

SUPREME COURT OF OHIO

Ohio State Bar Assn. v. Bruner

133 Ohio St. 3d 163, 2012-Ohio-4326 (2012) · No. 2012-0307 · Decided September 27, 2012

SUMMARY

The Supreme Court of Ohio disciplined Harvey B. Bruner for neglecting client matters, failing to reasonably communicate with clients, and charging clearly excessive fees. The court adopted the parties' consent-to-discipline agreement and imposed a two-year suspension stayed on the condition that Bruner reimburse three clients a total of \$12,000.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; McGee Brown, J.
JURISDICTION	Ohio
DECIDED	September 27, 2012
DOCKET	2012-0307
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding based on a certified report of the Board of Commissioners on Grievances and Discipline, submitted to the Supreme Court of Ohio for review of a consent-to-discipline agreement.
STANDARD OF REVIEW	The court independently reviewed and adopted the consent-to-discipline agreement upon determining that it conformed to BCGD Proc.Reg. 11.
PRECEDENTIAL VALUE	Published opinion; precedential attorney-discipline decision of the Supreme Court of Ohio.

TOPICS

agency adjudication administrative law judicial review of agency action

PRACTICE AREAS

professional responsibility attorney discipline legal ethics

QUESTIONS PRESENTED

1. Whether Bruner violated Prof.Cond.R. 1.3, 1.4, and 1.5(a) through neglect, inadequate communication, and charging clearly excessive fees.
2. Whether the court should adopt the parties' consent-to-discipline agreement imposing a two-year suspension stayed on the condition that Bruner pay specified restitution.

HOLDINGS

1. Bruner violated Prof.Cond.R. 1.3 by failing to act with reasonable diligence, Prof.Cond.R. 1.4 by failing to reasonably communicate with clients, and Prof.Cond.R. 1.5(a) by charging clearly excessive fees.
2. A two-year suspension from the practice of law, fully stayed on the condition that Bruner make specified restitution, was warranted and the consent-to-discipline agreement was adopted.

KEY QUOTATIONS

"We agree that Bruner violated Prof.Cond.R. 1.3, 1.4, and 1.5(a) and that, consistent with the parties' agreement, this conduct warrants a two-year, conditionally stayed suspension." (¶ 6)

"Accordingly, Bruner is hereby suspended from the practice of law in Ohio for two years, all stayed on the condition that he make restitution of \$1,000 to Michael Cox, \$8,500 to Shawn Burton, and \$2,500 to Robert Haidet, within 30 days of the date of this order." (¶ 7)

FACTUAL BACKGROUND

Bruner neglected client matters by filing inaccurate documents in one case and failing to timely file an appeal in another. He also failed to reasonably communicate with clients, failed to advise them of his hourly rate, and charged clearly excessive fees without maintaining time records or other documentation of his work. The parties stipulated that this conduct violated Ohio's professional-conduct rules and agreed that substantial mitigating factors supported a stayed suspension conditioned on restitution.

PROCEDURAL HISTORY

The Ohio State Bar Association charged Harvey B. Bruner with professional misconduct and later filed an amended complaint. Bruner and the relator entered into a consent-to-discipline agreement stipulating to the misconduct and proposed a two-year suspension stayed on conditions. The panel and board found the agreement compliant with the applicable procedural regulation and recommended adoption; the Supreme Court of Ohio adopted the agreement.

DISPOSITION

other

CASES CITED

- Columbus Bar Assn. v. Williams, 129 Ohio St. 3d 603, 2011-Ohio-4381, 955 N.E.2d 354

OPINION

PER CURIAM.

[Cite as Ohio State Bar Assn. v. Bruner, 133 Ohio St. 3d 163, 2012-Ohio-4326.] OHIO STATE BAR ASSOCIATION v. BRUNER. [Cite as Ohio State Bar Assn. v. Bruner, 133 Ohio St. 3d 163, 2012-Ohio-4326.] Attorneys—Misconduct—Failure to act with reasonable diligence in representing clients—Failure to communicate with client—Charging excessive fees— Two-year suspension, stayed on condition of reimbursement.

