

SUPREME JUDICIAL COURT OF MASSACHUSETTS

In the Matter of William J. Pudlo

460 Mass. 400 (2011) · No. SJC-10707 · Decided August 19, 2011

SUMMARY

The Supreme Judicial Court of Massachusetts reviewed the appropriate sanction for an attorney who negligently misused client funds advanced for legal fees and expenses, with deprivation, along with related misconduct. The court held that misuse of advanced funds should be evaluated based on the totality of the circumstances rather than under presumptive sanctions applicable to traditional client funds. It ordered a one-year suspension from practice, with six months stayed on the condition that the attorney provide quarterly trust-account audit reports for two years.

CASE DETAILS

COURT	Supreme Judicial Court of Massachusetts
WRITING FOR THE COURT	Cordy, J.; Spina, J.; Botsford, J.; Gants, J.
JURISDICTION	Massachusetts
DECIDED	August 19, 2011
DOCKET	SJC-10707
DISPOSITION	other
PROCEDURAL POSTURE	Attorney discipline matter reserved and reported by a single justice for determination by the full Supreme Judicial Court concerning the appropriate sanction.
STANDARD OF REVIEW	The court reviews de novo the appropriate level of discipline. In a reserved-and-reported bar discipline matter, it reviews the board's findings and reaches its own conclusion, while giving substantial deference to the board's recommendation.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Bar Counsel v. William J. Pudlo

TOPICS

appellate procedure

remedies

accounting

PRACTICE AREAS

QUESTIONS PRESENTED

1. What standard governs the Supreme Judicial Court's review of the appropriate level of attorney discipline in a reserved-and-reported matter?
2. How should negligent misuse with deprivation of client funds advanced for attorney fees and expenses be sanctioned?
3. Was the Board of Bar Overseers' recommended one-year suspension, with six months stayed subject to quarterly trust-account audits for two years, an appropriate and non-disparate sanction?

HOLDINGS

1. The court reviews de novo the appropriate level of discipline and, in a reserved-and-reported matter, reviews the board's findings and reaches its own conclusion, while giving substantial deference to the board's recommendation.
2. Negligent misuse with deprivation of funds advanced for attorney fees and expenses should not automatically receive the same presumptive sanction applicable to intentional misuse of traditional client funds; instead, the sanction must be determined by comparing the totality of the circumstances with similar disciplinary cases, including the nature of the misuse and other misconduct.
3. A one-year suspension from the practice of law, with six months stayed on the condition that Pudlo provide quarterly audit reports of all trust accounts for two years, was sufficient and was not markedly disparate from sanctions imposed in similar cases.
4. Under the rules in effect when Pudlo's violations occurred, an attorney was required to keep client money advanced for legal fees in a trust account until earned and to maintain complete records of the receipt, maintenance, and disposition of such funds; advances for expenses were treated as client funds but were not required to be held separately from the attorney's business account.

KEY QUOTATIONS

"We review de novo the question of the appropriate level of discipline to be imposed." (404)

"The aim of the disciplinary process "is to protect the public and maintain its confidence in the integrity of the bar and the fairness and impartiality of our legal system."" (406)

"A judgment shall enter suspending the respondent from the practice of law for one year, six months of which is to be stayed on the condition that he provide audit reports of all his trust accounts quarterly for two years." (408)

FACTUAL BACKGROUND

Pudlo received advance payments from client Albert Barbuto for legal fees and litigation expenses, including a \$10,000 retainer, a \$2,000 payment that was not recorded, another \$10,000 advance, and \$7,350 purportedly for expert expenses. He withdrew \$9,950 for personal use despite having earned no more than \$4,820, failed to account for certain payments, and could not fully explain the use of the \$7,350. He also delayed and

inadequately pursued Barbuto's malpractice claim and failed to maintain required records and render a timely accounting.

PROCEDURAL HISTORY

Bar counsel filed a three-count petition for discipline against Pudlo. A hearing committee found violations on all three counts and recommended a three-month suspension. The Board of Bar Overseers adopted the findings and recommended a one-year suspension, with six months stayed subject to quarterly trust-account audits for two years. After a single justice held a hearing, the matter was reserved and reported to the full court.

DISPOSITION

other

CASES CITED

- Matter of Taylor, 458 Mass. 1010 (2010)
- Matter of Doyle, 429 Mass. 1013 (1999)
- Matter of Alter, 389 Mass. 153 (1983)
- Matter of Crossen, 450 Mass. 533 (2008)
- Matter of the Discipline of an Attorney, 392 Mass. 827 (1984)
- Matter of Murray, 455 Mass. 872 (2010)
- Matter of Wainwright, 448 Mass. 378 (2007)
- Matter of Sharif, 459 Mass. 558 (2011)
- Matter of Curry, 450 Mass. 503 (2007)
- Matter of Garabedian, 415 Mass. 77 (1993)
- Matter of Hopwood, 24 Mass. Att'y Discipline Rep. 354 (2008)
- Matter of Okai, 11 Mass. Att'y Discipline Rep. 187 (1995)
- Matter of Morgan, 17 Mass. Att'y Discipline Rep. 437 (2001)