COURT OF APPEALS OF MARYLAND

Attorney Grievance Commission v. Fader

431 Md. 395 (2013) · Decided May 6, 2013

SUMMARY

The Maryland Court of Appeals reviewed attorney disciplinary charges against Joel Jay Fader arising from the management of attorney trust accounts and a postponement request in an administrative hearing. The hearing judge found violations involving safekeeping and commingling of funds, account recordkeeping, candor toward a tribunal, and responsibility for a nonlawyer assistant, while rejecting several other alleged violations. The excerpt includes the factual findings and legal conclusions but ends before the opinion is complete.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Battaglia, J.
JURISDICTION	Maryland
DECIDED	May 6, 2013
DISPOSITION	other
PROCEDURAL POSTURE	The Attorney Grievance Commission filed a petition for disciplinary or remedial action against Fader. Following an evidentiary hearing before a circuit court judge acting as hearing judge, the Court of Appeals independently reviewed the hearing judge's factual findings and legal conclusions, considered exceptions, determined additional rule violations, and imposed disbarment.
STANDARD OF REVIEW	The Court accepts the hearing judge's factual findings as prima facie correct unless clearly erroneous, giving deference to credibility determinations, and reviews conclusions of law de novo under Maryland Rule 16-759(b)(1). The petitioner bears the burden of proving the petition's averments by clear and convincing evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Attorney Grievance Commission of Maryland v. Joel Jay Fader

TOPICS

administrative law · agency adjudication · evidence · civil procedure

PRACTICE AREAS

legal ethics and professional responsibility | attorney discipline | administrative law | evidence | civil procedure

QUESTIONS PRESENTED

1. Whether the hearing judge's factual findings concerning who prepared and submitted the postponement materials and what Fader represented to the administrative law judge were clearly erroneous.
2. Whether Fader violated Maryland Lawyers' Rules of Professional Conduct 3.3(a)(1) and (4) and 8.4(c) by misleading the Office of Administrative Hearings and failing to correct false statements.
3. Whether Fader violated Rule 8.4(d) through dishonest conduct prejudicial to the administration of justice.
4. Whether Fader violated Rule 5.3(b) by failing to reasonably supervise his nonlawyer assistant.
5. Whether Fader violated Rules 1.15(a) and (b), 8.4(a) and (d), and Maryland Rules 16-606.1 and 16-607 through misuse and commingling of funds in attorney trust accounts.
6. What sanction was appropriate for the established violations.

HOLDINGS

1. The hearing judge's findings concerning the preparation and submission of the altered documents, Fader's voicemail messages, and his statements at the subsequent administrative hearing were supported by the record and were not clearly erroneous.
2. Fader violated Maryland Lawyers' Rule of Professional Conduct 3.3(a)(1) by knowingly misleading the Office of Administrative Hearings and failing to correct material misrepresentations, and violated Rule 3.3(a)(4) by offering evidence he knew to be false without taking reasonable remedial measures.
3. Fader violated Rule 8.4(c) by engaging in dishonesty, deceit, and misrepresentation in communications with the Office of Administrative Hearings and in his testimony before the administrative law judge.
4. Fader violated Rule 8.4(d) because his dishonest dealings with the administrative law judge were prejudicial to the administration of justice.
5. Fader violated Rule 5.3(b) by failing to make reasonable efforts to ensure that his nonlawyer assistant's conduct was compatible with his professional obligations.
6. Fader violated Maryland Lawyers' Rules of Professional Conduct 1.15(a), 1.15(b), 8.4(a), and 8.4(d), and Maryland Rules 16-606.1 and 16-607, by commingling personal and client funds, improperly maintaining trust accounts, and failing to comply with required trust-account procedures.
7. Disbarment was the appropriate sanction for Fader's intentional dishonesty toward a tribunal, multiple professional-rule violations, prior discipline, pattern of misconduct, and substantial experience in practice.

