

Withdraw! Withdraw! Withdraw! Redux

AUTHOR: SANDBERG PHOENIX

Attorneys can run afoul of the rules of professional conduct in a variety of ways. One of the most common ways is by ignoring a client's matter. The Ohio Board of Commissioners on Grievances and Discipline recently sanctioned an attorney for just that. On review, the Ohio Supreme Court then upheld the majority of the sanctions, though it did reduce the imposed penalty.

Case Background

William Little stopped paying rent on a 10-year lease after he attempted to exercise his option to buy and the lessor could not transfer clear title. Little then retained Larry Shenise to defend him and his father Leonard, who had co-signed the lease, against an eviction claim. The Littles also wanted to pursue a counterclaim for fraud and damages arising from the lessor's breach of contract.

After a series of legal maneuvers that are irrelevant to this entry, the Court entered summary judgment against the Littles and awarded \$114,345 in damages to an assignee of the first mortgage on the property. Shenise failed to respond to a number of motions; the court ultimately issued an order to show cause regarding why the Littles shouldn't be held in contempt for their failure to abide by the court's earlier orders. Shenise failed to respond to that order.

At some point during these events, Shenise allowed his professional liability insurance to lapse, failed to advise his clients of that fact, and failed to obtain a written acknowledgement of the lapse from his clients, which he admitted and the Board found violated Rule 1.4(c) of the applicable rules of professional conduct. The Board also found Shenise chose to consciously ignore the show cause order because he knew Leonard Little had filed for bankruptcy and had retained separate bankruptcy counsel; Shenise believed the bankruptcy would automatically stay the civil matter.

The Rules

The Board found, and the Supreme Court agreed, that Shenise's failure to act violated the following rules of professional conduct:

- 1.1 – requiring a lawyer to provide competent representation to a client
- 1.2 – requiring a lawyer to consult with the client and abide by the client’s decisions regarding the means to pursue the objectives of the representation;
- 1.3 – requiring a lawyer to act with reasonable diligence in representing a client;
- 1.4(a)(1) – requiring a lawyer to inform the client of any decision or circumstance with respect to which the client’s informed consent is required;
- 1.4(a)(3) – requiring a lawyer to keep the client reasonably informed about the status of a matter;
- 1.4(b) – requiring a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and
- 3.4(c) – prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal.

Shenise admitted he did not discuss post-judgment issues with Little because he believed his representation had ended when Leonard Little retained bankruptcy counsel—even though he did not move to withdraw as Leonard’s counsel in the eviction matter. Both the Board and the Supreme Court held Shenise retained the responsibility to monitor the litigation and to protect Little’s interests.

The Media

A journalist from the Akron Beacon Journal interviewed Shenise, who purportedly made a number of statements concerning the matter:

1. No one had advised him or his client of the judge’s order;
2. No one from the judge’s court notified him by mail or phone of the contempt hearing; and
3. The court did not send him notice of the arrest warrants issued against his clients.

The Board found Shenise violated Rule 3.5(a)(6), which prohibits a lawyer from engaging in undignified or discourteous conduct that is degrading to a tribunal. The Ohio Supreme Court disagreed, however, based on a U.S. Supreme Court opinion stating that “while attorneys may be ‘subject to ethical restrictions on speech to which an ordinary citizen would not be,’ their speech may be sanctioned only if it is ‘highly likely to obstruct or prejudice the administration of justice.’” The court found Shenise’s statements did not satisfy this high threshold and dismissed his alleged violation of Rule 3.5(a)(6).

The Sanction

The Board recommended that Shenise serve a two-year suspension. It based its proposed sanction on three aggravating factors: 1) a pattern of misconduct; 2) Shenise’s efforts to blame the Littles and their bankruptcy

attorney for the legal issues; and 3) the Littles' vulnerability because of their education and inexperience with the legal system.

The Board also noted several mitigating factors: 1) Shenise had no prior disciplinary record; 2) he did not act with a dishonest or selfish motive; 3) he cooperated throughout the disciplinary process; and 4) he enjoyed a good professional record apart from the charged misconduct.

The Supreme Court found these mitigating factors sufficient to reduce Shenise's punishment to a public reprimand and requiring him to pay \$4,000 in expenses. The court emphasized that his conduct occurred in a single case and arose from his belief that his clients' bankruptcy filings were imminent and would remove the need for him to take further action.

The Take-Away

Though Shenise narrowly avoided a two-year suspension, he could have avoided the entire disciplinary process simply by monitoring his clients' ongoing litigation or withdrawing his representation after his clients secured bankruptcy counsel. Shenise's failures to act resulted in ~~seven~~ separate rule violations. As we have indicated in at least one previous blog entry, don't just stop work, withdraw!

In addition, though Shenise avoided a finding that he violated Rule 3.5(a)(6), and though this case shows an attorney must do something "highly likely to obstruct or prejudice the administration of justice" (a high threshold) to violate that rule, talking to the media about alleged rule violations may only pour gasoline on the fire. Criminal defense attorneys often advise their clients not to talk to the media for a similar reason.

Akron Bar Assn v. Shenise

By Tyler Thompson

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