

SUPREME COURT OF OHIO

Cuyahoga County Bar Ass'n v. Aldrich

104 Ohio St. 3d 159 (Ohio 2004) · Decided December 8, 2004

SUMMARY

The Ohio Supreme Court reviewed disciplinary charges against Thomas P. Aldrich arising from his neglect of a divorce client’s matter, failure to return unearned fees, and related dishonest conduct. Given the misconduct, prior indefinite suspension, and failure to participate in the disciplinary proceedings, the court ordered that Aldrich be permanently disbarred and taxed costs to him.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick, J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Sweeney, J.
JURISDICTION	Ohio
DECIDED	December 8, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Cuyahoga County Bar Association charged respondent with additional violations of the Code of Professional Responsibility. The Board of Commissioners on Grievances and Discipline recommended an indefinite suspension, but the Supreme Court of Ohio independently imposed permanent disbarment.
STANDARD OF REVIEW	The Supreme Court of Ohio reviewed the disciplinary findings and sanction and determined the appropriate sanction based on the established misconduct, aggravating factors, and prior disciplinary history. The misconduct findings were based on clear and convincing evidence.
PRECEDENTIAL VALUE	published
PARTIES	Cuyahoga County Bar Association v. Thomas P. Aldrich III

TOPICS

- sanctions
- civil procedure

PRACTICE AREAS

legal ethics

attorney discipline

QUESTIONS PRESENTED

1. Whether respondent violated the specified provisions of the Ohio Code of Professional Responsibility by neglecting the client's divorce matter, failing to return unearned fees, misappropriating client funds, and causing client prejudice.
2. What sanction was appropriate for respondent's misconduct in light of his prior indefinite suspension, failure to cooperate in the disciplinary proceeding, and absence of mitigating factors.

HOLDINGS

1. Respondent violated DR 2-110(A)(3), DR 1-102(A)(4), DR 1-102(A)(6), DR 6-101(A)(3), DR 7-101(A)(2), and DR 7-101(A)(3).
2. Permanent disbarment was the appropriate sanction for respondent's misappropriation of client funds coupled with neglect, particularly in light of his prior indefinite suspension and refusal to participate in the disciplinary proceedings.

KEY QUOTATIONS

"Misappropriation coupled with neglect of a client's interests typically warrants disbarment." (160)

"Accordingly, respondent is permanently disbarred from the practice of law in Ohio." (161)

FACTUAL BACKGROUND

Respondent accepted filing fees and a retainer from a client seeking a divorce, then repeatedly failed to communicate with her or perform work on the case. He did not return the unearned fees, and the client ultimately retained another attorney to obtain the divorce. Respondent claimed he had sent a refund and that the client's sister owed him money, but the client denied receiving the letter or money order, and the sister denied owing respondent money.

PROCEDURAL HISTORY

Respondent had previously been indefinitely suspended for neglect and other improprieties and had been cited for contempt for failing to comply with that suspension order. After a panel hearing at which respondent did not appear despite notice, the panel recommended permanent disbarment, while the board recommended an indefinite suspension consecutive to the existing suspension. The Supreme Court agreed with the board's misconduct findings but imposed disbarment.

DISPOSITION

other

CASES CITED

- Cleveland Bar Assn. v. Aldrich, 93 Ohio St. 3d 625, 758 N.E.2d 180 (2001)
- Cleveland Bar Assn. v. Aldrich, 97 Ohio St. 3d 1407, 2002-Ohio-5557, 776 N.E.2d 1123 (2002)
- Cleveland Bar Assn. v. Glatki, 88 Ohio St. 3d 381, 384, 726 N.E.2d 993 (2000)
- Disciplinary Counsel v. France, 97 Ohio St. 3d 240, 2002-Ohio-5945, 778 N.E.2d 573

OPINION

PER CURIAM.

Per Curiam. {¶ 1} Respondent, Thomas P. Aldrich III, last known address in Lyndhurst, Ohio, Attorney Registration No. 0042451, was admitted to the practice of law in Ohio in 1989. On November 21, 2001, we indefinitely suspended respondent's license to practice for his neglect of client matters and other improprieties in cases he was involved in from 1995 through 1999 and for failing to appear at his disciplinary hearing.

Cleveland Bar Assn. v. Aldrich (2001), 93 Ohio St.3d 625, 758 N.E.2d 180. On October 17, 2002, we cited respondent for contempt because he had failed to surrender his certificate of admission and attorney registration card and file an affidavit stating that he was in compliance with our November 21, 2001 order. Cleveland Bar Assn. v. Aldrich, 97 Ohio St.3d 1407, 2002-Ohio-5557, 776 N.E.2d 1123. {¶ 2} On December 9, 2002, relator, Cuyahoga County Bar Association, charged respondent with additional violations of the Code of Professional Responsibility.

