

In the Supreme Court of Ohio

ALLEN COUNTY BAR ASSOCIATION,

Relator

v.

CHRISTI LEE BROWN

Respondent.

FILED  
SEP 03 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO

RESPONDENT CHRISTI LEE BROWN'S  
NOTICE OF ADDITIONAL AUTHORITIES  
TO BE RELIED UPON DURING ORAL ARGUMENT

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**RESPONDENT CHRISTI LEE BROWN'S LIST OF ADDITIONAL AUTHORITIES  
TO BE RELIED UPON DURING ORAL ARGUMENT**

Pursuant to Rule IX, Section 8 of the Rules of Practice of the Supreme Court of Ohio, Respondent Christi Lee Brown submits the following list of additional authorities upon which she intends to rely during oral argument:

**A. DISCIPLINARY CASES INVOLVING IMPROPER SEXUAL CONDUCT RESULTING IN PUBLIC REPRIMAND**

1. *Cincinnati Bar Association v. Schmalz*, Slip Opinion No. 2009-Ohio-4159 (public reprimand for attorney who engaged in sexual activity with client, even though the attorney originally lied to investigators).
2. *Disciplinary Counsel v. Engler*, 110 Ohio St. 3d 138, 2006-Ohio-3824 (public reprimand for attorney who engaged in sexual activity with client while representing her during divorce proceedings).
3. *Richland County Bar Association v. Brightbill* (1990), 56 Ohio St. 3d 95 (public reprimand for attorney who impersonated a peace officer and engaged in sexual activity for hire).
4. *Disciplinary Counsel v. Rensing* (1990), 53 Ohio St. 3d 265 (public reprimand for attorney who engaged in sexual relations with client while representing her in divorce proceedings).

**B. OTHER PUBLIC REPRIMAND CASES**

1. *Geauga County Bar Association v. Patterson*, 111 Ohio St. 3d 228, 2006-Ohio-5488 (public reprimand for attorney who failed to timely refund unearned fees and had aggravating factors, including prior disciplinary offenses and initial lack of cooperation).

2. *Disciplinary Counsel v. Agopian*, 112 Ohio St. 3d 102, 2006-Ohio-6510 (public reprimand for attorney who submitted inaccurate fee bills for legal services rendered as court appointed counsel).
3. *Ohio State Bar Association v. Vukelic*, 102 Ohio St. 3d 421, 2004-Ohio-3651 (public reprimand for attorney who presided over client's case while serving as a part-time magistrate).
4. *Medina County Bar Association v. Kerek*, 102 Ohio St. 3d 228, 2004-Ohio-2286 (public reprimand for attorney who neglected a legal matter, gave financial assistance to client, and did not immediately cooperate in disciplinary investigation).
5. *Columbus Bar Association v. Dicker*, 102 Ohio St. 3d 123, 2004-Ohio-1803 (public reprimand for attorney who failed to maintain proper records of client funds, failed to refund the unearned portion of his fee, and failed to cooperate in disciplinary investigation).
6. *Northwestern Ohio Bar Association v. Schnitkey*, 94 Ohio St. 3d 135, 2002-Ohio-1056 (public reprimand for attorney who neglected two client matters and failed to respond to clients' inquiries over eight month period).
7. *Cuyahoga County Bar Association v. Gonzalez and Cuyahoga County Bar Association v. Stafford*, 89 Ohio St. 3d 470, 2000-Ohio-221 (public reprimand given to two attorneys who engaged in a heated discussion in chambers and in the courtroom which included inappropriate language).
8. *Columbus Bar Association v. Battisti*, 90 Ohio St. 3d 452, 2000-Ohio-194 (public reprimand for an attorney who caused a client to sign blank affidavits and then later completed the affidavits to file with court).

9. *Cincinnati Bar Association v. Randolph*, 85 Ohio St. 3d 325, 1999-Ohio-268 (public reprimand for attorney who charged an excessive fee and failed to return funds that his client was entitled to receive).

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing, Respondent Christi Lee Brown's Notice of Additional Authorities to be Relied Upon During Oral Argument, has been served, via regular U.S. Mail, postage-prepaid, this 2<sup>nd</sup> day of September, 2009 upon the following:

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## CINCINNATI BAR ASSOCIATION v. SCHMALZ.

No. 2009-0661

## SUPREME COURT OF OHIO

2009 Ohio 4159; 2009 Ohio LEXIS 2259

May 19, 2009, Submitted

August 25, 2009, Decided

**NOTICE:**

THIS SLIP OPINION IS SUBJECT TO FORMAL REVISION BEFORE IT IS PUBLISHED IN AN ADVANCE SHEET OF THE OHIO OFFICIAL REPORTS.

**PRIOR HISTORY:** [\*\*1]

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 08-082.

**HEADNOTES**

*Attorneys at law -- Misconduct -- Public reprimand.*

**COUNSEL:** Peter Rosenwald and Jean M. Geoppinger, for relator.

John H. Burlew, for respondent.

**JUDGES:** MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, LANZINGER, and CUPP, JJ., concur.

**OPINION****Per Curiam.**

[\*P1] Relator, Cincinnati Bar Association, filed a complaint against Cincinnati lawyer Anna Schmalz, Attorney Registration Number 0078103, for violating the Rules of Professional Conduct. The Board of Commissioners on Grievances and Discipline

recommends that we adopt the stipulated facts and accede to the respondent's consent-to-discipline agreement in the form of a public reprimand. In the consent-to-discipline agreement, respondent admits that she violated her oath of office and also violated *Prof.Cond.R 1.7(a)(2)* (a lawyer's representation of a client creates a conflict of interest if there is a substantial risk that the lawyer's representation will be compromised by the lawyer's personal interests) and 1.8(j) (a lawyer shall not solicit or engage in sexual activity with a client unless the relationship existed before the representation commenced). The board's recommendation states that [\*\*2] dropping the charges involving lying to the investigator is justified by mitigating circumstances.

[\*P2] We agree with the recommendation, and we order that the respondent be publicly reprimanded for her misconduct.

**Background**

[\*P3] The facts in this case have been stipulated by the parties. On December 7, 2006, respondent was appointed to represent a criminal defendant with respect to two separate indictments. Both cases were tried before a jury in March 2007, and the jury acquitted the defendant with respect to all charges in the first indictment and all but two charges in the second indictment. As to those charges, the jury could not reach a verdict.

[\*P4] Prosecutors offered the defendant a plea bargain with respect to the remaining charges that would have required him to serve two years, and respondent

consistently advised her client to accept the offer. But the defendant declined, and at a second trial in November 2007, the defendant was convicted and sentenced to five years and five months in prison. Later in November 2007, the defendant filed a grievance against respondent and informed the court of the allegations pertinent to this matter: that respondent had engaged in a romantic relationship [\*\*3] with him, that that relationship had left the defendant vulnerable and had created a conflict of interest, and that the relationship had motivated the respondent to fail to obtain the plea bargain.

[\*P5] The relator investigated the grievance by interviewing the respondent twice and serving interrogatories on her. During the initial interview, respondent was unrepresented and stated that she had developed a "friendship" with the client but did not admit the sexual nature of the relationship. Subsequently, an attorney investigating the defendant's allegations for the trial judge supplied a CD that contained recordings of over 50 hours of telephone calls between the defendant and respondent. The calls had been monitored by the Hamilton County Sheriff's Department with the knowledge of the participants. Among the approximately 110 half-hour recorded conversations between the respondent and her client were explicit descriptions of sexual acts and professions of love between the two. In at least three calls, respondent requested and/or engaged in telephonic sexual activity with her client.

[\*P6] In her response to relator's interrogatories, respondent admitted that she had engaged in "personal [\*\*4] conversations" that were "inappropriate." After the CD was supplied to respondent's counsel, relator's investigator conducted a second interview with respondent in which she acknowledged the sexual component of the relationship and admitted that she had discussed with the client the possibility of pursuing the relationship following his release from custody. In that context, respondent stated, "I screwed up. I got too close."

