

SUPREME COURT OF OHIO

Disciplinary Counsel v. Lehmkuhl

137 Ohio St. 3d 71, 2013-Ohio-4539 (2013) · No. 2012-1719 · Decided October 16, 2013

SUMMARY

The Ohio Supreme Court publicly reprimanded Phillip Douglas Lehmkuhl for filing a defamation action without adequately investigating the identity of the proper defendants, failing to timely amend the complaint after discovering the error, and failing to cooperate in a disciplinary investigation. The court adopted the findings that he violated Ohio Prof.Cond.R. 3.1 and Gov.Bar R. V(4)(G), with costs taxed to him.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Kennedy, J.; French, J.; O'Neill, J.
JURISDICTION	Ohio
DECIDED	October 16, 2013
DOCKET	2012-1719
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on a certified report from the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential within Ohio.
PARTIES	Disciplinary Counsel v. Phillip Douglas Lehmkuhl

TOPICS

defamation pleadings civil procedure sanctions

PRACTICE AREAS

legal ethics attorney discipline professional responsibility defamation litigation

QUESTIONS PRESENTED

1. Whether Lehmkuhl violated Prof.Cond.R. 3.1 by filing and maintaining a defamation proceeding without adequately investigating and timely correcting the identity of a proper defendant.
2. Whether Lehmkuhl violated Gov.Bar R. V(4)(G) by failing to assist in the disciplinary investigation.
3. What sanction was appropriate for the established misconduct.

HOLDINGS

1. Lehmkuhl violated Prof.Cond.R. 3.1 by initiating the defamation action without adequately investigating the identity of the proper defendants and by failing to timely amend the complaint after discovering that Amanda Erb was not a proper defendant.
2. Lehmkuhl violated Gov.Bar R. V(4)(G) by failing to assist in the disciplinary investigation, including by failing to respond to letters of inquiry and failing to appear for a subpoenaed deposition.
3. A public reprimand was the appropriate sanction for Lehmkuhl's misconduct.

KEY QUOTATIONS

“Accordingly, we publicly reprimand Phillip Douglas Lehmkuhl for initiating a defamation action without adequately investigating the identity of the proper defendants, failing to timely amend his complaint when he learned that he had misidentified one of the defendants, and failing to cooperate in the ensuing disciplinary investigation.” (¶ 18)

FACTUAL BACKGROUND

Lehmkuhl filed a defamation action naming Joseph and Amanda Erb as defendants without adequately verifying their identities and relationship. After learning that Amanda Erb was Joseph Erb's daughter and was not involved in the alleged conduct, he delayed dismissing the claims against her and seeking leave to amend the complaint. He also failed to respond to disciplinary-inquiry letters and failed to appear for a subpoenaed deposition.

PROCEDURAL HISTORY

Disciplinary Counsel charged Lehmkuhl with professional misconduct arising from a defamation action and his failure to cooperate with the disciplinary investigation. The parties stipulated to misconduct and a public reprimand. After the Supreme Court remanded the matter to clarify a discrepancy between the hearing panel's findings and the board's report, the board submitted a supplemental report stating that only violations of Prof.Cond.R. 3.1 and Gov.Bar R. V(4)(G) remained. The Supreme Court adopted the board's findings and imposed a public reprimand.

DISPOSITION

other

CASES CITED

- Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St. 3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16
- Disciplinary Counsel v. Broeren, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21

- Akron Bar Assn. v. Fink, 131 Ohio St. 3d 34, 2011-Ohio-6342, 959 N.E.2d 1045
- Disciplinary Counsel v. Gallo, 131 Ohio St. 3d 309, 2012-Ohio-758, 964 N.E.2d 1024, ¶¶ 5-6, 20-21

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