

OPINIONS OF THE SUPREME COURT OF OHIO

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Office of Disciplinary Counsel v. King.

[Cite as Disciplinary Counsel v. King (1993), Ohio St.3d .]

Attorneys at law -- Misconduct -- Public reprimand -- Conduct adversely reflecting on fitness to practice law --Threatening criminal prosecution solely to obtain an advantage in a civil matter -- Retroactively filing certificates of registration.

(No. 93-867 -- Submitted June 15, 1993 -- Decided September 8, 1993.)

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 92-68.

A complaint by the Office of Disciplinary Counsel was filed before the Board of Commissioners on Grievances and Discipline of the Supreme Court on December 7, 1992, charging respondent, Barry King of Cleveland, Ohio, Attorney Registration No. 0029054, with two counts of misconduct. The complaint alleged that respondent's conduct violated, inter alia, DR 1-102(A)(6) (conduct adversely reflecting on his fitness to practice law), 7-105 (threatening criminal prosecution solely to obtain an advantage in a civil matter), and Gov. Bar R. VI(1) (retroactively filing certificates of registration). Respondent's answer of December 30, 1992 denied that he had violated the Code of Professional Responsibility or Gov. Bar R. VI(1).

On March 24, 1993 the parties entered into stipulations and recommendation for sanctions, as well as a waiver of the hearing scheduled for April 2, 1993. A panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court considered the stipulations and recommendation, made findings of fact and conclusions of law, and adopted the recommendation of the parties that respondent be publicly reprimanded.

The panel found that respondent had been retained by Elizabeth Sudberry in a forcible entry and detainer action against her mother-in-law, Garnet Major, a controversy between family members over ownership of real estate. On the day before trial, counsel for Major received a letter from respondent which stated, in part:

"The report of Anne M. Gelson clearly shows that your client has committed felony offenses of conversion, fraud and theft among others. I strongly suggest that she dismiss her claims and either pay Ms. Sudberry the rent due or vacate the premises immediately.

"Please be assured that unless Ms. Sudberry is reimbursed for her expenses and the loss of property, she will bring to the attention of the Prosecutors' Office the enclosed documents for the purpose of seeing criminal prosecution. Not only will she involve Garnet Major, but she will seek the prosecution of Ms. Major's sister who we believe notarized one of the documents and all other individuals who were involved.

"I urge you to strongly suggest to your client the folly in continuing this case."

Counsel for Major considered that letter a threat of criminal prosecution and, accordingly, on the day of trial, he spoke with respondent about it. Respondent reiterated that he would contact the prosecutor's office unless Major did as requested in the letter.

The parties stipulated, and the panel found, that respondent's conduct violated DR 1-102(A)(6) and 7-105, and Gov. Bar R. VI(1), in that he paid his attorney registration fees for the 1985-1987 biennium one and one-half months late and his 1987-1989 fees more than five and one-half months late.

The board adopted the findings of fact and conclusions of law of the panel and recommended that respondent be publicly reprimanded and the costs of these proceedings be taxed to respondent.

J. Warren Bettis, Disciplinary Counsel, and Sally Ann Steuk, Assistant Disciplinary Counsel, for relator.

James Draper, for respondent.

Per Curiam. We adopt the findings of fact and recommendations of the board. Respondent, Barry King, is hereby publicly reprimanded. Costs taxed to respondent.

Judgment accordingly.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.