Ohio Prof. Cond. Rule 7.1

Rules current through rule amendments received through November 17, 2022

OH - Ohio Local, State & Federal Court Rules > Ohio Rules of Professional Conduct > VII. Information about legal services

Rule 7.1. Communications concerning a lawyer's services

A lawyer shall not make or use a false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement considered as a whole not materially misleading.

History

Amended eff 4-1-15.

Annotations

Commentary

COMMENT

[1] This rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

[4] Characterization of rates or fees chargeable by the lawyer or law firm such as "cut-rate," "lowest," "giveaway," "below cost," "discount," or "special" is misleading.

[5] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Ohio Rules of Professional Conduct or other law.

Rule 7.1 corresponds to DR 2-101. Rule 7.1 does not contain the prohibitions found in DR 2-101 on client testimonials or self-laudatory claims. However, the rule does retain the DR 2-101 prohibition on unverifiable claims.

In addition, Rule 7.1 contains none of the other directives found in DR 2-101(B), the definition of misleading found in DR 2-101(C) (see comment [2] of Rule 7.1), or the directives found in DR 2-101(D), (E), and (G).

For DR 2-101(F) and DR 2-101(H) see Rule 7.3.

Rule 7.1 is similar to Model Rule 7.1 except for the inclusion of a prohibition on the use of nonverifiable communications about the lawyer or the lawyer's services.

Case Notes

Advertising

In a case in which an attorney filed objections to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court finding that she violated Ohio R. Prof. Conduct 7.1 and the recommendation that she be publicly remanded, her law firm's website advertised a free consultation, and it did not include any limitations. The advertisement was misleading because it omitted a key piece of information--the free consultation ended and billing began with the signing of the fee agreement. *Cincinnati Bar Ass'n v. Mezher, 134 Ohio St. 3d 319, 2012 Ohio 5527, 982 N.E.2d 657, 2012 Ohio LEXIS 3055 (Dec. 3, 2012)*.

Conflict

Attorney violated Prof.Cond.R. 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.16(d), 1.16(e), and 7.1 as the attorney had not taken action on a clients' bankruptcy action and did not refund the clients on their request. *Cleveland Metro. Bar Ass'n v. Westfall, 134 Ohio St. 3d 127, 2012 Ohio 5365, 980 N.E.2d 982, 2012 Ohio LEXIS 2878 (Nov. 21, 2012)*.

Postconviction relief petition was properly denied because, although the inmate asserted that her trial counsel had formerly served as her probation officer, she failed to indicate how his former position prejudiced her or amounted to a constitutional deprivation. At no time while her case was pending did she ask the trial court to appoint new counsel for trial. State v. Messer-tomak, -- Ohio App. 3d --, *2011 Ohio 3700*, -- N.E. 2d --, *2011 Ohio App. LEXIS 3124 (July 28, 2011)*.

Disbarment

Attorney was permanently disbarred because the attorney represented multiple parties in certain litigation and the related transactions created multiple conflicts of interest for which the attorney did not obtain informed consent as to those conflicts, continued to practice law while under suspension, failed to respond to the disciplinary investigation, and continued to hold himself out as an attorney after his suspension. Columbus Bar Ass'n v. Okuley, -- Ohio St. 3d --, *2021 Ohio 3225*, -- N.E.2d --, *2021 Ohio LEXIS 1832 (Sept. 21, 2021)*.

Suspension

Attorney's use of a two-person firm name and his business cards with that name, although he was the only employee, was deemed false and misleading and violative of professional conduct rules, such that a two-year suspension, fully stayed on conditions, was imposed due to, inter alia, his significant disciplinary history and his selfish motive. Ashtabula Cty. Bar Ass'n v. Brown, -- Ohio St. 3d --, 2017- Ohio 5698, -- N.E.2d --, *2017 Ohio LEXIS 1353 (July 6, 2017)*.

Attorney was indefinitely suspended from the practice of law for engaging in multiple acts of misconduct by accepting legal fees from clients and failing to perform the work, failing to reasonably communicate with his clients during their representation, failing to maintain a client trust account, issuing solicitation letters that were misleading because they gave the impression that he worked for a firm with multiple lawyers, when in fact he was a solo practitioner, and failing to assist in a disciplinary investigation. *Cleveland Metro. Bar Ass'n v. Lemieux, 139 Ohio St. 3d 320, 2014-Ohio 2127*, -- N.E.2d --, *2014 Ohio LEXIS 1216 (May 27, 2014)*.

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Ohio Prof. Cond. Rule 7.2

Rules current through rule amendments received through November 17, 2022

OH - Ohio Local, State & Federal Court Rules > Ohio Rules of Professional Conduct > VII. Information about legal services

Rule 7.2. Advertising and recommendation of professional employment

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through *written*, recorded, or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may pay any of the following:

(1) the *reasonable* costs of advertisements or communications permitted by this rule;

(2) the usual charges of a legal service plan;

(3) the usual charges for a nonprofit or lawyer referral service that complies with Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio;

(4) for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or *law firm*responsible for its content.

(d) A lawyer shall not seek employment in connection with a matter in which the lawyer or *law firm* does not intend to participate actively in the representation, but that the lawyer or *law firm* intends to refer to other counsel. This provision shall not apply to organizations listed in Rules 7.2 (b)(2) or (3) or if the advertisement is in furtherance of a transaction permitted by Rule 1.17.

History

Amended eff 4-1-15.

Annotations

Commentary

COMMENT

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the

lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, advertising going beyond specified facts about a lawyer, or "undignified" advertising. Television, the Internet, and other forms of electronic communication are among the most powerful media for getting information to the public, particularly persons of low and moderate income. Prohibiting television, Internet, or other forms of electronic advertising would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against solicitation through a real-time electronic exchange initiated by the lawyer

[4] Neither this rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as provided by these rules, lawyers are not permitted to give anything of value to another for recommending the lawyer's services or channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities. A reciprocal referral agreement between lawyers, or between a lawyer and a nonlawyer, is prohibited. Cf. Rule 1.5.

[5A] Division (b)(1) allows a lawyer to pay for advertising and communications permitted by this rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents, and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, including Internet-based client leads, provided the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5 and 5.4, and the lead generator's communications are consistent with Rule 7.1. To comply with Rule 7.1, a lawyer shall not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See Rules 5.3 and 8.4(a).

[6] A lawyer may pay the usual charges of a legal service plan or a nonprofit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this rule only permits a lawyer to pay the usual charges of a nonprofit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved pursuant to Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio. Relative to fee sharing, see Rule 5.4(a)(5).

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] [RESERVED]

Rule 7.2(a) directs attention to Rules 7.1 and 7.3, each of which includes or deletes language from the advertising and solicitation rules contained in DR 2-101 through DR 2-104.

The following are provisions of DR 2-101 that have not been included in Rule 7.1, 7.2, or 7.3: -

The specific reference to types of fees or descriptions, such as "give-away" or "below cost" found in DR 2-101(A)(5), although Rule 7.1, Comment [4] specifically indicates that these characterizations are misleading;

Specific references to media types and words, as set forth in DR 2-101(B)(1) and (2);

Specific reference that brochures or pamphlets can be disclosed to "others" as set forth in DR 2-101(B)(3);

The list of items that were permissible for inclusion in advertising, contained in DR 2-101(D).

Rule 7.2(b)(3) is modified to remove a reference to a qualified legal referral service and substitute a reference to the lawyer referral service provisions contained in Rule XVI of the Supreme Court Rules for the Government of the Bar of Ohio. Rule 7.2 does not include Model Rule 7.2(b)(4) and thus prohibits reciprocal referral agreements between two lawyers or between a lawyer and a nonlawyer professional. Rule 7.2(d) is added to incorporate the prohibition contained in DR 2-101(A)(2) relative to soliciting employment where the lawyer does not intend to participate in the matter but instead will refer the matter to other counsel.

Case Notes

Advertising
Recommendation of employment
Referral fee

Advertising

Television commercials containing testimonials from former clients violated DR 2-101. The fact that losing contingent fee clients are responsible for costs and expenses must be disclosed: *Disciplinary Counsel v. Shane, 81 Ohio St. 3d 494, 1998 Ohio 609, 692 N.E.2d 571, 1998 Ohio LEXIS 1052 (1998)*.

The ban on the use of illustrations in attorney advertisements in DR 2-101(B) violates *U.S. Const. amend. I* protections afforded commercial speech: *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 105 S. Ct. 2265, 85 L. Ed. 2d 652, 1985 U.S. LEXIS 19 (1985)*.

A rule that requires all advertisements which mention contingent fee rates to disclose whether percentages are computed before or after deduction of court costs and expenses do not violate *U.S. Const. amend. I*: *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, 471 U.S. 626, 105 S. Ct. 2265, 85 L. Ed. 2d 652, 1985 U.S. LEXIS 19 (1985)*.

Recommendation of employment

Respondent violated DR 2-103 by forming a corporation whose sole purpose was to seek out auto accident victims and refer them to respondent: *Cincinnati Bar Ass'n v. White, 79 Ohio St. 3d 491, 1997 Ohio 160, 684 N.E.2d 29, 1997 Ohio LEXIS 2436 (1997)*.

Referral fee

Evidence clearly and convincingly established that counsel violated this rule when he contracted with and shared his contingency fees with a group that was not a lawyer-referral service as counsel asserted. Cincinnati Bar Ass'n v. Hoskins, -- Ohio St. 3d --, 2016- Ohio 4576, -- N.E.2d --, *2016 Ohio LEXIS 1693 (June 28, 2016)*.

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Ohio Prof. Cond. Rule 7.3

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OH - Ohio Local, State & Federal Court Rules > Ohio Rules of Professional Conduct > VII. Information about legal services

Rule 7.3. Solicitation of clients

(a) A lawyer shall not by in-person, live telephone, or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless either of the following applies:

(1) the person contacted is a lawyer;

(2) the person contacted has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by *written*, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact even when not otherwise prohibited by division (a), if either of the following applies:

(1) the person being solicited has made *known* to the lawyer a desire not to be solicited by the lawyer;

(2) the solicitation involves coercion, duress, or harassment;

(3) the lawyer knows or reasonably should know that the person to whom the communication is addressed is a minor or an incompetent or that the person's physical, emotional, or mental state makes it unlikely that the person could exercise reasonable judgment in employing a lawyer.

(c) Unless the recipient of the communication is a person specified in division (a)(1) or (2) of this rule, every *written*, recorded, or electronic communication from a lawyer soliciting professional employment from anyone whom the lawyer *reasonably believes* to be in need of legal services in a particular matter shall comply with all of the following:

(1) Disclose accurately and fully the manner in which the lawyer or *law firm* became aware of the identity and specific legal need of the addressee;

(2) Disclaim or refrain from expressing any predetermined evaluation of the merits of the addressee's case;

(3) Conspicuously include in its text and on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication the recital - "ADVERTISING MATERIAL" or "ADVERTISEMENT ONLY."

(d) Prior to making a communication soliciting professional employment pursuant to division (c) of this rule to a party who has been named as a defendant in a civil action, a lawyer or *law firm* shall verify that the party has been served with notice of the action filed against that party. Service shall be verified by consulting the docket of the court in which the action was filed to determine whether mail, personal, or residence service has been perfected or whether service by publication has been completed. Division (d) of this rule shall not apply to the solicitation of a debtor regarding representation of the debtor in a potential or actual bankruptcy action.

(e) If a communication soliciting professional employment from anyone is sent within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death, the following "Understanding Your Rights" shall be included with the communication.

If you have been in an accident, or a family member has been injured or killed in a crash or some other incident, you have many important decisions to make. It is important for you to consider the following:

1. Make and keep records - If your situation involves a motor vehicle crash, regardless of who may be at fault, it is helpful to obtain a copy of the police report, learn the identity of any witnesses, and obtain photographs of the scene, vehicles, and any visible injuries. Keep copies of receipts of all your expenses and medical care related to the incident.

2. You do not have to sign anything - You may not want to give an interview or recorded statement without first consulting with an attorney, because the statement can be used against you. If you may be at fault or have been charged with a traffic or other offense, it may be advisable to consult an attorney right away. However, if you have insurance, your insurance policy probably requires you to cooperate with your insurance company and to provide a statement to the company. If you fail to cooperate with your insurance company, it may void your coverage.

3. Your interests versus interests of insurance company - Your interests and those of the other person's insurance company are in conflict. Your interests may also be in conflict with your own insurance company. Even if you are not sure who is at fault, you should contact your own insurance company and advise the company of the incident to protect your insurance coverage.

4. There is a time limit to file an insurance claim - Legal rights, including filing a lawsuit, are subject to time limits. You should ask what time limits apply to your claim. You may need to act immediately to protect your rights.

5. Get it in *writing* - You may want to request that any offer of settlement from anyone be put in *writing*, including a *written* explanation of the type of damages which they are willing to cover.

6. Legal assistance may be appropriate - You may consult with an attorney before you sign any document or release of claims. A release may cut off all future rights against others, obligate you to repay past medical bills or disability benefits, or jeopardize future benefits. If your interests conflict with your own insurance company, you always have the right to discuss the matter with an attorney of your choice, which may be at your own expense.

7. How to find an attorney - If you need professional advice about a legal problem but do not know an attorney, you may wish to check with relatives, friends, neighbors, your employer, or co-workers who may be able to recommend an attorney. Your local bar association may have a lawyer referral service that can be found in the Yellow Pages or on the Internet.

8. Check a lawyer's qualifications - Before hiring any lawyer, you have the right to know the lawyer's background, training, and experience in dealing with cases similar to yours.

9. How much will it cost? - In deciding whether to hire a particular lawyer, you should discuss, and the lawyer's written fee agreement should reflect:

a. How is the lawyer to be paid? If you already have a settlement offer, how will that affect a contingent fee arrangement?

b. How are the expenses involved in your case, such as telephone calls, deposition costs, and fees for expert witnesses, to be paid? Will these costs be advanced by the lawyer or charged to you as they are incurred? Since you are obligated to pay all expenses even if you lose your case, how will payment be arranged?

c. Who will handle your case? If the case goes to trial, who will be the trial attorney?

This information is not intended as a complete description of your legal rights, but as a checklist of some of the important issues you should consider.

***THE SUPREME COURT OF OHIO, WHICH GOVERNS THE CONDUCT OF LAWYERS IN THE STATE OF OHIO, NEITHER PROMOTES NOR PROHIBITS THE DIRECT SOLICITATION OF PERSONAL INJURY VICTIMS. THE COURT DOES REQUIRE THAT, IF SUCH A SOLICITATION IS MADE, IT MUST INCLUDE THE ABOVE DISCLOSURE.**

(f) Notwithstanding the prohibitions in division (a) of this rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not *known* to need legal services in a particular matter covered by the plan.

History

Amended eff 4-1-15.

Annotations

Commentary

COMMENT

[1] A solicitation is a communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is (a) directed to the general public, such as through a billboard, an Internet-based advertisement, a web site, or a commercial, (b) in response to a request for information, or (c) automatically generated in response to Internet searches.

[2] There is a potential for abuse when a solicitation involves direct in-person, live telephone, or real-time electronic contact by a lawyer with someone known to need legal services. These forms of contact subject the person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[3] This potential for abuse inherent in direct in-person, live telephone, or real-time electronic solicitation justifies its prohibition, particularly since a lawyer has alternative means of conveying necessary information to those who may be in need of legal services. Communications can be mailed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communication make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to direct in-person, telephone, or real-time electronic persuasion that may overwhelm the person's judgment. In using any telephone or other electronic communication, a lawyer remains subject to all applicable state and federal telemarketing laws and regulations.

[4] The use of general advertising and written, recorded, or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone, or real-time electronic contact, will help to ensure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone, or real-time electronic contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach, and occasionally cross, the dividing line between accurate representations and those that are false and misleading.

[5] There is far less likelihood that a lawyer would engage in abusive practices against a former client or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are

not applicable in those situations. Also, division (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee, or trade organizations whose purposes include providing or recommending legal services to members or beneficiaries.

[6] Even permitted forms of solicitation can be abused. Thus, any solicitation that contains information that is false or misleading within the meaning of Rule 7.1, that involves coercion, duress, or harassment within the meaning of Rule 7.3(b)(2), or that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient may violate Rule 7.3(b).

[7] This rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries, or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement that the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity that the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[8] None of the requirements of Rule 7.3 applies to communications sent in response to requests from clients or others. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a person known to be in need of legal services within the meaning of this rule.

[8A] The use of written, recorded, and electronic communications to solicit persons who have suffered personal injuries or the loss of a loved one can potentially be offensive. Nonetheless, it is recognized that such communications assist potential clients in not only making a meaningful determination about representation, but also can aid potential clients in recognizing issues that may be foreign to them. Accordingly, the information contained in division (e) must be communicated when the solicitation occurs within thirty days of an accident or disaster that gives rise to a potential claim for personal injury or wrongful death.

[9] Division (f) of this rule permits a lawyer to participate with an organization that uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned or directed, whether as manager or otherwise, by any lawyer or law firm that participates in the plan. For example, division (f) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably ensure that the plan sponsors are in compliance with Rules 7.1, 7.2, and 7.3(b). See Rule 8.4(a).

Rule 7.3 embraces the provisions of DR 2-104(A), DR 2-101(F) and DR 2-101(H), with modifications.

At division (c), the rule broadens the types of communications that are permitted by authorizing the use of recorded telephone messages and electronic communication via the Internet. Further, in keeping with the new methods of communication that are authorized, the provisions of DR 2-101(F) regarding disclosures are incorporated and modified to apply to all forms of permissible direct solicitations.

The provisions of DR 2-101(F)(2) have been incorporated in division (c) and modified to reduce the micromanagement of lawyer contact, which previously had been the subject of abuse, by requiring that the disclaimers "ADVERTISEMENT ONLY" and "ADVERTISING MATERIAL" be "conspicuously" displayed. The

requirements contained in DR 2-101(F)(2)(b) regarding disclaimers of prior acquaintance or contact with the addressee and avoidance of personalization have not been retained.

The provisions of DR 2-101(F)(4) [pre-service solicitation of defendants in civil actions] have been inserted as a new division (d), and the provisions of DR 2-101(H) [solicitation of accident or disaster victims] have been inserted as a new division (e).

Rule 7.3 contains the following substantive changes to Model Rule 7.3: -

With the modifications discussed above, the requirements placed upon the lawyer involved in the direct solicitation of prospective clients are more stringent than the requirements contained in division (c) of the Model Rule. Because a lawyer is not likely to have actual knowledge [Rule 1.0(g)] of a prospective client's need for legal services, the Model Rule standard contained in division (c) is changed to "* * * soliciting professional employment from a prospective client whom the lawyer reasonably believes to be in need of legal services * * *." See Rule 1.0(j).

Division (d), regarding preservice solicitation of defendants in civil actions, has been inserted.

Division (e), regarding direct solicitation requirements respecting solicitation of accident or disaster victims and their families, has been inserted.

Added to the rule is Comment [7A], which discusses the rationale for inclusion of the new division (e).

Case Notes

Public reprimand
Solicitation of clients

Public reprimand

Attorney's assertions that she sent the prospective client a bill only at the attorney's request, that she did not attempt to collect any payment of that bill, and that the grievance in this matter was not filed by the prospective client demonstrated that the attorney either misunderstood the rule or that she lost sight of her ethical duty; a public reprimand was an appropriate sanction for the attorney. Columbus Bar Ass'n v. Bahan, -- Ohio St. 3d --, 2020- Ohio 434, -- N.E.2d --, *2020 Ohio LEXIS 354 (Feb. 12, 2020)*.

Attorney received a public reprimand for violations of Ohio R. Prof. Conduct 1.5(d)(3), 1.5(e), and 7.3(c)(3), because mitigating factors were found, including the attorney's absence of a prior disciplinary record and his numerous voluntary refunds to clients, and aggravating factors were found, including that the attorney engaged in a pattern of misconduct and committed multiple offenses. Geauga County Bar Ass'n v. Snyder, -- Ohio St. 3d --, 2013- Ohio 3688, -- N.E.2d --, *2013 Ohio LEXIS 1929 (Sept. 4, 2013)*.

Solicitation of clients

A one year suspension was appropriate where respondent solicited clients in violation of DR 2-103 and, despite warnings by the disciplinary counsel, continued the solicitation through an unincorporated association under his control: *Disciplinary Counsel v. Heard, 16 Ohio St. 3d 18, 475 N.E.2d 784, 1985 Ohio LEXIS 289 (1985)*.

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Ohio Prof. Cond. Rule 7.5

Rules current through rule amendments received through November 17, 2022

OH - Ohio Local, State & Federal Court Rules > Ohio Rules of Professional Conduct > VII. Information about legal services

Rule 7.5. Firm names and letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A lawyer in private practice shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under the name, or a firm name containing surnames other than those of one or more of the lawyers in the firm, except that the name of a professional corporation or association, legal clinic, limited liability company, or limited liability partnership shall contain symbols indicating the nature of the organization as required by *Gov. Bar R. III*. If otherwise lawful, a firm may use as, or continue to include in, its name the surname of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession.

(b) A *law firm* with offices in more than one jurisdiction that lists attorneys associated with the *firm* shall indicate the jurisdictional limitations on those not licensed to practice in Ohio.

(c) The name of a lawyer holding a public office shall not be used in the name of a *law firm*, or in communications on its behalf, during any *substantial* period in which the lawyer is not actively and regularly practicing with the *firm*.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Annotations

Commentary

COMMENT

[1] A firm may be designated by the names of all or some of its members or by the names of deceased members where there has been a continuing succession in the firm's identity. The letterhead of a law firm may give the names and dates of predecessor firms in a continuing line of succession. A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. The use of the surname of a deceased partner to designate law firms is a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm or the name of a nonlawyer.

[2] With regard to division (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm. The use of a disclaimer such as "not a partnership" or "an association of sole practitioners" does not render the name or designation permissible.

[3] A lawyer may be designated "Of Counsel" if the lawyer has a continuing relationship with a lawyer or law firm, other than as a partner or associate.

[4] A legal clinic operated by one or more lawyers may be organized by the lawyer or lawyers for the purpose of providing standardized and multiple legal services. The name of the law office may include the phrase "legal clinic"

or words of similar import. The name of any active lawyer in the clinic may be retained in the name of the legal clinic after the lawyer's death, retirement, or inactivity because of age or disability, and the name must otherwise conform to other provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio. The legal clinic cannot be owned by, and profits or losses cannot be shared with, nonlawyers or lawyers who are not actively engaged in the practice of law in the organization.

With the exception of DR 2-102(E) and (F), Rule 7.5 is comparable to DR 2-102.

The provisions of DR 2-102(E), which prohibits truthful statements about a lawyer's actual businesses and professions, are not included in Rule 7.5. The Rules of Professional Conduct should not preclude truthful statements about a lawyer's professional status, other business pursuits, or degrees.

DR 2-102(F) is an exception to DR 2-102(E) and is unnecessary in light of the decision to not retain DR 2-102(E).

Comment [3] is substantially the same as the Ohio provision on the "of counsel" designation.

Comment [4] addresses the restrictions of DR 2-102(G) relative to operating a "legal clinic" and using the designation "legal clinic."

Rule 7.5 combines Model Rule 7.5 with DR 2-102, with one exception. Rule 7.5(a) retains the prohibition in DR 2-102(B) that a lawyer shall not practice under a trade name. The Model Rule prohibition extends only to the use of a trade name that implies a connection to a governmental, charitable, or public legal services organization.

Case Notes

Misrepresentation

Two attorneys were suspended from the practice of law for a six month period for violating Ohio R. Prof. Conduct 1.7(a)(1) and (2), 3.4(c), and 7.5(d), as a result of creating conflicts of interest as to the representation of limited-liability companies in which one attorney was a member as well as creating the impression that the two attorneys were practicing law in a partnership. Disciplinary Counsel v. Cannata, -- Ohio St. 3d --, 2016- Ohio 3027, -- N.E.2d --, *2016 Ohio LEXIS 1329 (May 18, 2016)*.

Attorney, who had been previously disciplined, was permanently disbarred from the practice of law in Ohio because the attorney engaged in a pattern of professional misconduct over a period of years and involving multiple clients by engaging in multiple acts of dishonesty, charging excessive fees, handling clients' legal matters without adequate preparation, neglecting multiple client matters, intentionally damaging clients, and entering into business relationships with clients without making the requisite disclosures. The attorney also failed to hold client money separate from the attorney's own money, failed to disclose that the attorney did not carry malpractice insurance, and falsely represented that the attorney was part of a law firm, when in fact, the attorney was a sole practitioner. Disciplinary Counsel v. Character, -- Ohio St. 3d --, *2011 Ohio 2902*, -- N.E. 2d --, *2011 Ohio LEXIS 1643 (June 23, 2011)*.

Name of firm

Attorney's use of a two-person firm name and his business cards with that name, although he was the only employee, was deemed false and misleading and violative of professional conduct rules, such that a two-year

suspension, fully stayed on conditions, was imposed due to, inter alia, his significant disciplinary history and his selfish motive. Ashtabula Cty. Bar Ass'n v. Brown, -- Ohio St. 3d --, 2017- Ohio 5698, -- N.E.2d --, *2017 Ohio LEXIS 1353 (July 6, 2017)*.

An attorney's mandamus action was properly dismissed where its object was to prevent a law firm which he had left from continuing to use his surname in its name: *State ex rel. Cunningham v. Amer Cunningham Co., L.P.A., 94 Ohio St. 3d 323, 2002 Ohio 789, 762 N.E.2d 1012, 2002 Ohio LEXIS 431(2002)*.

"Of counsel"

Local attorneys which contracted with an out-of-state law firm which was not admitted to practice in a bankruptcy court to file bankruptcy cases were not of counsel for the firm, since the attorneys did not have a continuing close personal relationship with the firm. *In re Quarm, -- Bankr. --, 2011 Bankr. LEXIS 5764 (Mar. 24, 2011)*.

Designation of an attorney as "of counsel" did not make the attorney an agent of the firm: *Trimble-Weber v. Weber, 119 Ohio App. 3d 402, 695 N.E.2d 344, 1997 Ohio App. LEXIS 1699 (1997)*.

Use of name

Lawyer, who licensed the lawyer's name under an agreement to the lawyer's old law firm in Ohio, when the lawyer moved to Florida, was able to return to Ohio and practice law because Ohio R. Prof. Conduct 5.6, 1.17(a), and 7.5 allowed the lawyer to return to Ohio to practice law and allowed the lawyer the exclusive right to the use of the lawyer's name if the lawyer did so. Cecil & Geiser, Llp v. Plymale, -- Ohio App. 3d --, *2012 Ohio 5861*, -- N.E. 2d --, *2012 Ohio App. LEXIS 5056 (Dec. 11, 2012)*.

License agreement between attorneys, wherein plaintiffs purchased defendant's law firm and practice name, could not be enforced with respect to plaintiffs' continued use of defendant's name once he returned to practice in a new firm, as it did not reflect the name of an active lawyer or one who had retired, as required by Ohio R. Prof. Conduct 7.5(a). Cecil & Geiser, LLP v. Plymale, -- Ohio Misc. 2d --, -- N.E. 2d --, *2012 Ohio Misc. LEXIS 50 (Mar. 27, 2012)*.

Use of titles and terms

An applicant for admission without examination to the practice of law in Ohio or any other person not admitted to the practice of law in Ohio may not use the designation "general counsel," "managing counsel," or any other term implying that the individual is already admitted to the practice of law in Ohio unless that person provides a disclaimer in any letterhead or other oral or written communication stating that the individual is not licensed to practice law in Ohio: *In re Application of Stage, 81 Ohio St. 3d 554, 1998 Ohio 338, 692 N.E.2d 993, 1998 Ohio LEXIS 1067 (1998)*.

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Ohio Prof. Cond. Rule 7.4

Rules current through rule amendments received through November 17, 2022

OH - Ohio Local, State & Federal Court Rules > Ohio Rules of Professional Conduct > VII. Information about legal services

Rule 7.4. Communication of fields of practice and specialization

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law or limits his or her practice to or concentrates in particular fields of law.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a *substantially* similar designation.

(c) A lawyer engaged in trademark practice may use the designation "Trademarks," "Trademark Attorney," or a *substantially* similar designation.

(d) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty," or a *substantially* similar designation.

(e) A lawyer shall not state or imply that a lawyer is a specialist in a particular field of law, unless both of the following apply:

(1) the lawyer has been certified as a specialist by an organization approved by the Supreme Court Commission on Certification of Attorneys as Specialists;

(2) the name of the certifying organization is clearly identified in the communication.

Annotations

Commentary

COMMENT

[1] Division (a) of this rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate.

[2] Divisions (b) and (c) recognize the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the office. Division (d) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Division (e) permits a lawyer to state that the lawyer is a specialist in a field of law if such certification is granted by an organization approved by the Supreme Court Commission on Certification of Attorneys as Specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge, and proficiency to ensure that a lawyer's recognition as a specialist is meaningful and reliable. In order to ensure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

Rule 7.4 is comparable to DR 2-105 except that it permits a lawyer to state that he or she is a "specialist," practices a "specialty," or "specializes in" particular fields, subject to the "false and misleading" standard contained in Rule 7.1.

Rule 7.4(a) is modified to include the existing ability of a lawyer to indicate that the lawyer's practice is limited to or concentrates in particular fields of law. Division (c) is added from DR 2-105(A)(1) and the remaining divisions are relettered.

Case Notes

Advertising

Attorney who authorized placement of an advertisement which claimed the attorney "specialized in" malpractice was subject to public reprimand for violating DR 2-105; attorney may say that his practice "consists in large part or is limited to" medical malpractice cases where such assertions can be made truthfully: *Trumbull Cty. Bar Assn. v. Joseph, 58 Ohio St. 3d 258, 569 N.E.2d 883, 1991 Ohio LEXIS 904 (1991)*.

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Dayton Bar Ass'n v. Parisi

Supreme Court of Ohio

June 7, 2011, Submitted; March 8, 2012, Decided

No. 2011-0340

Reporter
131 Ohio St. 3d 345 *; 2012-Ohio-879 **; 965 N.E.2d 268 ***; 2012 Ohio LEXIS 658 ****; 2012 WL 752444

DAYTON BAR ASSOCIATION v. PARISI.

Subsequent History: US Supreme Court certiorari denied by *Parisi v. Dayton Bar Ass'n, 568 U.S. 823, 133 S. Ct. 204, 184 L. Ed. 2d 40, 2012 U.S. LEXIS 6809 (Oct. 1, 2012)*

Prior History: [****1] ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 09-064.

Dayton Bar Ass'n v. Parisi, 128 Ohio St. 3d 1488, 2011-Ohio-2167, 946 N.E.2d 758, 2011 Ohio LEXIS 1105 (May 6, 2011)

Disposition: Judgment accordingly.

Core Terms

guardianship, misconduct, suspension, recommended, billed, guardianship proceeding, conflicting interest, practice of law, board found, incompetent, nonlegal, factors, power of attorney, attorney-in-fact, appointment, collecting, violations, six-month, charging, stayed suspension, ethical, administration of justice, probate court, fact finding, legal fees, prejudicial, conditions, records, niece, rates

Case Summary

Procedural Posture
Relator bar association charged respondent attorney with professional misconduct. The Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court found that she engaged in a conflict of interest, conduct prejudicial to the administration of justice, and charged an excessive fee and recommended that she be suspended from the practice of law for six months, with the entire suspension stayed on conditions. Both parties objected.

