

OFFICE OF DISCIPLINARY COUNSEL ET AL. v. NENTWICK.

[Cite as *Disciplinary Counsel v. Nentwick* (1999), 84 Ohio St.3d 491.]

*Attorneys at law — Misconduct — Permanent disbarment — Neglect of entrusted legal matters — Failing to carry out contracts of employment — Engaging in conduct adversely reflecting on fitness to practice law — Engaging in conduct involving moral turpitude — Withdrawing from employment and not taking reasonable steps to avoid prejudice to rights of client — Prejudicing or damaging client during course of legal relationship — Failing to promptly deliver to client funds which client is entitled to receive — Engaging in conduct prejudicial to the administration of justice — Engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation — Failing to promptly notify client of receipt of client's funds — Failing to maintain complete records of client's funds coming into attorney's possession — Failing to deposit client funds into bank account in which no funds of attorney are deposited.*

(No. 98-1323 — Submitted October 28, 1998 — Decided February 10, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, Nos. 96-67 and 97-47.

On August 12, 1996, relator, Office of Disciplinary Counsel, filed a four-count complaint in case No. 96-67 charging respondent, John N. Nentwick of East Liverpool, Ohio, Attorney Registration No. 0061315, with the violation of several Disciplinary Rules. Respondent filed an answer, and on June 12, 1997, the Office of Disciplinary Counsel filed an amended complaint adding five more disciplinary counts.

On June 16, 1997, relator, Columbiana County Bar Association, filed an eight-count complaint in case No. 97-47, which also charged respondent with violations of the Disciplinary Rules. On August 27, 1997, the Board of

Commissioners on Grievances and Discipline of the Supreme Court (“board”) consolidated the two cases. On April 30, 1998, the Columbiana County Bar Association, filed a second amended complaint in case No. 96-47 (*sic*) charging disciplinary violations in nineteen counts. The respondent filed an answer to that complaint on May 28, 1998, using the same case number. The Columbiana County Bar Association withdrew counts one, two, eight, ten, twelve, fifteen, and sixteen of its second amended complaint. On June 1, 1998, Disciplinary Counsel and respondent entered into stipulations in case No. 96-67, and a panel of the board heard the consolidated cases on that day.

In considering the evidence, the panel found that most of respondent’s disciplinary violations involved neglect of client matters entrusted to him. With respect to count three of that complaint, the panel found that after Shelia Backus engaged respondent in December 1993 to handle an uninsured motorist claim against her insurance company, she had difficulty contacting him. Then, in May 1995, respondent telephoned Backus to advise her that the statute of limitations had run on her claim. Although respondent settled with Backus by giving her a note for \$3,000 payable in monthly installments, he made only partial and sporadic payments.

With respect to count four, the panel found that in September 1994, Richard Enochs retained respondent and paid him \$150 to write a letter to the St. Clair Township Trustee, to prepare a letter to one of Enochs’s tenants, and to transfer a parcel of realty. Respondent wrote the letter to the tenant, but failed to take any other action on behalf of Enochs and returned \$100 to him.

In considering count five, the panel found that Larry Cunningham retained respondent, paying him \$388 for assistance in reinstating his driver’s license and obtaining an insurance bond. After receiving the money, respondent did nothing, explaining to Cunningham that he had forgotten to do the work.

As to count six, the panel found that respondent agreed to represent Judy Bartlett in a divorce proceeding for \$500. After he performed services to Bartlett's satisfaction, she employed him to pursue a post-decree motion for contempt. Respondent appeared at one hearing on the motion, and then failed to appear at a second with the result that the motion was dismissed.