KEY QUOTATIONS

> *"While it is true that Fader could have sought, and most likely would have been granted, a postponement if he had submitted a truthful request, it is Fader's dishonesty in dealing with the administrative law judge that is violative of Rule 8.4(d)."* (435)

> *"When a lawyer lies to a tribunal, he or she violates a norm that warrants disbarment."* (438)

> *"Fader misrepresented facts to OAH and the administrative law judge in order to secure a postponement and failed to correct his misrepresentations at the subsequent hearing before the administrative law judge on December 15, 2010."* (439)

FACTUAL BACKGROUND

Fader represented a client in an administrative hearing before the Office of Administrative Hearings and sought a postponement based on his medical condition. His office submitted materials including an altered disability slip and a forged physician letter, and Fader later made or failed to correct misleading statements about the basis for his absence and his purported treatment. Separately, Fader commingled personal and client funds in two attorney trust accounts, failed to maintain required records and reconciliations, and made unauthorized or improper withdrawals.

PROCEDURAL HISTORY

Bar Counsel filed the disciplinary petition on April 3, 2012. The Court of Appeals referred the matter to Judge Martin P. Welch of the Circuit Court for Baltimore City, who held an evidentiary hearing on August 27 and 28, 2012, and found multiple violations involving Fader's trust accounts and misrepresentations to the Office of Administrative Hearings. The Court of Appeals accepted the supported factual findings, overruled or sustained the parties' exceptions as described in the opinion, independently reviewed the legal conclusions, and disbarred Fader.

DISPOSITION

other

CASES CITED

- Attorney Grievance v. Chapman, 430 Md. 238, 273, 277, 60 A.3d 25, 46, 49 (2013)
- Attorney Grievance v. Seltzer, 424 Md. 94, 112, 34 A.3d 498, 509 (2011)
- Attorney Grievance v. Rand, 429 Md. 674, 712, 57 A.3d 976, 998 (2012)
- Attorney Grievance v. Stern, 419 Md. 525, 556, 19 A.3d 904, 925 (2011)
- Attorney Grievance v. Zimmerman, 428 Md. 119, 134, 50 A.3d 1205, 1214 (2012)
- Attorney Grievance v. Zdravkovich, 375 Md. 110, 126, 825 A.2d 418, 427 (2003)
- Attorney Grievance v. Zakroff, 387 Md. 603, 628, 876 A.2d 664 (2005)
- Attorney Grievance v. Goodman, 426 Md. 115, 128, 43 A.3d 988, 995 (2012)
- Attorney Grievance v. Carithers, 421 Md. 28, 56 (2011)
- Attorney Grievance v. Harris, 366 Md. 376, 403, 784 A.2d 516 (2001)

- Attorney Grievance v. Mooney, 359 Md. 56, 74, 79, 753 A.2d 17 (2000)
- Attorney Grievance v. Byrd, 408 Md. 449, 478, 970 A.2d 870 (2009)
- Attorney Grievance v. Mininsohn, 380 Md. 536, 569-70, 576, 846 A.2d 353, 376-77 (2004)
- Attorney Grievance v. Dietz, 331 Md. 637, 629 A.2d 678 (1993)
- Attorney Grievance v. Gallagher, 371 Md. 673, 710-11, 810 A.2d 996 (2002)
- Attorney Grievance v. Pak, 400 Md. 567, 607-08, 929 A.2d 546, 570 (2007)
- Attorney Grievance v. Blum, 373 Md. 275, 302, 818 A.2d 219, 235 (2003)
- Attorney Grievance v. McClain, 406 Md. 1, 16, 18, 21, 956 A.2d 135, 144-46 (2008)
- Attorney Grievance v. White, 354 Md. 346, 364, 367-68, 731 A.2d 447, 457, 459 (1999)
- Attorney Grievance v. Goodman, 381 Md. 480, 850 A.2d 1157 (2004)
- Attorney Grievance v. Joseph, 422 Md. 670, 707, 31 A.3d 137, 159 (2011)
- Attorney Grievance v. Paul, 423 Md. 268, 284, 31 A.3d 512, 522 (2011)
- Attorney Grievance Comm'n v. Goldberg, 292 Md. 650, 441 A.2d 338 (1982)
- Attorney Grievance v. Bleecker, 414 Md. 147, 176-78, 994 A.2d 928, 945-46 (2010)
- Attorney Grievance v. Coppola, 419 Md. 370, 406-07, 19 A.3d 431, 452-53 (2011)
- Attorney Grievance v. Nwadike, 416 Md. 180, 202, 6 A.3d 287, 299-300 (2010)
- W & D Acquisition, LLC v. First Union National Bank, 262 Conn. 704, 817 A.2d 91, 94 n.7 (Conn. 2003)