Overview

The attorney's actions in representing both a proposed guardian and a ward in a guardianship proceeding violated *Ohio R. Prof. Conduct 1.7* regardless of the ward's assent or objection to the process. In light of the ward's diminished capacity, the court could not countenance the attorney's arguments that she was either competent to execute a durable power of attorney or capable of giving informed consent to the dual representation. The court rejected the attorney's argument that *Ohio R. Prof. Conduct 1.7* and *1.14* were void for vagueness. The attorney violated *Ohio R. Prof. Conduct 8.4(d)* when she used the ward's power of attorney to pay her legal fees during the pendency of the guardianship proceeding. The attorney violated *Ohio R. Prof. Conduct 1.5(a)* and Ohio Code Prof. Resp. DR 2-106(A) by charging excessive fees to a client that were replete with charges at her attorney rate for nonlegal services such as arranging the client's doctors' appointments. The court overruled the objections and adopted the sanction imposed, as there were no findings that the attorney engaged in fraud, misrepresentation, or deceit. The court deferred to the Board's credibility determination.

Outcome
The court overruled the parties' objections and adopted the Board's recommended sanction of a six-month suspension, all stayed on the condition that the attorney commit no further misconduct.

LexisNexis® Headnotes

Legal Ethics > Professional Conduct > General Overview

HN1[] **Legal Ethics, Professional Conduct**

Ohio R. Prof. Conduct 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Legal Ethics > Professional Conduct > Illegal Conduct

HN2[] **Professional Conduct, Illegal Conduct**

Ohio R. Prof. Conduct 8.4(a) prohibits a lawyer from violating or attempting to violate the Ohio Rules of Professional Conduct) and *Rule 8.4(b)* prohibits a lawyer from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness.

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN3[] **Duties to Client, Effective Representation**

See *Ohio R. Prof. Conduct 1.14(b)*.

Legal Ethics > Client Relations > Conflicts of Interest

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN4[] **Client Relations, Conflicts of Interest**

Ohio R. Prof. Conduct 1.14(a) directs that a lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client, and comment 9 to the rule emphasizes that a lawyer who undertakes to represent a person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client. Thus, the emergency provisions of *Rule 1.14* do not entirely abrogate a lawyer's duties to the client under the Rules of Professional Conduct. Therefore, when taking actions authorized by *Rule 1.14*, the lawyer must still determine whether the representation of one client will be directly adverse to the other and whether there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for one client will be materially limited by the lawyer's responsibilities to another client. *Ohio R. Prof. Conduct 1.7(a)*.

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN5[] **Duties to Client, Effective Representation**

Comment 9 to *Ohio R. Prof. Conduct 1.14* provides that in an emergency where the health, safety, or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client.

Legal Ethics > Client Relations > Conflicts of Interest

HN6[] **Client Relations, Conflicts of Interest**

See *Ohio R. Prof. Conduct 1.7*.

Legal Ethics > Client Relations > Conflicts of Interest

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN7[] **Client Relations, Conflicts of Interest**

The American Bar Association (ABA) recognizes that Model *Rule of Professional Conduct 1.14*, which is identical to *Ohio R. Prof. Conduct 1.14* in all material respects, permits a lawyer to file a petition for guardianship of a client when no less-restrictive alternatives are available, but concludes that a lawyer with a disabled client should not attempt to represent a third party petitioning for a guardianship over the

lawyer's client.

Legal Ethics > Client Relations > Conflicts of Interest

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN8 **Client Relations, Conflicts of Interest**

The American Bar Association observes that Model *Rule of Professional Conduct 1.14(b)* creates a narrow exception to the normal responsibilities of a lawyer to his client, in permitting the lawyer to take action that by its very nature must be regarded as "adverse" to the client. However, *Rule 1.14* does not otherwise derogate from the lawyer's responsibilities to his client, and certainly does not abrogate the lawyer-client relationship. In particular, it does not authorize a lawyer to represent a third party in seeking to have a court appoint a guardian for his client. Such a representation would necessarily have to be regarded as adverse to the client and prohibited by Model *Rule of Professional Conduct 1.7(a)*, even if the lawyer sincerely and reasonably believes that such representation would be in the client's best interests, unless and until the court makes the necessary determination of incompetence. Even if the court's eventual determination of incompetence would moot the argument that the representation was prohibited by *Rule 1.7(a)*, the lawyer cannot proceed on the assumption that the court will make such a determination. In short, if the lawyer decides to file a guardianship petition, it must be on his own authority under Model *Rule of Professional Conduct 1.14* and not on behalf of a third party, however well-intentioned.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Overbreadth & Vagueness of Legislation

HN9 **Judicial & Legislative Restraints, Overbreadth & Vagueness of Legislation**

It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. Because a court assumes man is free to steer between lawful and unlawful conduct, the court insists that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Overbreadth & Vagueness of Legislation

Legal Ethics > Client Relations > Conflicts of Interest

Legal Ethics > Client Relations > Duties to Client > Duty of Confidentiality

Legal Ethics > Client Relations > Duties to Client > Effective Representation

HN10 **Judicial & Legislative Restraints, Overbreadth & Vagueness of Legislation**

Ohio R. Prof. Conduct 1.14 expressly permits an attorney to consult with persons who may take action to protect the client, to seek the appointment of a guardian in some circumstances, and to reveal client confidences otherwise protected by *Ohio R. Prof. Conduct 1.6* to the extent reasonably necessary to protect the client's interests. It does not, however, authorize the attorney to represent third parties in guardianship proceedings against a client or otherwise permit any departure from *Ohio R. Prof. Conduct 1.7*, which generally prohibits attorneys from representing multiple clients who have conflicting interests. Because *Ohio R. Prof. Conduct 1.14* clearly delineates the conduct permitted when an attorney represents a client with diminished capacity and does not purport to alter the prohibition against engaging in conflicts of interest set forth in *Ohio R. Prof. Conduct 1.7*, those rules are not void for vagueness and can constitutionally be applied to an attorney.

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Client Relations > Conflicts of Interest

Legal Ethics > Sanctions > Disciplinary Proceedings > Hearings

HN11 **Attorneys, Disqualification of Counsel**

The Supreme Court of Ohio has held that a court must hold an evidentiary hearing and issue findings of fact in ruling on a motion for disqualification of an individual or of an entire firm when an attorney has left a law firm that represents one party to an action and has joined a firm that represents an opposing party. But the court has never held that a court must hold an evidentiary hearing before ruling on every motion for disqualification. Nor are we willing to impose such a requirement when an attorney has admitted that she represents two clients, it is apparent that those clients have inherently conflicting interests, and the entire basis of the legal action is to determine that one of those clients is incompetent to handle his or her personal affairs -- incompetence that would presumably render the client unable to give informed consent to the conflict.

Legal Ethics > Client Relations > Attorney Fees > Excessive Fees

HN12 **Attorney Fees, Excessive Fees**

Ohio R. Prof. Conduct 1.5(a) and Ohio Code Prof. Resp. DR 2-106(A) both prohibit a lawyer from making an agreement for, charging, or collecting an illegal or clearly excessive fee.

Legal Ethics > Client Relations > General Overview

HN13 **Legal Ethics, Client Relations**

Ohio R. Prof. Conduct 8.4(a) and Ohio Code Prof. Resp. DR 1-102(A)(1) prohibit a lawyer from violating or attempting to violate the Ohio Rules of Professional Conduct or a Disciplinary Rule. *Ohio R. Prof. Conduct 8.4(c)* and Ohio Code Prof. Resp. DR 1-102(A)(4) each prohibit a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and *Ohio R. Prof. Conduct 8.4(d)* and Ohio Code Prof. Resp. DR 1-102(A)(5) prohibit a lawyer from engaging in conduct that is prejudicial to the administration of justice.

Constitutional Law > Congressional Duties & Powers > Contracts Clause

Legal Ethics > Professional Conduct > General Overview

Legal Ethics > Practice Qualifications

HN14 **Congressional Duties & Powers, Contracts Clause**

The Supreme Court of Ohio possesses the inherent, original, and exclusive jurisdiction to regulate all matters relating to the practice of law. *Ohio Const. art. IV, § 2(B)(1)(g)*. Nonetheless, rules adopted by this court must comply with the state and federal constitutions. While *U.S. Const. amend. XIV* and *Ohio Const. art. I, § 1* protect the freedom of contract, the court has long recognized that freedom is not absolute, but is subservient to the public welfare. And compensation for advocacy has never been treated as an ordinary debt or contractual right, but has since antiquity been regulated by the prevailing governmental authority possessing the power to control the practice of law.

Legal Ethics > Client Relations > Attorney Fees > Excessive Fees

HN15 **Attorney Fees, Excessive Fees**

Ohio R. Prof. Conduct 1.5 and Ohio Code Prof. Resp. DR 2-106(A) prohibit a lawyer from charging or collecting an illegal or clearly excessive fee and set forth a number of factors to aid attorneys in determining whether their fees are reasonable. Those factors include the time, labor, and skill involved in the representation; the likelihood that the acceptance of the employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar services; the amount involved and the results obtained; the nature and length of the professional relationship; the experience, reputation, and ability of the lawyer; and whether the fee is fixed or contingent. *Ohio R. Prof. Conduct 1.5(a)(1) through (8)*. The prohibition against clearly excessive fees is a reasonable restriction of the freedom of contract that permits attorneys to charge a fee for their services, while also preserving the integrity of the legal profession.

Legal Ethics > Client Relations > Attorney Fees > Excessive Fees

HN16 **Attorney Fees, Excessive Fees**

The Supreme Court of Ohio has previously denounced as a clearly excessive fee charging legal fees for

nonlegal services. For example, attorney rates for administrative tasks, including picking up mail, depositing checks, paying bills, and arranging for lawn care, house cleaning, and the delivery of necessities result in a clearly excessive fee.

Legal Ethics > Client Relations > Duties to Client > Effective Representation

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN17 **Duties to Client, Effective Representation**

Ohio R. Prof. Conduct. 1.2, *1.4*, and *5.7* require attorneys to consult with and abide by decisions concerning the objectives of their representation and the means by which they are pursued, promptly inform the client of decisions or circumstances that require the client's informed consent, and permit attorneys to perform law-related services on their clients' behalf. But nothing in those rules permits attorneys to violate their ethical obligations in pursuing their clients' objectives or to charge attorney rates for nonlegal services at the behest of a client.

Legal Ethics > Sanctions > General Overview

HN18 **Legal Ethics, Sanctions**

When imposing sanctions for attorney misconduct, the Supreme Court of Ohio considers relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. In making a final determination, the court also weighs evidence of the aggravating and mitigating factors listed in Section 10(B) of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline.

Legal Ethics > Sanctions > Disciplinary Proceedings > Appeals

HN19 **Disciplinary Proceedings, Appeals**

The Supreme Court of Ohio defers to a credibility determination made by a panel of the Board of Commissioners on Grievances and Discipline of the Supreme Court because the panel members saw and heard an attorney's testimony firsthand.

Headnotes/Summary

Headnotes

Attorneys at law—Misconduct—Six-month stayed license suspension.

Counsel: Gary C. Schaengold and Mark A. Tuss, for relator.

Konrad Kuczak and Dianna M. Anelli, for respondent.

Judges: PFEIFER, LUNDBERG STRATTON, O'DONNELL, and MCGEE BROWN, JJ., concur. CUPP, J., concurs in part and dissents in part. O'CONNOR, C.J., dissents and would accept the relator's recommended sanction of an indefinite suspension. LANZINGER, J., dissents and would impose a one-year suspension with six months stayed.

Opinion

[***271] [*345] **Per Curiam**.

[**P1] Respondent, Georgianna I. Parisi of Dayton, Ohio, Attorney Registration No. 0022538, was admitted to the practice of law in Ohio in 1982. In August 2009, relator, Dayton Bar Association, filed a complaint alleging that Parisi had violated the Code of Professional Responsibility and Rules of Professional Conduct by representing both the proposed guardian and ward in a guardianship proceeding, collecting legal fees from her client's account without court approval while the application for guardianship was pending, and collecting a clearly excessive fee from an elderly client with diminished mental capacity.[1]

[**P2] A panel of the Board of Commissioners on Grievances and Discipline conducted a hearing, at which it received the parties' stipulations of fact, witness

[1] Relator charged Parisi [****2] with misconduct under applicable rules for acts occurring before and after February 1, 2007, the effective date of the Rules of Professional Conduct, which supersede the Code of Professional Responsibility. When both the former and current rules are cited for the same act, the allegation constitutes a single ethical violation. *Disciplinary Counsel v. Freeman, 119 Ohio St.3d 330, 2008 Ohio 3836, 894 N.E.2d 31, ¶ 1, fn. 1*.

testimony, and numerous exhibits. Having considered the evidence, the panel found that Parisi had engaged in a conflict of interest and conduct prejudicial to the administration of justice and had charged a clearly excessive fee. The board adopted the panel's findings of fact and misconduct and its recommendation that Parisi be suspended from the practice of law for six months, with the entire suspension stayed on the condition that she commit no further misconduct.

[**P3] Both parties have objected to the board's report. Parisi challenges the sufficiency of the evidence, raises constitutional challenges to several of [****3] the ethical rules that she has been found to have violated, and seeks dismissal of relator's complaint. Relator argues that the clearly excessive fee charged by Parisi is tantamount to misappropriation and therefore warrants a period of actual suspension.

[**P4] [*346] For the reasons that follow, we overrule the objections of both parties and adopt the board's findings of fact and misconduct, as well as its recommended sanction.

Misconduct

The Demming Guardianship

[**P5] The board found that Parisi began to provide legal services for Sylvia Demming, a 93-year-old woman who claimed that she was being held against her will in a nursing home. Concerned about Demming's financial welfare and having observed her confusion and disorientation, on November 8, 2007, Parisi applied for guardianship in the Warren County Probate Court. In her guardianship application, Parisi alleged that Demming was incompetent as a result of Alzheimer's-related memory loss, and Parisi submitted an evaluation from a licensed physician diagnosing Demming with dementia. Seven weeks later, Parisi had Demming sign a durable power of attorney designating Parisi as her attorney-in-fact. The next month, Parisi withdrew her own application [****4] and filed a separate application for guardianship on behalf of Demming's niece.

[**P6] Believing that the court no longer had jurisdiction after Demming informed the court that she had left the county and intended to move out of state, Parisi sent her bill to Demming's niece for review. The guardianship proceeding was not dismissed as Parisi had anticipated; but acting [***272] as Demming's attorney-in-fact, Parisi paid her own fees of more than $18,000 without first obtaining the court's approval. The probate court later removed Parisi as counsel for both women, and Parisi returned the money to Demming's account.

[**P7] The board found that by representing both Demming and her niece in the guardianship proceeding, Parisi violated *Prof.Cond.R. 1.7(a)(2)* (providing that a lawyer's continued representation of a client creates a conflict of interest if there is a substantial risk that the lawyer's ability to represent the client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests). The panel also found that by obtaining a power of attorney over her client's affairs while her guardianship application was pending [****5] and using it to pay $18,820 of her own legal fees, Parisi violated ***HN1***[↑] *Prof.Cond.R. 8.4(d)* (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice). Citing the duplication of other claimed violations and the insufficiency of the evidence, the board recommended the dismissal of alleged violations of ***HN2***[↑] *Prof.Cond.R. 8.4(a)* (prohibiting a lawyer from violating or attempting to violate the Ohio Rules of Professional Conduct) and *(b)* (prohibiting a lawyer from committing an illegal act that reflects adversely on the lawyer's honesty or trustworthiness).

[**P8] [*347] Parisi challenges the board's findings of fact and misconduct with respect to her representation of Demming. First, she argues that this court has held as a matter of law that simultaneous representation of a proposed ward and an applicant for guardianship does not present a conflict of interest that requires disqualification. In support of this argument, Parisi cites *In re Guardianship of Love (1969), 19 Ohio St.2d 111, 48 O.O.2d 107, 249 N.E.2d 794*; *In re Clendenning (1945), 145 Ohio St. 82, 30 O.O. 301, 60 N.E.2d 676*; and *In re Guardianship of Santrucek, 120 Ohio St.3d 67, 2008 Ohio 4915, 896 N.E.2d 683*.

[**P9] [****6] None of the cases, however, stands for the proposition that an applicant for guardianship has no interest in the determination of the proposed ward's competence or incompetence or that an applicant cannot have an interest that is adverse to that of the proposed ward. Indeed, the far-reaching and life-altering consequences of an incompetency determination—involving a judicial determination that a mental or physical illness or disability has left a person so mentally impaired that the person is incapable of taking proper care of the person's self or property—create an inherent

conflict between the proposed ward and the applicant for guardianship, even if guardianship is ultimately in the proposed ward's best interest. Nevertheless, Parisi contends that *Prof.Cond.R. 1.14(b)* and *1.7(b)* and the comments thereto permit attorneys to simultaneously represent both the proposed ward and the applicant for guardianship and that any contrary interpretation of those rules cannot constitutionally be applied to her because she had no notice that her conduct was unethical.

[**P10] ***HN3***[↑] *Prof.Cond.R. 1.14(b)* provides: "When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial [****7] physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian."

[**P11] [***273] ***HN4***[↑] *Prof.Cond.R. 1.14(a)* directs that "the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client," and comment 9[2] to the rule emphasizes, "A lawyer who undertakes to represent a [*348] person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client." Thus, the emergency provisions of *Prof.Cond.R. 1.14* do not entirely abrogate a lawyer's duties to the client under the Rules of Professional Conduct. Therefore, when taking actions authorized by *Prof.Cond.R. 1.14*, the lawyer must still determine whether the representation of one client will be directly adverse to the other and whether there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for one [****8] client will be materially limited by the lawyer's responsibilities to another client. *Prof.Cond.R. 1.7(a)*.[3]

[**P12] The American Bar Association ("ABA") Standing Committee on Ethics and Professional Responsibility has addressed this situation. ABA Committee on Ethics & Professionalism, Formal Ops. No. 96-404 (1996) (discussing clients under disability). [****10] ***HN7***[↑] The ABA recognizes that Model *Rule of Professional Conduct 1.14* (1983, as amended), which is identical to our *Prof.Cond.R. 1.14* in all material respects, permits a lawyer to file a petition for guardianship of a client when no less-restrictive alternatives are available, but concludes that "a lawyer with a disabled client should not attempt to represent a third party petitioning for a guardianship over the lawyer's client." ***HN8***[↑] The ABA observes: "*Rule 1.14(b)* creates a narrow exception to the normal responsibilities of a lawyer to his client, in permitting the lawyer to take action that by its very nature must be regarded as 'adverse' to the client. However, *Rule 1.14* does not otherwise derogate from the lawyer's

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[2] ***HN5***[↑] Comment 9 to *Prof.Cond.R. 1.14* provides, "In an emergency where the health, safety, or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these rules as the lawyer would with respect to a client."

[3] ***HN6***[↑] *Prof.Cond.R. 1.7* provides:

"(a) A lawyer's acceptance or continuation of representation [****9] of a client creates a conflict of interest if either of the following applies:

"(1) the representation of that client will be directly adverse to another current client;

"(2) there is a substantial risk that the lawyer's ability to consider, recommend, or carry out an appropriate course of action for that client will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the lawyer's own personal interests.

"(b) "A lawyer shall not accept or continue the representation of a client if a conflict of interest would be created pursuant to division (a) of this rule, unless all of the following apply:

"(1) the lawyer will be able to provide competent and diligent representation to each affected client;

"(2) each affected client gives informed consent, confirmed in writing;

"(3) the representation is not precluded by division (c) of this rule [protecting certain representations regardless of client consent]."

responsibilities [***274] to his client, and certainly does not abrogate the lawyer-client relationship. In particular, it does not authorize a lawyer to represent a third party in seeking to have a court appoint a guardian for his client. Such a representation would necessarily have to be regarded as 'adverse' to the client and prohibited by Rule 1.7(a), even if the lawyer sincerely and reasonably [*349] believes that such representation would be in the client's best interests, unless and until [****11] the court makes the necessary determination of incompetence. Even if the court's eventual determination of incompetence would moot the argument that the representation was prohibited by Rule 1.7(a), the lawyer cannot proceed on the assumption that the court will make such a determination. In short, if the lawyer decides to file a guardianship petition, it must be on his own authority under Rule. 1.14 and not on behalf of a third party, however well-intentioned." Id.

[**P13] We concur in this analysis and conclude that the guardianship proceeding that Parisi initiated on behalf of Demming's niece, no matter how well-intentioned, was necessarily adverse to Demming. Therefore, Parisi's actions in representing both women in the guardianship proceeding violated Prof.Cond.R. 1.7, regardless of Demming's assent or objection to the process. And in light of Demming's diminished capacity, as evidenced by Parisi's own petition for guardianship, we cannot countenance Parisi's arguments that Demming was either competent to execute the durable power of attorney or capable of giving informed consent to the dual representation. See Disciplinary Counsel v. Heiland, 116 Ohio St.3d 521, 2008 Ohio 91, 880 N.E.2d 467, ¶ 4-6 [****12] (finding that an attorney had engaged in conduct adversely reflecting upon his fitness to practice law by witnessing his mother-in-law execute a power of attorney just 29 days after filing a complaint in which he had alleged that she was incompetent).

[**P14] Parisi's constitutional objections to the application of Prof.Cond.R. 1.7 and 1.14 to her conduct are also without merit. ***HN9***[] "'It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we assume man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.'" In re Complaint Against Harper (1996), 77 Ohio St.3d 211, 221, 673 N.E.2d 1253, quoting Grayned v. Rockford (1972), 408 U.S. 104, 108, 92 S.Ct. 2294, 33 L.Ed.2d 222. In this case, ***HN10***[] Prof.Cond.R. 1.14 expressly permits the attorney *to consult* with persons who may take action to protect the client, *to seek* the appointment of a guardian in some circumstances, and *to reveal* client confidences otherwise protected by Prof.Cond.R. 1.6 [****13] to the extent reasonably necessary to protect the client's interests. It does not, however, authorize the attorney *to represent* third parties in guardianship proceedings against a client or otherwise permit any departure from Prof.Cond.R. 1.7, which generally prohibits attorneys from representing multiple clients who have conflicting interests. Because Prof.Cond.R. 1.14 clearly delineates the conduct permitted when an attorney represents a client with diminished capacity and does not purport to alter the prohibition against engaging in conflicts of interest set forth in Prof.Cond.R. 1.7, we reject Parisi's [*350] argument that those rules are void for vagueness and cannot constitutionally be applied to her.

[**P15] We also reject Parisi's claims that she was entitled to an evidentiary [***275] hearing prior to her disqualification in the probate matter. ***HN11***[] We have held that a court must hold an evidentiary hearing and issue findings of fact in ruling on a motion for disqualification of an individual or of an entire firm when an attorney has left a law firm that represents one party to an action and has joined a firm that represents an opposing party. Kala v. Aluminum Smelting & Refining Co., Inc. (1998), 81 Ohio St.3d 1, 1998 Ohio 439, 688 N.E.2d 258, [****14] syllabus. But we have never held that a court must hold an evidentiary hearing before ruling on every motion for disqualification. Nor are we willing to impose such a requirement when an attorney has admitted that she represents two clients, it is apparent that those clients have inherently conflicting interests, and the entire basis of the legal action is to determine that one of those clients is incompetent to handle his or her personal affairs—incompetence that would presumably render the client unable to give informed consent to the conflict.

[**P16] Parisi's claim that her use of Demming's power of attorney to pay her legal fees during the pendency of the guardianship proceeding was not prejudicial to the administration of justice is likewise without merit. Regardless of Parisi's claims that the probate court no longer had jurisdiction over the guardianship proceeding due to Demming's purported departure from the county and her expressed intent to move to Florida, the action remained pending at the time she paid her own fees. And as the board found, the very power of attorney that Parisi used to make the unauthorized payment was obtained at a time when she had reason to believe that

Demming [****15] was incompetent. Therefore, we have no difficulty concluding that Parisi's conduct violated Prof.Cond.R. 8.4(d).

[**P17] Having rejected Parisi's factual and constitutional objections, we adopt the board's findings of fact and misconduct with respect to count one of relator's complaint.

The Royal John Greene Matter

[**P18] In August 2004, Royal John Greene, a widower in his mid-70s whose extended family was either unwilling or unable to assist in his care, appointed Parisi his attorney-in-fact. At that time, it was apparently understood that Parisi would be paid at her usual attorney hourly rate for legal and nonlegal services, but this agreement was not reduced to writing. While Greene was competent at the time that he retained Parisi, his physical and mental health declined significantly during the course of her representation. As early as November 2005, Parisi's records indicate that Greene was "sometimes forgetful." Billing records express concern about his increased memory loss in January 2006, profound cerebral atrophy and small strokes in August, and confusion in December.

[**P19] [*351] Parisi provided some traditional legal services for Greene, including the preparation of estate-planning documents and [****16] the administration of his wife's estate. She also advised him about several annuities that he had purchased. The bulk of her time, however, was devoted to the nonlegal tasks of managing Greene's life—overseeing his living arrangements, supervising his medical care, transporting him to doctors' appointments and dialysis treatments, reconciling his bank and brokerage statements, and delivering spending money and an occasional meal to him. The board found that Parisi had done a good job taking care of Greene and indicated that without her assistance, he probably would not have been able to achieve his goal of avoiding a nursing home.

[**P20] The board found that most of the work that Parisi and her staff performed did not require great legal skill and that in [***276] many instances, the client's demands for services resulted in costs that were not proportionate to the monetary importance of the matters involved.

[**P21] Having reviewed Parisi's voluminous and detailed records regarding the services provided to Greene, the board found that her conduct violated ***HN12*[] Prof.Cond.R. 1.5(a) and DR 2-106(A) (both prohibiting a lawyer from making an agreement for, charging, or collecting an illegal or clearly [****17] excessive fee). But citing the insufficiency of the evidence, the board recommends that we dismiss alleged violations of ***HN13*[] Prof.Cond.R. 8.4(a) and DR 1-102(A)(1) (prohibiting a lawyer from violating or attempting to violate the Ohio Rules of Professional Conduct or a Disciplinary Rule), Prof.Cond.R. 8.4(c) and DR 1-102(A)(4) (each prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation), and Prof.Cond.R. 8.4(d) and DR 1-102(A)(5) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice).

[**P22] Parisi objects to the board's finding that she charged a clearly excessive fee, arguing that among other things, (1) such a finding impairs her constitutional rights to contract, (2) Prof.Cond.R. 1.5(a) and DR 2-106(A) are void for vagueness and therefore cannot be constitutionally applied to her, (3) because relator did not offer any expert testimony regarding the reasonableness of her fees, there is insufficient evidence to support a finding that her fee was clearly excessive, and (4) Prof.Cond.R. 1.2 ("Scope of Representation and Allocation of Authority Between Client and Lawyer"), 1.4 ("Communication"), and 5.7 ("Responsibilities [****18] Regarding Law-Related Services") required her to abide by Greene's decisions concerning the objectives of her representation and the means of pursuing those objectives.

[**P23] ***HN14*[] This court possesses the inherent, original, and exclusive jurisdiction to regulate all matters relating to the practice of law. *Section 2(B)(1)(g), Article IV of the Ohio Constitution.* Nonetheless, rules adopted by this court must comply with the state and federal constitutions. Shimko v. Lobe, 103 Ohio St.3d 59, [*352] 2004 Ohio 4202, 813 N.E.2d 669, ¶ 27, quoting *Christensen v. Bd. of Commrs. on Grievances & Discipline (1991), 61 Ohio St.3d 534, 537, 575 N.E.2d 790*. While the Fourteenth Amendment to the United States Constitution and *Section 1, Article I of the Ohio Constitution* protect the freedom of contract, we have long recognized that freedom is not absolute, but is subservient to the public welfare. See, e.g., Pittsburgh, Cincinnati, Chicago & St. Louis Ry. Co. v. Kinney (1916), 95 Ohio St. 64, 115 N.E. 505, paragraph one of the syllabus. And "compensation for advocacy has never been treated as an ordinary debt or contractual right, but has since antiquity been regulated by the

prevailing governmental authority [****19] possessing the power to control the practice of law." *Shimko at ¶ 47*.

[**P24] ***HN15***[↑] *Prof.Cond.R. 1.5* and DR 2-106(A) prohibit a lawyer from charging or collecting an illegal or clearly excessive fee and set forth a number of factors to aid attorneys in determining whether their fees are reasonable. Those factors include the time, labor, and skill involved in the representation; the likelihood that the acceptance of the employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar services; the amount involved and the results obtained; the nature and length of the professional relationship; the experience, reputation, and ability of the lawyer; and whether the fee is fixed or contingent. *Prof.Cond.R. 1.5(a)(1) through (8)*. The prohibition against clearly excessive fees is [***277] a reasonable restriction of the freedom of contract that permits attorneys to charge a fee for their services, while also preserving the integrity of the legal profession. See *Shimko, 103 Ohio St.3d 59, 2004 Ohio 4202, 813 N.E.2d 669, ¶ 55* ("virtually all aspects of the practice of law in general, and remuneration in particular, have always been considered to lie within the regulatory [****20] jurisdiction of the granting or admitting authority and to be distinct from other types of contractual arrangements").

[**P25] ***HN16***[↑] We have previously denounced as a clearly excessive fee charging legal fees for nonlegal services. *Disciplinary Counsel v. Hunter, 106 Ohio St.3d 418, 2005 Ohio 5411, 835 N.E.2d 707, ¶ 17, 25* (attorney rates for administrative tasks, including picking up mail, depositing checks, paying bills, and arranging for lawn care, house cleaning, and the delivery of necessities result in a clearly excessive fee); *Cincinnati Bar Assn. v. Alsfelder, 103 Ohio St.3d 375, 2004 Ohio 5216, 816 N.E.2d 218, ¶ 22-23* (attorney rates for social interaction with a client constituted a clearly excessive fee). The factors set forth in *Prof.Cond.R. 1.5(a)* and the decisions of this court give attorneys a reasonable opportunity to know what is prohibited and to conduct themselves accordingly. Thus, Parisi's freedom-of-contract and void-for-vagueness arguments are without merit.

[**P26] Parisi charged over $220,000 for services provided by herself and her staff and for cost reimbursements during the nearly three years that she [*353] represented Greene. Her billings, however, were replete with charges at her [****21] attorney rate for nonlegal services like arranging and attending Greene's doctors' appointments, handling mundane tasks related to Greene's cable-television and magazine subscriptions, researching local feline clubs, and arranging for the replacement of Greene's watch battery. She billed approximately $13,000 in fees and expenses for overseeing the partial restoration of Greene's beloved Jaguar.

[**P27] The board found that Parisi's hourly rates for legal work were reasonable and that Greene believed that the services Parisi performed were important, had demanded (for the most part and sometimes irrationally) that she perform them, and had rejected some services when Parisi sought to have others provide them. Although relator did not present any expert testimony about the charges for Parisi's nonlegal services, it is clear that the bulk of those services required little, if any, legal skill and that the cost of providing the services was disproportionate to the benefit that Greene received. There is no question that those charges specifically addressed by relator and the scores of nonlegal services billed at attorney rates in Parisi's 404-page billing record are clearly excessive.

