Office of Disciplinary Counsel v. Campbell.

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

Attorneys at law -- Misconduct -- One-year suspension -- Conduct adversely reflecting on fitness to practice law -- Conduct prejudicial to the administration of justice -- Failure to uphold the integrity and impartiality of the judiciary -- Failure to conduct self at all times in a manner that promotes public confidence in the integrity and independence of the judiciary -- Failure to be patient, dignified and courteous to lawyers.

(No. 93-1298 -- Submitted September 28, 1993 -- Decided December 8, 1993.)

On Certified Report by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 92-42.

On August 17, 1992, relator, Office of Disciplinary Counsel, filed a six-count complaint alleging misconduct against respondent, John H. Campbell of Akron, Ohio, Attorney Registration No. 0030184. Each count alleged a violation of DR 1-102(A)(6) (conduct adversely reflecting on fitness to practice law). Violations of DR 1-102(A)(5) (conduct prejudicial to the administration of justice) were alleged as to counts two through five. Counts two through six additionally charged violations of Code of Judicial Conduct Canons 1 (failure to uphold the integrity and independence of the judiciary), 2(A) (failure to conduct self at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary), and 3(A)(3) (failure to be patient, dignified and courteous to lawyers). Respondent's answer denied all these violations, as well as most of the factual allegations underlying them. These charges were heard by a panel of the Board of Grievances and Discipline of the Supreme Court on December 17, 1992 and February 4, 1993.

The alleged acts span the years 1978 through 1992, with five of the counts arising from incidents in or after 1988, while respondent was either a judge or judicial candidate. Each count detailed unwelcome and offensive sexual remarks and/or physical contact. In all but one instance, the

complainant was someone over whom respondent exercised authority, either directly as an employer or as a judge before whom the complainant was required to appear.

Count one related to an incident which occurred in 1978 while respondent was engaged in private practice and which involved sexual overtures toward the mother of a client. Respondent denied this incident had occurred.

Counts two through six are particularly relevant. Count two recounted a 1988 incident involving an employee of respondent's law firm. The complainant, who was less than two months out of law school, was asked by respondent to accompany him to the conference room to "fool around." Assuming that it was respondent's way of telling her to review some of the paperwork being worked on there, she followed him.

According to complainant, once she entered the room, respondent immediately closed the door and extinguished the lights. Respondent proceeded to forcibly kiss and fondle complainant, stopping only as footsteps approached. Complainant testified she was so distraught that, despite respondent's apology, she never returned to the office. Respondent acknowledged the kiss only, and claimed it was consensual. Despite his characterization, however, respondent conceded that complainant quit because of the incident.

Counts four and six concerned remarks made in 1989 and 1992, respectively, to two female assistant prosecutors newly assigned to his courtroom. The complainant in Count four stated that respondent twice told her that the procedure to be followed in complainant's welfare fraud prosecutions depended on whether complainant "want[ed] to be [his] lover or not." In Count six, a different prosecutor testified that five days after her assignment, her statement that she was "ready to go" with the day's docket prompted respondent to reply, "just tell me when and where." When complainant responded that she was referring to the day's business, respondent said that "when a young woman tells me she's ready, I'm ready to go."

Both women testified that the comments had a sexual connotation and were accompanied by a "smirk" or "leer." They characterized the remarks as unwelcome and offensive, prompting them to avoid respondent's courtroom thereafter.

Respondent denied the allegations in Count four. He admitted only the first remark in Count six. Respondent's eventual apology to the complainant in Count six was offered only after other similar allegations against him surfaced publicly.

Counts three and five, unlike the others, involve multiple incidents of misconduct against the respective complainants. Count five details actions directed at an attorney who practiced before the respondent. In 1989, at complainant's first appearance in respondent's courtroom, respondent ordered the complainant to approach the bench and slowly turn around before him so that he could "get a look at [her]." This incident - - which was independently corroborated - - was described by complainant as "embarrass[ing]" and "inappropriate."

About four or five months later, complainant discovered a picture of respondent's name on the marquee of a church, where he had been a pastor, among photos of an accident site.

Thinking that respondent might enjoy the picture, she informed respondent that she had "something that I think you'd like to have." She testified that respondent replied, "[w]ell, honey, anything you've got, I certainly want it."

Having already promised the photo, complainant later stopped by respondent's office, hoping to merely leave the picture and go. Respondent, however, instructed complainant to enter the chambers and close the door. When given the picture, complainant testified that respondent was "insistent" that he somehow repay her. Respondent then repeatedly offered complainant a kiss or hug, ignoring her protestations that such conduct was inappropriate. At that point, respondent allegedly leaned towards complainant and stated, "Oh, come on, Mrs. * * *, you know what the score is." Complainant described respondent's tone as "very intense. And it was very clear to me at that point that this was not a joke, that this was serious." Complainant ran from the room.