[\*P7] The parties have entered into a consent-to-discipline agreement filed pursuant to Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg.") and also a stipulation of facts in support of that agreement. The stipulation identifies respondent's initial minimization of her relationship with the client as

an aggravating factor pursuant to BCGD Proc.Reg. 10(B)(1)(f), but states in mitigation that respondent has made full disclosure to the board and has no prior disciplinary history in accordance with BCGD Proc.Reg. 10(B)(2)(a) and (d). The parties have agreed to a public reprimand as an appropriate sanction. The board reviewed the stipulation and consent-to-discipline [\*\*5] agreement and recommended that the court adopt the agreement.

#### Disposition

[\*P8] The consent agreement seeks a public reprimand for the respondent for violations of *Prof.Cond.R. 1.7(a)(2)* and 1.8(j). Our cases have dealt with sexual activity between lawyers and clients in a number of contexts, often under circumstances in which the sexual relationship formed part of a larger pattern of misconduct. At the one end of the spectrum, we disbarred a male lawyer who preyed upon the vulnerabilities of his clients in an egregious manner, engaged in sex with them, lied during the investigation, and showed little acceptance of responsibility for the wrongfulness of his own acts. *Disciplinary Counsel v. Sturgeon*, 111 Ohio St.3d 285, 2006 Ohio 5708, 855 N.E.2d 1221, P 18, 29-30. In other cases, a sexual relationship has been linked with other disciplinary violations or an actual adverse impact on the quality of the legal representation; in such cases, we have ordered a suspension from the practice of law. See *Disciplinary Counsel v. Krieger*, 108 Ohio St.3d 319, 2006 Ohio 1062, 843 N.E.2d 765, P 29, 30, and cases cited therein.

[\*P9] The present case dwells at the end of the spectrum representing the least egregious [\*\*6] cases of sexual misconduct. The parties stipulated that in spite of the improprieties, respondent effectively performed her function as attorney in the criminal representation and that a public reprimand for the stated violations will adequately deter her from further violations. In such cases, we have imposed a public reprimand. See *Disciplinary Counsel v. Engler*, 110 Ohio St.3d 138, 2006 Ohio 3824, 851 N.E.2d 502 P 12 - 13; *Disciplinary Counsel v. DePietro* (1994), 71 Ohio St.3d 391, 392-393, 1994 Ohio 284, 643 N.E.2d 1145. Consistent with this case law, we adopt the recommendation of the board and order that respondent be publicly reprimanded. Costs are taxed to respondent.

Judgment accordingly.



FOCUS - 3 of 19 DOCUMENTS

**DISCIPLINARY COUNSEL v. ENGLER.**

No. 2006-0392

SUPREME COURT OF OHIO

*110 Ohio St. 3d 138; 2006 Ohio 3824; 851 N.E.2d 502; 2006 Ohio LEXIS 2374*

March 29, 2006, Submitted

August 9, 2006, Decided

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 05-089.

**HEADNOTES**

*Attorneys at law -- Misconduct -- Public reprimand -- Reasonable possibility that lawyer's professional judgment could have been affected by personal and financial interests.*

**COUNSEL:** Jonathan E. Coughlan, Disciplinary Counsel, and Brian E. Shinn, Assistant Disciplinary Counsel, for relator.

Mitchell, Allen, Cantalano & Boda Co., L.P.A., and William C. Mann, for respondent.

**JUDGES:** MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL and LANZINGER, JJ., concur.

**OPINION**

[\*\*503] [\*138] **Per Curiam.**

[\*\*P1] Respondent, David Lee Engler of Boardman, Ohio, Attorney Registration No. 0030264, was admitted to the practice of law in Ohio in 1985.

[\*\*P2] On October 10, 2005, relator, Disciplinary Counsel, charged respondent with violating the Code of Professional Responsibility by engaging in a sexual

relationship with a client. A panel of the Board of Commissioners on Grievances [\*139] and Discipline heard the cause on the parties' consent-to-discipline agreement, filed pursuant to Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."). The panel accepted the parties' agreement and made corresponding findings of misconduct and a recommendation, which the board adopted.

Misconduct

[\*\*P3] The parties stipulated that respondent had two sexual encounters with a divorce client and had thereby violated *DR 1-102(A)(6)* (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law) and *5-101(A)(1)* (prohibiting a lawyer from accepting employment if the exercise of professional judgment on behalf of a client will be or reasonably may be affected by the lawyer's personal interests). The parties also agreed that respondent's misconduct warranted a public reprimand.

[\*\*P4] Respondent has a law practice under the name of Engler & Associates. On June 29, 2004, a 28-year-old female client consulted respondent about ending her marriage. During their discussions, respondent learned that the client was an artist and had sold some of her paintings. He indicated an interest in possibly purchasing her work, and sometime later, the client brought paintings to respondent's office. Respondent offered to buy some of the paintings by crediting the client for \$ 400 toward his \$ 1,000 fee. The client agreed

to trade the paintings and paid the balance of respondent's \$ 600 legal fee.

[\*\*P5] The client expected her husband to agree to dissolve their marriage, and in late August 2004, respondent sent a separation agreement to the husband for review. On September 8, 2004, respondent met his client at a restaurant to discuss [\*\*\*504] the dissolution process. Afterward, respondent and the client went to his house and engaged in consensual sexual relations.

[\*\*P6] Approximately seven to ten days later, the client visited respondent at home again, and the couple again had consensual sex. Respondent subsequently told his client that he could not continue to have a personal relationship with her until her case had ended and she was no longer his client. About the same time, respondent wrote a memo to the client's file indicating he had told the client he could not have a personal relationship with her and that the client had agreed.

[\*\*P7] In late September 2004, an attorney representing the husband sent respondent proposed changes to the dissolution agreement. Early in October 2004, respondent met with his client in the presence of his assistant to review the changes and then wrote to the other lawyer regarding those changes.

[\*\*P8] In a telephone conversation on October 12, 2004, respondent again told his client that he could not continue their personal relationship while he was [\*140] representing her. The next day, the client sent a letter of dismissal to respondent. Respondent promptly replied with a letter indicating that he had completed his work in her case. Respondent enclosed a final invoice and a check reimbursing the client for the remaining balance of her paid fees. Later, respondent also returned the paintings that he had accepted from his client in partial payment of his fees.

#### Recommended Sanction

[\*\*P9] In recommending a sanction for respondent's misconduct, the board weighed the mitigating and aggravating factors of his case. See BCGD Proc.Reg. 10(B).

[\*\*P10] The parties stipulated to the mitigating factors that (1) respondent had no prior disciplinary record, (2) he had made timely good-faith efforts at restitution, (3) he made a full and free disclosure of information and was cooperative in the disciplinary proceedings, and (4) he had a good reputation in the legal community apart from the underlying misconduct. BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). According to the parties, respondent on his own initiative had also received instruction on ethics and practice management from a former president of the Mahoning County Bar Association. In addition, the board found that respondent had acknowledged his wrongdoing in this isolated incident of misconduct.

[\*\*P11] Adopting the panel's report, the board recommended that respondent receive a public reprimand for his misconduct.

#### Review

[\*\*P12] We agree that respondent violated *DR 1-102(A)(6)* and *5-101(A)(1)*, as found by the board. Moreover, we generally impose a public reprimand when a sexual relationship develops during an attorney-client relationship if the affair is legal and consensual and has not compromised client interests. *Disciplinary Counsel v. Moore*, 101 Ohio St.3d 261, 2004 Ohio 734, 804 N.E.2d 423, citing *Disciplinary Counsel v. DePietro* (1994), 71 Ohio St.3d 391, 1994 Ohio 284, 643 N.E.2d 1145; *Disciplinary Counsel v. Paxton* (1993), 66 Ohio St.3d 163, 610 N.E.2d 979; *Disciplinary Counsel v. Rensing* (1990), 53 Ohio St.3d 265, 559 N.E.2d 1359. Therefore, we find the recommended sanction appropriate.