[**P28] Parisi's [****22] claims that *Prof.Cond.R. 1.2*, *1.4*, and *5.7* authorized her conduct must also fail. There is no dispute that ***HN17***[↑] these rules require attorneys to consult with and abide by decisions concerning the objectives of their representation and the means by which they are pursued, promptly inform the client of decisions or circumstances that require the client's informed consent, and permit attorneys to perform law-related services on their clients' behalf. But nothing in those rules permits attorneys to violate their ethical obligations in pursuing their clients' objectives or to charge attorney rates for nonlegal services at the behest of a client.

[**P29] Accordingly, we overrule each of Parisi's objections, adopt the board's findings of fact and misconduct with respect to the Greene representation, and dismiss the alleged violations of *Prof.Cond.R. 8.4(a)*, *(c)*, and *(d)* and DR 1-102(A)(1), (4), and (5) as recommended by the board.

[***278] **Sanction**

[**P30] ***HN18***[↑] When imposing sanctions for attorney misconduct, we consider relevant factors, including the ethical duties that the lawyer violated and the sanctions imposed in similar cases. *Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St.3d 424, 2002 Ohio 4743, 775 N.E.2d 818, ¶ 16*. [****23] In making a final

determination, we also weigh evidence of the aggravating and mitigating factors listed in Section 10(B) of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievances and Discipline ("BCGD Proc.Reg."). *Disciplinary Counsel v. Broeren, 115 Ohio St.3d 473, 2007 Ohio 5251, 875 N.E.2d 935, ¶ 21*.

[**P31] [*354] The board found three aggravating factors, including Parisi's selfish motive in taking her attorney fees from Demming's account, her commission of multiple offenses, and the vulnerability of the clients harmed by her conduct. See BCGD Proc.Reg. 10(B)(1)(b), (d), and (h).

[**P32] As mitigating factors, the board found that Parisi had no prior disciplinary record in almost 30 years of practice, that she returned the attorney fees she had collected from Demming's account before the probate court issued a formal order for her to do so, that she cooperated in the disciplinary proceedings, and that she demonstrated her good reputation and character apart from the charged misconduct. See BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (e). Although Parisi denied having committed any ethical violations, the board also found that she fully [****24] acknowledged that she should not have taken her fee from Demming during the pendency of the guardianship proceeding and that it would have been a better practice to show Greene her monthly bills, to have him sign and date them, and to have him personally sign the checks for his legal fees. She also acknowledged that she should have arranged for someone else to review her monthly bills before Greene paid them.

[**P33] The board recommends that we impose a six-month suspension for Parisi's misconduct, but citing the panel's belief that she will not repeat her transgressions and the difficult choices Parisi faced in representing these clients as their mental and physical conditions deteriorated, recommends that we stay the entire suspension on the condition that she commit no further misconduct. In support of this recommendation, the board observes that in the absence of fraud or dishonesty, we have imposed comparable stayed suspensions for attorneys who have charged or collected a clearly excessive fee. See *Akron Bar Assn. v. Watkins, 120 Ohio St.3d 307, 2008 Ohio 6144, 898 N.E.2d 946, ¶ 6, 15* (imposing a six-month stayed suspension on an attorney who charged his hourly attorney rate for nonlegal [****25] services while serving as the trustee of a revocable living trust); *Cincinnati Bar Assn. v. Alsfelder, 103 Ohio St.3d 375, 2004 Ohio 5216, 816 N.E.2d 218, ¶ 25, 34* (imposing a one-year stayed suspension for an attorney who allowed a client to consult him as a friend while charging her for his time as a lawyer); *Disciplinary Counsel v. Dettinger, 121 Ohio St.3d 400, 2009 Ohio 1429, 904 N.E.2d 890, ¶ 4, 10* (imposing a six-month stayed suspension for an attorney who borrowed money from a client without disclosing the inherent conflict of interest or advising the client, or upon the client's death, his executor, to seek independent counsel); *Disciplinary Counsel v. Jacobs, 109 Ohio St.3d 252, 2006 Ohio 2292, 846 N.E.2d 1260, ¶ 3-5, 8* (publicly reprimanding an attorney for representing a husband and wife in their divorce and, while it was pending, representing each one on other [***279] matters without disclosing the conflict of interest).

[**P34] [*355] Both parties object to the recommended sanction. Parisi seeks dismissal of the complaint. Citing *Disciplinary Counsel v. Bandman, 125 Ohio St.3d 503, 2010 Ohio 2115, 929 N.E.2d 442*, *Toledo Bar Ass'n v. Stahlbush, 126 Ohio St. 3d 366, 2010 Ohio 3823, 933 N.E.2d 1091*, [****26] and *Disciplinary Counsel v. Johnson, 113 Ohio St.3d 344, 2007 Ohio 2074, 865 N.E.2d 873*, relator argues that Parisi's misconduct warrants an actual suspension from the practice of law with specific conditions imposed upon any stayed portion of that suspension.

[**P35] Unlike Parisi's conduct, however, each of relator's cited authorities involved fraud, misrepresentation, or deceit, and two of them involved findings that the attorney had misappropriated client funds. Bandman withdrew $60,050 from an elderly client's trust account without the knowledge or consent of the client or her attorney-in-fact and altered a bank record and payment records to conceal his misdeeds. *Bandman, 125 Ohio St.3d 503, 2010 Ohio 2115, 929 N.E.2d 442, ¶ 7, 10*. Because Bandman had misappropriated client funds, we indefinitely suspended him from the practice of law and conditioned reinstatement on proof that he has made full restitution. *Id. at ¶ 18-19*. And in *Stahlbush*, we imposed a two-year suspension with the second year stayed on conditions upon finding that the attorney had deceptively inflated her billable hours for court-appointed work, billing more than 24 hours per day in three instances. *Stahlbush, 126 Ohio St.3d 366, 2010 Ohio 3823, 933 N.E.2d 1091, ¶ 2-3, 11, 17*.

[**P36] [****27] Of the cases cited by relator, Johnson's conduct is perhaps the most comparable to

Parisi's. Johnson represented two elderly sisters—initially as the attorney-in-fact for one sister, and as a court-appointed guardian for the other. *Johnson, 113 Ohio St.3d 344, 2007 Ohio 2074, 865 N.E.2d 873, ¶ 5*. He sought to recover more than $800,000 that had been misappropriated by his clients' former attorney-in-fact, but failed to perform a cost-benefit analysis before pursuing their claims. *Id. at ¶ 71*. While he charged a reasonable hourly rate for his time and maintained detailed billing records, he overworked the client's case, billing almost $160,000 to collect $197,683.45. *Id. at ¶ 24, 26, 71*. We rejected Johnson's argument that he was acting at the behest of the sister for whom he had initially served as attorney-in-fact, observing that she became mentally incompetent during the representation, as evidenced by a June 1999 order appointing Johnson as her guardian. *Id. at ¶ 12, 74*. Johnson had also billed the sisters separately for his services and failed to disclose to the probate court the fees and expenses that he had collected pursuant to the power of attorney. *Id. at ¶ 17*. In determining [****28] the appropriate sanction for Johnson's misconduct, we observed that deliberate efforts to deceive generally warrant an actual suspension from the practice of law, and we imposed a one-year suspension, with the last six months stayed on conditions, including the payment of restitution, and a six-month period of probation. *Id. at ¶ 85, 89*.

[**P37] [*356] In this case, Parisi has engaged in a conflict of interest by representing both Demming and the niece who sought her guardianship, has engaged in conduct prejudicial to the administration of justice by paying her own fees during the guardianship proceeding, and has charged a clearly excessive fee for nonlegal services that she provided to Greene. But unlike the situations cited by relator, there have been no findings that Parisi has engaged in fraud, misrepresentation, or deceit. [***280] She returned the $18,820 payment to herself in the Demming matter and has settled litigation with Greene's heirs with her agreement to forgo approximately $25,000 in additional billings and with a $21,000 payment from her malpractice carrier. Furthermore, the panel believes that Parisi will not repeat her transgressions, and ***HN19***[↑] we defer to that credibility determination because [****29] the panel members saw and heard her testimony firsthand. *Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St.3d 164, 2006 Ohio 550, 842 N.E.2d 35, ¶ 24*.

[**P38] Having considered Parisi's misconduct, the aggravating and mitigating factors present, and the sanctions imposed for comparable offenses, we overrule the parties' objections and adopt the board's recommended sanction of a six-month suspension, all stayed on the condition that Parisi commit no further misconduct. Accordingly, we suspend Georgianna I. Parisi from the practice of law in Ohio for six months, with the entire suspension stayed on the condition that she commit no further misconduct. If Parisi fails to comply with that condition, the stay will be lifted, and she will serve the entire six-month suspension. Costs are taxed to Parisi.

Judgment accordingly.

PFEIFER, LUNDBERG STRATTON, O'DONNELL, and MCGEE BROWN, JJ., concur.

CUPP, J., concurs in part and dissents in part.

O'CONNOR, C.J., dissents and would accept the relator's recommended sanction of an indefinite suspension.

LANZINGER, J., dissents and would impose a one-year suspension with six months stayed.

Concur by: CUPP (In Part)

Dissent by: CUPP (In Part)

Dissent

CUPP, J., concurring in part and dissenting in [****30] **part**.

[**P39] Although I concur in the decision of the court, I would also add as a condition of the stayed suspension that Parisi submit to the monitoring of her practice by an attorney designated by relator during the entire term of the stayed six-month suspension.

End of Document

Ohio Prof. Cond. Rule 1.5

Rules current through rule amendments received through November 17, 2022

Rule 1.5. Fees and expenses

(a) A lawyer shall not make an agreement for, charge, or collect an *illegal* or clearly excessive fee. A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a *reasonable* fee. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in *writing*, before or within a *reasonable* time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in *writing*.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by division (d) of this rule or other law.

(1) Each contingent fee agreement shall be in a *writing* signed by the client and the lawyer and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial, or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement shall clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party.

(2) If the lawyer becomes entitled to compensation under the contingent fee agreement and the lawyer will be disbursing funds, the lawyer shall prepare a closing statement and shall provide the client with that statement at the time of or prior to the receipt of compensation under the agreement. The closing statement shall specify the manner in which the compensation was determined under the agreement, any costs and expenses deducted by the lawyer from the judgment or settlement involved, and, if applicable, the actual division of the lawyer's fees with a lawyer not in the same *firm*, as required in division (e)(3) of this rule. The closing statement shall be signed by the client and lawyer.

(d) A lawyer shall not enter into an arrangement for, charge, or collect any of the following:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support, or property settlement in lieu thereof;

(2) a contingent fee for representing a defendant in a criminal case;

(3) a fee denominated as "earned upon receipt," "nonrefundable," or in any similar terms, unless the client is simultaneously advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule.

(e) Lawyers who are not in the same *firm* may divide fees only if all of the following apply:

(1) the division of fees is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation and agrees to be available for consultation with the client;

(2) the client has given *written* consent after full disclosure of the identity of each lawyer, that the fees will be divided, and that the division of fees will be in proportion to the services to be performed by each lawyer or that each lawyer will assume joint responsibility for the representation;

(3) except where court approval of the fee division is obtained, the *written* closing statement in a case involving a contingent fee shall be signed by the client and each lawyer and shall comply with the terms of division (c)(2) of this rule;

(4) the total fee is *reasonable*.

(f) In cases of a dispute between lawyers arising under this rule, fees shall be divided in accordance with the mediation or arbitration provided by a local bar association. When a local bar association is not available or does not have procedures to resolve fee disputes between lawyers, the dispute shall be referred to the Ohio State Bar Association for mediation or arbitration.

Annotations

Commentary

COMMENT

Reasonableness of Fee

[1] Division (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in divisions (a)(1) through (8) are not exclusive. Nor will each factor be relevant in each instance.

Nature and Scope of Representation; Basis or Rate of Fee and Expenses

[2] The detail and specificity of the communication required by division (b) will depend on the nature of the client-lawyer relationship, the work to be performed, and the basis of the rate or fee. A writing that confirms the nature and scope of the client-lawyer relationship and the fees to be charged is the preferred means of communicating this information to the client and can clarify the relationship and reduce the possibility of a misunderstanding. When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be established promptly. Unless the situation involves a regularly represented client, the lawyer should furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee, and whether and to what extent the client will be responsible for any costs,

expenses, or disbursements in the course of the representation. So long as the client agrees in advance, a lawyer may seek reimbursement for the reasonable cost of services performed in-house, such as copying.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of division (a) of this rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(e). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[5A] If all funds held by the lawyer are not disbursed at the time the closing statement required by division (c)(2) is prepared, the lawyer's obligation with regard to those funds is governed by Rule 1.15.

Prohibited Contingent Fees

[6] Division (d) prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of spousal or child support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of post-judgment balances due under support or other financial orders because such contracts do not implicate the same policy concerns.

Retainer

[6A] Advance fee payments are of at least four types. The "true" or "classic" retainer is a fee paid in advance solely to ensure the lawyer's availability to represent the client and precludes the lawyer from taking adverse representation. What is often called a retainer is in fact an advance payment to ensure that fees are paid when they are subsequently earned, on either a flat fee or hourly fee basis. A flat fee is a fee of a set amount for performance of agreed work, which may or may not be paid in advance but is not deemed earned until the work is performed. An earned upon receipt fee is a flat fee paid in advance that is deemed earned upon payment regardless of the amount of future work performed. When a fee is earned affects whether it must be placed in the attorney's trust account, see Rule 1.15, and may have significance under other laws such as tax and bankruptcy. The reasonableness requirement and the application of the factors in division (a) may mean that a client is entitled to a refund of an advance fee payment even though it has been denominated "nonrefundable," "earned upon receipt," or in similar terms that imply the client would never receive a refund. So that a client is not misled by the use of such terms, division (d)(3) requires certain minimum disclosures that must be included in the written fee agreement. This does not mean the client will always be entitled to a refund upon early termination of the representation [*e.g.*, factor (a)(2) might justify the entire fee], nor does it determine how any refund should be calculated (e.g., hours worked times a reasonable hourly rate, quantum meruit, percentage of the work completed, etc.), but merely requires that

the client be advised of the possibility of a refund based upon application of the factors set forth in division (a). In order to be able to demonstrate the reasonableness of the fee in the event of early termination of the representation, it is advisable that lawyers maintain contemporaneous time records for any representation undertaken on a flat fee basis.

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial lawyer. Division (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. Within a reasonable time after disclosure of the identity of each lawyer, the client must give written approval that the fee will be divided and that the division of fees is in proportion to the services performed by each lawyer or that each lawyer assumes joint responsibility for the representation. Except where court approval of the fee division is obtained, closing statements must be in a writing signed by the client and each lawyer and must otherwise comply with division (c) of this rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rules 1.1 and 1.17.

[8] Division (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes between a client and a lawyer, such as an arbitration or mediation procedure established by a local bar association, the Ohio State Bar Association, or the Supreme Court of Ohio, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

[10] A procedure has been established for resolution of fee disputes between lawyers who are sharing a fee pursuant to division (e) of this rule. This involves use of an arbitration or mediation procedure established by a local bar association or the Ohio State Bar Association. The lawyer must comply with the procedure. A dispute between lawyers who are splitting a fee shall not delay disbursement to the client. See Rule 1.15.

Rule 1.5 replaces DR 2-106 and DR 2-107; makes provisions of EC 2-18 and EC 2-19 mandatory, as opposed to aspirational, with substantive modifications; and makes the provisions of *R.C. 4705.15* mandatory, with technical modifications.

Rule 1.5(a) adopts the language contained in DR 2-106(A) and (B), which prohibits illegal or clearly excessive fees and establishes standards for determining the reasonableness of fees. Eliminated from Rule 1.5(a) is language regarding expenses.

Rule 1.5(b) expands on EC 2-18 by mandating that the nature and scope of the representation and the arrangements for fees and expenses shall promptly be communicated to the client, preferably in writing, to avoid potential disputes, unless the situation involves a regularly represented client who will be represented on the same basis as in the other matters for which the lawyer is regularly engaged.

Rule 1.5(c)(1) also expands on EC 2-18 and *R.C. 4705.15(B)* by requiring that all contingent fee agreements shall be reduced to a writing signed by the client and the lawyer. Rule 1.5(c)(2) directs that a closing statement shall be prepared and signed by both the lawyer and the client in matters involving contingent fees. It closely parallels the current *R.C. 4705.15(C)*.

Rule 1.5(d) prohibits the use of a contingent fee arrangement when the contingency is securing a divorce, spousal support, or property settlement in lieu of support. It finds its basis in EC 2-19, which provides that "Because of the human relationships involved and the unique character of the proceedings, contingent fee arrangements in domestic relations cases are rarely justified." Rule 1.5(d)(2) prohibits the use of contingent fee arrangements in criminal cases and parallels DR 2-106(C).

Rule 1.5(d)(3) prohibits fee arrangements denominated as "earned upon receipt," "nonrefundable," or other similar terms that imply the client may never be entitled to a refund, unless the client is advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund so the client is not misled by such terms. The rationale for this rule is contained in Comment [6A].

Rule 1.5(e) deals with the division of fees among lawyers who are not in the same firm. Rule 1.5(e)(1) restates the provisions of DR 2-107(A)(1), with the additional requirement that in the event the division of fees is on the basis of joint responsibility, each lawyer must be available for consultation with the client. Rule 1.5(e)(2) clarifies DR 2-107(A)(2) and Advisory Opinion 2003-3 of the Board of Commissioners on Grievances and Discipline regarding the matters that must be disclosed in writing to the client.

Rule 1.5(e)(3) is a new provision directing that the closing statement contemplated by Rule 1.5(c)(2) must be signed by the client and all lawyers who are not in the same firm who will share in the fees, except where the fee division is court-approved. Rule 1.5(e)(4) is a restatement of DR 2-107(A)(3) regarding the requirement that the total fee must be reasonable.

Rule 1.5(f) is a restatement of DR 2-107(B) requiring mandatory mediation or arbitration regarding disputes between lawyers sharing a fee under this rule.

Model Rule 1.5 is amended to conform to Disciplinary Rules and ensure a better understanding of the relationship between the client and the lawyers representing the client, thereby reducing the likelihood of future disputes. Also, the comments are modified to bring them into conformity with the proposed changes to Model Rule 1.5 and clarify certain aspects of fees for the benefit of the bench, bar, and the public.

Although ABA Model Rule 1.5(a) directs that a lawyer shall not charge "unreasonable" fees or expenses, the terminology in DR 2-106 (A) prohibiting "illegal or clearly excessive" fees is more encompassing and better suited to use in Ohio. Charging an "illegal fee" differs from charging an "unreasonable fee" and, accordingly, the existing Ohio language is retained.

Model Rule 1.5(c), while dealing with contingent fees, is expanded and clarified. The closing statement provisions of the Model Rule are expanded to bring them in line with existing *R.C. 4705.15(C)*. Additionally, the Model Rule is divided into two parts, the first dealing with the lawyer's obligations at the commencement of the relationship and the second dealing with the lawyer's obligations at the time a fee is earned.

The provisions of Model Rule 1.5(d) are modified to add division (d)(3) and Comment [6A] in light of the number of disciplinary cases involving "retainers."

Model Rule 1.5(e) and Comment [7] dealing with division of fees are modified to bring both the requirements of the rule and the commentary into line with existing practice in Ohio.

Case Notes

Contingent fee agreements
Disbarment
Division of fees
Excessive fee
Fee agreements generally
Fee amount
Fee disputes between lawyers
Flat fee
Frivolous conduct
Good will as partnership asset
Lodestar
--Enhancement
Lost opportunity fee
Malpractice
Public reprimand
Reasonable fee amount
Reasonable fee amount in probate
Reimbursement advisement
Return of unearned fees
Suspension

Generally

Prohibition against clearly excessive fees in Ohio R. Prof. Conduct 1.5(a) and Ohio Code Prof. Resp. DR 2-106(A) was a reasonable restriction of the freedom of contract that permitted attorneys to charge a fee for their services while also preserving the integrity of the legal profession. The Supreme Court of Ohio had the inherent, original, and exclusive jurisdiction to regulate all matters relating to the practice of law under *Ohio Const. art. IV, § 2(B)(1)(g)*, and the freedom to contract, while protected by in *Ohio Const. art. I, § 1*, was not absolute but was subservient to the public welfare. *Dayton Bar Ass'n v. Parisi, 131 Ohio St. 3d 345, 2012 Ohio 879, 965 N.E.2d 268, 2012 Ohio LEXIS 658 (Mar. 8, 2012)*.

Although there was no abuse of discretion in awarding attorney fees, the award was sufficiently disproportionate to the damages obtained to raise a question as to reasonableness under RC § 5321.16(C). It could not be determined which of the Ohio Code Prof. Resp. 2-106(B) factors, if any, the trial court applied and the trial court did not provide any explanation as to why it found the requested fees to be fair and customary. The trial court entered judgment of $700 for return of the tenant's wrongfully withheld security deposit, plus an additional $700 in statutory damages, but the attorney fees awarded were eight and one-half times the amount that the realty company was determined to have wrongfully withheld, and over four times the total damages to which the tenant was entitled to collect. Whitestone Co. v. Stittsworth, -- Ohio App. 3d --, *2007 Ohio 233*, -- N.E. 2d --, *2007 Ohio App. LEXIS 216 (Jan. 23, 2007)*.

Trial court's award of attorney fees to vehicle owners in their action against an automobile dealer and manufacturer, arising from fraudulent sales tactics after the owners were informed that their lemon would be exchanged for a new vehicle at no cost to them, only to then be forced to sign new loan papers at an increased interest rate, was proper where the fee amount was deemed reasonable in the circumstances, based on the number of hours reasonably expended multiplied by an hourly fee, and then modified by the factors under *Ohio Code Prof. Resp. DR 2-106(B). Smith v. GMC, 168 Ohio App. 3d 336, 2006 Ohio 4283, 859 N.E.2d 1035, 2006 Ohio App. LEXIS 4197 (2006)*.

Attorney fees in all matters are governed by Ohio Code Prof. Resp. DR 2-106, and a trial court's decision regarding the reasonableness of fees must be based upon the evidence of the actual services performed by the attorneys and upon the reasonable value of those services. Further, Loc.R. 24(E) of the Court of Common Pleas of

Cuyahoga County's limitation of attorney fees to $850 except in contested cases where extraordinary circumstances were demonstrated, was invalid since it conflicted with RC § 5721.39, and a trial court erred in denying a buyer's request for attorney fees in excess of $850. Gls Capital Cuyahoga, Inc. v. Abuzahrieh, -- Ohio App. 3d --, *2006 Ohio 298*, -- N.E. 2d --, *2006 Ohio App. LEXIS 248 (Jan. 26, 2006)*.

Trial court erred in its allocation of attorney fees where the attorney originally engaged under a contingent fee agreement was discharged without having reached a settlement or filing suit and subsequent counsel obtained a settlement with a defendant: *In re J.F., 162 Ohio App. 3d 716, 2005 Ohio 4258, 834 N.E.2d 876, 2005 Ohio App. LEXIS 3872 (2005)*.

Order awarding attorney's fees to a widow, pursuant to RC § 4165.03, on her deceptive trade practices claim was reversed and remanded to the trial court because the trial court failed to state a clear basis for its determination. To support the attorney's fees awarded, the trial court simply stated that it found that the widow's position was well taken. The widow's motion failed to state that the trial court should consider the factor under Ohio Code Prof. Resp. DR 2-106(B) requiring consideration of the results obtained. Braglin v. Crock, -- Ohio App. 3d --, *2005 Ohio 6935*, -- N.E. 2d --, *2005 Ohio App. LEXIS 6254 (Dec. 22, 2005)*.

Although a trial court did not refer to Ohio Code Prof. Resp. DR 2-106 and Mont. County, Ohio, Ct. C.P. Prob. Div. R. 71.1 when it made its attorney fee determination with respect to the reasonableness of a testamentary trustee's application for fees, but instead, it relied on a probate case precedent for guidance, the award was not an abuse of discretion where the trial court's analysis took into account the relevant factors. The trial court's determination that the trustee's attorney fees were excessive was supported by the record, and by the fact that the trustee failed to segregate her attorney fees from her trustee fees, pursuant to Rule 71.1(E). In re Estate of Roe, -- Ohio App. 3d --, *2005 Ohio 4033*, -- N.E. 2d --, *2005 Ohio App. LEXIS 3684 (Aug. 5, 2005)*.

Trial court's award of attorney fees and costs to a testamentary trustee was not an abuse of discretion, although it did not refer to Mont. County, Ohio, Ct. C.P. Prob. Div. R. 71.1 or Ohio Code Prof. Resp. DR 2-106 when it considered the factors for what was a reasonable fee amount, as the trial court had engaged in an appropriate analysis of those factors, despite its reliance on an older probate case for guidance in determining the reasonableness. The trustee had failed to segregate the billing for trustee services and attorney services, as required by Mont. County, Ohio, Ct. C.P. Prob. Div. R. 71.1(E), which made a determination as to excessiveness and reasonableness difficult for the court, and there was no abuse of discretion accordingly found. *In re Trust of Flynn, 2005 Ohio 4028, 2005 Ohio App. LEXIS 3678 (2005)*.

Probate court had discretion to enter an award for attorney's fees to an estate attorney which was less than the amount requested, based on the probate court's determination of reasonableness pursuant to RC § 2113.36, Ohio Code Prof. Resp. DR 2-106, and *Ohio Superintendence R. 71(A)*; however, where the probate court failed to indicate what factors it based its determination of reasonableness on, pursuant to Trumbull County, Ohio, C.P. Ct. Prob. Div. R. 71.1, a remand was required so the appellate court could properly review the award. *In re Estate of Murray, 2005 Ohio 1892, 2005 Ohio App. LEXIS 1804 (2005)*.

Although the evidence supported a trial court's decision, through a magistrate, to award a wife attorney fees in the parties' divorce action, pursuant to RC § 3105.18(H), based on the fact that the husband was a medical doctor and the wife had stayed at home to raise the parties' children and had only recently gone back to school in order to become employable, the trial court erred in not holding a hearing on the reasonableness of the fee award; there was no evidence that the court considered the Swanson factors, pursuant to Ohio Code Prof. Resp. DR 2-106(B), the award appeared to only be based on the husband's ability to pay and the wife's need, which were not the only factors, and the husband had properly objected to the amount of fees, as required by Ohio R. Civ. P. 53(E)(3). Zerbe v. Zerbe, -- Ohio App. 3d --, *2005 Ohio 1180*, -- N.E. 2d --, *2005 Ohio App. LEXIS 1159 (Mar. 18, 2005)*.

Trial court did not abuse its discretion in awarding attorney fees to the bank because, since the debtors failed to properly supplement their incomplete responses to discovery pursuant to Ohio R. Civ. P. 37(D), the bank was entitled to reasonable expenses, including attorney fees; the debtors presented absolutely no evidence to justify

their failure to supplement discovery responses, nor did they respond by motion or present evidence at the hearing on the motion for attorney fees to explain their inaction. Papadelis v. Charter One Bank, F.S.B., -- Ohio App. 3d --, 2005 Ohio 288, -- N.E. 2d --, 2005 Ohio App. LEXIS 260 (Jan. 27, 2005).

Where the executor failed to timely administer the estate without just cause, and his attorney failed to establish the reasonableness of the numbers of hours he billed, the trial court did not abuse its discretion in reducing their respective fiduciary fees; moreover, such a reduction promoted the public policy of rejecting fees found to be excessive. In re Estate of Lazar, 2004 Ohio 1964, 2004 Ohio App. LEXIS 1705 (2004).

Probate court did not abuse its discretion by reducing the attorney's fees sought by the guardian of an estate; the evidence supported the finding that the attorney did not provide extraordinary services warranting the fee sought pursuant to Ohio Superintendence R. 71(D), and the probate court held a hearing on the matter and considered the factors required by Ohio Code Prof. Resp. DR 2-106 prior to entering the order. In re Guardianship of Melton, -- Ohio App. 3d --, 2004 Ohio 1180, -- N.E. 2d --, 2004 Ohio App. LEXIS 1016 (Feb. 13, 2004).

Because the probate court elected not to conduct a hearing on attorney fees associated with a decedent's wrongful death settlement, it was difficult to discern how it reached the conclusion that it did. It did not appear that work for out of court services, justified reducing the attorney fees and it was not clear exactly why the probate court elected to reduce a law firm's fees; thus, the matter had to be remanded for the probate court to state its rationale. In re Estate of Campbell, 2003 Ohio 7040, 2003 Ohio App. LEXIS 6387 (2003).

Trial court properly examined the factors under Ohio Prof. Resp. DR 2-106 in fashioning a reasonable amount of attorney's fees to a party in a judicial dissolution proceeding regarding one party's breach of fiduciary duty; however, it was noted that the party had not preserved his objections where he failed to raise the issue before the trial court in objecting to the magistrate's decisions and accordingly, he had waived appeal of that issue pursuant to Ohio R. Civ. P. 53(E)(3)(b). Dehoff v. Veterinary Hosp. Operations of Cent. Ohio, Inc., 2003 Ohio 3334, 2003 Ohio App. LEXIS 3040 (2003).

Trial court properly deviated from the lodestar amount of attorney fees awarded to a former employee in a breach of contract action where the trial court considered the testimony and billing statements and clearly enumerated its reasons for the award. Wall v. Pizza Outlet, L.P., -- Ohio App. 3d --, 2003 Ohio 3369, -- N.E. 2d --, 2003 Ohio App. LEXIS 3054 (June 23, 2003).

The law firm's overly broad redactions on its invoices, based on an alleged attorney-client privilege, deprived the court of necessary information in determining the reasonableness of the fees. There was no evidence that the fees were comparable to similar cases for that locality. It was unclear whether the "legal assistant" hours included in the invoices involved secretarial staff, paralegals, or law clerks: B-Right Trucking Co. v. Interstate Plaza Consulting, 154 Ohio App. 3d 545, 2003 Ohio 5156, 798 N.E.2d 29, 2003 Ohio App. LEXIS 4690 (2003).

Where a law firm that agrees to a contingent fee is discharged, the division of the attorney fees ultimately realized from the claim depends on the circumstances: Goldauskas v. Elyria Foundry Co., 145 Ohio App. 3d 490, 763 N.E.2d 645, 2001 Ohio App. LEXIS 3665 (2001).

By collecting for secretarial and law clerk expenses, in addition to filing fees, deposition fees, and the agreed thirty-three percent of the settlement, the attorney did not adhere to the contingent fee contract and charged a clearly excessive fee in violation of DR 2-106(A): Columbus Bar Ass'n v. Brooks, 87 Ohio St. 3d 344, 1999 Ohio 137, 721 N.E.2d 23, 1999 Ohio LEXIS 3933 (1999).

Counsel's exceptional qualifications, the novelty and difficulty of the legal issues involved, and the protracted length of the litigation justified an award of substantial attorney fees: Landis v. Grange Mut. Ins. Co., 100 Ohio Misc. 2d 31, 717 N.E.2d 1199, 1999 Ohio Misc. LEXIS 32 (CP 1998).

For purposes of determining reasonable attorney fees, the locality in issue was the entire state of Ohio, rather than the eleven-county area of northern *Ohio: Hamilton Mut. Ins. Co. v. Perry, 124 Ohio App. 3d 147, 705 N.E.2d 731, 1997 Ohio App. LEXIS 5275 (1997)*.

The number of hours actually expended by attorneys is not necessarily the amount of time reasonably expended. The time spent in conference between collaborating attorneys may be allowable. An enhancement multiplier based on excellent results is allowable in Ohio where purely state law claims are involved: *Freeman v. Crown City Mining, Inc., 90 Ohio App. 3d 546, 630 N.E.2d 19, 1993 Ohio App. LEXIS 5062 (1993)*.

