

COURT OF APPEALS OF MARYLAND

Attorney Grievance Commission of Maryland v. Ada Elizabeth
Cherry-Mahoi, 388 Md. 124

879 A.2d 58 (2005) · No. Misc. AG No. 45, September Term, 2004 · Decided July 21, 2005

SUMMARY

The Maryland Court of Appeals considered disciplinary charges against Ada Elizabeth Cherry-Mahoi arising from her handling of settlement and personal injury protection funds in an attorney trust account. The evidentiary court found violations involving diligence, fees, safekeeping of property, termination of representation, bar disciplinary matters, professional misconduct, trust-account rules, and misuse of trust money, while finding no violation of competence or communication rules.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Battaglia, J.; Bell, C.J.; Raker, J.; Wilner, J.; Cathell, J.; Harrell, J.; Greene, J.
JURISDICTION	Maryland
DECIDED	July 21, 2005
DOCKET	Misc. AG No. 45, September Term, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding initiated by the Attorney Grievance Commission of Maryland. After an evidentiary hearing before a designated circuit court judge, the Court of Appeals independently reviewed the record, sustained one of Bar Counsel's exceptions, overruled Respondent's exception to the findings of intentional misappropriation, upheld the remaining violations, and imposed disbarment.
STANDARD OF REVIEW	The Court of Appeals exercises original and complete jurisdiction and independently reviews the record. The hearing judge's factual findings are generally accepted unless clearly erroneous, while conclusions of law, including whether the Maryland Rules of Professional Conduct were violated, are reviewed essentially de novo.
PRECEDENTIAL VALUE	Published precedential opinion of the Court of Appeals of Maryland

PARTIES

Attorney Grievance Commission of Maryland v. Ada Elizabeth Cherry-Mahoi

TOPICS

trustee duties breach of trust trusts administrative law

PRACTICE AREAS

legal ethics and attorney discipline professional responsibility trust-account administration attorney sanctions

QUESTIONS PRESENTED

1. Whether the hearing judge's finding that Cherry-Mahoi knowingly and willfully misappropriated client trust funds was supported by clear and convincing evidence.
2. Whether Cherry-Mahoi violated MRPC 1.3 and 1.15(b) by failing to maintain sufficient funds and promptly pay medical providers from settlement-related funds.
3. Whether Cherry-Mahoi violated MRPC 1.5 and 1.16(d) by withdrawing fees substantially exceeding the agreed fee and failing to protect the client's interests.
4. Whether depositing personal funds and unrelated settlement proceeds into the attorney trust account violated MRPC 1.15(a).
5. Whether mislabeling the trust account and writing a check payable to cash violated Maryland Rules 16-606 and 16-609.
6. Whether intentional misappropriation of client funds violated MRPC 8.4(a), (c), and (d), and section 10-306 of the Business Occupations and Professions Article.
7. Whether disbarment was the appropriate sanction for the intentional misappropriation.

HOLDINGS

1. The hearing judge's finding that Cherry-Mahoi knowingly and willfully misappropriated entrusted funds was supported by clear and convincing evidence.
2. An attorney violates MRPC 1.15(b) and MRPC 1.3 when the attorney cannot promptly pay medical providers from settlement-related funds because the attorney depleted those funds, even where the client had temporarily directed that some payments be withheld.
3. Depositing personal funds and unrelated settlement proceeds into an attorney trust account containing client funds violates MRPC 1.15(a).
4. An attorney violates MRPC 1.5 and MRPC 1.16(d) by taking substantially more than the agreed fee, failing to inform the client of the additional withdrawals, and thereby converting client funds.
5. Mislabeling an attorney trust account as an IOLTA account violates Maryland Rule 16-606, and knowingly misusing trust funds or writing a trust-account check payable to cash violates Maryland Rule 16-609.

6. Intentional misappropriation of client funds violates MRPC 8.4(a), (c), and (d).
7. Disbarment is the appropriate sanction for intentional misappropriation of entrusted funds absent compelling extenuating circumstances.

KEY QUOTATIONS

"We have often stated that the misappropriation of entrusted funds "is an act infected with deceit and dishonesty, and, in the absence of compelling extenuating circumstances justifying a lesser sanction, will result in disbarment." (at 81)

"Appropriating any part of those funds to their own use and benefit without clear authority to do so cannot be tolerated." (at 81)

FACTUAL BACKGROUND

Cherry-Mahoi represented Mary Emma Clark and her two children in a personal-injury matter that settled for \$11,000 in May 2002. She deposited settlement and personal-injury-protection funds into an attorney trust account, withdrew substantially more in fees than the agreed amount, and used funds that should have remained available to pay medical providers. She later deposited personal funds from unrelated matters into the trust account to cover outstanding medical bills, and wrote a check payable to cash. The Court found that she knowingly and willfully misappropriated entrusted funds.

