

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

THE STATE OF OHIO)	CASE NO. CR 17 622972 B
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY DISQUAL-</u>
)	<u>IFYING AND REMOVING THE</u>
ERIC G. WILSON)	<u>DEFENDANT'S RETAINED COUNSEL</u>
)	<u>AND APPOINTING REPLACEMENT</u>
Defendant.)	<u>COUNSEL</u>

John P. O'Donnell, J.:

Eric G. Wilson is charged with seven crimes arising from the October 26, 2017, killing of Jonathan Singletary including aggravated murder, murder, felonious assault, aggravated robbery, discharge of a firearm over prohibited premises, tampering with evidence and having a weapon while under disability.

Wilson was indicted on November 15 and arraigned on November 20. At arraignment he informed the judge that he was unable to afford counsel and two attorneys were appointed to represent him at the expense of the state. Pretrial proceedings and discovery then commenced, with initial pretrial conferences taking place on November 28 and December 11. At the December 11 pretrial a third pretrial conference was set for December 20. That date was journalized in a judgment entry docketed on December 12.

Thereafter, Wilson retained attorney Michael Cheselka. Cheselka filed a notice of appearance on December 19 but did not appear at the December 20 pretrial conference, the purpose of which was to schedule a date for the trial. The prosecutor and lawyers for the co-defendants appeared and the trial was set for Monday, April 30, 2018. The judgment entry setting the trial date was journalized on December 29 and a copy of that entry was emailed to Cheselka.

On Friday, April 27, 2018, at 1:16 p.m., Cheselka filed a motion to continue the trial set for the following Monday, less than one-half of one business day later. As grounds, he asserted that he was scheduled to appear on May 1, 2018, at a hearing in Cleveland on *Disciplinary Counsel v. Cheselka*, Ohio Board of Professional Conduct Case No. 2017-050. A review of the docket in that case shows that the May 1 hearing was scheduled on December 15, 2017, and a notice of formal hearing was sent three days later, on December 18.

The motion for a continuance was still pending when this case was called on the record for trial as scheduled. Cheselka did not appear for trial, instead sending in his place an attorney who had never met Wilson, knew nothing about the case, and was wholly unprepared to try it. Wilson, who is awaiting trial in jail, did appear for trial and was informed that his trial could not go forward without counsel. Accordingly, the trial proceeded against co-defendant Merlin Johnson only.¹

The question now before me, on my own motion, is whether Cheselka, given his utter failure to even appear for, much less participate in, the trial and scheduling proceedings leading to it, should be disqualified and removed as counsel for Wilson in this case.

¹ A second co-defendant, Latifah Stewart, who is on bond, failed to appear for trial and a warrant was issued for her arrest.

The practice of a licensed attorney in Ohio is subject to the lawyer's compliance with the Ohio Rules of Professional Conduct. Among other things, those rules require that 1) a lawyer must provide competent representation by demonstrating the "thoroughness and preparation reasonably necessary for the representation,"² 2) a lawyer shall act with reasonable promptness and diligence in representing a client,³ 3) a lawyer may not knowingly disobey an obligation under the rules of a tribunal,⁴ and 4) a lawyer may not engage in conduct intended to disrupt a tribunal or engage in undignified or discourteous conduct that is degrading to a tribunal.⁵ Additionally, the practice of law before the Cuyahoga County Court of Common Pleas is conditioned on the attorney's compliance with the court's local rules. Local Rule 17.0(A)(1) of the Cuyahoga County Court of Common Pleas requires that a motion for a trial continuance be filed at least seven days before the trial date. And while Local Rule 17.0(B)(2) provides that a party to a disciplinary proceeding who is "scheduled to appear [in the disciplinary case] on the *same date*" as a trial is entitled to a trial continuance, the rule does not make an exception for a party to a disciplinary proceeding to the obligation to file a motion for continuance at least seven days before trial.

Implied in a trial court's scheduling judgment entry is an order that the attorneys for the parties must appear at the hearing or trial. Cheselka filed his notice of appearance with knowledge of the December 20 pretrial scheduling conference yet he did not appear for it. He was also undoubtedly aware of the April 30 trial date – and his alleged hearing conflict was on May 1, not April 30 – yet he did not appear for the trial either. What's more, although he knew

² Ohio Rule of Professional Conduct 1.1.

³ Rule of Prof. Cond. 1.3.

⁴ Rule of Prof. Cond. 3.4(c).

⁵ Rule of Prof. Cond. 3.5(a)(5) and (6).

when he entered an appearance in December that he was obligated to appear before the disciplinary board on May 1, he waited more than four months until the day before trial to move for a continuance.

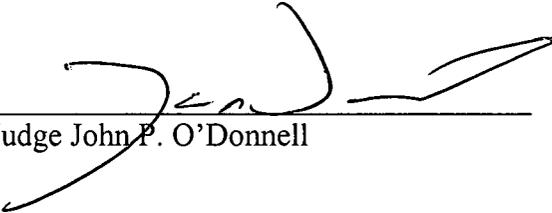
A trial court has the inherent power to do all things necessary for the administration of justice and to protect its own powers, process, and the rights of those who invoke its process. *Pla v. Cleveland State Univ.*, 10th Dist. App. No. 17AP-212, 2017-Ohio-8149, ¶14. Moreover, a trial court's power to protect its pending proceedings includes the authority to dismiss an attorney who cannot, or will not, take part in them with a reasonable degree of propriety. *Royal Indem. Co. v. J. C. Penney Co.*, 27 Ohio St. 3d 31, 34 (1986). The authority to remove an attorney exists since a court's power is practically constrained by the extent to which parties and counsel voluntarily comply with its reasonable orders, and if a lawyer can ignore a scheduled trial without any consequence then the ability of any court to control its proceedings is forfeited to the whim of the disobedient lawyer, virtually assuring an end to the efficient, practical and just administration of a lawsuit.

That will happen here if defense counsel is not removed: a party, with an interest in the outcome of the case, will control the proceedings instead of a disinterested court. Such an arrangement might stumble its way to a just result, but is more likely to lead to an unjust conclusion, with stops at impracticality, confusion and uncertainty along the way.

For these reasons, Cheselka is disqualified and removed as counsel for the defendant. I do not know Cheselka's financial arrangement with the defendant, but I do know that the arraigning judge deemed Wilson to be indigent and entitled to counsel at the expense of the state. Based upon that determination, and given the provision in Local Rule 33.0, Part II(B), for the appointment of two lawyers to an indigent defendant charged with aggravated murder, attorneys

Fernando Mack, Esq. and Susan J. Moran, Esq. are hereby appointed to represent Wilson at the expense of the state and a pretrial scheduling conference is set for May 22, 2018, at 10:00 a.m.

IT IS SO ORDERED:



Judge John P. O'Donnell

Date: May 15, 2018

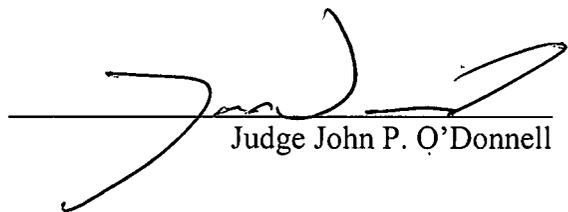
SERVICE

A copy of this judgment entry was emailed to the following on May 15, 2018:

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Judge John P. O'Donnell