[\*\*P13] Respondent is therefore publicly reprimanded for his violations of *DR 1-102(A)(6)* and *5-101(A)(1)*. Costs are taxed to respondent.

Judgment accordingly.

[\*\*\*505] MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL and LANZINGER, JJ., concur.



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**RICHLAND COUNTY BAR ASSOCIATION v. BRIGHTBILL**

No. 90-1132

Supreme Court of Ohio

*56 Ohio St. 3d 95; 564 N.E.2d 471; 1990 Ohio LEXIS 1727*

**July 31, 1990, Submitted**  
**December 19, 1990, Decided**

**NOTICE:**

[\*\*\*1]

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 89-68.

On December 18, 1989, relator, Richland County Bar Association, filed a complaint against respondent, James E. Brightbill, based on respondent's recent convictions on charges of impersonating a peace officer and soliciting to engage in sexual activity for hire. Relator charged respondent, *inter alia*, with violating DR 1-102(A)(3) (engaging in illegal conduct involving moral turpitude) and 1-102(A)(5) (engaging in conduct that is prejudicial to the administration of justice). Respondent, in his answer filed January 9, 1990, admitted being charged with and convicted of the two offenses and receiving a \$ 500 fine and suspended jail sentences.

A panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court held a hearing on the matter on May 11, 1990. The evidence presented by respondent's counsel tended to show that respondent had a strong aptitude for trial work, but was somewhat naive, based on his rural upbringing. Respondent was also [\*\*\*2] portrayed as curious, based on his daily encounters with the criminal element in Richland County once he began working in the prosecutor's office. Respondent admitted to consorting with prostitutes on four or five occasions during the nine months he worked at the prosecutor's office. He admitted to carrying a wallet with his assistant county prosecutor

badge pinned to the inner trifold pocket, which was distinctly visible when his wallet was open; however, he stated that he did not hold himself out at any time to be a police officer. Respondent admitted that he was driving a county car on one occasion in which he engaged in sexual activity with a prostitute. Respondent also admitted asking the prostitutes he engaged to return his money to him, but states he did not attempt to coerce them to do so.

Respondent claimed he pled no contest to the criminal charges to avoid a public trial and for personal reasons. As a result of the charges, respondent was dismissed from the prosecutor's office and returned to work at the family dairy farm in Loudonville. Respondent has not practiced law since he was charged with the offenses. Respondent's ordeal was closely followed by the press [\*\*\*3] and, besides costing respondent his job, it cost him the friendships of many of his peers. Respondent underwent psychological counseling after his convictions, which he testified helped him to realize that he committed the sexual offense due to excessive alcohol use and loneliness.

The panel noted that the evidence presented on respondent's charge of impersonating a peace officer could not result in a conviction because the badge at issue was not one of a peace officer. However, the panel felt itself bound by respondent's no contest plea and subsequent conviction and concluded that respondent had violated DR 1-102(A)(3) and (5). The panel recommended that respondent be suspended from the practice of law for one year. Upon review, the board agreed with the panel's findings of misconduct, but recommended a public reprimand because the misconduct

did not directly relate to the practice of law and because of the trauma respondent had already experienced due to the charges, the lack of clear and convincing evidence that respondent used his position to intimidate prostitutes, and the favorable character testimony.

**DISPOSITION:** *Judgment accordingly.*

**HEADNOTES**

*Attorneys at law -- Misconduct -- Public reprimand [\*\*\*4] -- Convictions on charges of impersonating a peace officer and soliciting to engage in sexual activity for hire.*

**COUNSEL:** *William Travis McIntyre*, for relator.

*David L. Kitzler*, for respondent.

**JUDGES:** Sweeney, Holmes, Douglas and H. Brown, JJ., concur. Moyer, C.J., Wright and Resnick, JJ., dissent.

**OPINION BY: PER CURIAM**

**OPINION**

[\*\*472] [\*96] We agree with the board's findings and recommendation and hereby publicly reprimand respondent for his misconduct. Costs taxed to the respondent.

*Judgment accordingly.*

**DISSENT BY: MOYER; WRIGHT; RESNICK**

**DISSENT**

MOYER, C.J., dissenting.

I would suspend respondent from the practice of law in the state of Ohio for a period of six months.

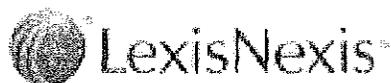
WRIGHT, J., dissenting.

I concur in the thrust and substance of Justice Resnick's dissent but not in her [\*\*473] proposed penalty of indefinite suspension. Instead, I would suspend respondent for one year.

ALICE ROBIE RESNICK, J., dissenting.

I vehemently dissent from the majority's granting of a public reprimand in this case. Respondent admitted that he has engaged in illicit sexual conduct with prostitutes on several occasions. Most egregious was the fact that apparently on one occasion, while using a county vehicle, he engaged the services of a prostitute and [\*\*\*5] reportedly attempted to use his position as an assistant prosecutor to avoid paying for this illegal activity.

Respondent has admitted to being charged with and convicted of impersonating a peace officer and soliciting to engage in sexual activity for hire. This behavior brought disgrace not only to respondent but to the prosecutor's office and the entire legal profession. The board, in recommending a public reprimand, commented that respondent's misconduct did not directly relate to the practice of law. [\*97] This statement is without foundation in fact. A lawyer's personal activities, especially those involving criminal conduct, cannot be separated from the practice of law, particularly where the conduct involves moral turpitude and is prejudicial to the administration of justice. Respondent was in fact found to have violated DR 1-102(A)(3) and (5). Due to the nature of the conduct involved herein, a public reprimand is inappropriate in my opinion. I would therefore indefinitely suspend Mr. Brightbill from the practice of law.



FOCUS - 16 of 19 DOCUMENTS

**OFFICE OF DISCIPLINARY COUNSEL v. RESSING**

No. 90-403

Supreme Court of Ohio

*53 Ohio St. 3d 265; 559 N.E.2d 1359; 1990 Ohio LEXIS 1045*

April 11, 1990, Submitted  
September 12, 1990, Decided

**PRIOR HISTORY:** [\*\*1] ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 90-1.

In a complaint filed January 2, 1990, relator, Office of Disciplinary Counsel, charged that respondent, Thomas Garrett Rassing, had violated DR 1-102(A)(6) (engaging in conduct that adversely reflects on an attorney's fitness to practice law). In his answer, respondent admitted the facts and misconduct alleged in the complaint. Respondent waived a hearing, and the matter was submitted to a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court on joint stipulations.

The record substantiates that, in 1986, respondent was asked by one of his female clients to represent her in a divorce action. The woman paid respondent \$ 60 for court filing fees. Thereafter, respondent and the woman engaged in sexual relations on more than one occasion while she was a client. During this relationship, respondent did not charge the woman for his legal services, and sometimes gave her money. However, no evidence established that respondent accepted sex in exchange for his services.

Based on the foregoing, the panel found that respondent had violated DR [\*\*2] 1-102(A)(6), and recommended the sanction suggested by the parties, a public reprimand. The board concurred in the panel's

findings and its recommendation.

**DISPOSITION:** *Judgment accordingly.*

**HEADNOTES**

*Attorneys at law -- Misconduct -- Public reprimand -- Engaging in conduct that adversely reflects on attorney's fitness to practice law -- Engaging in sexual relations with client.*

**COUNSEL:** *J. Warren Bettis*, disciplinary counsel, and *Karen B. Hull*, for relator.

*Charles W. Kettlewell*, for respondent.

**JUDGES:** *Moyer, C.J., Sweeney, Holmes, Douglas, Wright, H. Brown and Resnick, JJ.*, concur.

**OPINION BY:** PER CURIAM

**OPINION**

[\*1359] We agree with the board's findings of misconduct and its recommendation. Thus, we hereby publicly reprimand respondent for having violated DR 1-102(A)(6). Costs taxed to respondent.

