

ORIGINAL
COMPUTER - JJ

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

In Re : 09-0662
Complaint against : Case No. 08-061

Roger C. Stridsberg : Findings of Fact,
Attorney Reg. No. 0021277 : Conclusions of Law and
Respondent : Recommendation of the
Board of Commissioners on
Cincinnati Bar Association : Grievances and Discipline of
the Supreme Court of Ohio

Relator

FILED :
APR 10 2009
CLERK OF COURT
SUPREME COURT OF OHIO

Introduction

This case was initiated with the filing of a complaint by the Cincinnati Bar Association, the Relator, against Roger C. Stridsberg, Attorney Registration No. 0021277, the Respondent.

The members of the panel assigned to hear this case were attorneys Jana E. Emerick, John H. Siegenthaler and David E. Tschantz, Chair, all of whom are duly qualified Board members. None of the panel members resides in the district from which the complaint arose and none of the panel members served as a member of the probable cause panel that certified this matter to the Board. Respondent was represented by Andrew S. Adams, and Relator, Cincinnati Bar Association, was represented by Attorneys Jarrod M. Mohler and Rosemary D. Welsh.

Procedural History

Relator's complaint, filed on August 18, 2008, contained three allegations of misconduct:
(1) DR 1-102(A)(4) [conduct involving dishonesty, fraud, deceit and misrepresentation];
(2) DR 1-102(A)(6) [conduct adversely reflecting on the lawyer's fitness to practice law]; and

(3) DR 2-106(A) [charging an excessive fee].

Respondent timely filed his answer on September 10, 2008, filed an amended answer on September 24, 2008, and a second amended answer on September 25, 2008. In his second amended answer, Respondent admitted some of the alleged facts, denied some of the allegations, and denied all of the charged rule violations.

The hearing panel was appointed on September 30, 2008, with an initial telephone pretrial conducted on October 20, 2008. During this telephone pretrial the parties advised that a strong likelihood existed that they would reach agreement on a Consent to Discipline. On November 24, 2008, the parties jointly requested an extension of the 60-day period required for filing a Consent to Discipline, which was granted by the Panel Chair. The Consent to Discipline was timely filed by the parties on December 31, 2008, and reported to the Board by the hearing panel on February 13, 2009.

During discussion by the Board, it was pointed out that the Consent to Discipline did not address the alleged violation of DR 1-102(A)(4). The Panel Chair then withdrew the panel's recommendation and the Consent to Discipline was not adopted.

Relator then filed a dismissal of the alleged violation of DR 1-102(A)(4) on March 10, 2009, and on March 20, 2009, the parties filed a Stipulation of Facts, Mitigating and Aggravating Factors, and Recommended Sanction and also filed a joint waiver of a formal hearing. The matter was then deemed submitted to the panel.

Findings of Fact

Respondent, Roger C. Stridsberg, was admitted to the practice of law in Ohio on March 23, 1949, and is currently registered as "Active" with the Supreme Court of Ohio. Respondent has no prior disciplinary history.

The two remaining violations alleged in Relator's complaint arise out of Respondent's representation of a client named Dawn Haggard regarding two workers' compensation claims. (Stipulation ¶ 2)

As Ms. Haggard's attorney, and in furtherance of her claims, respondent filed a motion on her behalf in July 2000, requesting temporary total disability (TTD) status for his client. An Industrial Commission District Hearing Officer (DHO) held a hearing on this request on September 1, 2000, and then issued an order allowing for TTD payments for the period of December 23, 1998 to January 31, 2000, and from February 11, 2000, to June 1, 2000. The order was mailed on September 6, 2000. (Stipulation ¶ 3)

Haggard's employer appealed the order which resulted in a modification of the order by the DHO. The modification changed the commencement date of the TTD payments from December 23, 1998, to December 23, 1999, and was mailed on November 3, 2000.

