

BEFORE THE SUPREME COURT OF OHIO

In re:)
)
CLEVELAND METROPOLITAN BAR) **CASE NO. 2008-1205**
ASSOCIATION)
)
Relator,)
)
v.)
)
)
KENNETH PODOR)
)
Respondent.)

**RELATOR'S OBJECTIONS TO THE
RECOMMENDATION OF THE BOARD OF COMMISSIONERS ON
GRIEVANCES AND DISCIPLINE**

Cleveland Metropolitan Bar Association

By:

Ellen S. Mandell (#0012026)
55 Public Square Suite 1717
Cleveland, Ohio 44113-1901
(216) 771-7080
(216) 771-8404 fax
esmandell@earthlink.net

Joseph Rutigliano (#007126)
6140 Parkland Blvd.
Suite 300
Mayfield Heights, Ohio 44124
(440) 995-5100

Counsel for Respondent

Brian P. Riley (#0072503)
The Tower at Erieview Suite 1900
1301 East Ninth Street
Cleveland, Ohio 44114
(216) 687-3289
(216) 621-8369 fax
briley@westonhurd.com

Counsel for Relator

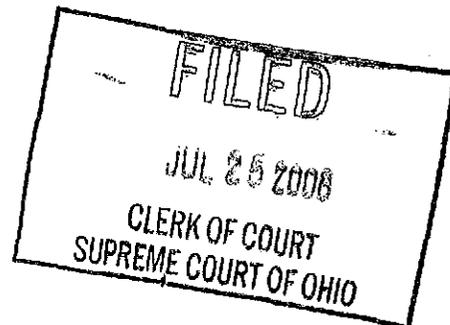


TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE CASE.....1

STATEMENT OF FACTS.....2

LAW AND ARGUMENT.....3

Relator's Objection3

The Recommended Sanction of a Stayed Suspension Is Inadequate Where the Conduct of the Respondent Demonstrates His Lack of Respect for the Disciplinary System and His Lack of Remorse for the Misconduct3

Authorities in Support of Relator's First Proposition of Law

Cases

Stark County Bar Assn. v. Ake (2006), 111 Ohio St.3d 2663

Disciplinary Counsel v. Goldblatt, 2008-Ohio-24584

Toledo Bar Assn. v. Leizerman (1992), 64 Ohio St.3d 6697

Disciplinary Rules

DR 5-103(B)7

Rules of Professional Conduct

Rule 1.8(e).....7

Rules Governing Procedures on Complaints and Hearings Before the Board of Commissioners

BCGD Proc. Req. 10(B)3, 4

CONCLUSION8

CERTIFICATE OF SERVICE9

APPENDIX

Stipulations of Fact Entered Into Between Respondent and Relator App 000001-000005

Respondent's Answer App 000006-000011

Findings of Fact, Conclusions of Law and Recommendation of the
Board of Commissioners on Grievances and Discipline App 000012-000018

TABLE OF AUTHORITIES

Cases

Stark County Bar Assn. v. Ake (2006), 111 Ohio St.3d 2663
Disciplinary Counsel v. Goldblatt, 2008-Ohio-24584
Toledo Bar Assn. v. Leizerman (1992), 64 Ohio St.3d 6697

Disciplinary Rules

DR 5103(B).....7

Rules of Professional Conduct

Rule 1.88(e).....7

Rules Governing Procedures on Complaints and Hearings Before the Board of Commissioners

BCGD Proc. Req. 10(B)3, 4

STATEMENT OF THE CASE

Relator, Cuyahoga County Bar Association¹, filed a six count Complaint against Respondent on April 23, 2007. Following discovery, a First Amended Complaint was filed on April 1, 2008, in which certain claims originally charged were dismissed and an additional matter (Charging a clearly excessive fee) was added. The case proceeded to trial on April 25, 2008, on the remaining three counts set forth in the First Amended Complaint. During the trial, Relator dismissed Count Two, in which it had been alleged that Respondent had improperly taken an excess number of cases and fees from a joint advertising venture in which he participated with several other attorneys in violation of DR 2-107(A). The remaining charges were set forth in Counts One – a violation of DR 5-103(B) resulting from Respondent's advancement of funds to a personal injury client; and Count Three – a violation of DR 2-106(A). The parties submitted Stipulations of Fact² with respect to those charged violations.

