

1 Office of Disciplinary Counsel v. Fortado.

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

3 *Attorneys at law -- Misconduct -- Two-year suspension with one*
4 *year of sanction suspended with conditions -- Conduct*
5 *adversely reflecting on fitness to practice law -- Failure to*
6 *assist disciplinary investigation.*

7 (No. 95-1665--Submitted January 9, 1996--Decided February 28,
8 1996.)

9 On Certified Report by the Board of Commissioners on Grievances
10 and Discipline of the Supreme Court, No. 94-59.

11 The respondent in this matter is Matthew Fortado of Sun Valley,
12 Idaho (formerly of Akron, Ohio), Attorney Registration No. 0010597.
13 Relator, Office of Disciplinary Counsel, filed a six-count complaint against
14 Fortado with this court's Board of Commissioners on Grievances and
15 Discipline. A panel of the board heard this matter on May 5, 1995. In
16 accordance with the parties' stipulation, Counts III and VI of the complaint
17 were dismissed. With respect to the remaining counts, the hearing record,
18 stipulations, and exhibits establish the following facts:

19 Count I

1 letter. Fortado wrote that he would be in Texas until February 28, but
2 promised to contact relator “immediately” when he got back. Meanwhile,
3 relator’s February 23 letter arrived at Fortado’s office on February 28, and
4 the receptionist signed for it, but relator heard nothing more from Fortado.
5 Fortado stipulated that his conduct violated DR 1-102(A)(6) and Gov.Bar R.
6 V(4)(G).

7 Mitigating Factors

8 Fortado had abused drugs and alcohol since age fourteen. He first
9 used cocaine in law school; after he graduated in 1977, it became his “drug
10 of choice.” At the height of his addiction, Fortado took \$400-\$500 worth of
11 cocaine per week. However, he was able to abstain completely from drugs
12 and alcohol for substantial periods of time.

13 After his March 8, 1994 arrest on drug charges, Fortado took steps
14 toward recovery. He completed a twenty-eight-day substance abuse
15 program and joined the Ohio Lawyers Assistance Program, Inc. (“OLAP”).
16 He signed an “advocacy contract” with OLAP, agreeing to abstain from
17 mood-altering drugs, attend three Alcoholics Anonymous (“AA”) meetings
18 per week, and undergo random substance abuse testing. OLAP officials

1 testified that Fortado had complied with his contract, was facing his
2 problems, and was willing to do whatever was necessary to get better.

3 Fortado has also undergone aftercare counseling at an Idaho clinic
4 and has volunteered for AA-related tasks. Four persons involved in AA
5 wrote letters to express their view that Fortado has shown a serious
6 commitment to recovery.

7 On August 3, 1994, the Summit County Court of Common Pleas
8 granted Fortado's motion for treatment in lieu of conviction, pursuant to
9 R.C. 2951.041. By journal entry filed May 16, 1995, the court found that
10 Fortado "has successfully completed his treatment and is rehabilitated" and
11 dismissed the indictment.

12 Several judges and lawyers testified or wrote letters praising
13 Fortado's integrity and professional ability. Three witnesses said Fortado's
14 drug problem had not interfered with his professional performance. Several
15 friends and clients wrote of Fortado's integrity, generosity, *pro bono* work,
16 legal skill, dedication, and responsibility. Fortado testified that he has
17 continued to take CLE classes and has maintained his Ohio attorney
18 registration.

1 The panel recommended that Fortado be suspended from the practice
2 of law for two years. Both parties concurred in this; however, Fortado
3 asked that the entire sanction be stayed, while relator recommended that one
4 year be stayed. In line with relator’s recommendation, the panel
5 recommended that one year of the sanction be stayed, on condition that
6 Fortado fulfill the terms of his OLAP contract and that he be monitored by
7 two attorneys when he re-enters legal practice: one to help him with “office
8 set-up and procedures” and one to monitor his progress in remaining drug-
9 and alcohol-free. The board adopted the panel’s findings of fact,
10 conclusions of law, and recommendation.

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

13 *Charles W. Kettlewell*, for respondent.

14 *Per Curiam*. Fortado asks that we stay his entire two-year
15 suspension, citing *Disciplinary Counsel v. Casalnuovo* (1993), 66 Ohio
16 St.3d 367, 613 N.E.2d 177, and *Disciplinary Counsel v. Carter* (1994), 68
17 Ohio St.3d 568, 629 N.E.2d 430. *Casalnuovo* and *Carter* were cases of
18 attorneys who, after being found guilty of drug abuse, received treatment in

1 lieu of conviction under R.C. 2951.041. But in those cases, the respondents
2 were sanctioned solely for using illegal drugs. Fortado is guilty of other
3 misconduct as well; he admits two violations each of DR 1-102(A)(6) and
4 Gov.Bar R. V(4)(G), including the improper disbursement of \$11,500 of a
5 client's funds and repeated failures to cooperate with relator's investigation.

6 Accordingly, we adopt the board's findings, conclusions, and
7 recommendation. Matthew Fortado is suspended from the practice of law in
8 Ohio for two years. One year of this sanction is stayed on the conditions
9 recommended by the board as stated above. Costs taxed to respondent.

10 *Judgment accordingly.*

11 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, F.E. SWEENEY, PFEIFER
12 and COOK, JJ., concur.

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