DISCIPLINARY COUNSEL *v.* ESTADT.

[Cite as *Disciplinary Counsel v. Estadt,* 172 Ohio St.3d 391, 2023-Ohio-2347.]

Attorneys—Misconduct—Violations of the Rules of Professional Conduct—Six-month suspension.

(No. 2023-0177—Submitted March 21, 2023—Decided July 12, 2023.)

ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2022-014.

Per Curiam.

{¶ 1} Respondent, John Robert Estadt, of St. Clairsville, Ohio, Attorney Registration No. 0016397, was admitted to the practice of law in Ohio in 1983. In a May 2022 complaint, relator, disciplinary counsel, alleged that Estadt violated five professional-conduct rules in his role as the administrator of a probate estate, the assets of which consisted entirely of unclaimed funds held by the state. Specifically, relator alleged that Estadt engaged in dishonest conduct that was prejudicial to the administration of justice by allowing his personal interests to interfere with his ability to carry out an appropriate course of action for the estate and by making a false statement to a tribunal in an effort to charge a clearly excessive fee equal to the entire value of the estate.

{¶ 2} The parties entered into stipulations of fact and submitted 56 stipulated exhibits to the Board of Professional Conduct. A three-member panel of the board conducted a hearing, during which it heard testimony from seven witnesses, including Estadt. The panel issued a report finding that Estadt committed the charged misconduct and recommending that he be suspended from the practice of law for six months. The board adopted the panel's findings of fact, conclusions of law, and recommended sanction. No objections have been filed.

{¶ 3} After a thorough review of the record, we adopt the board's findings of misconduct and the recommended sanction.

MISCONDUCT

Estadt's Representation of the Rees Estate

{¶ 4} In April 2019, a "finder" registered with the Ohio Department of Commerce, Division of Unclaimed Funds, asked Estadt to assist him with a probate estate in Belmont County. *See generally* R.C. Chapter 169. The finder had discovered unclaimed funds held by the state on behalf of Morris W. Rees ("Rees"), a resident of Martins Ferry who died intestate on January 16, 2010. The unclaimed funds consisted of stock, dividends, bank accounts, life-insurance-premium funds, and the proceeds of a life-insurance policy under which Rees was the insured and his mother, Nell M. Rees ("Nell"), who had predeceased him, was the beneficiary. The total value of those assets was $42,834.85.

{¶ 5} Estadt agreed to open an estate for receipt and distribution of the unclaimed funds and to pay the finder 10 percent of the amount recovered. Estadt immediately began internal billing through his firm, Hanlon, Estadt, McCormick, & Schramm Co., L.P.A.

{¶ 6} In late August 2019, Estadt wrote an engagement letter to himself. The letter noted that Rees had no known next of kin, outlined the necessary steps for administration of the estate, and set forth the hourly rates for the firm's representation—$300 for himself, $200 for associate attorneys, and $100 for paralegals.[1] Estadt signed the letter on behalf of the law firm and a second time as the client and administrator of the estate. Estadt also filed an application for authority to administer Rees's estate, signing his own name as the applicant and signing the name of Erik A. Schramm Jr., an associate attorney and a son of a named

1. Estadt opened a separate estate to collect the proceeds of the life-insurance policy for which Nell was the named beneficiary and then transferred those funds to the Rees estate. He billed all services related to the unclaimed funds through the Rees estate.

partner in the firm, as the attorney for the estate. The probate court appointed Estadt as the administrator of Rees's estate in October 2019.

{¶ 7} In early September 2019, after Estadt asked Schramm to determine whether Rees had any next of kin, a paralegal generated a LexisNexis report on Rees. The report failed to identify any next of kin, and Schramm reported that result to Estadt. Neither Estadt nor Schramm took any other action at that time to identify any next of kin other than to have the probate court publish a notice of the hearing on the appointment of the fiduciary.

