

OPINIONS OF THE SUPREME COURT OF OHIO

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Office of Disciplinary Counsel v. Crowley.

[Cite as Disciplinary Counsel v. Crowley (1994), Ohio St. 3d .]

Attorneys at law -- Misconduct -- Indefinite suspension -- Misappropriation of funds from law firm.

(No. 93-2537 -- Submitted May 10, 1994 -- Decided July 13, 1994.)

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 93-23.

On June 21, 1993, relator, Office of Disciplinary Counsel, charged respondent, James Tyner Crowley of Waite Hill, Ohio, Attorney Registration No. 0021541, with violations of DR 1-102(A)(3) (illegal conduct involving moral turpitude); 1-102(A)(4) (misconduct involving fraud, deceit, dishonesty or misrepresentation); and 1-102(A)(6) (conduct that adversely reflects on the fitness to practice law). The matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court on October 29, 1993.

The parties stipulated to the facts underlying the charges against respondent. The stipulations stated, in part:

"1. Respondent \* \* \* is an attorney at law, admitted to practice in the State of Ohio on November 2, 1968.

"2. In January of 1977, Respondent became a partner with the law firm of Thompson, Hine & Flory, Cleveland, OH, and in 1991, was appointed Chairman of the Litigation Section.

"3. In May of 1992, a discrepancy was discovered in one of the Respondent's client expense accounts, which revealed that Respondent had double billed for an expense. To cover legitimate expenses, Respondent would request cash advances, then later turn in credit card receipts for the same expense. In some cases, Respondent \* \* \* would materially alter the credit card total, making his second reimbursement even more than the actual expense.

"4. The firm of Thompson Hine & Flory conducted an investigation into Respondent's irregular expense activities, finding that such conduct occurred since 1990, and in one client's case it dated to 1987.

"5. Improper expense reinbursements were made to the

Respondent from the accounts of at least ten (10) different clients. Several clients who were billed for Respondent's improper expenses were given cash refunds totalling in excess of Fifteen Thousand Dollars (\$15,000.00). In at least two (2) other client cases, discrepancies were discovered before billings on the improper expenses were sent out, but after Respondent had been paid a total of over Twenty Thousand Dollars (\$20,000.00). And, in over five (5) other client's [sic] matters, they were billed for Respondent's improper expenses for a total of in excess of One Hundred and Fifty Thousand Dollars (\$150,000.00). Thompson, Hine & Flory credited the accounts of these clients for the improper billings.

"6. Respondent \* \* \* received over Two Hundred Thousand Dollars (\$200,000.00) from Thompson, Hine & Flory based upon his improper expense reimbursement requests. After setting off Respondent's capital account and share of profits, the net loss incurred by Thompson, Hine & Flory is approximately One Hundred Thirty Thousand Dollars (\$130,000.00).

"To date, Respondent has not reimbursed Thompson, Hine & Flory for their loss. Effective May of 1992, Respondent resigned his position with the firm, and became associated with another law firm."

The panel found that respondent violated DR 1-102(A) (4) and (6), the misconduct to which the parties stipulated. As respondent misappropriated funds from his former law firm, the panel further found a violation of DR 1-102(A) (3). Before recommending any disciplinary measures, the panel considered respondent's testimony that he stole to finance his mother's medical care. It also considered testimony from some of respondent's clients and colleagues, all of whom described him as an accomplished litigator.

The panel recommended that respondent be suspended from the practice of law for a period of two years, with one of these years being suspended on the conditions that (1) he agree in writing within the first year to make restitution to Thompson, Hine & Flory, and (2) that he commit no further misconduct. The board adopted the panel's findings; however, it increased the recommended sanction to an indefinite suspension.

Geoffrey Stern, Disciplinary Counsel, and Sally Ann Steuk, Assistant Disciplinary Counsel, for relator.

Duvin, Cahn, Barnard & Messerman and Gerald A. Messerman, for respondent.

Per Curiam. We concur in the board's findings of misconduct. In addition, the board increased the sanction recommended by the panel because of "the calculated, deliberate manner in which Respondent conducted and concealed his fraudulent schemes, his gross abuse of a position of trust and responsibility for personal gain, the amount of the theft, the length of time over which the thefts occurred and a concern that Respondent's testimony, offered in mitigation and justification of the thefts, instead demonstrated a fundamental lack of appreciation for lawyers' ethical obligations to the profession and the public."

We agree with this assessment of respondent's misconduct and that indefinite suspension is the appropriate sanction. Accordingly, James Tyner Crowley is hereby indefinitely suspended from the practice of law in Ohio. Costs taxed to respondent.

Judgment accordingly.

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

Wright, J., dissents.

Wright, J., dissenting. I would follow the recommendation of the panel and impose a two-year suspension, with one of the years being suspended on the conditions described in the majority opinion.

Accordingly, I respectfully dissent.