Judgment accordingly.



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## GEAUGA COUNTY BAR ASSOCIATION v. PATTERSON.

No. 2006-1176

## SUPREME COURT OF OHIO

111 Ohio St. 3d 228; 2006 Ohio 5488; 855 N.E.2d 871; 2006 Ohio LEXIS 3219

August 8, 2006, Submitted

November 8, 2006, Decided

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 05-057.

**HEADNOTES**

*Attorneys at law -- Misconduct -- Failure to promptly return unearned fees upon withdrawal from employment -- Public reprimand.*

**COUNSEL:** James Reardon and Edward T. Brice, for relator.

David N. Patterson, Pro sc.

**JUDGES:** MOYER, C.J., RESNICK, PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL and LANZINGER, JJ., concur.

**OPINION**

[\*228] [\*\*\*872] **Per Curiam.**

[\*\*P1] Respondent, David Nelson Patterson of Willoughby, Ohio, Attorney Registration No. 0015280, was admitted to the Ohio bar in 1964. On December 23, 1980, we publicly reprimanded respondent for violating the following *Disciplinary Rules: DR 2-103(B)* (barring a lawyer from compensating or giving something of value to a person to recommend or secure the lawyer's employment, or as a reward for having made a recommendation resulting in his employment), *5-101(A)* (prohibiting a lawyer from accepting employment if the

exercise of professional judgment on behalf of a client will be or reasonably may be affected by the lawyer's personal interests), *5-105(A)* (requiring a lawyer to decline employment that is likely to compromise the lawyer's independent judgment on a client's behalf), *5-105(B)* (prohibiting a lawyer from representing multiple clients when the exercise of professional judgment on any client's behalf is likely to be adversely affected by the representation of another client), and *7-101(A)(3)* (prohibiting a lawyer from intentionally prejudicing or damaging a client). *Lake Cty. Bar Assn. v. Patterson (1980)*, *64 Ohio St.2d 163*, *18 O.O.3d 382*, *413 N.E.2d 840*.

[\*\*P2] On June 13, 2005, relator, Geauga County Bar Association, filed a complaint charging respondent with additional professional misconduct. Respondent filed an answer to the complaint, and a panel of the Board of Commissioners on Grievances and Discipline held a hearing on the complaint in April 2006. The [\*229] panel then prepared written findings of fact, conclusions of law, and a recommendation, all of which the board adopted.

**Misconduct**

[\*\*P3] In the late 1980s, Clayton Ausmundson paid respondent a \$ 5,500 retainer to represent him in a domestic-relations matter. In 2002, Ausmundson asked respondent to represent him in another domestic-relations matter, and Ausmundson paid an additional \$ 2,465.22 retainer. While that second case was pending in 2003, Ausmundson became dissatisfied with respondent's services, and he asked respondent to refund any unused

portion of the retainer. In October 2003, respondent provided Ausmundson an accounting of his services and indicated that a refund of \$ 1,314.62 was due. Respondent failed, however, to refund any money at that time, prompting Ausmundson to file a grievance against him with relator in June 2004.

[\*\*P4] In response to relator's inquiry about the unpaid refund, respondent promised in August 2004 to pay Ausmundson immediately. No refund was forthcoming, however, and relator sent two letters to respondent in September and October 2004 again requesting the refund. Finally, relator received a \$ 1,300 check from respondent on October 22, 2004, and relator promptly forwarded it to Ausmundson. In March 2006, respondent refunded an additional \$ 2,650 to Ausmundson.

[\*\*P5] After examining these actions, the board found that respondent had violated *DR 2-110(A)(3)* (requiring a lawyer to [\*\*\*873] promptly return unearned fees upon withdrawal from employment).

#### Sanction

[\*\*P6] In recommending a sanction for this misconduct, the board considered the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."). The aggravating factors cited by the board were respondent's prior disciplinary offenses and his initial lack of cooperation in the disciplinary process. BCGD Proc.Reg. 10(B)(1)(a) and (c). The board also noted several mitigating factors: the absence of a dishonest or selfish motive, respondent's efforts to rectify the consequences of his misconduct, his full and free disclosure to the

board and his cooperative attitude toward the disciplinary process once he refunded the money to his client, and letters to the board attesting to respondent's good character and reputation. BCGD Proc.Reg. 10(B)(2)(b), (c), (d), and (e).

[\*\*P7] Relator recommended that respondent be publicly reprimanded. The panel and the board issued similar recommendations. Respondent has filed no objections to the board's findings or its recommendation.

[\*230] [\*\*P8] We have reviewed the board's report and the record, and we accept the board's findings and conclusions. We also adopt the board's recommended sanction.

[\*\*P9] Although respondent was tardy in sending a refund of unearned fees to his client, he did readily admit his misconduct in his answer to relator's complaint, and there is no evidence in the record pointing to any dishonesty or a pattern of misconduct on respondent's part. We also look favorably on respondent's apology to Ausmundson at the disciplinary hearing as well as the seven letters in the record from judges and lawyers who describe respondent as ethical, honest, and diligent. In light of these various factors, we accept the board's assessment that a public reprimand will be sufficient to ensure that respondent does not repeat his misconduct.

[\*\*P10] Accordingly, respondent is hereby publicly reprimanded. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, PFEIFER, LUNDBERG  
STRATTON, O'CONNOR, O'DONNELL and  
LANZINGER, JJ., concur.



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**DISCIPLINARY COUNSEL v. AGOPIAN.**

No. 2006-0779

**SUPREME COURT OF OHIO***112 Ohio St. 3d 103; 2006 Ohio 6510; 858 N.E.2d 368; 2006 Ohio LEXIS 3560***August 8, 2006, Submitted****December 27, 2006, Decided**

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 05-079.

**HEADNOTES**

*Attorneys at law--Misconduct--Conduct involving dishonesty, fraud, deceit, or misrepresentation--Conduct adversely reflecting on fitness to practice law--Public reprimand.*

**COUNSEL:** Jonathan E. Coughlan, Disciplinary Counsel, for relator.

Kegler, Brown, Hill & Ritter, Christopher J. Weber, and Geoffrey Stern, for respondent.

**JUDGES:** O'DONNELL, J. RESNICK, PFEIFER and LUNDBERG STRATTON, JJ., concur. MOYER, C.J., O'CONNOR and LANZINGER, JJ., dissent.

**OPINION BY:** O'DONNELL

**OPINION**

[\*103] [\*\*\*369] O'DONNELL, J.

[\*\*P1] In this case, we are called upon to determine the appropriate sanction for an attorney who submitted inaccurate fee bills to the Cuyahoga County Court of Common Pleas for legal services rendered as court-appointed counsel to indigent criminal defendants.

[\*\*P2] The Board of Commissioners on Grievances and Discipline adopted the panel's sanction and recommended that the Supreme Court impose a one-year stayed suspension of Richard V. Agopian's license to practice law for allegedly improperly billing the Cuyahoga County Court of Common Pleas for court-appointed legal services. After a careful review of the facts in this case, we reject this recommendation and conclude that the conduct here warrants a public reprimand.

[\*\*P3] Disciplinary Counsel filed a complaint against Richard Van Agopian of Cleveland, Attorney Registration No. 0030924, in connection with fee bills he submitted to the Cuyahoga County Court of Common Pleas for representation of indigent defendants charged with criminal conduct. Admitted to the practice of law in Ohio in 1975, Agopian has primarily represented defendants in criminal matters in Cuyahoga County since about 1985, and he often served as appointed counsel for indigent parties. This case involves a series of fee bills he submitted to the court for approval primarily between the months of October 2002 and April 2003, a period during which he represented between 30 and 40 such clients. The majority of these cases involved third-, fourth-, and fifth-degree felonies, for which *Loc.R. 33 of the Court of Common Pleas of Cuyahoga County, General Division*, specified an hourly rate of \$ 40 for out-of-court and \$ 50 for in-court representation and set a maximum fee for these felonies at \$ 400.

