

SUPREME COURT OF OHIO

Disciplinary Counsel v. Dragelevich

106 Ohio St. 3d 478 (Ohio 2005) · Decided November 2, 2005

SUMMARY

The Ohio Supreme Court indefinitely suspended J. Walter Dragelevich from practicing law after he pleaded guilty to a federal felony involving odometer alteration. The court found that his conduct violated disciplinary rules prohibiting dishonesty and conduct adversely reflecting on fitness to practice law, and granted credit for the time served under his interim suspension.

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.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	November 2, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Board of Commissioners on Grievances and Discipline adopted a master commissioner's default findings of misconduct and recommended an indefinite suspension with credit for time served.
PRECEDENTIAL VALUE	Published and precedential Supreme Court of Ohio opinion
PARTIES	Disciplinary Counsel v. J. Walter Dragelevich

TOPICS

administrative law

agency adjudication

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

QUESTIONS PRESENTED

1. Whether respondent violated DR 1-102(A)(4) and DR 1-102(A)(6) through conduct involving odometer fraud and a resulting federal felony conviction.

2. Whether an indefinite suspension from the practice of law was the appropriate sanction.
3. Whether respondent should receive credit for time served under the interim suspension.

HOLDINGS

1. Respondent violated DR 1-102(A)(4), which prohibits conduct involving dishonesty, fraud, deceit, or misrepresentation, and DR 1-102(A)(6), which prohibits conduct adversely reflecting on a lawyer's fitness to practice law.
2. An indefinite suspension from the practice of law in Ohio was the appropriate sanction for respondent's misconduct.
3. Respondent was entitled to credit for time served after the interim suspension was imposed on September 12, 2003.

FACTUAL BACKGROUND

Dragelevich pleaded guilty in federal court to knowingly causing a vehicle odometer to be altered, changing the displayed mileage from 26,624 miles to 16,651 miles. He received two years of probation, was required to perform 100 hours of community service, and was fined \$5,000. The conduct resulted in an Ohio disciplinary complaint alleging dishonesty and conduct adversely reflecting on his fitness to practice law.

PROCEDURAL HISTORY

The Supreme Court of Ohio imposed an interim suspension on September 12, 2003, after receiving notice of respondent's felony conviction. Disciplinary Counsel later filed a misconduct complaint; service was made on the Clerk of the Supreme Court as respondent's agent after certified-mail service failed. Respondent did not answer, and the master commissioner granted relator's motion for default. The board adopted the findings and recommended an indefinite suspension with credit for time served.

DISPOSITION

other

CASES CITED

- In re Dragelevich, 99 Ohio St. 3d 1552, 2003-Ohio-4827, 795 N.E.2d 688
- Disciplinary Counsel v. Rolla, 95 Ohio St. 3d 27, 765 N.E.2d 316 (2002)
- Cincinnati Bar Assn. v. Holcombe, 93 Ohio St. 3d 141, 753 N.E.2d 176 (2001)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} Respondent, J. Walter Dragelevich of Niles, Ohio, Attorney Registration No. 0019672, was admitted to the Ohio bar in 1966. On September 12, 2003, we imposed an interim

suspension under Gov.Bar R. V(5) after we received notice that respondent had been convicted of a felony offense.

In re Dragelevich, 99 Ohio St.3d 1552, 2003-Ohio-4827, 795 N.E.2d 688. {¶ 2} On April 19, 2004, relator, Disciplinary Counsel, filed a complaint charging respondent with professional misconduct. When service of the complaint on respondent by certified mail could not be completed, the complaint was served on the Clerk of the Supreme Court as respondent's agent pursuant to Gov.Bar R. V(11)(B).

Respondent did not answer, and relator moved for default under Gov.Bar R. V(6)(F). A master commissioner appointed by the Board of Commissioners on Grievances and Discipline granted the motion, making findings of misconduct, which the board adopted.

The master commissioner recommended an indefinite suspension, and the board agreed, but the board further recommended that respondent be given credit for time served after the interim suspension was imposed on September 12, 2003. *479Misconduct {¶ 3} In 2003, respondent entered a plea of guilty to a federal felony criminal charge in the United States District Court for the Northern District of Ohio, case No. 4:03CR054.

He had knowingly caused the odometer on a vehicle to be altered in May 2001 so that the mileage displayed on the odometer changed from 26,624 miles to 16,651 miles. His actions violated Section 32703(2), Title 49, U.S.Code. Respondent was sentenced to a term of two years of probation with a requirement that he perform 100 hours of community service and pay a \$5,000 fine. {¶ 4} Relator alleged in his complaint that respondent had violated DR 1-102(A)(4) (barring conduct involving dishonesty, fraud, deceit, or misrepresentation) and 1-102(A)(6) (barring conduct that adversely reflects on a lawyer's fitness to practice law).

The master commissioner and the board found that respondent had indeed violated those provisions. {¶ 5} In recommending a sanction for the misconduct, the board considered 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.").

On the aggravating side of the equation, the board found that respondent had acted with a dishonest motive. BCGD Proc.Reg. 10(B)(1)(b). In mitigation, the board noted that respondent had no prior disciplinary record and had been punished in federal court for his crime. BCGD Proc.Reg. 10(B)(2)(a) and (f). {¶ 6} Relator recommended that respondent's license to practice law be indefinitely suspended for his misconduct.

The master commissioner accepted this recommendation, and the board further recommended that respondent be granted credit for time served. {¶ 7} We agree that respondent violated DR 1-

102(A)(4) and 1-102(A)(6), and we also agree that an indefinite suspension is the appropriate sanction.

We have imposed that penalty in similar cases. See, e.g., *Disciplinary Counsel v. Rolla* (2002), 95 Ohio St.3d 27, 765 N.E.2d 316 (indefinite suspension imposed after lawyer was convicted on several felony charges); *Cincinnati Bar Assn. v. Holcombe* (2001), 93 Ohio St.3d 141, 753 N.E.2d 176 (indefinite suspension imposed after lawyer was convicted on one felony charge). {¶ 8} Accordingly, respondent is hereby indefinitely suspended from the practice of law in Ohio, with credit for time served after the interim suspension was imposed on September 12, 2003.

Costs are taxed to respondent. Judgment accordingly. Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur. Jonathan E. Coughlan, Disciplinary Counsel, and Robert R. Berger, Assistant Disciplinary Counsel, for relator.