMAS A. REIN**  
526 Superior Avenue  
Suite 940  
Cleveland, Ohio 44114  
(216) 687-0400

**OFFICE OF THE OHIO PUBLIC DEFENDER**  
250 East Broad Street  
Suite 1400  
Columbus, Ohio 43215  
(614) 466-5394

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SUPREME COURT OF OHIO

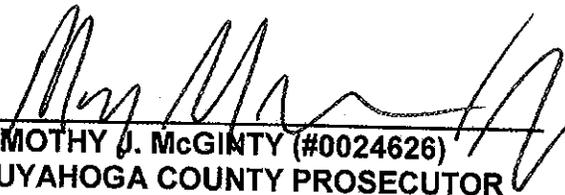
**FILED**  
JUL 14 2014  
CLERK OF COURT  
SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF APPELLANT STATE OF OHIO**

Now comes the State of Ohio and hereby gives Notice of Appeal to the Supreme Court of Ohio from a judgment and final order of the Court of Appeals for Cuyahoga County, Ohio, Eighth Judicial District, journalized in Court of Appeals Case No. CA 101558, on July 3, 2104.

Said cause did not originate in the Court of Appeals, is a felony, and involves a substantial constitutional question or a question of public or great general interest.

Respectfully submitted,



**TIMOTHY J. MCGINTY (#0024626)**

**CUYAHOGA COUNTY PROSECUTOR**

**T. ALLAN REGAS (#0067336)**

**MARY H. McGRATH (#0041381)**

Assistant Prosecuting Attorneys

The Justice Center, 8<sup>th</sup> Floor

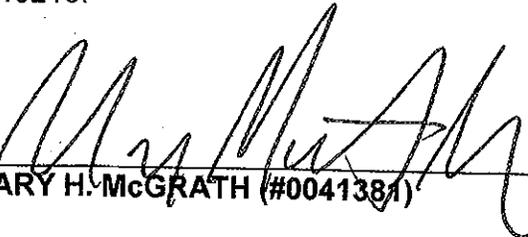
1200 Ontario Street

Cleveland, Ohio 44113

(216) 443-7800

**CERTIFICATE OF SERVICE**

A copy of the foregoing Notice of Appeal has been sent by regular U.S. Mail or electronic filing this 11<sup>th</sup> day of July, 2014, to Thomas Rein, 526 Superior Avenue, Suite 940, Cleveland, Ohio 44114, and the Office of the Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.



**MARY H. McGRATH (#0041381)**

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Andrea Rocco, Clerk of Courts

STATE OF OHIO

Appellant

COA NO.  
101558

LOWER COURT NO.  
CR-11-547091-A

-vs-

DELTA ROSARIO

Appellee

MOTION NO. 476033

COMMON PLEAS COURT

Date 07/03/14

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Journal Entry

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Motion by Appellant for leave to appeal is denied.

RECEIVED FOR FILING

JUL X 3 2014

CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By *[Signature]* Deputy



Judge EILEEN A. GALLAGHER, Concur

*[Signature]*  
PATRICIA A. BLACKMON  
Presiding Judge

JUL X 8 2014

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Andrea Rocco, Clerk of Courts

STATE OF OHIO

Appellant

COA NO.  
101558

LOWER COURT NO.  
CR-11-547091-A

-VS-

COMMON PLEAS COURT

DELTA ROSARIO

Appellee

MOTION NO. 476367

Date 07/03/14

Journal Entry

Sua sponte, the appeal is dismissed per entry 476033 dated July 3, 2014.

COPIES MAILED TO COUNSEL FOR  
ALL PARTIES.-COSTS TAKEN

FILED AND JOURNALIZED  
PER APP.R. 22(C)

JUL X 8 2014

CUYAHOGA COUNTY CLERK  
OF THE COURT OF APPEALS  
By                      Deputy



Judge EILEEN A. GALLAGHER, Concur

*Patricia A. Blackmon*  
PATRICIA A. BLACKMON  
Presiding Judge

The State of Ohio, }  
Cuyahoga County. } ss.