[\*104] [\*\*P4] Because his practice necessitated his daily appearance in court, Agopian would spend his weekends preparing fee bills and would approximate the

amount of time he spent working on a particular case in drafting his fee requests.

[\*\*P5] [\*\*\*370] In a hearing before a three-member panel of the Board of Commissioners on Grievances and Discipline, Agopian stipulated that he submitted bills to the court that did not reflect the day upon which he rendered the services mentioned. The panel found that his billing records reflected a pattern of recording the same number of hours to prepare and file motions in a number of cases regardless of the actual time spent and that he would assign those hours to a date regardless of whether he actually performed that work on that day. He admitted that he had approximated his actual time to perform these services but had nevertheless certified to the court the accuracy of the information.

[\*\*P6] The panel found that Agopian submitted fee bills for work performed in excess of 24 hours on three days: Saturday, October 12, 2002; Saturday, November 2, 2002; and Saturday, November 23, 2002. But the reality is that Agopian spent those weekends in his office preparing fee bills for cases he had worked on during the previous weeks and months, giving the appearance that he had performed more than 24 hours of work on a given day. Despite the perception, Agopian did all the work on each individual case but failed to accurately record the exact days of his appearances in court or the specific number of hours that he spent on each case. Rather, Agopian recorded the same number of hours spent in motion practice and in opening each of these case files in an effort to obtain the \$ 400 maximum legal fee authorized by local rule for the work he performed. Despite this careless and sloppy timekeeping practice, there is no evidence of deceit or any course of conduct designed to collect fees for work not performed. The panel found that Agopian "routinely performs services in an amount far in excess of the time for which he submits payment requests." One panel member noted that Agopian "wasn't taking one hour \* \* \* and turning it into three. It looks to me like he was taking three hours and turning it into one."

[\*\*P7] Following the hearing, the panel determined that Agopian had violated *DR 1-102(A)(4)* (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation) and *1-102(A)(6)* (a lawyer shall not engage in conduct that adversely reflects on the lawyer's fitness to practice law). The panel recommended dismissal of the Disciplinary Counsel's allegation of a

third rule violation, finding no evidence that Agopian had violated *DR 2-106* (a lawyer shall not charge or collect an illegal or clearly excessive fee).

[\*\*P8] The Board of Commissioners on Grievances and Discipline adopted the panel's recommendation and recommended a one-year stayed suspension of Agopian's license to practice law.

[\*105] [\*\*P9] Disciplinary Counsel objected to the board's recommendation that the alleged violation of *DR 2-106* be dismissed. We overrule Disciplinary Counsel's objection and accept the board's recommendation to dismiss this allegation.

[\*\*P10] This court has consistently recognized that "in determining the appropriate length of the suspension and any attendant conditions, we must recognize that the primary purpose of disciplinary sanctions is not to punish the offender, but to protect the public." *Disciplinary Counsel v. O'Neill*, 103 Ohio St.3d 204, 2004 Ohio 4704, 815 N.E.2d 286, P 53; see, also, *Ohio State Bar Assn. v. Weaver* (1975), 41 Ohio St.2d 97, 100, 70 O.O.2d 175, 322 N.E.2d 665. As we stated in *Weaver*, "In [a] disciplinary matter, the primary purpose is not to punish an offender; it is to protect the public against members of the bar who are unworthy of the trust and confidence essential to the [\*\*\*371] relationship of attorney and client; it is to ascertain whether the conduct of the attorney involved has demonstrated his unfitness to practice law, and if so to deprive him of his previously acquired privilege to serve as an officer of the court." *Id.*, quoting *In re Pennica* (1962), 36 N.J. 401, 418-419, 177 A.2d 721.

Primary purpose to protect public

[\*\*P11] As the panel noted, Agopian's conduct "did not involve the exploitative motive found in *Disciplinary Counsel v. Holland*, 106 Ohio St.3d 372, 2005 Ohio 5322 [835 N.E.2d 361]," in which we suspended an attorney for one year for double billing, i.e., "billing of fees and costs to more than one client for the same work or the same hours." *Holland*, P 21, quoting Hopkins, Law Firms, Technology, and the Double-Billing Dilemma (1998), 12 *Geo.J.Legal Ethics* 93, 99. Agopian did not pad his bills or charge for work he did not perform. Moreover, he took full responsibility for his sloppy record keeping.

[\*\*P12] We have considered similar cases involving fees and determined a public reprimand to be the appropriate sanction. In *Dayton Bar Assn. v. Schram*,

98 Ohio St.3d 512, 2003 Ohio 2063, 787 N.E.2d 1184, in which an attorney violated DR 2-106(A) by charging a nonrefundable fee, we determined that a public reprimand should be imposed. We noted Schram's lack of a prior disciplinary record, her cooperation in the disciplinary proceedings, and the panel's determination that she "had not intended to keep more money than she earned from her client." *Id.*, P 7.

[\*\*P13] In *Cincinnati Bar Assn. v. Randolph* (1999), 85 Ohio St. 3d 325, 1999 Ohio 268, 708 N.E.2d 192, we publicly reprimanded an attorney who violated DR 2-106(A) by retaining a portion of a fee he had not earned. In so holding, we noted Randolph's lack of a disciplinary record, his character letters attesting to his honesty and integrity, and his complete acceptance of responsibility. The same considerations expressed in *Schram* and *Randolph* militate against imposing any sanction other than a public reprimand for Agopian's conduct. While we do not condone the billing practices employed in this case, the conduct involves neither a [\*106] deliberate effort to deceive in order to generate funds not earned nor an effort to collect for services not rendered, and it is not a double-billing case.

[\*\*P14] We have also held that "mitigating evidence can justify a lesser sanction." *Disciplinary Counsel v. Carroll*, 106 Ohio St.3d 84, 2005 Ohio 3805, 831 N.E.2d 1000, P 13. In this case, the mitigating evidence demonstrates that Agopian has no prior disciplinary record, has fully cooperated with the disciplinary process, and has accepted responsibility for his conduct. The panel received more than 40 letters attesting to his character, including one from Judge Janet Burnside ("I have always found him honest and forthright in all my dealings with him") and two from former presidents of the Cuyahoga Criminal Defense Lawyers Association, David L. Grant and James M. Kersey, who attested to his integrity, reputation, and professionalism. In other letters, colleagues Mark A. Stanton noted "an

unwavering belief that Richard Agopian embodies the highest standards of professional excellence and integrity," and William T. Doyle wrote that Agopian "always conducted himself in a very professional manner." This mitigating evidence counsels against imposing the sanction recommended in this case.

[\*\*P15] Weighing the mitigating factors against the conduct at issue, we reject the board's recommendation that a one-year stayed suspension be imposed, and instead, based on the fact that Agopian has no prior disciplinary record, has fully complied with the disciplinary process, and has accepted responsibility for his conduct, and [\*\*\*372] further considering the character letters attesting to his reputation, integrity, and professionalism, we issue a public reprimand for the conduct in this case. Costs are taxed to respondent.

Judgment accordingly.

RESNICK, PFEIFER and LUNDBERG  
STRATTON, J.J., concur.

MOYER, C.J., O'CONNOR and LANZINGER, J.J.,  
dissent.

**DISSENT BY: LANZINGER**

**DISSENT**

**LANZINGER, J., dissenting.**

[\*\*P16] I respectfully dissent. I would impose a one-year stayed suspension as recommended by the Board of Commissioners on Grievances and Discipline.

MOYER, C.J., and O'CONNOR, J., concur in the foregoing opinion.



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## OHIO STATE BAR ASSOCIATION v. VUKELIC.

No. 2004-0395

## SUPREME COURT OF OHIO

102 Ohio St. 3d 421; 2004 Ohio 3651; 811 N.E.2d 1127; 2004 Ohio LEXIS 1742

March 30, 2004, Submitted

July 28, 2004, Decided

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 03-091.

