

THE STATE OF OHIO, APPELLANT, v. OWENS, APPELLEE.

[Cite as *State v. Owens*, 123 Ohio St.3d 1204, 2009-Ohio-4086.]

Motion to strike notice of appeal granted, and notice of appeal dismissed.

(No. 2009-0637 — Submitted July 14, 2009 — Decided August 20, 2009.)

APPEAL from the Court of Appeals for Mahoning County, No. 07 MA 229,
2009-Ohio-1508.

ON MOTION TO STRIKE NOTICE OF APPEAL AND TO DISMISS.

{¶ 1} The Ohio Public Defender has filed a motion to strike the state's notice of appeal and to dismiss the appeal in this case because of the state's failure to serve the notice of appeal on the Ohio Public Defender as required by S.Ct.Prac.R. XIV(2)(A)(3), which provides as follows: "In a case involving a felony, when a county prosecutor files a notice of appeal under S.Ct.Prac.R. II or an order certifying a conflict under S.Ct.Prac.R. IV, the county prosecutor shall also serve a copy of the notice or order on the Ohio Public Defender." The Ohio Public Defender asserts that the failure of county prosecutors to comply with S.Ct.Prac.R. XIV(2)(A)(3) is a significant and recurring problem that interferes with its ability to fully discharge its responsibilities.

{¶ 2} In *State v. Cargile*, 121 Ohio St.3d 1208, 2009-Ohio-477, 901 N.E.2d 1289, *State v. Lester*, 121 Ohio St.3d 1209, 2009-Ohio-478, 901 N.E.2d 1290, and *State v. Rohrbaugh*, 121 Ohio St.3d 1210, 2009-Ohio-479, 901 N.E.2d 1291, we noted that county prosecuting attorneys have a clear duty to comply with S.Ct.Prac.R. XIV(2)(A)(3), and we put county prosecuting attorneys and their staffs on notice that failure to comply with the requirements of S.Ct.Prac.R. XIV(2)(A)(3) may result in the dismissal of a notice of appeal.

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{¶ 3} In this case, there was an unquestioned failure of the Mahoning County Prosecuting Attorney to comply with the requirements of S.Ct.Prac.R. XIV(2)(A)(3). Compliance with those requirements is not optional.

{¶ 4} Accordingly, the motion to strike is granted. The notice of appeal is stricken, and the cause is dismissed.

MOYER, C.J., and PFEIFER, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

LUNDBERG STRATTON, J., dissents and would hold the cause until the Mahoning County Prosecuting Attorney complies with S.Ct.Prac.R. XIV(2)(A)(3).

Paul J. Gains, Mahoning County Prosecuting Attorney, and Gabriel M. Wildman and Ralph Rivera, Assistant Prosecuting Attorneys, for appellant.

Timothy Young, Ohio Public Defender, and Stephen P. Hardwick, Assistant Public Defender, for amicus curiae, Ohio Public Defender.
