

SUPREME COURT OF OHIO

Office of Disciplinary Counsel v. Smith

101 Ohio St. 3d 27, 2003-Ohio-6623 (Ohio 2003) · No. 2003-1117 · Decided December 31, 2003

SUMMARY

The Supreme Court of Ohio indefinitely suspended Stanford Smith from practicing law for apparent conversion and neglect in administering the estate of an adjudicated incompetent. The court also found that Smith failed to cooperate with the disciplinary investigation and declined to make restitution.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick; F.E. Sweeney; Pfeifer; Lundberg Stratton; O'Connor; O'Donnell
JURISDICTION	Ohio
DECIDED	December 31, 2003
DOCKET	2003-1117
DISPOSITION	other
PROCEDURAL POSTURE	On a certified report from the Board of Commissioners on Grievances and Discipline following respondent's default on disciplinary charges.
PRECEDENTIAL VALUE	Published Ohio Supreme Court disciplinary opinion
PARTIES	Office of Disciplinary Counsel v. Stanford Smith

TOPICS

estate administration guardianship procedure guardianships probate

PRACTICE AREAS

legal ethics and professional responsibility attorney discipline estate administration guardianship

QUESTIONS PRESENTED

- Whether Smith committed professional misconduct by failing to account for estate assets, neglecting the administration of an incompetent person's estate, and failing to comply with professional obligations.
- Whether Smith violated the disciplinary rule requiring cooperation with an investigation of misconduct.

3. Whether indefinite suspension rather than disbarment was the appropriate sanction.

HOLDINGS

1. Smith's apparent conversion and neglect in administering the estate violated DR 1-102(A)(4), DR 1-102(A)(6), DR 6-101(A)(3), DR 7-101(A)(2), and DR 9-102(B)(3).
2. Smith violated Gov.Bar R. V(4)(G) by refusing to respond to repeated requests for information and ignoring subpoenas for two depositions.
3. Indefinite suspension from the practice of law was the appropriate sanction under the circumstances.

KEY QUOTATIONS

“Absent any mitigating factors, disbarment is the appropriate sanction for an attorney’s misappropriation of client funds.” (§9)

“Accordingly, respondent is hereby suspended indefinitely from the practice of law in Ohio.” (§10)

FACTUAL BACKGROUND

Smith served as guardian of an adjudicated incompetent and the incompetent's estate beginning in 1987. After the ward's death, the probate court removed Smith for failing to file a required account; a successor fiduciary discovered that \$10,100.68 in estate assets was unexplained, and the probate court entered a \$10,000 surcharge plus fees and expenses against Smith. Smith did not pay the judgment, respond to disciplinary inquiries, or appear for two depositions.

PROCEDURAL HISTORY

Disciplinary Counsel charged Smith with two counts of professional misconduct. Smith did not answer the complaint, and a master commissioner heard the matter under the default procedure, made findings of fact and conclusions of law, and recommended an indefinite suspension. The Board of Commissioners on Grievances and Discipline adopted the findings and recommendation, which the Supreme Court of Ohio approved.

DISPOSITION

other

CASES CITED

- Cleveland Bar Assn. v. Belock, 82 Ohio St. 3d 98, 100, 694 N.E.2d 897 (1998)
- Columbus Bar Assn. v. Hamilton, 88 Ohio St. 3d 330, 725 N.E.2d 1116 (2000)