**HEADNOTES**

*Attorneys at law - Magistrates - Misconduct - Public reprimand - Canon 3(E)(1), Code of Judicial Conduct - Failure to disqualify oneself where impartiality might reasonably be questioned.*

**COUNSEL:** Eugene P. Whetzel and Bruce A. Campbell, for relator.

Charles W. Kettlewell and Charles J. Kettlewell, for respondent.

**JUDGES:** MOYER, C.J., RESNICK, F.E. SWEENEY, PFEJFER, LUNDBERG STRATTON, O'CONNOR and O'DONNELL, JJ., concur.

**OPINION**

[\*421] [\*\*\*1127] *Per Curiam.*

[\*\*P1] Respondent, David A. Vukelic of Steubenville, Ohio, Attorney Registration No. 0001077, was admitted to the practice of law in Ohio in 1977. On October 6, 2003, relator, Ohio State Bar Association, charged respondent with having committed professional misconduct in his capacity as a part-time magistrate in the Mayor's Court of Toronto, Ohio. A panel of the Board of Commissioners [\*422] on Grievances and Discipline

considered the cause on the parties' consent-to-discipline agreement. See Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg.").

[\*\*P2] In addition to serving as a part-time magistrate, respondent also had a private law practice during the events at bar. On August 26, 2002, respondent filed a motion in the Columbiana County Court of Common Pleas on behalf of a domestic relations client. On October 31, 2002, while presiding in his capacity as magistrate, respondent's client in the pending domestic relations case appeared before him in mayor's court on two charges for the commission of criminal misdemeanors.

[\*\*P3] Respondent realized that his client's court appearance presented a situation in which his impartiality might be [\*\*\*1128] legitimately questioned and from which he should disqualify himself. Respondent nevertheless failed to immediately transfer the cause to a different jurisdiction for resolution, allowing the case against his client to be discussed in his presence. The parties agreed and the panel found that respondent had thereby violated the *Canon 3(E)(1) of the Code of Judicial Conduct*, which requires a person functioning in a judicial capacity to disqualify himself where his impartiality might reasonably be questioned. The board adopted this finding of misconduct.

[\*\*P4] The panel also considered the appropriate sanction for respondent's misconduct. Consistent with the parties' agreement, the panel found mitigating that

102 Ohio St. 3d 421, \*422; 2004 Ohio 3651, \*\*P4;  
811 N.E.2d 1127, \*\*\*1128; 2004 Ohio LEXIS 1742

respondent had no prior disciplinary record, had not acted dishonestly, had cooperated completely in the disciplinary process, and had a reputation for good character in his community. See BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). The panel found no aggravating features in respondent's case.

[\*\*P5] The panel accepted the parties' suggestion that respondent be publicly reprimanded for his misconduct. The board adopted the panel's recommendation.

[\*\*P6] We agree with the board's finding of misconduct and recommendation. Accordingly, respondent is hereby publicly reprimanded for having violated *Canon 3(E)(1) of the Code of Judicial Conduct*. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, F.E. SWEENEY,  
PFEIFER, LUNDBERG STRATTON, O'CONNOR and  
O'DONNELL, JJ., concur.



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**MEDINA COUNTY BAR ASSOCIATION v. KEREK.**

No. 2003-2202

**SUPREME COURT OF OHIO***102 Ohio St. 3d 228; 2004 Ohio 2286; 809 N.E.2d 1; 2004 Ohio LEXIS 1175*

**March 15, 2004, Submitted**  
**May 26, 2004, Decided**

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 02-39.

**DISPOSITION:** Respondent publicly reprimanded.

**HEADNOTES**

Attorneys at law -- Misconduct -- Public reprimand -- Neglect of an entrusted legal matter -- Giving impermissible financial assistance to a client -- Failing to cooperate in disciplinary investigation.

**COUNSEL:** Stephen J. Brown and Gary T. Mantkowski, for relator.

Wayne L. Kerek, Pro se.

**JUDGES:** MOYER, C.J., RESNICK, F.E. SWFENEY, PFEIFER, LUNDBERG STRATTON, O'CONNOR and O'DONNELL, JJ., concur.

**OPINION**

[\*\*1] [\*228] *Per Curiam*.

[\*\*P1] Respondent, Wayne L. Kerek of Brunswick, Ohio, Attorney Registration No. 0029211, was admitted to the practice of law in Ohio in 1983. On June 17, 2002, relator, Medina County Bar Association, charged respondent with professional misconduct. A panel of the Board of Commissioners on Grievances and Discipline considered the cause on the parties' stipulations of

misconduct and jointly proposed sanction.

[\*\*P2] The parties stipulated to the following facts. Respondent had agreed to represent a client regarding a personal-injury claim for which the client believed the statute of limitations would expire in January 2001. Respondent kept in contact with this client through December 1999. Thereafter, however, the client made repeated attempts to contact respondent, by both visiting his office and leaving messages with his answering service, but she was unable to reach him, and he did not return her calls. In fact, respondent did not contact his client again until after August 1, 2000, the date on which she filed a grievance with relator.

[\*\*P3] Respondent also did not return calls from relator's investigator and did not respond for over a month to relator's letter sent by certified mail notifying him of the grievance and requesting that he contact the investigator. Respondent explained that his failure to return his client's and the investigator's calls was a result of his former answering service's going out of business in December 1999. Respondent had then changed his telephone number and did not realize that an answering machine was still accepting his messages at the old number. He thought the old number had been disconnected. Respondent further advised that he intended to cooperate fully with the investigation.

[\*\*P4] Respondent acknowledged during the investigation that he had loaned \$ 450 to his client. Respondent loaned this money to help his client avoid having [\*229] her car repossessed and with the understanding that she would repay him upon settlement

[\*\*2] of her claim. The client later confirmed this loan, as well as the fact that respondent, who timely filed suit on his client's behalf in January 2001, became more involved in her case after her grievance. In fact, in January 2002, respondent negotiated a settlement of the client's personal injury claim, and she subsequently reimbursed him for the loan.

[\*\*P5] The parties stipulated and the panel found that respondent had violated *DR 6-101(A)(3)* (barring attorneys from neglecting an entrusted legal matter) and *5-103(B)* (barring attorneys from giving impermissible financial assistance to a client) and *Gov.Bar R. V(4)(G)* (requiring an attorney's cooperation in disciplinary proceedings). The board adopted these findings of misconduct.

[\*\*P6] The panel also considered the appropriate sanction for respondent's misconduct. From the parties' stipulations, the panel found as mitigating factors that respondent had no prior disciplinary record, had not sought or received financial gain through his misconduct, and had rectified the consequences of his misconduct by timely filing a complaint and negotiating a settlement. See Section 10(B)(2) of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and

Discipline . The panel further found that respondent had ultimately been cooperative and forthcoming during the disciplinary process, although it did register concern that respondent had not immediately replied to the investigator's certified letter, claiming to have misplaced it, and had not given his client his new telephone number and business address. The panel was also skeptical of respondent's claim that after he received the certified letter, he had left a message for a former member of relator's certified-grievance committee.

[\*\*P7] The panel accepted the parties' suggestion that respondent be publicly reprimanded for his misconduct. The board adopted the panel's recommendation.

[\*\*P8] We agree with the board's findings of misconduct and recommendation. Accordingly, respondent is hereby publicly reprimanded for having violated *DR 6-101(A)(3)* and *5-103(B)* and *Gov.Bar R. V(4)(G)*. Costs are taxed to respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, F.E. SWEENEY,  
PFEIFER, LUNDBERG STRATTON, O'CONNOR and  
O'DONNELL, JJ., concur.



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**COLUMBUS BAR ASSOCIATION v. DICKER.**

No. 2004-0039

**SUPREME COURT OF OHIO***102 Ohio St. 3d 123; 2004 Ohio 1803; 807 N.E.2d 326; 2004 Ohio LEXIS 886***February 3, 2004, Submitted****April 28, 2004, Decided**

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 03-049.