PROCEDURAL HISTORY

Bar Counsel filed a petition for disciplinary or remedial action on September 15, 2004. The Court referred the matter to Judge Mickey J. Norman of the Circuit Court for Baltimore County, who held an evidentiary hearing on February 2, 2005, and issued findings of fact and conclusions of law on March 10, 2005. The hearing judge found violations of multiple professional-conduct rules and statutes. The Court of Appeals independently reviewed the record, sustained Bar Counsel's exception concerning the Rule 8.1 finding based on Respondent's answer to the disciplinary petition, rejected Respondent's challenge to the intentional-misappropriation finding, affirmed the remaining violations, and disbarred Respondent.

DISPOSITION

other

CASES CITED

- Attorney Grievance Comm'n v. Zuckerman, 386 Md. 341, 363, 369-71, 374-75, 872 A.2d 693, 706, 710-12, 713 (2005)
- Attorney Grievance Comm'n v. James, 385 Md. 637, 654, 663-66, 870 A.2d 229, 239, 245 (2005)
- Attorney Grievance Comm'n v. O'Toole, 379 Md. 595, 604, 843 A.2d 50, 55 (2004)
- Attorney Grievance Comm'n v. Gore, 380 Md. 455, 468, 845 A.2d 1204, 1211 (2004)
- Attorney Grievance Comm'n v. Potter, 380 Md. 128, 151, 844 A.2d 367, 380-81 (2004)
- Attorney Grievance Comm'n v. McLaughlin, 372 Md. 467, 493, 813 A.2d 1145, 1160 (2002)

- Attorney Grievance Comm'n v. Seiden, 373 Md. 409, 419, 818 A.2d 1108, 1114 (2003)
- Attorney Grievance Comm'n v. Stolarz, 379 Md. 387, 399-400, 842 A.2d 42, 49 (2004)
- Attorney Grievance Comm'n v. Gallagher, 371 Md. 673, 710, 712-13, 810 A.2d 996, 1018, 1020 (2002)
- Attorney Grievance Comm'n v. Prichard, 386 Md. 238, 246-47, 872 A.2d 81, 85-86 (2005)
- Attorney Grievance Comm'n v. Milliken, 348 Md. 486, 515, 704 A.2d 1225, 1239 (1998)
- Attorney Grievance Comm'n v. Blum, 373 Md. 275, 299, 303, 818 A.2d 219, 234, 236 (2003)
- Attorney Grievance Comm'n v. Bernstein, 363 Md. 208, 221-23, 768 A.2d 607, 614-15 (2001)
- Attorney Grievance Comm'n v. Snyder, 368 Md. 242, 793 A.2d 515 (2002)
- Attorney Grievance Comm'n v. Vanderlinde, 364 Md. 376, 381, 410, 773 A.2d 463, 466, 483 (2001)
- Attorney Grievance Comm'n v. Sheridan, 357 Md. 1, 741 A.2d 1143 (1999)
- Attorney Grievance Comm'n v. Hollis, 347 Md. 547, 702 A.2d 223 (1997)
- Attorney Grievance Comm'n v. Brown, 380 Md. 661, 846 A.2d 428 (2004)
- Attorney Grievance Comm'n v. Somerville, 379 Md. 586, 593, 842 A.2d 811, 815 (2004)
- Attorney Grievance Comm'n v. Santos, 370 Md. 77, 803 A.2d 505 (2002)
- Attorney Grievance Comm'n v. Powell, 369 Md. 462, 800 A.2d 782 (2002)
- Attorney Grievance Comm'n v. McCoy, 369 Md. 226, 798 A.2d 1132 (2002)
- Attorney Grievance Comm'n v. Sheinbein, 372 Md. 224, 252-53 n. 16, 812 A.2d 981, 996 n. 16 (2002)
- Attorney Grievance Comm'n v. Awuah, 374 Md. 505, 526, 823 A.2d 651, 663 (2003)
- Attorney Grievance Comm'n v. McClain, 373 Md. 196, 211, 817 A.2d 218, 227 (2003)
- Attorney Grievance Comm'n v. Sperling, 380 Md. 180, 191-92, 844 A.2d 397, 404 (2004)
- Attorney Grievance Comm'n v. Smith, 376 Md. 202, 238, 829 A.2d 567, 588-89 (2003)
- Attorney Grievance Comm'n v. Sperry, 371 Md. 560, 568, 810 A.2d 487, 491-92 (2002)
- Attorney Grievance Comm'n v. Owrutsky, 322 Md. 334, 345, 587 A.2d 511, 516 (1991)