

**BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO**

In Re: : **08-1205**
Complaint against : **Case No. 07-029**
Kenneth Podor : **Findings of Fact,**
Attorney Reg. No. 0014067 : **Conclusions of Law and**
: **Recommendation of the**
Respondent, : **Board of Commissioners on**
: **Grievances and Discipline of**
Cuyahoga County Bar Association : **the Supreme Court of Ohio**
:
Relator. :
:

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDATIONS OF THE PANEL**

FILED
JUN 19 2008
CLERK OF COURT
SUPREME COURT OF OHIO

INTRODUCTION

1. The Cuyahoga County Bar Association filed a six count complaint against Respondent on April 23, 2007. Respondent filed a “Motion to Dismiss or in the Alternative, Motion for a More Definite Statement” on June 29, 2007. On August 20, 2007, the Chair of the Board of Commissioners on Grievances and Discipline denied Respondent’s motion with the exception that Count Six of the complaint was dismissed. Respondent filed his Answer on September 12, 2007, and a hearing panel was appointed.
2. The case was originally set for hearing on February 12, 2008. It became apparent that neither side was going to be ready for the hearing on February 12, and the hearing date was

canceled.

3. After pre-hearing discussions, the case was again set for hearing on April 25, 2008. On March 28, 2008, Relator dismissed counts one and two of the original complaint, and on April 1, 2008, Relator filed a First Amended Complaint. Respondent filed an Answer to the First Amended Complaint on April 21, 2008.

4. The First Amended Complaint alleged four counts of misconduct against Respondent. Count Four, however, was summarily dismissed by the Panel Chair because it simply restated Count Six from the original complaint that had been dismissed by the Board Chair.

5. The remaining three counts were scheduled for hearing on April 25, 2008, in Cleveland, Ohio, before a panel composed of Charles E. Colson, Walter Reynolds, and Judge John B. Street, Chair. None of the panel members was from the district in which the complaint arose, and none was a member of the probable cause panel that certified the matter to the board. Brian P. Riley and Ellen S. Mandell appeared as counsel for Relator, Cuyahoga County Bar Association. Respondent, Kenneth Podor was present for the hearing. He was represented by Attorney Joseph E. Rutigliano.

6. Count Two of the First Amended Complaint was dismissed by Relator during the hearing. The evidence on counts One and Three mainly consisted of the attached stipulations. Count One alleged that Respondent had violated DR 5-103(B):

While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the client, except that a lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, the repayment of which may be contingent on the outcome

of the matter.

Count Three alleged that Respondent violated DR 2-106(A) [“A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.”] and (B) which defines what is meant by “clearly excessive”:

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

COUNT ONE

7. Respondent maintained his law office in Beechwood, Ohio, and at 33565 Solon Road, Solon, Ohio. He designated his practice as “Podor and Associates.” He was the sole owner, but he had a staff of four attorneys and six non-attorneys working for him.

8. Respondent also owned and operated a corporate entity known as International Media Marketing, Inc. (IMMI), whose purposes included advertising for legal services, primarily on television, and advertising the sale of diet and exercise advice, primarily on the internet.

9. Respondent controlled both his law practice and IMMI effectively by himself and was responsible for all decisions in both entities.

10. Respondent represented Carla White and her husband, Charles White, in a personal injury case. Carla White had been a long time client and friend of Respondent. She had also appeared briefly in a television commercial produced by IMMI.

11. During the pendency of the personal injury litigation, Carla White asked Respondent to advance her money for living expenses. Respondent, through his corporation IMMI, gave the Whites \$19,800.00 while their cases were pending.

12. The money was paid to the Whites whenever Carla would call in and ask for additional money. If IMMI had sufficient cash flow, Respondent would agree to give her \$1,500.00 to \$2,000.00 at a time upon her request.

13. Upon settlement of the personal injury litigation the sum of \$19,800.00 was repaid to IMMI by the Whites. The amount was paid one-half out of Carla White's settlement and one-half out of Charles White's settlement.

14. The Panel finds by clear and convincing evidence that Respondent violated DR 5-103(B) as alleged in Count One of the First Amended Complaint.

COUNT THREE

15. Respondent's normal routine in undertaking representation of a new personal injury client was to let the client decide whether to come to Respondent's office or to have an "investigator" go to the client's residence. If the client wanted the investigator to come to them, then Respondent would hire a non-attorney to go to the client's residence to obtain medical releases, present a retainer fee agreement, to take pictures, to make measurements, and to gather other information that might be needed in the litigation. Respondent paid these non-attorneys a fee of between \$50.00 and \$100.00 depending on how far they had to travel to reach the client.

