

SUPREME COURT OF OHIO

Cleveland Metropolitan Bar Association v. Gay.

Cleveland Metropolitan Bar Association v. Gay., 2018 Ohio 2170 (Ohio 2018) · No. 2017-1413 · Decided June 7, 2018

SUMMARY

Attorney disciplinary case involving James Arthur Gay for mismanaging his IOLTA (overdraft, failure to maintain client ledgers or monthly reconciliations) and making a personal loan to a client, violating Prof.Cond.R. 1.15(a), 1.5(c)(2), 1.15(a)(2), 1.15(a)(5), and 1.8(e). The Ohio Supreme Court imposed a one-year suspension, fully stayed on conditions including two years of monitored probation, additional CLE in law-practice management and IOLTA instruction, and no further misconduct. Mitigating factors included lack of dishonest motive, full cooperation, no client harm, and remedial steps taken; the sole aggravating factor was a prior disciplinary record.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor; O'Donnell; Kennedy; French; Fischer; Dewine
JURISDICTION	Ohio
DECIDED	June 7, 2018
DOCKET	2017-1413
DISPOSITION	other
PROCEDURAL POSTURE	On certified report from the Board of Professional Conduct of the Supreme Court.
STANDARD OF REVIEW	The court independently reviews the record and adopts the board's findings and recommendations.
PRECEDENTIAL VALUE	published

TOPICS

[sanctions](#)[standard of review](#)

PRACTICE AREAS

[Attorney Discipline](#)[Professional Responsibility](#)

QUESTIONS PRESENTED

1. Whether Gay violated Prof.Cond.R. 1.15(a) by failing to properly safeguard client funds, causing an IOLTA overdraft.
2. Whether Gay violated Prof.Cond.R. 1.5(c)(2), 1.15(a)(2), and 1.15(a)(5) by failing to maintain proper records and closing statements.
3. Whether Gay violated Prof.Cond.R. 1.8(e) by making a personal loan to a client.
4. Whether Gay violated Prof.Cond.R. 1.15(a) by withdrawing fees before depositing client settlement proceeds.
5. What sanction is appropriate for the misconduct.

HOLDINGS

1. The court held that Gay violated Prof.Cond.R. 1.15(a), 1.5(c)(2), 1.15(a)(2), 1.15(a)(5), and 1.8(e) as found by the Board of Professional Conduct.
2. The court imposed a one-year suspension from the practice of law, fully stayed on conditions including two years of monitored probation, additional CLE in law-practice management, and no further misconduct.

KEY QUOTATIONS

“On July 21, 2015, Gay disbursed settlement proceeds to two of his clients, Carmen Graham and Breonna Crawford, from his IOLTA. He also disbursed \$5,747.56 in settlement proceeds to pay his fees and to reimburse himself for expenses he had advanced to his clients. On July 28, 2015, Gay directly withdrew \$5,747.56 from his IOLTA for the same fees and expenses, causing a negative balance in the account.” (¶ 4)

“Gay admits that he did not maintain separate ledger sheets for his clients. He also admits that he did not consistently maintain, and have his clients sign, disbursement sheets and closing statements.” (¶ 5)

“Gay admits that he made a personal loan of \$300 to a client, Carmen Graham, and repaid himself from the settlement proceeds of Graham's personal-injury claim.” (¶ 6)

“Gay admits that prior to depositing the settlement proceeds of clients Vanessa Cannon and Layvonne Washington in two separate cases, he withdrew funds from his IOLTA to pay himself for the work he did in those cases.” (¶ 7)

“The board recommended that we impose a fully stayed one-year suspension on conditions for Gay's misconduct. In support of that recommendation, the board examined cases in which we imposed one- or two-year suspensions partially or fully stayed on conditions for similar misconduct.” (¶ 12)

“Having independently reviewed the record, we adopt the board's findings of fact and misconduct and agree that a one-year suspension, stayed in its entirety on the conditions recommended by the board, is the appropriate sanction in this case.” (¶ 14)

FACTUAL BACKGROUND

Gay mismanaged his IOLTA by causing an overdraft after double-paying himself fees and expenses, failed to maintain separate client ledger sheets, disbursement sheets, and monthly reconciliations, made a personal loan of \$300 to a client and repaid himself from settlement proceeds, and withdrew fees from his IOLTA before depositing client settlement funds. No clients were harmed. Gay had a prior disciplinary record but had maintained sobriety and cooperated fully.

PROCEDURAL HISTORY

Respondent James Arthur Gay was previously disciplined in 1994 (indefinite suspension) and reinstated in 2002. In February 2017, relator filed a four-count complaint alleging violations of the Rules of Professional Conduct. A panel of the Board of Professional Conduct found the violations and recommended a one-year suspension, fully stayed on conditions. The board adopted the panel's report and recommended the same sanction.

DISPOSITION

other

REMAND INSTRUCTIONS

The suspension is stayed on conditions: (1) two-year monitored probation with oversight of office management and IOLTA recordkeeping, (2) six hours of additional CLE in law-practice management including at least one hour of IOLTA instruction, (3) no further misconduct. If any condition is violated, the stay is lifted and the full one-year suspension is served. Costs taxed to Gay.

CASES CITED

- Cleveland Bar Assn. v. Gay, 68 Ohio St.3d 190, 625 N.E.2d 593 (1994)
- Cleveland Bar Assn. v. Gay, 94 Ohio St. 3d 404, 763 N.E.2d 585 (2002)
- Toledo Bar Assn. v. Royer, 133 Ohio St. 3d 545, 2012-Ohio-5147, 979 N.E.2d 329
- Akron Bar Assn. v. Tomer, 138 Ohio St. 3d 302, 2013-Ohio-5494, 6 N.E.3d 1133
- Disciplinary Counsel v. Thompson, 139 Ohio St. 3d 452, 2014-Ohio-2482, 12 N.E.3d 1203