

ORIGINAL

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

In Re: : 12-1324
Complaint against : Case No. 11-009
Leo Johnny Talikka : Findings of Fact,
Attorney Reg. No. 0006613 : Conclusions of Law and
Respondent : Recommendation of the
Disciplinary Counsel : Board of Commissioners on
Relator : Grievances and Discipline of
the Supreme Court of Ohio

FILED
AUG 06 2012
CLERK OF COURT
SUPREME COURT OF OHIO

OVERVIEW

{¶1} The parties waived a hearing and submitted this matter to the panel on stipulations of fact, violations, matters in mitigation and aggravation, and a recommended sanction.

{¶2} The members of the panel assigned to hear this case were the Honorable Arlene Singer, Martha Butler Clark, and David E. Tschantz, chair. None of the panel members resides in the district from which the complaint arose and none of the panel members served as a member of the probable cause panel that certified the matter to the Board. Respondent was represented by Richard S. Koblentz and Bryan L. Penvose, and Relator was represented by Philip A. King.

{¶3} Based on its review of the stipulated facts, the panel agrees with the parties and finds, by clear and convincing evidence that Respondent engaged in professional misconduct. After consideration of the parties' stipulated matters in mitigation and aggravation and the parties' recommendation of the sanction of a two-year suspension with the second year stayed

on conditions, and the parties' joint brief for sanction, the panel agrees with the parties and recommends the sanction of a two-year suspension, with one year stayed on conditions, but is modifying the conditions in its recommendation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶4} Having considered the stipulations jointly filed by the parties, which are incorporated herein by reference, the panel accepts the stipulations, and adopts them as its findings of fact. The panel therefore finds by clear and convincing evidence that Respondent committed the following violations set forth below.

Count 1—Topazio Matter

{¶5} Prof. Cond. R. 1.3 [diligence]; Prof. Cond. R. 1.15(a) [a lawyer shall keep client funds in the lawyer's possession separate from the lawyer's funds]; Prof. Cond. R. 1.15(a)(2) [a lawyer shall maintain a record for each client on whose behalf funds are held]; Prof. Cond. R. 1.16(e) [a lawyer who withdraws from employment shall promptly refund any unearned fee]; Prof. Cond. R. 8.4(c) [conduct involving dishonesty, fraud, deceit, or misrepresentation]; Prof. Cond. R. 8.4(d) [conduct that is prejudicial to the administration of justice]; and Prof. Cond. R. 8.4(h) [conduct that adversely reflects on the lawyer's fitness to practice law].

Count 2—Homkes Matter

{¶6} Prof. Cond. R. 1.5(c)(2) [a lawyer who is entitled to compensation under a contingent-fee agreement shall not fail to prepare a closing statement and provide it to the client at the time of or prior to the lawyer's receiving compensation]; Prof. Cond. R. 1.15(a)(2); Prof. Cond. R. 1.15(a)(5) [a lawyer shall not fail to perform and retain a monthly reconciliation of the funds in his trust account]; Prof. Cond. R. 1.15(d) [a lawyer shall not fail to promptly deliver

funds or other property that the client is entitled to receive], Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

Count 3—Waclawski Matter

{¶7} Prof. Cond. R. 1.5(c)(2); Prof. Cond. R. 1.15(a)(2); Prof. Cond. R. 1.15(a)(5); Prof. Cond. R. 1.15(d); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

Count 4—Kooyman Matter

{¶8} Prof. Cond. R. 1.15(a)(2); Prof. Cond. R. 1.15(a)(5); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

Count 5—Price Matter

{¶9} Prof. Cond. R. 1.3; Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep a client reasonably informed about the status of a legal matter]; and Prof. Cond. R. 8.4(h).

Count 6—Cantrell Matter

{¶10} Prof. Cond. R. 1.3; Prof. Cond. R. 1.16(e); and Prof. Cond. R. 8.4(h).

Count 7—Montagino Matter

{¶11} Prof. Cond. R. 1.4(a)(3); Prof. Cond. R. 1.4(a)(4) [a lawyer shall not fail to comply as soon as practicable with reasonable requests for information from the client]; and Prof. Cond. R. 8.4(h).

Count 8—Ingram Matter

{¶12} Prof. Cond. R. 1.5(c)(2); Prof. Cond. R. 1.15(a)(2) Prof. Cond. R. 1.15(a)(5); Prof. Cond. R. 1.15(d); Prof. Cond. R. 8.4(c); and Prof. Cond. R. 8.4(h).