These fees were not discussed with the client in advance, but they were passed along to the client at the settlement of the personal injury case as “client intake services.”

16. Lawrence Lett was one of Respondent’s personal injury clients. Respondent charged Mr. Lett \$100.00 out of his personal injury settlement proceeds for client intake services.

17. The parties stipulated that this payment of \$100.00 to Mr. Lett constituted an excessive fee in violation of DR 2-106(A) and (B). The Panel, however, recommends dismissal of Count Three because it does not find by clear and convincing evidence that Respondent charged or collected an illegal or clearly excessive fee. The non-attorney performed some services that might normally be covered by the contingent fee agreement such as obtaining paper work, getting medical releases, and that sort of thing, but the non-attorney also performed services that were legitimate charges to the client such as taking photographs of the scene, the vehicles and the injuries; making measurements; saving the client a trip into Respondent’s office; and being available to testify if needed. As a result, the Panel did not have a definite and firm conviction that the fee was in excess of a reasonable fee. Accordingly, we recommend dismissal of Count Three.

MATTERS IN MITIGATION, AGGRAVATION, AND SANCTION

MITIGATION

18. The Panel finds that there was an absence of a dishonest or selfish motive.

AGGRAVATION

19. The following aggravating factors have been shown:

a. There was a prior disciplinary offense. Respondent was disciplined by the Ohio Supreme Court in *Cleveland Bar Association v. Podor* (1995), 72 Ohio St.3d 40, for

violations of DR 2-106(A), DR 5-105(A), and DR 5-105(B). In that matter, Respondent was suspended for six months, all of which was stayed with a period of probation for two years. The probation in the prior matter terminated on September 25, 1997.

b. There was submission of false evidence, false statements or other deceptive practices during the disciplinary process in that Respondent was somewhat guarded in his testimony. At his deposition Respondent testified that IMMI was giving Carla White money during her personal injury litigation as payment for appearing in a commercial. At the hearing, he admitted that the primary motivation for giving her money was to help her out during a difficult financial time, but he still tried to justify it because of her appearance in the commercial. Although he may have justified in his own mind that he could pay her out of IMMI because she appeared in a television commercial, it was clear to the Panel that he was paying her simply to help her out. It had nothing to do with her acting ability. Respondent's reluctance to fully admit his motivation was an aggravating factor.

RECOMMENDED SANCTION

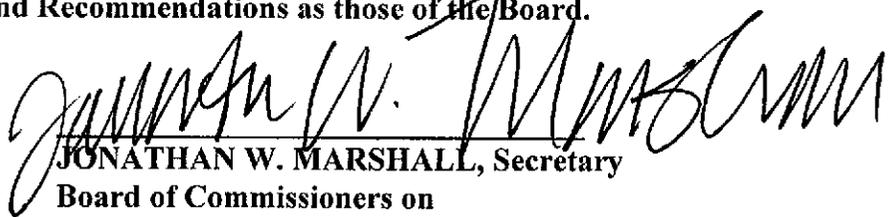
20. Relator recommended that Respondent receive an actual suspension of six months from the practice of law and that during that time he not participate in any profits made by his law firm. The panel finds this case to be similar to *Cleveland Bar Association v. Nusbaum*, 93 Ohio St.3d 150, 2001-Ohio-1305, in which the Supreme Court publicly reprimanded an attorney for advancing approximately \$26,000.00 to a client during personal injury litigation. Here, the aggravating factors of a prior disciplinary record and deceptive practices require more than a public reprimand. The Panel recommends that Respondent receive a one year suspension, all stayed on the condition that he complete an additional six (6) hours of continuing legal education

in ethics and office management and that he commit no further disciplinary violations.

BOARD RECOMMENDATION

Pursuant to Gov. Bar Rule V(6)(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on June 5, 2008. The Board adopted the Findings of Fact, Conclusions of Law and Recommendation of the Panel and recommends that the Respondent, Kenneth Podor, be suspended from the practice of law in the State of Ohio for one year with the entire year suspension stayed upon the conditions in the Panel's report. The Board further recommends that the cost of these proceedings be taxed to the Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendations as those of the Board.



JONATHAN W. MARSHALL, Secretary

**Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**