On June 19, 2008, the Board of Commissioners on Grievances and Discipline issued Findings of Fact, Conclusions of law and Recommendations of the Panel. The Panel unanimously dismissed Count Three, finding that the subject fee was insufficient to constitute an excessive fee as contemplated by DR 2-106(A). The Panel did find a violation of DR 5-103(B) as charged in Count One. The Panel recommended that Respondent receive a one year suspension, entirely stayed on the condition that Respondent complete an additional six (6) hours of continuing legal education in ethics and law office management. The Board adopted the Panels' recommendation.

¹ The Cuyahoga County Bar Association ceased to exist on February 29, 2008. Its successor organization, the Cleveland Metropolitan Bar Association, has been substituted as Relator herein.

² App 000001-000005, attached hereto.

STATEMENT OF THE FACTS

Respondent Kenneth Podor maintained a law office in Solon, Ohio, although he primarily resides in Florida. Respondent designated his practice as "Podor & Associates". Respondent's main area of practice is personal injury law. Respondent routinely discards client files approximately one year after their conclusion based upon the one-year malpractice statute of limitations.

In addition to his law practice, Respondent owned and operated a corporate entity known as International Medium Marketing, Inc. ("IMMI"), an entity whose purposes included advertising for legal services, primarily on television, and the sale of diet and exercise advice, primarily on the internet. Respondent controlled both his law practice and IMMI by himself and was responsible for all decisions related to those entities.

Respondent represented Charles and Carla White in a personal injury lawsuit. During the course of that lawsuit, Respondent, through IMMI, gave \$19,800.00 to the Whites, the repayment of which was contingent upon the outcome of her case.

According to Respondent's former office manager, Donna Stohlmann, the loans paid to the Whites were for personal items³ that they needed, and not related to any litigation expenses or costs. Ms. White would call Respondent's office and request money for things such as prescriptions. Respondent would then direct Ms. Stohlmann to prepare checks for Ms. White. According to Ms. Stohlmann, Respondent told her that if this practice of giving Ms. White loans was ever questioned, they would just say that the payments to her were for her appearing in a commercial on behalf of IMMI.

³ Respondent testified that the Whites were attempting to start a business and the money was, in part, needed for that.

After the conclusion of the Whites' personal injury case, the money previously loaned to them was repaid to IMMI, with one-half of the total sum coming from the settlement distribution to each. The distribution summaries prepared by Respondent's office reflected that Mr. And Mrs. White each agreed that monies advanced to them were owed to IMMI.

Respondent testified at his deposition that the funds advanced to the Whites were in payment for Carla White appearing in one of the television commercials produced by IMMI for a total cost of \$4,000.00-\$5,000.00⁴. He further testified that Mrs. White's appearance was the only one for which compensation was paid so handsomely.⁵ At trial, Respondent admitted that the "primary motivation for giving her money was to help her out during a difficult financial time."⁶

ARGUMENT AND LAW

Relator's Objection:

The Recommended Sanction of a Stayed Suspension Is Inadequate Where the Conduct of the Respondent Demonstrates His Lack of Respect for the Disciplinary System and His Lack of Remorse for the Misconduct.

Relator does not object to any of the factual findings adopted by the Board. Relator does object to the sanction imposed because Respondent should serve a term of actual suspension.

In determining the proper sanction the Court "consider[s] the duties violated, the actual or potential injury caused, the attorney's mental state, the existence of aggravating or mitigating circumstances, and sanctions imposed in similar cases." *Stark County Bar Assn. v. Ake*, 111 Ohio St.3d 266, 2006-Ohio-5704, 855 N.E.2d 1206. The Court is not limited to the factors specified in BCGD Proc.Req. 10(B) or other disciplinary case decisions, but may consider "all relevant factors"

⁴ TR. 59.

