

SUPREME COURT OF OHIO

Disciplinary Counsel v. Simmons

120 Ohio St. 3d 304 (Ohio 2008) · Decided December 3, 2008

SUMMARY

The Ohio Supreme Court held that an attorney engaged in dishonesty, conduct prejudicial to the administration of justice, and unauthorized practice by representing clients in Michigan while suspended from practicing law in Ohio. The attorney also falsely used his sister's name and purported law-firm affiliation in court filings. The court imposed a one-year suspension from practice in Ohio, with six months stayed conditioned on no further violations.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	December 3, 2008
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Board of Commissioners on Grievances and Discipline recommended a one-year suspension with six months stayed, based on the parties' stipulated facts, violations, and recommended sanction.
STANDARD OF REVIEW	The Supreme Court of Ohio independently reviewed the stipulated misconduct and the board's recommended sanction.
PRECEDENTIAL VALUE	Published precedential opinion

TOPICS

agency adjudication administrative law

PRACTICE AREAS

legal ethics professional discipline unauthorized practice of law

QUESTIONS PRESENTED

1. Whether respondent's stipulated conduct violated the disciplinary rules governing dishonesty, conduct prejudicial to the administration of justice, and unauthorized practice of law in another jurisdiction.
2. Whether the board's recommended sanction of a one-year suspension with six months stayed was appropriate.

HOLDINGS

1. Respondent violated DR 1-102(A)(4) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.
2. Respondent violated DR 1-102(A)(5) by engaging in conduct prejudicial to the administration of justice.
3. Respondent violated DR 3-101(B), the correct disciplinary rule governing practice in another jurisdiction; the parties and board had mistakenly cited DR 3-101(A)(3).
4. A one-year suspension from the practice of law in Ohio, with six months stayed on the condition that respondent commit no further violations, was appropriate.

KEY QUOTATIONS

“The respondent stipulated and the board found that respondent’s acts set forth above constituted violations of DR 1-102(A)(4) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation), DR 1-102(A)(5) (a lawyer shall not engage in conduct that is prejudicial to the administration of justice), and DR 3-101(A)(3) (a lawyer shall not practice law in a jurisdiction where to do so would violate regulations of the profession in that jurisdiction).” (¶ 9)

“Respondent is therefore suspended from the practice of law in Ohio for one year, with six months stayed on condition of no further violations.” (¶ 12)

FACTUAL BACKGROUND

While suspended from practicing law in Ohio, Frank James Simmons Jr. represented clients in Michigan proceedings and filed pleadings falsely identifying his sister, Jessica R. Simmons, as co-counsel from a nonexistent law firm. He appeared in a Michigan family-law matter without disclosing that he was not licensed in Michigan and negotiated a settlement on behalf of a client. In a separate criminal matter, he signed a motion using his sister's name and falsely represented that she had requested that he act as counsel. Michigan courts removed him as counsel, found him in contempt, and imposed fines and restitution.

PROCEDURAL HISTORY

Disciplinary Counsel filed a two-count complaint against respondent. The parties waived a hearing and submitted stipulated facts and law to a panel of the Board of Commissioners on Grievances and Discipline; the panel accepted the stipulation and recommended sanction, and the board adopted that recommendation. The Supreme Court of Ohio adopted the board's findings and sanction, with a correction to the cited disciplinary rule.

DISPOSITION

other

CASES CITED

- In re Attorney Registration Suspension, 107 Ohio St. 3d 1431, 2005-Ohio-6408, 838 N.E.2d 671
- In re Reinstatement of Simmons, 110 Ohio St. 3d 1424, 2006-Ohio-3648, 850 N.E.2d 1217
- Disciplinary Counsel v. Fowerbaugh, 74 Ohio St. 3d 187, 190, 658 N.E.2d 237 (1995)

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