

SUPREME COURT OF OHIO

Columbus Bar Assn. v. Kluesener

2017-Ohio-4417 (Ohio 2017) · No. 2017-0221 · Decided June 22, 2017

SUMMARY

The Supreme Court of Ohio approved a consent-to-discipline agreement involving attorney Jeffrey Thomas Kluesener's neglect of a products-liability matter, failure to communicate with the client, and failure to comply with discovery obligations. The court imposed a six-month suspension, fully stayed on the condition that Kluesener engage in no further misconduct.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, Chief Justice; Terrence O'Donnell, Justice; Pat DeWine, Justice; William M. O'Neill, Justice; Sharon L. Kennedy, Justice; Judith L. French, Justice; Patrick F. Fischer, Justice
JURISDICTION	Ohio
DECIDED	June 22, 2017
DOCKET	2017-0221
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding submitted to the Supreme Court of Ohio on a certified report from the Board of Professional Conduct based on the parties' consent-to-discipline agreement.
STANDARD OF REVIEW	The Supreme Court reviewed the certified disciplinary report and consent-to-discipline agreement for conformity with Gov. Bar R. V(16) and independently determined the appropriate sanction.
PRECEDENTIAL VALUE	Published Ohio Supreme Court disciplinary opinion
PARTIES	Columbus Bar Association v. Jeffrey Thomas Kluesener

TOPICS

sanctions

civil procedure

costs

PRACTICE AREAS

attorney discipline

professional responsibility

legal malpractice

QUESTIONS PRESENTED

1. Whether Kluesener's conduct violated Ohio's professional-conduct rules governing competence, diligence, client communication, withdrawal, and discovery compliance.
2. What disciplinary sanction was appropriate for Kluesener's stipulated misconduct.

HOLDINGS

1. Kluesener violated Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.16(d), and 3.4(d) by neglecting the client's matter, failing to act diligently, failing to keep the client informed, failing to protect the client's interests, and intentionally failing to make a reasonably diligent effort to comply with discovery requests.
2. A six-month suspension from the practice of law, fully stayed on the condition that Kluesener engage in no further misconduct, was the appropriate sanction.

KEY QUOTATIONS

"We agree that Kluesener's conduct violated Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.16(d), and 3.4(d) and that a six-month suspension, fully stayed on the condition that he engage in no further misconduct, is the appropriate sanction for his misconduct." (¶ 13)

"Accordingly, Jeffrey Thomas Kluesener is hereby suspended from the practice of law for six months, with the entire suspension stayed on the condition that he engage in no further misconduct." (¶ 14)

FACTUAL BACKGROUND

Kluesener represented Anthony Vera in a products-liability claim arising from a floor-scrubber accident. Although he knew an expert was needed, Kluesener did not obtain one, failed to respond to discovery requests and orders compelling discovery, and voluntarily dismissed and later refiled the complaint. After again failing to comply with a discovery order, the court dismissed Vera's case with prejudice, and Kluesener failed to inform Vera about these failures or their potential malpractice consequences.

PROCEDURAL HISTORY

The Columbus Bar Association charged Kluesener with professional misconduct arising from his handling of a products-liability matter. A panel of the Board of Professional Conduct considered the parties' consent-to-discipline agreement, and the Board recommended that the Supreme Court adopt it. The Supreme Court adopted the agreement and imposed a six-month suspension, fully stayed on the condition of no further misconduct.

DISPOSITION

other

CASES CITED

- Dayton Bar Assn. v. Sebree, 96 Ohio St.3d 50, 2002-Ohio-2987, 770 N.E.2d 1009
- Dayton Bar Assn. v. Hooks, 139 Ohio St.3d 462, 2014-Ohio-2596, 12 N.E.3d 1212
- Cleveland Metro. Bar Assn. v. Fonda, 138 Ohio St.3d 399, 2014-Ohio-850, 7 N.E.3d 1164

OPINION

Columbus Bar Assn. v. Kluesener (Slip Opinion)

2017 Ohio 4417

PER CURIAM.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as Columbus Bar Assn. v. Kluesener, Slip Opinion No. 2017-Ohio-4417.]

NOTICE

This slip opinion is subject to formal revision before it is published in an advance sheet of the Ohio Official Reports. Readers are requested to promptly notify the Reporter of Decisions, Supreme Court of Ohio, 65 South Front Street, Columbus, Ohio 43215, of any typographical or other formal errors in the opinion, in order that corrections may be made before the opinion is published.

SLIP OPINION NO. 2017-OHIO-4417

COLUMBUS BAR ASSOCIATION v. KLUESENER. [Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as Columbus Bar Assn. v. Kluesener, Slip Opinion No. 2017-Ohio-4417.] Attorneys—Misconduct—Neglect of client matter, failure to keep client informed, and failure to comply with discovery request—Six-month suspension, fully stayed. (No. 2017-0221—Submitted April 5, 2017—Decided June 22, 2017.) ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2016-036. _____

Per Curiam. {¶ 1} Respondent, Jeffrey Thomas Kluesener, of Columbus, Ohio, Attorney Registration No. 0087256, was admitted to the practice of law in Ohio in 2011. On August 26, 2016, relator, Columbus Bar Association, charged Kluesener with professional misconduct arising from his neglect of a single client matter.

