

SUPREME COURT OF OHIO

Disciplinary Counsel v. Gildee

134 Ohio St. 3d 374, 2012-Ohio-5641 · No. 2012-1011 · Decided December 5, 2012

SUMMARY

The Supreme Court of Ohio reviewed disciplinary charges against attorney Eva Catherine Gildee for misappropriating client funds, failing to deliver funds, and making false statements and fabricating documents during the disciplinary investigation. The court accepted the findings of misconduct and imposed a two-year suspension from practice, with one year stayed on conditions including no further violations and full restitution of \$11,290.98.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; O'Connor, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; McGee Brown, J.
JURISDICTION	Ohio
DECIDED	December 5, 2012
DOCKET	2012-1011
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding before the Supreme Court of Ohio on a certified report from the Board of Commissioners on Grievances and Discipline. The parties stipulated to facts, rule violations, aggravating and mitigating factors, and a proposed sanction; neither party objected to the board's recommendation.
STANDARD OF REVIEW	Independent review of the pertinent factors in determining the appropriate attorney-discipline sanction.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.

TOPICS

commercial litigation commercial remedies

PRACTICE AREAS

legal ethics attorney discipline professional responsibility client funds

QUESTIONS PRESENTED

1. Whether Gildee violated the Ohio Rules of Professional Conduct by failing to maintain client funds separately, failing to deliver funds to which the client was entitled, and making false or deceptive statements in connection with the disciplinary matter.
2. Whether the appropriate sanction was a two-year suspension from the practice of law with one year stayed on conditions, including no further misconduct and full restitution.

HOLDINGS

1. Gildee violated Prof.Cond.R. 1.15(a), 1.15(d), 8.1, 8.4(c), and 8.4(h) by failing to maintain client funds in a separate trust account, failing to promptly deliver funds owed to the client, and making false, dishonest, fraudulent, or misleading statements in connection with the disciplinary matter.
2. Gildee violated Prof.Cond.R. 8.1, 8.4(c), and 8.4(h) by falsely representing to disciplinary counsel that she had transmitted letters and checks to the client when she had not done so.
3. A two-year suspension from the practice of law, with one year stayed on the conditions that Gildee commit no further disciplinary violation and make full restitution of \$11,290.98 before reinstatement, was appropriate.

KEY QUOTATIONS

“The presumptive sanction for misappropriation of client funds is disbarment.” (¶ 17)

“We therefore suspend Gildee from the practice of law in Ohio for two years, with one year of the suspension stayed on the conditions that Gildee commit no further violation of the disciplinary rules and that Gildee not be reinstated to the practice of law until she has made full restitution to the client in the amount of \$11,290.98.” (¶ 18)

FACTUAL BACKGROUND

Gildee represented a client and his company in a commercial-lease dispute under a contingent-fee agreement. After settlement, she failed to deposit certain lease payments into her client trust account and misappropriated \$8,347.60 that was owed to the client. She also fabricated and backdated a letter and sent disciplinary counsel purported copies of letters and checks that she had not sent to the client, including one check for which she lacked sufficient funds.

PROCEDURAL HISTORY

Disciplinary counsel filed a two-count complaint against Eva Catherine Gildee. A three-member panel heard the matter, adopted the stipulated findings and sanction, and the board adopted the panel’s report. The Supreme Court of Ohio independently reviewed the misconduct and sanction, accepted the findings and recommendation, dismissed one stipulated charge, and imposed a two-year suspension with one year stayed on conditions.

DISPOSITION

other

CASES CITED

- Toledo Bar Assn. v. Weisberg, 124 Ohio St. 3d 274, 2010-Ohio-142, 921 N.E.2d 641, ¶ 15
- Cleveland Metro. Bar Assn. v. Mishler, 127 Ohio St. 3d 336, 2010-Ohio-5987, 939 N.E.2d 852, ¶ 45
- Disciplinary Counsel v. Burchinal, 133 Ohio St. 3d 38, 2012-Ohio-3882, 975 N.E.2d 960, ¶¶ 17, 19
- Disciplinary Counsel v. Claflin, 107 Ohio St. 3d 31, 2005-Ohio-5827, 836 N.E.2d 564, ¶ 15

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