

SUPREME COURT OF OHIO

Toledo Bar Assn. v. Berling

2020-Ohio-2838 (Ohio 2020) · No. 2019-1743 · Decided May 12, 2020

SUMMARY

The Supreme Court of Ohio held that Mark David Berling committed 27 violations of the Ohio Rules of Professional Conduct across eight client matters, including neglect, failure to communicate, mishandling client funds, unauthorized practice, dishonesty, and improper sexual communications with a client. The court imposed a two-year suspension without stay, ordered restitution to seven former clients, and conditioned reinstatement on compliance with specified evaluation and treatment requirements.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Maureen O'Connor, C.J.
JURISDICTION	Ohio
DECIDED	May 12, 2020
DOCKET	2019-1743
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding based on a certified report of the Board of Professional Conduct of the Supreme Court of Ohio.
STANDARD OF REVIEW	Independent review of the record; credibility determinations of the hearing panel are deferred to unless the record weighs heavily against them.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Toledo Bar Association v. Mark David Berling

TOPICS

remedies restitution administrative law

PRACTICE AREAS

legal ethics and professional responsibility attorney discipline professional misconduct remedies

QUESTIONS PRESENTED

1. Whether the Board of Professional Conduct's findings that Berling violated the Ohio Rules of Professional Conduct in eight client matters should be adopted.
2. What sanction is appropriate for Berling's pattern of neglect, failure to communicate, trust-account violations, dishonesty, unauthorized practice, sexual communications with a client, and failure to make restitution.
3. Whether Berling should be required to make specified restitution and satisfy conditions before reinstatement.

HOLDINGS

1. The Supreme Court of Ohio adopted the board's findings that Berling committed most of the charged violations of the Ohio Rules of Professional Conduct in all eight client matters.
2. A two-year suspension from the practice of law, without any portion stayed, was warranted.
3. Berling was required to pay specified restitution to seven former clients within 90 days and satisfy additional reinstatement conditions, including an Ohio Lawyers Assistance Program evaluation and proof of fitness to resume competent, ethical, and professional practice.

KEY QUOTATIONS

“The record, the balance of the aggravating and mitigating factors, and our applicable precedent all support a two-year suspension, without any portion stayed.” (§ 40)

“Mark David Berling is hereby suspended from the practice of law in Ohio for two years.” (§ 41)

FACTUAL BACKGROUND

Berling represented clients in eight matters but repeatedly neglected their legal matters, failed to communicate, failed to return unearned fees, and failed to deposit client funds into his trust account. His misconduct included failing to file pleadings, missing or mishandling hearings, delaying the transfer of client files, sending sexual messages to a client, and attempting to practice law in Michigan without obtaining temporary admission. The board found 27 ethical-rule violations, six aggravating factors, and several mitigating factors, and determined that restitution was owed to seven clients.

PROCEDURAL HISTORY

The Toledo Bar Association charged Berling with professional misconduct in eight client matters. After a hearing, a three-member panel found most of the charged misconduct, and the Board of Professional Conduct adopted the panel's findings and recommended a two-year suspension and restitution to seven former clients. Neither party objected, and the Supreme Court of Ohio independently reviewed the record and accepted the board's findings and recommended sanction.

DISPOSITION

other

CASES CITED

- Toledo Bar Assn. v. Berling, 2020-Ohio-1111
- Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St. 3d 164, 2006-Ohio-550, 842 N.E.2d 35
- Disciplinary Counsel v. Delay, 157 Ohio St. 3d 137, 2019-Ohio-2955, 132 N.E.3d 680
- Cleveland Metro. Bar Assn. v. Gresley, 127 Ohio St. 3d 430, 2010-Ohio-6208, 940 N.E.2d 945
- Disciplinary Counsel v. Hall, 131 Ohio St. 3d 222, 2012-Ohio-783, 963 N.E.2d 813
- Disciplinary Counsel v. Turner, 154 Ohio St. 3d 322, 2018-Ohio-4202, 114 N.E.3d 174

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/ohio-supreme-court-of-ohio/2020/toledo-bar-assn-v-berling-0ksaeji8>