

OPINIONS OF THE SUPREME COURT OF OHIO

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Office of Disciplinary Counsel v. Payne.
[Cite as Disciplinary Counsel v. Payne (1993), Ohio
St.3d .]

Attorneys at law -- Misconduct -- One-year suspension with six months suspended -- Conduct prejudicial to the administration of justice -- Engaging in other conduct that adversely reflects on fitness to practice law -- Neglect of a legal matter entrusted.

(No. 93-1713 -- Submitted September 21, 1993 -- Decided December 29, 1993.)

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 92-29.

On March 31, 1992, Office of Disciplinary Counsel filed a four-count complaint against respondent, Charles Lee Payne of East Liverpool, Ohio, Attorney Registration No. 0007369, charging him with misconduct in violation of the following Disciplinary Rules: DR 6-101(A)(3) (neglect of a legal matter entrusted), 1-102(A)(5) (conduct prejudicial to the administration of justice), and 1-102(A)(6) (engaging in other conduct that adversely reflects on his fitness to practice law). Respondent's answer admitted the allegations of misconduct, but denied that his actions constituted disciplinary violations. The parties stipulated the facts, waived a hearing, and agreed that the appropriate sanction was a public reprimand.

Respondent was retained by the co-executors of the estate of Evelyn Mae Carey to handle the estate. Respondent initiated probate proceedings on June 13, 1988. The inventory and appraisal, due August 13, 1988, were not filed until August 16, 1989, more than a year late. Respondent was also fourteen months late in filing the Ohio Estate Tax Resident Return. The late filing resulted in an interest and penalty charge of \$3,149.64, which was ultimately paid by respondent. During one of the initial meetings with the executors, respondent received \$5,954.81 in funds belonging to the estate. Respondent deposited the funds in his trust account, rather than in an estate checking account. On July 26, 1988, he opened an estate checking account, but did not transfer the \$5,954.81 from his

trust account. He made additional deposits of estate funds into his trust account, including the proceeds of the sale of Evelyn Mae Carey's residence. In April 1990, in connection with the closing of the estate, respondent transferred the funds from his trust account to the estate checking account.

On June 20, 1988, four days after depositing the initial estate funds in his trust account, he wrote himself a check for attorney fees in the amount of \$5,000. At that time he had not submitted a fee statement for services rendered to the estate or performed work entitling him to a fee of \$5,000, and he had not received court approval for any attorney fees. On February 27, 1990, respondent wrote a check on the estate account for part of the distribution of the estate and the check was returned for insufficient funds. A valid replacement check was not issued until after April 17, 1990.

From November 3, 1989 to June 24, 1990, respondent's trust account was in overdraft status on nine occasions. Moreover, respondent's other checking accounts, between May 24, 1988 and August 1990, incurred one hundred forty-two returned check charges because of insufficient funds.

The panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court concluded that respondent had committed a single violation of DR 1-102(A)(5), three violations of 1-102(A)(6), and two violations of 6-101(A)(3).1

The panel found, in mitigation of respondent's misconduct, that the estate funds had been accounted for, and that during the time in question, respondent suffered from personal problems and business adjustments which have now been corrected. However, the panel found "respondent's conduct to have been too reprehensible to go unpunished" and recommended that respondent be suspended from the practice of law for one year, with six months suspended.

The board adopted the findings of fact and conclusions of law of the panel, as well as the recommendation that respondent be suspended from the practice of law in the state of Ohio for one year, with six months of the suspension suspended and, further, that the costs of these proceedings be taxed to him.

Geoffrey Stern, Disciplinary Counsel, and Sally Ann Steuk, Assistant Disciplinary Counsel, for relator.

Charles W. Kettlewell, for respondent.

Per Curiam. Upon review of the record, we concur in the findings of the board and adopt its recommendation. Respondent is hereby suspended from the practice of law in Ohio for one year, with six months of the suspension suspended.

Costs taxed to respondent.

Judgment accordingly.

A.W. Sweeney, Douglas, Wright, Resnick and Pfeifer, JJ., concur.

Moyer, C.J., and F.E. Sweeney, J., dissent and would suspend respondent from the practice of law for one year.

FOOTNOTE

1 As to Count I, the panel and board found that respondent had violated DR 6-101(A)(2) as charged. However, this violation was denominated "neglect of a legal matter entrusted"

and is more properly a violation of DR 6-101(A)(3).