

OFFICE OF DISCIPLINARY COUNSEL v. SWEENEY.

[Cite as *Disciplinary Counsel v. Sweeney* (1999), \_\_\_ Ohio St.3d \_\_\_.]

*Attorneys at law — Misconduct — Permanent disbarment — Conviction for mail fraud — Failure to make restitution as ordered by federal court — Failure to make restitution as ordered by Ohio Supreme Court of all monetary claims involved in previous disciplinary action.*

(No. 98-1302 — Submitted September 28, 1998 — Decided January 13, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 96-25.

In 1994, we suspended respondent, Antonio Sweeney of Cleveland, Ohio, Attorney Registration No. 0006003, from the practice of law for two years with one year of the suspension stayed upon condition that he make full restitution of all monetary claims against him. *Cleveland Bar Assn. v. Sweeney* (1994), 71 Ohio St.3d 197, 643 N.E.2d 89. On March 27, 1996, after being advised of respondent's felony conviction for mail fraud in January 1996, we indefinitely suspended him from the practice of law pursuant to Gov.Bar R. V(5)(A)(4). *In re Sweeney* (1996), 75 Ohio St.3d 1426, 662 N.E.2d 28.

On April 15, 1996, relator, Office of Disciplinary Counsel, filed a complaint alleging that respondent's activities that resulted in the felony conviction violated DR 1-102(A)(3) (engaging in conduct involving moral turpitude), (4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and (6) (engaging in conduct that adversely reflects upon the attorney's fitness to practice law). Respondent filed an answer admitting the relevant facts, and the matter was referred to a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court ("board"), which held a hearing on matters relating to mitigation.

The panel found that respondent's felony conviction was based upon his defrauding four insurance companies by settling claims in the total amount of \$92,839 based on false medical records that he had created. The panel concluded that respondent's conduct violated the Disciplinary Rules as charged.

In mitigation, the panel received evidence that in the past respondent had been an excellent and very bright lawyer, but for some time prior to his felony conviction, he was dependent upon alcohol and cocaine. The evidence indicated that respondent perpetrated the fraud on the insurance companies to obtain money for the purchase of cocaine. However, the panel also received evidence that respondent was remorseful, that he had been free from alcohol and drugs for the eighteen months before the hearing, that he is active in his church and in Alcoholics Anonymous, and that he has a contract for rehabilitation with Ohio Lawyers Assistance Program, Inc. In addition, the panel found that as a result of the felony conviction, respondent served five months in prison from late December 1995 to May 1996, and has been monitored since by federal probation officials.

The panel recommended that respondent be indefinitely suspended from the practice of law with conditions for reinstatement. The board adopted the findings, conclusions, and recommendation of the panel.

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

*Michael Drain*, for respondent.

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***Per Curiam.*** We adopt the findings and conclusions of the board. We note that respondent did plead guilty to a felony and has not made restitution as ordered by the federal court. Nor did respondent produce evidence that he made the

restitution we ordered in 1994 as a condition of reinstatement. We have reviewed in detail the evidence submitted in mitigation, and we believe that a more severe sanction than indefinite suspension is warranted by the facts in this case. Respondent is hereby permanently disbarred from the practice of law in Ohio. Costs taxed to respondent.

*Judgment accordingly.*

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