When awarding reasonable attorney fees pursuant to RC § 1345.09(F)(2), the trial court should first calculate the number of hours reasonably expended on the case times an hourly fee, and then may modify that calculation by application of the factors listed in *DR-2-106(B): Bittner v. Tri-County Toyota, Inc., 58 Ohio St. 3d 143, 569 N.E.2d 464, 1991 Ohio LEXIS 690 (1991)*.

Additional fees

Where additional felony counts are "thrown in" to a plea arrangement that the prosecutor has already presented on a "take it or leave it" basis, the attorney violates DR 2-106 by requiring additional fees for these additional charges which did not require him to perform further legal services: *Mahoning Cty. Bar Assn. v. Pagac, 39 Ohio St. 3d 1, 528 N.E.2d 948, 1988 Ohio LEXIS 303 (1988)*.

Accepting illegal drugs as payment for legal services violates both *DR 2-106(A) and 7-102(A)(7): Columbus Bar Asso. v. Cockrum, 21 Ohio St. 3d 51, 487 N.E.2d 314, 1986 Ohio LEXIS 523 (1986)*.

Allocation of attorney fees

The court lacked subject matter jurisdiction over the motion for allocation of attorney fees between counsel where the class action settlement had already been approved and paid: *Steiner v. Van Dorn Co., 104 Ohio App. 3d 51, 660 N.E.2d 1256, 1995 Ohio App. LEXIS 1937 (1995)*.

Appellate review

Appellate court could not say an attorney fee award of $1,000 in a landlord/tenant case was an abuse of discretion, but it was sufficiently disproportionate to the damages of $510 that its reasonableness was in question; thus, the matter had to be remanded for further findings by the trial court as to its rationale for making the award. *Ridenour v. Dunn, 2004 Ohio 3375, 2004 Ohio App. LEXIS 3001 (2004)*.

Applicability

Flat fee contingency agreement was valid as Ohio R. Prof. Conduct 1.5 did not apply, and comment 5 to Rule 1.5 was not relevant to the fee agreement or binding on the appellate court; assuming Rule 1.5, was violated, any violation did not necessarily render the agreement unenforceable as the Preamble to the Ohio Rules of Professional Conduct provided that violation of a rule did not itself give rise to a cause of action against a lawyer nor did it create a presumption in such case that a legal duty had been breached, and the Ohio Rules of Professional Conduct were not designed to be a basis for civil liability. Gullotta v. McKinzie, -- Ohio App. 3d --, 2014-Ohio 5729, -- N.E.2d --, *2014 Ohio App. LEXIS 5544 (Dec. 22, 2014)*.

As Ohio R. Prof. Conduct 1.5 governed attorney ethics and not the law to be applied to determine the terms of a contract and the result of a breach with respect to the allowance of an attorney fee award, a magistrate properly

refused to rely on the rule to determine the reasonableness of a fee sought in a commercial lease dispute. Yoder v. Hurst, -- Ohio App. 3d --, *2007 Ohio 4861*, -- N.E. 2d --, *2007 Ohio App. LEXIS 4310 (Sept. 20, 2007)*.

Arbitration of fee disputes

Trial court did not err in determining that the bar association did not exceed its authority in finding it had authority to hear the matter because there was no question that the attorneys were from different firms and had a fee dispute that the bar association arbitrated. Linnen Co., L.P.A. v. Roubic, -- Ohio App. 3d --, *2013 Ohio 1022*, -- N.E.2d --, *2013 Ohio App. LEXIS 902 (Mar. 20, 2013)*.

Trial court properly determined it did not have jurisdiction over appellants' complaint because there was nothing to suggest that any of the three counts represented anything other than a fee dispute between lawyers in different firms, which was subject to mandatory, binding arbitration under Ohio R. Prof. Conduct 1.5. The language of Ohio R. Prof. Conduct 1.5(f) was not read so narrowly as to exclude fee disputes that were not in technical compliance with the mandates of Ohio R. Prof. Conduct 1.5(e) or fee disputes in which the attorneys questioned the terms that made up their agreement. Linnen Co., L.P.A. v. Roubic, -- Ohio App. 3d --, *2013 Ohio 1022*, -- N.E.2d --, *2013 Ohio App. LEXIS 902 (Mar. 20, 2013)*.

An arbitration award rendered pursuant to DR 2-107(B) is final, binding upon the parties, and unappealable. DR 2-107(B) does not infringe upon the right of trial by jury as guaranteed by *Ohio Const. art. I, § 5*: *Shimko v. Lobe, 103 Ohio St. 3d 59, 2004 Ohio 4202, 813 N.E. 2d 669, 2004 Ohio LEXIS 1944 (Aug. 25, 2004)*.

DR 2-107(B), providing for compulsory arbitration of fee disputes between attorneys, is a reasonable restriction on those who practice law: *Shimko v. Lobe, 152 Ohio App. 3d 742, 2003 Ohio 2200, 790 N.E.2d 335, 2003 Ohio App. LEXIS 2039 (2003)*.

For the arbitration/mediation provisions of DR 2-107(B) to apply, an agreement between the parties in accordance with DR 2-107(A) for division of fees must exist: *Schroeder v. DeVito, 136 Ohio App. 3d 610, 737 N.E.2d 559, 2000 Ohio App. LEXIS 356 (2000)*.

Disciplinary Rule 2-107(B) did not apply to fee disputes between a firm and attorneys who left to form a new firm: *Hohmann, Boukis & Curtis Co. v. Brunn, 138 Ohio App. 3d 693, 742 N.E.2d 192, 2000 Ohio App. LEXIS 3255 (2000)*.

Disciplinary Rule 2-107(B) does not necessarily divest a court of jurisdiction over a fee dispute between attorneys: *Schulman v. Wolske & Blue Co., L.P.A., 125 Ohio App. 3d 365, 708 N.E.2d 753, 1998 Ohio App. LEXIS 135 (1998)*.

Compulsory arbitration of attorney fee disputes pursuant to DR 2-107(B) does not violate due process or equal protection: *Shimko v. Lobe, 124 Ohio App. 3d 336, 706 N.E.2d 354, 1997 Ohio App. LEXIS 5391 (1997)*.

Referral of the fee dispute to binding arbitration pursuant to DR 2-107(B) was error where the dispute was between attorney and client, not between attorneys: *Putnam v. Hogan, 122 Ohio App. 3d 351, 701 N.E.2d 774, 1997 Ohio App. LEXIS 3637 (1997)*.

Disciplinary Rule 2-107(B) did not divest the court of jurisdiction over a breach of contract action between the law firms: *Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co. v. Robert E. Sweeney Co., 123 Ohio App. 3d 289, 704 N.E.2d 47, 1997 Ohio App. LEXIS 4647 (1997)*.

Attorney fees

Trial court did not abuse its discretion in awarding attorney fees to a graduate's attorney for the 1,000 hours of work he generated during the trial phase of the proceedings because the record supported its findings that the first

seven factors listed in subsection (a)(1) weighed in favor of maintaining the full lodestar amount, and the last factor, regarding the existence of a contingency fee agreement, weighed in favor of a reduction. Cruz v. English Nanny & Governess Sch., -- Ohio App. 3d --, 2020- Ohio 4216, -- N.E.2d --, *2020 Ohio App. LEXIS 3112 (Aug. 27, 2020)*.

In this Employee Retirement Income Security Act (ERISA) action, plaintiffs were awarded statutory attorney's fees because plaintiffs were well represented by vigorous advocates who exercised billing judgment and class counsel invested significant time and effort in this case, which presented a difficult set of issues, and the risks of failure at the outset were quite significant. Schumacher v. Ak Steel Corp. Ret. Accumulation Pension Plan, -- F. Supp. 2d --, *2014 U.S. Dist. LEXIS 13768 (Feb. 4, 2014)*.

Court concurred with the Board of Commissioners on Grievances and Discipline of the Supreme Court's finding that: (1) the attorney improperly withdrew money from a trust account in violation of Ohio R. Prof. Conduct 1.15(c), Ohio R. Prof. Conduct 1.5(d)(3) and Ohio R. Prof. Conduct 8.4 since the evidence showed that the attorney transferred $50,000, with the notation "partial Randell fees," from the trust account to his law office account; (2) clear and convincing evidence proved that the attorney had violated Ohio R. Prof. Conduct 8.4(b), 8.4(c), and 8.4(h) in conjunction with his conviction for federal tax evasion in violation of *26 U.S.C.S. § 7201*; (3) that the attorney's testimony as to why he did not timely remit the sum to the client was not credible and that clear and convincing evidence proved that the attorney had violated Ohio R. Prof. Conduct 1.15(d) and 8.4(c); (4) that the attorney violated Ohio R. Prof. Conduct 1.15(a)(2), 1.15(a)(5), 1.15(d), 8.4(b) and 8.4(c) because the attorney did not maintain records for funds received, disbursements made, or return monthly reconciliation of his accounts, and the bank records showed that the balance in the trust account was insufficient to pay the client what he was owed; moreover, the case was replete with aggravating factors because numerous violations found by the panel and the board involved a dishonest or selfish motive and the violations demonstrated a clear pattern of misconduct. The presumptive sanction for misappropriation of client funds was disbarment, and that sanction was warranted in the instant case given the multiple instances of dishonesty and misappropriation. *Cleveland Metro. Bar Ass'n v. Toohig, 133 Ohio St. 3d 548, 2012 Ohio 5202, 979 N.E.2d 332, 2012 Ohio LEXIS 2860 (Nov. 15, 2012)*.

In a bank's action to collect funds owing under a commercial guaranty, while the attorney's fees provision contained in the commercial guaranty was enforceable as a matter of law, the trial court erred in awarding attorneys' fees because the award was not supported by competent, credible evidence. The trial court should have calculated the lodestar figure and applied the factors listed in Ohio Code Prof. Resp. DR 2-106(B). JPMorgan Chase Bank, NA v. Corral, -- Ohio App. 3d --, *2011 Ohio 3674*, -- N.E. 2d --, *2011 Ohio App. LEXIS 3107 (July 14, 2011)*.

Attorney's fee award was adjusted because the matter involved claims and issues that might not have been overly complicated but were nonetheless sophisticated and warranted a significant amount of time and effort to research and litigate. Among other things, the case involved the comparison of two chemoinformatics software programs and the assertion of a malicious litigation claim as an independent basis for an unfair competition claim. Am. Chem. Soc'y v. Leadscope, Inc., -- Ohio Misc. 2d --, -- N.E.2d --, *2009 Ohio Misc. LEXIS 552 (Feb. 5, 2009)*.

It was an abuse of discretion to deny an employee any attorney fees, under Ohio Code Prof. Resp. DR 2-106, in his intentional tort suit against his employer, in which he was awarded punitive damages, because the amount of the punitive damages award was inadequate to both compensate the employee for his attorney fees and accomplish the purposes of punitive damages. Maynard v. Eaton Corp., -- Ohio App. 3d --, *2007 Ohio 1906*, -- N.E. 2d --, *2007 Ohio App. LEXIS 1742 (Apr. 23, 2007)*.

Claimed attorney fees were clearly excessive in the absence of any proof of legal service performed: *In re Estate of Keytack, 147 Ohio Misc. 2d 114, 2008 Ohio 3831, 892 N.E.2d 529, 2008 Ohio Misc. LEXIS 187 (2008)*.

Bad faith

Trial court did not abuse its discretion by ordering the attorney to pay the attorney fees to the half-sister and the sister incurred in the prosecution of the breach of fiduciary duty claim, nor did it err in its evaluation of the

appropriate amount of those awards, because, but for the attorney's egregious failures during the initial administration of the estate, neither of the sisters would have incurred the fees. The attorney engaged in a course of conduct amounting to breach of his fiduciary duty as a result of his conflict of interest in representing the estate, his failure to investigate the half-sister's status as an heir, and his failure to properly present his claim against estate, which constituted bad faith. Ivancic v. Enos, -- Ohio App. 3d --, *2012 Ohio 3639*, -- N.E. 2d --, *2012 Ohio App. LEXIS 3218 (Aug. 13, 2012)*.

Compensation

Decision to advise a client concerning nonlegal issues and accept compensation for that advice is not a bright-line test, but the propriety of this conduct may be assessed by applying the standard of a reasonable attorney in the same situation: *Cincinnati Bar Assn. v. Alsfelder, 103 Ohio St. 3d 375, 2004 Ohio 5216, 816 N.E.2d 218, 2004 Ohio LEXIS 2342 (2004)*.

Computation

In a case in which an attorney filed objections to the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court's finding that he violated Ohio R. Prof. Conduct 1.5(b) and recommendation that he be publicly reprimanded, most laypersons would have viewed the meeting as one continuous consultation, rather than a free consultation followed immediately by a billable attorney conference. Although the attorney viewed the signing of the fee agreement as the line of demarcation, nothing in the fee agreement itself expressly alerted the clients that their free consultation was over. *Cincinnati Bar Ass'n v. Mezher, 134 Ohio St. 3d 319, 2012 Ohio 5527, 982 N.E.2d 657, 2012 Ohio LEXIS 3055 (Dec. 3, 2012)*.

In calculating an attorney fee award, the trial court was required to compute the lodestar figure and then deviate from that determination after consideration of any or all of the factors set forth in Ohio Code Prof. Resp. DR 2-106(B). The trial court's disallowance of time for researching the opponent's prior litigation history, counsel's travel time, and counsel's conferencing with his staff was error, as those were appropriate charges, and the time spent by in-house counsel prior to the filing of the complaint was also allowable, although any duplication of effort between in-house counsel and the new litigation counsel due to the change in representation was not compensable. Landmark Disposal, Ltd. v. Byler Flea Mkt., -- Ohio App. 3d --, *2006 Ohio 3935*, -- N.E. 2d --, *2006 Ohio App. LEXIS 3888 (July 31, 2006)*.

When a law firm sued a former client for past due fees, and sought attorney fees in connection with that complaint, a trial court properly did not apply the lodestar method to a determination of the current fees the firm was entitled to because that method was inapplicable in cases where an attorney sues a former client for collection of unpaid attorney fees. Bringman v. Smith, -- Ohio App. 3d --, *2007 Ohio 4684*, -- N.E. 2d --, *2007 Ohio App. LEXIS 4214 (Sept. 12, 2007)*.

Contingent fee agreements

Probate court did not abuse its discretion in finding the requested fees, including the one-third contingency fee, reasonable and not excessive and not against the manifest weight of the evidence, because the case was far more complicated than it appeared on its face due to statements made by the decedent's wife to police, possible assumption of the risk and/or comparative negligence issues, a possible product liability case involving the failure of the airbags, and collusion between the wife and the driver to "shut down" the wrongful death claim and keep the claim at policy limits to protect the driver's personal assets. In re Estate of Green v. Froehlich, -- Ohio App. 3d --, 2019- Ohio 2862, -- N.E.2d --, *2019 Ohio App. LEXIS 2952 (July 11, 2019)*.

Trial court did not abuse its discretion because it did not award fees that the companies were not entitled to recover and the owner was a party to the contract allowing for the recovery of attorney fees. The owner failed to

demonstrate that the contingency-fee agreement that the companies had with their attorney required the trial court to reduce the lodestar amount for what was now over six years of litigation for a debt collection case. William E. Weaner & Assocs., LLC v. 369 West First Street, LLC, -- Ohio App. 3d --, 2016- Ohio 8077, -- N.E.2d --, *2016 Ohio App. LEXIS 4938 (Dec. 9, 2016)*.

The probate court had authority to reduce the amount of attorney fees due under a contingency-fee agreement which was incorporated into a settlement agreement where the guardian had not sought prior approval of the fee agreement. *Sup.R. 71* is not unconstitutional. The court was required to review the reasonableness of the fee prior to making a reduction: *In re Thompson, 150 Ohio App. 3d 98, 2002 Ohio 6065, 779 N.E.2d 816, 2002 Ohio App. LEXIS 5969 (2002)*.

Even where a probate court has pre-approved a contingent fee agreement, it retains jurisdiction to consider the reasonableness of the final fee to be paid: *In re Estate of York, 133 Ohio App. 3d 234, 727 N.E.2d 607, 1999 Ohio App. LEXIS 971 (1999)*.

When an attorney representing a client pursuant to a contingent-fee agreement is discharged, the attorney's cause of action for a fee recovery on the basis of quantum meruit arises upon the successful occurrence of the contingency. A trial court called upon to determine the reasonable value of a discharged contingent-fee attorney's services in quantum meruit should consider the totality of the circumstances involved in the situation. The number of hours worked by the attorney before the discharge is only one factor to be considered. Additional relevant considerations include the recovery sought, the skill demanded, the results obtained, and the attorney-client agreement itself: *Reid, Johnson, Downes, Andrachik & Webster v. Lansberry, 68 Ohio St. 3d 570, 1994 Ohio 512, 629 N.E.2d 431, 1994 Ohio LEXIS 638, 56 A.L.R.5th 813 (1994)*.

When an attorney handled collection cases for a credit union on a contingent fee basis, and the credit union discharged the attorney, the attorney's fee recovery was properly limited to the one case handled by the attorney in which the credit union had actually recovered a judgment because that was the only case in which the contingency provided in the parties' contingent fee agreement had occurred, and the attorney was not entitled to recover on a quantum meruit basis for work done on other cases because the contingency of the credit union's actual recovery in those cases had not yet occurred, so the recovery of a fee would be excessive, under Ohio R. Prof. Conduct 1.5(a). Doellman v. Midfirst Credit Union, -- Ohio App. 3d --, *2007 Ohio 5902*, -- N.E. 2d --, *2007 Ohio App. LEXIS 5178 (Nov. 5, 2007)*.

Contingent-fee agreement calling for hourly charges if an attorney is discharged regardless of whether the contingency occurred violates Ohio Code Prof. Conduct 1.5(a), which provides that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. Doellman v. Midfirst Credit Union, -- Ohio App. 3d --, *2007 Ohio 5902*, -- N.E. 2d --, *2007 Ohio App. LEXIS 5178 (Nov. 5, 2007)*.

When an attorney representing a client pursuant to a contingent-fee agreement is discharged, the attorney's basis of quantum meruit arises upon the successful occurrence of the contingency. Doellman v. Midfirst Credit Union, -- Ohio App. 3d --, *2007 Ohio 5902*, -- N.E. 2d --, *2007 Ohio App. LEXIS 5178 (Nov. 5, 2007)*.

Attorney who represents a client on a contingency basis, yet is discharged prior to completing the attorney's service, does not have a cause of action for a fee recovery in quantum meruit until the contingency has occurred, so the discharged attorney is not compensated if the client recovers nothing. Doellman v. Midfirst Credit Union, -- Ohio App. 3d --, *2007 Ohio 5902*, -- N.E. 2d --, *2007 Ohio App. LEXIS 5178 (Nov. 5, 2007)*.

Disbarment

Attorney was permanently disbarred because he violated the Ohio Rules of Professional Conduct by misappropriating client funds for his personal use, revealing confidential information regarding multiple clients when he cashed their workers' compensation checks through another client's convenience store, falsely notarizing clients' names on a settlement agreement, failing to cooperate in disciplinary counsel's investigation, and repeatedly

making false statements of material fact while testifying under oath during the disciplinary hearing. Disciplinary Counsel v. Harter, -- Ohio St. 3d --, 2018- Ohio 3899, -- N.E.2d --, *2018 Ohio LEXIS 2337 (Sept. 27, 2018)*.

Attorney was permanently disbarred because the attorney, inter alia, failed to provide complete and accurate accountings to the trust beneficiaries, disobeyed orders of the chancery and probate courts, paid himself attorney and trustee fees in excess of those authorized by the court while simultaneously misappropriating trust funds and engaging in activities to conceal that misappropriation, and created and submitted fraudulent documentation to conceal the misappropriation. Columbus Bar Ass'n v. Magee, -- Ohio St. 3d --, 2018- Ohio 3268, -- N.E.2d --, *2018 Ohio LEXIS 2051 (Aug. 16, 2018)*.

Attorney was permanently disbarred for by settling a personal-injury case without his clients' authorization and never distributing the funds, failing to competently represent another client in a dental-malpractice case, failing to disclose a conflict of interest, and committing other ethical violations in the process of representing a client in the administration of an estate. In aggravation, he failed to admit he had forged his clients' signatures on a check, and failed to make restitution or pay the judgments against him. Lake Cnty. Bar Ass'n v. Davies, -- Ohio St. 3d --, 2015-Ohio 4904, -- N.E.2d --, *2015 Ohio LEXIS 3173 (Dec. 1, 2015)*.

Attorney was permanently disbarred from the practice of law for continuing to practice law while his license was under suspension, charging a client an excessive fee and never doing what he promised, and not cooperating with the disciplinary investigation. As aggravating factors, it was found that he had been previously disciplined, had engaged in a pattern of misconduct involving multiple offenses, had failed to cooperate in the disciplinary process, and had caused harm to vulnerable victims. *Cleveland Metro. Bar Ass'n v. Brown, 143 Ohio St. 3d 333, 2015-Ohio 2344*, -- N.E.2d --, *2015 Ohio LEXIS 1539 (June 17, 2015)*.

Attorney was disbarred for violating the Rules of Professional Conduct because he demonstrated a lack of cooperation in the disciplinary process, was convicted of theft for misappropriating funds from his employer, knowingly accepted and kept retainers that were intended to be used for pursuing claims that he knew or should have known were frivolous, and took fees from clients and failed to do any work or return any of the money. *Cincinnati Bar Ass'n v. Damon, 140 Ohio St. 3d 383, 2014- Ohio 3765*, -- N.E.2d --, *2014 Ohio LEXIS 2073 (Sept. 3, 2014)*.

Attorney was permanently disbarred for multiple and repeated violations of the Rules of Professional Conduct based on, in five separate client matters, engaging in a pattern of dishonesty, neglect, serious misuse of her IOLTA account, and misappropriation of client funds-mostly to maintain a gambling addiction, and she engaged in deceptive practices during the disciplinary process. She pled guilty to felony counts of forgery and theft, stemming from some of the same misconduct charged in the disciplinary complaint. *Stark County Bar Ass'n v. Williams, 137 Ohio St. 3d 112, 2013- Ohio 4006*, -- N.E.2d --, *2013 Ohio LEXIS 2149 (Sept. 24, 2013)*.

Attorney was permanently disbarred, and ordered to pay restitution, because he accepted thousands of dollars from the two affected clients, failed to pursue their claims for postconviction relief while they sat in prison and deceived them by representing that he was working to secure the reductions of their criminal sentences. After seven years, he had filed only a seven-page application to reopen one client's appeal and had filed nothing in the other client's case. *Disciplinary Counsel v. Tomson, 136 Ohio St. 3d 71, 2013- Ohio 2154, 990 N.E.2d 579, 2013 Ohio LEXIS 1365 (June 4, 2013)*.

Attorney was disbarred where he violated Ohio R. Prof. Conduct 1.1, Ohio R. Prof. Conduct 1.3, Ohio R. Prof. Conduct 1.5, Ohio R. Prof. Conduct 1.15(d) and Ohio R. Prof. Conduct 3.5(a)(6) because there were several aggravating factors, including a prior serious disciplinary offense. Disbarment was the appropriate sanction because of the prior serious disciplinary offense and because the attorney took his clients' money, failed to render services, failed to return clients' money, and he failed to cooperate in the investigation. *Cincinnati Bar Ass'n v. Hennekes, 135 Ohio St. 3d 106, 2012 Ohio 5689*, -- N.E.2d --, *2012 Ohio LEXIS 3117 (Dec. 6, 2012)*.

Attorney was disbarred after considering her conduct, the profusion of aggravating factors, the absence of mitigating factors, and the case law as her neglect of client matters, acceptance of client funds without performing

the work, attempts to practice law while her license was suspended, failure to inform clients of her suspension, dishonesty, incompetence, and failure to cooperate in the disciplinary process in violation of Ohio R. Prof. Conduct 1.1, 1.3, 1.4(a)(3), 1.5(a), 1.16(d), 1.6(a), 5.5(a), 8.1(b), 8.4(c) and 8.4(h) and Ohio Sup. Ct. R. Gov't Bar V(4)(G) demonstrated that she was not fit to practice law. *Columbus Bar Ass'n v. Stubbs, 134 Ohio St. 3d 162, 2012 Ohio 5481, 980 N.E.2d 1012, 2012 Ohio LEXIS 2910 (Nov. 29, 2012)*.

Division of fees

Probate court did not abuse its discretion in awarding attorney fees in the amount of $100,000 and directing that they should be apportioned $25,000 to the new attorney and $75,000 to the former attorney. The new attorney failed to demonstrate how the probate court erred, especially since he failed to offer any evidence beyond his original contingency contract to support his claim for attorney fees, and the probate court's ultimate decision regarding the award of attorney fees was supported by the record and the probate court properly considered the totality of the circumstances involved before entering judgment. In re Stine, -- Ohio App. 3d --, *2006 Ohio 6687*, -- N.E. 2d --, *2006 Ohio App. LEXIS 6567 (Dec. 18, 2006)*.

Attorneys who share office and secretarial expenses, but who do not practice law together are not considered to be in the same firm for purposes of division of fees under *DR 2-107(A): Duff v. Gary, 87 Ohio App. 3d 558, 622 N.E.2d 727, 1993 Ohio App. LEXIS 2433 (1993)*.

While pure referral contracts are prohibited by RC § 4705.08 and DR 2-107(A), co-counsel agreements specifically are not. An agreement is a "pure referral contract" if it provides that an attorney will receive a fee for merely forwarding a client to another attorney while doing nothing toward handling the case: *Waterman v. Kitrick, 60 Ohio App. 3d 7, 572 N.E.2d 250, 1990 Ohio App. LEXIS 467 (1990)*.

Division of fees among counsel must be made in proportion to the services performed and responsibility assumed by each: *Dragelevich v. Kohn, Milstein, Cohen & Hausfeld, 755 F. Supp. 189, 1990 U.S. Dist. LEXIS 18213 (N.D. Ohio 1990)*.

Where one attorney performs services for the client and refers the client to another attorney who also performs services on the case, fee splitting would be permitted to the extent allowable under *DR 2-107: Waterman v. Kitrick, 60 Ohio App. 3d 7, 572 N.E.2d 250, 1990 Ohio App. LEXIS 467 (1990)*.

An attorney who employs another attorney to assist him in the representation of a client has a duty to fully disclose to his client the fee agreement with the employed attorney. DR 2-107(A)(1). The duty of full disclosure requires that the amount to be paid and manner of payment, as well as other relevant fee agreements, be disclosed to the client by his attorney: *King v. Housel, 52 Ohio St. 3d 228, 556 N.E.2d 501, 1990 Ohio LEXIS 295 (1990)*.

A change in the ethical rules concerning fee splitting arrangements between lawyers should not be judicially mandated, because enforcement of any contract which violates established policy unnecessarily and inappropriately, undermines a court's role: *Macurdy v. Sikov and Love, P.A., 701 F. Supp. 134, 1988 U.S. Dist. LEXIS 14579 (N.D. Ohio 1988)*.

Excessive fee

Attorney violated the professional conduct rule that prohibited charging a client an excessive fee when he charged for the initial telephone conference after representing to the client that there was no charge, he charged an excessive amount for an email that only memorialized his fee agreement and conveyed an offer for future representation, and charged an unreasonable and clearly excessive interest rate on any unpaid balance. Disciplinary Counsel v. Shimko, -- Ohio St. 3d --, 2019- Ohio 2881, -- N.E.2d --, *2019 Ohio LEXIS 1452 (July 18, 2019)*.

Attorney was suspended for two years and ordered to pay restitution to his former law firm because there was no merit to his claim that he had been denied due process in the disciplinary proceedings and he used unethical billing practices and charged excessive fees in five separate cases in violation of the former and current Rules of Professional Conduct where approximately 150 of the hours that he billed in the five cases were fraudulent, he billed multiple clients for the same work on the same day, billed clients for documents that were never filed with the courts, billed a client for deposition preparation more than a month after another partner had conducted the depositions, and took credit for work performed by another attorney. Disciplinary Counsel v. Smith, -- Ohio St. 3d --, 2017- Ohio 9087, -- N.E.2d --, *2017 Ohio LEXIS 2606 (Dec. 19, 2017)*.

Suspending an attorney for one year with six months stayed on conditions was an appropriate sanction for the attorney's violation of various professional rules because the attorney deposited an incarcerated client's $ 2,500 fee into his operating account rather than his trust account; however, the attorney did not charge an excessive fee because the fee included, inter alia, the attorney's visits to the client in jail and filing the motion for judicial release. *Dayton Bar Ass'n v. Scaccia, 141 Ohio St. 3d 35, 2014-Ohio 4278*, -- N.E.2d --, *2014 Ohio LEXIS 2505 (Oct. 2, 2014)*.

Trial court did not abuse its discretion when it reduced the requested attorney fees to an attorney who also served as trustee of a special needs trust because the time that the attorney billed for his services was excessive, such as having billed for hand delivering documents to court. Bringman v. Reed (In re Perkins), -- Ohio App. 3d --, 2014-Ohio 2414, -- N.E.2d --, *2014 Ohio App. LEXIS 2391 (June 4, 2014)*.

Trial court's application of the Bittner factors was not an abuse of discretion where $100 per hour in attorney's fees were awarded, although the consumer requested $200 per hour, even though there was evidence that the customary hourly fee was $175 to $250, where the trial court made a detailed application of the Bittner factors and relied on the excessive fee factors to reduce the hourly rate and the hours expended to 35 hours; there was evidence that supported the findings. Scipio v. Used Car Connection, Inc., -- Ohio App. 3d --, 2013- Ohio 4325, -- N.E.2d --, *2013 Ohio App. LEXIS 4536 (Sept. 24, 2013)*.

Trial court considered the consumer's receipt of free legal aid in analyzing the excessive fee factors only when it found that the nature and length of any professional relationship with the client was of minimal consideration; the trial court did automatically reduce the fee because the consumer received free legal aid. Scipio v. Used Car Connection, Inc., -- Ohio App. 3d --, 2013- Ohio 4325, -- N.E.2d --, *2013 Ohio App. LEXIS 4536 (Sept. 24, 2013)*.

It was not an abuse of discretion to consider the consumer's and her counsel's delay in reducing an award of attorney's fees. Scipio v. Used Car Connection, Inc., -- Ohio App. 3d --, 2013- Ohio 4325, -- N.E.2d --, *2013 Ohio App. LEXIS 4536 (Sept. 24, 2013)*.

Attorney violated Ohio R. Prof. Conduct 1.5(d)(3) by charging a flat fee without also advising the client that he may be entitled to a refund of part of the fee if the attorney did not complete the representation, Ohio R. Prof. Conduct 1.5(a) by charging an illegal or clearly excessive fee, Ohio R. Prof. Conduct 1.16(e) by not refunding any unearned fee upon his withdrawal from employment, and Ohio R. Prof. Conduct 8.4(h) by engaging in conduct that adversely reflected on his fitness to practice law. A six-month suspension was the appropriate sanction given that the attorney had not accepted responsibility in the matter, he had blamed his clients and others, he had been condescending to disciplinary counsel, he only grudgingly cooperated with the disciplinary process, and his testimony was laced with lies and evasiveness. *Disciplinary Counsel v. Summers, 131 Ohio St. 3d 467, 2012 Ohio 1144, 967 N.E.2d 183, 2012 Ohio LEXIS 701 (Mar. 22, 2012)*.

