

COLUMBUS BAR ASSOCIATION v. EMERSON.

[Cite as *Columbus Bar Assn. v. Emerson* (1999), ___ Ohio St.3d ___.]

Attorneys at law — Misconduct — Indefinite suspension — Violating a Disciplinary Rule — Engaging in conduct adversely reflecting on fitness to practice law — Neglect of an entrusted legal matter — Failing to carry out employment contract — Prejudicing client during course of professional relationship — Engaging in conduct prejudicial to the administration of justice — Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation — Neglecting or refusing to assist or testify in a disciplinary investigation or hearing.

(No. 98-1744 — Submitted September 29, 1998 — Decided January 13, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-13.

On February 18, 1997, relator, Columbus Bar Association, filed a four-count complaint charging respondent, Wesley C. Emerson of Columbus, Ohio, Attorney Registration No. 0059853, with several violations of the Disciplinary Rules and Gov.Bar R. V(4)(G). When respondent failed to file an answer, relator filed a motion for default judgment. Respondent then filed a memorandum in opposition as well as a motion for leave to file an answer. The Board of Commissioners on Grievances and Discipline of the Supreme Court (“board”) granted respondent leave to file an answer. In his answer, respondent denied that his conduct violated any Disciplinary Rule or Gov.Bar R. V(4)(G).

On November 12, 1997, relator filed an amended, five-count complaint charging respondent with violations of the Disciplinary Rules and Gov.Bar R. V(4)(G). On January 8, 1998, relator filed a second amended, six-count complaint against respondent. In April 1998, the board scheduled a hearing on the second

amended complaint for June 18, 1998 before a panel of the board. After failing to file an answer to the first amended complaint, respondent filed a motion three days before the scheduled hearing date to continue the hearing based on a trial conflict. When the board denied his motion, respondent filed a motion for reconsideration and an untimely answer in which he generally denied the allegations of relator's first amended complaint. Respondent filed no response to relator's second amended complaint or to relator's request for the production of documents. The panel proceeded with the scheduled hearing, and respondent did not appear or submit evidence.

The panel made the following findings. Respondent represented the plaintiff in a federal district court case. He did not appear for a final pretrial conference in the case, and court representatives were unable to reach him by telephone or through an employee sent to respondent's law office. At a December 1995 hearing to determine whether respondent should receive a sanction, the federal district court judge noted that the defendant's counsel had advised him that respondent had failed to respond to repeated telephone messages concerning the case and that defendant's counsel's most recent telephone calls had been intercepted by an answering device reporting that respondent's voice mail was full. In January 1996, the judge fined respondent \$100 and ordered him to contact relator, report to relator the circumstances leading to the sanctions, and cooperate with relator on plans or programs to help him avoid these problems in the future. Respondent, however, never contacted relator.

In July 1995, Ralph K. Farrell paid respondent a \$1,500 retainer to represent him in a postdecree custody matter and gave respondent all of the documents relating to his divorce. Respondent advised Farrell that the court would begin hearings in the case in September 1995. After attempting unsuccessfully about

twelve times to reach respondent, Farrell discharged him in the fall of 1995 and requested that the documents be returned and the retainer be refunded. Respondent did not return the fees or the documents to Farrell. Respondent also never filed anything on behalf of Farrell.

In 1994, Ronald Goldstein obtained an \$11,126 judgment against Mark Tracton. When Tracton filed for bankruptcy, Goldstein's attorney referred him to respondent. Respondent agreed to file an adversary complaint on behalf of Goldstein in order to prevent his monetary judgment from being discharged in bankruptcy. Respondent failed to timely file the complaint, and when he filed it, he failed to serve a copy on Tracton's counsel. When respondent ultimately obtained proper service, the bankruptcy court dismissed the adversary complaint because of respondent's failure to timely seek relief on behalf of Goldstein.

In August 1995, Kermit Day retained respondent to represent him for claims arising from an automobile accident. Despite respondent's assurances that he was handling the case and had contacted an insurance company on Day's behalf, he actually did nothing for Day. Day discharged respondent in March 1997.

In May 1997, Joseph Poliziani paid respondent an initial retainer of \$750 to represent him in modifying a postdecree shared-parenting plan, and later paid him an additional \$350. Respondent misrepresented the status of the case by reporting that he had taken actions that he had not performed. Respondent also failed to respond to letters and telephone calls from Poliziani concerning his case. After Poliziani terminated respondent's representation in September 1997, respondent failed to comply with his demands to turn over the case file and return a portion of the retainer. Respondent further failed to cooperate with the disciplinary investigation concerning the counts set forth in the second amended complaint.

The panel concluded that respondent had committed six violations of DR 1-102(A)(1) (violating a Disciplinary Rule), six violations of DR 1-102(A)(6) (engaging in conduct that adversely reflects on his fitness to practice law), five violations of DR 6-101(A)(3) (neglecting a legal matter), five violations of DR 7-101(A)(1) (failing to seek the lawful objectives of his client), five violations of DR 7-101(A)(2) (failing to carry out an employment contract), five violations of DR 7-101(A)(3) (prejudicing a client during the course of the professional relationship), four violations of DR 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice), and two violations of DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). The panel also found that respondent had violated Gov.Bar R. V(4)(G) (neglecting or refusing to assist or testify in a disciplinary investigation or hearing). The panel accepted relator's recommendation that respondent be suspended indefinitely from the practice of law in Ohio.

The board adopted the findings, conclusions, and recommendation of the panel.

Vorys, Sater, Seymour & Pease and Julie A. Davis; Schottenstein, Zox & Dunn and James E. Davidson; and Bruce A. Campbell, for relator.

Wesley C. Emerson, pro se.

Per Curiam. We adopt the findings, conclusions, and recommendation of the board. Respondent's pattern of neglect and misrepresentation coupled with his cavalier attitude towards the disciplinary proceedings establishes his present unfitness to practice law in Ohio. Respondent is hereby indefinitely suspended from the practice of law in Ohio.

Judgment accordingly.

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

COOK and LUNDBERG STRATTON, JJ., dissent.

LUNDBERG STRATTON, J., dissenting. I dissent from the majority's decision to indefinitely suspend the respondent and would disbar the respondent. His problem, time after time, of obtaining retainers and utterly failing to do anything about the matter, or to return files and retainer upon discharge, is akin to theft. Respondent's failure to cooperate in the disciplinary process or to present any mitigation evidence to explain his abusive course of conduct further supports that he is totally unfit to continue the practice of law in this state. Therefore, I would disbar the respondent.

COOK, J., concurs in the foregoing dissenting opinion.