

The Supreme Court of Ohio

CASE ANNOUNCEMENTS AND ADMINISTRATIVE ACTIONS

October 3, 2002

MERIT DECISIONS WITH OPINIONS

2002-1552. State ex rel. Commt. for the Charter Amendment, City Trash Collection v. Westlake.

In Mandamus. Writ granted and attorney fees awarded.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

MOTION AND PROCEDURAL RULINGS

1999-1268. State v. Cassano.

Richland C.P. No. 98CR171H. Upon consideration of the motion filed by counsel for appellant to stay the execution of sentence in the above-styled cause pending the timely filing of a petition for a writ of certiorari in the Supreme Court of the United States,

IT IS ORDERED that said motion be, and hereby is, granted.

IT IS FURTHER ORDERED that the compliance with the mandate and the execution of sentence be, and hereby are, stayed, pending the timely filing of the petition in the Supreme Court of the United States.

IT IS FURTHER ORDERED that if such petition is timely filed, this stay shall continue for an indefinite period pending final disposition of this cause by the Supreme Court of the United States.

2001-0871. State v. Ahmed.

Belmont C.P. No. 99CR192. This cause is a death penalty appeal from the Court of Common Pleas of Belmont County. Upon consideration of appellant's motion to unseal medical records contained in the supplemental record,

IT IS ORDERED by the court that the motion to unseal be, and hereby is, granted.

2001-1009. Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 01-K-1751, 00-K-1752, 00-K-1753, 00-K-1754, 00-K-1755, 00-K-1756, 00-K-1757 and 00-K-1758. This cause came on for further consideration upon appellee's motion to clarify court order/decision. Upon consideration thereof,

IT IS ORDERED by the court that the motion to clarify court order/decision be, and hereby is, denied.

Cook, J., not participating.

2001-1642. Tacohio Dev., L.L.C. v. Franklin Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 98-T-431, 98-T-433, 98-T-434 and 98-T-435. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2001-1758. Ferrone v. Medina Cty. Bd. of Revision.

Board of Tax Appeals, No. 99-V-609. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-0048. EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 99-M-1594, 99-M-1595, 99-M-1596 and 99-M-1597. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of

the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-0453. Watson v. Champaign Cty. Bd. of Revision.

Board of Tax Appeals, No. 01-V-1215. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-0867. Midland Food Serv., L.L.C. v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, No. 01-G-159. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-0884. Adria Laboratories, Inc. v. Franklin Cty. Bd. of Revision.

Board of Tax Appeals, No. 00-A-2136. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-0885. Adria Laboratories, Inc. v. Union Cty. Bd. of Revision.

Board of Tax Appeals, No. 00-A-2135. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of

the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-1010. State v. Mitts.

Cuyahoga App. No. 68612. This cause is pending before the court as a death penalty *Murnahan* appeal from the Court of Appeals for Cuyahoga County. Whereas this court denied appellant's motion for appointment of counsel on September 25, 2002,

IT IS ORDERED by the court, sua sponte, that appellant's brief shall be due 40 days from the date of this entry, and the parties shall otherwise proceed in accordance with S.Ct.Prac.R. VI.

2002-1037. W. Park Trust v. Richland Cty. Aud.

Board of Tax Appeals, Nos. 01-J-1255 and 01-J-1257. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-1052. Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Aud.

Board of Tax Appeals, Nos. 99-J-1920, 99-J-1921, 99-J-1942 and 99-J-1944. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-1103. South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 00-N-100 and 00-N-101. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of

the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-1218. Zanesville City Schools Bd. of Edn. v. Muskingum Cty. Bd. of Revision.

Board of Tax Appeals, Nos. 2001-T-600 and 2001-T-632. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-1304. Feathers v. Summit Cty. Bd. of Revision.

Board of Tax Appeals, No. 01-A-599. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

2002-1366. Royal Group Limited Liab. Co. v. Cuyahoga Cty. Bd. of Revision.

Board of Tax Appeals, No. 2000-A-2052. This cause is pending before the court as an appeal from the Board of Tax Appeals.

IT IS ORDERED by the court, sua sponte, that appellant show cause, within fourteen days of the date of this order, why this cause should not be dismissed as a premature appeal upon the authority of *Cleveland Elec. Illum. Co. v. Lake Cty. Bd. of Revision*, 96 Ohio St.3d 165, 2002-Ohio-4033, 772 N.E.2d 1160, for failure of the board of revision to serve a copy of its decision on the Tax Commissioner as required by R.C. 5715.20.

DISCIPLINARY CASES

1994-2701. Disciplinary Counsel v. Pagac.

