

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

In re: :

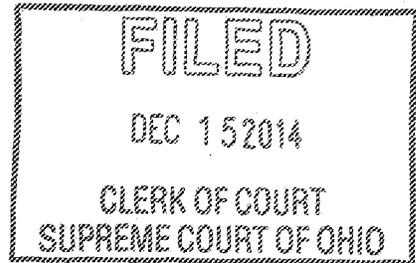
Complaint against: : Board Case No. 2013-059

Beverly J. Corner : SCO Case No. 2014-1404

Respondent :

Disciplinary Counsel and :  
Columbus Bar Association :

Co-Relators :



SUPPLEMENTAL PANEL REPORT AND RECOMMENDATION  
ON REMAND FROM THE SUPREME COURT OF OHIO

{¶1} This matter comes before the panel on remand from the Supreme Court of Ohio. *Disciplinary Counsel, et al. v. Corner*, 2014-Ohio-3959. The question presented to is whether Respondent is to make restitution to a former client, Floyd Evans, due to Respondent’s charging of an excessive fee. In the original recommendations, the panel and Board found violations of Prof. Cond. R. 1.5(a) [excessive or illegal fee] and Prof. Cond. R. 1.15(d) [safekeeping of client and/or third party funds] relating to Count Three of the complaint (the Evans matter). That recommendation was made in error as these two violations should have been dismissed based on the evidence presented to the hearing panel.

{¶2} The Evans matter involved a client who had entered into a contingency fee agreement with prior counsel. Evans then retained Respondent on a separate agreement. When the disbursement of settlement funds occurred, Respondent took her contracted fee and then

deducted the prior attorney's lien from Evan's portion of the settlement. The allegation was that this scenario resulted in an excessive fee.

{¶3} Relator has conceded that it has no case law to support the proposition that Respondent's failure to deduct prior counsel's fees from her fee constituted an illegal or excessive fee. Relator's position would have resulted in Evans paying fees totaling approximately 23% of the total settlement, whereas Respondent's action resulted in the client paying legal fees totaling approximately 36.4%. Although this is more than the total fee for which the client contracted with prior counsel and Respondent, and may constitute a breach of the fee agreements, the question for the panel and Board is whether this constitutes an illegal or excessive fee and thus a violation of Prof. Cond. R. 1.5(a). There was no clear and convincing evidence submitted to justify such a finding. The Prof. Cond. R. 1.5(a) violation should be dismissed.

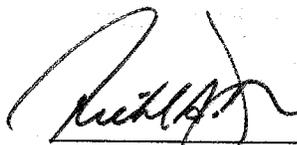
{¶4} With regard to the Prof. Cond. R. 1.15(d) violation, Respondent stipulated that she failed to account for \$2,505 owed to Grandview Family Practice (GFP) in her disbursement. The question is then whether Respondent had actual knowledge of Evans' debt to GFP and whether GFP's interest was a lien, judgment, or the subject of a written agreement between Respondent and Evans. Evans did not testify at the hearing, and Grant/GFP has since written-off the \$2,505 debt owed by Evans. There is no evidence in the record that either GFP or Grant had a lien or judgment for the amounts. Nor is there evidence that Respondent and Evans contracted for the payment of the various expenses. Therefore, there is not clear and convincing evidence of a Prof. Cond. R. 1.15(d) violation. This violation should also be dismissed.

{¶5} The panel recommends adoption of this supplemental panel report and the filing of the same with the Supreme Court.

## **BOARD RECOMMENDATION**

Pursuant to Gov. Bar R. V, Section 6, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on December 12, 2014. The Board adopts the supplemental report and recommendation of the hearing panel to dismiss the alleged violations of Prof. Cond. R. 1.5(a) and 1.15(d) in the Evans matter for lack of clear and convincing evidence and reaffirms the balance of the recommendations set forth in the Board report filed with the Supreme Court on August 12, 2014.

**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 "Richard A. Dove", written over a horizontal line.

**RICHARD A. DOVE, Secretary**