

OFFICE OF DISCIPLINARY COUNSEL v. WISE.

[Cite as *Disciplinary Counsel v. Wise*, 1999-Ohio-457.]

Attorneys at law—Misconduct—Indefinite suspension—Misappropriation of client funds.

(No. 98-2213—Submitted December 16, 1998—Decided March 24, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 98-20.

{¶ 1} When Elaine F. Cestone moved from Ohio to Mississippi in 1994, she and respondent, James Russell Wise of Youngstown, Ohio, Attorney Registration No. 0039046, agreed that he would be a joint signatory on her bank accounts. Cestone also gave respondent control over her investment accounts with the understanding that he would pay the majority of her expenses from the bank and investment accounts. Between March 1994 and May 1996, respondent removed over \$22,000 from Cestone's accounts, which he used, without her knowledge or authorization, to pay his own obligations.

{¶ 2} In April and May 1996, respondent deposited \$16,500 and \$5,000 of his own funds into his client trust account. When Cestone asked respondent to stop representing her, respondent withdrew \$21,100 from the trust account and paid it to Cestone.

{¶ 3} On April 6, 1998, relator, Office of Disciplinary Counsel, filed a complaint alleging these facts and charging respondent with disciplinary violations. Respondent answered, and the matter was submitted on stipulations to a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board").

{¶ 4} The panel found the facts as stipulated and concluded that by improperly removing funds from Cestone's accounts, respondent violated DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and (6) (a lawyer shall not engage in conduct that adversely reflects upon the lawyer's fitness to practice law). The panel further concluded that by commingling his own funds with those in his client trust account, respondent violated DR 9-102(A) (all funds of clients paid to a lawyer shall be deposited in identifiable bank accounts and no fund belonging to the lawyer shall be deposited therein).

{¶ 5} The panel stated that it received in mitigation respondent's testimony, testimony from attorneys, and numerous letters on behalf of respondent. The panel also found that respondent cooperated with relator and the panel and immediately reimbursed Cestone when asked to do so. The panel recommended that respondent be indefinitely suspended from the practice of law. The board adopted the findings, conclusions, and recommendation of the panel.

Jonathan E. Coughlan, Disciplinary Counsel, and *Lori J. Brown*, First Assistant Disciplinary Counsel, for relator.

J. Gerald Ingram, for respondent.

Per Curiam.

{¶ 6} The normal sanction for misappropriation of client funds is disbarment. *Disciplinary Counsel v. Connaughton* (1996), 75 Ohio St.3d 644, 645, 665 N.E.2d 675, 676, and cases cited therein. However, on some occasions because of mitigating circumstances, we have given weight to a board recommendation of a lesser sanction. *Disciplinary Counsel v. Kurtz* (1998), 82 Ohio St.3d 55, 693 N.E.2d 1080. We do so in this case. Respondent is hereby indefinitely suspended from the practice of law in Ohio. Costs are taxed to respondent.

January Term, 1999

Judgment accordingly.

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