

SUPREME COURT OF OHIO

Toledo Bar Ass'n v. Burkholder

109 Ohio St. 3d 443 (Ohio 2006) · Decided June 21, 2006

SUMMARY

The Supreme Court of Ohio disciplined an attorney who made repeated unwanted romantic and sexual advances toward a client during a dissolution-of-marriage representation. The court found violations of Ohio Disciplinary Rules 1-102(A)(6) and 5-101(A)(1) and imposed a six-month suspension, stayed in full on the condition that the attorney commit no further misconduct.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	June 21, 2006
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding brought by the Toledo Bar Association against respondent Fred Joseph Burkholder. A panel of the Board of Commissioners on Grievances and Discipline held a hearing, made findings and recommendations, and the board adopted them; the Supreme Court of Ohio reviewed the misconduct and sanction.
PRECEDENTIAL VALUE	Published and precedential Supreme Court of Ohio opinion

TOPICS

family law

PRACTICE AREAS

legal ethics

attorney discipline

family law

QUESTIONS PRESENTED

- Whether respondent's conduct toward a client violated Ohio disciplinary rules governing conduct adversely reflecting on a lawyer's fitness to practice law and conflicts arising from the lawyer's personal interests.

2. What sanction was appropriate for respondent's unwanted sexual advances and inappropriate conduct toward a client.

HOLDINGS

1. Respondent's conduct violated DR 1-102(A)(6), prohibiting conduct adversely reflecting on a lawyer's fitness to practice law, and DR 5-101(A)(1), barring acceptance of employment when the lawyer's personal interests may affect professional judgment on behalf of the client.
2. A six-month suspension from the practice of law, with the entire suspension stayed on the condition that respondent commit no further misconduct during the suspension period, was the appropriate sanction.

KEY QUOTATIONS

"He had a clear duty at that point to avoid putting himself and his client in a situation in which his own personal interests could compromise his ability to provide sound advice to the client." (445)

"In addition, respondent's unwelcome physical contact with Alexander at a bar, coupled with the entirely inappropriate remark about his penis at his home, was unethical and recklessly unprofessional." (445)

"Accordingly, respondent is hereby suspended from the practice of law in Ohio for six months, with the entire suspension stayed provided that respondent commit no further misconduct during the suspension period." (446)

FACTUAL BACKGROUND

Respondent, an Ohio attorney whose practice focused primarily on family law, represented Laurel Alexander in connection with the dissolution of her marriage. At the outset of the representation, he expressed an interest in dating her despite her lack of interest, and during the representation he repeatedly asked her to go out, made an inappropriate sexual remark, and engaged in unwelcome physical contact. Alexander terminated the representation and hired new counsel.

PROCEDURAL HISTORY

The Toledo Bar Association filed a professional-misconduct complaint on April 18, 2005. After a hearing in September 2005, the panel and board found misconduct and recommended a public reprimand. The relator recommended a one-year suspension with six months stayed; the Supreme Court imposed a six-month suspension, entirely stayed on the condition of no further misconduct.

DISPOSITION

other

CASES CITED

- Disciplinary Counsel v. Quatman, 108 Ohio St. 3d 389, 2006-Ohio-1196, 843 N.E.2d 1205
- Disciplinary Counsel v. Moore, 101 Ohio St. 3d 261, 2004-Ohio-734, 804 N.E.2d 423

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