Attorney who charged a client a clearly excessive fee committed a violation of Ohio R. Prof. Conduct 1.5(a), but as he had no prior disciplinary record and he cooperated in the disciplinary process, a six-month suspension from the practice of law, all stayed on conditions, was deemed an appropriate sanction. *Akron Bar Ass'n v. Carr, 131 Ohio St. 3d 210, 2012 Ohio 610, 963 N.E.2d 802, 2012 Ohio LEXIS 406 (Feb. 22, 2012)*.

In light of the attorney's successful completion of inpatient treatment for his drug addiction, his more than two years of sustained sobriety, and his payment of restitution to each of the clients harmed by his misconduct, he was

suspended from the practice of law for two years (with 18 months stayed on conditions) for his more than 80 violations of the Ohio Rules of Professional Conduct for, among other things, accepting attorney fees to represent multiple clients in bankruptcy proceedings and then failing to perform the work and engaging in dishonesty, deceit, and misrepresentation by seeking leave of court to pay filing fees in installments when he had already collected the full filing fee from his clients. Counsel v. Hoppel, -- Ohio St. 3d --, *2011 Ohio 2672*, -- N.E. 2d --, *2011 Ohio LEXIS 1410 (June 8, 2011)*.

Attorney, who had been previously disciplined, was permanently disbarred from the practice of law in Ohio because the attorney engaged in a pattern of professional misconduct over a period of years and involving multiple clients by engaging in multiple acts of dishonesty, charging excessive fees, handling clients' legal matters without adequate preparation, neglecting multiple client matters, intentionally damaging clients, and entering into business relationships with clients without making the requisite disclosures. The attorney also failed to hold client money separate from the attorney's own money, failed to disclose that the attorney did not carry malpractice insurance, and falsely represented that the attorney was part of a law firm, when in fact, the attorney was a sole practitioner. Disciplinary Counsel v. Character, -- Ohio St. 3d --, *2011 Ohio 2902*, -- N.E. 2d --, *2011 Ohio LEXIS 1643 (June 23, 2011)*.

Attorney was publicly reprimanded, because the attorney's employment agreement with associates leaving the attorney's firm violated Ohio R. Prof. Conduct 1.5 and 5.6, when the employment agreement stated that upon termination the associate would no longer continue to represent or attempt to represent clients of the attorney's firm whose claims had been assigned to him for representation, and the employment agreement further provided that if a client decided to leave the attorney's firm and thereafter be represented by the associate, the associate would pay the attorney's firm 95-percent of any attorney's fees generated by that case, based upon a 33.3-percent contingent fee agreement. Cincinnati Bar Ass'n v. Hackett, -- Ohio St. 3d --, *2011 Ohio 3096*, -- N.E. 2d --, *2011 Ohio LEXIS 1671 (June 30, 2011)*.

Trial court's enhancement of an award of attorney fees to a boat purchaser pursuant to RC § 1345.09(F) was an abuse of discretion, as the trial court gave great weight to the fact that the purchaser's counsel took a "risk" by entering into a contingency fee agreement, which "risk" was not supported by the record. The trial court's determination to double the amount that was deemed a risk for purposes of calculating the total attorney fee award was not reasonable under Ohio Code Prof. Resp. DR 2-106(B)(8). Borror v. Marinemax of Ohio, Inc., -- Ohio App. 3d --, *2007 Ohio 562*, -- N.E. 2d --, *2007 Ohio App. LEXIS 525 (Feb. 9, 2007)*.

Where an attorney neglected legal matters, failed to carry out a contract of employment, and charged an illegal or clearly excessive fee in violation of Ohio Code Prof. Resp. DR 6-101(A)(3), 7-101(A)(2), and 2-106(A), the attorney was suspended for one year, with six months conditionally stayed. *Office of Disciplinary Counsel v. Ames, 99 Ohio St. 3d 181, 2003 Ohio 2904, 790 N.E. 2d 301, 2003 Ohio LEXIS 1651 (June 18, 2003)*.

Attorney was indefinitely suspended from the practice of law for because he misappropriated his client's funds by retaining the proceeds from the sale of the client's land, entered into a business transaction with the client without meeting specific conditions, and failed to comply with the client's requests for information or keep her informed about the status of the matter. He had a dishonest motive and engaged in multiple offenses, the client suffered significant financial harm as a result of the misconduct and did not receive her portion of the sale proceeds until six years after the sale, and the attorney did not express remorse or accept responsibility for his actions until after his criminal conviction. Disciplinary Counsel v. Bucio, -- Ohio St. 3d --, 2017- Ohio 8709, -- N.E.2d --, *2017 Ohio LEXIS 2372 (Nov. 29, 2017)*.

Fee agreements generally

In addition to the written fee requirement of *11 U.S.C.S. § 528*, the Ohio Rules of Professional Conduct indicate a strong preference for the existence of a written fee arrangement between attorneys and their clients in bankruptcy cases; Ohio R. Prof. Conduct 1.5, which is made applicable to proceedings in bankruptcy courts by Bankr. N.D. Ohio R. 2090-2 and N.D. Ohio Civ. R. 83.7, provides that the nature and scope of an attorney's representation and

the basis or rate of the fee and expenses for which a client will be responsible shall be communicated to the client, preferably in writing, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. *In re Payton, -- Bankr. --, 2014 Bankr. LEXIS 4701 (Nov. 12, 2014)*.

Attorney was publicly reprimanded for violating Ohio R. Prof. Conduct 1.5(c)(1), (d)(3) and 1.15(a), (d) because the attorney charged a non-refundable fee without advising the client that the client might be entitled to a refund, failed to memorialize a contingent-fee agreement in writing, failed to hold the client's funds in an interest-bearing client trust account, and failed to promptly deliver the unearned fees and the client's file upon the termination of his representation. *Cincinnati Bar Ass'n v. Seibel, 132 Ohio St. 3d 411, 2012 Ohio 3234, 972 N.E.2d 594, 2012 Ohio LEXIS 1798 (July 19, 2012)*.

Trial court erred in refusing to let an attorney testify in narrative fashion to the existence of a fee agreement because the attorney did not violate Ohio R. Prof. Conduct 1.5(b) by failing to produce a signed client contract, and the attorney's proposed testimony regarding the attorney's fees for representing a client would have fallen within an exception in Ohio R. Prof. Conduct 3.7(a)(2). Michael P. Harvey Co., L.P.A. v. Ravida, -- Ohio App. 3d --, *2012 Ohio 2776, 972 N.E. 2d 1087, 2012 Ohio App. LEXIS 2433 (June 21, 2012)*.

A fee agreement in an employment discrimination case providing for a nonrefundable retainer and a contingent fee violated *DR 2-106(A): Columbus Bar Ass'n v. Klos, 81 Ohio St. 3d 486, 1998 Ohio 610, 692 N.E.2d 565, 1998 Ohio LEXIS 1065 (1998)*.

A lawyer's failure to fully disclose a fee agreement to a client as required by DR 2-107(A)(1) may not be used by the noncomplying attorney to avoid enforcement by the other attorney of an otherwise valid fee agreement: *King v. Housel, 52 Ohio St. 3d 228, 556 N.E.2d 501, 1990 Ohio LEXIS 295 (1990)*.

Fee amount

Ohio Motor Vehicle Dealers Board did not err in awarding less in attorney fees, expert fees, and costs than requested, as the hearing examiner appeared to have undertaken a thorough review of the evidence and although she did not conduct a factor-by-factor analysis under Ohio R. Prof. Conduct 1.5, her general analysis pointed to several specific factors. Sims v. Nissan N. Am., Inc., -- Ohio App. 3d --, 2015-Ohio 5367, -- N.E.2d --, *2015 Ohio App. LEXIS 5183 (Dec. 22, 2015)*.

Attorney violated Ohio R. Prof. Conduct 1.5(a) and Ohio Code Prof. Resp. DR 2-106(A) by charging excessive fees to a client that were replete with charges at her attorney rate for nonlegal services such as arranging the client's doctors' appointments, handling mundane tasks related to his cable-television and magazine subscriptions, researching local feline clubs, and arranging for the replacement of his watch battery. Her claim that Ohio R. Prof. Conduct 1.2 , 1.4, and 5.7 authorized her conduct because the client demanded those services from her failed, as nothing in those rules permitted her to violate her ethical obligations in pursuing her clients' objectives or to charge attorney rates for nonlegal services at the behest of a client. *Dayton Bar Ass'n v. Parisi, 131 Ohio St. 3d 345, 2012 Ohio 879, 965 N.E.2d 268, 2012 Ohio LEXIS 658 (Mar. 8, 2012)*.

Although a trial court properly determined that automobile owners were entitled to an award of attorney fees under Ohio Rev. Code Ann. § 1345.09(F)(2) upon judgment being entered on their claims against an automobile restorer under the Ohio Consumer Sales Practices Act, Ohio Rev. Code Ann. § 1345.01 et seq., the trial court erred in awarding the fees incurred on more than claims under the Act, as other claims initially asserted had been dismissed by the owners prior to the trial. The trial court failed to indicate which factors under Ohio Code Prof. Resp. DR 2-106(B) it considered in making its award, which was necessary for proper appellate review. Grieselding v. Krischak, -- Ohio App. 3d --, *2007 Ohio 2668*, -- N.E. 2d --, *2007 Ohio App. LEXIS 2489 (June 1, 2007)*.

Fee disputes between lawyers

In a fee dispute, the trial court did not abuse its discretion in finding that 95 percent of the initial settlement offer was attributable to the prior attorney's work on the case because the court considered evidence concerning, inter alia, the timing of both counsel's involvement in the case relative to settlement, the nature of the work done, and the settlement negotiations; the remainder of the settlement offer was distributed evenly between the prior attorney and the current attorney. Dickson & Campbell L.L.C. v. Marshall, -- Ohio App. 3d --, 2018- Ohio 2233, -- N.E.2d --, *2018 Ohio App. LEXIS 2389 (June 7, 2018)*.

In a fee dispute, the trial court did not abuse its discretion in finding that 95 percent of the initial settlement offer was attributable to the prior attorney's work on the case because the court considered evidence concerning, inter alia, the timing of both counsel's involvement in the case relative to settlement, the nature of the work done, and the settlement negotiations; the remainder of the settlement offer was distributed evenly between the prior attorney and the current attorney. Dickson & Campbell L.L.C. v. Marshall, -- Ohio App. 3d --, 2018- Ohio 2233, -- N.E.2d --, *2018 Ohio App. LEXIS 2389 (June 7, 2018)*.

Ohio Code Prof. Resp. DR 2-107(B), providing for the arbitration of fee disputes between lawyers, does not create courts or any other tribunal as the "judicial" power that is being exercised under DR 2-107(B) is administrative, not adjudicative, and the Rule does not create any adjudicative body but instead requires officers of the court to arbitrate their fee disputes so an attorney's obligation as a practicing Ohio lawyer to abide by the Ohio Code of Professional Responsibility gives mediators or arbitrators the authority to resolve fee disputes. *Shimko v. Lobe, 103 Ohio St. 3d 59, 2004 Ohio 4202, 813 N.E. 2d 669, 2004 Ohio LEXIS 1944 (Aug. 25, 2004)*.

Arbitration award rendered pursuant to Ohio Code Prof. Resp. DR 2-107(B), regarding a fee dispute between lawyers, is final, binding upon the parties, and unappealable so the burden of the Rule withstanding constitutional scrutiny under *Ohio Const. art. I, § 5*, regarding the right to a jury trial, falls upon the Rule itself, as adopted by the Ohio Supreme Court, rather than being foisted upon the implementing plans or bylaws of a particular bar association. *Shimko v. Lobe, 103 Ohio St. 3d 59, 2004 Ohio 4202, 813 N.E. 2d 669, 2004 Ohio LEXIS 1944 (Aug. 25, 2004)*.

Considering that Ohio Code Prof. Resp. DR 2-107(B) explicitly requires division of fees in accordance with mediation or arbitration, that the Ohio Disciplinary Rules, unlike the Ohio Ethical Considerations, are mandatory in character, and that the salient purpose of the Rule is to prevent litigation of disputes between lawyers over the division of fees, it is clear that DR 2-107(B) cannot and was not intended to be interpreted otherwise than as providing for binding arbitration of a fee dispute between lawyers. *Shimko v. Lobe, 103 Ohio St. 3d 59, 2004 Ohio 4202, 813 N.E. 2d 669, 2004 Ohio LEXIS 1944 (Aug. 25, 2004)*.

Ohio Code Prof. Resp. 2-107(B), requiring binding arbitration of fee disputes between lawyers, did not violate a lawyer's right to a jury trial under *Ohio Const. art. I, § 5* because (1) that right did not exist in such disputes and (2) the Ohio Supreme Court had the inherent power to create or deny a lawyer's right to split a fee with another lawyer, so it could provide an enforcement mechanism that did not involve a jury trial. *Shimko v. Lobe, 103 Ohio St. 3d 59, 2004 Ohio 4202, 813 N.E. 2d 669, 2004 Ohio LEXIS 1944 (Aug. 25, 2004)*.

Because nothing in the record suggested that the case was anything other than a fee dispute governed by Ohio Code Prof. Resp. DR 1.5(f) and its predecessor Ohio Code Prof. Resp. DR 2-107(B), requiring mandatory arbitration, and the earlier attorney's argument that the fee dispute matter should be bifurcated for an initial adjudication of his right to the fees followed by arbitration by the bar association of the proper division had no support from Shimko or any other case law authority, the attorney's complaint was properly dismissed. Bauer v. White, -- Ohio App. 3d --, *2012 Ohio 1135*, -- N.E. 2d --, *2012 Ohio App. LEXIS 1002 (Mar. 19, 2012)*.

Flat fee

The attorney was suspended from the practice of law for two years, with 18 months stayed on conditions, for failing to comply with the rules regulating flat fees and client trust accounts and failing to cooperate with the disciplinary investigation. He did not comply with the conditions in the flat fee rule because he "told" the client at the

time the client discharged him, two weeks after he collected the flat fee, that he would refund the unearned portion of the $10,000, he had received prior discipline for the same misconduct, and he did not make restitution. Lorain Cty. Bar Ass'n v. Nelson, -- Ohio St. 3d --, 2017- Ohio 8856, -- N.E.2d --, *2017 Ohio LEXIS 2428 (Dec. 7, 2017)*.

Frivolous conduct

In a dispute between neighbors involving nuisance allegations, the amount of attorney fees awarded to appellees was within the trial court's sound discretion, based on the reasonable hourly rate, the lodestar amount, and consideration of the factors. Nithiananthan v. Toirac, -- Ohio App. 3d --, 2015-Ohio 1416, -- N.E.2d --, *2015 Ohio App. LEXIS 1381 (Apr. 13, 2015)*.

Trial court did not err by awarding $ 8950 in attorney fees under Ohio Rev. Code Ann. § 2323.51 because an appellate court had already determined that the conduct at issue was frivolous and that appellees had been adversely affected by it; moreover, the award was not unreasonable based on 44.75 hours worked at a rate of $ 200 per hour. However, the evidence did not show that 99.667 hours were spent defending a frivolous counterclaim; the trial court was not satisfied with the apportionment of time as presented by an expert, the time sheets, and the affidavits. Wrinch v. Miller, -- Ohio App. 3d --, *2011 Ohio 5891*, -- N.E. 2d --, *2011 Ohio App. LEXIS 4821 (Nov. 16, 2011)*.

Good will as partnership asset

As a matter of law, the ethical standard within DR 2-107(B) of the Code of Professional Responsibility does not preclude a finding that good will exists in a law partnership upon dissolution of that association: *Spayd v. Turner, Granzow & Hollenkamp, 19 Ohio St. 3d 55, 482 N.E.2d 1232, 19 Ohio B. 54, 1985 Ohio LEXIS 474 (1985)*.

Lodestar

--Enhancement

Because the lodestar reflected a reasonable fee based on the prevailing market rate for the services rendered by appellees' attorneys, the appellate court erred by affirming the trial court's enhancement to the lodestar based on appellants' conduct. With the exception of "overall success," all of the factors considered by the trial court were subsumed within the rates charged and the number of hours billed. Phoenix Lighting Grp., L.L.C. v. Genlyte Thomas Grp., L.L.C., -- Ohio St. 3d --, 2020- Ohio 1056, -- N.E.2d --, *2020 Ohio LEXIS 730 (Mar. 25, 2020)*.

Lost opportunity fee

Attorney's nonrefundable "lost opportunity fee" violated DR 2-106. Such retainers are appropriate only in very limited circumstances, such as an engagement to remain available and forgo employment by a competitor of the client: *Columbus Bar Ass'n v. Halliburton-Cohen, 106 Ohio St. 3d 98, 2005 Ohio 3956, 832 N.E.2d 42, 2005 Ohio LEXIS 1814 (2005)*.

Malpractice

Where plaintiffs, a business and its owner, alleged that five attorneys committed legal malpractice by representing both the business owner and the owner's brother in several transactions where the brothers had adverse interests, the legal malpractice claim failed because there was no evidence of an express or implied attorney-client relationship between plaintiffs and the attorneys. Hustler Cincinnati, Inc. v. Cambria, -- F.3d --, *2015 U.S. App. LEXIS 14538 (Aug. 14, 2015)*.

Public reprimand

Attorney was publicly reprimanded for violating Ohio R. Prof. Conduct 1.5(d)(3), 1.4, and 1.15(a), (c), in connection with the attorney's representation of a client in a probate matter, as the attorney did not inform the client that she considered the fee earned upon receipt and deposited money received into her operating account, and let her professional liability insurance coverage lapse and did not inform the client. Lorain Cty. Bar Ass'n v. Vagotis, -- Ohio St. 3d --, 2021- Ohio 806, -- N.E.2d --, *2021 Ohio LEXIS 538 (Mar. 18, 2021)*.

Attorney received a public reprimand for committing multiple ethical violations in attempting to collect fees from the settlement of a personal-injury case that he had referred to another lawyer. There were no aggravating factors and, as mitigating factors, the attorney did not have a prior disciplinary record, made full and free disclosure and demonstrated a cooperative attitude toward the disciplinary proceedings, presented evidence of his good character and reputation apart from the charged misconduct, and acknowledged the wrongfulness of his actions. *Mahoning Cnty. Bar Ass'n v. Bauer, 143 Ohio St. 3d 519, 2015-Ohio 3653*, -- N.E.2d --, *2015 Ohio LEXIS 2350 (Sept. 10, 2015)*.

Attorney violated the Rules of Professional Conduct by not acting with reasonable diligence in representing one client and not depositing the payment from another client into a client fund, as stated in the parties' consent-to-discipline agreement, and the conduct warranted a public reprimand. Mitigating factors included the absence of a prior disciplinary record, the absence of a dishonest or selfish motive, the attorney's full and free disclosure to the Board of Professional Conduct and his cooperative attitude toward the disciplinary proceedings. *Akron Bar Ass'n v. Harsey, 142 Ohio St. 3d 97, 2015-Ohio 965*, -- N.E.2d --, *2015 Ohio LEXIS 607 (Mar. 17, 2015)*.

Attorney received a public reprimand for violations of Ohio R. Prof. Conduct 1.5(d)(3), 1.5(e), and 7.3(c)(3), because mitigating factors were found, including the attorney's absence of a prior disciplinary record and his numerous voluntary refunds to clients, and aggravating factors were found, including that the attorney engaged in a pattern of misconduct and committed multiple offenses. Geauga County Bar Ass'n v. Snyder, -- Ohio St. 3d --, 2013- Ohio 3688, -- N.E.2d --, *2013 Ohio LEXIS 1929 (Sept. 4, 2013)*.

Public reprimanded of an attorney was appropriate because the attorney violated Ohio R. Prof. Conduct 1.5(a), by collecting an excessive legal fee through a contingent-fee agreement to collect and distribute life insurance proceeds on behalf of a widow, and violated Ohio R. Prof. Conduct 1.5(c)(1), by failing to reduce the attorney's contingent-fee agreement to writing. *Columbus Bar Ass'n v. Adusei, 136 Ohio St. 3d 155, 2013- Ohio 3125, 991 N.E.2d 1142, 2013 Ohio LEXIS 1710 (July 23, 2013)*.

Ohio Board of Commissioners on Grievances and Discipline's recommendation that an attorney be publicly reprimanded for violating Ohio R. Prof. Conduct 1.5(a) in five matters was adopted as the facts in mitigation under BCGD Proc.Reg. 10(B)(2)(a), 10(B)(2)(c), and 10(B)(2)(d) included that the attorney had no prior disciplinary record, was cooperative during investigation, made full restitution and made significant changes to her law practice after she was notified of possible professional misconduct; the only aggravating factor was that the attorney engaged in multiple acts of misconduct under Reg. 10(B)(1)(d). Geauga County Bar Ass'n v. Martorana, -- Ohio St. 3d --, *2013 Ohio 686*, -- N.E.2d --, *2013 Ohio LEXIS 1102 (Apr. 30, 2013)*.

Reasonable fee amount

Trial court did not abuse its discretion when it determined that the amount of attorney fees sought was reasonable because the attorney been practicing law for over 30 years, was a former president of the local bar association, and the attorney's $275 hourly rate was reasonable, and the client's divorce was very complex, extremely adversarial, and involved significant personal and corporate assets. Marshall & Melhorn, LLC v. Sullinger, -- Ohio App. 3d --, 2020- Ohio 1240, -- N.E.2d --, *2020 Ohio App. LEXIS 1165 (Mar. 31, 2020)*.

Trial court erred in finding in favor of a law firm on its breach of contract action for unpaid legal fees because the firm failed to present evidence of the reasonableness of its time spent and hourly rates charged on the client's case, and the court erred by improperly shifting the burden of proof to the client and not considering whether the firm had demonstrated the reasonableness of its fees. Caparella-Kraemer & Assoc. v. Grayson, -- Ohio App. 3d --, 2020-Ohio 3498, -- N.E.2d --, *2020 Ohio App. LEXIS 2438 (June 29, 2020)*.

Client was entitled to an award of summary judgment when the client's former attorney brought suit to collect attorney's fees because, although the attorney testified about the reasonableness of the attorney's fees, the attorney's failure to present independent and more-than-conclusory expert evidence about the reasonableness of the fee which the attorney charged the client made it impossible for the attorney's claim to survive the client's summary judgment motion. Eichenberger v. Chilton-Clark, -- Ohio App. 3d --, 2019- Ohio 3343, -- N.E.2d --, *2019 Ohio App. LEXIS 3420 (Aug. 20, 2019)*.

Trial court abused its discretion by awarding attorney fees to the wife because the trial court failed to make a finding of the reasonableness of the award of attorney fees by determining the reasonableness of the time spent on the matter and the reasonableness of the hourly rate. Kolar v. Kolar, -- Ohio App. 3d --, 2018- Ohio 2559, -- N.E.2d --, *2018 Ohio App. LEXIS 2846 (June 29, 2018)*.

Probate court properly determined the reasonableness of attorney fees awarded to a law firm that represented a putative ward, who was deemed incompetent and had a guardian appointed for him, as it properly considered the ethical guidelines, the facts and circumstances of the case, and applied the Allen test. In re Guardianship of Schwarzbach, -- Ohio App. 3d --, 2018- Ohio 1712, -- N.E.2d --, *2018 Ohio App. LEXIS 1890 (May 3, 2018)*.

Because there was no testimony regarding an attorney's communication with clients or the reasonableness of his fees, the supreme court accpeted the recommendation of the Board of Professional Conduct that it dismiss alleged violations of subsection (a). *Trumbull Cnty. Bar Ass'n v. Roland, 147 Ohio St. 3d 274, 2016- Ohio 5579*, -- N.E.2d --, *2016 Ohio LEXIS 2125 (Aug. 31, 2016)*.

Because there was no testimony regarding an attorney's communication with clients or the reasonableness of his fees, the supreme court accpeted the recommendation of the Board of Professional Conduct that it dismiss alleged violations of subsection (a). *Trumbull Cnty. Bar Ass'n v. Roland, 147 Ohio St. 3d 274, 2016- Ohio 5579*, -- N.E.2d --, *2016 Ohio LEXIS 2125 (Aug. 31, 2016)*.

In a law firm's suit to recover unpaid legal fees from its former client, the trial court did not abuse its discretion in finding that the firm's attorney fees were reasonable in view of the nature of the dispute, the lengthy litigation, and the fact that, due to the firm's efforts, the client's age discrimination claim survived summary judgment and his retaliation claim remained pending until the cases were voluntarily dismissed. Hadden Co., L.P.A. v. Zweier, -- Ohio App. 3d --, 2016- Ohio 2733, -- N.E.2d --, *2016 Ohio App. LEXIS 1598 (Apr. 28, 2016)*.

Award of attorney's fees was appropriate because an expert witness testified as to the detailed invoices from all the law firms which represented a lending institution that prevailed in the action, a summary sheet tallying the fees and expenses for all the firms, hourly rates, and biographical information for attorneys, as well as to the complexity of the matters involved, the services provided, and the potential liability of the institution in verdicts. However, a downward revision was appropriate for matters that were redacted from invoices. Home S&L Co. v. Evergreen Land Dev., -- Ohio App. 3d --, 2016- Ohio 1248, -- N.E.2d --, *2016 Ohio App. LEXIS 1127 (Mar. 24, 2016)*.

Trial court did not conduct a hearing on attorney fees, provided no further explanation regarding its award of fees, the statutory factors, or the lodestar amount; moreover, the trial court granted a portion of the attorney fees requested by the buyer without providing explanation as to the reduction of the fees, and consequently, the trial court erred in failing to elucidate its basis for granting the buyer's attorney fees in the amount of $25,876.75. Levy v. Seiber, -- Ohio App. 3d --, 2016- Ohio 68, -- N.E.2d --, *2016 Ohio App. LEXIS 58 (Jan. 11, 2016)*.

Trial court properly affirmed a magistrate's award of attorney fees to a mortgagee in a foreclosure action, as it was reasonable based on a reasonable hourly rate, the hours billed were decreased to reflect only time specific to the

foreclosure and to remove vague billing, and the reasonableness fee factors were considered. First Fin. Bank, N.A. v. Lilley, -- Ohio App. 3d --, 2016- Ohio 76, -- N.E.2d --, *2016 Ohio App. LEXIS 61 (Jan. 11, 2016)*.

Trial court did not abuse its discretion by determining that the lodestar amount of $24,172.26 in attorney fees under the frivolous lawsuit statute was reasonable and necessary. Counsel for the business achieved an excellent result, the complaint provided sufficient notice to the village, and discovery was not limited by the allegations in the complaint the business had more at stake than $2,500, having felt harassed by the village. Vill. of New Leb. v. Krahn, -- Ohio App. 3d --, 2015-Ohio 4791, -- N.E.2d --, *2015 Ohio App. LEXIS 4680 (Nov. 20, 2015)*.

Trial court complied with the two-step process regarding the reasonableness of attorney fees and did not abuse its discretion in awarding attorney fees to the buying dentist in the amount of $95,988. It found the number of hours reasonably spent on the case was the number proposed minus out-of-pocket expenses because, while the contract for sale of the dental practice provided for the recovery of attorney fees, recovery of out-of-pocket expenses was not included. Ginn v. Stonecreek Dental Care, -- Ohio App. 3d --, 2015-Ohio 4452, -- N.E.2d --, *2015 Ohio App. LEXIS 4339 (Oct. 26, 2015)*.

Trial court did not abuse its discretion in awarding attorney fees to a rape victim in her civil action against the perpetrator because it determined a reasonable fee amount based upon consideration of the various factors, including those enumerated in the professional conduct rules. Burton v. Dutiel, -- Ohio App. 3d --, 2015-Ohio 4134, -- N.E.2d --, *2015 Ohio App. LEXIS 3986 (Oct. 2, 2015)*.

Trial court did not abuse its discretion in reducing the magistrate's attorney fees award to a husband for defending his wife's frivolous petition for a domestic violence civil protection order, as the petition was not an uncommon form of litigation to defend, counsel's hourly rate was higher than the fee charged for similar services in the locality, and there was no indication that counsel was under time limitations or precluded from engaging in other work while representing the husband. Lozada v. Lozada, -- Ohio App. 3d --, 2014-Ohio 5700, -- N.E.2d --, *2014 Ohio App. LEXIS 5523 (Dec. 29, 2014)*.

Trial court did not abuse its discretion in determining the attorney fees award because the insured submitted evidence to support the hours worked and a reasonable hourly rate. An attorney whose primary area of practice was collision repair-related issues and insurance and consumer protection, testified that the particular section of the Ohio Consumer Sales Practice Act was complicated area of law that only a few attorneys in the state handle. Bigelow v. Am. Family INS., -- Ohio App. 3d --, 2014- Ohio 2945, -- N.E.2d --, *2014 Ohio App. LEXIS 2876 (June 30, 2014)*.

Assignee's attorney's fees award was proper as: (1) the assignee's attorney properly filed an affidavit in support of his own fee request; (2) the hourly rates of the assignee's attorney, who was a partner in a major, multi-city commercial law firm, and the mortgagors' attorney, who was a solo practitioner with 11 years less legal experience than the assignee's attorney, was attributed to their experience; (3) the mortgagors' attorney's hours worked and billing rate was limited by the mortgagors' ability to pay; (4) the trial court relied on a federal bankruptcy decision in addressing the prevailing hourly rate in the same market area and the mortgagors offered little contrary evidence; and (5) the award did not shock the conscience. Wells Fargo Bank, N.A. v. Odita, -- Ohio App. 3d --, 2014- Ohio 2540, -- N.E.2d --, *2014 Ohio App. LEXIS 2472 (June 12, 2014)*.

In a tenant's action to recover a security deposit from her landlord, the trial court properly awarded the tenant the attorney's fees to which she was entitled. The trial court considered the relevant facts under this rule and found that $175 per hour was a reasonable billing rate and 26.5 hours was a reasonable number to expend for a total of $4,637.50; the trial court's attorney's fees award did not shock the conscience. Spring Hill Townhomes v. Pounds, -- Ohio App. 3d --, 2014- Ohio 1980, -- N.E.2d --, *2014 Ohio App. LEXIS 1929 (May 9, 2014)*.

Although the amount of attorney fees awarded did not shock the conscience so as to require reversal given the complexity of the issues involved and the lengthy protracted procedural history of the case, because the company itself requested a reduction in its attorney fee award to $139,986.27, the trial court's decision awarding $144,986.27

in attorney fees was in error. Ohio Valley Associated Builders & Contrs. v. Rapier Elec., Inc., -- Ohio App. 3d --, 2014- Ohio 1477, -- N.E.2d --, *2014 Ohio App. LEXIS 1411 (Apr. 7, 2014)*.

Trial court's award of attorneys' fees was not unreasonable, despite using a multiplier of 2.0, because of the complexity of the issues, the time that the insurance dispute took, the success of the litigation, and many other applicable factors in determining the proper fee amount. Bigler v. Pers. Serv. Ins. Co., -- Ohio App. 3d --, 2014- Ohio 1467, -- N.E.2d --, *2014 Ohio App. LEXIS 1401 (Mar. 31, 2014)*.

Insureds established reasonable attorney fees upon prevailing on their claim that the insurer committed a violation of the Ohio Consumer Sales Practices Act because the amount of time spent by counsel was reasonable based on the nature and complexity of the case and it was a reasonable hourly rate based upon the evidence and testimony submitted by the insureds, as well as consideration of the lodestar figure and the applicable factors. Dillon v. Farmers Ins. of Columbus, Inc., -- Ohio App. 3d --, 2014- Ohio 431, -- N.E.2d --, *2014 Ohio App. LEXIS 431 (Feb. 6, 2014)*.