{¶ 8} In March and April 2021, the firm generated prebills showing that the firm had performed work worth approximately $20,000 on behalf of the estate and Estadt asked Schramm to review them. Of the 85.3 hours, 54 were attributed to Estadt, 9 to Schramm, and 21.6 to paralegals. Estadt then made handwritten adjustments to the hourly rates, increasing them by $100 an hour for each of the attorneys and the paralegals. He also added 8.4 hours for himself and 9 hours for his paralegal for work purportedly performed between April 10 and 14. Estadt's revisions increased the bill by $13,710 to a new total of $34,050, but after distributions for the finder's fee, other expenses, and a Medicaid lien, the value of Rees's estate was just $31,444.20. Estadt therefore proposed a $2,605.80 "write-off" or "courtesy discount" to match his attorney fees to the estate's assets.

{¶ 9} On April 15, Estadt filed an application to pay attorney fees of $31,444.20, representing that the fees were necessary, reasonable, and beneficial to the estate. The invoice submitted with that application contained a description of the services provided without disclosing the number of hours worked or the hourly rates. Estadt signed the fee application as administrator of the estate, filled in the notary jurat, and signed it without having it notarized. He also signed Schramm's name as the attorney for the estate to the proposed judgment entry, acknowledging that the facts stated in the application were true. Estadt also filed a final fiduciary's account and a certification that he had served the account on Rees's heirs, but the

space for information about the heirs was blank because, at that time, he had not identified any. Estadt signed both of those documents as the fiduciary and again signed Schramm's name as attorney for the fiduciary.

{¶ 10} On May 18, 2021, Schramm and the firm's shareholders (including Schramm's father) confronted Estadt about his decision to increase the hourly rates charged to the Rees estate and his unauthorized signing of Schramm's name to the probate-court filings. They asked Estadt to sign a revised application for attorney fees based on the original April 9 prebill total of $20,340. Although Estadt eventually agreed to sign the form, the shareholders terminated his relationship with the firm and had him escorted from the premises. Following the May 18 meeting, Estadt terminated the firm's representation of the Rees estate and instructed the firm not to file the revised fee application.

{¶ 11} After obtaining information that raised questions about the reasonableness and appropriateness of the attorney fees indicated on the original fee application, the probate court issued a judgment entry staying the enforcement of its order approving those fees and set the matter for a hearing. Before that hearing, Estadt apparently conducted additional research regarding Morris's next of kin and filed an amended form identifying Rees's cousin, Patricia Suriano, as an heir entitled to inherit under R.C. 2105.06 (statute of descent and distribution).

{¶ 12} At the hearing on the application for attorney fees—and again at Estadt's disciplinary hearing—Schramm testified that he did not authorize Estadt to sign his name to the documents filed on behalf of the Rees estate. To the contrary, he testified that he had told Estadt that he did not approve of Estadt's increasing the hourly rates. Before the probate court, Estadt testified that as administrator of the estate, he was the client. He further claimed that he could change the firm's rates for the benefit of the firm—and that he could do so

retroactively—so that the funds "wouldn't have to go back to the unclaimed fund."[2] Furthermore, he acknowledged that he never considered making the rate change strictly prospective, because his goal was to obtain *all* of the estate's funds as fees for the firm.

{¶ 13} Based on the testimony of Estadt, Schramm, and two shareholders in the firm, the probate court issued a judgment entry in which it found that Estadt knowingly, intentionally, and retroactively inflated his attorney fees to an amount equal to the estate proceeds, less the costs and expenses of administration. In addition, the probate court found that Estadt had signed Schramm's name to the proposed judgment entry without his authorization. After considering the factors set forth in Prof.Cond.R. 1.5(a) for determining the reasonableness of attorney fees, the probate court determined that the amount requested was not reasonable or appropriate and that it "grossly exceed[ed] the guideline amount that was in effect under the Local Rules of Court." The probate court authorized $10,268.44 in attorney fees (the standard fee of $1,768.44 per local rule plus $8,500 in extraordinary fees). Estadt did not receive any of that amount even though his efforts after his termination from the firm led to the discovery of Suriano, who received more than $21,000 from the estate.