⁵ Respondent's spouse also appeared in the television advertisement and she was compensated \$1,500.00 per quarter while the TV advertisement ran (TR. 59).

⁶ Findings of Fact, Conclusions of Law and Recommendation of the Board, ¶19(b) (attached hereto at App 000012-000018).

in determining the proper sanction in the case before it. *Disciplinary Counsel v. Goldblatt*, Slip Opinion No. 2008-Ohio-2458 ¶10; BCGD Proc.Req. 10

Each disciplinary case presents unique facts and circumstances, as recognized in BCGD Proc.Req.10. As a result, unless all the facts and circumstances of two cases were identical, one could not assume an identical outcome.

In his Answer to the Relator's initial Complaint Respondent admitted to making loans to "a very few friends of his who happened to also be clients."⁷ Although Respondent's Answer also alleges that the loans were paid by a separate non-professional corporation (IMMI), both Respondent and IMMI were effectively one in the same. Despite his Answer, Respondent testified at deposition that the funds paid to the Whites were not loans, but rather were compensation for a very brief appearance in a television commercial which only needed to be repaid from the proceeds of the Whites' personal injury case.⁸ While Respondent acknowledged at trial that the payment to the Whites was an improper advance of funds as prohibited by DR 5-103(B), he contradicted that acknowledgment when he also attempted to categorize the payment as compensation for the television appearance.

Respondent's deposition testimony that the money paid to the Whites was for Carla White's appearance in a television commercial for IMMI was illogical and disingenuous. Clearly Respondent understood that, because he changed his testimony at trial and acknowledged that the payments were "in part" advancements for living and personal expenses, unrelated to the television commercial:

A: It was paid part for being in the commercial and because she needed the money.

She was severely injured, her and her husband.

TR. 32.

⁷ Respondent's Answer, at ¶13 (App 000006-000011, attached hereto).

⁸ Deposition Transcript, at p. 24, line 3.

Upon follow-up examination by Panel member Mr. Coulson, Respondent's characterization of his motives changed:

Q: On page 24 of the deposition you gave on March 6th when you were under oath, you said, or the question was asked of you, "Did the \$19,800", and I'm now referring to line 3, "was that just for appearing in a TV spot?" And your answer was "Yes." Do you recall making that statement.

A: Yes.

Q: And it wasn't the truth, was it?

A: Well, she came to me and said, Can you pay me the money? I mean, there were three different possible –

Q: Let's talk about the question. The question was on line 2, "I think it was \$19,800", that's you. And the question was, "That was just for appearing in the TV spot", "Just for appearing in a TV spot, you paid \$19,800," and your answer was "Yes".

A: Yes, that's why I gave it to her.

Q: For appearing in a TV spot?

A: That was the motivating factor, yes. She came to me –

TR. 56-57.

Q: Okay. I want to turn your attention to page 63 of your deposition of March 6th. You were asked the question on line 7, "The money paid to Carla White, the \$19,800, wasn't for litigation expenses; is that right?" And your answer was "No, that was for being in the commercial".

A: It was not for litigation expenses.

Q: It was for being in your commercial was the important part of your answer.

A: That's why I gave it to her.

TR. 60.

The Panel found that Respondent submitted false evidence, false statements or that there had been other deceptive practices by Respondent during the disciplinary proceedings. This equivocation and reluctance to be truthful was found to be an aggravating factor pursuant to Sect.10(B) Rules Governing Procedures on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline, (hereinafter (BCGD §___) . Although not specifically noted, Respondent's duplicity regarding the advancement of funds to his client subject to repayment upon conclusion of the underlying litigation, and notwithstanding his pro forma acknowledgment that such is "wrong",⁹ demonstrates his lack of remorse and/or the absence of an understanding that his conduct was improper. This also constitutes an aggravating factor which merits a severe sanction.