AGGRAVATION AND MITIGATION

{¶13} With regard to the factors in aggravation that may be considered in favor of a more severe sanction for professional misconduct listed in BCGD Proc. Reg. 10(B)(1), the

parties stipulated that Respondent clearly acted with a dishonest or selfish motive, demonstrated a pattern of misconduct, committed multiple offenses and has failed to make restitution. The panel accepts the aggravating factors stipulated and finds that they were proven by clear and convincing evidence.

{¶14} The parties did not stipulate, but the panel finds by clear and convincing evidence, based on the stipulated facts, the additional aggravating factor that Respondent's victims were vulnerable and harm to them resulted.

{¶15} With regard to the factors in mitigation that may be considered in favor of less severe sanctions for professional misconduct listed in BCGD Proc. Reg. 10(B)(2), the parties stipulated and the panel finds by clear and convincing evidence that Respondent has no prior disciplinary violations and has shown evidence of good character.

RECOMMENDED SANCTION

{¶16} In their stipulations and joint brief for sanction, Relator and Respondent recommended the sanction of a two-year suspension with one year stayed on the following conditions:

- Respondent commit no further misconduct;
- Respondent not be reinstated until he makes restitution to Jeffrey Homkes in the amount of \$8,674.59; to Fran Cantrell in the amount of \$1,000; and to John Ingram in the amount of \$39,196.70;
- Respondent, upon reinstatement, complete one year of probation and be monitored by an attorney appointed by Relator in accordance with Gov. Bar R. V, Section 9(B).

{¶17} In considering the appropriate sanction to recommend to the Board, the panel is mindful of the Court's opinion that "taking retainers and failing to carry out contracts of employment is tantamount to theft of the fee from the client," and permanent disbarment is the

“presumptive disciplinary measure for such acts.” *Cincinnati Bar Assn. v. Weaver*, 102 Ohio St.3d 264, 2004-Ohio-2683.

{¶18} However, Respondent in this case, unlike the respondents in other similar cases reviewed by the panel, displayed the mitigating factors of no prior disciplinary violations and evidence of good character.

{¶19} The panel also reviewed the case of *Disciplinary Counsel v. Claflin*, 107 Ohio St.3d 31, 2005-Ohio-5827 in regard to the parties’ recommendation of the payment of restitution as a condition of Respondent’s reinstatement, and agrees with the parties that this should be a condition of said reinstatement. The panel notes, however, that there is no mention of interest on what clearly is the clients’ money and believes that interest on the restitution paid, as was ordered in *Claflin*, is appropriate in this case.

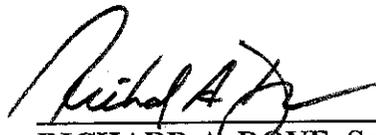
{¶20} In light of these factors, the panel recommends Respondent be suspended for a period of two years with one year stayed on the condition that Respondent commit no further misconduct. The panel further recommends that Respondent not be reinstated, regardless of whether or not the term of the above suspension is completed, until he makes restitution to Jeffrey Homkes in the amount of \$8,674.59, and interest at the statutory rate on that amount from May 6, 2009 to the date of payment; to Fran Cantrell in the amount of \$1,000, and interest at the statutory rate on that amount from July 15, 2011 to the date of payment; and to John Ingram in the amount of \$39,196.70, and interest at the statutory rate on that amount from November 30, 2011 to the date of payment.

{¶21} The panel further recommends that Respondent, upon reinstatement, complete one year of probation and be monitored during the probationary period by an attorney appointed by Relator in accordance with Gov. Bar R. V, Section 9(B).

BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 6(L), the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio considered this matter on August 3, 2012. The Board adopted the Findings of Fact and Conclusions of Law of the panel. Based on the extensive nature of Respondent's misconduct impacting on eight individual clients, the Board amended the sanction recommended by the panel and recommends that Respondent, Leo Johnny Talikka, be indefinitely suspended from the practice of law in Ohio with reinstatement subject to the payment of restitution to clients as set forth in ¶20 of this report. The Board further recommends that the costs of these proceedings be taxed to Respondent in any disciplinary order entered, so that execution may issue.

Pursuant to the order of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, I hereby certify the foregoing Findings of Fact, Conclusions of Law, and Recommendation as those of the Board.



**RICHARD A. DOVE, Secretary
Board of Commissioners on
Grievances and Discipline of
the Supreme Court of Ohio**