The Board's Findings of Misconduct

{¶ 14} The panel heard testimony from the probate-court judge assigned to the case, who had direct knowledge of the customary attorney fees in Belmont County. He testified that the "fees that were agreed upon prior to the retroactive modification by Estadt, although on the high end, could pass as customary for services in * * * Belmont County; however, the increase in fees [did] not necessarily result in the same conclusion." Based on that testimony, the board

2. Contrary to Estadt's belief that any remaining funds would be returned to the Division of Unclaimed Funds, R.C. 2105.07 provides that any personal property escheating to an estate is paid to the county treasurer to be applied exclusively to the support of the common schools of the county in which the property is collected.

found that Estadt's $100 retroactive increase in the hourly rates for services provided to the Rees estate constituted an agreement to charge a clearly excessive fee and that Estadt then charged that clearly excessive fee by filing the application for attorney fees that would exhaust the estate's assets. The board therefore concluded that Estadt's conduct violated Prof.Cond.R. 1.5(a) (prohibiting a lawyer from making an agreement for, charging, or collecting an illegal or clearly excessive fee).

{¶ 15} In addition, the board found that Estadt's conduct violated Prof.Cond.R. 1.7(a)(2) (providing that a lawyer's continued representation of a client creates a conflict of interest if there is a substantial risk that the lawyer's ability to represent the client will be materially limited by the lawyer's own personal interests), 3.3(a)(1) (prohibiting a lawyer from knowingly making a false statement of fact or law to a tribunal), 8.4(c) (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice). We adopt these findings of misconduct.

RECOMMENDED SANCTION

{¶ 16} When imposing sanctions for attorney misconduct, we consider all relevant factors, including the ethical duties that the lawyer violated, the aggravating and mitigating factors listed in Gov.Bar R. V(13), and the sanctions imposed in similar cases.

{¶ 17} The board found that three aggravating factors are present in this case—Estadt acted with a dishonest or selfish motive, committed multiple offenses, and refused to acknowledge the wrongful nature of his conduct. *See* Gov.Bar R. V(13)(B)(2), (4), and (7). Estadt maintained that he had lacked the intent to "pass off" his signing of Schramm's name as Schramm's signature because he placed his own initials next to the signature. However, the board found that Estadt could not cure his misrepresentation by initialing his signing of Schramm's name, because he

knew that Schramm had not consented to—and in fact *opposed*—the inflated fee application. Furthermore, the board rejected Estadt's assertion that attorneys who practiced in his former firm had implied authority to sign the names of other attorneys in the firm without their authorization, noting that Schramm and his father both had testified that no such policy existed. During his disciplinary hearing, Estadt testified that he now understands that he cannot sign another attorney's name without that attorney's consent.

{¶ 18} As for mitigating factors, the board found that Estadt had practiced law for 39 years without prior discipline, he had exhibited a cooperative attitude toward the disciplinary proceedings (although the board also found his testimony to be defensive, excusatory, and finger-pointing at others), he had submitted 17 character letters attesting to his good character or reputation, and other penalties had been imposed for his misconduct by virtue of the termination of his relationship with the firm. *See* Gov.Bar R. V(13)(C)(1), (4), (5), and (6).

{¶ 19} Relator recommended that Estadt be suspended from the practice of law for one year with six months stayed, whereas Estadt argued that his conduct warranted a sanction no more severe than a fully stayed one-year suspension. After reviewing nine decisions imposing sanctions ranging from public reprimands to one-year suspensions with six months conditionally stayed for similar acts of misconduct, the board recommends that we suspend Estadt from the practice of law for six months with no stay.

{¶ 20} The board noted that we have publicly reprimanded attorneys who were found to have engaged in dishonest conduct by improperly notarizing documents. *See, e.g., Columbus Bar Assn. v. Dougherty*, 105 Ohio St.3d 307, 2005-Ohio-1825, 825 N.E.2d 1094 (attorney notarized a liquor-license application without witnessing the applicant's signature, which turned out to be a forgery); *Disciplinary Counsel v. Wilson*, 142 Ohio St.3d 439, 2014-Ohio-5487, 32 N.E.3d 426 (attorney signed the name of her granddaughter's mother to an affidavit without

noting that she had signed it with the affiant's authorization, filed it in court, and encouraged the affiant to claim the signature as her own).