Respondent has been sanctioned previously by this Court in 1995. The Court imposed a stayed six month suspension, with a probation period of two years. In the prior case, Respondent had successfully negotiated a reduction in subrogated medical bills for a personal injury client, without advising his injury client that the medical provider was paying Respondent a fee for "collecting" the funds from the injured person. That prior discipline constitutes an aggravating factor pursuant to BCGD §10.

The purpose of the disciplinary process is to protect the public from lawyers who do not possess an ethical or moral compass which directs them to behave consistent with the law and the rules of the profession. However, because this is a self-regulating professional, it is imperative that attorneys under investigation be honest and forthcoming in the information they supply.

⁹ TR. 60.

Cooperation should not mean merely “showing up.” Cooperation should require meaningful and honest participation.

In past cases involving violations of DR 5-103(B), this court has tempered the sanction because it anticipated that the prohibition against financially assisting existing clients would be re-examined. As Chief Justice Moyer stated in his dissent in *Toledo Bar Association v. Leizerman*, 64 Ohio St. 3d 669, 672; 597 N.E.2d 1104; 1992 Ohio LEXIS 1950:

The majority has sanctioned respondents with a public reprimand apparently because the majority believes that DR 5-103(B) “should perhaps be reexamined.” While I do not disagree with the majority’s conclusion in that respect, I do disagree with the majority’s conclusion that because we believe that a Disciplinary Rule should be reviewed and perhaps be amended in the future such possibility of re-examination constitutes a valid reason to reduce a sanction for past conduct that clearly violates the existing rule.

The Code of Professional Responsibility has been replaced and the ethical rules have been reexamined. Now, Rule 1.8(e), Rules of Professional Conduct, the corollary to DR 5-103(B) prohibits a lawyer from providing financial assistance, aside from court costs and litigation expenses, to a client.

While a public reprimand or the recommended stayed suspension might be appropriate in other cases, it is not the appropriate sanction where, as in this case, the previously sanctioned Respondent attorney was clearly dishonest in his testimony during the investigation, pretrial discovery phases of the disciplinary process, and at trial, and where the Respondent’s continued attempts to justify the misconduct clearly demonstrate a lack of remorse and contrition.

If Respondent were seeking admission to the practice of law in Ohio, appearing before the Board on Character and Fitness instead of the Board of Commissioners on Grievances and he had demonstrated a similar disregard for the truth, his application for admission would be likely be

denied. The fact that Respondent is already a licensed attorney should not grant him any additional consideration or lesser expectation. Indeed, he should be held to a higher standard.

CONCLUSION

For the foregoing reasons, Relator submits its objection to the recommended sanction and requests that a term of actual suspension be imposed.

Respectfully submitted,

Cleveland Metropolitan Bar Assn.

By:

Ellen S. Mandell
Ellen S. Mandell #0012026 

Brian P. Riley
Brian P. Riley #0072503

CERTIFICATE OF SERVICE

A copy of the foregoing Relator's Objections from the Recommendation of the Board of Commissioners on Grievances and Discipline was served upon counsel for the Respondent on this 24th day of July, 2008.



BRIAN P. RILEY

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

<i>In re.</i>)	
)	CASE NO. 07-029
<i>Complaint Against</i>)	
)	
KENNETH PODOR)	
)	STIPULATIONS
Respondent.)	
)	
CUYAHOGA COUNTY BAR ASSOCIATION)	
Relator.)	
)	
)	
)	