After the corporation's attorney filed an affidavit setting forth her calculation of the amount of attorney fees owed under the dismissal entry, the product development company only challenged the amount, not the appropriateness, of the attorney-fee award. The absence of an explanation for the fee amount did not warrant reversal because there was no prejudice; the $0.75 difference in the award from the corporation's affidavit was not so great that it threw into question what evidence the trial court used to reach the amount of attorney fees awarded. Action Group, Inc. v. Nanostatics Corp., -- Ohio App. 3d --, 2013- Ohio 5542, -- N.E.2d --, *2013 Ohio App. LEXIS 5784 (Dec. 17, 2013)*.

Trial court did not abuse its discretion in finding that $100 per hour was a reasonable hourly rate, even though it was less than what the expert witnesses testified was customary in the locality since the excessive fee factors were used in reducing the hourly rate and hours worked. Scipio v. Used Car Connection, Inc., -- Ohio App. 3d --, 2013- Ohio 4325, -- N.E.2d --, *2013 Ohio App. LEXIS 4536 (Sept. 24, 2013)*.

Trial court did abuse its discretion in setting the amount of the attorney fee award at $26,130 because it concluded that the number of hours expended on the Consumer Sales Practices Act claim and the hourly rate, although on the high side, were reasonable. The $26,130 award represented approximately one tenth of the total amount billed to the recycler to defend it against the foundry's four-count case. Semco, Inc. v. Sims Bros., Inc., -- Ohio App. 3d --, 2013- Ohio 4109, -- N.E.2d --, *2013 Ohio App. LEXIS 4293 (Sept. 23, 2013)*.

Trial court did not abuse its discretion in its award of attorneys' fees when an attorney was retained by a lessor to collect a past due balance on a short term lease agreement. Furthermore, the trial court could have reasonably concluded that an additional award of attorney's fees was not warranted in light of the sum already requested and granted when a hearing was held as to the right to an award of attorney's fees. Columbus Truck & Equip. Co. v. L.O.G. Transp., Inc., -- Ohio App. 3d --, 2013- Ohio 2738, -- N.E.2d --, *2013 Ohio App. LEXIS 2758 (June 27, 2013)*.

Trial court did not abuse its discretion by awarding the employer $66,036.50 in attorney fees because, in issuing an extremely detailed memorandum of opinion regarding its award of attorney fees, the trial court exercised its discretion and reduced the employer's award to account one attorney's unreasonable hourly rate and expended hours and for the attorneys' limited success. Magnum Steel & Trading, LLC v. Mink, -- Ohio App. 3d --, 2013- Ohio 2431, -- N.E.2d --, *2013 Ohio App. LEXIS 2372 (June 12, 2013)*.

Trial court erred in denying appellant's motion for attorneys' fees under *R.C. 2323.51* and Civ.R. 11 on the basis that appellant did not present independent evidence from a disinterested attorney regarding the amount of hours spent and the hourly rate charged. Though testimony from a disinterested person may be the better practice when establishing the reasonableness of attorneys' fees, the court had not gone so far as to hold that this testimony was a threshold requirement in all circumstances. Grove v. Gamma Ctr., -- Ohio App. 3d --, *2013 Ohio 734*, -- N.E.2d --, *2013 Ohio App. LEXIS 1618 (Apr. 29, 2013)*.

Trial court did not err in granting a separate award of attorneys fees to a party that had a contingency fee agreement with the party's attorney because the trial court's decision was unreasonable, arbitrary, or unconscionable. The trial court arrived at a balance which it determined was appropriate -- an amount that was less than what the party requested and more than what the party would have owed to counsel under the contingent fee agreement. Reinbolt v. Kern, -- Ohio App. 3d --, *2013 Ohio 1359*, -- N.E.2d --, *2013 Ohio App. LEXIS 1286 (Apr. 5, 2013)*.

There was no abuse of discretion in the award of attorney fees because the trial court addressed all of the parties' disputed issues and considered all of their assets, observed that the case involved a great deal of discovery and hard work, that the wife's counsel had to consult with experts and appraisers, and that the husband was not cooperative in providing some of the documents. The trial court awarded the wife $75,000 for her attorney fees, noting that it was approximately 25 percent of her total fees and expenses. Gentile v. Gentile, -- Ohio App. 3d --, *2013 Ohio 1338*, -- N.E.2d --, *2013 Ohio App. LEXIS 1251 (Apr. 4, 2013)*.

Trial court did not abuse its discretion in awarding attorney fees to the condominium seller in the amount of $101,232.88 because the evidence in the record supported the fee award, the seller did in fact prevail on a portion of the two remaining issues (condominium fees and property taxes) in his amended complaint, and the attorney fees were not capable of separation between the work done on the claim for taxes and fees before the demand for payment, on which the seller did not prevail, and the work done on the claim for taxes and fees after that date, on which seller did prevail, as a result of the appeal. Arnett v. Bardonaro, -- Ohio App. 3d --, *2013 Ohio 1065*, -- N.E.2d --, *2013 Ohio App. LEXIS 948 (Mar. 22, 2013)*.

Once the lodestar figure is determined for an award of attorney's fees, a trial court should consider modifying it based on the factors listed in the Ohio R. Prof. Conduct 1.5 regarding the reasonableness of the fee. United Ass'n of Journeyman & Apprentices of the Plumbing & Pipe Fitting Indus., Local Union No. 776 v. Jack's Heating, Air Conditioning & Plumbing, Inc., -- Ohio App. 3d --, *2013 Ohio 144*, -- N.E.2d --, *2013 Ohio App. LEXIS 109 (Jan. 22, 2013)*.

Attorney's testimony was sufficient to show that the law firm's hourly rate of $190 was reasonable for the locality, and that the amount of work charged by the firm was legitimate in light of the nature of the trust removal action and the other legal issues resolved during the representation. Schraff & King Co., L.P.A. v. Casey, -- Ohio App. 3d --, *2012 Ohio 5829, 983 N.E. 2d 882, 2012 Ohio App. LEXIS 5031 (Dec. 10, 2012)*.

Attorney fees award of $ 2,250 was reasonable under *R.C. 1345.09(F)* and Ohio R. Prof. Conduct 1.5(a) where: (1) the consumer's attorney performed more hours of work than necessary to complete relatively simple tasks; (2) the attorney's hours were reduced from 32.10 to 15, and the hourly rate was reduced from $ 250 to $ 150; (3) three hours each were allotted for the drafting of the complaint, the motion for default judgment, and the motion for attorney fees, the fee hearing, and ancillary matters; (4) a sufficient explanation was provided for the total award; and (5) the trial court did not limit the consumer's attorney fees to make them more proportional to the damages award. Pack v. Hilock Auto Sales, -- Ohio App. 3d --, *2012 Ohio 4076*, -- N.E. 2d --, *2012 Ohio App. LEXIS 3587 (Sept. 6, 2012)*.

Trial court carefully evaluated the reasonableness of the attorney fees submitted and found the hours billed by the attorney to have exceeded the time and labor required, that there were no novel questions involved, and that the fee exceeded that customarily charged in the locality for similar legal services. Thus, after engaging in the required considerations, the trial court reduced the award accordingly. Ivancic v. Enos, -- Ohio App. 3d --, *2012 Ohio 3639*, -- N.E. 2d --, *2012 Ohio App. LEXIS 3218 (Aug. 13, 2012)*.

Trial court properly awarded a billboard lessor attorney fees pursuant to a fee-shifting provision in the parties' advertising contract upon finding that the lessor proved its breach of contract claim against the lessee, as the fees were deemed reasonable pursuant to Ohio R. Prof. Conduct 1.5(a); the trial court particularly noted the results obtained and the complexity of the issues involved. Lamar Advantage Gp Co. v. Patel, -- Ohio App. 3d --, *2012 Ohio 3319*, -- N.E. 2d --, *2012 Ohio App. LEXIS 2925 (July 23, 2012)*.

Given the length of time the case extended before conclusion, the landlord's actions in delaying the matter, and the testimony supporting the award of attorney fees, there was no error in awarding attorney fees for the trial and the tenants' expert witnesses. Schultz v. Wurdlow, -- Ohio App. 3d --, *2012 Ohio 3163*, -- N.E. 2d --, *2012 Ohio App. LEXIS 2792 (July 12, 2012)*.

Record provided support for equal attorney fees between an attorney, who acted as co-administrator of a decedent's estate and another attorney as the trial court considered the factors in Ohio R. Prof. Conduct 1.5. The trial court properly considered the nature and result of counsels' services, the benefit conferred, and the time and labor involved, restricting its consideration of fees to legal services that were warranted and necessary, as opposed to those that were duplicative, unexpected, or useless. In re Estate of Dye, -- Ohio App. 3d --, *2012 Ohio 2570*, -- N.E. 2d --, *2012 Ohio App. LEXIS 2266 (June 11, 2012)*.

Trial court did not abuse its discretion, pursuant to *Sup.R. 71* and Ohio R. Prof. Conduct 1.5, in awarding attorney fees to an attorney for the attorney having rendered legal services to a client because the court considered the testimony of the attorney and the client as to the items in the attorney's bill, determined a reasonable amount of time for the attorney to have spent on each item, and applied the hourly rate that the attorney charged, which the court found to be reasonable, to the bill. Brancatelli v. Soltesiz, -- Ohio App. 3d --, *2012 Ohio 1884*, -- N.E. 2d --, *2012 Ohio App. LEXIS 1663 (Apr. 30, 2012)*.

Although a trial court indicated that it had considered Bittner and former Ohio Code Prof. Resp. DR 2-106(B) in decreasing a fee award from what a magistrate had recommended, the trial court failed to show that the award was reasonable because it failed to state how many hours it determined were reasonable, what it determined to be a reasonable hourly rate or which, if any of the Ohio R. Prof. Cond. 1.5(a) factors it applied. Scipio v. Used Car Connection, Inc., -- Ohio App. 3d --, *2012 Ohio 891*, -- N.E. 2d --, *2012 Ohio App. LEXIS 771 (Feb. 29, 2012)*.

Trial court erred in finding $250 per hour to be a reasonable rate attributable to the consulting attorney without any evidence of her experience, reputation, or ability. The $250 per hour rate was reasonable for the primary attorney based on his experience. City of Canton v. Irwin, -- Ohio App. 3d --, *2012 Ohio 344*, -- N.E. 2d --, *2012 Ohio App. LEXIS 298 (Jan. 30, 2012)*.

Modest 25 percent upward adjustment of the lodestar fee award was appropriate based on the factors listed in Ohio R. Prof. Conduct 1.5 for determining a reasonable attorney fee because: (1) a review of the docket revealed that discovery was extensive and the case was vigorously litigated on both sides, resulting in significant expenditures of time on both sides; (2) such a time-intensive case by necessity precluded the acceptance of some other work by the plaintiff's counsel; (3) counsel were retained by plaintiff on a contingency fee basis; and (4) the lack of direct evidence and discovery issues presented the plaintiff's counsel with difficult, if not novel, legal issues and proof. Consequently, the total attorney fee award was the sum of $494,037.50. Freudeman v. Landing of Canton, -- F. Supp. 2d --, *2011 U.S. Dist. LEXIS 150023 (Dec. 30, 2011)*.

Law firm carried its burden of establishing the reasonableness, value, and necessity of its fees pursuant to Ohio R. Prof. Conduct 1.5 because the firm presented evidence as to the time, labor, novelty, and difficulty of the issues raised and necessary skill to pursue a course of action; the amount involved and results obtained; the experience and ability of counsel; and the nature and length of the professional relationship. Schottenstein, Zox & Dunn Co., L.P.A. v. Reineke, -- Ohio App. 3d --, *2011 Ohio 6201*, -- N.E. 2d --, *2011 Ohio App. LEXIS 5081 (Dec. 5, 2011)*.

Trial court erred in calculating the award of attorney fees; because the trial court did not resolve whether it was possible for the former partner to separate the fees on a claim-by-claim basis, it erroneously failed to consider whether to award fees for the time reasonably spent pursuing all of the claims. The trial court further erred by mathematically apportioning the amount of attorney fees based on the amount of the punitive-damages award. Miller v. Grimsley, -- Ohio App. 3d --, *2011 Ohio 6049*, -- N.E. 2d --, *2011 Ohio App. LEXIS 4938 (Nov. 22, 2011)*.

Trial court properly considered the factors under former Ohio Code Prof. Resp. DR 2-106(B) (now at Ohio R. Prof. Conduct 1.5) with respect to the reasonableness of attorney fees, including the difficulty of the litigation, level of

expertise required, and the amount of the settlement. In re Estate of Mal, -- Ohio App. 3d --, 2011 Ohio 4825, -- N.E. 2d --, 2011 Ohio App. LEXIS 3997 (Sept. 22, 2011).

Trial court erred in determining a reasonable amount of attorneys fees arising from bailees' refusal to allow a bailor to complete the removal of its property stored by the bailees because the trial court did not make an explicit finding of "bad faith" and simply accepted the amount of attorneys fees calculated by the bailor's trial counsel without ascertaining the reasonableness of the amount of those fees by addressing the factors in former Ohio Code Prof. Resp. DR 2-106. Camp-Out, Inc. v. Adkins, -- Ohio App. 3d --, 2007 Ohio 3946, -- N.E. 2d --, 2007 Ohio App. LEXIS 3613 (Aug. 3, 2007).

Reasonable fee amount in probate

Probate court, in considering all the factors relevant to the estate and the services performed for its benefit, supported by the record, properly exercised its discretion in granting the attorney the minimum reasonable amount of attorney fees for a full administration, albeit less than the attorney had requested. Estate of Eleanor, -- Ohio App. 3d --, 2019- Ohio 3548, -- N.E.2d --, 2019 Ohio App. LEXIS 3638 (Sept. 3, 2019).

Probate Court did not err it approving the estate's payment of attorney's fees to a law firm representing the executor in a wrongful death lawsuit), as the litigation involved principally the interest of the beneficiaries and the Court reviewed the fees in question under the correct legal and reasonableness standards. In re Estate of Weiner, -- Ohio App. 3d --, 2019- Ohio 2354, -- N.E.2d --, 2019 Ohio App. LEXIS 2458 (June 14, 2019).

Probate court abused its discretion by summarily denying the attorney's request for extraordinary fees, stating, without analysis or discussion, that the fees requested were not extraordinary because the probate court did not determine the reasonable value of legal services provided by the attorney to the estate. Estate of Brunger, -- Ohio App. 3d --, 2018- Ohio 4474, -- N.E.2d --, 2018 Ohio App. LEXIS 4796 (Nov. 5, 2018).

Magistrate's award of attorney fees to counsel for the decedent's estate was properly adopted by the probate court because the request was deemed fair, proper, necessary, and reasonable, based on the magistrate's consideration of the professional rule factors. In re Estate of Klie, -- Ohio App. 3d --, 2017- Ohio 487, -- N.E.2d --, 2017 Ohio App. LEXIS 474 (Feb. 9, 2017).

Probate court properly reduced an award of attorney fees to an attorney for an estate executor, as it made explicit findings and as to each individual billed service, including that some of the services were unreasonable, clerical in nature, unnecessary or not beneficial to the estate, or were completed in a highly inefficient manner, there were no novel or difficult questions, and the time and labor were less than what was billed. In re Estate of Fetters, -- Ohio App. 3d --, 2016- Ohio 8232, -- N.E.2d --, 2016 Ohio App. LEXIS 5089 (Dec. 19, 2016).

As the trial court duly considered the factors of Ohio R. Prof. Conduct 1.5, and its finding that the attorney fees charged the administrator were reasonable, necessary, and beneficial to the estate, the amount of the fee award was supported by the record. Neuman v. Trice, -- Ohio App. 3d --, 2012 Ohio 4206, 978 N.E. 2d 228, 2012 Ohio App. LEXIS 3713 (Sept. 17, 2012).

Amount awarded for extraordinary fees and for executor duties in an estate matter constituted an abuse of discretion, even though the factors in Ohio R. Prof. Conduct 1.5 were examined, because a probate court failed to provide any basis for reducing the amount of the allowance, and the final dollar amount awarded was arbitrary, even though it seemed to be based upon the expected amount of ordinary attorney fees for the estate. Moreover, the decision to allow no future attorney fees was also an abuse of discretion. In re Estate of Stockmaster, -- Ohio App. 3d --, 2012 Ohio 41, -- N.E. 2d --, 2012 Ohio App. LEXIS 29 (Jan. 9, 2012).

Considering the fact that the attorney did not object to the magistrate's award of attorney fees, there was no error in the probate court's determination of reasonable attorney fees for the services rendered. Given the probate court's upward modification of the magistrate's recommendation, it did not appear that the probate court had issues with

the attorney's hourly rate; however, it appeared that it agreed in some instances with the magistrate as to the amount of time and non-legal services that could have been done by the conservator rather than the attorney. In re Conservatorship of: Adamosky, -- Ohio App. 3d --, *2011 Ohio 3166*, -- N.E. 2d --, *2011 Ohio App. LEXIS 2672 (June 21, 2011)*.

Because a probate court failed to explain which attorney fee motion or motions that it was considering or which of the factors set forth the Ohio R. Prof. Conduct 1.5 supported a reduction in the attorney fee sought by a guardian, it was impossible to conduct a meaningful review. In re Guardianship of Spagnola, -- Ohio App. 3d --, *2011 Ohio 5602*, -- N.E. 2d --, *2011 Ohio App. LEXIS 4577 (Oct. 28, 2011)*.

Probate court's determination regarding the fiduciary nature of certain attorney services was not unreasonable or arbitrary and it also did not err in determining that the attorney was entitled to compensation for the 42.5 hours of routine fiduciary services at a reduced rate of $75 per hour. The probate court's determination regarding the unproductive nature of certain services was not unreasonable or arbitrary. It did not err determining that the attorney was entitled to compensation for the 32.4 hours of unproductive time at a reduced rate of $60 per hour. Re Estate of Brady, -- Ohio App. 3d --, *2007 Ohio 1005*, -- N.E. 2d --, *2007 Ohio App. LEXIS 933 (Mar. 8, 2007)*.

Probate court's attorney fee award to a litigation attorney who defended a decedent's estate, as well as the estate executor and attorney, was reasonable pursuant to the factors under Ohio Code Prof. Resp. DR 2-106 and *Ohio Superintendence R. 71*, where the services were clearly delineated and clearly benefited the estate. Services that were for the exclusive personal benefit of the executor and the estate attorney were excluded for purposes of reimbursement. In re Estate of Fouras, -- Ohio App. 3d --, *2006 Ohio 3461*, -- N.E. 2d --, *2006 Ohio App. LEXIS 3389 (July 3, 2006)*.

Trial court's fee award to a union in an action to collect a debt owed by a union member for violations of union documents was not an abuse its discretion where the trial court properly considered the factors under Ohio Code Prof. Resp. DR 2-106 in reaching the reasonable amount of fees in the circumstances. The amount sought was not large, the questions presented were not difficult, and the trial court reduced to one-quarter the amount originally sought for a fee award. IBEW, Local Union No. 8 v. Hyder, -- Ohio App. 3d --, *2006 Ohio 3177*, -- N.E. 2d --, *2006 Ohio App. LEXIS 3096 (June 23, 2006)*.

Although an attorney who unsuccessfully defended an executor in a will contest submitted a very detailed statement of the services rendered by himself and his associate, the probate court denied the fee request and held that it was unreasonable; however, as the probate court failed to provide any explanation as to what factors under Ohio Code Prof. Resp. DR 2-106 and *Ohio Superintendence R. 71(A)* were not met, a remand for further consideration and explanation was required. *Estate of Szczotka, 166 Ohio App. 3d 124, 2006 Ohio 1449, 849 N.E. 2d 302, 2006 Ohio App. LEXIS 1283 (Mar. 24, 2006)*.

Since *Ohio Superintendence R. 71(A)* stated that attorney fees in all matters were governed by Ohio Code Prof. Resp. DR 2-106, a common pleas court properly considered the reasonableness of an attorney's fee under the factors listed in the code of professional responsibility when it decided that a fee amount that was included in a final accounting for an estate that the attorney had administered was not reasonable. Valuing the attorney's fee strictly under Lake County, Ohio, Ct. C.P. Prob. Div. R. 71.2 did not render the calculated value reasonable as a matter of law and the court properly examined the record and properly applied the factors enumerated in Ohio Code Prof. Resp. DR 2-106 in determining that the attorney fees were not reasonable and in setting a new amount. In re Estate of Williams, -- Ohio App. 3d --, *2004 Ohio 3993*, -- N.E. 2d --, *2004 Ohio App. LEXIS 3626 (July 30, 2004)*.

Reimbursement advisement

Trial court erred in not granting summary judgment in favor of the attorney because the fee agreement was not illegal or unconscionable. Because the attorney's representation of the son as contemplated in the agreement was completed upon the plea of guilty to the criminal charges and the subsequent pronouncement of sentences, the

failure to give the letter of advisement required by Ohio R. Prof. Conduct 1.5(d) did not render the agreement void. Van Dyne v. Cortez, -- Ohio App. 3d --, *2012 Ohio 2618*, -- N.E. 2d --, *2012 Ohio App. LEXIS 2306 (June 11, 2012)*.

Return of unearned fees

Attorney violated Ohio R. Prof. Conduct 1.5(a) and Ohio R. Prof. Conduct 1.16(e) by collecting a fee from a client and then failing either to perform the work or refund the money. *Cleveland Metro. Bar Ass'n v. Kelly, 132 Ohio St. 3d 292, 2012 Ohio 2715, 971 N.E.2d 922, 2012 Ohio LEXIS 1550 (June 20, 2012)*.

Suspension

Attorney was indefinitely suspended from the practice of law for multiple violations of the Ohio Rules of Professional Conduct arising from his representation in four separate client matters. Eight aggravating factors were found to be present--a dishonest or selfish motive; a pattern of misconduct; multiple offenses; lack of cooperation in the disciplinary process, including his failure to comply with a subpoena for his deposition; the submission of false evidence, false statements, or other deceptive practices during the disciplinary process; his refusal to acknowledge the wrongful nature of his misconduct; the vulnerability of and resulting harm to the victims of his misconduct; and the failure to make restitution. Disciplinary Counsel v. Delay, -- Ohio St. 3d --, 2019- Ohio 2955, -- N.E.2d --, *2019 Ohio LEXIS 1466 (July 23, 2019)*.

Attorney was indefinitely suspended, with credit for certain time she had served under the February 23, 2018 interim default suspension because the attorney, inter alia, neglected two client matters, practiced law after the imposition of her interim default suspension, collected legal fees from a client while she was suspended, failed to fully refund those fees, made misrepresentations to a client and courts about her suspension, and failed to cooperate in the disciplinary investigation. Cleveland Metro. Bar Ass'n v. Austin, -- Ohio St. 3d --, 2019- Ohio 3325, -- N.E.2d --, *2019 Ohio LEXIS 1695 (Aug. 21, 2019)*.

Attorney was suspended from the practice of law for violating the Ohio Rules of Professional Conduct because his misconduct caused harm to his client by depriving him of the opportunity to directly appeal his conviction and sentence, leaving him to retain new counsel and creating additional procedural hurdles in his quest for federal habeas relief. The attorney had a prior indefinite suspension for engaging in dishonest conduct that also resulted in a felony conviction and a two-year prison term, and he went on to engage in additional dishonesty and misrepresentation just four years after being reinstated to the practice of law. Disciplinary Counsel v. Bennett, -- Ohio St. 3d --, 2018- Ohio 3973, -- N.E.2d --, *2018 Ohio LEXIS 2354 (Oct. 2, 2018)*.

Conditionally stayed one-year suspension was imposed upon an attorney, by consent-to-discipline agreement, because the attorney did not respond to a show cause order as to why he filed the clients' brief late, and the fee agreement indicated that it was nonrefundable but the attorney did not advise the clients that they might be entitled to a refund if he did not complete the representation; the instant matter was the attorney's second disciplinary case. Cleveland Metro. Bar Ass'n v. Thomas, -- Ohio St. 3d --, 2018- Ohio 3267, -- N.E.2d --, *2018 Ohio LEXIS 2053 (Aug. 16, 2018)*.

Attorney was suspended from the practice of law for one year, fully stayed on conditions, for violating the Ohio Rules of Professional Conduct for mismanaging his Interest on Lawyers' Trust Account (IOLTA) on several occasions and by making a personal loan to a client. The only mitigating factor was that he had a prior disciplinary record and, as mitigating evidence, it was determined that he had been practicing law for 38 years, he did not have a dishonest or selfish motive, and his misconduct was not intentional but instead was the result of sloppiness and bad recordkeeping. Cleveland Metro. Bar Ass'n v. Gay, -- Ohio St. 3d --, 2018- Ohio 2170, -- N.E.2d --, *2018 Ohio LEXIS 1531 (June 7, 2018)*.

Attorney was suspended for six months, stayed on conditions, because the attorney accepted a nonrefundable retainer without simultaneously advising the client in writing that he could be entitled to a refund of all or part of the

retainer if the attorney did complete the representation, failed to adequately notify the client that he did not carry malpractice insurance, and failed to act with reasonable diligence in representing the client. Dayton Bar Ass'n v. Strahorn, -- Ohio St. 3d --, 2017- Ohio 9204, -- N.E.2d --, *2017 Ohio LEXIS 2745 (Dec. 28, 2017)*.

Attorney was indefinitely suspended from the practice of law for violating the Ohio Rules of Professional Conduct by engaging in dishonest conduct in three separate matters, including making false statements to the court and failing to timely communicate with a client regarding the nature and scope of his legal representation and his fee in a fourth matter. As aggravating factors, he committed multiple offenses and refused to accept any responsibility for his misconduct because he failed to admit any wrongdoing and he submitted false statements and engaged in deceptive practices in the disciplinary process. Cleveland Metro. Bar Ass'n v. Donchatz, -- Ohio St. 3d --, 2017- Ohio 2793, -- N.E.2d --, *2017 Ohio LEXIS 820 (May 16, 2017)*.

Attorney was suspended for two years with the final six months stayed on the conditions and with no credit for time served under the interim default suspension for violating the Ohio Rules of Professional Conduct by failing to adequately represent two clients, including failing to communicate, not having a fee agreement, not carrying professional liability insurance, and failure to have a client trust account, among other things. The parties stipulated that the applicable aggravating factors included a pattern of misconduct, multiple offenses, a lack of cooperation in the disciplinary process, and the attorney's failure to make restitution. Akron Bar Ass'n v. Bednarski, -- Ohio St. 3d --, 2017- Ohio 522, -- N.E.2d --, *2017 Ohio LEXIS 231 (Feb. 16, 2017)*.

Pursuant to a consent-to-discipline agreement, respondent, who stipulated to violating Ohio R. Prof. Conduct 1.4(c), 1.5(d)(3), 1.15(a), (c), and (e), 1.16(a), and 8.4(b) and (h), was suspended from the practice of law for two years, with the final 18 months stayed on certain conditions, when she acted with a selfish or dishonest motive in falsifying a client's name on a legal document but had no prior discipline, made timely and good-faith restitution, was well respected in the local legal and drug-recovery communities, had sought one-on-one training in the areas of fee agreements, client trust accounts, and withdrawing from client matters, and had successfully completed treatment for substance abuse and continued to be monitored. Geauga County Bar Ass'n v. Snavely, -- Ohio St. 3d --, 2016- Ohio 7829, -- N.E.2d --, *2016 Ohio LEXIS 2816 (Nov. 22, 2016)*.

Attorney was suspended from the practice of law for one year, with the entire year stayed upon conditions, for violating the Ohio Rules of Professional Conduct by failing to act with reasonable diligence, failing to comply as soon as practicable with reasonable requests for information from a client, and failing to advise the client that all or part of her flat fee could be refunded if he did not complete the representation. The aggravating factors included that the attorney engaged in multiple offenses, he failed to pay restitution, and, by failing to file one client's claim within the statute of limitations, he harmed the client's case. *Disciplinary Counsel v. Simmonds, 147 Ohio St. 3d 280, 2016- Ohio 5599*, -- N.E.2d --, *2016 Ohio LEXIS 2132 (Sept. 1, 2016)*.

Attorney was suspended from the practice of law for one year, with the entire year stayed upon conditions, for violating the Ohio Rules of Professional Conduct by failing to act with reasonable diligence, failing to comply as soon as practicable with reasonable requests for information from a client, and failing to advise the client that all or part of her flat fee could be refunded if he did not complete the representation. The aggravating factors included that the attorney engaged in multiple offenses, he failed to pay restitution, and, by failing to file one client's claim within the statute of limitations, he harmed the client's case. *Disciplinary Counsel v. Simmonds, 147 Ohio St. 3d 280, 2016- Ohio 5599*, -- N.E.2d --, *2016 Ohio LEXIS 2132 (Sept. 1, 2016)*.

Supreme court adopted the parties' consent-to-discipline agreement and suspended an attorney from the practice of law because he violated the Ohio Rules of Professional Conduct; while the attorney was not initially cooperative in the investigation into his Interest on Lawyers Trust Account violations, his appearance for multiple depositions and his subsequent full and free disclosure of his actions could be considered mitigating. Disciplinary Counsel v. Jackson, -- Ohio St. 3d --, 2016- Ohio 1599, -- N.E.2d --, *2016 Ohio LEXIS 1109 (Apr. 21, 2016)*.

As an attorney violated this rule as well as Ohio Code Prof. Resp. DR. 1.3, 1.4(a), 1.15(a), and 8.4(c) by, inter alia, neglecting his clients' cases, failing to account for settlement funds, and his dishonesty; failed to cooperate in the

ensuing disciplinary investigation in violation of former Ohio Sup. Ct. R. Gov't Bar V(4)(G); had been disciplined for similar misconduct before; and did not establish any mitigating factors, his behavior warranted an indefinite suspension. *Mahoning Cnty. Bar Ass'n v. DiMartino, 145 Ohio St. 3d 391, 2016- Ohio 536*, -- N.E.2d --, *2016 Ohio LEXIS 419 (Feb. 17, 2016)*.

Attorney was suspended for two years with the second year stayed because she mishandled and failed to keep required records of the client funds entrusted to her, shared fees with another lawyer without making required disclosures to her client, and engaged in dishonesty, fraud, deceit, or misrepresentation. However, given her cooperation in the disciplinary process, her mental-health diagnosis, ongoing mental-health treatment, and her four-year contract with the lawyer's assistance program, the recommended sanction was appropriate. *Disciplinary Counsel v. Corner, 145 Ohio St. 3d 192, 2016- Ohio 359*, -- N.E.2d --, *2016 Ohio LEXIS 246 (Feb. 3, 2016)*.

Attorney was indefinitely suspended from the practice of law with credit for time served under her interim default suspension because, in the course of representing a client in a post-decree custody matter and in the course of the ensuing disciplinary investigation, she violated the rules of professional conduct and the former and current Government Bar Rules by charging an excessive fee, splitting a fee without the client's consent, failing to hold the client's property in an interest-bearing trust account, failing to respond to the disciplinary authority's demand for information, neglecting or refusing to assist in the disciplinary investigation, and failing to apprise the Office of Attorney Services of her residence and office addresses. *Mahoning Cnty. Bar Ass'n v. Marrelli, 144 Ohio St. 3d 253, 2015-Ohio 4614*, -- N.E.2d --, *2015 Ohio LEXIS 2988 (Nov. 10, 2015)*.

