

SUPREME COURT OF GEORGIA

Case No. S97Y0698.

Atlanta May 2, 1997

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

IN THE MATTER OF WALLACE D. WASHINGTON

This disciplinary proceeding involves the appropriate sanction to impose on respondent Wallace D. Washington for writing and delivering a post-dated check on his client's behalf, on a personal account which had been closed. We agree with the special master that Washington's conduct in this case violates Standards 4 and 45, and we agree with the Review Panel that the appropriate sanction in this case is a public reprimand.

The underlying facts in this case are generally undisputed. Washington represented Lisa Austin in negotiating a settlement in her divorce action. In anticipation of the sum she was to receive under the settlement Ms. Austin attempted to rent a house. The rental agent, James Kurtz, for Century 21, informed Ms. Austin that because of her credit history she would be required to pay \$7,000 representing six months rent and a security deposit before moving in. Ms. Austin sought Washington's assistance, and Washington gave her a check for \$7,000, post-dated, written on a closed personal account, which check Austin then delivered to Kurtz. According to Washington, he never intended that check to be negotiated. According to Kurtz, he and Washington agreed in a telephone conversation that if Austin did not make the required payment, then Washington's check would be applied for that payment. Austin testified she understood Washington was lending her the \$7,000 and that he would deduct that amount from her settlement proceeds. The divorce settlement did not go through, Austin was unable to make the payment, and the rental company, at Kurtz's direction, deposited the check, which was returned because it was written on a closed account.

The State Bar, on Kurtz's grievance, alleged in its complaint that Kurtz's conduct violated Standards 4 and 45.¹ The special master, following an evidentiary hearing, agreed

¹ The State Bar charged Washington with the following violations of Bar Rule 4-102: Standard 3 (engaging in illegal professional conduct involving moral turpitude); Standard 4 (engaging in professional conduct involving dishonesty, fraud, deceit, or wilful misrepresentation); Standard 45 (b) (knowingly making a false statement of law or fact in the representation of a client); Standard 45 (d) (counseling or assisting a client in conduct the lawyer knows to be illegal or fraudulent); Standard 45 (e) (knowingly engaging in other illegal conduct or conduct contrary to a disciplinary rule in the representation of a client); and Standard 68 (failure to respond to disciplinary authorities in accordance with State Disciplinary Board rules). The Bar abandoned its allegations

and recommended a public reprimand for Washington's conduct. A majority of the Review Panel found Washington did not violate Standard 4 but did violate Standard 45, and recommended a public reprimand.

We agree with the minority of Review Panel members that although Washington's conduct in writing the check on his closed account might not be sufficient to support a verdict under the criminal and civil statutes regarding the writing of bad checks, the scope of Standard 4 is broader, and includes Washington's conduct in this case. Standard 4 proscribes a lawyer's professional conduct involving fraud, deceit or wilful misrepresentation. It is undisputed Washington wrote a post-dated check on a closed personal account and gave the check to his client, knowing she would deliver it to the rental agent. While this Court does not find facts in disciplinary matters, it is nonsensical, regardless of Washington's stated intent regarding the check, to believe that he would not expect that check would be negotiated under the facts of this case.² In any event, we have no difficulty concluding that when a lawyer writes a check on a closed account, personal or otherwise, knowing that check will be delivered to another party on a client's behalf, that conduct in itself is at the least a dishonest and wilful misrepresentation. Likewise, we hold that Washington's conduct violated Standards 45 (b) which proscribes knowingly making a false representation of law or fact, and 45 (e), which proscribes knowingly engaging in illegal conduct or conduct contrary to a disciplinary rule.³

In examining the appropriate sanction in this case we look for guidance, as did the Review Panel, to the ABA Standards for Imposing Lawyer Sanctions (1991), and in particular to the factors to be considered: the duty violated, the lawyer's mental state, the actual or

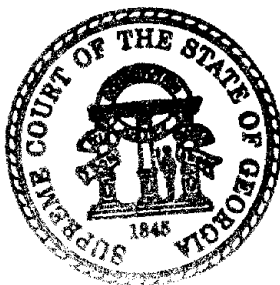
regarding Standard 3. Although the special master granted the Bar's motion for summary judgment regarding Standard 68 and recommended a formal admonition as sanction, we agree with the Review Panel that although Washington did not timely notify the Bar of his new address, it would be fundamentally unfair under the facts of this case to sanction Washington for failing to respond to the Notice of Investigation in the Kurtz grievance. That notice was sent to his old address around the same time the same member of the Investigative Panel handling the Kurtz grievance had been corresponding with Washington at his new address regarding a grievance filed by Austin (the Bar dismissed that grievance as lacking sufficient evidence to establish probable cause).

² We are, of course, bound by the Review Panel's findings of fact where there is any evidence to support them. In the Matter of Jack Morse, 265 Ga. 353 (1) (456 SE2d 52) (1995).

³ The State Bar in its complaint alleged Washington violated Standards 45 (b) (knowingly making a false statement of law or fact), (d) (counseling or assisting a client in conduct that the client knows to be illegal or fraudulent) and (e) (knowingly engaging in other illegal conduct or conduct contrary to a disciplinary rule). The special master, in finding Washington violated Standard 45, did not specify that standard's subparts. The majority of the Review Panel found Washington violated Standards (b) and (d). We disagree with the Review Panel majority that Washington's conduct violated Standard 45 (d). Washington did not assist his client in conduct he knew to be illegal or fraudulent under Standard 45 (d), as alleged in the State Bar's complaint. There is no evidence Austin knew that the check was bad or that she herself was engaging in illegal or fraudulent conduct.

potential injury caused by the lawyer's misconduct and any mitigating or aggravating factors. Here, Washington had a duty to act truthfully and honestly in dealings with his client and with others on the client's behalf. In writing a bad check Washington violated that duty. There is no evidence Washington was acting maliciously, or that his motives were selfish. Rather, it appears that he attempted to assist his client in an inappropriate manner. In this case the client was not injured, but was able to stay in her house. In aggravation we find that Robinson has refused to acknowledge the wrongful nature of his conduct, apparently believing his conduct in writing a bad check in this case was proper. See ABA Standard 9.22 (g). In mitigation, we note that Washington has no prior disciplinary record and did not act with a dishonest or selfish motive. We note that ABA Standard 5.13 states that a reprimand is generally appropriate when a lawyer knowingly engages in conduct involving dishonesty, fraud, deceit, or misrepresentation adversely reflecting on the lawyer's fitness to practice law. While it appears that Washington's conduct in this case was a misguided and inappropriate attempt to assist his client, it nevertheless involved dishonesty adversely affecting Washington's fitness to practice law.

For the above and foregoing reasons, it is hereby ordered that Washington be given a public reprimand for his violations of Standards 4 and 45, and that the chief judge of the appropriate superior court administer that reprimand in open court pursuant to Bar Rule 4-220 (c).



SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I hereby certify that the above is a true extract from
The minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court hereto
Affixed the day and year last above written.

, Chief Deputy Clerk