

OFFICE OF DISCIPLINARY COUNSEL v. KURTZ.

[Cite as *Disciplinary Counsel v. Kurtz* (1999), 85 Ohio St.3d 34.]

Attorneys at law — Misconduct — On motion to appear and show cause — Thirty days in jail with all but three days suspended provided attorney no longer practices law in Ohio during his indefinite suspension.

(No. 97-2182 — Submitted December 15, 1998 — Decided March 10, 1999.)

ON MOTION to Appear and Show Cause.

This matter is before the court on the motion of relator, Office of Disciplinary Counsel, for an order requiring respondent, Phillip Kurtz of Euclid, Ohio, Attorney Registration No. 0030018, to appear and show cause why he should not be held in contempt.

On May 20, 1998, we indefinitely suspended respondent from the practice of law in Ohio. *Disciplinary Counsel v. Kurtz* (1998), 82 Ohio St.3d 55, 693 N.E.2d 1080. Respondent's motions to reconsider and for a stay were denied on July 28, 1998. *Disciplinary Counsel v. Kurtz* (1998), 82 Ohio St.3d 1470, 696 N.E.2d 226. On July 28, 1998, the Clients' Security Fund reported that it had awarded the Anna J. Korda Trust \$25,000 on account of respondent's misappropriation of trust funds.

On September 30, 1998, relator filed a motion alleging that at the end of July 1998, respondent, who had been engaged in April 1998 by Wendy Vanatta to represent her in a custody matter, accepted an additional fee of \$120 from Vanatta. At the time, he told Vanatta that he could continue to work on her case but could not appear in court on her behalf. Respondent said that he would, and ultimately did, find another attorney to represent Vanatta.

Relator also alleged that respondent had previously appeared in a case in the Cuyahoga County Common Pleas Court representing DRG Hydraulics, Inc. and that after his suspension did not file a notice of withdrawal. Instead, on September 1, 1998, he signed a “check-in” sheet in the case as “Michael Lograsso by Phillip Kurtz,” counsel for DRG Hydraulics. When the judge asked him about his ability to practice law, respondent replied that he was “having some problems” but expected to be reinstated very shortly. He told the judge that Lograsso, a Cleveland attorney, represented DRG Hydraulics but was unable at the time to appear in court. Lograsso stated that he never represented DRG Hydraulics.

Relator further alleged that after his suspension, respondent continued to communicate with his former client Donald Pope regarding criminal charges against him. Respondent also represented Pope in some civil matters and received \$200 in fees from him. When the court became aware of respondent’s suspension, it appointed a public defender for Pope. Respondent, nevertheless, attempted to find new counsel for Pope and told him to disregard the advice of the public defender.

Relator also alleged that in August 1998, Estelle Bousquet contacted respondent, having found his name in the yellow pages, and asked him to prepare a will. Respondent told Bousquet that he would charge \$150 to prepare the will. After respondent offered to keep Bousquet’s valuables and asked for her bank account numbers, she decided to have no further contact with him. Bousquet called the Cleveland Bar Association and was told that respondent had been suspended.

Relator finally alleged that respondent had not complied with the order of suspension by notifying his clients, returning their files and unearned fees, and notifying opposing counsel in pending litigation.

At the hearing on the order to show cause, respondent denied that he practiced law after his suspension. He attempted to explain his actions by his perceived duty to help his clients such as Vanatta and Pope, who he said were without resources to find attorneys. Respondent further said that he was attempting to “transfer [his] practice” to Michael Lograsso and appeared in the DRG Hydraulics case only to obtain a continuance. Respondent also said that he offered only to have someone type Bousquet’s will after explaining to her testamentary trusts and the effect of a power of attorney. And he said that he gave oral notice of his suspension to clients, courts, and opposing counsel.

Jonathan E. Coughlan, Disciplinary Counsel, and *Lori J. Brown*, First Assistant Disciplinary Counsel, for relator.

Phillip Kurtz, pro se.

Per Curiam. The practice of law includes counseling clients as well as drafting documents and appearing in court. After he was suspended from the practice of law, respondent, by his own admission, counseled clients and, at least in one case, appeared in court. Respondent unquestionably practiced law not only after we suspended him indefinitely but also after we denied his motion for reconsideration.

Moreover, respondent failed to carry out our mandate in the suspension order because he failed to send by certified mail the required notices to clients, the courts, and opposing counsel.

Relator’s motion for contempt is granted. Respondent is sentenced to thirty days in jail with all but three of those thirty days suspended, provided that respondent no longer practices law in Ohio during his indefinite suspension. It is

further ordered that respondent return all files to all clients, forthwith conform with the May 20, 1998 order of suspension, and pay all costs of this proceeding.

Judgment accordingly.

MOYER, C.J., DOUGLAS, RESNICK, F.E. SWEENEY, PFEIFER, COOK and
LUNDBERG STRATTON, JJ., concur.