1. Respondent Kenneth Charles Podor, (Atty. Reg. No. 0014067), is an attorney, who was, at all times relevant to this Complaint registered with the Supreme Court of Ohio.
2. At all times relevant hereto, Podor maintained his law office in Beachwood, Ohio and at 33565 Solon Road, Solon, Ohio, and designated his practice as "Podor and Associates."
3. Podor was previously disciplined by the Supreme Court of Ohio in Cleveland Bar Assn. vs. Podor (1995), 72 Ohio St.3d 40, as a result of violations of DR 2-106(A), 5-105(A), and 5-105(B).
4. In the prior disciplinary matter, Podor's sanction consisted of a suspension of six (6) months, entirely stayed, with a period of probation of two (2) years, monitored by attorney Thomas Skulina.
5. The probation in the prior matter terminated on September 25, 1997, Cleveland Bar Assn. vs. Podor (1997), 80 Ohio St.3d 1205.
6. At all times relevant hereto, Podor has owned and operated a corporate entity known as International Media Marketing, Inc. ("IMMI"), an entity whose purposes included advertising

for legal services, primarily on television, and the sale of diet and exercise advice, primarily on the internet.

7. Podor controlled both his law practice and IMMI effectively by himself and was responsible for all decisions.

8. Podor, through IMMI, gave the amount of \$19,800.00, to Carla White, who was a long-time client, during the pendency of a personal injury litigation, repayment of which was without interest and contingent upon the outcome of her case or her other ability to pay.

9. Carla White made a brief appearance in a television commercial produced by IMMI during the pendency of her injury case; Charles White did not appear in the commercial.

10. Repayment of the funds to IMMI was made in equal shares by Carla and Charles White from the settlement proceeds of the injury case, as reflected in the distribution summary.

11. The advancement of funds to Carla White constituted a violation of DR 5-103(B) as alleged in Count One of the Amended Complaint.

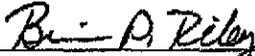
12. As part of his practice, Respondent sometimes paid non-attorneys a fee for going to a potential new personal injury client's location to obtain the client's signature on a retainer agreement, as well as sometimes obtaining case information, photographs, and other materials.

13. Respondent ultimately deducted the fee paid to the non-attorney from the client's eventual injury settlement proceeds as a litigation expense.

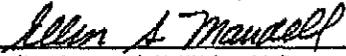
14. Lawrence Lett, was one of an unknown number of personal injury clients who was charged a fee of \$100.00 which Respondent paid to a non-attorney to obtain the client's signature on a retainer agreement.

15. The charge assessed for the non-attorney services in obtaining a client's signature on the retainer agreement constitutes an excessive fee, pursuant to DR 2-106(A)&(B)

Respectfully submitted,
Relator By:

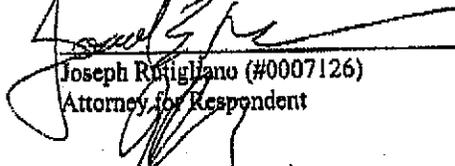


Brian P. Riley (#0072508)



Ellen S. Mandell (#0012026)
Bar Counsel

Respondent By:



Joseph Righlano (#0007126)
Attorney for Respondent

Kenneth Podor (#0014067)
Respondent

3 of 3 DOCUMENTS

Cleveland Bar Association v. Podor

No. 94-2648

Supreme Court of Ohio

72 Ohio St. 3d 40; 1995 Ohio 303; 647 N.E.2d 470; 1995 Ohio LEXIS 840

January 24, 1995, Submitted

April 19, 1995, Decided

PRIOR HISTORY: [***1] On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 93-34.

Relator, Cleveland Bar Association, on June 21, 1993, charged respondent, Kenneth C. Podor of Chagrin Falls, Ohio, Attorney Registration No. 0014067, with having violated, *inter alia*, DR 2-106(A) (charging or collecting a clearly excessive fee), 5-105(A) (accepting employment that adversely affects professional judgment on behalf of client without client's consent after full disclosure), and 5-105(B) (continuing multiple employment that adversely affects professional judgment on behalf of client without client's consent after full disclosure). A panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board") heard the matter on August 29, 1994.

