OFFICE OF DISCIPLINARY COUNSEL *v.* LINICK.

[Cite as *Disciplinary Counsel v. Linick* (1999), ___ Ohio St.3d ___.]

Attorneys at law — Misconduct — One-year suspension — Accepting compensation for referring cases — Dividing fees with lawyers not in the same firm without prior consent of client.

(No. 98-1241 — Submitted September 16, 1998 — Decided February 10, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 96-58.

On June 19, 1997, relator, Disciplinary Counsel, filed a twelve-count amended complaint, alleging that respondent, David M. Linick of Beachwood, Ohio, Attorney Registration No. 0009026, violated several Disciplinary Rules while serving as an attorney for ICI Paints, Glidden Division of Cleveland, Ohio. Respondent answered, and 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 while employed as senior corporate counsel for Glidden, respondent referred eight cases to attorney Richard Zuckerman to handle as outside counsel for the company. After Zuckerman billed and was paid by Glidden reasonable fees for his work, he made a gift to respondent of one-half of each fee he received from Glidden. The total amount Zuckerman gave to respondent with respect to the eight cases was $8,572.50.

The panel found that during the same period, respondent forwarded three cases to outside counsel Frederick D. Kanter. For his services, Glidden paid Kanter over $174,000, which the panel found to be reasonable fees. Kanter then gave respondent $38,000 in gifts. Glidden was unaware that Zuckerman and Kanter gave this money to respondent.

The panel concluded that respondent's conduct violated DR 2-107(A)(1) (fees may be divided by lawyers who are not in the same firm only with the

consent of the client after written disclosure, and the division is either in proportion to the work done by each attorney or all lawyers assume responsibility for the representation) and 5-107(A)(2) (except where the client consents after full disclosure, a lawyer shall not accept anything of value related to his employment from someone other than his client). The panel found no clear and convincing evidence to conclude that respondent violated DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) and (6) (engaging in conduct that adversely reflects upon the lawyer's fitness to practice law).

The panel noted in mitigation that after discovering these facts, Glidden dismissed respondent but permitted him to wind up certain cases and to continue to represent Glidden as chairperson of the creditors' committee in one of the largest pending bankruptcy cases in which Glidden was involved. It further found that Glidden was happy with respondent's performance as a lawyer, but that failure to discharge respondent would send the wrong message to other employees. The panel took note of a letter from the chief executive officer of ICI Paints, requesting leniency for respondent and dismissal of the disciplinary charges against him. The panel also noted that respondent had repaid $16,400 to Glidden at the time of the hearing and that he could not pay more because his law practice was not going well. At the hearing, Glidden's current senior corporate counsel testified that because respondent's actions had no financial impact upon the company, Glidden would waive the balance owed by respondent.

The panel recommended that respondent be suspended from the practice of law for one year with the full year stayed on condition that respondent be involved in no further disciplinary violations. The board agreed with the panel's findings and conclusions, but recommended that respondent be suspended for one year with

six months stayed on condition that respondent not be involved in any further disciplinary violations.

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

Charles W. Kettlewell, for respondent.

Per Curiam. We adopt the findings and conclusions of the board. On review of the record, we find that respondent's conduct violated DR 2-107(A)(1) and 5-107(A)(2) as found by the board. In *Ohio State Bar Assn. v. Zuckerman* (1998), 83 Ohio St.3d 148, 699 N.E.2d 40, we imposed a one-year suspension on one of the outside counsel who participated in this scheme. We believe that the same sanction is appropriate for respondent. Respondent is hereby suspended from the practice of law in Ohio for one year. Costs taxed to respondent.

Judgment accordingly.

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

RESNICK and LUNDBERG STRATTON, JJ., dissent.

LUNDBERG STRATTON, J., dissenting. I respectfully dissent from the sanction imposed by the majority. In the case of *Ohio State Bar Assn. v. Zuckerman* (1998), 83 Ohio St.3d 148, 699 N.E.2d 40, the court imposed a one-year suspension. In the *Zuckerman* case, no one disputes that Zuckerman did competent work and received a reasonable fee for his services. He then kicked back fifty percent of the fee to Linick.

Linick performed no services for the percentage of kickback he received. He had a similar scheme going with Attorney Kanter. Linick returned none of this

money to his employer, Glidden. He was the mastermind and the beneficiary of the scheme. His discipline should therefore be greater than Zuckerman's.

Therefore, I would suspend Linick for two years, with six months stayed.

RESNICK, J., concurs in the foregoing dissenting opinion.