SUPREME COURT OF OHIO

Columbus Bar Ass'n v. DiAlbert

98 Ohio St. 3d 386 (Ohio 2003) · Decided March 26, 2003

SUMMARY

The Ohio Supreme Court considered disciplinary charges against attorney John Eugene DiAlbert for neglecting a client's judicial-release matter, misrepresenting anticipated release dates, and initially failing to cooperate with the disciplinary investigation. The court imposed a six-month suspension, stayed in full subject to conditions including no further misconduct, payment of costs, psychological counseling, and possible participation in fee arbitration.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Resnick, J.; F.E. Sweeney, J.; Pfeifer, J.; Cook, J.; Lundberg Stratton, J.; O'Connor, J.
JURISDICTION	Ohio
DECIDED	March 26, 2003
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding arising from a consent-to-discipline agreement considered by a panel of the Board of Commissioners on Grievances and Discipline and adopted by the board.
PRECEDENTIAL VALUE	Published opinion; precedential attorney-discipline decision of the Supreme Court of Ohio.
PARTIES	Columbus Bar Association v. John Eugene DiAlbert

TOPICS

administrative law

PRACTICE AREAS

legal ethics · attorney discipline · professional responsibility

QUESTIONS PRESENTED

1. Whether DiAlbert's conduct violated the cited provisions of the Ohio Code of Professional Responsibility and Gov.Bar R. V(4)(G).

2. What disciplinary sanction was appropriate for the established misconduct.

HOLDINGS

1. DiAlbert violated DR 1-102(A)(4) and (6), DR 6-101(A)(3), DR 7-101(A)(3), and Gov.Bar R. V(4)(G) through misrepresentation, conduct adversely reflecting on his fitness to practice law, neglect of an entrusted legal matter, intentional prejudice or damage to a client, and initial failure to cooperate with the disciplinary investigation.
2. A six-month suspension from the practice of law, stayed in its entirety on specified conditions, was an appropriate sanction; failure to satisfy the conditions would lift the stay and require six months of actual suspension.

KEY QUOTATIONS

> *"Accordingly, respondent is hereby suspended from the practice of law in Ohio for six months, but this sanction is stayed on the conditions recommended by the board. If respondent fails to meet these conditions, the stay of his suspension shall be lifted and respondent shall serve six months of actual suspension from the practice of law."* (¶ 7)

FACTUAL BACKGROUND

DiAlbert represented an incarcerated client who became eligible for judicial release in late September 2000 and had paid DiAlbert to file a motion. Although DiAlbert promised to file the motion promptly, he delayed filing until November 15, 2000 and gave the client fictitious anticipated release dates. After the first motion was denied, DiAlbert filed a second motion that the trial court granted in February 2001.

PROCEDURAL HISTORY

The Columbus Bar Association charged DiAlbert with violations of the Code of Professional Responsibility. A panel found misconduct based on DiAlbert's neglect of a client's judicial-release matter, misrepresentations to the client, prejudice to the client, and initial failure to cooperate with the disciplinary investigation. The panel recommended, and the board adopted, a six-month suspension stayed on specified conditions. The Supreme Court of Ohio agreed with the findings and imposed the stayed suspension.

DISPOSITION

other

OPINION

PER CURIAM.

Per Curiam. {¶ 1} On June 17, 2002, relator, Columbus Bar Association, charged respondent, John Eugene DiAlbert of Westerville, Ohio, Attorney Registration No. 0030101, with violations of the Code of Professional Responsibility. A panel of the Board of Commissioners on Grievances and Discipline considered the cause on the parties' consent-to-discipline agreement.

See Section 11 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline. The panel made the following findings. {¶ 2} Respondent represented a client who asked him to file a motion to secure the client's judicial release from incarceration. Respondent's client became eligible for judicial release in late September 2000, and by that time, respondent had been paid and had promised to file the motion at the earliest opportunity.

However, respondent did not file the motion for judicial release until November 15, 2000, and on several occasions before that, he had given his client fictitious anticipated release dates. {¶ 3} Respondent filed the motion for judicial release after confessing to his client that he had not done so before.

The motion was denied on December 12, *3872000. Respondent filed a second motion for his client's release on December 18, 2000. The trial court granted that motion in February 2001. {¶4} The parties agreed and the panel found that respondent's conduct violated DR 1-102(A)(4) (engaging in conduct involving misrepresentation) and (6) (engaging in conduct adversely reflecting on the attorney's fitness to practice law), 6-101(A)(3) (neglect of an entrusted legal matter), and 7-101(A)(3) (intentional prejudice or damage to client during representation).

The parties also agreed and the panel found that by initially failing to cooperate with relator's investigation, respondent violated DR 1-102(A)(6) and Gov.Bar R. V(4)(G). {¶ 5} In recommending a sanction, the panel reviewed the aggravating and mitigating circumstances stipulated to by the parties.

The panel considered respondent's lack of cooperation in the disciplinary process, the vulnerability of his client, and the harm caused to his client as aggravating circumstances. As mitigating factors, the panel considered that respondent had no prior disciplinary record, had not acted out of selfish motive, and had otherwise been a reputable practitioner.

Moreover, respondent conceded that some of his misconduct may have been the product of a psychological impairment for which he should seek a professional diagnosis and treatment. {¶ 6} The panel recommended the sanction suggested by the parties — a six-month suspension from the practice of law, with the entire six months stayed, provided that respondent comply with four conditions: (1) refrain from any further misconduct, (2) timely pay the costs of the disciplinary proceeding, (3) seek professional psychological counseling and report regularly to relator about his progress, and (4) participate, if his client requests, in relator's binding fee-arbitration program.

The board adopted the panel's findings of misconduct and recommendation. {¶ 7} We agree that respondent violated DR 1-102(A)(4) and (6), 6-101(A)(3), and 7-101(A)(3) and Gov.Bar R. V(4)(G) as found by the board. We also agree that a six-month suspension, stayed on conditions, is appropriate.

Accordingly, respondent is hereby suspended from the practice of law in Ohio for six months, but this sanction is stayed on the conditions recommended by the board. If respondent fails to meet these conditions, the stay of his suspension shall be lifted and respondent shall serve six months of actual suspension from the practice of law. Costs are taxed to respondent.

Judgment accordingly. Resnick, F.E. Sweeney, Pfeifer, Cook, Lundberg Stratton and O'Connor, JJ., concur. Moyer, C.J., dissents. Strip, Fargo, Hoppers & Leithart Co., L.P.A., and John W. Hoppers; Bruce A. Campbell, Bar Counsel, and Jill M. Snitcher McQuain, Assistant Bar Counsel, for relator. John Eugene DiAlbert, pro se.

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