

ORIGINAL

THE SUPREME COURT OF OHIO

CINCINNATI BAR ASSOCIATION : CASE NO. 2009-2302
Relator, :
v. : RESPONDENT'S MOTION
PAUL J. KELLOGG : FOR RECONSIDERATION
Respondent. :

Pursuant to S. Ct. Prac. R. XI, Section 2(A)(4), Respondent Paul J. Kellogg, by and through counsel, respectfully requests this Court to reconsider its July 20, 2010 decision in which it indefinitely suspended him without any interim suspension credit. Kellogg requests this Court to make his suspension effective as of January 15, 2009, which is consistent with the recommendation of the Board of Commissioners on Grievances and Discipline. In the alternative, Kellogg asks the Court to grant him interim suspension credit from December 14, 2009, the date this Court imposed its interim suspension.

Kellogg does not object to or in any way challenge this Court's imposition of his indefinite suspension or the requirement that he complete or otherwise be released from his term of supervised release by the federal court before applying for reinstatement. Kellogg's sole issue for reconsideration is to request that this Court make his suspension effective as of January 15, 2009 or in the alternative, grant him interim suspension credit.

This Motion is supported by the attached Memorandum.

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MEMORANDUM

I. Introduction

Kellogg voluntarily stopped practicing law almost two years ago, on August 29, 2008, after being sentenced by Senior District Judge Arthur Spiegel in the United States District Court for the Southern District of Ohio. Following his sentencing, Kellogg promptly notified the Ohio Disciplinary Counsel of his convictions and sentence; and notified them that he had voluntarily stopped practicing law, despite the lack of a former order imposing an interim suspension of his license. In December 2008, the Cincinnati Bar Association instituted the present action as a result of his convictions.

On January 15, 2009, Kellogg self-reported to the Ashland Federal Prison Camp to begin serving the sentence imposed by Judge Spiegel. In May 2009, a three member panel of the Commissioners on Grievances and discipline conducted two full days of hearings where they heard from witnesses, including Kellogg, and reviewed various exhibits. On December 14, 2009, Kellogg was formally suspended when this Court imposed an interim felony suspension of his license.¹ One week later, on December 22, 2009, the Board adopted the panel report in its entirety and recommended that Kellogg be suspended from the practice of law for two years, with the last six months stayed, and that Kellogg's suspension begin to run on January 15, 2009, the date he began serving his prison sentence.

¹ The 16-month delay in Kellogg being suspended on an interim basis was not of Kellogg's doing, as he promptly reported his felony convictions to the Ohio Disciplinary Counsel on September 2, 2008. As evidenced by Kellogg's actions, he fully anticipated an immediate interim suspension and promptly ceased practicing law following his sentencing on August 29, 2008.

Relator objected to the Board's recommendation, arguing that disbarment was the proper sanction. Kellogg did not object to the Board's recommendation. Oral argument was held before this Court on March 30, 2010, with much of this Court's inquiry focusing on whether an attorney should be able to practice law while still under the supervision and control of the sentencing court.

On July 20, 2010, this Court issued its decision suspending Kellogg indefinitely from the practice of law. The Court further ordered that Kellogg may petition for reinstatement once he has completed the term of supervised release imposed by the federal court, but not before the two year period that respondent must wait before petitioning for reinstatement pursuant to Gov. Bar R. V(10)(B).

II. Argument

As stated above, Kellogg fully accepts this Court's imposed sanction suspending him indefinitely from the practice of law and acknowledges that he must complete, or otherwise be released from, his term of supervised release by the federal court prior to applying for reinstatement. Kellogg's only request of this Court is that it reconsider whether he should receive credit toward the two year period that he must wait before petitioning for reinstatement pursuant to Gov. Bar. R. V(10)(B), whether such credit be in the form of making his suspension retroactive to January 15, 2009 as recommended by the Board, or whether he should be granted interim suspension credit from December 14, 2009, the date this Court imposed his interim suspension.