I, ANDREA F. ROCCO, Clerk of the Court of

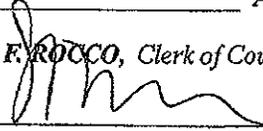
Appeals within and for said County, and in whose custody the files, Journals and records of said Court are required by the laws of the State of Ohio, to be, kept, hereby certify that the foregoing is taken and copied from the Journal entry dated on 07-03-2014 CA 101558

of the proceedings of the Court of Appeals within and for said Cuyahoga County, and that the said foregoing copy has been compared by me with the original entry on said Journal entry dated on 07-03-2014

CA 101558 and that the same is correct transcript thereof.

In Testimony Whereof, I do hereunto subscribe my name officially, and affix the seal of said court, at the Court House in the City of Cleveland, in said County, this 7th day of July A.D. 20 14

ANDREA F. ROCCO, Clerk of Courts

By  Deputy Clerk







IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY

STATE OF OHIO,

2014 FEB 14

) P 1: 35

Case No: CR 535298 & 542057

Plaintiff,  
CLERK OF COURTS  
CUYAHOGA COUNTY

JUDGE JOHN D. SUTULA

v.

**JOURNAL ENTRY**

BRIAN K. WASHINGTON

Defendant.

This matter is before the court for consideration of the motions filed by Timothy J. McGinty, Cuyahoga County Prosecutor, on January 6, 2014, captioned: State's Motion to Reopen Hearing and Hold Full and Fair Hearing Upon Brian K. Washington's Violations of Community Control Sanction Violations (hereinafter motion to reopen); and, on January 31, 2014, 25 days later, State's Motion to Hold a Probation Violation Hearing Upon Brian K. Washington's Violation of Community Control Sanctions (hereinafter motion to hold PV hearing).

The U.S. Supreme Court, the Ohio Supreme Court and Ohio Appellate Courts including the Eighth District Appellate Court of Ohio have held that revocation of probation or parole are not criminal proceedings. *Morrisay v. Brewer* (1973), 408 U.S. 471; *Gagnon v. Scarpelli* (1973), 411 U.S. 778; *Wright v. Ohio Adult Parole Authority* (1996), 75 Ohio St. 3d 82; *State v. Coulverson* (1991), 62 Ohio St. 3d 12; *State v. Delaney* (1984), 11 Ohio St. 3d 231; *State v. Lenard*, 2010 Ohio 81 (Court of App. OH 8<sup>th</sup> D); *State v. Hayes*, Cuyahoga App. No. 87642, 2006 Ohio 5924; *In re: Bennet, a minor*, 1997 Ohio App. LEXIS 2546 (Court of App. OH 8<sup>th</sup> D.); *State v. Parsons*, 1996



Ohio App. LEXIS 4957; *State v. Ferguson* (1991), 72 Ohio App. 3d 14. The State of Ohio is represented by the Probation Department. *Morrisay v. Brewer* (1973), 408 U.S. 471; *Gagnon v. Scarpelli* (1973), 411 U.S. 778; *Wright v. Ohio Adult Parole Authority* (1996), 75 Ohio St. 3d 82; R.C. 2929.15, 2951.08; Crim. R 32.3. This Court's duty of notice as directed by due process requirements for a probation revocation hearing does not include notice to the prosecutor as the prosecutor has no due process rights in revocation hearings. *Gagnon v. Scarpelli* (1973), 411 U.S. 778; *State v. Lenard*, 2010 Ohio 81 (Court of App. OH 8<sup>th</sup> D); R.C. 2929.15, 2951.08; Crim. R 32.3.