{¶ 21} But the misconduct in *Dougherty* and *Wilson* is not as egregious as the misconduct in this case, because neither Dougherty nor Wilson charged a clearly excessive fee or signed another attorney's name to a court filing with knowledge that the other attorney opposed the filing, as Estadt did in this case. Moreover, the board recognized our well-established precedent under which an attorney's pattern of dishonest conduct generally warrants an actual suspension from the practice of law, *see, e.g.*, *Toledo Bar Assn. v. DeMarco*, 144 Ohio St.3d 248, 2015-Ohio-4549, 41 N.E.3d 1237, ¶ 12, citing *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 190, 658 N.E.2d 237 (1995). Although the board acknowledged that we have made exceptions to that rule when there was "an abundance of mitigating evidence," *Disciplinary Counsel v. Markijohn*, 99 Ohio St.3d 489, 2003-Ohio-4129, 794 N.E.2d 24, ¶ 8, it found that Estadt's mitigating evidence does not rise to that level.

{¶ 22} The board also considered several cases in which we imposed partially stayed term suspensions on attorneys for misconduct that included dishonesty, making false statements to a tribunal, and conduct prejudicial to the administration of justice. For example, in *DeMarco*, an attorney made a series of misrepresentations to a court at two separate hearings. DeMarco also falsely denied that he had received and reviewed discovery materials in violation of a strict discovery protocol that authorized a computer expert retained by DeMarco to search the opposing party's electronic devices and turn over potentially relevant documents to the trial judge for an in camera inspection to determine what documents—if any—would be turned over to DeMarco. In fact, the computer expert had given DeMarco a disc containing the documents that he had retrieved from the opposing party's electronic devices without submitting them to the trial judge for in camera inspection. DeMarco showed no remorse until confronted in

court with a voicemail message in which he essentially admitted that he had lied to the court. *Id*. at ¶ 3-6, 10. However, DeMarco cooperated during the disciplinary process and submitted evidence of his good character and reputation. *Id*. at ¶ 9. Finding that his misconduct was an aberration in an otherwise unblemished 45-year legal career, we suspended him from the practice of law for one year with six months stayed on the condition that he engage in no further misconduct. *Id*. at ¶ 15.

{¶ 23} In *Disciplinary Counsel v. Schuman*, 152 Ohio St.3d 47, 2017-Ohio-8800, 92 N.E.2d 850, we imposed a similar sanction on an attorney who made false statements and submitted a fraudulently altered document to a court to collect a guardian-ad-litem fee in a juvenile-custody case. Schuman sought and obtained a default judgment in municipal court for over $6,400 against the child's parents jointly and severally, without disclosing that the juvenile court had approved a fee of just $3,416 and had specifically ordered each parent to pay one-half of that amount. Schuman ultimately collected $7,100 from just one of the parents.

{¶ 24} During his disciplinary hearing, Schuman admitted that he had had multiple opportunities to notify the municipal court of the true nature of the juvenile court's order but that he had continued to perpetrate a fraud on the court in an effort to collect additional funds. We suspended Schuman from the practice of law for one year with six months stayed on the conditions that he commit no further misconduct and complete two continuing-legal-education courses on law-office management. *Id*. at ¶ 19. We also conditioned his reinstatement to the practice of law on his seeking to lawfully set aside the judgment he had fraudulently obtained, and we ordered him to serve a period of monitored probation upon his reinstatement. *Id*.

{¶ 25} In contrast to Schuman, when questioned by the probate-court judge during the hearing regarding his fees, Estadt freely admitted that believing there was no heir, he had inflated his fee in an effort to capture the full value of the probate estate. Estadt also undertook additional—albeit belated—efforts to rectify

his misconduct by identifying and locating Suriano, who ultimately received approximately $21,000 from the estate, without Estadt's receiving any portion of the fees.

