

DAYTON BAR ASSOCIATION v. LEWIS.

[Cite as *Dayton Bar Assn. v. Lewis*, 1999-Ohio-418.]

Attorneys at law—Misconduct—Indefinite suspension—Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation—Engaging in conduct adversely reflecting on fitness to practice law—Failing to promptly notify client of receipt of client’s funds—Failing to maintain complete records of all of client’s funds—Failing to deposit all funds paid by client into one or more identifiable bank accounts in which no funds of lawyer have been deposited—Engaging in conduct involving moral turpitude—Engaging in conduct prejudicial to the administration of justice—Failing to file federal, state, and local income tax returns—Previous stayed suspension.

(No. 98-1707—Submitted October 28, 1998—Decided February 17, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-4.

{¶ 1} On December 3, 1997, relator, Dayton Bar Association, filed an amended complaint charging respondent, Gordon H. Lewis of Dayton, Ohio, Attorney Registration No. 0023561, with the violation of several Disciplinary Rules in his representation of a client, Tina M. Smith, and in his failure to file federal, state, and local income tax returns. Respondent answered and the matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court (“board”).

{¶ 2} The panel found that prior to June 1995, Tina Smith engaged respondent to file a Chapter 13 bankruptcy case. The documents filed in the case show that the Chapter 13 fee to be paid through the plan was \$800; however, Smith

later testified that she was not aware of the amount of the fee. Smith's case was dismissed in October 1995 because she did not make payments contemplated by her Chapter 13 plan. In December 1995, respondent received a refund check from the bankruptcy trustee payable to Smith in the amount of \$563.50. Respondent claims that on December 19, 1995, he called Smith, who was then living in Florida, and they agreed that he should keep the money as his fee, which he said had been earned but not paid. Respondent claimed that Smith gave him telephone authority to cash the check; hence, he had his secretary endorse it by signing Smith's name and then deposit it into his trust account. However, two weeks later, Smith called respondent and, after arguing about the fee, Smith and respondent agreed that \$400 should be sent to Smith and that only the balance should be applied to respondent's attorney fee. Respondent did not pay the \$400 to Smith until May 15, 1996, transmitting the money by means of two money orders for \$200 each. From December to May 1996, respondent made several withdrawals from his trust account and, at one point, the account balance was under \$85. Respondent did not maintain records of deposits to or disbursements from his trust account.

{¶ 3} The panel also found that respondent filed a personal Chapter 13 bankruptcy case for himself in May 1996. Respondent, who had failed to file federal, state, and local tax returns for the years 1991 through 1996, testified in an appearance before the bankruptcy trustee that he had received extensions to file from the tax authorities. He then failed to comply with the bankruptcy court's order to file the returns on or before December 10, 1996. Later, by failing to respond to relator's requests for admissions, respondent admitted that he had received no extensions to file tax returns. No criminal charges were brought against respondent with respect to his failure to file tax returns.

{¶ 4} The panel concluded that with respect to his representation of Smith, respondent had violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), 1-102(A)(6) (engaging in conduct

that adversely reflects upon the attorney's fitness to practice law), 9-102(B)(1) (failing to promptly notify a client of the receipt of her funds), 9-102(B)(3) (failing to maintain complete records of all funds of the client), and 9-102(A) (failing to deposit all funds paid by a client to a lawyer in one or more identifiable bank accounts in which no funds of the lawyer are deposited).

{¶ 5} With respect to the counts relating to respondent's tax returns, the panel concluded that respondent had violated DR 1-102(A)(3) (engaging in conduct involving moral turpitude), (4), (5) (engaging in conduct prejudicial to the administration of justice), and (6). The panel also noted that respondent was previously suspended for two years with the entire suspension stayed pending successful completion of a two-year probationary period. *Dayton Bar Assn. v. Lewis* (1993), 68 Ohio St.3d 5, 623 N.E.2d 23. The panel recommended that respondent be indefinitely suspended from the practice of law. The board adopted the findings, conclusions, and recommendation of the panel.

Howard P. Krisher and Nikki J. Palmer, for relator.

Herbert Creech, for respondent.

Per Curiam.

{¶ 6} We adopt the findings, conclusions, and recommendation of the board.

{¶ 7} Respondent's conduct, including his failure to file tax returns coupled with his disregard of the bankruptcy judge's order to file them, warrants serious disciplinary consequences.

{¶ 8} Respondent is hereby indefinitely suspended from the practice of law in Ohio. Costs are taxed to respondent.

*Judgment
accordingly.*

SUPREME COURT OF OHIO

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