

CINCINNATI BAR ASSOCIATION v. ARNOLD.

[Cite as *Cincinnati Bar Assn. v. Arnold* (1999), \_\_ Ohio St.3d \_\_.]

*Attorneys at law — Misconduct — Indefinite suspension with credit for time served — Misappropriation of client funds.*

(No. 98-2663 — Submitted February 10, 1999 — Decided March 31, 1999.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 97-108.

On December 8, 1997, relator, Cincinnati Bar Association, filed a complaint charging respondent, S. Richard Arnold of Cincinnati, Ohio, Attorney Registration No. 0012733, with violating several Disciplinary Rules. Respondent answered, and the matter was heard by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court (“board”).

Based on the stipulations, testimony, and exhibits, the panel found that from July 27, 1994 through August 17, 1995, respondent, then a partner with the Cincinnati law firm Dinsmore & Shohl, falsely charged his client, Fifth Third Bank, for legal services that were never rendered and converted approximately \$75,000 to his personal use. As a result of his misappropriation of client funds, respondent pled guilty to bank fraud, in violation of Section 1344, Title 18, U.S.Code, and in January 1997, the federal district court convicted him, sentencing him to a term of actual imprisonment for six months, and upon release from imprisonment, to a three-year term of supervised release, with the first one hundred and eighty days of supervised release to be served in electronically monitored home confinement.

In February 1997, respondent informed the federal court in a motion for reconsideration that he suffered from a crack cocaine addiction and had entered a treatment program for his addiction. Respondent conceded at his disciplinary

hearing that his addiction to crack cocaine from 1992 until August 1995 adversely affected his ability to practice law during that period. On July 9, 1997, we suspended respondent from the practice of law in Ohio for an interim period because of his felony conviction. *In re Arnold* (1997), 79 Ohio St.3d 1454, 680 N.E.2d 1254.

The panel concluded that by his conduct, respondent committed two violations of DR 1-102(A)(6) (engaging in any conduct that adversely reflects on lawyer's fitness to practice law), one violation of 1-102(A)(3) (engaging in illegal conduct involving moral turpitude), and one violation of 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

In mitigation, respondent testified that in March 1991, he learned that he had tested positive for the HIV virus. Shortly thereafter, in order to cope with stress over his test result, respondent became addicted to crack cocaine and subsequently misappropriated the funds that were the subject of his bank fraud conviction. In August 1995, the law firm discovered respondent's misconduct and forced him to resign.

The panel found that respondent was candid and sincere in accepting full responsibility for his actions; that upon leaving his law firm, he had immediately entered into a residential drug treatment program; that he had been drug-free since that time; that he regularly attends Narcotics Anonymous meetings; and that pursuant to conditions of his supervised release, he submits to random drug testing and attends psychiatric counseling sessions. Respondent also submitted five letters of persons noting his exemplary character, professional and community commitment, and his resolve to fight his addiction and conduct himself in a law-abiding manner in the future.

The panel recommended that respondent be indefinitely suspended from the practice of law in Ohio, with credit for time served since his July 9, 1997 interim suspension. The panel further recommended that respondent establish that he has remained drug-free in any petition for reinstatement. The board adopted the findings and conclusions of the panel, but modified the recommendation to add that in any petition for reinstatement, respondent must also show proof of full restitution to all parties found by a court to be entitled to restitution.

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*Eagan, Wykoff & Healy Co., L.P.A., and Jack S. Healy; Rendigs, Fry, Kiely & Dennis, L.L.P., and Thomas S. Shore, Jr., for relator.*

*John H. Burlew, for respondent.*

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***Per Curiam.*** We adopt the findings and conclusions of the board. In determining the proper sanction, we have held that absent mitigating circumstances, the appropriate sanction for misappropriation of client funds is disbarment. *Cleveland Bar Assn. v. Knowlton* (1998), 81 Ohio St.3d 76, 78, 689 N.E.2d 538, 539. In *Miami Cty. Bar Assn. v. Hallows* (1997), 78 Ohio St.3d 75, 77, 676 N.E.2d 517, 519, and *Mahoning Cty. Bar Assn. v. Davis* (1991), 62 Ohio St.3d 37, 577 N.E.2d 1075, we found mitigating circumstances, which included sincere attempts to overcome the alcohol and cocaine addictions that contributed to the misappropriation of client funds, sufficient to warrant indefinite suspension rather than disbarment.

Similarly, we recently held that an attorney's federal bank fraud conviction for misappropriating client funds totaling \$230,900 and placing them in his account, which violated DR 1-102(A)(3), (4), and (6), and 9-102(A) (preserving identity of funds of a client), warranted an indefinite suspension because of

mitigating evidence that included the attorney's attendance at alcohol treatment programs. *Disciplinary Counsel v. Sanborn* (1998), 81 Ohio St.3d 282, 690 N.E.2d 1272.

Consistent with the foregoing cases, we are persuaded that an indefinite suspension is the appropriate sanction here. Respondent is hereby indefinitely suspended from the practice of law in Ohio, and he is given credit for time served since his July 9, 1997 interim suspension. Any petition for reinstatement must establish that respondent has remained drug-free and that he has made full restitution to all parties found by a court to be entitled to restitution. Costs taxed to respondent.

*Judgment accordingly.*

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and LUNDBERG STRATTON, JJ., concur.