This Court has a long history of granting suspended attorneys credit for time served under an interim suspension. See, Disciplinary Counsel v. Blaszak, 104 Ohio St. 3d 330, 819 N.E.2d 689, 2004-Ohio-6593; Cuyahoga County Bar Assn. v. Garfield, 109 Ohio St.3d 103, 846 N.E.2d 45, 2006-Ohio-1935; Disciplinary Counsel v. Petroff, 85 Ohio St.3d 396, 709 N.E.2d 111, 1999-Ohio-

400; Dayton Bar Assn. v. Seall, 81 Ohio St.3d 280, 690 N.E.2d 1271, 1998-Ohio-630; Disciplinary Counsel v. Lash, 68 Ohio St.3d 12, 1993-Ohio-157, 623 N.E.2d 28.

Very recently, this Court indefinitely suspended two other attorneys for felony convictions who were subject to federal supervised release, yet received interim suspension credit for time served under their interim suspension. In Disciplinary Counsel v. Gittinger, Ohio St.3d ___, 2010-Ohio-1830, ___ N.E.2d ___, which this Court cited in Kellogg's decision, the Court suspended an attorney indefinitely, with credit for time served under his interim suspension, which credit was to be applied against the two year period that he was required to wait before petitioning for reinstatement. The Court went on to state in Gittinger that "respondent may petition for reinstatement once he has either completed, or otherwise satisfied, all the conditions imposed by the federal court and his underlying criminal case is resolved." Id. This Court's order in Gittinger is almost identical to Kellogg's order, absent the credit for time served under his interim suspension.

In another similar case, the Court indefinitely suspended an attorney following his convictions for structuring financial transactions. Disciplinary Counsel v. Bennett, 124 Ohio St.3d 314, 2010-Ohio-313. As in Gittinger, the attorney was granted credit for time served under his interim suspension, with the stipulation that he could petition for reinstatement upon completion of his supervised release. Id.

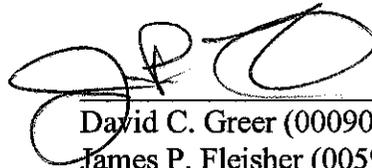
The facts in Kellogg's situation are very similar to the facts in both Gittinger and Bennett. All three respondents were suspended on an interim basis after their federal convictions. All three were subject to federal supervised release. All three cases involve one-time violations. All three involve significant mitigating evidence, including attestations to their good reputations in the community, indicating that the misconduct was out of character and unlikely to recur. Furthermore,

in deciding to grant the attorney in Gittinger interim suspension credit this Court gave great weight to the fact that the attorney did not realize any tangible personal gain or profit from his misconduct; nor did he engage in a lengthy pattern of misconduct or cause grave harm to others. These same factors which weight in favor of granting interim suspension credit are also present in Kellogg's case.

III. Conclusion

The close parallels between the facts in this matter and the facts in Gittinger and Bennett are unmistakable. Based on these precedents as well as this Court's long history of granting interim suspension credit, Kellogg would ask this Court to reconsider its decision and make Kellogg's suspension retroactive to January 15, 2009 as recommended by the Board or in the alternative to grant him interim suspension credit for time served under his interim suspension.

Respectfully submitted,



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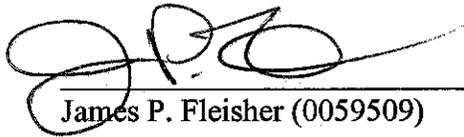
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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Respondent's Motion for Reconsideration has been served upon Counsel for Relator by mailing a copy by First Class United States Mail to Susan R. Bell, 537 East Pete Rose Way, Suite 400, Cincinnati, OH 45202, and Peter Rosenwald, 114 East Eighth Street, Cincinnati, OH 45202, this 28th day of July, 2010.


James P. Fleisher (0059509)

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