

SUPREME COURT OF OHIO

In re Resignation of Elsass

2018-Ohio-783 (Ohio 2018) · No. 2018-0266 · Decided March 5, 2018

SUMMARY

The Supreme Court of Ohio accepted Tobias Harold Elsass's resignation from the practice of law as a resignation with disciplinary action pending under Gov.Bar R. VI(11)(C). The order withdrew his privileges to practice law, struck his name from the roll of attorneys, and imposed related client-notification, property-delivery, reimbursement, and compliance obligations.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Chief Justice O'Connor; Justice O'Donnell; Justice Kennedy; Justice French; Justice Fischer; Justice DeWine; Justice DeGenaro
JURISDICTION	Ohio
DECIDED	March 5, 2018
DOCKET	2018-0266
DISPOSITION	other
PROCEDURAL POSTURE	Attorney Tobias Harold Elsass submitted an application for retirement or resignation under Gov.Bar R. VI(11), which was referred to disciplinary counsel for review. The Supreme Court of Ohio considered disciplinary counsel's report and accepted the resignation as a resignation with disciplinary action pending.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential value is limited to the order and governing attorney-resignation procedure.

TOPICS

administrative law

civil procedure

PRACTICE AREAS

attorney discipline

legal ethics

professional responsibility

QUESTIONS PRESENTED

1. Whether the Supreme Court of Ohio should accept Elsass's application for resignation under Gov.Bar R. VI(11) while disciplinary action was pending.
2. What restrictions and compliance obligations should accompany acceptance of the resignation.

HOLDINGS

1. Under Gov.Bar R. VI(11)(C), the court accepted Elsass's resignation as a resignation with disciplinary action pending.
2. Upon acceptance of the resignation, Elsass's rights and privileges to practice law in Ohio were withdrawn, and he was prohibited from practicing law or holding himself out as an attorney.
3. Elsass was required to surrender his certificate of admission, have his name stricken from the roll of attorneys, reimburse eligible Lawyers' Fund for Client Protection awards, notify clients and opposing parties, handle client property and unearned fees, file a compliance affidavit, and satisfy related employment and recordkeeping restrictions.

KEY QUOTATIONS

“On consideration thereof, it is ordered by the court that pursuant to Gov.Bar R. VI(11)(C), the resignation as an attorney and counselor at law is accepted as a resignation with disciplinary action pending.” (¶ 2)

“It is further ordered that respondent shall surrender respondent’s certificate of admission to practice to the clerk of the court on or before 30 days from the date of this order and that respondent’s name be stricken from the roll of attorneys maintained by this court.” (¶ 7)

FACTUAL BACKGROUND

Tobias Harold Elsass was admitted to practice law in Ohio in 1980 and had a last known business address in Columbus. He submitted an application for retirement or resignation while disciplinary action was pending. Disciplinary counsel submitted a report to the Supreme Court of Ohio, which then accepted the resignation under Gov.Bar R. VI(11)(C).

PROCEDURAL HISTORY

Elsass applied for retirement or resignation from the Ohio bar. The application was referred to disciplinary counsel, whose report was filed with the Supreme Court of Ohio under seal. The court accepted the resignation and entered consequential restrictions and compliance requirements.

DISPOSITION

other

OPINION

PER CURIAM.

[Cite as In re Resignation of Elsass, ___ Ohio St.3d ___, 2018-Ohio-783.] IN RE RESIGNATION OF ELSASS. [Cite as In re Resignation of Elsass, ___ Ohio St.3d ___, 2018-Ohio-783.] Attorneys at law—Resignation with disciplinary action pending—Gov.Bar R. VI(11)(C). (No. 2018-0266—Submitted February 27, 2018—Decided March 5, 2018.) ON APPLICATION FOR RETIREMENT OR RESIGNATION PURSUANT TO GOV.BAR R. VI(11). _____ {¶ 1} Tobias Harold Elsass, Attorney Registration No. 0024436, last known business address in Columbus, Ohio, who was admitted to the bar of this state on May 9, 1980, submitted an application for retirement or resignation pursuant to Gov.Bar R. VI(11).