**DISPOSITION:** Respondent publicly reprimanded.

**HEADNOTES**

*Attorneys at law -- Misconduct -- Public reprimand -- Failing to cooperate in disciplinary investigation -- Engaging in conduct adversely reflecting on fitness to practice law -- Failing to maintain complete records of client funds and to render appropriate accounts.*

**COUNSEL:** Bruce A. Campbell, Bar Counsel, Jill Snitcher McQuain, Assistant Bar Counsel, Joel H. Mirman and Barbara J. Petrella, for relator.

Alvin E. Mathews Jr., for respondent.

**JUDGES:** MOYER, C.J., RESNICK, F.E. SWEENEY, PFEIFER, LUNDBERG STRATTON, O'CONNOR and O'DONNELL, JJ., concur.

**OPINION**

[\*123] [\*\*\*326] **Per Curiam.**

[\*\*P1] Respondent, Gary H. Dicker of Columbus, Ohio, Attorney Registration No. 0037755, was admitted to the practice of law in Ohio in 1987. On June 9, [\*124] 2003, relator, Columbus Bar Association, charged respondent with violations of the Code of Professional

Responsibility. A panel of the Board of Commissioners on Grievances and Discipline considered the cause on the parties' consent-to-discipline agreement. See Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg.").

[\*\*P2] Frazier Legal Group retained respondent in June 2002 to represent a client in a parole-violation case. The Frazier Group accepted a \$ 2,500 fee to arrange the representation and paid respondent either \$ 750 or \$ 1,000 of this amount. Respondent, however, could not precisely account for his fee because he did not maintain records of the transaction. Respondent also has not refunded any unearned portion of his fee.

[\*\*P3] During relator's investigation of this misconduct, respondent represented that he had consulted with his client while in jail when, in fact, he had not. Respondent later realized that he had confused this client with another client whom he had visited in jail. He explained his mistake and stipulated that his conduct violated *Gov.Bar R. V(4)(G)* (requiring an attorney [\*\*\*327] to cooperate in an investigation of misconduct).

[\*\*P4] The panel accepted the parties' agreement as to respondent's misconduct and found that he had violated *DR 1-102(A)(6)* (barring conduct that adversely reflects on an attorney's fitness to practice law) and *9-102(B)(3)* (requiring an attorney to maintain complete records of client funds and to render appropriate accounts) and *Gov.Bar R. V(4)(G)*.

[\*\*P5] In recommending a sanction, the panel considered the aggravating and mitigating factors listed in BCGD Proc.Reg. Section 10. Consistent with the parties' agreement, the panel found respondent's failure to cooperate to be an aggravating factor. Considering mitigating factors, the panel found that respondent had no prior disciplinary record, had not acted out of dishonesty or selfishness, and has a reputation for good character in the legal community.

[\*\*P6] In accepting the consent-to-discipline agreement, the panel also recommended the sanction stipulated by the parties: a public reprimand. The board accepted the parties' agreement, adopting the panel's

findings of misconduct and recommendation.

[\*\*P7] We agree with the board's findings of misconduct and recommendation. Accordingly, respondent is hereby publicly reprimanded for having violated *DR 1-102(A)(6)* and *9-102(B)(3)* and *Gov.Bar R. V(4)(G)*. Costs are taxed to the respondent.

Judgment accordingly.

MOYER, C.J., RESNICK, F.E. SWEENEY,  
PFEIFER, LUNDBERG STRATTON, O'CONNOR and  
O'DONNELL, JJ., concur.



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**NORTHWESTERN OHIO BAR ASSOCIATION v. SCHNITKEY.**

No. 01-1262

**SUPREME COURT OF OHIO***94 Ohio St. 3d 135; 2002 Ohio 1056; 760 N.E.2d 825; 2002 Ohio LEXIS 6***August 28, 2001, Submitted****January 9, 2002, Decided**

**PRIOR HISTORY:** [\*\*\*1] ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 98-77.

**DISPOSITION:** Respondent was publicly reprimanded.

**HEADNOTES**

Attorneys at law -- Misconduct -- Public reprimand -- Neglecting entrusted legal matters.

**COUNSEL:** Michael W. Spangler, for relator.

Mark D. Schnitkey, Pro se.

**JUDGES:** MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

**OPINION**

[\*\*826] [\*135]

**ON CERTIFIED REPORT** by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 98-77.

**Per Curiam.** During 1996 and 1997, respondent, Mark D. Schnitkey of Napoleon, Ohio, Attorney Registration No. 0006075, represented several clients who entrusted him with legal matters that relator, Northwestern Ohio Bar Association, charges that he

neglected. Relator filed a complaint with the Board of Commissioners on Grievances and Discipline ("board") on November 12, 1998, alleging violations of the Code of Professional Responsibility. After a hearing before a panel and after review of the panel's recommendation, the board determined that respondent had committed two violations of DR 6-101(A)(3) (a lawyer shall not neglect an entrusted legal matter) and recommended that he be publicly reprimanded for this misconduct. We adopt the board's findings of misconduct and its recommendation.

Respondent violated DR 6-101(A)(3) by having neglected the interest of Joann McCabe Reitz and her business partner in recovering money from [\*\*\*2] a failed restaurant purchase. McCabe Reitz telephoned respondent repeatedly over an eight-month period to learn the status of her case but had no success. Respondent ultimately withdrew his representation due to a conflict of interest and purportedly advised McCabe Reitz of the withdrawal by letter. McCabe Reitz did not receive it.

[\*136] Respondent further violated DR 6-101(A)(3) by having neglected the interest of Michele Aelker in obtaining an order modifying her child's visitation schedule. Aelker also attempted to reach respondent for months with little success. And after assuring Aelker that he had moved the court for relief in August 1997, respondent failed to check on the status of his motion and later learned that his secretary had never filed it. Respondent's mistake was discovered only when Aelker called the court in January 1998.

Respondent has been in practice since 1985, and he

94 Ohio St. 3d 135, \*136; 2002 Ohio 1056;  
760 N.E.2d 825, \*\*826; 2002 Ohio LEXIS 6, \*\*\*2

has never before received a disciplinary sanction. At the hearing, he accepted complete responsibility for his misconduct and expressed his sincere remorse that he had let down his clients. He has already refunded his clients' money and made sure that no client was financially harmed by his mistakes. [\*\*\*3] Respondent has also changed his office procedures to ensure that he will not repeat his misconduct, including having instituted a reliable system for keeping track of court filings and answering telephone calls. Respondent additionally provided letters from clients and judges for the board's review, all of whom described their confidence in and respect for his professional competence.

In light of these mitigating considerations, we agree with the board that respondent should receive the recommended public reprimand. Respondent is therefore publicly reprimanded for his violations of DR 6-101(A)(3). Costs are taxed to respondent.

*Judgment accordingly.*

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



FOCUS - 1 of 1 DOCUMENT

**CUYAHOGA COUNTY BAR ASSOCIATION v. GONZALEZ. CUYAHOGA  
COUNTY BAR ASSOCIATION v. STAFFORD.**

**Nos. 00-412 and 00-413**

**SUPREME COURT OF OHIO**

*89 Ohio St. 3d 470; 2000 Ohio 221; 733 N.E.2d 587; 2000 Ohio LEXIS 2006*

**April 26, 2000, Submitted  
August 16, 2000, Decided**

**PRIOR HISTORY:**        [\*\*1] ON CERTIFIED  
REPORT by the Board of Commissioners on Grievances  
and Discipline of the Supreme Court, No. 98-61.

On April 2, 1999, relator, Cuyahoga County Bar Association, filed an amended complaint charging respondents Vincent Gonzalez, Attorney Registration No. 0008558, and Vincent Stafford, Attorney Registration No. 0059846, both of Cleveland, Ohio, with several violations of the Code of Professional Responsibility. Respondents answered, and the matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board").