Meanwhile, the Bureau of Workers' Compensation (BWC) had gone ahead and, in compliance with the September 6th order, issued payment on October 16, 2000, in the form of three checks totaling \$12,820.85, payable to Ms. Haggard and Respondent. Respondent received all three checks and deposited them into his trust account. (Stipulation ¶ 5)

Respondent and Ms. Haggard then executed a disbursement agreement on October 24, 2000, for one of the BWC checks which had been issued in the amount of \$2,859.52. Respondent issued a check from his trust account to his client for \$1,906.35 and paid himself a \$953.17 contingent fee (Stipulation ¶ 6), presumably pursuant to a contingent fee agreement with his client which is not in evidence before the panel. The balance of the payments received from the BWC, remained in Respondent's trust account by mutual consent of Respondent and his client. (Stipulation ¶ 7)

On November 4, 2000, Respondent received the DHO's modified order, and on November 10, 2000, received a Notice of Overpayment from the BWC. The notice stated that an overpayment of \$9,454.44 (a year of benefits) would be recovered from future payments unless Haggard chose to send the money back to the BWC. (Stipulation ¶ 9) At this time, Respondent's trust account still held \$9,961.33 in BWC payments to Ms. Haggard.

However, Respondent's client insisted on disbursement of the funds remaining in the Respondent's trust account and Respondent chose to comply with his client's wishes. Before disbursing the funds, Respondent advised his client that the bulk of the funds were the result of an overpayment and his client acknowledged in the disbursement agreement that the distribution was being made at her request. She further acknowledged therein that she was advised by Respondent that the law is unclear as to whether or not the overpayment was subject to recoupment, and that she might be made to repay the overpayment but that said repayment would be made out of amounts payable to Ms. Haggard in the future from the BWC. (Stipulation ¶12) Finally, she directed Respondent to disburse the \$9,961.33 being held in his trust account, with \$6,640.89 paid to her and the balance paid to Respondent as his fee.

On November 24, 2000, Respondent filed an appeal on his client's behalf of the DHO's modified order, but a reviewing DHO affirmed the modification.

Ms. Haggard discharged Respondent in 2001 and hired new counsel.

Not having received its overpayment from Ms. Haggard, the BWC began to withhold 40% from subsequent payments to Ms. Haggard. She tried to contact respondent about the withheld amounts, but was not successful. She then contacted the Cincinnati Bar Association (CBA) in 2007. (Stipulation ¶ 15)

The CBA contacted Respondent concerning the fee he took from the second disbursement and, in response thereto, he issued a check in the amount of \$991.52 to Ms. Haggard through her new counsel. He also deposited sufficient funds in his trust account to repay his client the balance of the fee he took out of the second disbursement.

Relator then filed its complaint against Respondent on August 18, 2008.

Conclusions of Law

The parties stipulated and the panel agrees, that the sole issue before the panel is the propriety of Respondent taking a fee out of the second disbursement when he knew it was likely an overpayment and that the funds, therefore, belonged to the BWC not to his client.

The two remaining charges against Respondent are violations of DR 1-102(A)(6) [conduct adversely reflecting on the lawyer's fitness to practice law] and DR 2-106(A) [charging an excessive fee].

After reviewing the stipulated facts, the panel finds, by clear and convincing evidence, that Respondent violated both DR 1-102(A)(6) and DR 2-106(A) of the Ohio Code of Professional Responsibility.

Aggravation and Mitigation

With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in BCGD Proc.Reg. 10(B)(1), the parties stipulated and the panel finds, by clear and convincing evidence, that Respondent (1) refused to acknowledge the wrongful nature of his conduct, and (2) failed to make timely full reimbursement to his client of the wrongfully taken fee.

With regard to the factors in mitigation that may be considered in favor of less severe sanctions for professional misconduct listed in BCGD Proc.Reg. 10(B)(2), the parties stipulated

and the panel finds, by clear and convincing evidence, that Respondent (1) has no prior disciplinary record, (2) cooperated completely in this disciplinary matter, and (3) made partial restitution and took other action to begin rectifying the consequences of his misconduct.

