

SUPREME COURT OF OHIO

Columbus Bar Assn. v. Dice

120 Ohio St. 3d 455, 2008-Ohio-6787 (Ohio 2008) · No. 2008-1238 · Decided December 30, 2008

SUMMARY

The Supreme Court of Ohio held that Daniel Sean Dice committed professional misconduct by delaying an incarcerated client's federal appeal, failing to appear for another criminal appeal, neglecting client matters, and failing to cooperate with a disciplinary investigation. The court imposed a one-year suspension from the practice of law, stayed as to the final six months on the condition of no further misconduct.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Thomas J. Moyer, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	December 30, 2008
DOCKET	2008-1238
DISPOSITION	other
PROCEDURAL POSTURE	The Columbus Bar Association brought a disciplinary complaint against Daniel Sean Dice. The matter reached the Supreme Court of Ohio on a certified report from the Board of Commissioners on Grievances and Discipline after Dice stipulated to the charged misconduct and the board adopted the parties' proposed sanction.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Ohio

TOPICS

- appellate procedure
- criminal procedure

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility

QUESTIONS PRESENTED

1. Whether Dice committed the charged professional misconduct by neglecting client matters, failing to prepare adequately, failing to pursue clients' lawful objectives, engaging in conduct prejudicial to the administration of justice or reflecting adversely on his fitness to practice, and failing to cooperate with the disciplinary investigation.
2. Whether a one-year suspension with the final six months stayed on the condition of no further misconduct was an appropriate sanction.

HOLDINGS

1. Dice committed the charged professional misconduct by delaying and neglecting an appellate matter, failing to appear for a criminal-case oral argument, failing to pursue his clients' lawful objectives, engaging in conduct prejudicial to the administration of justice and adversely reflecting on his fitness to practice law, and failing to cooperate with the disciplinary investigation.
2. A one-year suspension from the practice of law, with the final six months stayed on the condition that Dice commit no further professional misconduct, was appropriate; violation of the stay would lift it and require service of the entire one-year suspension.

FACTUAL BACKGROUND

Dice delayed filing an appellate brief for an incarcerated federal criminal defendant for seven months, obtained seven extensions, failed to file the required appendix, rarely responded to the client's correspondence, and ultimately required appointment of new counsel. He also failed to appear for oral argument in another criminal case and did not respond to the bar association's requests during its disciplinary investigation. The parties agreed that a treated mental disability contributed to the ethical lapses.

PROCEDURAL HISTORY

The relator filed a two-count disciplinary complaint alleging neglect and mishandling of client matters and failure to cooperate with the disciplinary investigation. After Dice initially failed to answer and the relator moved for default, Dice stipulated to the misconduct; a panel accepted the stipulations and proposed a one-year suspension with the final six months stayed, and the board adopted that recommendation. The Supreme Court of Ohio agreed with the findings and imposed the recommended sanction.

DISPOSITION

other

CASES CITED

- Disciplinary Counsel v. Shramek, 98 Ohio St. 3d 441, 2003-Ohio-1636, 786 N.E.2d 869

OPINION

Columbus Bar Assn. v. Dice
2008 Ohio 6787

PER CURIAM.

[Cite as Columbus Bar Assn. v. Dice, 120 Ohio St. 3d 455, 2008-Ohio-6787.] COLUMBUS BAR ASSOCIATION v. DICE. [Cite as Columbus Bar Assn. v. Dice, 120 Ohio St. 3d 455, 2008-Ohio-6787.] Attorneys at law — Misconduct — Conduct prejudicial to the administration of justice — Conduct adversely reflecting on the lawyer's fitness to practice law — Handling a legal matter without adequate preparation — Neglect of an entrusted legal matter — Failing to seek the lawful objectives of a client — Failure to cooperate in a disciplinary investigation — Partially stayed suspension. (No. 2008-1238 — Submitted August 26, 2008 — Decided December 30, 2008.) ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 07-004. _____ Per Curiam. {¶ 1} Respondent, Daniel Sean Dice of New York, New York, Attorney Registration No. 0069476, was admitted to the practice of law in Ohio in 1998. {¶ 2} The Board of Commissioners on Grievances and Discipline recommends that we suspend respondent's license to practice for one year but stay the last six months on condition of no further misconduct, based on findings that he (1) delayed filing an appellate brief in an incarcerated client's case for seven months, (2) failed to appear for oral argument on behalf of another criminal defendant, and then (3) did not fully cooperate in the investigation of this misconduct. We agree that respondent committed professional misconduct as found by the board and that a one-year suspension with a six-month stay is appropriate. {¶ 3} Relator, Columbus Bar Association, charged respondent in a two- count complaint with violations of the Code of Professional Responsibility and

