

SUPREME COURT OF OHIO

Disciplinary Counsel v. Tomlan

118 Ohio St. 3d 1 (2008) · Decided April 3, 2008

SUMMARY

The Ohio Supreme Court indefinitely suspended attorney John Richard Tomlan for misconduct involving an elderly client’s assets and estate. The court found that Tomlan transferred assets into joint survivorship accounts without informed consent, concealed estate proceeds, delayed administering the estate, and engaged in an improper ex parte communication with a probate judge. The court weighed mitigating factors, including Tomlan’s lack of prior discipline, against aggravating circumstances involving self-dealing and harm to the estate.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Lundberg Stratton, J.; O'Donnell, J.; Cupp, J.; Pfeifer, J.; O'Connor, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	April 3, 2008
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the Board of Commissioners on Grievances and Discipline recommended an indefinite suspension after finding multiple violations of the Disciplinary Rules. The Supreme Court of Ohio overruled respondent's objections and adopted the indefinite suspension.
STANDARD OF REVIEW	The Supreme Court independently reviewed the disciplinary record and determined the appropriate sanction by considering the duties violated, actual or potential injury, the attorney's mental state, sanctions in similar cases, and aggravating and mitigating circumstances.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; binding Ohio authority on the stated disciplinary rules and sanction principles.
PARTIES	Disciplinary Counsel v. John Richard Tomlan

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QUESTIONS PRESENTED

1. Whether Tomlan violated the Disciplinary Rules by transferring an elderly client's assets into joint and survivorship accounts for his own benefit without informed consent.
2. Whether Tomlan violated the Disciplinary Rules by concealing estate assets and proceeds that he was obligated to disclose.
3. Whether Tomlan violated the Disciplinary Rules by unduly delaying his duties as executor.
4. Whether Tomlan violated the Disciplinary Rules by communicating ex parte with the probate judge about the merits of a pending proceeding.
5. What sanction was appropriate for the established misconduct.

HOLDINGS

1. A lawyer violates DR 1-102(A)(6) and DR 5-101(A)(1) by facilitating transfers of an elderly client's assets into joint and survivorship accounts with the lawyer without the client's valid informed consent, including disclosure of risks such as tax consequences and depletion of testamentary bequests.
2. A lawyer violates DR 1-102(A)(4) and DR 7-109(A) by failing to disclose estate assets and proceeds that the lawyer knows he has a legal duty to reveal or produce.
3. A lawyer violates DR 1-102(A)(5) and DR 1-102(A)(6) by unduly delaying the performance of executor duties, including admitting the will to probate, paying creditors, managing estate assets, and responding to the administrator's requests for information.
4. A lawyer violates DR 7-110(B) by communicating with a judge about the merits of a pending adversarial proceeding without notice to opposing counsel or legal justification.
5. Indefinite suspension is warranted for calculated self-dealing involving a vulnerable client, concealment of estate assets, prolonged interference with estate administration, and prohibited ex parte communication, notwithstanding the absence of a prior disciplinary record and other mitigating factors.

KEY QUOTATIONS

“For violations of DR 1-102(A)(4), 1-102(A)(5), 1-102(A)(6), 5-101(A)(1), 7-109(A), and 7-110(B), we hereby indefinitely suspend respondent from the practice of law in Ohio.” (¶ 49)

“Strength of will and lucidity, however, are not characteristics on which we can rely to conclude that this 96-year-old nursing home patient with multiple debilitating infirmities, including signs of dementia or organic brain syndrome, was impervious to respondent’s influence.” (¶ 40)

FACTUAL BACKGROUND

Tomlan represented and assisted Katherine Rice, a 90-year-old nursing-home resident with Parkinson's disease and signs of dementia or organic brain syndrome. Without obtaining informed consent or independent counsel, he transferred more than \$1 million in her assets into joint and survivorship accounts with himself, later concealed estate proceeds, delayed opening and administering her estate for more than 16 months, and engaged in an ex parte discussion with the probate judge about the merits of a pending concealment proceeding. The estate ultimately recovered more than \$1.6 million in assets through a settlement, while Tomlan retained certain certificates of deposit and interest.

PROCEDURAL HISTORY

Disciplinary Counsel charged Tomlan with multiple violations arising from his handling of an elderly client's assets and estate. A panel found misconduct and recommended a two-year suspension; the board adopted the findings but modified the recommended sanction to indefinite suspension. The Supreme Court of Ohio accepted the board's findings and imposed an indefinite suspension.

DISPOSITION

other

CASES CITED

- Stark Cty. Bar Assn. v. Ake, 111 Ohio St. 3d 266, 2006-Ohio-5704, 855 N.E.2d 1206, ¶ 44
- Krischbaum v. Dillon, 58 Ohio St. 3d 58, 567 N.E.2d 1291 (1991)
- West v. Henry, 173 Ohio St. 498, 184 N.E.2d 200 (1962)
- Disciplinary Counsel v. Galinas, 76 Ohio St. 3d 87, 666 N.E.2d 1083 (1996)
- Disciplinary Counsel v. Kelleher, 102 Ohio St. 3d 105, 2004-Ohio-1802, 807 N.E.2d 310
- Mahoning Cty. Bar Assn. v. Theofilos, 36 Ohio St. 3d 43, 521 N.E.2d 797 (1988)
- Disciplinary Counsel v. Slavens, 63 Ohio St. 3d 162, 586 N.E.2d 92 (1992)
- Toledo Bar Assn. v. Cook, 97 Ohio St. 3d 225, 2002-Ohio-5787, 778 N.E.2d 40
- Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St. 3d 424, 2002-Ohio-4743, 775 N.E.2d 818
- Cincinnati Bar Assn. v. Clark, 71 Ohio St. 3d 145, 642 N.E.2d 611 (1994)

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