The panel found that counts seven, nine, and eleven involved similar neglect. In considering count seven, the panel found that Joseph Downard engaged respondent to defend against a subrogation claim and file a cross-claim. When respondent failed to appear at a hearing on the subrogation claim and failed to file a cross-claim, a default judgment was taken against Downard in the amount of \$4,268.10. Downard consequently lost his driver's license for two years and was required to pay a reinstatement fee of \$600. In reviewing count nine, the panel found that although Robin Wiggers paid respondent \$572 in January 1997 to file a divorce action, he neither filed the action nor returned the advance fee. Count eleven involved the complaint of a common pleas judge that respondent failed to submit a judgment entry to finalize an uncontested divorce and failed to appear at the "docket call." As a result, the case was dismissed. Later, the case was reinstated, and the divorce was granted by the court's own entry.

Respondent's pattern of obtaining advance fees and then neglecting his clients' interests was also evident in the panel's findings with respect to counts thirteen, fourteen, seventeen, and eighteen. Count thirteen involved Ronald Thrasher and his wife, who employed respondent to file dissolution of their marriage. After they paid respondent \$467, he failed to meet with them, and no dissolution was obtained. In considering count fourteen, the panel found that respondent did nothing after Shirley June Little employed and paid him \$150 to collect a judgment. With respect to count seventeen, the panel found that in December 1997, after Kathryn Houshour retained respondent and paid him an

initial fee of \$60 to effect a change of custody, he did nothing in the case. The findings with regard to count eighteen were similar. In September 1997, David L. Gilliland retained respondent and paid him a total of \$522 in attorney fees and filing costs to represent him in a dissolution of marriage. But respondent did nothing.

In addition to these matters of client neglect, the panel found that in December 1997, respondent was incarcerated for eleven months for violating the terms of a drug treatment program. Earlier, respondent had been found to be chemically dependent, and, in lieu of conviction for possession of “crack cocaine,” he had been ordered to participate in the program.

The panel then considered the complaint filed by Disciplinary Counsel and found the same pattern of accepting client money and neglecting their cases. With respect to count one, it found that in July 1993, Clara Johnston retained respondent to represent her in a personal injury case. Respondent did not keep Johnston advised of the progress of the case, and in April 1995, Johnston asked another attorney to review the file. Johnston wrote to respondent firing him as her attorney and requesting that he send the file to her. Respondent refused to transmit the file but told Johnston to pick the file up at his office. Disciplinary Counsel withdrew charges on counts two and three.

With respect to count four, the panel found that in July 1995, John Riley and Bob Conkle engaged respondent and initially paid him \$150 to conduct a title search and prepare a deed. In September 1995, respondent advised Riley and Conkle that the title was marketable, and Riley paid respondent an additional \$50 to record the deed. For the next four months, Riley unsuccessfully requested the title notes and the deed from respondent. In January 1996, respondent gave Riley an unrecorded deed. He did not provide Riley with the title notes, and he did not refund the money he was paid to record the deed until February 1996.

The panel found with respect to count five that from November 1995 through July 1996, Lloyd Frye paid respondent \$350 to represent him in a divorce. Respondent filed the complaint for divorce but failed to appear at the pretrial hearing, and the case was dismissed for lack of prosecution. Respondent did not return any of the fee to Frye.

On count six, the panel found that when respondent agreed to represent Stanton MacKall on a personal injury matter, he contracted with a chiropractic clinic to withhold from any settlement money sufficient to pay the clinic. After the case was settled, in addition to paying himself a fee for representation, respondent deposited \$2,000 from the settlement funds into his trust account for the chiropractic clinic. However, respondent did not pay the clinic. The clinic then sued both respondent and MacKall, and because respondent failed to answer or plead on behalf of himself or MacKall, recovered a default judgment of \$3,055.

On count seven the panel found that in May 1997, after Leroy L. MacEldowney engaged respondent and paid him to evict certain tenants, respondent failed to act for several weeks. The tenants left of their own accord, but despite repeated requests by MacEldowney, respondent failed to return the advance fee.

