

COURT OF APPEALS OF MARYLAND

Attorney Grievance Commission v. McLaughlin, 372 Md. 467

813 A.2d 1145 (2002) · No. Misc. Docket AG No. 22, Sept. Term, 2001 · Decided December 24, 2002

SUMMARY

The Maryland Court of Appeals considered disciplinary charges against attorney Thomas J. McLaughlin arising from his asset-protection and Medicaid-planning representations, management of client funds, fee arrangements, and handling of funds belonging to his mother and a health-care facility. The opinion discusses violations involving client communication, unreasonable fees, conflicts and business transactions with clients, safekeeping and misuse of trust funds, failure to refund unearned fees, and related misconduct.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Battaglia, J.; Bell, C.J.; Eldridge, J.; Raker, J.; Wilner, J.; Cathell, J.; Harrell, J.
JURISDICTION	Maryland
DECIDED	December 24, 2002
DOCKET	Misc. Docket AG No. 22, Sept. Term, 2001
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the Court of Appeals independently reviewed the record following a hearing before a circuit court judge and an earlier per curiam order disbarring respondent.
STANDARD OF REVIEW	The Court independently reviews the record as the court of original and complete jurisdiction in attorney disciplinary proceedings. The hearing judge's factual findings are accepted unless clearly erroneous, while conclusions of law are reviewed de novo.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Attorney Grievance Commission of Maryland v. Thomas Joseph McLaughlin

TOPICS

[asset protection](#)[estate planning](#)[medicare medicaid](#)[power of attorney](#)[trusts](#)

PRACTICE AREAS

legal ethics and attorney discipline

trust-account compliance

elder law

Medicaid planning

health law

QUESTIONS PRESENTED

1. Whether the hearing judge's factual findings and legal conclusions establishing violations of the Maryland Rules of Professional Conduct and Maryland statutes should be sustained.
2. Whether McLaughlin was entitled to a remand or new hearing based on his self-representation, failure to answer requests for admissions, and asserted psychiatric conditions.
3. Whether McLaughlin's fee agreements and conduct violated duties concerning communication, reasonable fees, conflicts of interest, business transactions with clients, safekeeping of property, refunding unearned fees, and honesty.
4. Whether McLaughlin violated Maryland law and professional-conduct rules by misappropriating funds entrusted for his mother's nursing-home care.
5. What sanction was appropriate for the established misconduct.

HOLDINGS

1. In an attorney disciplinary proceeding, the Court independently reviews the record, accepts factual findings unless clearly erroneous, and reviews legal conclusions de novo.
2. A respondent who received notice and repeated opportunities to obtain counsel, object, respond to discovery, and defend at a full and fair hearing is not entitled to a remand or new hearing merely because he failed to use those opportunities or later asserted deficient litigation skills and psychiatric conditions.
3. A lawyer violates MRPC 1.4(a) by failing to keep clients reasonably informed about the status of their matters and failing to respond promptly to reasonable requests for information.
4. A fee charged for which little or no legal work is performed is unreasonable per se under MRPC 1.5(a), and receiving and retaining such a fee may constitute dishonest conduct in violation of MRPC 8.4(c).
5. Unearned advance fees entrusted to a lawyer for future services are trust money that must be maintained separately in an attorney trust account and may not be used for unrelated personal or professional purposes.
6. A fee agreement allowing the lawyer to repay unearned fees over time at interest creates a business or financial transaction with the client and violates MRPC 1.7 and MRPC 1.8 when the lawyer does not advise the client to seek independent counsel or provide a reasonable opportunity to do so, and the lawyer's self-interest materially limits the representation.
7. Upon termination of representation, a lawyer must refund advance fees that have not been earned; failure to do so violates MRPC 1.16(d).
8. An attorney acting under a power of attorney who receives funds intended for a nursing-home resident's care must use those funds only for their authorized purpose, maintain them separately, and may not divert them for personal or professional use.

9. Disbarment forthwith was the appropriate sanction for McLaughlin's willful, unmitigated, and repeated misuse and misappropriation of client and third-party funds, together with his exploitation of vulnerable elderly clients.