The parties stipulated to the events underlying this complaint and to the charged misconduct, as follows:

"1. * * * [Respondent] was retained by Samuel Tamburrino on June 13, 1988 to represent Mr. Tamburrino in a personal injury claim arising from a slip and fall accident;

"2. * * * On June 13, 1988, [respondent] and Mr. Tamburrino entered into a contingent fee contract that provided, [***2] *inter alia*, that [respondent's] compensation would be 40% of the amount recovered;

"3. * * * [Respondent] filed, on behalf of Mr. Tamburrino, a civil action in the Cuyahoga County Court of Common Pleas, bearing case # 181870;

"4. * * * On or about January 20, 1990, the civil action was settled for the gross amount of \$ 40,000.00;

"5. * * * [Respondent] withheld \$ 16,000.00 from the gross settlement for his 40% contingent fee;

"6. * * * [Respondent] also withheld from the gross settlement \$ 8,581.31, to cover the lien or claim filed against the settlement by HMO Ohio, for reimbursement of the costs of medical care provided by HMO Ohio to Mr. Tamburrino;

"7. * * * [Respondent] negotiated with * * * the attorney for HMO Ohio, a reduction in the amount needed to satisfy the lien or claim of HMO Ohio;

"8. * * * The amount that HMO Ohio agree[d] to accept to satisfy the lien or claim * * * was \$ 4,300.00;

"9. * * * Without approval of Mr. Tamburrino, [respondent] took an additional fee of \$ 3,432.52 (40% of \$ 8,581.31) and remitted to Mr. Tamburrino a check for \$ 648.79;

"10. * * * [Respondent's] taking of the \$ 3,432.52 constituted the taking of a clearly excessive [***3] fee in violation of DR 2-106(A) * * *;

"11. * * * When [respondent's] taking of the \$ 3,432.52 was questioned by Mr. Tamburrino, through his new counsel, he responded that he was retained [*sic*, retained] by HMO Ohio to collect the \$ 8,581.31 bill owed by Mr. Tamburrino to HMO Ohio;

"12. * * * HMO Ohio never consented to [respondent's] representation of it;

"13. * * * Mr. Tamburrino did not consent to [respondent's] representation of both Mr. Tamburrino and HMO Ohio;

"14. * * * [Respondent] negotiated the reduction in the bill owed by Mr. Tamburrino to HMO Ohio without the prior consent, authority or knowledge of Mr. Tamburrino;

"15. * * * [Respondent's] representation of Mr. Tamburrino and HMO Ohio created a conflict of interest such that his actions violated DR 5-105(A) * * * and (B) * * *"

The panel found violations of the Disciplinary Rules as stipulated. The panel recommended a six-month suspension from the practice of law that was to be suspended on the conditions that respondent be placed on probation with a monitor assigned by relator and follow all reasonable instructions from this monitor, and that he comply in all respects with the requirements of [***4]

72 Ohio St. 3d 40, *; 1995 Ohio 303;
647 N.E.2d 470, **; 1995 Ohio LEXIS 840, ***

the Code of Professional Responsibility. The board adopted the panel's findings and its recommendation.

DISPOSITION: *Judgment accordingly.*

HEADNOTES

Attorneys at law — Misconduct — Six-month suspension suspended on condition of completion of two-year monitored probation — Charging or collecting a clearly excessive fee — Accepting employment that adversely affects professional judgment on behalf of client without client's consent after full disclosure — Continuing multiple employment that adversely affects professional judgment on behalf of client without client's consent after full disclosure.

COUNSEL: Edward T. Clarke, Warren P. Gelger, Robert H. Gillespy II and Mary Cibella, Bar counsel, for relator.

Synenberg & Associates and Roger M. Synenberg, for respondent.

JUDGES: Douglas, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur. Moyer, C.J., and Wright, J., dissent.

OPINION

[*42] [**471] We have reviewed the record and agree with the board's findings of misconduct and its recommendation. Respondent is, therefore, suspended from the practice of law in Ohio for a period of six months, but this sanction is suspended on the condition that respondent complete a two-year monitored probation as set forth by the board. Costs taxed to respondent.

Judgment accordingly.

Douglas, Resnick, F.E. Sweeney, Pfeifer and Cook, JJ., concur.

Moyer, C.J., and Wright, J., dissent.