(No. 2012-0307—Submitted March 7, 2012—Decided September 27, 2012.) ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 11-076. _____ Per Curiam. {¶ 1} Respondent, Harvey B. Bruner of Cleveland, Ohio, Attorney Registration No. 0004829, was admitted to the practice of law in Ohio in 1974.

On August 15, 2011, relator, Ohio State Bar Association, charged Bruner with professional misconduct arising from his neglect, failure to reasonably communicate, and charging clearly excessive fees in three client matters.

On January 20, 2012, relator filed an amended complaint alleging the same misconduct, but modifying a factual allegation. {¶ 2} A panel of the Board of Commissioners on Grievances and Discipline considered the cause on the parties' consent-to-discipline agreement filed on January 30, 2012. See BCGD Proc.Reg. 11.

In the parties' consent-to- discipline agreement, Bruner stipulates to the facts as alleged in relator's complaint—namely, that he neglected client matters by filing inaccurate documents in one case and failing to timely file an appeal in another and that he charged clearly excessive fees, failed to advise clients of his hourly rate, and failed to maintain time sheets, notes, or records to document the time he spent working on client matters.

SUPREME COURT OF OHIO {¶ 3} The parties stipulate that Bruner's conduct violated Prof.Cond.R. 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), 1.4 (requiring a lawyer to reasonably communicate with a client), and 1.5(a) (prohibiting a lawyer from charging an illegal or clearly excessive fee). {¶ 4} The parties agree that no aggravating factors exist and that mitigating factors include the absence of a prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure and a cooperative attitude toward the disciplinary proceedings, and Bruner's good character and reputation aside from the charged misconduct.

See BCGD Proc.Reg. 10(B)(2)(a), (b), (d), and (e). {¶ 5} Based upon these substantial mitigating factors, the parties stipulated that a two-year suspension, all stayed on the condition that he make restitution of \$1,000 to Michael Cox, \$8,500 to Shawn Burton, and \$2,500 to Robert Haidet, in

accordance with the schedule attached to the consent-to- discipline agreement, which requires restitution to be paid in full by July 15, 2012. {¶ 6} The panel and board found that the consent-to-discipline agreement conforms to BCGD Proc.Reg.

11, and citing Columbus Bar Assn. v. Williams, 129 Ohio St. 3d 603, 2011-Ohio-4381, 955 N.E.2d 354 (imposing a two- year, conditionally stayed suspension on an attorney who failed to file an appellate brief in a client’s appeal of his convictions for rape, murder, and attempted tampering with evidence), they recommend that we adopt the agreement in its entirety.

We agree that Bruner violated Prof.Cond.R. 1.3, 1.4, and 1.5(a) and that, consistent with the parties’ agreement, this conduct warrants a two-year, conditionally stayed suspension. Therefore, we adopt the parties’ consent-to-discipline agreement. {¶ 7} Accordingly, Bruner is hereby suspended from the practice of law in Ohio for two years, all stayed on the condition that he make restitution of 2 January Term, 2012 \$1,000 to Michael Cox, \$8,500 to Shawn Burton, and \$2,500 to Robert Haidet, within 30 days of the date of this order.

If Bruner fails to comply with the condition of the stay, the stay will be lifted and Bruner shall serve the full two- year suspension. Costs are taxed to Bruner. Judgment accordingly. O’CONNOR, C.J., and PFEIFER, LUNDBERG STRATTON, O’DONNELL, LANZINGER, CUPP, and MCGEE BROWN, JJ., concur. _____ Eugene P. Whetzel; Kegler, Brown, Hill & Ritter Co., L.P.A., and Geoffrey Stern; and Smith, Rolfes & Skavdahl Co., L.P.A., and M. Andrew Sway, for relator.

Richard C. Alkire Co., L.P.A., Richard C. Alkire, and Dean C. Nieding, for respondent.