

1 Toledo Bar Association v. Batt.

2 [Cite as *Toledo Bar Assn. v. Batt* (1997), \_\_\_\_\_Ohio St. 3d\_\_\_\_\_.]

3 *Attorneys at law -- Misconduct -- Permanent disbarment -- Padding*  
4 *client bills with hours not worked -- Lying to Ohio Department*  
5 *of Liquor Control on several occasions in order to obtain an*  
6 *assignment of a liquor license for the village of Holland --*  
7 *Engaging in contemptuous, undignified, and discourteous*  
8 *conduct toward the Ohio Hazardous Waste Facility Board*  
9 *hearing panel, opposing counsel, and witnesses, while*  
10 *representing city of Oregon as city solicitor.*

11 (No. 96-1436 -- Submitted January 8, 1997 -- Decided April 16,

12 1997.)

13 On Certified Report by the Board of Commissioners on Grievances  
14 and Discipline of the Supreme Court, No. 90-66.

15 In December 1990 relator, Toledo Bar Association, filed a complaint  
16 before the Board of Commissioners on Grievances and Discipline of the  
17 Supreme Court (“board”) charging respondent, Nicholas D. Batt of Toledo,  
18 Ohio, Attorney Registration No. 0002291, in one count with violation of  
19 three Disciplinary Rules with respect to the legal bills he tendered to the city  
20 of Oregon and the village of Holland from March 1988 through December

1 1988. In another count relator alleged that respondent violated a  
2 Disciplinary Rule in his handling his client's trust account in July 1987.  
3 Respondent answered, stating that any erroneous billings sent to the  
4 governmental agencies were unintentional and that the treatment of the trust  
5 account did not violate the Disciplinary Rules.

6 In September 1991, relator filed an amended complaint charging  
7 respondent with a third additional count alleging violations of six  
8 Disciplinary Rules in connection with an application for a liquor permit and  
9 in a fourth count with violating thirteen Disciplinary Rules in connection  
10 with his appearance before the Ohio Hazardous Waste Facility Board.

11 Commencing on March 22, 1993, respondent was tried in common  
12 pleas court on an eight-count indictment charging theft in office and grand  
13 theft from March through December 1988, while respondent was an official  
14 of the city of Oregon and the village of Holland. On March 29, 1993,  
15 respondent was found guilty of three counts of theft in office in violation of  
16 R.C. 2921.41(A)(2) and one count of grand theft in violation of R.C.  
17 2913.02(A), ordered to pay restitution of \$18,580 to the two governmental  
18 agencies, and sentenced to two years' imprisonment on each count with the

1 sentences to run concurrently. The trial judge, however, suspended the  
2 prison sentences and placed respondent on probation with certain  
3 conditions. On May 26, 1993, pursuant to Gov.Bar R. V(5)(A)(2) and  
4 (A)(3), we indefinitely suspended respondent from the practice of law in  
5 Ohio. *In re Batt* (1993), 66 Ohio St.3d 1491, 612 N.E.2d 1246.

6         Based upon respondent's convictions in the common pleas court,  
7 relator filed a second amended complaint in May 1993, adding a fifth count  
8 alleging five additional disciplinary violations. Respondent filed an answer  
9 to the second amended complaint, and in September 1993, the parties  
10 entered into "Stipulations of Fact and Conclusions of Law."

11         After a hearing, the panel found with respect to count one that in  
12 representing the city of Oregon and the village of Holland, respondent  
13 padded his bills by increasing the time billed above the amount of time he  
14 actually worked and thus violated DR 2-106(A) (collecting an illegal or  
15 clearly excessive fee), 1-102(A)(4) (engaging in conduct involving  
16 dishonesty, fraud, deceit, or misrepresentation), and 1-102(A)(6) (engaging  
17 in conduct that adversely reflects on his fitness to practice law).

1           With respect to count three, the panel first found that respondent,  
2 while attorney for the village of Holland, made numerous  
3 misrepresentations from March 1988 through August 1990, intending to  
4 deceive and mislead the Ohio Department of Liquor Control in order to  
5 obtain an assignment of a liquor license for the village. The panel stated  
6 that respondent should have been aware that applications for liquor permits  
7 may not be assigned. The panel then found that respondent made additional  
8 misrepresentations to obtain a liquor license for the village. The panel  
9 concluded that respondent violated DR 1-102(A)(4), 1-102(A)(6), 6-  
10 101(A)(1) (handling a legal matter which he knew or should have known he  
11 was not competent to handle), 7-102(A)(3) (concealing or failing to disclose  
12 that which he was required by law to disclose in representing a client), and  
13 7-102(A)(5) (knowingly making a false statement of law or fact).

