

1 Toledo Bar Association v. Savage.

2 [Cite as Toledo Bar Assn. v. Savage (1995), ____ Ohio St.3d ____.]

3 *Attorneys at law -- Misconduct -- Public reprimand -- Unauthorized*
4 *communication with a represented party concerning the subject of the*
5 *representation.*

6 (No. 94-2664 -- Submitted September 13, 1995 -- Decided December 20,
7 1995.)

8 ON CERTIFIED REPORT by the Board of Commissioners on Grievances and
9 Discipline of the Supreme Court, No. 94-17.

10 In an amended complaint filed on April 4, 1994, relator, Toledo Bar
11 Association, charged respondent, Barry E. Savage of Mount Pleasant, South
12 Carolina, Attorney Registration No. 0025481, with two counts of professional
13 misconduct, each alleging a violation of DR 7-104(A)(1) (unauthorized
14 communication with a represented party concerning the subject of the
15 representation). A panel of the Board of Commissioners on Grievances and
16 Discipline of the Supreme Court (“board”) heard the matter on October 17, 1994.

17 With respect to the first count, the evidence established that respondent
18 communicated with Beverly Cooper on January 26, 1993 in an attempt to find her
19 husband, Kenneth M. Cooper, and obtain Mr. Cooper’s signature on documention

1 to transfer a liquor license bought by respondent's client in a larger transaction for
2 the client's purchase of a gas station. The Coopers were represented by their
3 general counsel in the negotiations to purchase the gas station, as well as in certain
4 credit-related concerns involving a bank, which respondent also represented. The
5 Coopers' attorney had authorized respondent to discuss directly with Mr. Cooper
6 some matters in which the bank had an interest, but he had not authorized
7 respondent to contact Mr Cooper about the liquor license transfer, and he never
8 authorized respondent to speak with Mrs. Cooper in his absence.

9 In fact, the Coopers' attorney had specifically advised respondent on
10 January 26, 1993 that Mr. Cooper, who was actually in the hospital at the time,
11 would not be available to sign the liquor license transfer papers for seven to ten
12 days. Nevertheless, respondent later drove with his client from Toledo, Ohio, to
13 the Coopers' home in Birmingham, Michigan. At approximately 9:30 p.m.,
14 respondent and his client visited Mrs. Cooper, who explained that her husband
15 was not at home. Mrs. Cooper knew respondent and his client, but their visit
16 surprised her. She initially asked respondent, referring to his capacity as counsel
17 for the bank, whether he had come to "take [her] house," to which respondent
18 replied that he had not. Mrs. Cooper spoke with respondent and his client for

1 about forty-five minutes, during which respondent apparently inquired repeatedly
2 about Mr. Cooper's whereabouts, but mostly engaged in small talk, and did not
3 discuss legal matters. Respondent defended his actions on the ground that Mrs.
4 Cooper's signature was not required for the transfer of the liquor permit, and he
5 did not speak to Mr. Cooper.

6 With respect to the second count, the evidence established that respondent
7 attempted to elicit information from the client of another attorney after the
8 attorney had advised respondent of his representative status. On August 20, 1993,
9 respondent sent a letter directly to the represented party seeking to aid his client in
10 establishing a claimed mechanic's lien. Respondent defended his actions on the
11 ground that he had only spoken with his opposing counsel once on the telephone,
12 the other attorney had failed to send a purportedly promised letter confirming his
13 representation and address, and respondent had not kept the other attorney's
14 telephone number.

15 The panel found a violation of DR 7-104(A)(1) on both counts. It observed,
16 however, that neither of respondent's unauthorized communications had
17 prejudiced the clients represented by the other attorneys. After considering this
18 and the favorable character references offered by several of respondent's

1 colleagues, the panel recommended that respondent receive a public reprimand for
2 his misconduct. The board adopted the panel's report, including its findings of
3 fact, conclusions of law and recommendation.

4 *Thomas J. Szyperski*, for relator.

5 *Barry E. Savage, pro se.*

6 *Per Curiam.* Upon review of the record, we agree with the board's findings
7 of misconduct and its recommendation. We therefore also reject the arguments
8 raised in respondent's objections -- (1) that his unauthorized communication with
9 Mrs. Cooper was ethical because her signature was not required to execute the
10 transfer of the liquor license, and (2) that his unauthorized request for information
11 from a represented party was permissible because the opposing counsel had not
12 identified his address in writing.

13 Apparently, respondent contends that Mrs. Cooper was not represented in
14 the liquor license transfer by the Coopers's general counsel and, therefore,
15 respondent could not have communicated with her about "the subject of [her]
16 representation" in that matter. DR 7-104(A)(1). The subject of the representation
17 at issue, however, was the sale of the gas station, including the agreement to

1 transfer the liquor license, and the Coopers' general counsel plainly represented
2 Mrs. Cooper's interests, as well as those of her husband, in the entire transaction.
3 Moreover, another "subject of the representation" about which respondent had no
4 authority to communicate with Mrs. Cooper was the Coopers' credit with the bank
5 respondent represented. Respondent nevertheless surprised Mrs. Cooper at her
6 home, which generated their discussion about the possibility of the bank's
7 foreclosure. Either way, respondent's communications with Mrs. Cooper violated
8 DR 7-104(A)(1).

9 Furthermore, an attorney is not relieved of the duty to communicate only
10 with the attorney of a represented party by the opposing counsel's failure to
11 confirm the representation in writing. DR 7-104(A)(1) forbids such
12 communication upon the attorney's knowledge of the party's representative, and
13 respondent admits having had that knowledge here.

14 We, therefore, publicly reprimand respondent for having committed these
15 two violations of DR 7-104(A)(1). Costs taxed to respondent.

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Judgment accordingly.

1 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER and

2 COOK, JJ., concur.

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