In complying with the due process standards as set forth above, this Court held a probation revocation hearing on the record on January 2, 2014, wherein the State was represented by the Cuyahoga County Probation Department, Probation Officer Victoria Boyd, and the Defendant was present with counsel. In holding this probation revocation hearing, this court followed the long held customary procedures practiced by the Cuyahoga County Common Pleas Court, General Division, on which Mr. McGinty served as a Judge for 19 years. In following these procedures at no time did this Court hold or participate in ex parte hearings or communication as alleged in the motion to reopen as the state is represented by the Probation Department.

This court is cognizant of its ethical obligations and at no time does it participate in ex parte communications. This Court is obligated to report conduct which it suspects may be a violation of the Ohio Rules of Professional Conduct. Therefore, the Court is referring this matter to the Supreme Court Disciplinary Counsel to determine whether there is an ethical violation on the part of Mr. McGinty for knowingly making false allegations impugning the integrity of the court and the efficacy of the Judicial system for

allegedly having ex parte communications and hearings, very serious allegations. Ohio Rule of Professional Conduct 8.2(a).

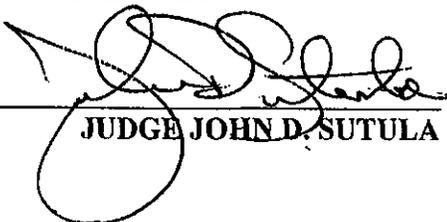
The prosecutor under law can argue incarceration at the sentencing phase of the criminal proceeding, but does not have a second opportunity to do so at a probation revocation hearing. Therefore, according to legal precedents and authority above set forth, this court denies both of the prosecution's motions. The January 31, 2014, motion to hold a probation violation hearing is being denied as the court was aware of the arrest of the defendant at the hearing of January 2, 2014, and issued a punishment that adequately addressed that same issue, raised again by the January 31, 2014 motion. This Court ordered 60 days in jail and inpatient treatment.

As the prosecution is not entitled to notice of probation violation hearings, it will not receive notice either from the Court or from the Probation Department. However, the Prosecutor can check the Desk Book which is open to the Prosecutor or the docket for scheduled probation violation hearings as has been customary in Cuyahoga County Common Pleas Court. The hearings are public and the Prosecutor is entitled to attend each hearing.

At all future probation violation hearings in this case or any other case, should the prosecutor desire to bring to the attention of the Court or the Probation Department acts that may be a probation violation, it may do so. Since the State is represented by the Probation Department, the prosecutor is not inherently entitled to speak at a Probation hearing. In the event the Prosecutor's Office desires to speak at a hearing, it may only do so with leave of Court. A Request for Leave to be Heard shall be filed no later than 2 days before the scheduled probation revocation hearing and shall include any evidence

and witnesses supporting the claimed violations. Case specific statements as to the violation shall be set forth in detail in a brief attached to the request. The Request for Leave to be Heard shall be served on the Probation Department, Counsel for the Defendant and the Defendant, should the Defendant wish to proceed pro se, at least 2 days prior to the hearing. Prior evidence and testimony received at the sentencing will not be considered as it will be considered cumulative or repetitious.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
JUDGE JOHN D. SUTULA

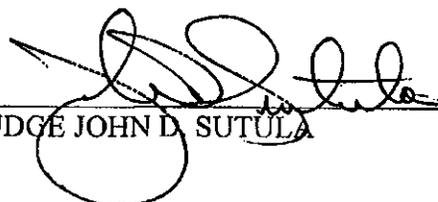
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**CERTIFICATE OF SERVICE**

A copy of the forgoing journal entry was served on the 14<sup>th</sup> day of February, 2014 by U.S. Mail to Attorney Craig W. Smotzer, counsel for Defendant, 1914 Clark Avenue, Cleveland, Ohio 44109; and, by personal delivery to:

Cuyahoga County Probation Department, 1200 Ontario Street, 7<sup>th</sup> Floor, Cleveland, Ohio 44113; and,

Prosecutor Timothy J. McGinty, Cuyahoga County Prosecutor, 1200 Ontario Street, 9<sup>th</sup> Floor, Cleveland, Ohio 44113.