SUPREME COURT OF OHIO

{¶ 2} A panel of the Board of Professional Conduct considered the cause on the parties' consent-to-discipline agreement. See Gov.Bar R. V(16). {¶ 3} In their consent agreement, the parties stipulate that Kluesener served as a law clerk at the Michael D. Christensen Law Offices, L.L.C., for approximately two years before he was admitted to the Ohio bar in May 2011 and assumed the role of a lawyer with the firm. {¶ 4} On April 21, 2011, Anthony Vera hired the firm to pursue a products-liability claim against the manufacturer of a floor scrubber that allegedly caused him serious and permanent injury in a November 2010 work-related accident. Kluesener was involved in Vera's representation from the initial intake interview, first as a law clerk, and then as an attorney. {¶ 5} Although Kluesener had never handled a products-liability case before, he was lead counsel on Vera's case and the only attorney identified as plaintiff's counsel on the complaint he drafted and filed in the Franklin County Court of Common Pleas. {¶ 6} Kluesener knew that he would need to retain an expert to support Vera's claim that the floor scrubber was defective, but he did not know how to find an expert. He did not request the assistance of the other attorneys at his firm, even though he was periodically under the supervision of Attorneys Chanda Higgins (n.k.a.

Chanda Brown) and Michael D. Christensen. He failed to respond to the defendant's discovery requests and an order to compel him to respond. And after the defendant filed a motion to dismiss the complaint, Kluesener voluntarily dismissed the complaint pursuant to Civ.R. 41(A). {¶ 7} Kluesener refiled the complaint one year later, but the only effort he made to gather additional information in support of Vera's claim was to write a single letter to the expert who had investigated the accident in conjunction with a related workers' compensation claim. But that expert had found that there was no product defect and laid blame for the accident on the employer's requirement that 2 January Term, 2017 the scrubber be parked in a certain way. After Kluesener once again failed to respond to a court order directing him to respond to the defendant's discovery requests, the court dismissed Vera's case with prejudice on July 8, 2015. {¶ 8} Kluesener admits that he did not communicate with Vera about his failure to hire an expert, his failure to respond to the defendant's discovery requests, the dismissal of Vera's complaint, or the fact that his failures could provide a cause of action for legal malpractice. Vera terminated the representation in December 2015 and after obtaining new counsel, filed a legal-malpractice and spoliation complaint against Kluesener and the Christensen firm. That complaint was settled and dismissed in February 2016. {¶ 9} Kluesener admits that his conduct violated Prof.Cond.R. 1.1 (requiring a lawyer to provide competent representation to a client), 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4(a)(3) (requiring a lawyer to keep the client reasonably informed about the status of a matter), 1.16(d) (requiring a lawyer withdrawing from representation to take steps reasonably practicable to protect a client's interest), and 3.4(d) (prohibiting a lawyer from intentionally failing to make a reasonably diligent effort to comply with a legally proper discovery request by an opposing party). {¶ 10} The parties agreed that no aggravating factors are present and that relevant mitigating factors include the absence of prior discipline, the absence of a dishonest or selfish motive, full and free disclosure to the board and a cooperative attitude toward the disciplinary proceedings, positive evidence of Kluesener's character and reputation, and his full acknowledgment of his misconduct. See Gov.Bar R. V(13) (B); Gov.Bar R. V(13)(C)(1), (2), (4), and (5). {¶ 11} The parties stipulated that a six-month, fully stayed suspension is the appropriate sanction for Kluesener's misconduct. The panel and the board found that the consent-to-discipline agreement conforms to Gov.Bar R. V(16) and recommend that we adopt the agreement in its entirety. 3

SUPREME COURT OF OHIO

{¶ 12} We have imposed six-month stayed suspensions for comparable misconduct in *Dayton Bar Assn. v. Seebree*, 96 Ohio St.3d 50, 2002-Ohio 2987, 770 N.E.2d 1009 (attorney undertook and then neglected client's representation and failed to respond to the client's numerous requests for information regarding the status of her case); *Dayton Bar Assn. v. Hooks*, 139 Ohio St.3d 462, 2014-Ohio- 2596, 12 N.E.3d 1212 (attorney accepted retainer and agreed to seek modification of existing child-custody and child-support matters but failed to perform the work and failed to keep the client informed about the status of his legal matter); and *Cleveland Metro. Bar Assn. v. Fonda*,

138 Ohio St.3d 399, 2014-Ohio-850, 7 N.E.3d 1164 (attorney failed to act with reasonable diligence in two separate client matters, failed to keep the clients reasonably informed about the status of their legal matters, and failed to respond to their reasonable requests for information). {¶ 13} We agree that Kluesener's conduct violated Prof.Cond.R. 1.1, 1.3, 1.4(a)(3), 1.16(d), and 3.4(d) and that a six-month suspension, fully stayed on the condition that he engage in no further misconduct, is the appropriate sanction for his misconduct. Therefore, we adopt the parties' consent-to-discipline agreement. {¶ 14} Accordingly, Jeffrey Thomas Kluesener is hereby suspended from the practice of law for six months, with the entire suspension stayed on the condition that he engage in no further misconduct. If Kluesener fails to comply with the condition of the stay, the stay will be lifted and he will serve the full six- month suspension. Costs are taxed to Kluesener. Judgment accordingly.

O'CONNOR, C.J., and O'DONNELL, KENNEDY, FRENCH, O'NEILL, FISCHER,
and DEWINE, JJ., concur. _____ R. Leland Evans; and Lori J. Brown, Bar
Counsel, and A. Alysha Clous, Assistant Bar Counsel, for relator. 4 January Term, 2017 Kegler,
Brown, Hill & Ritter Co., L.P.A., and Jonathan E. Coughlan, for respondent. _____