The application was referred to disciplinary counsel pursuant to Gov.Bar R. VI(11)(B). On February 14, 2018, the Office of Attorney Services filed disciplinary counsel’s report, under seal, with this court in accordance with Gov.Bar R. VI(11)(B)(2). {¶ 2} On consideration thereof, it is ordered by the court that pursuant to Gov.Bar R. VI(11)(C), the resignation as an attorney and counselor at law is accepted as a resignation with disciplinary action pending. {¶ 3} It is further ordered and adjudged that from and after this date all rights and privileges extended to respondent to practice law in the state of Ohio be withdrawn, that henceforth respondent shall cease to hold himself forth as an attorney authorized to appear in the courts of this state, that respondent shall not attempt, either directly or indirectly, to render services as an attorney or counselor at law to or for any individuals, corporation, or society, nor in any way perform or seek to perform services for anyone, no matter how constituted, that must by law be executed by a duly appointed and qualified attorney within the state of Ohio. SUPREME COURT OF OHIO {¶ 4} It is further ordered that respondent desist and refrain from the practice of law in any form, either as principal or agent or clerk or employee of another, and hereby is forbidden to appear in the state of Ohio as an attorney and counselor at law before any court, judge, board, commission, or other public authority, and hereby is forbidden to give another an opinion as to the law or its application or advise with relation thereto. {¶ 5} 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(23)(C).

If employed pursuant to Gov.Bar R. V(23), respondent shall refrain from direct client contact except as provided in Gov.Bar R. V(23)(A)(1) and from receiving, disbursing, or otherwise handling any client trust funds or property. {¶ 6} It is further ordered that respondent shall not enter into an employment, contractual, or consulting relationship with an attorney or law firm with which respondent was associated as a partner, shareholder, member, or employee at the time respondent engaged in the misconduct that resulted in this acceptance of respondent’s resignation with discipline pending. {¶ 7} It is further ordered that respondent shall surrender respondent’s certificate of admission to practice to the clerk of the court on or before 30 days from the date of this order and that respondent’s name be stricken from the roll of attorneys maintained by this court. {¶ 8} It is further ordered 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 Lawyers' Fund for Client Protection pursuant to Gov.Bar R. VIII(7)(F).

It is further ordered by the court that if after the date of this order the Lawyers' Fund for Client Protection awards any amount against respondent 2 January Term, 2018 pursuant to Gov.Bar R. VIII(7)(F), respondent shall reimburse that amount to the Lawyers' Fund for Client Protection within 90 days of the notice of that award. {¶ 9} It is further ordered that on or before 30 days from the date of this order, respondent shall do the following: {¶ 10} 1.

Notify all clients being represented in pending matters and any co-counsel of respondent's resignation 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; {¶ 11} 2.

Regardless of any fees or expenses due, 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; {¶ 12} 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; {¶ 13} 4. Notify opposing counsel or, in the absence of counsel, the adverse parties in pending litigation 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; {¶ 14} 5.

Send all notices required by this order by certified mail with a return address where communications may thereafter be directed to respondent; {¶ 15} 6. File with the clerk of this court and disciplinary counsel of the Supreme Court an affidavit showing compliance with this order, showing proof of service of the notices required herein, and setting forth the address where respondent may receive communications; and 3 SUPREME COURT OF OHIO {¶ 16} 7.

Retain and maintain a record of the various steps taken by respondent pursuant to this order. {¶ 17} It is further ordered that until such time as respondent fully complies with this order, respondent shall keep the clerk and disciplinary counsel advised of any change of address where respondent may receive communications. {¶ 18} It is further ordered 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 Sup.R. 44 through 47, which govern access to court records. {¶ 19} It is further ordered 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. {¶ 20} It is further ordered that the clerk of this court issue certified copies of this order as provided for in Gov.Bar R. V(17)(D)(1) and that publication be made as provided for in Gov.Bar R. V(17)(D)(2).

O'CONNOR, C.J., and O'DONNELL, KENNEDY, FRENCH, FISCHER, DEWINE, and DEGENARO, JJ., concur. _____ 4