

CUYAHOGA COUNTY BAR ASSOCIATION v. WILLIAMS.

[Cite as *Cuyahoga Cty. Bar Assn. v. Williams* (1999), ____ Ohio St.3d ____.]

Attorneys at law – Misconduct – Public reprimand – Engaging in conduct adversely reflecting on fitness to practice law – Failing to promptly pay or deliver to client as requested funds in lawyer’s possession that client is entitled to receive.

(No. 98-1227 — Submitted September 15, 1998 — Decided February 17, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 95-62.

This disciplinary proceeding arises out of the acrimonious breakup of a three-person law firm. Pursuant to an agreement dated January 25, 1994, Gregg Austin, a ten-percent shareholder of the firm of Donald Williams Co., L.P.A. (the “firm”), left the firm in February 1994. Sheldon Steiger, another ten-percent shareholder, and Donald Williams, the eighty-percent shareholder, remained with the firm.

On August 7, 1995, relator, Cuyahoga County Bar Association, filed a four-count complaint charging respondent, Donald L. Williams of Cleveland, Ohio, Attorney Registration No. 0001318, with the violation of several Disciplinary Rules as a result of his conduct after the firm breakup. Respondent answered, and the matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court (“board”).

With respect to count one, the panel found that Cecelia Taylor, n.k.a. Cecelia Noyes (“Noyes”), retained the firm in 1989 to represent her in a workers’ compensation matter arising out of an injury at a restaurant. She also retained the firm to represent her with respect to a second injury at the same restaurant in

November 1988. In May 1989, Noyes again retained the firm to represent her in a workers' compensation matter with respect to her employment by Manner Home, and retained the firm for workers' compensation representation a fourth time in October 1991 with respect to carpal tunnel syndrome. After January 1994, when Austin left the firm, Noyes considered Austin to be her attorney.

In March 1994, Noyes was again injured while working at the Ashtabula Care Center. Having received a telephone call from the firm of Nicholson & Pontius who had been contacted about Noyes's injury by her son, respondent visited Noyes in the hospital and obtained papers indicating that Noyes had selected him to represent her. On or about that time, respondent made derogatory remarks about Austin to Noyes. On April 12, 1994, Noyes wrote to Austin, declaring him to be her attorney with respect to the March 1994 injury.

The panel concluded that respondent's conduct violated DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), (5) (a lawyer shall not engage in conduct prejudicial to the administration of justice), and (6) (a lawyer shall not engage in conduct that adversely reflects upon his fitness to practice law). The panel found no clear and convincing evidence to support the allegations of count two.

With respect to count three, the panel found that in February 1986, Barbara Bookbinder agreed to have respondent's firm handle her workers' compensation case based on an injury she received in January 1986. The firm filed the claim, and from 1988 through 1991, Bookbinder received bi-monthly workers' compensation checks. In January 1994, after Austin left the firm, Bookbinder signed an agreement to be represented thereafter by Austin. In March 1994, the firm received a check in the amount of \$5,596.82 for a percentage of permanent partial disability compensation awarded for the period from June 1991 to April

1992. Respondent telephoned Bookbinder, told her that he had the check, and that she could appear at the firm, sign it, and immediately receive two-thirds of the face amount, which was the net she was due after attorney fees.

Bookbinder told respondent that Austin was representing her and that the check should be forwarded to Austin. Respondent told Bookbinder that the firm did the work on the case and that Austin was not entitled to the money. Respondent did not forward the check to Bookbinder until June 1994, when Bookbinder endorsed it and received her share. The panel concluded that respondent's conduct violated DR 1-102(A)(4), (5), (6), and 9-102(B)(4) (a lawyer shall promptly pay or deliver to the client as requested the funds in the lawyer's possession that the client is entitled to receive).

Count four concerned the firm's transmittal to Austin of correspondence relating to Austin's clients after the breakup of the firm. After Austin left the firm, respondent informed the secretaries that he would review mail directed to Austin and the file related to that mail to determine whether the client belonged to Austin. After respondent's review, if the client belonged to Austin, respondent would direct that the file be copied and the copy sent to Austin. Secretaries copied the files and placed them and the related mail into a box for pickup by Austin. The firm received calls from Austin's office almost daily, and if mail or files were to be picked up, Austin would send people to obtain them. In some cases the mail and files were not promptly placed in the box. The panel concluded that respondent's conduct violated DR 1-102(A)(5) and (6).

The panel recommended that respondent be suspended from the practice of law for six months with the entire six months stayed. The board adopted the findings, conclusions, and recommendation of the panel.

Lester A. Potash and Martha H. Krebs, for relator.

Mary L. Cibella and Charles W. Kettlewell, for respondent.

Per Curiam. We have reviewed the record and considered the briefs filed by both parties in response to our show cause order of June 29, 1998. We adopt the findings and conclusions of the board, but impose a lesser sanction. As a result of his violations, respondent is hereby publicly reprimanded. Costs are taxed to respondent.

Judgment accordingly.

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