

SUPREME COURT OF OHIO

Cleveland Metro. Bar Ass'n v. Hurley, 152 Ohio St. 3d 536, 2018-Ohio-231

98 N.E.3d 259 (Ohio 2018) · Decided January 16, 2018

SUMMARY

The Ohio Supreme Court held that Rosel Charles Hurley III violated professional-conduct rules by sending demand letters to employers while suspended, using his former law firm's name, misrepresenting the existence of a client, and holding himself out as authorized to practice law. The court imposed an indefinite suspension rather than disbarment, citing mitigating factors including cooperation, restitution, and participation in an Ohio Lawyers Assistance Program contract, subject to conditions for reinstatement.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Kennedy; French; O'Neill; Fischer; DeWine; O'Connor; O'Donnell
JURISDICTION	Ohio
DECIDED	January 16, 2018
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Cleveland Metropolitan Bar Association charged a suspended Ohio attorney with unauthorized practice of law and dishonest conduct. After a hearing, the Board of Professional Conduct found violations and recommended permanent disbarment. The Supreme Court of Ohio overruled the attorney's objections to the misconduct findings but imposed an indefinite suspension instead of disbarment.
STANDARD OF REVIEW	The Supreme Court of Ohio independently reviewed the record and the disciplinary findings, considered the applicable aggravating and mitigating factors, and determined the appropriate sanction.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion; precedential

TOPICS

employment law

civil rights

PRACTICE AREAS

attorney discipline

professional responsibility

unauthorized practice of law

employment law

civil rights

QUESTIONS PRESENTED

1. Whether a suspended Ohio attorney engages in the unauthorized practice of law by holding himself out to the public as authorized to practice, even when he does not actually represent a client.
2. Whether federal authorization to file discrimination charges with the EEOC protected Hurley's private settlement activity from professional-discipline rules.
3. Whether the Board of Professional Conduct properly found violations of Prof.Cond.R. 5.5(a), 5.5(b)(2), 7.1, and 8.4(c).
4. Whether the appropriate sanction was permanent disbarment or an indefinite suspension in light of the misconduct and mitigating circumstances.

HOLDINGS

1. A suspended attorney engages in the unauthorized practice of law when he holds himself out to the public or otherwise represents that he is authorized to practice in Ohio, even if he does not actually render legal services for a client.
2. Federal law authorizing a person to file an EEOC discrimination charge does not protect a suspended attorney's private settlement efforts on behalf of a nonexistent client absent an express federal statute or regulation authorizing that activity.
3. Hurley violated Prof.Cond.R. 5.5(a), 5.5(b)(2), 7.1, and 8.4(c) by sending the demand letters while suspended, using his former law firm's name and the title 'Esquire,' representing that he had a client, and omitting that he was suspended and acting for himself.
4. An indefinite suspension, rather than permanent disbarment, was the appropriate sanction because Hurley cooperated in the disciplinary process, made restitution, and entered into an OLAP contract to address a diagnosed mental disorder.

KEY QUOTATIONS

“The unauthorized practice of law, however, includes not only the rendering of legal services for another by any person not authorized to practice in Ohio but also the holding out to the public or otherwise representing oneself as authorized to practice in Ohio by a person not authorized to do so.” (¶ 10)

“Under these circumstances, an indefinite suspension serves to protect the public while also leaving open the possibility that with treatment, Hurley might one day be able to return to the competent, ethical, and professional practice of law.” (¶ 24)

FACTUAL BACKGROUND

Hurley had been suspended from practicing law after felony convictions and other disciplinary violations. While suspended, he sent demand letters to at least 20 employers whose job postings excluded applicants with criminal backgrounds, asserting that the practices violated federal law and proposing \$500 settlements. The letters used

the name of Hurley's former law firm, referred to a nonexistent client, threatened EEOC action, and identified Hurley as an esquire without disclosing his suspension. One recipient paid \$500, which Hurley later refunded; another learned of the suspension and did not pay.

PROCEDURAL HISTORY

Hurley had previously been suspended from the practice of law. The Cleveland Metropolitan Bar Association filed a disciplinary complaint alleging that, during his suspension, Hurley sent demand letters to employers, held himself out as an attorney, and engaged in dishonest conduct. The Board of Professional Conduct found violations of several professional-conduct rules and recommended permanent disbarment. The Supreme Court of Ohio affirmed the misconduct findings in substance but modified the sanction to an indefinite suspension with conditions for reinstatement.

DISPOSITION

other

REMAND INSTRUCTIONS

Hurley is indefinitely suspended. Before reinstatement, he must satisfy the requirements of Gov.Bar R. V(25)(D) (1) and additionally undergo an OLAP mental-health evaluation, maintain or renew and comply with an OLAP contract, and comply with OLAP and treating-professional recommendations. Costs are taxed to Hurley.

CASES CITED

- In re Hurley, 134 Ohio St. 3d 1491, 2013-Ohio-924, 984 N.E.2d 33
- In re Attorney Registration Suspension of Hurley, 136 Ohio St. 3d 1544, 2013-Ohio-4827, 996 N.E.2d 973
- Cleveland Metro. Bar Assn. v. Hurley, 143 Ohio St. 3d 69, 2015-Ohio-1568, 34 N.E.3d 116
- Disciplinary Counsel v. Harris, 137 Ohio St. 1, 2013-Ohio-4026, 996 N.E.2d 921, ¶ 18
- Sperry v. Florida ex rel. Florida Bar, 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed. 2d 428 (1963)
- Disciplinary Counsel v. Goldblatt, 118 Ohio St. 3d 310, 2008-Ohio-2458, 888 N.E.2d 1091, ¶ 5
- Disciplinary Counsel v. Smith, 124 Ohio St. 3d 49, 2009-Ohio-5960, 918 N.E.2d 992, ¶ 25
- Cincinnati Bar Assn. v. Mullaney, 119 Ohio St. 3d 412, 2008-Ohio-4541, 894 N.E.2d 1210, ¶ 40
- Erie-Huron Counties Joint Certified Grievance Commt. v. Derby, 131 Ohio St. 3d 144, 2012-Ohio-78, 961 N.E.2d 1124, ¶ 10
- Cleveland Metro. Bar Assn. v. Pryatel, 145 Ohio St. 3d 398, 2016-Ohio-865, 49 N.E.3d 1286, ¶ 21
- Cleveland Metro. Bar Assn. v. Brown, 143 Ohio St. 3d 333, 2015-Ohio-2344, 37 N.E.3d 1199, ¶ 15
- Disciplinary Counsel v. Hoskins, 150 Ohio St. 3d 41, 2017-Ohio-2924, 78 N.E.3d 845, ¶ 27
- Disciplinary Counsel v. Mitchell, 124 Ohio St. 3d 266, 2010-Ohio-135, 921 N.E.2d 634
- Disciplinary Counsel v. Anthony, 138 Ohio St. 3d 129, 2013-Ohio-5502, 4 N.E.3d 1006, ¶ 13