DISSENT BY: WRIGHT

DISSENT

Wright, J., dissenting.

Because I would not suspend respondent's six-month suspension, I respectfully dissent.

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

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

In re:)	Case No. 07-029
)	
Kenneth Podor,)	
)	
Respondent,)	ANSWER
)	
Cuyahoga County Bar Association,)	
)	
Relator.)	

Now comes the Respondent and for his reply to the Relator's Complaint states as follows:

PARTIES JURISDICTION and COUNT ONE

1. Admits the allegations contained in Paragraphs 1 through 11.
2. Denies the allegations contained in paragraph 12.
3. Podor admits he deposited funds in his IOLTA account and did reimburse all clients he could locate (as of this date all clients have been located except for 2) and admits that some portions of client files are purged after one year. Respondent denies the remainder of paragraph 13.
4. Denies the allegations in paragraph 14.
5. Denies the allegations contained in paragraph 15.
6. In response to paragraphs 10 to 15, Respondent states that his former officer manager, Donna Stohlmann (the original complaintant in this grievance), had misplaced 26 return-of-court-costs checks, some over a year old. When Respondent discovered the checks, he reprimanded the complainant, and directed that she deposit all but one check into his IOLTA

account and send refunds to the clients where appropriate. (The one check was to be deposited into his general account because the case had been dismissed and refilled.)

Although Stohlmann told the Respondent she had corrected the mistake, she actually failed to do so. When Respondent discovered Stohlmann's second failure, he immediately caused the funds to be deposited into his IOLTA and diligently attempted to return the fees. To date he has returned the fees (with interest) to 16 of the clients. He has been unable to locate 10 of the former clients. The funds not returned are still in his IOLTA account.

COUNT TWO

7. Respondent incorporates the above answers as a response to paragraph 16.
8. Admits the allegations in paragraph 17.
9. Denies the allegations in paragraphs 18 through 21.

10. In response to COUNT TWO respondent states he settled a case for Stohlmann. He distributed her funds and withheld from that distribution, with her consent and knowledge, funds to cover her medical bills with Beachwood Orthopaedics. Ms. Stohlmann, Respondent's office manager, actually was the person who withheld the funds. Respondent was trying to negotiate a reduced bill with Beachwood Orthopaedics. Stohlmann thereafter "left" respondent's employ. During the negotiations, Beachwood Orthopaedics sent a bill to Stohlmann who called Respondent and asked for the withheld funds. Respondent then forwarded her a check from his IOLTA account (not his general account as alleged) and stopped negotiating with Beachwood Orthopaedics.

COUNT THREE

11. Respondent incorporates the above answers as a response to paragraph 22.
12. Denies the allegations in paragraph 23. Mr. Podor admits that he owns both his law practice and a separate Ohio corporation IMMI. He denies he is the proverbial "Lone Ranger" and further states that he has employed attorneys, paralegals, secretaries and office managers.
13. The allegation in paragraph 24 is a non-sequitor and is therefore denied. Podor admits that IMMI has lent money to a very few friends of his who happened to also be clients. IMMI charged no interest, and paid no funds to Respondent or his firm in connection with these few loans.
14. The allegations in paragraph 25 are denied. The loans were repaid. The debt obligation was not to Respondent or his law firm, was not done for profit or for any nefarious purpose, was not obtaining an interest in a case because the debtors were obligated to pay the loan regardless of the cases' outcomes and was done by a separate non-professional corporation, IMMI.
15. The allegations in paragraph 26 are denied. Podor affirmatively states at no time has he been unable to produce such records and has produced all records requested by the investigator on this matter, Ari Jaffe, with the exception of a request sent by Mr. Jaffe on December 8 to the undersigned to produce records before Mr. Jaffe's report was due to the Grievance Committee on December 8.
16. Denies the allegations in paragraph 27.

