

CLEVELAND BAR ASSOCIATION v. STEBBINS.

[Cite as *Cleveland Bar Assn. v. Stebbins*, 1999-Ohio-430.]

Attorneys at law—Misconduct—One-year suspension with entire suspension stayed—Misappropriating client funds.

(No. 98-2222—Submitted December 16, 1998—Decided March 3, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 96-101.

{¶ 1} In December 1996, relator, Cleveland Bar Association, filed a complaint charging respondent, Theodore Stebbins of Cleveland, Ohio, Attorney Registration No. 0023658, with violating several Disciplinary Rules in connection with his handling of a personal injury claim. After respondent filed an answer, a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court (“board”) conducted a hearing on the matter.

{¶ 2} Based on the admissions in respondent’s answer and the testimony introduced at the hearing, the panel found that Janyce Anderson retained respondent to represent her in a personal injury matter arising from a January 1987 automobile accident. In September 1989, respondent settled Anderson’s personal injury claims for \$20,000. As agreed by respondent and Anderson, respondent withheld \$4,762.10 of the settlement, which Anderson instructed respondent to use to pay the medical bills that she had incurred for treatment of her injuries.

{¶ 3} Respondent, however, failed to use the money to pay Anderson’s medical bills. Instead, he deposited the money into his personal bank account. In 1995, Anderson began receiving medical bills for the expenses that she had instructed respondent to pay. When she inquired about these bills, respondent assured her that they had been paid.

{¶ 4} In September 1995, Anderson filed a lawsuit to recover the money respondent had retained. In December 1995, the case was settled, and respondent paid Anderson \$5,612.10, which included the full amount of Anderson's unpaid medical bills, as well as attorney fees and court costs incurred by Anderson in instituting the suit.

{¶ 5} The panel concluded that respondent's conduct violated DR 1-102(A)(6) (engaging in conduct that adversely reflects on lawyer's fitness to practice law), 6-101(A)(3) (neglecting an entrusted legal matter), 9-102(B)(3) (failing to maintain complete records of all client funds coming into lawyer's possession and render appropriate accounts to client regarding them), and 9-102(B)(4) (failing to promptly pay to the client upon request funds in the possession of the lawyer that the client is entitled to receive).

{¶ 6} The panel found in mitigation that respondent's misconduct was an isolated incident in an otherwise unblemished and distinguished legal career; that he had a reputation as an able attorney and truthful person; that he had experienced severe health problems during some of this period, eventually leading to his receiving a liver transplant; and that he regularly attended Alcoholics Anonymous meetings. The panel also emphasized that respondent had made restitution to Anderson; that he was remorseful; and that because of numerous office moves during the pertinent period, he lost files and did not receive many of the bills sent by Anderson's medical providers.

{¶ 7} Based on the foregoing, the panel recommended that respondent be publicly reprimanded. The board adopted the findings, conclusions, and recommendation of the panel.

Gallagher, Sharp, Fulton & Norman and Timothy J. Fitzgerald; Gold, Rotatori & Schwartz Co., L.P.A., and Brian P. Downey, for relator.

Bernard, Haffey & Bohnert Co., L.P.A., and J. Ross Haffey, for respondent.

Per Curiam.

{¶ 8} We adopt the findings and conclusions of the board. Nevertheless, we disagree with the board's recommended sanction that respondent be publicly reprimanded.

{¶ 9} Respondent misappropriated client funds by placing settlement proceeds that he had agreed to use to pay his client's medical providers into his personal bank account for a period of over six years. In general, "[t]he continuing public confidence in the judicial system and the bar requires that the strictest discipline, [*i.e.*, disbarment] be imposed in misappropriation cases." *Cleveland Bar Assn. v. Belock* (1998), 82 Ohio St.3d 98, 100, 694 N.E.2d 897, 899.

{¶ 10} Although we agree that the mitigating factors, *i.e.*, restitution, no pattern of misconduct, and no evidence of deliberate conversion of client funds by respondent, warrant a lesser penalty than disbarment, we believe that the sanction should be more severe than a public reprimand. In other cases involving violations of DR 9-102(B)(3) and 9-102(B)(4) in which mitigating factors existed, we have imposed a one-year suspension or a one-year-stayed suspension. See *Erie-Huron Counties Joint Certified Grievance Comm. v. Miles* (1996), 76 Ohio St.3d 574, 669 N.E.2d 831 (mitigating evidence included character testimony, evidence that misconduct was limited to two incidents, and agreement to provide restitution); *Cincinnati Bar Assn. v. Warren* (1993), 66 Ohio St.3d 334, 612 N.E.2d 1223. Accordingly, we suspend respondent from the practice of law for one year, with the entire suspension stayed. Costs taxed to respondent.

Judgment accordingly.

DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER and LUNDBERG STRATTON, JJ.,
concur.

MOYER, C.J., and COOK, J., dissent.

SUPREME COURT OF OHIO

COOK, J., dissenting.

{¶ 11} I would suspend the respondent from the practice of law for one year.

MOYER, C.J., concurs in the foregoing dissenting opinion.
