

SUPREME COURT OF OHIO

Akron Bar Ass'n v. Wittbrod

124 Ohio St. 3d 1465 (Ohio 2010) · Decided February 3, 2010

SUMMARY

The Supreme Court of Ohio found attorney Harry J. Wittbrod in contempt after he failed to appear and failed to pay disciplinary board costs. The court revoked the stay of his prior six-month suspension and imposed requirements concerning cessation of practice, client notifications, continuing legal education, reimbursement obligations, and reinstatement.

CASE DETAILS

COURT	Supreme Court of Ohio
JURISDICTION	Ohio
DECIDED	February 3, 2010
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline contempt proceeding initiated by the Akron Bar Association's motion for an order to show cause after respondent failed to pay disciplinary costs and failed to appear before the Supreme Court of Ohio.
PRECEDENTIAL VALUE	Published disciplinary order; binding as to the court's contempt and suspension disposition and its stated compliance requirements.
PARTIES	Akron Bar Association v. Harry J. Wittbrod

TOPICS

contempt sanctions remedies civil procedure

PRACTICE AREAS

attorney discipline professional responsibility contempt remedies

QUESTIONS PRESENTED

1. Whether Wittbrod should be found in contempt for failing to comply with the court's prior disciplinary order and failing to appear for the show-cause proceeding.
2. Whether the stay of Wittbrod's six-month suspension should be revoked and the full suspension imposed.

3. What conditions and compliance obligations should govern Wittbrod during the suspension and before reinstatement.

HOLDINGS

1. Wittbrod was found in contempt for failing to comply with the court's prior order and failing to appear as ordered.
2. The stay of Wittbrod's six-month suspension was revoked, and he was required to serve the entire six-month suspension.
3. Wittbrod was prohibited from practicing law or performing legal services during the suspension and could not be reinstated until satisfying the specified reinstatement, rule-compliance, and court-order requirements.

KEY QUOTATIONS

"Therefore, It is ordered that respondent is found in contempt." (124 Ohio St. 3d at 1465)

"It is further ordered and adjudged by this court that the stay of the suspension is hereby revoked and respondent, Harry J. Wittbrod, Attorney Registration No. 0066021, last known business address in Cuyahoga Falls, Ohio, shall serve the entire six-month suspension imposed in the court's order of July 28, 2009." (124 Ohio St. 3d at 1465)

FACTUAL BACKGROUND

The Supreme Court of Ohio had previously imposed a stayed six-month suspension and one year of monitored probation on Harry J. Wittbrod, conditioned on compliance with the court's order, and ordered him to pay \$1,319.66 in costs. The costs remained unpaid, and Wittbrod failed to appear after the court ordered him to show cause why he should not be held in contempt.

PROCEDURAL HISTORY

On July 28, 2009, the Supreme Court of Ohio suspended Wittbrod from practicing law for six months, stayed the suspension, placed him on monitored probation, and ordered him to pay costs. After Wittbrod failed to pay the costs and did not appear for a scheduled show-cause proceeding, the court found him in contempt, revoked the stay, and ordered him to serve the entire suspension subject to continuing conditions.

DISPOSITION

other

OPINION

PER CURIAM.

On July 28, 2009, this court suspended respondent, Harry J. Wittbrod, from the practice of law for a period of six months, stayed the suspension, and placed respondent on monitored probation for a

period of one year, on conditions. It was further ordered that if respondent violated any of the conditions, the stay would be lifted, and respondent would serve the entire six-month suspension.

Respondent was ordered to pay board costs in the amount of \$1,319.66. These costs and all accrued interest remain unpaid. On October 13, 2009, relator, Akron Bar Association, filed a motion for an order to show cause why respondent should not be found in contempt.

On December 4, 2009, this court ordered respondent to appear before it on January 12, 2010. Respondent did not appear. Therefore, It is ordered that respondent is found in contempt. It is further ordered and adjudged by this court that the stay of the suspension is hereby revoked and respondent, Harry J. Wittbrod, Attorney Registration No. 0066021, last known business address in Cuyahoga Falls, Ohio, shall serve the entire six-month suspension imposed in the court's order of July 28, 2009.

All terms of that order remain in effect. It is further ordered that 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 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, respondent shall verify that the attorney or law 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, 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 respondent by the Clients' *1466Security 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 respondent pursuant to Gov.Bar R. VTII(7)(F), 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 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 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, 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.

All case documents are subject to Rules 44 through 47 of the Rules of Superintendence for the Courts of Ohio, which govern access to court records. 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 to respondent's last known address. 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.