

SUPREME COURT OF OHIO

Disciplinary Counsel v. McCormack

133 Ohio St. 3d 192, 2012-Ohio-4309 (2012) · No. 2011-2055 · Decided September 26, 2012

SUMMARY

The Supreme Court of Ohio imposed a one-year suspension, fully stayed on conditions, against attorney and former magistrate Thomas Arthur McCormack for violations of the Code of Judicial Conduct and Rules of Professional Conduct. The violations arose from discourteous and undignified conduct, procedural irregularities, and failure to fairly and efficiently conduct hearings in a postdecree domestic-relations matter.

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	September 26, 2012
DOCKET	2011-2055
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding based on a certified report of the Board of Commissioners on Grievances and Discipline. The parties waived a hearing, stipulated to the facts, violations, mitigating factors, and exhibits, and jointly recommended a six-month fully stayed suspension. The Supreme Court of Ohio independently determined the appropriate sanction.
STANDARD OF REVIEW	The Supreme Court of Ohio independently reviews the stipulated facts, violations, and recommended sanction and determines the appropriate sanction for attorney misconduct.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Ohio concerning attorney discipline and judicial misconduct.
PARTIES	Disciplinary Counsel v. Thomas Arthur McCormack

TOPICS

family law procedure

child support

child custody

visitation

spousal support

PRACTICE AREAS

attorney discipline

judicial ethics

family law procedure

QUESTIONS PRESENTED

1. Whether McCormack's stipulated conduct violated the former and current Ohio Code of Judicial Conduct and Prof.Cond.R. 8.4(d).
2. What sanction was appropriate for McCormack's judicial and professional misconduct in light of the aggravating and mitigating factors.

HOLDINGS

1. The court adopted the stipulated facts and found that McCormack's conduct violated former Canons 1, 2, 3(B)(4), and 3(B)(8) of the Ohio Code of Judicial Conduct, current Jud.Cond.R. 1.2, 2.2, 2.5(A), 2.6(A), 2.6(B), and 2.8(B), and Prof.Cond.R. 8.4(d).
2. A one-year suspension from the practice of law, fully stayed on conditions, was appropriate. The conditions required no further misconduct, a mental-health evaluation by the Ohio Lawyers Assistance Program, compliance with any required treatment contract and recommendations, and monitored probation; failure to comply would lift the stay and require service of the entire suspension.

KEY QUOTATIONS

"We adopt the facts and violations as stipulated by the parties, but based upon our concerns about the current state of McCormack's mental health, the absence of direct evidence from the professionals who had provided his early treatment, and the brief period of treatment he had received from the psychiatrist who testified in his behalf, we find that a one-year suspension, all stayed on conditions, is the appropriate sanction for McCormack's misconduct." (§ 3)

"The record demonstrates that McCormack conducted himself in an undignified and discourteous manner, treated the litigants and their counsel with disdain, permitted the guardian ad litem to lecture the parties on the record, terminated hearings before the parties had presented all their evidence and had made a record of their objections, acted on his own whims rather than inquiring into the best interests of the child, failed to resolve any of the matters pending before him for more than a year and a half, and failed to conduct hearings in a manner that would permit the judge assigned to the case to resolve those issues in his stead." (§ 16)

"Therefore, we find that the proper sanction for McCormack's misconduct is a one-year suspension, fully stayed on the conditions that he commit no further misconduct and that within 60 days of the effective date of this opinion, he (1) submit to a mental-health evaluation conducted by the Ohio Lawyers Assistance Program ("OLAP"), (2) enter into an OLAP contract, if OLAP determines that treatment is necessary, the duration of which shall be determined by OLAP, (3) complies with all OLAP treatment recommendations, and (4) serves a period of monitored probation in accordance with Gov.Bar R. V(9) until the expiration of his OLAP contract or 12 months from the effective date of this order, whichever occurs later." (§ 29)

FACTUAL BACKGROUND

Thomas Arthur McCormack, an Ohio attorney and former magistrate in the Medina County Court of Common Pleas, Domestic Relations Division, presided over multiple hearings in a postdecree domestic-relations matter involving child support, custody, visitation, school placement, and spousal support. During four of six hearings, he acted impatiently, undignifiedly, and discourteously; addressed issues without proper notice, failed to rule on objections, limited the presentation of evidence, threatened counsel with contempt, and improperly injected himself into settlement and custody-related discussions. The assigned judge later declared a mistrial because the parties had not been given a meaningful opportunity to present testimony and evidence and because McCormack had conducted an unauthorized school-placement hearing.

PROCEDURAL HISTORY

Disciplinary Counsel charged McCormack with violations arising from his conduct as a domestic-relations magistrate. A panel of the Board of Commissioners on Grievances and Discipline found clear and convincing evidence of the stipulated violations and recommended adoption of the stipulated sanction. The board adopted the panel's report, but the Supreme Court of Ohio imposed a one-year suspension fully stayed on conditions.

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
- Cleveland Bar Assn. v. Cleary, 93 Ohio St. 3d 191, 754 N.E.2d 235 (2001)
- Disciplinary Counsel v. Karto, 94 Ohio St. 3d 109, 760 N.E.2d 412 (2002)
- Disciplinary Counsel v. Parker, 116 Ohio St. 3d 64, 2007-Ohio-5635, 876 N.E.2d 556
- Disciplinary Counsel v. O'Neill, 103 Ohio St. 3d 204, 2004-Ohio-4704, 815 N.E.2d 286
- Disciplinary Counsel v. Hoague, 88 Ohio St. 3d 321, 725 N.E.2d 1108 (2000)