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Gov.Bar R. V(4)(G) (requiring lawyers to cooperate during a disciplinary investigation). Though respondent did not answer the complaint until relator moved for default, he afterward stipulated to the charged misconduct, and the parties jointly proposed as a sanction the one-year suspension and six-month stay. A panel of the board issued a report accepting the stipulations and the parties' proposed sanction, which the board adopted. Misconduct Count I {¶ 4} Respondent was appointed in November 2004 to represent Larry Craft in a federal appeal of Craft's felony conviction. The Court of Appeals for the Sixth Circuit ordered respondent to file a brief in the appeal on February 22, 2005. Respondent did not file the brief and then caused unnecessary delay in his incarcerated client's case. Respondent obtained seven extensions, and it was not until August 22, 2005, that he finally filed a brief. He then missed the deadline for filing an appendix to his brief, never filing it at all. {¶ 5} Craft frequently wrote to ask respondent about the case. Respondent seldom answered Craft's letters, failing to properly provide status reports. In early February 2006, after more than two years of respondent's dilatory practices, the appellate court had to appoint new counsel for Craft. {¶ 6} Respondent also failed to appear in another client's criminal case that had been scheduled for oral argument before the Sixth Circuit. {¶ 7} By his acts and omissions, respondent violated DR 1-102(A)(5) (prohibiting conduct that is prejudicial to the administration of justice), 1-102(A)(6) (prohibiting conduct that adversely reflects on a lawyer's fitness to practice law), 6-

101(A)(2) (prohibiting a lawyer from handling a legal matter without preparation adequate in the circumstances), 6-101(A)(3) (prohibiting a lawyer from neglecting an entrusted legal matter), 7-101(A)(1) (prohibiting a lawyer from intentionally failing to seek the lawful objectives of his client), and 2 January Term, 2008 7-101(A)(3) (prohibiting a lawyer from intentionally causing a client prejudice or damage during the course of the professional relationship). Count II {¶ 8} Craft filed a grievance against respondent in late January 2006. Between February and June 2006, relator sent three letters and left a voice mail asking for respondent's response to the grievance. Though respondent promised in various e-mails that his response was forthcoming, he did not provide any reply during the investigation process. Respondent thereby violated Gov.Bar R. V(4)(G) and DR 1-102(A)(6). Sanction {¶ 9} The sanction proposed by the parties is consistent with *Disciplinary Counsel v. Shramek*, 98 Ohio St. 3d 441, 2003-Ohio-1636, 786 N.E.2d 869. There, a lawyer neglected a products-liability case by failing to timely file an expert's report for his client or ask for an extension. The lawyer also did not respond to a motion to strike the expert's testimony or supply evidentiary support in response to a motion for summary judgment. That lawyer also failed to cooperate fully in the investigation of this misconduct by failing to respond to letters of inquiry or appear in response to a subpoena for his deposition. {¶ 10} Like respondent, the lawyer in *Shramek* violated duties to a client, DR 6-101(A)(3) and 7-101(A)(3), the public, DR 1-102(A)(5), the legal system, DR 1-102(A)(6), and the legal profession, Gov.Bar R. V(4)(G). *Id.*, 98 Ohio St.3d 441, 2003-Ohio-1636, 786 N.E.2d 869, ¶ 9. We suspended the lawyer's license to practice for one year and stayed the last six months of the suspension on the condition that he commit no further misconduct, factoring into our decision mitigating factors of no prior record of discipline, no dishonest motive, and eventual cooperation in the disciplinary process. See BCGD Proc.Reg. 10(B)(2)(a), (b), and (d). 3

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{¶ 11} These mitigating factors are also present in respondent's case. Moreover, the parties have agreed that respondent suffers from a mental disability that contributed to his ethical lapses and for which he has been successfully treated, a factor that is mitigating under BCGD Proc.Reg. 10(B)(2)(g). A one- year suspension with a conditional six-month stay is thus equally appropriate here. {¶ 12} We note that since July 13, 2006, respondent has been on inactive status under Gov.Bar R. VI(2). Today, we suspend respondent from the practice of law in Ohio for one year; however, the last six months of the suspension period are stayed on the condition that he engage in no further acts of professional misconduct. If respondent violates the term of the stay, the stay will be lifted, and he will serve the entire one-year suspension. Costs are taxed to respondent. Judgment accordingly. Moyer, C.J., and Pfeifer, Lundberg Stratton, O'Connor, Lanzinger, and Cupp, JJ., concur. O'Donnell, J., would suspend the respondent for one year, with no time stayed.

Bloomfield & Kempf and David S. Bloomfield; Robert W. Edmund; and
Bruce A. Campbell, Bar Counsel, and A. Alysha Clous, Assistant Bar Counsel, for relator. Daniel
Sean Dice, pro se. _____ 4