  
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JUDGE JOHN D. SUTULA

2-14-14  
DATE

**§ 309.08 Powers and duties of prosecuting attorney; rewards for information as to drug-related offenses.**

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**(A)** The prosecuting attorney may inquire into the commission of crimes within the county. The prosecuting attorney shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party, except for those required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code, and other suits, matters, and controversies that the prosecuting attorney is required to prosecute within or outside the county, in the probate court, court of common pleas, and court of appeals. In conjunction with the attorney general, the prosecuting attorney shall prosecute in the supreme court cases arising in the prosecuting attorney's county, except for those cases required to be prosecuted by a special prosecutor pursuant to section 177.03 of the Revised Code or by the attorney general pursuant to section 109.83 of the Revised Code. In every case of conviction, the prosecuting attorney forthwith shall cause execution to be issued for the fine and costs, or costs only, as the case may be, and faithfully shall urge the collection until it is effected or found to be impracticable to collect. The prosecuting attorney forthwith shall pay to the county treasurer all moneys belonging to the state or county which come into the prosecuting attorney's possession.

The prosecuting attorney or an assistant prosecuting attorney of a county may participate, as a member of the investigatory staff of an organized crime task force established under section 177.02 of the Revised Code that has jurisdiction in that county, in an investigation of organized criminal activity under sections 177.01 to 177.03 of the Revised Code.

**(B)** The prosecuting attorney may pay a reward to a person who has volunteered any tip or information to a law enforcement agency in the county concerning a drug-related offense that is planned to occur, is occurring, or has occurred, in whole or in part, in the county. The prosecuting attorney may provide for the payment, out of the following sources, of rewards to a person who has volunteered tips and information to a law enforcement agency in the county concerning a drug-related offense that is planned to occur, is occurring, or has occurred, in whole or in part, in the county:

- (1) The law enforcement trust fund established by the prosecuting attorney pursuant to division (C)(1) of section 2981.13 of the Revised Code;
  - (2) The portion of any mandatory fines imposed pursuant to divisions (B)(1) and (2) of section 2929.18 or Chapter 2925. of the Revised Code that is paid to the prosecuting attorney pursuant to that division or chapter, the portion of any additional fines imposed under division (A) of section 2929.18 of the Revised Code that is paid to the prosecuting attorney pursuant to that division, or the portion of any fines imposed pursuant to division (A) of section 2925.42 of the Revised Code that is paid to the prosecuting attorney pursuant to division (B) of that section;
  - (3) The furtherance of justice fund allowed to the prosecuting attorney under section 325.12 of the Revised Code or any additional funds allowed to the prosecuting attorney under section 325.13 of the Revised Code;
  - (4) Any other moneys lawfully in the possession or control of the prosecuting attorney.
- (C) As used in division (B) of this section, "drug-related offense" means any violation of Chapter 2925. or 3719. of the Revised Code or any violation of a municipal ordinance that is substantially equivalent to any section in either of those chapters.

## History

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RS § 1273; S&C 1125, 1185; 33 v 44, §§ 1, 2, 3; 50 v 215, § 2; 82 v 27; 98 v 160; GC § 2916; 102 v 77; 103 v 405(419); Bureau of Code Revision, 10-1-53; 141 v S 74 (Eff 9-3-86); 143 v S 258 (Eff 11-20-90); 145 v H 152 (Eff 7-1-93); 146 v S 2 (Eff 7-1-96); 146 v S 166. Eff 10-17-96; 151 v H 241, § 1, eff. 7-1-07.

### ▼ Annotations

#### Notes

##### Editor's Notes

The provisions of § 4 of 151 v H 241 read as follows:

SECTION 4. Sections 1, 2, and 3 of this act shall take effect on July 1, 2007. If a criminal or civil forfeiture action relating to misconduct under Title XXIX of the

*APPENDIX PAGE 13*