

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Lawyer Disciplinary Board v. Markins, 222 W. Va. 160

663 S.E.2d 614 (2008) · No. No. 33256 · Decided June 8, 2008

SUMMARY

The Supreme Court of Appeals of West Virginia upheld a two-year suspension and related sanctions against attorney Michael P. Markins for repeatedly accessing other attorneys' email accounts without authorization. The court found violations of West Virginia Rules of Professional Conduct 8.4(b) and 8.4(c), emphasizing the pattern of misconduct, confidentiality concerns, deterrence, and protection of the public.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam
JURISDICTION	West Virginia
DECIDED	June 8, 2008
DOCKET	No. 33256
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the respondent challenged the sanctions recommended by the Lawyer Disciplinary Board after a hearing determining that he violated West Virginia Rules of Professional Conduct 8.4(b) and 8.4(c).
STANDARD OF REVIEW	The Court applies de novo review to questions of law, the application of law to facts, and the appropriate sanction, while giving respectful consideration to the Board's recommendations and substantial deference to factual findings supported by reliable, probative, and substantial evidence on the whole record.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Lawyer Disciplinary Board v. Michael P. Markins

TOPICS

agency adjudication

judicial review of agency action

standard of review

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PRACTICE AREAS

legal ethics

attorney discipline

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QUESTIONS PRESENTED

1. What sanction was appropriate for Markins's violations of West Virginia Rules of Professional Conduct 8.4(b) and 8.4(c)?
2. What standard governs the Supreme Court of Appeals' review of the Lawyer Disciplinary Board's findings, legal conclusions, and recommended sanction?
3. Whether mitigating circumstances, including emotional distress, remorse, cooperation, lack of a prior disciplinary record, and the absence of proven dissemination of information, warranted a sanction less severe than a two-year suspension.

HOLDINGS

1. The Court reviews de novo the adjudicatory record concerning questions of law, application of law to facts, and appropriate sanctions; it gives respectful consideration to the Board's recommendations but exercises independent judgment, and gives substantial deference to supported factual findings.
2. A two-year suspension from the practice of law, one year of supervised private practice upon reinstatement, twelve additional hours of ethics CLE before reinstatement, and payment of proceeding costs were appropriate sanctions for Markins's repeated unauthorized access of attorneys' e-mail accounts in violation of Rules 8.4(b) and 8.4(c).
3. Mitigating factors do not require a reduced sanction when substantial aggravating factors demonstrate a prolonged and repeated pattern of professional misconduct and a need for deterrence and protection of public confidence.

KEY QUOTATIONS

"A de novo standard applies to a review of the adjudicatory record made before the [Lawyer Disciplinary Board] as to questions of law, questions of application of the law to the facts, and questions of appropriate sanctions; this Court gives respectful consideration to the [Board's] recommendations while ultimately exercising its own independent judgment." (663 S.E.2d at 618)

"In deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession." (663 S.E.2d at 619)

"Accordingly, based upon the foregoing, we are compelled to adopt the recommendation of discipline tendered by the Board." (663 S.E.2d at 622)

FACTUAL BACKGROUND

Between late 2003 and March 2006, Michael P. Markins repeatedly accessed the e-mail accounts of his wife and eight other attorneys at Offutt, Fisher & Nord without their knowledge or permission. He accessed the accounts

at least 150 times, viewed personal and confidential financial information, and accessed the accounts from work, home, and a hotel computer networks. Although no evidence showed that he disseminated or misused the information, the intrusion caused the firm to investigate the breach, incur economic losses, face client concerns, and suffer reputational harm.

PROCEDURAL HISTORY

Following a July 20, 2007 disciplinary hearing, a Hearing Panel Subcommittee of the Lawyer Disciplinary Board found that Markins repeatedly and without authorization accessed the e-mail accounts of other attorneys and recommended a two-year suspension, one year of supervised practice upon reinstatement, twelve additional hours of ethics CLE, and payment of costs. Markins did not dispute the misconduct but argued that the recommended sanctions were excessive. The Supreme Court of Appeals independently reviewed the appropriate sanction, adopted the Board's recommendations, and imposed them.

DISPOSITION

other

CASES CITED

- Committee on Legal Ethics v. McCorkle, 192 W. Va. 286, 452 S.E.2d 377 (1994)
- Committee on Legal Ethics v. Blair, 174 W. Va. 494, 327 S.E.2d 671 (1984)
- Committee on Legal Ethics v. Walker, 178 W. Va. 150, 358 S.E.2d 234 (1987)
- Committee on Legal Ethics v. Roark, 181 W. Va. 260, 382 S.E.2d 313 (1989)
- Office of Lawyer Disciplinary Counsel v. Jordan, 204 W. Va. 495, 513 S.E.2d 722 (1998)
- Lawyer Disciplinary Bd. v. Wade, 217 W. Va. 58, 614 S.E.2d 705 (2005)
- Lawyer Disciplinary Bd. v. Taylor, 192 W. Va. 139, 451 S.E.2d 440 (1994)
- Lawyer Disciplinary Bd. v. Battistelli, 206 W. Va. 197, 523 S.E.2d 257 (1999)
- Lawyer Disciplinary Bd. v. Lakin, 217 W. Va. 134, 617 S.E.2d 484 (2005)
- Lawyer Disciplinary Bd. v. Losch, 219 W. Va. 316, 633 S.E.2d 261 (2006)
- In re Brown, 368 S.C. 174, 628 S.E.2d 885 (2006)
- In re Schwartz, 278 Ga. 216, 599 S.E.2d 184 (2004)
- Lawyer Disciplinary Bd. v. Scott, 213 W. Va. 209, 579 S.E.2d 550 (2003)