

1 Office of Disciplinary Counsel v. King.

2 [Cite as *Disciplinary Counsel v. King* (1996), ____ Ohio St.3d ____.]

3 *Attorneys at law -- Misconduct -- Six-month suspension --*
4 *Deliberately false statements to a client -- Neglect of an*
5 *entrusted legal matter -- Conduct involving dishonesty, fraud,*
6 *deceit, or misrepresentation -- Prior offenses considered as a*
7 *factor that may justify an increase in the degree of discipline*
8 *for subsequent misconduct.*

9 (No. 95-378--Submitted October 24, 1995--Decided February 28,
10 1996.)

11 ON CERTIFIED REPORT by the Board of Commissioners on Grievances
12 and Discipline of the Supreme Court, No. 93-59.

13 In a single-count complaint filed on October 18, 1993, relator, Office
14 of Disciplinary Counsel, charged respondent, James C. King of Lima, Ohio,
15 Attorney Registration No. 0000774, with violations of DR 6-101(A)(3)
16 (neglect of an entrusted legal matter) and 1-102(A)(4) (conduct involving
17 dishonesty, fraud, deceit, or misrepresentation). In his answer, respondent
18 admitted some facts alleged in the complaint and added explanations.

19 On May 11, 1994, a panel of the Board of Commissioners on
20 Grievances and Discipline of the Supreme Court (“board”) held a hearing on

1 the matter. The complaint, answer, stipulations, and evidence established
2 that respondent was admitted to the Ohio Bar in 1967 and practices in Lima.
3 In September 1989, respondent filed a civil complaint relating to wage
4 deductions on behalf of his client, Carl E. Lawrence, against Duff Truck
5 Lines, Inc. (“Duff”). Before that case was resolved, we suspended
6 respondent from the practice of law for one year because of a felony
7 conviction for filing a false federal income tax return. *Allen Cty. Bar Assn.*
8 *v. King* (1990), 48 Ohio St.3d 8, 548 N.E.2d 238. Respondent and
9 Lawrence agreed that another attorney would dismiss Lawrence’s case.
10 Later, respondent agreed he would refile the complaint for Lawrence when
11 he was reinstated to practice.

12 In February 1991, we reinstated King to the practice of law. *Allen*
13 *Cty. Bar Assn. v. King* (1991), 58 Ohio St.3d 601, 567 N.E.2d 985. Shortly
14 thereafter, Lawrence contacted respondent, and respondent assured
15 Lawrence that his case would be refiled. Twice in 1991, Lawrence called
16 respondent and reminded him to refile the case, and respondent assured
17 Lawrence he would do so. In January, April and July 1992, Lawrence again
18 called respondent, and respondent assured Lawrence each time that the case

1 had been refiled. In July 1992, Lawrence learned that respondent had not
2 refiled the Duff complaint. In fact, respondent never did so. In August
3 1992, Lawrence fired respondent and picked up the case file.

4 Subsequently, Lawrence secured other counsel who filed his case
5 against Duff, and Lawrence secured a default judgment for \$20,245.97, plus
6 attorney fees. Lawrence also sued respondent for malpractice, but
7 respondent and Lawrence settled that case when respondent paid Lawrence
8 \$12, 673.37 (the amount of the wages withheld by Duff).

9 At the hearing, respondent testified and admitted he had neglected a
10 legal matter entrusted to him and that he had falsely represented to
11 Lawrence that the Duff case had been refiled. He explained the extensive
12 pressures on him surrounding his earlier conviction and suspension from
13 practice. He had an extensive, busy practice, with emphasis on domestic
14 relations, and wanted to continue to practice law. David Cheney, one of his
15 peers and long-time friends, testified that respondent was regarded as
16 “honest” and a “fighter,” and acknowledged that respondent “zealously
17 protect[s] his client’s rights.” Respondent’s wife testified he was an
18 excellent husband and father but tends to be a workaholic. During the year

1 he was suspended, respondent was involved extensively in community
2 service.

3 The panel concluded that respondent neglected a legal matter in
4 violation of DR 6-101(A)(3) and engaged in conduct involving dishonesty,
5 fraud, deceit or misrepresentation in violation of DR 1-102(A)(4). The
6 panel also noted that respondent's prior suspension was due to conduct
7 unrelated to the practice of law. Further, respondent had settled Lawrence's
8 claim against him, that Lawrence still had a default judgment against Duff,
9 and thus apparently has been made whole. Further, respondent was
10 genuinely contrite.

11 At the hearing in May 1994, relator recommended that respondent be
12 suspended from the practice of law for six months. The panel recommended
13 that respondent be suspended from the practice of law for two years, but that
14 this suspension be stayed, subject to the completion of a two-year
15 probationary period monitored by the Allen County Bar Association. The
16 board adopted the panel's findings of fact, conclusions of law, and
17 recommendation.

18

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

2 COOK, JJ., concur.

3 PFEIFER, J., dissents and would adopt the recommendations of the

4 panel and the board of a two-year suspension, stayed, with probation.

5

6