A panel of the Board of Commissioners on Grievances and Discipline heard the cause on September 26, 2003, but respondent, who had answered the complaint and been served with notice of the hearing, did not appear. The panel made findings of misconduct that, with the exception of DR 1-102(A)(1), which simply bars an attorney from violating a Disciplinary Rule, the board adopted.

The panel recommended that respondent be disbarred; however, the board rejected that sanction as too severe and recommended that he be indefinitely suspended. *160Misconduct {¶ 3} The board found that in May 2001 a client hired respondent to represent her in a divorce and soon thereafter paid respondent \$130 for a filing fee and \$200 (\$100 in cash and \$100 by check) as a retainer.

From June through August, the client made repeated unsuccessful attempts to contact respondent. When she finally did reach respondent in September 2001, he told her that he had lost the \$100 check that she had given him.

The client then sent respondent a money order to replace the lost check. {¶ 4} During October and November 2001, the client made many more attempts to contact respondent and again had no success. The client ultimately sent respondent a letter demanding that he call her by November 30, 2001, and that he either return her money or proceed with her case. According to the client,

respondent did not contact her and did not work on her case or refund the filing and legal fees she had paid.

The client later hired another attorney, who was successful in obtaining her divorce. {¶ 5} Respondent submitted with his answer to the complaint a copy of a letter that he had purportedly sent to his client on December 9, 2001.

In it, respondent claimed to be enclosing the \$100 money order and explained that he could no longer represent the client. The letter further stated that respondent was unable to return the additional \$230 he owed her but advised that the client's sister owed him over \$200 for his representation in her divorce and suggested that the client collect the money from her sister.

At the hearing before the panel, the client attested that she had never received this letter or the money order, and her sister attested that although respondent had handled her divorce, she did not owe him any money. {¶ 6} The board found, by clear and convincing evidence, that in representing this client, respondent had violated DR 2-110(A)(3) (requiring an attorney to promptly return unearned fees upon withdrawal from professional employment), 1-102(A)(4) (barring conduct involving dishonesty, fraud, deceit, or misrepresentation), 1-102(A)(6) (barring conduct that adversely reflects on an attorney's fitness to practice law), 6-101(A)(3) (barring an attorney from neglecting an entrusted legal matter), 7-101(A)(2) (prohibiting an attorney from intentionally failing to carry out a contract for professional employment), and 7-101(A)(3) (prohibiting an attorney from intentionally causing a client damage or prejudice).

Sanction {¶ 7} Considering the aggravating and mitigating factors listed in Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."), the board found respondent's disciplinary record to be an aggravating factor. BCGD Proc.Reg. 10(B)(1)(a). And because respondent had failed to attend the hearing in this case, the board found his failure to cooperate to be an aggravating factor.

BCGD Proc.Reg. 10(B)(1)(e). The board did not find any evidence to mitigate respondent's misconduct. Justin F. Madden and Ellen S. Mandell, for relator. Thomas P. Aldrich III, pro se. {¶ 8} The panel recommended, consistent with relator's suggestion, that respondent be permanently disbarred.

The board, however, recommended that respondent receive an indefinite suspension from the practice of law and that this suspension be served consecutively to respondent's current indefinite suspension. {¶ 9} We agree that respondent violated DR 2-110(A)(3), 1-102(A)(4), 1-102(A)(6), 6-101(A)(3), 7-101(A)(2), and 7-101(A)(3), as found by the board.

We, however, believe that disbarment is the appropriate sanction. {¶ 10} Respondent did not earn the \$200 that his client paid him for legal fees, and there is no evidence that he filed anything in

her case that would explain the use of the \$130 she gave him for filing fees. Respondent admitted in his answer that he had none of the money left, so obviously he had spent it.

Misappropriation coupled with neglect of a client's interests typically warrants disbarment. *Cleveland Bar Assn. v. Glatki* (2000), 88 Ohio St.3d 381, 384, 726 N.E.2d 993. Moreover, respondent's transgressions are exacerbated by his prior conduct, which resulted in an indefinite suspension, and by his refusal to participate in disciplinary proceedings. *Disciplinary Counsel v. France*, 97 Ohio St.3d 240, 2002-Ohio-5945, 778 N.E.2d 573. {¶ 11} Accordingly, respondent is permanently disbarred from the practice of law in Ohio. Costs are taxed to respondent.

Judgment accordingly. Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor and O'Donnell, JJ., concur. F.E. Sweeney, J., dissents and would suspend respondent indefinitely.