COUNT FOUR

17. Respondent incorporates the above answers as a response to paragraph 28.
18. For his answer to paragraph 29, Respondent admits that IMMI, *inter alia*, provided advertising services to lawyers, including his firm, and denies all other allegation in paragraph 29.
19. Admits the allegations contained in paragraphs 30 and 31.
20. Paragraph 32 is denied and paragraph 33 is unintelligible and is therefore denied.
21. For his answer to paragraph 34, Respondent admits that other attorneys refer clients to him, and deny the remaining allegations contained therein.
22. For his answer to paragraph 35, Respondent admits that he has sent cases to other attorneys, and denies the remaining allegations contained therein.
23. Paragraph 36 is again unintelligible as written and is denied. Podor admits that he has co-counseled cases with other attorneys and has, in such cases, received or paid a co-counsel fee with the clients' approval.
24. Respondent denies the allegations in paragraphs 37 and 38.

COUNT FIVE

25. Respondent incorporates the above answers as a response to paragraph 39.
26. Respondent denies the allegations in paragraphs 40 and 41.

AFFIRMATIVE DEFENSES

1. Relator has failed to state a claim against Respondent.
2. Relator's claims are barred by the doctrines of waiver, estoppel, laches and/or unclean hands.

3. Relator's allegations are based upon the unsubstantiated claims of a former employee of Respondent, who may be directly responsible for the misdoings, if any, attributed to Respondent.

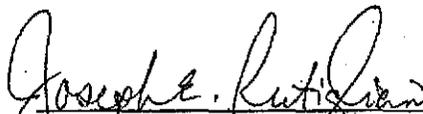
4. The actions complained of may be the result of the actions of a third party, and not this Respondent.

5. Relator has failed to bring this action timely, in accordance with the rules of the government of the bar.

6. Respondent reserves the right to assert additional affirmative defenses as they become known during the course of this investigation/lawsuit.

WHEREFORE, having fully answered the complaint of the Relator, the Respondent respectfully requests that the complaint be dismissed.

Respectfully submitted,



Joseph E. Rutigliano (007126)
Rutigliano & Associates Co., L.P.A.
6140 Parkland Boulevard, Suite 300
Mayfield Heights, Ohio 44124
(440) 995-5100

Attorney for Respondent

CERTIFICATE OF SERVICE

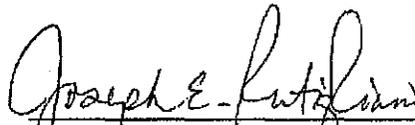
I hereby certify that the foregoing Answer was served, via regular U.S. mail, postage prepaid, this 10th day of September, 2007 upon :

Jonathan W. Marshall, Esq.
The Supreme Court of Ohio
Board of Commissioners on Grievances and Discipline
65 South Front Street, 5th Floor
Columbus, OH 43215-3431

Brian P. Riley, Esq.
Weston Hurd LLP
The Tower at Erieview
1301 East 9th Street, Suite 1900
Cleveland, OH 44114-1862

Stanley E. Stein, Esq.
Stanley E. Stein & Associates Co., L.P.A.
75 Public Square, Suite 714
Cleveland, OH 44113

Ellen Mandell, Esq.
55 Public Square, Suite 1717
Cleveland, OH 44113-1901



Joseph E. Rutigliano, Esq.

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

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

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

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

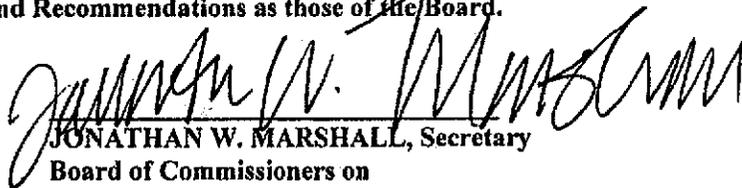
20. Relator recommended that Respondent receive an actual suspension of six months from the practice of law and that during that time he not participate in any profits made by his law firm. The panel finds this case to be similar to *Cleveland Bar Association v. Nusbaum*, 93 Ohio St.3d 150, 2001-Ohio-1305, 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**