

1 Cleveland Bar Association v. Fox.

2 [Cite as *Cleveland Bar Assn. v. Fox* (1996), _____ Ohio St.3d _____.)

3 *Attorneys at law -- Misconduct -- Indefinite suspension -- Failure to*
4 *preserve client's secrets or confidences -- Acceptance of*
5 *employment in which lawyer's own interest may impair*
6 *professional judgment on behalf of client -- Continuing multiple*
7 *employment where independent judgment on any client's*
8 *behalf may be adversely affected, without client's consent*
9 *after full disclosure -- Failure to cooperate in disciplinary*
10 *investigation.*

11 (No. 95-2536--Submitted January 24, 1996--Decided February 28,
12 1996.)

13 ON CERTIFIED REPORT by the Board of Commissioners on Grievances
14 and Discipline of the Supreme Court, No. 94-54.

15 Relator, Cleveland Bar Association, filed a complaint with the Board
16 of Commissioners on the Grievances and Discipline of the Supreme Court
17 ("board"), charging respondent, Norman A. Fox, last known address in
18 Fairview Park, Ohio, Attorney Registration No. 0013014, with violations of
19 DR 4-101(B)(2) (failure to preserve client's secrets or confidences), 5-101
20 (acceptance of employment in which lawyer's own interest may impair

1 professional judgment on behalf of client), and 5-105(B) (continuing
2 multiple employment where independent judgment on any client's behalf
3 may be adversely affected, without client's consent after full disclosure),
4 and Gov.Bar R. V(4)(G) (duty to cooperate in investigation of alleged
5 misconduct). The board served the complaint by certified mail at
6 respondent's last known address, but respondent did not answer. A panel
7 appointed by the board heard the matter on relator's motion for default, filed
8 pursuant to Gov.Bar R. V(6)(F).

9 Evidence submitted to support the motion for default established that
10 Willard S. McCarley hired respondent in June 1988 to represent him in a
11 personal injury action. McCarley had been injured in an automobile
12 accident, as had his passenger, Scott DeFabbo, whom respondent also
13 agreed to represent. McCarley's claim was referred to arbitration, from
14 which he received an adverse verdict and appealed in May 1990. In June
15 1990, respondent moved to withdraw as McCarley's counsel and, while
16 continuing to represent DeFabbo, requested permission to file a cross-claim
17 against McCarley. McCarley accused respondent of having used
18 information gained in confidence to advance DeFabbo's case.

1 Evidence also established that respondent did not reply as requested
2 to relator's June 30, 1990 correspondence or to its August 27, 1990 certified
3 letter inquiring about McCarley's grievance. Respondent also did not
4 respond to inquiries made by two investigators assigned by relator to look
5 into McCarley's grievance.

6 The panel granted the motion for default and found that respondent
7 had violated DR 4-101(B)(2), 5-101, and 5-105(B), and Gov.Bar R.
8 V(4)(G). The panel recommended that respondent receive a one-year
9 suspension from the practice of law.

10 The board agreed with the panel's findings of misconduct, but
11 recommended that respondent's license be suspended indefinitely due to his
12 "total failure to cooperate with the disciplinary process and in order to
13 protect the public."

14 *Ramsey, Caputo & Ramsey and Kenneth E. Ramsey; Lavelle &*
15 *Lavelle and Neal Lavelle*, for relator.

16 *Per Curiam*. Upon review of the record, we concur in the board's
17 findings of misconduct and its recommended sanction. Respondent is

1 hereby suspended indefinitely from the practice of law in Ohio. Costs taxed
2 to respondent.

3 *Judgment accordingly.*

4 MOYER, C.J., DOUGLAS, WRIGHT, RESNICK, PFEIFER and COOK, JJ.,
5 concur.

6 F.E. SWEENEY, J., not participating.

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