Additionally, the panel found that from July 1996 through February 1997, as charged in count eight, respondent misused money in his client trust account on nineteen occasions, paying his secretary's wages from the account four times during 1996 and issuing checks unrelated to his law practice to friends and acquaintances. As to count nine, the panel found that from April 1996 through February 1997, respondent drew twenty checks to himself on the account, which did not represent fees owed to him by his clients. Also, respondent stipulated that he did not keep records of his client accounts, did not render an account to them of

their funds which came into his possession, and did not promptly pay to clients amounts they were entitled to receive.

The panel concluded that with respect the case brought by the Columbiana County Bar Association, respondent's conduct in counts three, four, five, six, seven, nine, eleven, thirteen, fourteen, seventeen, and eighteen violated DR 6-101(A)(3) (a lawyer shall not neglect a legal matter entrusted to him). As to counts three, four, six, seven, nine, thirteen, and fourteen, respondent's conduct violated DR 7-101(A)(2) (a lawyer shall not fail to carry out a contract of employment). The panel also concluded that as to counts six, seven, eleven, thirteen, fourteen, eighteen, and nineteen, respondent's conduct violated DR 1-102(A)(6) (engaging in conduct that adversely reflects upon an attorney's fitness to practice law). In addition, the panel concluded that respondent's conduct in count nineteen violated DR 1-102(A)(3) (engaging in conduct involving moral turpitude).

The panel concluded with respect to the case brought by Disciplinary Counsel that respondent's conduct in count one violated DR 2-110(A)(2) (a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid prejudice to the rights of his client), 6-101(A)(3), and 7-101(A)(3) (a lawyer shall not prejudice or damage his client during the course of a legal relationship). Respondent's conduct, as found by the panel, in count four violated DR 6-101(A)(3) and 9-102(B)(4) (a lawyer shall promptly deliver to a client funds which the client is entitled to receive); in count five, he violated DR 1-102(A)(5) (a lawyer shall not engage in conduct prejudicial to the administration of justice), 6-101(A)(3), and 7-101(A)(2); in count six, he violated DR 1-102(A)(4) (engaging in conduct involving dishonestly, fraud, deceit, or misrepresentation), 1-102(A)(6) (engaging in conduct that adversely reflects upon the lawyer's fitness to practice law), and 7-102(A)(2) (knowingly advancing a claim unwarranted under existing law); in count seven, he violated DR 1-102(A)(5) and (6), 7-101(A)(2) and 9-

102(B)(4); in count eight, he violated DR 1-102(A)(4) and (6), 9-102(B)(1) (failing to promptly notify a client of the receipt of the client's funds), (3) (failing to maintain complete records of funds of a client coming into his possession), and (4) and 9-102(A) (failing to deposit client funds into a bank account in which no funds of the lawyer are deposited); and in count nine, he violated DR 1-102(A)(4) and (6), 9-102(B)(1), (3), and (4), and 9-102(A).

The panel heard in mitigation respondent's long history of involvement with drugs and alcohol and his frequent relapses. During the period of his treatment in lieu of conviction, however, respondent attended only sixty percent of his scheduled sessions. The panel also heard about the stress in respondent's life and received testimony from his father and a friend of the family.

The panel found that the potential harm to clients if respondent continued in practice outweighed the mitigating factors presented by respondent. The panel therefore recommended that respondent be permanently disbarred from the practice of law. The board adopted the findings, conclusions, and recommendation of the panel.

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*Jonathan E. Coughlan*, Disciplinary Counsel, and *Lori J. Brown*, Assistant Disciplinary Counsel, for relator Office of Disciplinary Counsel.

*Mark A. Hutson* and *Frederic E. Naragon*, for relator Columbiana County Bar Association.

*R. Eric Kibler*, for respondent.

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***Per Curiam.*** We adopt the findings of the board and its conclusions, except the conclusion that in the MacKall matter respondent violated DR 7-102(A)(2) (knowingly advancing a claim or defense unwarranted under existing law), which the board erroneously characterized as "failing to carry out a contract of

employment.” We also adopt the recommendation of the board. Respondent is hereby permanently disbarred from the practice of law in Ohio. Costs are taxed to respondent.

*Judgment accordingly.*

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