

## SUPREME COURT OF OHIO

### Disciplinary Counsel v. Owens

Disciplinary Counsel v. Owens., 2018 Ohio 5080 (Ohio 2018) · No. 2018-0257 · Decided December 19, 2018

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#### SUMMARY

The Supreme Court of Ohio held that Robert Morris Owens violated Prof.Cond.R. 8.4(c), (d), and (h) by misrepresenting that a client's spousal-support arrearage had been paid, delaying enforcement proceedings, and recklessly placing other clients' trust-account funds at risk. The court suspended Owens from practicing law for one year, stayed the suspension in full subject to a two-hour client-trust-account CLE requirement and one year of monitored probation.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Per Curiam; Maureen O'Connor, C.J.; William M. O'Donnell, J.; William A. Fischer, J.; Patrick F. DeWine, J.; Mary DeGenaro, J.; Jennifer Brunner Kennedy, J.; Judith L. French, J.                                                                                                                                                                                         |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | December 19, 2018                                                                                                                                                                                                                                                                                                                                                          |
| DOCKET                | 2018-0257                                                                                                                                                                                                                                                                                                                                                                  |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Attorney-discipline proceeding on a certified report of the Supreme Court of Ohio Board of Professional Conduct. Owens objected to the board's findings of fact, conclusions of law, recommended sanction, and alleged bias.                                                                                                                                               |
| STANDARD OF REVIEW    | The Supreme Court of Ohio independently reviews attorney-discipline matters but generally defers to a hearing panel's credibility determinations unless the record weighs heavily against the findings. The court determines the appropriate sanction based on the ethical duties violated, aggravating and mitigating factors, and sanctions imposed in comparable cases. |
| PRECEDENTIAL VALUE    | Published opinion of the Supreme Court of Ohio; precedential attorney-discipline decision.                                                                                                                                                                                                                                                                                 |
| PARTIES               | Disciplinary Counsel v. Robert Morris Owens                                                                                                                                                                                                                                                                                                                                |

## TOPICS

family law

spousal support

civil procedure

## PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

family law

## QUESTIONS PRESENTED

1. Whether sufficient evidence supported the board's findings that Owens violated Prof.Cond.R. 8.4(c), (d), and (h).
2. Whether Owens made a material misrepresentation by presenting a client-trust-account check and failing to correct the resulting representation after learning that the client's funds had not been deposited.
3. Whether the board was biased against Owens by disregarding his testimony and amended closing brief.
4. What sanction was appropriate for Owens's misconduct.

## HOLDINGS

1. The board's findings that Owens violated Prof.Cond.R. 8.4(c), (d), and (h) were supported by the record and were adopted.
2. Owens's conduct constituted a material misrepresentation because he presented the trust-account check as payment and, after learning that the funds had not been deposited, failed to correct the resulting false representation.
3. The record did not establish improper bias by the board.
4. Owens was suspended from the practice of law for one year, with the entire suspension stayed on conditions requiring additional client-trust-account CLE and one year of monitored probation.

## KEY QUOTATIONS

*“There is also sufficient evidence to establish that Owens made a material misrepresentation when he presented a \$58,242.93 client-trust-account check to CSEA in order to satisfy Bittner’s spousal-support obligation, thereby representing to CSEA and the court that those funds had been deposited into that account on Bittner’s behalf, either with knowledge or with reckless disregard as to whether any such funds had been deposited into that account.” (¶ 24)*

*“Once he learned that the facts were not as he originally believed, he had a duty to step forward and correct his prior representations to avoid engaging in misrepresentation by omission.” (¶ 25)*

*“We typically impose an actual suspension from the practice of law for an appropriate period of time when an attorney has engaged in a course of conduct involving dishonesty.” (¶ 38)*

## FACTUAL BACKGROUND

Owens represented a client who was jailed for contempt after failing to pay court-ordered spousal support. Owens issued a \$58,242.93 counter check drawn on his client trust account even though the account contained

funds belonging to approximately 19 other clients and no funds had been deposited for the client whose arrearage the check purported to satisfy. After learning that the expected funds had not arrived, Owens stopped payment on the check but did not promptly disclose the nonpayment to the child-support agency or court, allowing the client to obtain release from jail based on the apparent payment. The delay postponed collection of the spousal support and exposed other clients' funds to risk.

## PROCEDURAL HISTORY

Disciplinary counsel filed a complaint alleging three violations of the Ohio Rules of Professional Conduct. After considering stipulated facts, exhibits, and hearing evidence, a panel of the Board of Professional Conduct found misconduct and recommended a six-month suspension and client-trust-account CLE; the board adopted that recommendation with minor alterations. The Supreme Court of Ohio adopted the findings and misconduct determinations, rejected Owens's objections concerning the findings and alleged bias, and modified the sanction to a one-year suspension stayed on conditions.

## DISPOSITION

other

## CASES CITED

- Bittner v. Bittner, 2015-Ohio-4707, 49 N.E.3d 821 (5th Dist.)
- Disciplinary Counsel v. Zingarelli, 89 Ohio St.3d 210, 217, 729 N.E.2d 1167 (2000)
- Cross v. Ledford, 161 Ohio St. 469, 478, 120 N.E.2d 118 (1954)
- Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St.3d 164, 2006-Ohio-550, 842 N.E.2d 35, ¶ 24
- Miles v. McSwegin, 58 Ohio St.2d 97, 99, 388 N.E.2d 1367 (1979)
- Disciplinary Counsel v. Bunstine, 131 Ohio St.3d 302, 2012-Ohio-977, 964 N.E.2d 427
- Disciplinary Counsel v. Koehler, 132 Ohio St.3d 465, 2012-Ohio-3235, 973 N.E.2d 262
- Cleveland Bar Assn. v. Cox, 98 Ohio St.3d 420, 2003-Ohio-1553, 786 N.E.2d 454
- Disciplinary Counsel v. Cuckler, 101 Ohio St.3d 318, 2004-Ohio-784, 804 N.E.2d 966
- Mahoning Cty. Bar Assn. v. Cochran, 152 Ohio St.3d 448, 2018-Ohio-4, 97 N.E.3d 454
- Disciplinary Counsel v. Fowerbaugh, 74 Ohio St.3d 187, 191, 658 N.E.2d 237 (1995)

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