Attorney was suspended for one year, stayed, for charging the client excessive legal fees as well as other ethical violations in administering an account the law firm had set up to handle the client's funds and to pay the client's bills and her brother was suspended for six months, stayed, for committing several ethical violations in administering that account. However, the Board of Professional Conduct erred by finding that neither the attorney nor her brother were required to pay some sort of restitution. *Cleveland Metro. Bar Ass'n v. Zoller, 144 Ohio St. 3d 142, 2015-Ohio 4307*, -- N.E.2d --, *2015 Ohio LEXIS 2727 (Oct. 21, 2015)*.

Attorney was suspended from the practice of law in Ohio for two years, all stayed on conditions, for not depositing funds into his client trust account, not having a written fee agreement, and not providing a monthly statement detailing the time spent, funds disbursed, or funds remaining. The attorney had prior disciplinary offenses. *Mahoning County Bar Ass'n v. Gerchak, 144 Ohio St. 3d 138, 2015-Ohio 4305*, -- N.E.2d --, *2015 Ohio LEXIS 2721 (Oct. 20, 2015)*.

Attorney was suspended from the practice of law for one year, with six months stayed, for failing to communicate effectively with a client about the nature and scope of representation, failing to deposit a retainer check into the client trust account, failing to provide written notice on a separate form that he lacked professional liability insurance, and representing two criminal defendants constituting a conflict of interest. *Dayton Bar Ass'n v. Scaccia, 143 Ohio St. 3d 144, 2015- Ohio 2487*, -- N.E.2d --, *2015 Ohio LEXIS 1563 (June 25, 2015)*.

Attorney was indefinitely suspended from the practice of law for overdrawing her client trust account on two separate occasions, not fully cooperating in the disciplinary counsel's investigation, and by knowingly making a false statement during the investigation. The attorney showed a pattern of disregard for the disciplinary process that required a more severe sanction. *Disciplinary Counsel v. Rammelsberg, 143 Ohio St. 3d 381, 2015-Ohio 2024*, -- N.E.2d --, *2015 Ohio LEXIS 1372 (May 28, 2015)*.

Attorney was suspended from the practice of law in Ohio for two years, stayed on the conditions that he engage in no further misconduct and make restitution of $8,757.50 for having violated the Disciplinary Rules of the Code of Professional Conduct the Rules of Professional Conduct, by submitting nearly identical briefs in 31 separate cases without providing any case law to support his sole assignment of error and by failing to properly track the hours he spent working on each case and submitting fee applications with inflated hours. His conduct also adversely reflected on his fitness to practice law. *Disciplinary Counsel v. Milhoan, 142 Ohio St. 3d 230, 2014-Ohio 5459*, -- N.E.2d --, *2014 Ohio LEXIS 3111 (Dec. 17, 2014)*.

Attorney was indefinitely suspended from the practice of law for violating the Ohio Rules of Professional Conduct because he did not inform the clients that if he did not complete his representation, they could be entitled to a refund of their retainer, and by failing to respond to discovery requests, to comply with court orders, and to oppose various motions, including dispositive motions and a motion for sanctions, he caused the clients' breach of contract action to be dismissed with prejudice. Medina County Bar Ass'n v. Malynn, -- Ohio St. 3d --, 2014-Ohio 5261, -- N.E.2d --, *2014 Ohio LEXIS 3084 (Dec. 4, 2014)*.

Suspending an attorney for one year with six months stayed on conditions was an appropriate sanction for the attorney's violation of various professional rules because the attorney charged a client a "flat nonrefundable fee" of $ 2,000 for representation in an employment matter and deposited the fee plus an additional $ 110 from the client into his operating account rather than trust account. *Dayton Bar Ass'n v. Scaccia, 141 Ohio St. 3d 35, 2014-Ohio 4278*, -- N.E.2d --, *2014 Ohio LEXIS 2505 (Oct. 2, 2014)*.

Attorney was suspended from the practice of law for two years for multiple violations of the Ohio Rules of Professional Conduct by failing to provide competent representation and keep his client reasonably informed, failing to pay an arbitration judgment, breaching his duty to cooperate in the bar association investigation, failing to maintain the requisite records of client funds and escrow accounts, and refusing to provide material facts in response to the bar association's demand for information. *Toledo Bar Ass'n v. Harvey, 141 Ohio St. 3d 346, 2014-Ohio 3675*, -- N.E.2d --, *2014 Ohio LEXIS 2080 (Sept. 4, 2014)*.

Attorney was indefinitely suspended from the practice of law for engaging in multiple acts of misconduct by accepting legal fees from clients and failing to perform the work, failing to reasonably communicate with his clients during their representation, failing to maintain a client trust account, issuing solicitation letters that were misleading because they gave the impression that he worked for a firm with multiple lawyers, when in fact he was a solo practitioner, and failing to assist in a disciplinary investigation. *Cleveland Metro. Bar Ass'n v. Lemieux, 139 Ohio St. 3d 320, 2014-Ohio 2127*, -- N.E.2d --, *2014 Ohio LEXIS 1216 (May 27, 2014)*.

Attorney's mental-illness suspension was lifted but she was suspended from the practice of law for one year, with conditions, by failing to maintain complete records of the client funds in her possession, withdrawal of unearned fees from her client trust account, failure to perform contracted legal work, and failure to cooperate in the resulting disciplinary investigation. The conduct occurred before her brain injury. *Cincinnati Bar Ass'n v. Lawrence, 137 Ohio St. 3d 299, 2013- Ohio 4735, 998 N.E.2d 1161, 2013 Ohio LEXIS 2464 (Oct. 31, 2013)*.

Attorney was suspended from the practice of law for two years, with the second year stayed on conditions, including wearing an alcohol-monitoring device on his ankle for the remainder of the two-year term of suspension, for multiple violations of the Ohio Rules of Professional Conduct by failing to effectively communicate with clients, especially about the basis of his fees and his lack of professional malpractice insurance, along with four judicial grievances, one of which was for appearing in court under the influence of alcohol. *Columbus Bar Ass'n v. Gill, 137 Ohio St. 3d 277, 2013- Ohio 4619, 998 N.E.2d 1141, 2013 Ohio LEXIS 2344 (Oct. 24, 2013)*.

Attorney was indefinitely suspended from the practice of law because he failed to place client fees received pursuant to a flat-fee arrangement into a client trust account as required, failed to refund unearned client payments, failed to advise his clients that he did not carry malpractice insurance, and failed to perform contracted work, and lied to the bar association investigator. The attorney engaged in dishonesty, fraud, deceit, or misrepresentation, his conduct was prejudicial to the administration of justice, and it adversely reflected on his fitness to practice law. Cleveland Metro. Bar Ass'n v. Gruttadaurio, -- Ohio St. 3d --, 2013- Ohio 3662, -- N.E.2d --, *2013 Ohio LEXIS 1903 (Aug. 28, 2013)*.

Attorney was indefinitely suspended from the practice of law for misuse of client funds and other professional misconduct in violation of the Ohio Rules of Professional Conduct because the attorney's serious misconduct was tempered by the mitigating factors, including an absence of a disciplinary record and good professional character and reputation, imposition of other penalties and sanctions, and other interim rehabilitation. The attorney did not establish an absence of a dishonest or selfish motive because he pled guilty to theft, he did not make a timely good

faith effort toward restitution, he did not exhibit a "cooperative attitude" toward the disciplinary process, and his recent mental-disorder diagnoses did not qualify as a mitigating factor because the doctor did not conclude that the disorders contributed to the professional misconduct. *Cleveland Metro. Bar Ass'n v. Pryatel, 135 Ohio St. 3d 410, 2013-- Ohio -1537, 988 N.E.2d 541, 2013 Ohio LEXIS 960 (Apr. 24, 2013)*.

Considering the attorney's conduct, the profusion of aggravating factors, the absence of any mitigating factors, and the sanctions previously imposed for comparable conduct, the attorney was suspended from the practice of law indefinitely for violating Ohio R. Prof. Conduct 1.1, 1.5, 4.1, and 8.4. As mitigating factors, it was found that the attorney had a prior disciplinary offense, dishonest or selfish motive, lack of cooperation in the disciplinary process, submission of false statements or other deceptive practices during the disciplinary process, and a refusal to acknowledge the wrongful nature of his conduct. *Akron Bar Ass'n v. Carr, 135 Ohio St. 3d 390, 2013 Ohio 1485, 987 N.E.2d 666, 2013 Ohio LEXIS 931 (Apr. 17, 2013)*.

Attorney was suspended from the practice of law for two years for violating Ohio R. Prof. Conduct 1.3, 1.4, 1.16, 1.15, 1.5, and 8.4 by failing to effectively represent his clients, failing to refund a portion of the retainer, failed to safeguard, maintain records, and properly administer client funds. The attorney had no prior disciplinary record in his 40-plus years of practice, he suffered from a series of serious health problems during the time that he committed his misconduct, he voluntarily participated in a psychological evaluation, and accepted full responsibility for his conduct; the attorney stipulated to the facts underlying the complaint as well as the charged misconduct. Disciplinary Counsel v. Talikka, -- Ohio St. 3d --, *2013 Ohio 1012*, -- N.E.2d --, *2013 Ohio LEXIS 785 (Mar. 20, 2013)*.

Attorney was suspended for six moths for violating Ohio R. Prof. Conduct 1.5(a) and (c)(1) and 1.16(e) because the attorney did not pay a client money, did not deposit the money the client paid him into a client trust account, and refused to return the amount paid by the client for the filing fee in bankruptcy court. *Cleveland Metro. Bar Ass'n v. Sliwinski, 134 Ohio St. 3d 368, 2012 Ohio 5640, 982 N.E.2d 698, 2012 Ohio LEXIS 3077 (Dec. 5, 2012)*.

Attorney was suspended, with one year conditionally stayed, for having committed professional misconduct, in part, because the attorney failed to obtain a written contingent-fee agreement, in violation of Ohio R. Prof. Conduct 1.5(b) and 1.5(3), and failed to respond to disciplinary investigative inquiries, in violation of Ohio R. Prof. Conduct 8.1(b) and *Ohio Sup. Ct. R. Gov't Bar V(4)(G). Dayton Bar Ass'n v. Matlock, 134 Ohio St. 3d 276, 2012 Ohio 5638, 981 N.E.2d 861, 2012 Ohio LEXIS 3081 (Dec. 5, 2012)*.

As an attorney committed violations of Ohio R. Prof. Conduct 1.5(e)(2), 1.15(a), (a)(2), (a)(5), and 8.4(h) by failure to properly maintain his trust account, based on consideration of the misconduct, the aggravating and mitigating factors, and sanctions imposed for comparable misconduct, a partially stayed one-year suspension with conditions was proper. *Disciplinary Counsel v. Alexander, 133 Ohio St. 3d 232, 2012 Ohio 4575, 977 N.E.2d 633, 2012 Ohio LEXIS 2438 (Oct. 9, 2012)*.

Attorney was suspended for two years for violating Ohio R. Prof. Conduct 1.1, 1.3, 1.4(a)(3), (a)(4), 1.5, 8.1(b), 8.4(d), and Ohio Sup. Ct. R. Gov't Bar V(4)(G) because the attorney neglected a legal matter, failed to provide competent representation, charged an illegal or clearly excessive fee, failed to reasonably communicate with clients, and failed to cooperate with the resulting disciplinary investigations. *Disciplinary Counsel v. Ford, 133 Ohio St. 3d 105, 2012 Ohio 3915, 976 N.E.2d 846, 2012 Ohio LEXIS 2055 (Sept. 5, 2012)*.

Supreme Court of Ohio found that the indefinite suspension of an attorney from the practice of law, and an order of restitution, was appropriate because the attorney's conduct in representing clients resulted in violations of Ohio R. Prof. Conduct 1.3, 1.4(a)(3) and 1.4, 1.5(a), 1.15(d), and 1.16(e). As to aggravating factors, pursuant to BCGD Proc. Reg. 10(B)(1), the attorney demonstrated a pattern of misconduct, committed multiple offenses, and failed to make restitution, while as to mitigating factors, pursuant to BCGD Proc. Reg. 10(B)(2), the attorney fully and freely disclosed the attorney's misconduct, was cooperative after the institution of formal proceedings, and presented evidence of good character and reputation. *Mahoning County Bar Ass'n v. Kish, 131 Ohio St. 3d 105, 2012 Ohio 40, 961 N.E. 2d 172, 2012 Ohio LEXIS 45 (Jan. 11, 2012)*.

Attorney was indefinitely suspended from the practice of law, in the attorney's third disciplinary proceeding, because the attorney violated Ohio R. Prof. Conduct 1.1, 1.3, 1.4(a), 1.4(c), 1.5(a). 1.15(a), 1.15(c), and 8.4(h) as the attorney took large sums of money from two of the attorney's clients, failed to inform clients that the attorney did not maintain professional-liability insurance, and could neither document nor demonstrate to the clients the work that was done by the attorney on their behalf. Columbus Bar Ass'n v. Boggs, -- Ohio St. 3d --, *2011 Ohio 2637*, -- N.E. 2d --, *2011 Ohio LEXIS 1408 (June 7, 2011)*.

Attorney's license to practice law in Ohio was suspended indefinitely for violations of Ohio R. Prof. Conduct 1.5(b), 1.8(a), 1.15(a), 1.15(c), 1.16(e), 8.4(c), and 8.4(h) where he misappropriated and mishandled client funds, failed to maintain adequate records documenting client funds, and failed to notify clients of conflicts of interest. Disciplinary Counsel v. Squire, -- Ohio St. 3d --, *2011 Ohio 5578*, -- N.E. 2d --, *2011 Ohio LEXIS 2798 (Nov. 3, 2011)*.

One-year suspension of an attorney's license was stayed where he violated Ohio R. Prof. Conduct 1.15(c), Ohio R. Prof. Conduct 1.5(d)(3), and Ohio R. Prof. Conduct 8.4(d) by failing to return filing fees. Although he did not violate Ohio Sup. Ct. R. Gov't Bar V(4)(G) in securing the release of disciplinary action, it was an aggravating factor; however, the attorney did not act with a dishonest or selfish motive since he had a mistaken belief about holding costs in a trust account and whether a refund of the fees was appropriate, and he acknowledged the wrongful nature of his conduct and took steps to prevent any future misconduct. Cincinnati Bar Ass'n v. Dearfield, -- Ohio St. 3d --, *2011 Ohio 5295*, -- N.E. 2d --, *2011 Ohio LEXIS 2541 (Oct. 19, 2011)*.

Attorney's license to practice law was suspended for one year, stayed for six months on conditions of his repaying his client, based on findings of misconduct, including the neglect of a client's case and failure to account for unearned fees. The attorney violated former Ohio Code Prof. Resp. 6-101(A)(3), 7- 101(A)(2), and 9-102(B)(4) by abandoning his client and ignoring requests for her file and an accounting. Cuyahoga County Bar Ass'n v. Peto, -- Ohio St. 3d --, *2007 Ohio 5250*, -- N.E. 2d --, *2007 Ohio LEXIS 2520 (Oct. 10, 2007)*.

End of Document

Ashtabula Cty. Bar Ass'n v. Brown

Supreme Court of Ohio

February 8, 2017, Submitted; July 6, 2017, Decided

No. 2016-1147

Reporter
151 Ohio St. 3d 63 *; 2017-Ohio-5698 **; 86 N.E.3d 269 ***; 2017 Ohio LEXIS 1353 ****

ASHTABULA COUNTY BAR ASSOCIATION v. BROWN.

Subsequent History: Later proceeding at *Ashtabula Cty. Bar Ass'n v. Brown, 151 Ohio St. 3d 1404, 2017-Ohio-8306, 2017 Ohio LEXIS 2175, 84 N.E.3d 1045 (Oct. 26, 2017)*

Stay lifted by *Ashtabula Cty. Bar Ass'n v. Brown, 152 Ohio St. 3d 1206, 2017-Ohio-8753, 2017 Ohio LEXIS 2383, 93 N.E.3d 988 (Ohio, Dec. 1, 2017)*

Later proceeding at *Ashtabula Cty. Bar Ass'n v. Brown, 151 Ohio St. 3d 1518, 2018-Ohio-475, 2018 Ohio LEXIS 333, 90 N.E.3d 955 (Ohio, Feb. 8, 2018)*

Prior History: [****1] ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2015-063.

Disciplinary Counsel v. Brown, 84 Ohio St. 3d 1430, 702 N.E.2d 1210, 1998 Ohio LEXIS 3367 (Dec. 8, 1998)

Core Terms

misconduct, business card, law office, disciplinary, recommended, suspension, practice of law, misleading, suspended, factors, firm name, advertising, aggravating, distributed, mitigating, alleged violation, false statement, law firm, communications, indefinite, practicing, knowingly, offending

Case Summary

Overview

HOLDINGS: [1]-The Court adopted findings of fact and conclusions of law by the Board of Professional Conduct of the Supreme Court regarding an attorney's use of a two-person firm name and his distribution of business cards with that name although he was the only employee, which was deemed false and misleading and violative of *Ohio R. Prof. Conduct 7.1* and *7.5(a)* and (c); [2]-There was insufficient evidence to find that the attorney had knowingly continued to use the firm name after he had testified in the disciplinary proceeding that he had ceased that conduct, as the attorney's assertion that he did not intend to commit further violations was deemed credible; [3]-Based on, inter alia, the attorney's significant prior disciplinary record, a two-year suspension was imposed, which was fully stayed on Board-recommended conditions.

Outcome

Bar Association's objections overruled in part; sustained in part. Board's findings of facts and conclusions of law adopted. Attorney suspended from practice of law for two years, fully stayed on conditions.

LexisNexis® Headnotes

Legal Ethics > Legal Services Marketing > Firm Letterhead & Names

HN1[] **Legal Services Marketing, Firm Letterhead & Names**

Ohio R. Prof. Conduct 7.1 prohibits a lawyer from making or using false, misleading, or nonverifiable communication about the lawyer or the lawyer's services. *Ohio R. Prof. Conduct 7.5(a)* prohibits a lawyer from using a firm name, letterhead, or other professional designation that is false or misleading. Rule 7.5(c) prohibits the use of the name of a lawyer who holds a public office in a law firm's name during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

Legal Ethics > Sanctions > Disciplinary Proceedings > Investigations

HN2 **Disciplinary Proceedings, Investigations**

Ohio R. Prof. Conduct 8.1(a) prohibits knowingly making a false statement of material fact in connection with a disciplinary matter. Rule 8.1(b) prohibits a lawyer from failing to disclose a material fact in response to, or knowingly failing to respond to, a demand for information by a disciplinary authority during an investigation.

Legal Ethics > Professional Conduct

HN3 **Legal Ethics, Professional Conduct**

Ohio R. Prof. Conduct 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Evidence > Types of Evidence > Testimony > Credibility of Witnesses

Legal Ethics > Sanctions > Disciplinary Proceedings > Appeals

HN4 **Testimony, Credibility of Witnesses**

When the record from an attorney disciplinary proceeding does not weigh heavily against the credibility determination, the Ohio Supreme Court defers to it.

Legal Ethics > Sanctions > Disciplinary Proceedings > Hearings

HN5 **Disciplinary Proceedings, Hearings**

When imposing sanctions for attorney misconduct, the Ohio Supreme Court considers several relevant factors, including the ethical duties the lawyer violated, the aggravating and mitigating factors listed in Ohio Sup. Ct. R. Gov't Bar V(13), any other relevant factors, and the sanctions imposed in similar cases.

Headnotes/Summary

Headnotes

Attorneys—Misconduct—Violations of the Rules of Professional Conduct—Conditionally stayed two-year suspension.

Counsel: Harold E. Specht Jr., Bar Counsel, for relator.

Thomas C. Brown, Pro se.

Judges: KENNEDY, FRENCH, MCCORMACK, and DEWINE, JJ., concur. O'DONNELL, J., dissents, with an opinion joined by O'CONNOR, C.J., and FISCHER, J. JOHN TIMOTHY MCCORMACK, J., of the Eighth District Court of Appeals, sitting for O'NEILL, J.

Opinion

[***269] [*63] **Per Curiam**.

[**P1] Respondent, Thomas Christopher Brown, of Geneva, Ohio, Attorney Registration No. 0024054, was admitted to the practice of law in Ohio in 1981. We suspended his license on an interim basis in October 1999, pending the final disposition of disciplinary matters then pending against him. Disciplinary Counsel v. Brown, 87 Ohio St.3d 1427, 718 N.E.2d 444 (1999).

[**P2] In November 2000, we indefinitely suspended him from the practice of law with credit for the time served under his interim suspension based on our findings that he engaged in multiple acts of misconduct. Disciplinary Counsel v. Brown, 90 Ohio St.3d 273, 2000 Ohio 82, 737 N.E.2d 516 (2000). We reinstated his license to practice law in [***270] November 2006. Disciplinary Counsel v. Brown, 112 Ohio St.3d 1205, 2006-Ohio-6723, 858 N.E.2d 814.

[**P3] In addition, we have suspended Brown's license on three separate occasions for his failures to comply with the registration requirements [****2] of *Gov.Bar R. VI*. [*64] *See In re Atty. Registration Suspension, 107 Ohio St.3d 1431, 2005-Ohio-6408, 838 N.E.2d 671*; *In re Reinstatement of Brown, 113 Ohio St.3d 1425, 2007-Ohio-1313, 863 N.E.2d 644*; *In re Atty. Registration Suspension, 123 Ohio St.3d 1475, 2009-Ohio-5786, 915 N.E.2d 1256*; *In re Reinstatement of Brown, 126 Ohio St.3d 1603, 2010-Ohio-4979, 935 N.E.2d 48*; In re Attorney Registration Suspension of Brown, 143 Ohio St.3d 1509, 2015-Ohio-4567, 39 N.E.3d 1277; In re Reinstatement of Brown, 144 Ohio St.3d 1432, 2015-Ohio-5363, 42 N.E.3d 766.

[**P4] In a November 2, 2015 complaint, relator, Ashtabula County Bar Association, alleged that Brown had engaged in false or misleading communications about his law practice. Specifically, the complaint alleged that he had erected a sign advertising his law firm as "O'Neill & Brown Law Office" and distributed business cards bearing that firm name even though he was the only employee of the firm.

[**P5] The parties submitted stipulations of fact, and a panel of the Board of Professional Conduct conducted a hearing. The panel found that Brown committed some of the charged misconduct, recommended that we dismiss allegations that Brown knowingly made false statements during the disciplinary process, and recommended that he be suspended from the practice of law for six months, fully stayed on conditions. The board adopted the findings of fact, conclusions of law, and recommendations of the panel and recommends as an additional condition that Brown be ordered to refrain from advertising or communicating in any manner that he is practicing in the "O'Neill & Brown Law Office" except in biographical references to his former law-firm affiliations.

[**P6] Relator objects to the board's findings [****3] and recommendations, arguing that it carried its burden of proving that Brown knowingly made false statements in the course of the disciplinary proceedings; therefore, relator argues, a more severe sanction is warranted.

[**P7] We overrule relator's objections in part and sustain them in part and adopt the board's findings of fact and conclusions of law. For the reasons that follow, we suspend Brown from the practice of law for two years, fully stayed on the conditions recommended by the board.

Misconduct

[**P8] Following Brown's admission to the Ohio bar in 1981, he and William M. O'Neill—who presently serves as a justice of this court—practiced law together at the O'Neill & Brown Law Office. Although they ceased practicing law together in 1997, Brown began using their old firm name with Justice O'Neill's consent in July 2015. Brown installed a sign outside his office advertising it as "O'Neill & Brown Law Office (EST 1981)." He also began distributing business [*65] cards bearing the firm name "O'Neill & Brown Law Office" to court personnel, opposing counsel, and potential clients.

[**P9] Relator began to investigate allegations of professional misconduct arising from Brown's firm name, signage, and business [****4] cards in late July 2015. Brown responded to relator's inquiry in writing, explaining his past affiliation with Justice O'Neill and inquiring as to which rules his conduct may have violated. After relator advised Justice O'Neill that Brown's sign violated the Rules of Professional Conduct, [***271] Justice O'Neill instructed Brown to remove his name from the sign.

[**P10] Relator later filed a complaint alleging that Brown's use of Justice O'Neill's name violated ***HN1***[↑] *Prof.Cond.R. 7.1* (prohibiting a lawyer from making or using false, misleading, or nonverifiable communication about the lawyer or the lawyer's services), *7.5(a)* (prohibiting a lawyer from using a firm name, letterhead, or other professional designation that is false or misleading), and *7.5(c)* (prohibiting the use of the name of a lawyer who holds a public office in a law firm's name during any substantial period in which the lawyer is not actively and regularly practicing with the firm).

[**P11] Approximately one month after the hearing, the panel allowed relator to amend its complaint to allege two additional charges based on Brown's alleged false statements during the disciplinary process. First, relator alleged that Brown continued to distribute the offending business [****5] cards after the time he testified that he had stopped using them. Relator therefore alleged that Brown had violated ***HN2***[↑] *Prof.Cond.R. 8.1(a)* (prohibiting a lawyer from knowingly making a false statement of material fact in connection with a disciplinary matter) and *8.1(b)* (prohibiting a lawyer from failing to disclose a material fact in response to, or knowingly failing to respond to, a demand for information by a disciplinary authority during an investigation). Second, relator alleged that during the disciplinary investigation, Brown told relator that he had removed Justice O'Neill's name from the offending sign in September 2015, when in fact the sign remained unaltered until November 2015. Relator accordingly alleged that Brown had also violated ***HN3***[↑] *Prof.Cond.R. 8.4(c)* (prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

[**P12] In support of those charges, relator submitted an affidavit and supporting documents from a potential client's wife, who averred that Brown handed her one of the offending business cards in April 2016, and noted that a witness had testified that Justice O'Neill's name remained on Brown's sign until late November 2015. Brown admitted the factual allegations of the

amended [****6] complaint and submitted his own affidavit explaining that he unintentionally distributed one business card bearing the firm name "O'Neill and Brown Law Office" in April 2016.

[**P13] [*66] The board found that the firm name depicted on Brown's sign and business card and the reference on the sign to the firm's having been established in 1981 were false or misleading communications that violated *Prof.Cond.R. 7.1* and *7.5(a)*. In addition, the board found that Brown's use of Justice O'Neill's name during his term as a justice of this court violated *Prof.Cond.R. 7.5(c)*. The board determined, however, that relator had failed to carry its burden of proof on the new charges alleged in the amended complaint and therefore recommended that we dismiss the alleged violations of *Prof.Cond.R. 8.1(a)*, *8.1(b)*, and *8.4(c)*.

[**P14] Relator objects to the board's recommendation that we dismiss the alleged violations of *Prof.Cond.R. 8.1(a)*, *8.1(b)*, and *8.4(c)*, arguing that its evidence clearly and convincingly demonstrates that Brown intentionally continued to distribute the offending business cards after testifying that he had ceased using them and that he knowingly misrepresented the date on which he removed Justice O'Neill's name from the sign outside his office.

[**P15] Brown submitted his own affidavit stating that he carried, but "rarely [****7] used," an extra business card in his wallet and gave it to his potential client's wife without realizing that it was one of the [***272] "O'Neill & Brown" cards that he had "discontinued using in 2015."

[**P16] With regard to the offending sign, relator submitted Brown's February 9, 2016 letter to relator, which stated that he had removed Justice O'Neill's name from his business sign "the first week of September 2015." But when confronted with the testimony of the chairperson of the Ashtabula County grievance committee that she saw Justice O'Neill's name on the sign as late as November 23, 2015, Brown testified that he was not certain of the date and that it "certainly is possible" that Justice O'Neill's name could have remained on the sign through November 2015.

[**P17] The panel heard the above evidence, observed the witnesses' demeanor firsthand, and found Brown's explanations to be credible. ***HN4***[↑] Because the record does not weigh heavily against that credibility determination, we defer to it. *See*, *e.g.* *Disciplinary Counsel v. Eichenberger, 146 Ohio St.3d 302, 2016-Ohio-3332, 55 N.E.3d 1100, ¶ 22*. We therefore overrule relator's objections in this regard and adopt the board's findings of fact. We agree that Brown's conduct violated *Prof.Cond.R. 7.1*, *7.5(a)*, and *7.5(c)* and hereby dismiss the alleged violations of *Prof.Cond.R. 8.1(a)*, *8.1(b)*, and *8.4(c)* based [****8] on the insufficiency of the evidence.

Sanction

[**P18] ***HN5***[↑] When imposing sanctions for attorney misconduct, we consider several relevant factors, including the ethical duties the lawyer violated, the aggravating and mitigating factors listed in *Gov.Bar R. V(13)*, any other relevant factors, and the sanctions imposed in similar cases.

[**P19] [*67] As aggravating factors, the board found that Brown has a prior disciplinary record, his misconduct reflected a selfish motive, he committed multiple offenses, he failed to acknowledge the wrongful nature of his conduct, and he continued to use Justice O'Neill's name on his sign and business card for approximately four months after relator informed him that his actions might constitute professional misconduct. *See* *Gov.Bar R. V(13)(B)(1)*, *(2)*, *(4)*, and *(7)*.

[**P20] Brown's prior disciplinary record is significant in that he has received three separate registration suspensions and was under an indefinite suspension for more than six years for conduct that included failing to file appellate briefs in four client matters, threatening a judge who served as the chairperson of the Ashtabula County grievance committee, making false statements in an affidavit attached to his motion to dismiss a lawsuit filed against him, failing [****9] to comply with a pretrial order, lying to a judge when questioned about his compliance with a separate pretrial order, representing both the victim and the accused in two separate domestic-violence matters without advising his clients of the inherent conflicts of interest, failing to attend scheduled hearings in two client matters and the ensuing show-cause hearings, and failing to cooperate in the resulting disciplinary investigation. *Brown, 90 Ohio St.3d 273, 737 N.E.2d 516*.

[**P21] As mitigating factors, the board found that Brown demonstrated a cooperative attitude during the disciplinary process, that his misconduct did not involve the provision of legal services, that no clients were negatively impacted by his conduct, and that Justice

O'Neill participated in the decision to use the "O'Neill and Brown Law Office" name on the sign in front of Brown's office. *See* Gov.Bar R. V(13)(C)(4).

[**P22] In deciding the appropriate sanction for Brown's misconduct, the panel and board considered the sanction that we imposed for misleading advertising in *Medina Cty. Bar Assn. v. Baker, 102 Ohio St.3d 260, [***273] 2004-Ohio-2548, 809 N.E.2d 659*. Baker tacitly approved signage and advertisements that were misleading as to the identity of the lawyer or lawyers in the practice, whether he or his law firm were practicing under the trade name "Confidential Credit [****10] Counselors," and whether the law firm was offering credit counseling. *Id. at ¶ 5*. We balanced a single aggravating factor—that Baker had profited to some degree from his misconduct—against multiple mitigating factors, including the absence of prior discipline; Baker's reputation for honesty, integrity, and competence; his history of charitable and civic works in his community; his full cooperation in the disciplinary process; and the steps he had taken to correct the misleading advertising. *Id. at ¶ 7*. And we determined that a public reprimand was the appropriate sanction for Baker's misconduct. *Id. at ¶ 9*.

