

SUPREME COURT OF OHIO

Cleveland Metropolitan Bar Association v. Westfall

Cleveland Metro. Bar Assn. v. Westfall, 134 Ohio St. 3d 127, 2012-Ohio-5365 (Ohio 2012) · No. 2012-1003 ·
Decided November 21, 2012

SUMMARY

The Supreme Court of Ohio found that James W. Westfall committed multiple violations of the Ohio Rules of Professional Conduct and failed to cooperate fully with a disciplinary investigation. The misconduct involved client neglect, failure to refund unearned fees, misleading communications, withholding and failing to remit payroll taxes, and misrepresentations to disciplinary authorities. The court imposed a two-year suspension, with reinstatement conditioned on restitution, resolution of unpaid payroll-tax obligations, proof of compliance, and no further violations.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	McGee Brown, J.; O'Connor, C.J.; Pfeifer, J.; Lundberg Stratton, J.; Lanzinger, J.; Cupp, J.; O'Donnell, J.
JURISDICTION	Ohio
DECIDED	November 21, 2012
DOCKET	2012-1003
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on a certified report of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.
STANDARD OF REVIEW	The court independently reviewed the record and determined the appropriate sanction for attorney misconduct, considering the ethical duties violated, sanctions imposed in comparable cases, and aggravating and mitigating factors.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Cleveland Metropolitan Bar Association v. James W. Westfall Jr.

TOPICS

[bankruptcy](#)[chapter 7](#)[payroll tax](#)[tax collection](#)[tax](#)

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

bankruptcy practice

payroll tax compliance

QUESTIONS PRESENTED

1. Whether the record established that Westfall violated the specified Ohio Rules of Professional Conduct and Gov.Bar R. V(4)(G).
2. What sanction was appropriate for Westfall's multiple violations, including client neglect, failure to refund unearned fees, misleading communications, tax misconduct, dishonesty, and failure to cooperate with the disciplinary investigation.
3. Whether the unauthorized-practice allegations in Count Five were supported by sufficient evidence.

HOLDINGS

1. The court adopted the board's findings that Westfall violated Prof.Cond.R. 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.16(d), 1.16(e), 5.3(b), 7.1, 8.1(b), 8.4(c), and 8.4(h), and Gov.Bar R. V(4)(G). The court did not adopt the panel's Prof.Cond.R. 1.9(a) finding because the board concluded that violation was not supported by clear and convincing evidence.
2. The court accepted the dismissal of the Count Five allegations because the panel found insufficient evidence that the nonlawyer staff's furnishing of general information to clients constituted unauthorized practice of law.
3. Westfall was suspended from the practice of law in Ohio for two years, with reinstatement conditioned on restitution, payment of unpaid payroll-tax obligations or compliance with an IRS payment agreement, proof of compliance, and commission of no further disciplinary violations.

KEY QUOTATIONS

"After reviewing the record, we adopt the board's recommended sanction and suspend Westfall for two years, with reinstatement contingent on several conditions." (§ 4)

"Accordingly, we suspend Westfall from the practice of law in Ohio for two years, with reinstatement contingent on the following conditions." (§ 29)

FACTUAL BACKGROUND

Westfall accepted fees to represent several clients in Chapter 7 bankruptcy matters but deactivated or closed cases, failed to communicate adequately, failed to protect clients' interests upon withdrawal, and failed to refund unearned fees and costs. His firm also used misleading marketing and failed to supervise nonlawyer staff adequately. In addition, Westfall withheld federal and payroll taxes from employees but failed to remit the amounts to the Internal Revenue Service and later made a false statement and failed to cooperate during the disciplinary investigation.

PROCEDURAL HISTORY

The Cleveland Metropolitan Bar Association filed an amended seven-count disciplinary complaint against Westfall. A panel conducted a hearing, found multiple violations of the Ohio Rules of Professional Conduct, and dismissed the unauthorized-practice allegations in Count Five for lack of evidence. The board adopted the findings, rejected the panel's finding under Prof.Cond.R. 1.9(a) for lack of clear and convincing evidence, and recommended a two-year suspension with reinstatement conditions. The Supreme Court of Ohio adopted the board's findings and sanction.

DISPOSITION

other

CASES CITED

- Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St. 3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16
- Disciplinary Counsel v. Broeren, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21
- Cleveland Metro. Bar Assn. v. Gresley, 127 Ohio St. 3d 430, 2010-Ohio-6208, 940 N.E.2d 945, ¶ 27
- Columbus Bar Assn. v. Ellis, 120 Ohio St. 3d 89, 2008-Ohio-5278, 896 N.E.2d 703, ¶¶ 7, 11-13
- Cuyahoga Cty. Bar Assn. v. Veneziano, 120 Ohio St. 3d 451, 2008-Ohio-6789, 900 N.E.2d 185, ¶ 10
- Geauga Cty. Bar Assn. v. Bruner, 98 Ohio St. 3d 312, 2003-Ohio-736, 784 N.E.2d 687
- Northwest Ohio Bar Assn. v. Archer, 129 Ohio St. 3d 204, 2011-Ohio-3142, 951 N.E.2d 78
- Disciplinary Counsel v. Large, 122 Ohio St. 3d 35, 2009-Ohio-2022, 907 N.E.2d 1162