14           The panel found with respect to count four that while representing the  
15 city of Oregon as city solicitor before the Ohio Hazardous Waste Facility  
16 Board, respondent engaged in undignified or discourteous conduct  
17 degrading to the hearing panel, opposing counsel, or witnesses. This  
18 conduct included using insulting or intemperate language, as well as

1 shouting or screaming at, arguing with, or otherwise harassing the hearing  
2 panel, opposing counsel, or witnesses. The respondent publicly called the  
3 presiding judge a “marginal incompetent,” and implied that panel members  
4 bought their appointments, were biased, and were responding to political  
5 measures. The panel found that respondent’s actions violated DR 1-  
6 102(A)(5) (engaging in conduct prejudicial to the administration of justice),  
7 1-102(A)(6), 7-101(A)(1) (failing to avoid offensive tactics and failing to  
8 treat with courtesy and consideration all persons involved in the legal  
9 process), 7-102(A)(1) (asserting a position, conducting a defense, or taking  
10 an action on behalf of a client knowing that such action would merely serve  
11 to harass or maliciously injure another), 7-102(A)(5), 7-106(C)(1) (when  
12 appearing in a professional capacity before a tribunal alluding to matters  
13 which respondent had no reasonable basis to believe were relevant to the  
14 case), 7-106(C)(2) (when appearing before a tribunal in a professional  
15 capacity asking questions that one has no reasonable basis to believe are  
16 relevant to the case and are intended to degrade a witness or another  
17 person), 7-106(C)(3) (when appearing before a tribunal in a professional  
18 capacity asserting personal knowledge of facts in issue), 7-106(C)(6) (when

1 appearing before a tribunal in a professional capacity engaging in  
2 undignified or discourteous conduct which is degrading to the tribunal), 7-  
3 107(A) (making a statement during the pendency of an administrative  
4 proceeding that a reasonable person would expect to be disseminated by  
5 means of public communication, outside the course of the proceedings,  
6 which was reasonably likely to interfere with a fair hearing), and 8-102(B)  
7 (knowingly making false accusations against a judge or an adjudicatory  
8 officer).

9 Finally, with respect to count five relating to respondent's criminal  
10 conviction, the panel found that respondent violated DR 1-102(A)(3)  
11 (engaging in illegal conduct involving moral turpitude), and 1-102(4), 1-  
12 102(A)(5), 1-102(A)(6), and 7-102(A)(8) (knowingly engaging in illegal  
13 conduct). The panel dismissed count two relating to a client's trust account.

14 Two members of the panel recommended that respondent be  
15 disbarred, and one member of the panel recommended an indefinite  
16 suspension. On the basis of the panel's findings and conclusions, the board  
17 recommended that the respondent be disbarred. After we issued an order to

1 show cause, respondent objected to the board's findings, conclusions, and  
2 recommendation. The relator disagreed with respondent's objections.

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4 *Martin J. Witherell, Charles A. Stupsker, John N. MacKay and*  
5 *Joseph L. Wittenberg, for relator.*

6 *Charles W. Kettlewell, for respondent.*

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8 *Per Curiam.* The appropriate sanction for misappropriation of client  
9 funds is disbarment. *Columbus Bar Assn. v. Sterner* (1996), 77 Ohio St. 3d  
10 164, 167, 672 N.E.2d 633; 635; *Mahoning Cty. Bar Assn. v. Michaels*  
11 (1996), 75 Ohio St.3d 645, 647, 665 N.E.2d 676, 677; *Disciplinary Counsel*  
12 *v. Connaughton* (1996), 75 Ohio St. 3d 644, 645, 665 N.E.2d 675, 676.

13 Here respondent obtained fees by padding client bills with hours not  
14 worked. These actions, which were the basis for respondent's criminal  
15 conviction for theft in office and grand theft, are equivalent to  
16 misappropriation of the funds of a client and alone would warrant  
17 respondent's disbarment.



1 MOYER, C.J., TYACK, RESNICK, F.E. SWEENEY, PFEIFER, COOK and

2 LUNDBERG STRATTON, JJ., concur.

3 G. GARY TYACK, J., of the Tenth Appellate District, sitting for

4 DOUGLAS, J.

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