Recommended Sanction

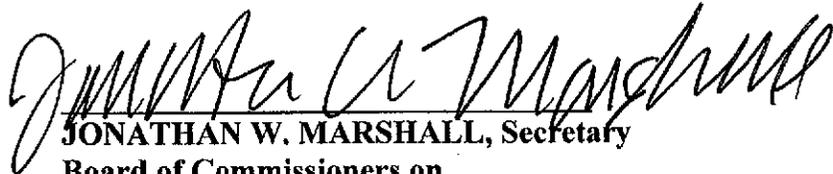
In their stipulations, Relator and Respondent jointly recommend, and the panel recommends the adoption of, the sanction of a six month suspension commencing from the date this case is decided by the Court, with the entire six months stayed on conditions that Respondent pay the BWC the balance of the wrongfully taken fee, an amount of \$2,159.96, and commit no further misconduct.

The panel, in recommending this sanction, reviewed *Akron Bar Assn. v. Watkins*, 120 Ohio St.3d 307, 2008-Ohio-6144. In that case, the respondent charged a clearly excessive fee while acting as the trustee of a client's revocable living trust, charging his client for "extraordinary" services such as picking up her mail, and was suspended by the Court for six months, all stayed on conditions.

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 April 3, 2009. The Board adopted the Findings of Fact, Conclusions of Law, and Recommendation of the Panel and recommends that Respondent, Roger C. Stridsberg, be suspended from the practice of law for a period of six months with the entire six months stayed upon conditions contained in the Panel Report including restitution to the Bureau of Workers' Compensation. The Board further recommends that the cost of these proceedings be taxed to 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 Recommendation as those of the Board.**

A handwritten signature in black ink, appearing to read "Jonathan W. Marshall", is written over a horizontal line.

**JONATHAN W. MARSHALL, Secretary
Board of Commissioners on
Grievances and Discipline of
The Supreme Court of Ohio**

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

FILED

MAR 20 2009

**BOARD OF COMMISSIONERS
ON GRIEVANCES & DISCIPLINE**

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|--|---|-----------------------------------|
| ROGER C. STRIDSBERG (#0021277), | : | |
| Respondent, | : | Case No. 08-061 |
| CINCINNATI BAR ASSOCIATION, | : | STIPULATION OF FACTS, |
| Relator. | : | MITIGATING AND AGGRAVATING |
| | | FACTORS, AND RECOMMENDED |
| | | SANCTION |

FACTUAL BACKGROUND

1. Respondent Roger Stridsberg ("Respondent") has been duly admitted to the practice of law in Ohio since 1949.
2. An attorney-client relationship between Respondent and Dawn (Biggs) Haggard ("Haggard") began sometime around 1999. The attorney-client relationship arose as a result of two workers' compensation claims by Ms. Haggard.
3. In July 2000, Respondent filed a Motion on Haggard's behalf requesting temporary total disability. On September 1, 2000, a hearing was held on the Motion before a District Hearing Officer of the Industrial Commission, which hearing resulted in an order that allowed temporary total disability payments for the period December 23, 1998, to January 31, 2000; as well as a subsequent period of temporary total disability from February 11, 2000, to June 1, 2000. The Order was mailed on September 6, 2000.
4. Haggard's employer appealed the September 6, 2000 Order, and at the hearing on October 13, 2000, the Staff Hearing Officer modified the first Order, changing the commencement date of the allowance of temporary total payments from December

23, 1998, to December 23, 1999. The Staff Hearing Officer's Order was mailed on November 3, 2000.

5. On October 16, 2000, not having received the Staff Hearing Officer's Order, the Bureau of Workers' Compensation, issued three checks payable to Roger Stridsberg and Dawn M. Biggs totaling \$12,820.85, in the respective amounts of \$2,859.52, \$8,243.65 and \$1,717.68. These checks were based on the District Hearing Officer's September 6 Order, which allowed an extra year of temporary total disability payments.
6. Respondent deposited the checks into his trust account. On October 24, 2000, Respondent and Haggard signed a disbursement agreement for one of the checks, in the amount of \$2,859.52, resulting in Respondent issuing a check for \$1,906.35 to Ms. Haggard, and a check for \$953.17 to himself for his contingent fee.
7. Both Respondent and Haggard questioned the balance of the award paid in the other two checks, because they seemed too much, so they left the remaining two checks deposited in Respondent's trust account.
8. On November 4, 2000, Respondent received notice of the Staff Hearing Officer's October 13, 2000, Order modifying the dates of compensation previously ordered by the District Hearing Officer.
9. On November 9, 2000, the Bureau of Workers' Compensation mailed a Notice of Overpayment due to clerical error to Respondent and Haggard individually. Respondent received his copy on November 10, 2000. The notice stated that an overpayment of \$9,454.44, which represented the extra year of benefits, would be recovered from future payments unless Haggard chose to send a check to the Bureau of Workers' Compensation in the overpayment amount.