On June 28, 1995, this court permanently disbarred respondent, Paul Pagac III, Attorney Registration No. 0015049. On March 28, 2002, relator, Disciplinary Counsel, filed a motion for order to appear and show cause, requesting the court to

issue an order directing Paul Pagac III to appear and show cause why he should not be found in contempt for his failure to comply with this court's June 28, 1995 order. On May 9, 2002, this court granted that motion and advised respondent to file a written response by May 29, 2002. Respondent did not file a written response. On September 10, 2002, this court ordered respondent to appear before the court on September 25, 2002. Respondent did not appear. Accordingly,

IT IS ORDERED by the court, sua sponte, that respondent be and hereby is, found in contempt and sentenced to 30 days in jail. It is further ordered that the 30-day jail sentence be suspended on the condition that respondent not practice law in the state of Ohio.

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).

Douglas, J., would find respondent in contempt and give him 10 days to purge.

2000-0759. Darke Cty. Bar Assn. v. Brumbaugh.

On October 25, 2000, this court suspended respondent, Philip J. Brumbaugh, a.k.a. Philip James Brumbaugh, for a period of two years and stayed the suspension on conditions that respondent continue his treatment for major depression and that the attending physician report every three months to the relator, indicating respondent's progress and need, if any, for further treatment and that during the two-year suspension period, no complaint be filed against respondent that passes probable cause review by relator. The court further ordered respondent to pay board costs on or before January 23, 2001, and ordered that if costs were not timely paid respondent could be found in contempt and suspended from the practice of law until such costs, including all accrued interest, were paid in full.

On August 22, 2001, the court ordered the respondent to show cause why he should not be found in contempt for failure to comply with the court's October 25, 2000 order. Respondent did not respond to the show cause order. On May 23, 2002, this court found respondent in contempt and suspended him from the practice of law in Ohio until he purged himself of contempt by paying board costs and accrued interest in full, and further ordered him to surrender his certificate of admission and attorney registration card, and file an affidavit of compliance. Respondent paid his board costs on May 28, 2002. Respondent paid the outstanding interest on the board costs and surrendered his attorney registration card on July 2, 2002. On August 13, 2002, this court ordered respondent to show cause why he had not complied with the court's order of May 23, 2002, to wit, failure to surrender his certificate of admission and failure to file an affidavit of compliance. Respondent has not surrendered his certificate of admission or filed an affidavit of compliance. On August 16, 2002, relator filed a notice of

noncompliance with conditions for stay of suspension, in which relator states that a complaint has been filed against respondent that is currently pending before the Board of Commissioners on Grievances and Discipline. On consideration thereof,

IT IS ORDERED AND ADJUDGED by this court that respondent, Philip J. Brumbaugh, a.k.a. Philip James Brumbaugh, Attorney Registration No. 0022652, last known business address in Greenville, Ohio, be and hereby is, found in contempt for failure to comply with the court's May 23, 2002 order. It is further ordered that respondent be suspended from the practice of law for a period of two years from the date of this order for breach of the conditions of the court's order of October 25, 2000.

IT IS FURTHER ORDERED that the respondent, Philip J. Brumbaugh, a.k.a. Philip James Brumbaugh, 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 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 respondent surrender his certificate of admission to practice to the Clerk of this court on or before 30 days from the date of this order, and that his name be stricken from the roll of attorneys maintained by this court.

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, 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 respondent shall not be reinstated to the practice of law in Ohio until (1) respondent complies with the requirements for

reinstatement set forth in the Supreme Court Rules for the Government of the Bar of Ohio; (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 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 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 his 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 affiant 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 Darke County Bar Association, and the Disciplinary Counsel advised of any change of address where respondent may receive communications.

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 Attorney Registration Office.

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.

Moyer, C.J., Douglas, Resnick, F.E. Sweeney, Pfeifer, Cook and Lundberg Stratton, JJ., concur.

2002-0482. In re Resignation of Zimmerman.

On affidavit of resignation from practice of law of John Frederick Zimmerman, Jr., and report filed under seal by Disciplinary Counsel pursuant to Gov.Bar R. V(11)(G)(2).

Resignation accepted with designation of disciplinary action pending.

MISCELLANEOUS DISMISSALS

2002-1398. Tincher v. Interstate Precision Tool Corp.

Montgomery App. No. 19093, 2002-Ohio-3311. This cause is pending before the court as a discretionary appeal. Upon consideration of appellants' application for dismissal,

IT IS ORDERED by the court that the application for dismissal be, and hereby is, granted.

ACCORDINGLY, IT IS FURTHER ORDERED by the court that this cause be, and hereby is, dismissed.