

SUPREME COURT OF OHIO

Cleveland Bar Ass'n v. Kirsh

105 Ohio St. 3d 435 (Ohio 2005) · Decided June 8, 2005

SUMMARY

The Supreme Court of Ohio indefinitely suspended S. Martin Kirsh from the practice of law after finding that he neglected matters for five clients, failed to pursue their objectives, mishandled client funds, failed to cooperate with disciplinary investigations, and failed to maintain current registration information. The court adopted the board's recommendation that disbarment was inappropriate given Kirsh's decades of prior practice without apparent disciplinary problems and his unexplained disappearance, while taxing costs to him.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick, J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	June 8, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Cleveland Bar Association sought discipline against an attorney who failed to answer the disciplinary complaint. The Supreme Court reviewed the board's recommendation of an indefinite suspension following a default judgment.
STANDARD OF REVIEW	The Supreme Court adopted and independently reviewed the board's findings, conclusions, and recommended sanction in the attorney-discipline proceeding.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion

TOPICS

default judgment sanctions remedies civil procedure

PRACTICE AREAS

attorney discipline professional responsibility civil procedure remedies

QUESTIONS PRESENTED

1. Whether respondent committed the charged violations of the Ohio Code of Professional Responsibility and Supreme Court disciplinary rules.
2. Whether the appropriate sanction was permanent disbarment or indefinite suspension given the seriousness of respondent's misconduct, his prior lengthy practice without known disciplinary problems, and his unexplained disappearance.
3. Whether the costs of the disciplinary proceeding should be taxed to respondent.

HOLDINGS

1. Respondent committed the violations found by the master commissioner, including neglect of entrusted legal matters, failure to pursue clients' lawful objectives, failure to carry out employment contracts, prejudice to clients, dishonesty-related violations in two matters, failure to deliver client funds in one matter, failure to maintain a current address, and failure to cooperate with the disciplinary investigation.
2. Permanent disbarment was inappropriate under the unusual circumstances of this case; an indefinite suspension was sufficient to protect the public while allowing respondent an opportunity to seek reinstatement and explain the circumstances of his disappearance.
3. The costs of the disciplinary proceeding were taxed to respondent.

KEY QUOTATIONS

“While an indefinite suspension will adequately protect the public by remaining in effect until respondent affirmatively seeks reinstatement, it would also give respondent the opportunity to explain the events germane to this matter should communication ever be reestablished.” (105 Ohio St. 3d at 437)

FACTUAL BACKGROUND

Respondent accepted retainers or filing fees in several matters, including child-support, bankruptcy, paternity, and medical-malpractice matters, but failed to file suit or otherwise pursue the clients' objectives. In a personal-injury matter, respondent's actions were unclear and he stopped communicating with the client. All five clients eventually discovered that respondent had closed his office and could not be reached; respondent's whereabouts remained unknown. He did not answer the disciplinary complaint or cooperate with the investigation.

PROCEDURAL HISTORY

The Cleveland Bar Association filed a disciplinary complaint charging respondent with misconduct involving five clients. After respondent failed to answer or cooperate and could not be located, service was made through the clerk of the Supreme Court of Ohio. The Board of Commissioners on Grievances and Discipline entered a default-related proceeding, adopted the master commissioner's findings and recommendation of indefinite suspension, and taxed costs to respondent. The Supreme Court adopted the board's report in full and imposed an indefinite suspension.

DISPOSITION

other

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