

OFFICE OF DISCIPLINARY COUNSEL v. BOYLAN.

[Cite as *Disciplinary Counsel v. Boylan* (1999), 85 Ohio St.3d 115.]

Attorneys at law — Misconduct — Indefinite suspension — Neglect of an entrusted legal matter — Failure to cooperate with disciplinary investigation.

(No. 98-2637 — Submitted January 27, 1999 — Decided March 17, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 98-38.

On June 8, 1998, relator, Office of Disciplinary Counsel, filed a two-count complaint charging that respondent, Michael M. Boylan of Elyria, Ohio, Attorney Registration No. 0010201, violated several Disciplinary Rules and a Rule for the Government of the Bar. Relator alleged in count one that in 1994, the Lorain County Court of Common Pleas appointed respondent as counsel for Thomas Flood in a criminal case. In September 1995, the common pleas court convicted Flood on two counts of felonious assault and sentenced him. Respondent filed a notice of appeal on behalf of Flood and was appointed his attorney for purposes of appeal. Although respondent was notified that the transcript had been filed and that if he failed to file his brief by August 15, 1996, the appeal would be dismissed, respondent did not file a brief and Flood's appeal was consequently dismissed with prejudice. Respondent failed to notify Flood that his appeal had been dismissed.

In count two, relator alleged that after Flood filed a grievance with relator, relator issued two letters of inquiry requiring respondent to submit a response to the grievance. Respondent received the letters but did not respond to them. The Board of Commissioners on Grievances and Discipline of the Supreme Court ("board") then issued a *subpoena duces tecum* requiring respondent to appear and

testify at a deposition in April 1998. A deputy sheriff personally served respondent with the subpoena, but respondent failed to appear at the deposition. After being contacted by relator, respondent ultimately agreed to attend a second deposition.

The board served the complaint on respondent, but respondent did not file an answer. On September 18, 1998, relator filed a motion for default judgment.

A panel of the board heard the matter and, based on the complaint, motion, and attached exhibits, the panel found the facts as alleged and found that respondent was in default. The panel did not specify the violations committed by respondent but recommended that he be indefinitely suspended from the practice of law. The panel emphasized that in respondent's deposition, which was attached to relator's motion for default judgment, respondent failed to admit or explain the alleged misconduct, failed to explain his failure to cooperate in the disciplinary investigation, and displayed a lack of remorse for his misconduct.

The board adopted the findings, conclusions, and recommendation of the panel, and further specified that the panel had adopted as its conclusions of law those set forth in relator's complaint.¹ By adopting the conclusions in relator's complaint, the board found that respondent's conduct in failing to file an appellate brief for Flood violated DR 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice), 1-102(A)(6) (engaging in conduct that adversely reflects on fitness to practice law), 6-101(A)(3) (neglecting an entrusted legal matter), 7-101(A)(1) (intentionally failing to seek client's lawful objectives through reasonably available means permitted by law and the Disciplinary Rules), 7-101(A)(2) (intentionally failing to carry out an employment contract for professional services), and 7-101(A)(3) (intentionally prejudicing or damaging client during course of professional relationship). The board also found that

respondent's conduct after Flood filed a grievance violated DR 1-102(A)(6) (engaging in conduct adversely reflecting on lawyer's fitness to practice law) and Gov.Bar R. V(4)(G) (failing to cooperate in investigation of a disciplinary proceeding).

Jonathan E. Coughlan, Disciplinary Counsel, and *Kenneth R. Donchatz*, Assistant Disciplinary Counsel, for relator.

Michael M. Boylan, *pro se*.

Per Curiam. We adopt the findings, conclusions, and recommendation of the board. The sanction of an indefinite suspension from the practice of law “is especially fitting * * * where neglect of a legal matter is coupled with a failure to cooperate in the ensuing disciplinary investigation.” *Warren Cty. Bar Assn. v. Lieser* (1997), 79 Ohio St.3d 488, 490, 683 N.E.2d 1148, 1149; see, also, *Akron Bar Assn. v. Barnett* (1997), 80 Ohio St.3d 269, 685 N.E.2d 1230. The record establishes that respondent exhibited a cavalier attitude toward both the representation of his client and the ensuing disciplinary investigation. Respondent is indefinitely suspended from the practice of law in Ohio. Costs taxed to respondent.

Judgment accordingly.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

FOOTNOTE:

1. As noted previously, the panel report does not contain an express statement adopting the conclusions of the complaint.