Thereafter, complainant's "stomach tie[d] up in knots" whenever cases took her into respondent's courtroom. Her ability to practice before him was adversely affected:

"* * * I felt like I was not being perceived as a professional person, that I was perceived as an object. And it took away from my credibility and my representation of my clients in his court."

Respondent continued to make inappropriate comments on complainant's attire even after the photo incident. At one point, respondent expressed a desire to "connect the dots" on a pair of patterned stockings to "see where it lead to." Respondent denied all but the initial encounter and stated that he never intended to degrade complainant.

Count five arose out of verbal and physical conduct against the psychologist-director of the court's Psycho-Diagnostic Clinic. What began in late 1988 as unwelcome comments on complainant's appearance and marital status escalated into uninvited and offensive physical contact on more than one occasion. Respondent's advances culminated in an April 24, 1990 encounter in which respondent physically blocked the complainant's path and forcibly kissed and stroked her hair.

Respondent continued his unsolicited comments following the April incident. His demeanor became hostile, however, when complainant, before others, compared his behavior to that alleged in the Anita Hill-Clarence Thomas hearings. Respondent began openly questioning complainant's salary. Finally, in December 1991, respondent sent a letter critical of complainant's office to complainant and a copy to the court's executive officer.

During the course of these events, complainant tried to avoid doing psychological evaluations for respondent's courtroom, feeling that she was not being taken seriously, to the possible detriment of the defendants whom she evaluated. She also feared for her job because she believed that she, as a court employee, could be fired by respondent. She characterized respondent's letter as retaliatory and an "attemp[t] * * * to create an incident and unfairly criticize my performance in my job."

Respondent denied that he did anything other than compliment complainant on her looks, although he did recall the

Hill/Thomas exchange. He suggested that complainant's allegations may have been spurred by his earlier failure to support complainant's proposed improvements to the county's diagnostic facilities. He denied having any ulterior motive for his letter, despite the fact that the alleged reason for the criticism proved baseless.

Addressing all the charges leveled, respondent denied any offensive intent to those actions to which he did admit. He stated that he now knew, however, that certain verbal statements that he viewed as innocuous could have been differently perceived by the recipient. In addition, respondent presented a dozen character witnesses and over forty reference letters and affidavits, all lauding respondent as an exemplary judge and human being. Respondent requested dismissal of the complaint or public reprimand.

The panel found that respondent had committed all the violations alleged. The panel concluded:

"Despite the fact that in testimony presented on behalf of Respondent, the Respondent's court has sought to be characterized as functioning properly, it is apparent from the uncontroverted testimony of many of the witnesses that his continuing remarks made practicing before him or serving in a professional capacity before him uncomfortable, unacceptable and violative of the standards to which members of the judiciary must adhere."

The panel recommended that respondent be indefinitely suspended from the practice of law in Ohio. The board adopted the findings and recommendation of the panel and also recommended that the costs of the proceeding be charged to respondent.

Respondent subsequently resigned from office.

Geoffrey Stern, Disciplinary Counsel, Alvin E. Mathews and Diana L. Chesley, Assistant Disciplinary Counsel, for relator.

Donald S. Varian and Charles W. Kettlewell, for respondent.

Per Curiam. The Code of Professional Responsibility and the Code of Judicial Conduct serve many purposes. Foremost among them are to ensure a legal system of the highest caliber, and to instill and maintain public confidence in that system. Respondent's acts not only do not further these goals, but they also undermine them. Such conduct would be unacceptable by any member of society. We, however, find it particularly intolerable by an attorney and abhorrent for a member of the judiciary.

In all but one instance, respondent was either directly or indirectly in a position of influence over the complainant. Similarly, his actions were almost exclusively directed at those most likely to be intimidated by his position. Four of the victims, for example, were inexperienced attorneys engaged in a new job early in their legal career.

Respondent's defense that he intended no harm is contradicted by those instances in which his behavior continued despite objections from the victim that his actions were unwelcome and offensive. Similarly, respondent's claim that none of the complainants had expressed problems with any of the cases they had before respondent ignores the adverse effect his

actions had on the complainants' perception of their ability to effectively practice before him. Accordingly, we concur in the findings of the board and suspend respondent from the practice of law for one year.

Costs taxed to respondent.

Judgment accordingly.

Moyer, C.J., A.W. Sweeney, Douglas, Wright, Resnick, F.E. Sweeney and Pfeifer, JJ., concur.