{¶ 26} The board ultimately found that this case is most similar to several cases in which we imposed six-month suspensions with no stay: *Disciplinary Counsel v. Lynch*, 71 Ohio St.3d 287, 643 N.E.2d 542 (1994); *Lake Cty. Bar Assn. v. Speros*, 73 Ohio St.3d 101, 652 N.E.2d 681 (1995); and *Disciplinary Counsel v. Spinazze*, 159 Ohio St.3d 187, 2020-Ohio-957, 149 N.E.3d 503. Of those cases, we find the facts of this case most comparable to those of *Spinazze*.

{¶ 27} While serving as a part-time assistant prosecutor, Spinazze met with counsel for a defendant charged with operating a vehicle while under the influence of alcohol and one of the two arresting officers. After watching the officer's body-camera video of the arrest, defense counsel suggested that his client would be willing to plead guilty to a misdemeanor charge of having physical control while under the influence. Despite the officer's objection, Spinazze agreed to recommend reducing the charge.

{¶ 28} Aware that the defendant had two prior alcohol-related convictions, the judge asked Spinazze to appear in court to explain the basis for his recommendation. Spinazze misled the court at that hearing, claiming that there were some evidentiary concerns and falsely stating that the arresting officers had consented to the plea agreement. Relying on those misrepresentations, the court accepted the plea. In an effort to conceal his misrepresentations to the court, Spinazze made a false notation in the case file and a series of false excuses to his supervisor. When the truth came out, the court was forced to vacate the plea.

{¶ 29} Just one aggravating factor was present—Spinazze's dishonest motive. *Id.*, 159 Ohio St.3d 187, 2020-Ohio-957, 149 N.E.3d 503, at ¶ 14. But the mitigating factors mirrored those present in this case in that Spinazze had a clean disciplinary record and had exhibited a cooperative attitude toward the disciplinary

proceedings, presented positive character and reputation evidence, and had another penalty imposed for his misconduct—namely, the termination of his employment. *See id*. We suspended Spinazze from the practice of law for six months. *Id*. at ¶ 25. It is true that Estadt engaged in additional misconduct by attempting to use his position as the administrator of an estate with no apparent heir to charge a clearly excessive fee for the benefit of himself and his firm, but he made no effort to conceal his misconduct as Spinazze did. Despite Estadt's far-fetched claim that he believed he was authorized to sign the name of another attorney in his firm to a court filing without that attorney's consent—when he knew that the attorney opposed the filing—Estadt nonetheless freely admitted the facts of his misconduct. Given that fact, his otherwise unblemished 39-year legal career, and his loss of employment at the firm, we conclude that a six-month suspension from the practice of law is the appropriate sanction in this case.

CONCLUSION

{¶ 30} Accordingly, John Robert Estadt is suspended from the practice of law in Ohio for six months. Costs are taxed to Estadt.

Judgment accordingly.

KENNEDY, C.J., and DEWINE, DONNELLY, STEWART, and DETERS, JJ., concur.

FISCHER, J., concurs in part and dissents in part, with an opinion joined by BRUNNER, J.

FISCHER, J., concurring in part and dissenting in part.

{¶ 31} I concur in the majority opinion's finding of violations and dissent as to the sanction imposed. Based on the facts found and the aggravating and mitigating factors present, the proper sanction under the analogous case law would be a one-year suspension with six months conditionally stayed. *See Toledo Bar Assn. v. DeMarco*, 144 Ohio St.3d 248, 2015-Ohio-4549, 41 N.E.3d 1237; *Warren*

Cty. Bar Assn. v. Vardiman, 146 Ohio St.3d 23, 2016-Ohio-352, 51 N.E.3d 587. The majority opinion fails to protect the citizens of Ohio by not following those precedents.

BRUNNER, J., concurs in the foregoing opinion.

Joseph M. Caligiuri, Disciplinary Counsel, and Michelle A. Hall and Martha S. Asseff, Assistant Disciplinary Counsel, for relator.

Buckley King, L.P.A., and Richard C. Alkire; and Winter Trimacco Co., L.P.A., and Jason D. Winter, for respondent.