The board found that in January 1998, respondents appeared in the chambers of Magistrate Barbara Porzio for the purpose of negotiations before resuming trial on a domestic relations visitation schedule. During a heated discussion, respondent Gonzalez called respondent Stafford "a piece of shit," and Stafford responded by calling Gonzalez "a total asshole." These remarks and the demeanor of the respondents caused the magistrate to call for a court deputy. The respondents left the magistrate's chambers and walked into the courtroom, where they stood chest to chest and continued to shout at each other.

The panel concluded [\*\*2] that by their conduct respondents violated DR 7-106(C)(6) (in appearing in a professional capacity, a lawyer shall not engage in undignified or discourteous conduct which is degrading to a tribunal) and recommended that each respondent be publicly reprimanded. The board adopted the findings, conclusions, and recommendations of the panel.

**DISPOSITION:** Respondent Gonzalez and respondent Stafford publicly reprimanded.

**HEADNOTES**

Attorneys at law -- Misconduct -- Public reprimand -- While appearing in a professional capacity, engaging in undignified or discourteous conduct that is degrading to a tribunal.

**COUNSEL:** Howard A. Shulman and Lester S. Potash, for relator.

Wesley A. Dumas, for respondent Gonzalez.

Charles W. Kettlewell, for respondent Stafford.

**JUDGES:** MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

**OPINION**

[\*471] **Per Curiam.** We adopt the findings, conclusions, and recommendations of the board. Respondent Gonzalez and respondent Stafford are hereby publicly reprimanded. Costs of these proceedings are taxed equally to each respondent.

*Judgment accordingly.*

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG



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**COLUMBUS BAR ASSOCIATION v. BATTISTI.**

**No. 00-764**

**SUPREME COURT OF OHIO**

*90 Ohio St. 3d 452; 2000 Ohio 194; 739 N.E.2d 344; 2000 Ohio LEXIS 2997*

**July 6, 2000, Submitted  
December 27, 2000, Decided**

**PRIOR HISTORY:** [\*\*\*1] ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 99-35.

STRATTON, JJ., concur.

**OPINION**

**DISPOSITION:** Respondent publicly reprimanded.

[\*\*345] [\*453] *Per Curiam.* We adopt the findings of the board and its conclusion that respondent violated DR 1-102(A)(5) and 7-102(A)(5). We do not conclude that respondent violated DR 1-102(A)(4). Our review of the stipulated facts also indicates that respondent's infraction was an isolated incident. We adopt the recommendation of the board and respondent is hereby publicly reprimanded.

**HEADNOTES**

Attorneys at law -- Misconduct -- Public reprimand -- Causing client to sign blank affidavits and then later completing them in order to file the affidavits in court.

*Judgment accordingly.*

**COUNSEL:** Randall Arndt, Patricia K. Block and Bruce A. Campbell, for relator.

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

Ronald L. Solove, for respondent.

**JUDGES:** MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG



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**CINCINNATI BAR ASSOCIATION v. RANDOLPH.**

No. 98-2685

**SUPREME COURT OF OHIO***85 Ohio St. 3d 325; 1999 Ohio 268; 708 N.E.2d 192; 1999 Ohio LEXIS 879***February 10, 1999, Submitted****April 7, 1999, Decided**

**SUBSEQUENT HISTORY:** [\*\*\*1] As Corrected September 1, 1999.

**PRIOR HISTORY:** ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-103.

On December 8, 1997, relator, Cincinnati Bar Association, filed a complaint charging respondent, Daniel P. Randolph of Cincinnati, Ohio, Attorney Registration No. 0029075, with violating several Disciplinary Rules. After respondent submitted an answer and the parties filed stipulations, the matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board").

The panel found that in 1970, Louise Loretta Wochler executed a will providing in Item IV that the residue of her estate be held in trust for certain purposes, including paying up to \$ 1,500 of the burial expenses of her son, Louis L. Ihrig, if he survived Wochler. Item IV of the will also provided that the residue of Wochler's estate be held in trust for the benefit of her four grandchildren and directed that the trustees distribute the trust's corpus and income to the grandchildren when the youngest of them reached the age of thirty. In 1978, Wochler died, and Ihrig survived her. First National Bank of Cincinnati, n.k.a. Star Bank N.A. ("First National"), [\*\*\*2] was appointed executor of the estate and trustee of the testamentary trusts.

In late 1984, when the will required final distribution of the testamentary trusts to Wochler's four grandchildren, First National requested that respondent

prepare an application to establish a burial fund for Ihrig. Respondent then filed an application on behalf of First National, requesting that the probate court authorize that \$ 1,500 be withdrawn from the trusts and deposited into a savings and loan account in respondent's name in trust, to be payable with all accrued interest on the death of Ihrig for his burial expenses. In January 1985, the probate court approved the application and ordered First National to deliver \$ 1,500 to the savings and loan, with the money to be released to Ihrig's estate or the funeral home selected by his next of kin on his death to be used for his burial. First National issued the \$ 1,500 check payable to the savings and loan with instructions to deposit the money in a savings account in respondent's name as trustee until Ihrig's death.

When Ihrig died in July 1995, the amount in the savings and loan burial fund account, with accrued interest, totaled \$ 2,725.09. [\*\*\*3] Upon being informed by the funeral home about Ihrig's death, respondent sent the funeral home a check in the amount of \$ 1,500. He kept the remaining \$ 1,225.09 in the burial account as a fee for the services rendered even though he (1) did not do anything other than determine whether an annual tax form was required to be filed, (2) did not have prior written authorization from the probate court for any fee, and (3) did not enter into any written fee agreement with First National, Wochler, or her grandchildren.

In March 1997, one of Wochler's grandchildren demanded that respondent provide an invoice and accounting of his \$ 1,225.09 fee. Respondent did not offer to return the money until December 1997, when he filed his answer to relator's disciplinary complaint.

The panel concluded that respondent's conduct violated DR 2-106(A) (collecting an illegal or clearly excessive fee) and 9-102(B)(4) (failing to pay upon request client funds which client is entitled to receive).

In mitigation, the panel found that respondent initially erroneously believed that he was entitled to the fee. It was not until he read the disciplinary complaint and attached exhibits that respondent [\*\*\*4] realized that he had no right to a fee, and he returned the remaining account money to the grandchildren. Respondent accepted complete responsibility for his error and testified that he had no previous disciplinary violation in a lengthy legal career. The panel heard witnesses and received letters attesting to respondent's exceptional professional ability and exemplary character for honesty and integrity.

The panel recommended that respondent receive a public reprimand. The board adopted the findings, conclusions, and recommendation of the panel.

**DISPOSITION:** Respondent publicly reprimanded. Costs taxed to respondent.

#### HEADNOTES

*Attorneys at law -- Misconduct -- Public reprimand -- Collecting an illegal or clearly excessive fee -- Failing to pay upon request client funds that client is entitled to receive.*

**COUNSEL:** Nancy J. Gill, G. Mitchell Lippert and

Richard H. Johnson, for relator.

John H. Burlew and Charles W. Kettlewell, for respondent.

**JUDGES:** MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.

#### OPINION

[\*\*193] [\*326] *Per Curiam.* We adopt the findings, conclusions, and recommendation of the board. A public reprimand is the appropriate sanction for respondent's isolated act of misconduct. See *Akron Bar Assn. v. Naumoff* (1991), 62 Ohio St. 3d 72, 578 N.E.2d 452, and *Mahoning Cty. Bar Assn. v. Gilmartin* (1991), 62 Ohio St. 3d 10, 577 N.E.2d [\*\*\*5] 350, where we publicly reprimanded and ordered attorneys to make full restitution to clients for violating DR 2-106(A). As the board found, once respondent became aware of his error in retaining a fee from the burial fee account, he made complete restitution to the beneficiaries of the testamentary [\*327] trust and accepted complete responsibility for his actions. Respondent is hereby publicly reprimanded. Costs taxed to respondent.

*Judgment accordingly.*

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