KEY QUOTATIONS

"A fee charged for which little or no work was performed is an unreasonable fee." (1166)

"The hearing judge correctly characterized respondent's behavior—taking money without providing services—as a misappropriation of funds, the "gravest form of professional misconduct."" (1167)

"This Court, however, has no trouble characterizing the second repayment option as a business transaction." (1168)

"As we have repeatedly decided, only disbarment provides the necessary shield from conduct so blatantly nefarious." (1171)

FACTUAL BACKGROUND

McLaughlin represented elderly clients and their families in purported Medicaid and long-term-care asset-protection matters. He charged substantial design and implementation fees, frequently performed little or no appreciable work, failed to communicate or return unearned fees, and deposited or spent client funds for personal or professional purposes rather than maintaining them in trust. He also received approximately \$28,000 in insurance payments intended for his mother's nursing-home care and used those funds for his own purposes while acting under a power of attorney.

PROCEDURAL HISTORY

The Attorney Grievance Commission filed a petition charging McLaughlin with violations of the Maryland Rules of Professional Conduct and Maryland statutes. The Court of Appeals referred the matter to the Circuit Court for Baltimore County for fact-finding and conclusions of law. Judge Robert N. Dugan found numerous violations, and Bar Counsel recommended disbarment. After denying McLaughlin's motions to remand and reconsider, the Court heard oral argument and entered a November 1, 2002 per curiam order disbarring him forthwith, then issued this opinion explaining that order.

DISPOSITION

other

CASES CITED

- Attorney Grievance Comm'n v. Garfield, 369 Md. 85, 97, 797 A.2d 757, 763-64 (2002)
- Attorney Grievance Comm'n v. Snyder, 368 Md. 242, 253, 265-66, 793 A.2d 515, 521, 529 (2002)
- Attorney Grievance Comm'n v. Garland, 345 Md. 383, 392, 692 A.2d 465, 469 (1997)
- Attorney Grievance Comm'n v. Dunietz, 368 Md. 419, 428, 795 A.2d 706, 710-11 (2002)
- Attorney Grievance Comm'n v. Thompson, 367 Md. 315, 322, 786 A.2d 763, 768 (2001)

- Attorney Grievance Comm'n v. Briscoe, 357 Md. 554, 562, 745 A.2d 1037, 1041 (2000)
- Attorney Grievance Comm'n v. Harris, 366 Md. 376, 391, 784 A.2d 516, 525 (2001)
- Attorney Grievance Comm'n v. Stewart, 285 Md. 251, 259, 401 A.2d 1026, 1030 (1979)
- Jackson v. Millstone, 369 Md. 575, 580-82, 801 A.2d 1034, 1036-38 (2002)
- Jaffe v. Sharp, 463 F. Supp. 222 (D. Mass. 1978)
- Attorney Grievance Comm'n v. Monfried, 368 Md. 373, 390-93, 794 A.2d 92, 102-03 (2002)
- Attorney Grievance Comm'n v. Santos, 370 Md. 77, 87-88, 803 A.2d 505, 511 (2002)
- Attorney Grievance Comm'n v. Hayes, 367 Md. 504, 512-13, 789 A.2d 119, 124 (2002)
- Attorney Grievance Comm'n v. Pattison, 292 Md. 599, 609, 441 A.2d 328, 333 (1982)
- Bar Ass'n v. Marshall, 269 Md. 510, 307 A.2d 677 (1973)
- Attorney Grievance Comm'n v. Gallagher, 371 Md. 673, 715, 810 A.2d 996, 1021 (2002)
- Advance Fin. Co. v. Trustees of the Clients' Sec. Trust Fund of the Bar of Maryland, 337 Md. 195, 210-11, 652 A.2d 660, 667 (1995)
- Attorney Grievance Comm'n v. Clark, 363 Md. 169, 183-84, 767 A.2d 865, 873 (2001)
- Attorney Grievance Comm'n of Maryland v. Hess, 352 Md. 438, 453, 722 A.2d 905, 913 (1999)
- Attorney Grievance Comm'n of Maryland v. Webster, 348 Md. 662, 678, 705 A.2d 1135, 1143 (1998)
- Attorney Grievance Comm'n of Maryland v. Awuah, 346 Md. 420, 435, 697 A.2d 446, 454 (1997)
- Attorney Grievance Comm'n v. Atkinson, 357 Md. 646, 656, 745 A.2d 1086, 1092 (2000)
- Attorney Grievance Comm'n v. Gavin, 350 Md. 176, 197-98, 711 A.2d 193, 204 (1998)
- Attorney Grievance Comm'n v. McLaughlin, 344 Md. 372, 686 A.2d 1103 (1996)