[**P23] Noting the number and nature of the aggravating factors present in this case, the board recommended that Brown be suspended from the practice of law [*68] for six months, fully stayed on several conditions. Although relator objects to the board's recommended dismissal of the alleged violations of *Prof.Cond.R. 8.1(a)*, *8.1(b)*, and *8.4(c)* and to the board's failure to sanction Brown for the conduct underlying those alleged violations, relator does not contest the stayed six-month suspension that the board recommended for Brown's violations of *Prof.Cond.R. 7.1*, *7.5(a)*, and *7.5(c)*.

[**P24] In light of the significant aggravating factors in this case—including [****11] Brown's prior indefinite suspension from the practice of law, his selfish motive for using Justice O'Neill's name and the prestige of Justice O'Neill's position as a justice of this court to enhance his own reputation, his failure to acknowledge or appreciate the wrongful nature of his misconduct, and his failure to timely modify his sign and business cards once relator put him on notice that they were misleading—we do not believe that a fully stayed six-month suspension will adequately protect the public from future harm.

[**P25] Accordingly, we suspend Thomas Christopher Brown from the practice of law for two years, with the entire suspension stayed on the board-recommended conditions that he (1) remove any reference to his firm's having been established in 1981, (2) within 60 days of the date of our decision, permanently alter the signage outside his law office to remove the name "O'Neill," (3) within 14 days of the date of our decision, destroy all business cards bearing the name "O'Neill & Brown Law Office" and submit an affidavit to this court averring that the cards have been destroyed, (4) refrain from advertising or communicating in any manner that he is practicing in the "O'Neill & Brown Law Office" [****12] except in biographical references to his former law-firm affiliations, and (5) engage in no further professional misconduct. If he violates a condition of the stay, the stay will be lifted and he will serve the entire two-year suspension. Costs are taxed to Brown.

Judgment accordingly.

KENNEDY, FRENCH, MCCORMACK, and DEWINE, JJ., concur.

O'DONNELL, J., dissents, with an opinion joined by O'CONNOR, C.J., and FISCHER, J.

JOHN TIMOTHY MCCORMACK, J., of the Eighth District Court of Appeals, sitting for O'NEILL, J.

Dissent by: O'DONNELL

Dissent

O'DONNELL, J., dissenting.

[**P26] Respectfully, I dissent.

[**P27] Attorney Thomas Brown installed a sign and printed and distributed business [***274] cards bearing the name of "O'Neill & Brown Law Office." I agree with [*69] the majority that Brown's conduct violates *Prof.Cond.R. 7.1* (prohibiting false, misleading, or nonverifiable communications about the lawyer or the lawyer's services), *7.5(a)* (prohibiting use of a false or misleading firm name, letterhead, or other professional designation), and *7.5(c)* (prohibiting use of the name of a lawyer who holds a public office in a law firm's name when the lawyer is not practicing with the firm).

[**P28] The majority apparently agrees with the board's determination that it is a mitigating [****13] factor that "Justice O'Neill participated in the decision to use the

'O'Neill and Brown Law Office' name on the sign in front of Brown's office." Majority opinion at ¶ 21.

[**P29] In my view, there is nothing mitigating about that fact.

[**P30] Because judges are prohibited from lending their names to law firms, the fact that Brown obtained consent to use the "O'Neill" name cannot be deemed mitigating; rather, this is aggravating misconduct. For this reason, a fully stayed suspension from the practice of law is not a sufficient sanction in these circumstances.

[**P31] Further aggravating his misconduct is the fact that after the Ashtabula County Bar Association alerted him that the law firm sign violated the Rules of Professional Conduct, he continued using the "O'Neill" name on the sign until November 2015 and on his business card until April 2016, despite the fact that he had stipulated to the board that he was no longer using that business card. The majority recognizes Brown's "selfish motive for using Justice O'Neill's name and the prestige of Justice O'Neill's position as a justice of this court to enhance his own tarnished reputation," majority opinion at ¶ 24, but it fails to grasp that Brown also [****14] created an appearance of impropriety by representing that he was practicing law in a legal partnership with a sitting justice of the Supreme Court of Ohio. This deceitful conduct demands a serious sanction involving time out from the practice of law in order to protect the public from being misled about the nature of a professional legal engagement with Brown.

[**P32] This court previously indefinitely suspended Brown for a period of six years, and he has been the subject of three attorney-registration suspensions, two of which we imposed subsequent to his reinstatement.

[**P33] In my view, in light of his previous discipline, the appropriate sanction for Brown's misconduct is an indefinite suspension.

O'CONNOR, C.J., and FISCHER, J., concur in the foregoing opinion.

Waterman v. Kitrick

Court of Appeals of Ohio, Tenth Appellate District, Franklin County

February 8, 1990, Decided

Nos. 89AP-672, 89AP-673, 89AP-674

Reporter
60 Ohio App. 3d 7 *; 572 N.E.2d 250 **; 1990 Ohio App. LEXIS 467 ***

WATERMAN ET AL., APPELLANTS, v. KITRICK ET AL., APPELLEES. WATERMAN ET AL., APPELLANTS, v. CHRISTY, EXRX., APPELLEE. WATERMAN ET AL., APPELLANTS, v. CHRISTY, EXRX., ET AL., APPELLEES

Subsequent History: [***1] As Amended.

Prior History: APPEALS: Court of Appeals for Franklin County.

Disposition: *Judgment affirmed in case No. 89AP-673; judgments reversed and causes remanded in cases No. 89AP-672 and No. 89AP-674*.

Core Terms

trial court, consolidated, summary judgment, cocounsel, assigned error, cases, division of fees, deposition, unenforceable, genuine issue of material fact, perform a service, referral, first assignment, matter of law, appointment, complaints, split

Case Summary

Procedural Posture

In consolidated actions, plaintiff attorney appealed judgments from the Court of Appeals for Franklin County (Ohio) that granted defendants, an deceased co-counsel's and his partners, summary judgment in the attorney's suit for breach of contract and for the allegedly improper rejection of his claims as creditor against the estate.

Overview

The attorney allegedly entered into several contracts with the deceased lawyer whereby he rendered services on cases and was entitled to portion of fees thereon. After the lawyer died, his partners refused to honor the contracts. The attorney filed claims against the lawyer's estate and sued the partners for breach of contract. The trial court consolidated the cases and ultimately granted the estate summary judgment on grounds that the contracts were illegal referral contracts, under *Ohio Rev. Code Ann. § 4705.08*, and granted the estate summary judgment on grounds that his claims were untimely under *Ohio Rev. Code Ann. § 2117.06(B)*. On appeal, the court ruled: (1) material issues of fact remained on the value of the attorney's services, whether the contracts were valid co-counsel agreements, and whether the partners were aware of the contracts, thus summary judgment was improper on those claims; (2) his claims against the estate were time-barred because they were not filed within three months after the day the estate's executrix was named, and; (3) while the trial court erred by consolidating the cases, the attorney was not prejudiced because his claim against the estate failed.

Outcome

The court affirmed in part and reversed in part the judgment. Summary judgment was improper because there existed a genuine issue of material fact as to the value of services performed by the attorney and the type of relationship that existed between him and the deceased lawyer. Summary judgment was proper on the claims against the estate because the claims were not timely filed. Trial court's error in consolidating the cases was not prejudicial.

LexisNexis® Headnotes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

HN1[] Entitlement as Matter of Law, Genuine Disputes

Ohio R. Civ. P. 56(C) sets forth a two-part test that must be met before summary judgment may be granted. First, the depositions, affidavits and other evidence submitted must establish that there is not a genuine issue of material fact. Second, the moving party must show that he is entitled to judgment as a matter of law.

Civil Procedure > ... > Summary Judgment > Opposing Materials > General Overview

Civil Procedure > ... > Summary Judgment > Burdens of Proof > General Overview

Civil Procedure > ... > Summary Judgment > Motions for Summary Judgment > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > General Overview

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Genuine Disputes

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Materiality of Facts

Civil Procedure > ... > Summary Judgment > Supporting Materials > General Overview

Civil Procedure > Judgments > Relief From Judgments > General Overview

HN2[] Summary Judgment, Opposing Materials

Summary judgment is a procedural device to terminate litigation and to avoid a formal trial where there is nothing to try. It must be awarded with caution, resolving doubts and construing evidence against the moving party, and granted only when it appears from the evidentiary material that reasonable minds can reach only an adverse conclusion as to the party opposing the motion. Thus, only if the moving party is able to demonstrate that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law is a trial court correct in granting the moving party's motion for summary judgment.

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN3[] Client Relations, Attorney Fees

See Ohio Rev. Code Ann. § 4705.08.

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN4[] Client Relations, Attorney Fees

Ohio Code of Prof. Resp. DR 2-107(A) specifically permits the division of fees between attorneys provided that: (1) the client consents to employment of the other lawyer after a full disclosure that a division of fees will be made; (2) the division is made in proportion to the services performed and responsibility assumed by each, and; (3) the total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

Legal Ethics > Client Relations > Attorney Fees > Fee Splitting

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN5[] Attorney Fees, Fee Splitting

A distinction must be drawn between a contract for a referral fee without performance of any services for the client, or a fee-splitting arrangement unrelated to services, and co-counsel agreements. While pure referral contracts are prohibited by Ohio Rev. Code Ann. § 4705.08 and Ohio Code of Prof. Resp. DR 2-107(A), co-counsel agreements specifically are not. The agreement is a "pure referral contract" if it provides that

an attorney will receive a fee for merely forwarding a client to another attorney while doing nothing toward handling the case. Such an agreement is violative of § 4705.08 and DR 2-107.

Legal Ethics > Client Relations > Attorney Fees > Fee Splitting

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN6 **Attorney Fees, Fee Splitting**

Where one attorney performs services for the client and refers the client to another attorney who also performs services on the case, fee splitting would be permitted to the extent allowable under and Ohio Code of Prof. Resp. DR 2-107(A). In other words, provided that the client consents to the arrangement after full disclosure and that the division of fees between the attorneys is made in proportion to the services performed and responsibility assumed by each, fee splitting is permissible.

Legal Ethics > Client Relations > Attorney Fees > Fee Splitting

Legal Ethics > Client Relations > Attorney Fees > General Overview

HN7 **Attorney Fees, Fee Splitting**

Ohio Code of Prof. Resp. DR 2-107 does not specifically mandate that the client be informed of the amount of percentage of the fee split. It merely states that the client must consent to the employment of the other lawyer and to a division of fees.

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > Time Limitations

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

HN8 **Claims Against Estates, Time Limitations**

See Ohio Rev. Code Ann. § 2117.06(B).

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN9 **Pleadings, Time Limitations**

See Ohio Rev. Code Ann. § 1.14.

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN10 **Pleadings, Time Limitations**

See Ohio Rev. Code Ann. § 1.45.

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

Estate, Gift & Trust Law > ... > Probate > Personal Representatives > General Overview

Estate, Gift & Trust Law > Estate Administration > Claims Against Estates > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

HN11 **Pleadings, Time Limitations**

Reading Ohio Rev. Code Ann. § 1.45 in conjunction with Ohio Rev. Code Ann. §§ 1.14, 2117.06(B), the time to begin counting the three-month period in which one has to file a claim against an estate is clearly the day of appointment of the executor.

Civil Procedure > Trials > Consolidation of Actions

Civil Procedure > Trials > Separate Trials

HN12 **Trials, Consolidation of Actions**

Ohio R. Civ. P. 42(A) provides that a trial court may consolidate pending actions before it if there are common questions of law or fact between the actions. It is within the trial court's discretion whether to consolidate. However, before the actions may be properly consolidated, a court must determine if there is enough commonality of issues to warrant consolidation and if the parties are substantially the same. In making such a determination, a court should be mindful of the purpose of consolidation, which is the saving of time when a joint trial is used as opposed to separate trials.

Headnotes/Summary

Headnotes

Civil procedure -- Civ. R. 56 -- Defendants' motion for summary judgment granted, when -- Attorneys at law -- Cocounsel agreements -- R.C. 4705.07 and DR 2-107, contrued -- Probate -- Claims against an estate must be presented within three months of appointment of executor -- Time to begin counting the three-month period begins, when -- Requirements for consolidation of cases.

Syllabus

1. Only if the moving party is able to demonstrate that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law is a trial court correct in granting its motion for summary judgment.

2. While pure referral contracts are prohibited by *R.C. 4705.08* and DR 2-107(A), cocounsel agreements specifically are not. An agreement is a "pure referral contract" if it provides that an attorney will receive a fee for merely forwarding a client to another attorney while doing nothing toward handling the case.

3. Where one attorney performs services for the client and refers the client to another attorney [***2] who also performs services on the case, fee splitting would be permitted to the extent allowable under DR 2-107.

4. *R.C. 2117.06(B)* provides that all claims against an estate "* * * shall be presented within three months after the date of the appointment of the executor * * *." The day from which to begin counting the three-month period is the day of appointment of the executor.

5. *Civ. R. 42(A)* provides that the trial court may consolidate pending actions before it if there are common questions of law or fact between the actions. However, before the actions may be properly consolidated, the court must determine if there is sufficient commonality of issues to warrant consolidation and if the parties are substantially the same.

Counsel: *Lucas, Prendergast, Albright, Gibson & Newman, Rankin M. Gibson* and *Roger Whitaker*, for appellants.

Fry & Walker Co., L.P.A., and *Barry A. Walker*, for Carolyn T. Christy, individually and as executrix, and Bruce L. Christy Co., L.P.A.

Mark Kitrick Co., L.P.A., and *Mark M. Kitrick, pro se*.

Irwin & Flickinger and *Michael T. Irwin*, for appellee Russell N. Flickinger, Jr. and *pro se*.

Grieser, Schafer, Blumensteil & Slane Co., [***3] *L.P.A.*, and *Richard Grieser*, for appellee Grieser, Schafer, Blumensteil & Slane Co., L.P.A.

Judges: Whiteside, J. Reilly and Brame, JJ., concur. Michael A. Brame, J., of the Court of Common Pleas of Vinton County, sitting by assignment in the Tenth Appellate District.

Opinion by: WHITESIDE

Opinion

[*8] [**252] Plaintiffs, Joseph Waterman et al. (hereinafter "plaintiff"), appeal the judgments of the Franklin County Common Pleas Court granting defendants' motions for summary judgment. In case No. 89AP-672, plaintiff raises the following assignments of error:

"I. The trial court abused its discretion in consolidating this case with case No. 86CV-12-7975, requesting damages for breach of contract, and with case No. 87CV-04-2331, challenging the rejection of plaintiffs' claims against the estate of Bruce L. Christy.

"II. The trial court erred in granting summary judgment

for the defendants."

In cases No. 89AP-673 and No. 89AP-674, plaintiff raises the following assignments of error:

"I. The trial court erred in granting summary judgment for the defendants.

"II. The trial court erred in finding that standing and timeliness of plaintiffs' claim against the estate of Bruce L. Christy (case No. 87CV-04-2331) are moot [***4] and in not finding that the claim against the estate was timely filed."

These separate appeals were consolidated by this court.

[*9] Plaintiff initiated this lawsuit by filing three separate complaints in the trial court. All three were based upon alleged underlying cocounsel agreements plaintiff allegedly had with the late Bruce L. Christy.

The first of these complaints (case No. 86CV-12-7975) was filed by plaintiff against defendant Carolyn T. Christy, both individually and as executrix of her husband's estate, Bruce L. Christy Co., L.P.A. ("BLC"), William Stehle, Mark Kitrick, Russel Flickinger, Calig & Handelman Co., L.P.A., Samuel Calig, and Robert Handelman. [1] Plaintiff alleged breach of contract arising from "numerous contingent fee agreements" plaintiff and Christy had together. Plaintiff further alleged that defendants had refused to pay him pursuant to those agreements even though he had performed all of his obligations under the contracts. According to plaintiff, these contracts were entered into in plaintiff's capacity as a member of Calig & Waterman (now dissolved) and also as a sole practitioner.

[***5] Also in the first complaint, plaintiff alleged that BLC settled numerous cases on which plaintiff was cocounsel but refused to pay plaintiff in accordance with the agreement. Further, plaintiff alleged that defendants collectively converted and divested plaintiff of his interests in pending cases not yet settled.

Plaintiff's second complaint (case No. 87CV-04-2331) filed on April 15, 1987, was brought as "Complaint on Rejected Claim" naming Carolyn T. Christy, Executrix of Bruce L. Christy's estate, as defendant. Plaintiff alleged that defendant executrix wrongfully rejected his claim against Christy's estate.

Plaintiff's final complaint (case No. 87CV-06-3949), was filed on June 24, 1987, with similar claims to that of plaintiff's first complaint. Again plaintiff alleged as the basis for his complaint numerous cocounsel agreements between plaintiff and BLC. Plaintiff alleged that the attorneys [**253] who worked with Christy, namely Kitrick, Flickinger and Grieser of Grieser, Schafer, Blumensteil & Slane Co., L.P.A., solicited former clients of Christy as to whom plaintiff was cocounsel. These defendants purportedly knew of the existence of these cocounsel agreements. Plaintiff also [***6] alleged that defendants settled numerous cases on which plaintiff was cocounsel but refused to account to plaintiff amounts due him under the contract.

On May 27, 1987, pursuant to a motion filed by plaintiff, the trial court consolidated plaintiff's first and third complaints involving the claims against the attorneys. The trial court then on October 30, 1987, consolidated the remaining complaint, which involved the rejected claim against the estate, with the other consolidated case.

On April 24, 1989, pursuant to motions filed by defendants Carolyn T. Christy, BLC, Kitrick and Flickinger, the trial court granted each of these defendants summary judgment and further by judgment entries dismissed all three of plaintiff's complaints with prejudice.

In its decision, the trial court framed the issue as follows: "* * * whether an agreement, between lawyers not associated with each other, to divide fees without regard to work performed or responsibility assumed is enforceable." The trial court concluded that as a matter of law such a contract [*10] is in violation of Ohio law, violative of public policy and thus void and unenforceable. Therefore, the trial court reasoned that the [***7] motions for summary judgment should be granted. In addition, the trial court went an extra step and dismissed all of plaintiff's claims with prejudice, thus disposing of all three cases in their entirety.

Plaintiff filed three separate appeals with this court, which were consolidated by this court. Of the four assignments of error which plaintiff raises, two deal with the same issue: whether summary judgment on the merits was appropriate. This assignment of error will be addressed first.

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[1] Plaintiff brought this action along with the others as a class action. In an earlier decision by this court, we upheld the judgment of the lower court striking the class action allegations. *Waterman* v. *Christy* (Mar. 15, 1988), Franklin App. No. 87AP-866, unreported.

HN1[⬆] *Civ. R. 56(C)* sets forth a two-part test that must be met before summary judgment may be granted. First, the depositions, affidavits and other evidence submitted must establish that there is not a genuine issue of material fact. Second, the moving party must show that he is entitled to judgment as a matter of law.

As the court held *per curiam* in *Norris v. Ohio Std. Oil Co. (1982), 70 Ohio St. 2d 1, 2, 24 O.O. 3d 1, 2, 433 N.E. 2d 615, 616*, courts must bear in mind that:

"***HN2***[⬆] 'Summary judgment is a procedural device to terminate litigation and to avoid a formal trial where there is nothing to try. It must be awarded with caution, resolving doubts [***8] and construing evidence against the moving party, and granted only when it appears from the evidentiary material that reasonable minds can reach only an adverse conclusion as to the party opposing the motion. * * *'" (Citations omitted.)

Thus, only if defendants were able to demonstrate that no genuine issue of material fact exists and that they were entitled to judgment as a matter of law was the trial court correct in granting defendants' motion for summary judgment.

With this standard in mind, we turn to plaintiff's contention that summary judgment was not appropriate. The trial court primarily relied upon *R.C. 4705.08* to conclude the plaintiff's alleged cocounsel agreements with Christy were unenforceable. ***HN3***[⬆] *R.C. 4705.08* provides:

"No attorney or other person shall pay or receive any compensation or other consideration, or divide with or receive any portion of a fee, as an inducement or payment for solicitation or procurement of legal services * * *. This section does not prohibit the division of fees between attorneys for services performed by them.

"Any agreement made or contract of employment obtained in violation of this section is void and unenforceable."

While the trial [***9] court correctly interpreted this statute to prohibit attorneys from paying or receiving compensation solely for the referral of a client by one attorney to another, the statute expressly states that it does not prohibit the division of fees for services performed. Furthermore, ***HN4***[⬆] DR 2-107(A), relied upon by defendants, specifically [**254] permits the division of fees between attorneys provided that:

"(1) The client consents to employment of the other lawyer after a full disclosure that a division of fees will be made.

"(2) The division is made in proportion to the services performed and responsibility assumed by each.

"(3) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client."

HN5[⬆] A distinction must be drawn between a contract for a referral fee without performance of any services for the client (a fee-splitting arrangement unrelated to services) and cocounsel agreements. While pure referral contracts are prohibited by *R.C. 4705.08* and DR 2-107(A), cocounsel [*11] agreements specifically are not. The agreement is a "pure referral contract" if it provides that an attorney will receive a fee for merely forwarding a client [***10] to another attorney while doing nothing toward handling the case. Such an agreement is violative of *R.C. 4705.08* and DR 2-107.

However, ***HN6***[⬆] where one attorney performs services for the client and refers the client to another attorney who also performs services on the case, fee splitting would be permitted to the extent allowable under DR 2-107. In other words, provided that the client consents to the arrangement after full disclosure and that the division of fees between the attorneys is "made in proportion to the services performed and responsibility assumed by each," fee splitting is permissible.

The trial court failed to recognize this distinction as evidenced by its decision. Without regard to evidence contained in the depositions and affidavits, the trial court made a blanket finding that the express agreement plaintiff alleges is invalid and cannot be enforced. Because plaintiff alleged that the agreement was that fees would be split fifty-fifty and because plaintiff did not establish that he had performed half of the services, the trial court reasoned that plaintiff is not entitled to any award. As more fully explained, *infra*, an exactly even division of work is not necessary [***11] for a fifty-fifty fee-splitting arrangement, it being sufficient if the division is substantially equal from a quality of work responsibility and value standpoint.

Although plaintiff admits that there was no written contract, he also stated that he and Christy had many discussions regarding this relationship. With regard to the services plaintiff performed, he stated in his deposition:

"* * * We did many things. We did the -- 0 on most of the cases, the initial interview. We determined the extent of injuries, the presence of liability on behalf of the Defendant, the presence of property damage and helping people with that. Clients would call and we would be in touch with clients from time to time. They would call our office to see what was happening. We, in turn, would call Bruce's office if sufficient information was not available in the file. Bruce was supposed to send a copy of all -- any and all correspondence regarding that client to our office."

It is clear, even from this limited portion of plaintiff's deposition, that there exists a genuine issue of material fact as to the value of services performed by plaintiff and the type of relationship that existed between plaintiff [***12] and Christy. It appears from plaintiff's testimony that the relationship between the two was more than just a "pure referral." Clients did not simply receive Christy's name from plaintiff who then had no further contact with the clients. There exists several genuine issues of material fact as to the extent plaintiff participated in the representation of the clients.

Even assuming that plaintiff is not entitled to 1 fifty percent of all awards, it does not automatically follow that plaintiff is entitled to nothing. That is another disputed factual issue in this case making summary judgment inappropriate. It must first be determined that services were (or were anticipated to be) performed by Christy and by plaintiff. Next the relative value of those services must be determined, keeping in mind that quality or value, not quantity of services, is the determinative [**255] factor. Relative value of services does not necessarily depend upon time spent but instead is based upon all factors that are appropriate in setting fees for legal services, including expertise, experience, benefit to the client, responsibility, expenses, et cetera.

Defendants make several contentions [*12] in support [***13] of affirming the trial court's decision. The first, as discussed above, is that *any* agreement plaintiff may have would be unenforceable as it violated *R.C. 4705.08*. However, as we held above, there is a question of fact as to the nature of the agreement, if any, between plaintiff and Christy. The contract alleged and described by plaintiff has not been demonstrated to be violative of *R.C. 4705.08* and DR 2-107 as a matter of 2 law.

Defendants also contend that the agreement is void for another reason: that because the clients were not informed and did not consent to the fifty-fifty split, it is unenforceable. However, ***HN7***[] DR 2-107 does not specifically mandate that the client be informed of the amount of percentage of the fee split. It merely states that the client must consent to the employment of the other lawyer and to a division of fees. There is no indication that any client anticipated anything other than an arrangement consistent with the Code of Professional Responsibility and statute.

Plaintiff states in his deposition that, although the amount of the division was not explained to the client, it was explained that there would be a "division of fees, work, and responsibility." [***14] With respect to one client, plaintiff specifically states that, when explaining the retainer agreement, the client was told that the two law offices were representing him and that there was a division of fees, services, and responsibilities. As this is all which is required to be told the client regarding the fee division, the trial court erred in finding the agreement to be unenforceable as a matter of law for that reason.

3 Defendants Kitrick and Flickinger both contend that, although they worked with Christy, neither was a shareholder or partner with BLC. Therefore, defendants contend that neither is liable on any debts incurred by BLC as a result of any agreement with plaintiff. Furthermore, defendants contend that they did not owe any duty to plaintiff and do not owe any accounting to plaintiff.

Plaintiff's complaints allege two causes of action against defendants Kitrick and Flickinger: (1) that they are liable for amounts owed to him as a result of his cocounsel agreements with Christy; and (2) that by sending letters to clients for whom plaintiff was already cocounsel, defendants interfered with contractual rights of plaintiff. As a result, defendants may owe plaintiff [***15] an accounting to the extent that such letters resulted in either Kitrick or Flickinger's obtaining the client as his own and receiving fees for services (it being unclear as to whether this included fees for plaintiff's services).

The trial court did not reach this issue as it held that any agreement plaintiff may have had with Christy was void and unenforceable as a matter of law. As we have already determined, it was error for the 4 court to grant defendants' summary judgment because of the existence of numerous genuine issues of material fact.

Even if defendants were not partners of Christy (shareholders in Bruce L. Christy Co., L.P.A.), there still exists a genuine issue as to whether defendants knew of the cocounsel agreements and proceeded to ignore

them. If each file that defendants took contained a referral agreement in plaintiff's name, as plaintiff contends, then defendants should not have "solicited" these clients without plaintiff's knowledge or consent.

Depositions of defendant Kitrick and defendant Flickinger were taken, with Kitrick's ending abruptly after a name-calling dispute. However, it is unclear from his deposition whether he knew of the existence of cocounsel [***16] [*13] agreements. Furthermore, Flickinger specifically stated in his deposition that cocounsel agreements existed in some of the files, but he does not know how many. Thus, additional genuine issues of material fact exist.

[**256] Since so many of the basic facts in this case are in dispute summary judgment is clearly inappropriate. Only a fact finder, after hearing all of the evidence presented by both parties, may reach the factual findings 5 that the trial court reached. Accordingly, plaintiff's second assignment of error in case No. 89AP-672, and his first assignment of error in case No. 89AP-674 are well-taken.

With regard to plaintiff's claim against the estate (the second assignment of error in cases No. 89AP-673 and No. 89AP-674), plaintiff contends that the claim was filed timely and thus should not have been rejected by the executrix of Christy's estate. The trial court, after sustaining the summary judgment motions, ruled that the issue of timeliness was moot.

The parties are not in disagreement with the determinative dates. Defendant Carolyn T. Christy was appointed executrix of her husband's estate on September 29, 1986, while plaintiff filed a claim against that estate [***17] on December 30, 1986.

HN8[↑] *R.C. 2117.06(B)* provides that all claims against an estate "* * * shall be presented within three months after the date of the appointment of the executor * * *." Plaintiff contends that the time to file his claim did not start to run until the day after defendant's appointment as executrix. Plaintiff primarily relies ***HN9***[↑] upon *R.C. 1.14*, which states in pertinent part:

"The time within which an act is requried by law to be 6 done shall be computed by excluding the first and including the last day * * *."

Thus, plaintiff concludes the three-month period to file a claim did not begin until September 30, 1986, giving plaintiff until December 30, 1986, to file his claim.

Plaintiff overlooks ***HN10***[↑] *R.C. 1.45*, which provides in part:

"If a number of months is to be computed *by counting the months from a particular day*, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun * * *." (Emphasis added.)

HN11[↑] Reading *R.C. 1.45* in conjunction with *R.C. 1.14* and *2117.06(B)*, the time to begin counting the three-month period is clearly the day of appointment of the executor. Even when relying upon *R.C. 1.14* and excluding [***18] the first day, that first day is still the point from which counting begins, it is just excluded.

Therefore, when applying *R.C. 1.45 to 2117.06(B)*, the day from which to begin counting is the day the executor is appointed. See *In re Estate of Fisher (1983), 12 Ohio App. 3d 150, 12 OBR 474, 467 N.E. 2d 898*. In this case, that date would be September 29, 1986, making December 29, 1986, the last day plaintiff could have timely filed a claim against the 7 estate. As plaintiff did not file the claim until December 30, 1986, it was untimely as strict adherence to the statutory requirements is necessary. See *Prudential Ins. Co. v. Joyce Building Realty Co. (1944), 143 Ohio St. 564, 28 O.O. 480, 56 N.E. 2d 168*. Accordingly, plaintiff's second assignment of error in cases No. 89AP-673 and No. 89AP-674 is not well-taken. Since this issue is determinative of case No. 89AP-673, the first assignment of error is not well-taken in that case.

Plaintiff's last assignment of error (assignment of error one in case No. 89AP-672) centers around the trial court's decision to consolidate plaintiff's complaint [***19] on the rejected claim with the other two actions involving [*14] plaintiff's breach of contract allegations.

HN12[↑] *Civ. R. 42(A)* provides that the trial court may consolidate pending actions before it if there are common questions of law or fact between the actions. It is within the trial court's discretion whether to consolidate. See *Dir. of Highways v. Kleines (1974), 38 Ohio St. 2d 317, 67 O.O. 2d 368, 313 N.E. 2d 370*.

However, before the actions may be properly consolidated, the court must determine if there is enough commonality of issues to warrant consolidation and if the parties are substantially the 8 same. See *Miller v. Beard (App. 1955), 73 Ohio Law Abs. 10, 136 N.E. 2d 366*. In making such a determination, [**257]

the court should be mindful of the purpose of consolidation, which is the saving of time when a joint trial is used as opposed to separate trials.

The trial court's decision to consolidate the complaint on the rejected claim of the estate with plaintiff's other claims was poorly supported as there are completely dissimilar parties and different claims. There was insufficient commonality [***20] of issues to justify consolidation.

However, in light of our determination that plaintiff's claim against Christy's estate was not filed timely, which is the sole basis of plaintiff's complaint against the executrix, any error in consolidating this complaint with the others is not prejudicial. Accordingly, plaintiff's first assignment of error in case No. 89AP-672 is not well-taken.

For the foregoing reasons, in case No. 89AP-672, plaintiff's first assignment of error is overruled, while the second assignment of error is sustained; in case No. 89AP-674, plaintiff's first assignment of error is sustained, while the second assignment of error is overruled, and both assignments of error are overruled in case 9 No. 89AP-673. In case No. 89AP-673 the judgment dismissing the case is affirmed. In cases No. 89AP-672 and No. 89AP-674, the judgments of the Franklin County Court of Common Pleas are affirmed as to the decision to consolidate the cases and as to the dismissal of Carolyn T. Christy, executrix of Bruce Christy's estate, and reversed as to the granting of summary judgment to defendants Kitrick and Flickinger and the dismissal of plaintiff's remaining claims, and these causes are [***21] remanded to that court for further proceedings in accordance with law consistent with this opinion.

Judgment affirmed in case No. 89AP-673; judgments reversed and causes remanded in cases No. 89AP-672 and No. 89AP-674.