10. It is not in dispute that by November 10, 2000, Respondent had been notified of the overpayment and that he was still in possession of those funds in his trust account.
11. Nevertheless, on November 14, 2000, Respondent executed a second disbursement agreement with Haggard for the remaining two checks, which totaled \$9,961.33. Respondent disbursed \$6,640.89 to Haggard, and paid himself a contingency fee of \$3,320.44. Of that contingency fee, \$3,151.48 represented funds resulting from the overpayment.
12. The disbursement agreement indicated that most of the amount being disbursed was the result of an overpayment and Haggard would be required to repay these monies to the Bureau of Workers' Compensation out of future claim awards if there were any.
13. On November 24, 2000, Respondent filed an appeal of the Order declaring an overpayment, but at the subsequent hearing a District Hearing Officer found that the Bureau of Workers' Compensation properly determined that Haggard was originally paid an extra year's worth of compensation because of a clerical error.
14. Ms. Haggard discharged Respondent in 2001 and hired new counsel.
15. Sometime in the fall of 2007, being unable to contact Respondent, Haggard contacted the Cincinnati Bar Association because the Bureau of Workers' Compensation was withholding 40% from each payment she was receiving on her ongoing claims to recoup the overpayment.
16. Relator filed a Complaint against Respondent on August 18, 2008, alleging violations of DR 1-102(A)(4) [dishonesty]; DR 1-102(A)(6) [conduct adversely reflecting on fitness to practice law]; and DR 2-106(A) [excessive fee]. Relator has since dismissed the allegation concerning a violation of DR 1-102(A)(4) [dishonesty].

17. The issue before the panel is the appropriateness of the second contingency fee that Respondent took from the overpayment with knowledge that it was an overpayment.

MITIGATING AND AGGRAVATING FACTORS

18. Respondent and Relator agree to the following aggravating factors:
- a. Respondent's refusal to acknowledge the wrongful nature of his conduct; and
 - b. Respondent's refusal to timely make full reimbursement of his contingency fee to either Ms. Haggard or the Bureau of Workers' Compensation.
19. Respondent and Relator agree to the following mitigating factors:
- a. Respondent has no prior disciplinary history;
 - b. Respondent has made full and free disclosure to the Disciplinary Board and has been cooperative in the investigation process;
 - c. On March 12, 2008, after being contacted by Relator, Respondent issued a check in the amount of \$991.52, partial reimbursement, to Ms. Haggard through her new counsel, which was later paid; and
 - d. When it became apparent that the above-referenced check had not been cashed, Respondent deposited monies into his IOLTA account in anticipation of issuing a check to Ms. Haggard and/or the Bureau of Workers' Compensation to repay his share of the overpayment.

RECOMMENDED SANCTION

20. Relator and Respondent recommend a sanction of a six-month suspension stayed on the condition of payment to the Bureau of Workers' Compensation in the amount of \$2,159.96, and payment of the costs of this proceeding. Respondent shall commit no further misconduct during the period of suspension.

Respectfully Submitted,

By: 

Roger C. Stridsberg (#0021277)

Respondent

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By: 

Andrew S. Adams (#0011799)

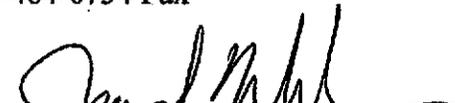
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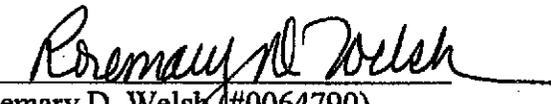
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