

SUPREME COURT OF RHODE ISLAND

In re McKenna

76 A.3d 144 (R.I. 2013) · Decided October 17, 2013

SUMMARY

The Rhode Island Supreme Court suspended attorney David I. McKenna from practicing law for at least three months based on neglect of an estate-planning matter, failure to communicate with a client, failure to respond to disciplinary counsel, and misrepresentations concerning filings with the Division of Taxation. The suspension required an application for reinstatement and imposed procedures for concluding or transferring client matters.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	Flaherty; Goldberg; Indeglia; Robinson; Suttell
JURISDICTION	Rhode Island
DECIDED	October 17, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter submitted by the Rhode Island Supreme Court disciplinary board for review and entry of an appropriate order.
STANDARD OF REVIEW	The Supreme Court reviewed the disciplinary record and entered the appropriate disciplinary order under Article III, Rule 6(d) of the Supreme Court Rules of Disciplinary Procedure.
PRECEDENTIAL VALUE	published opinion
PARTIES	Disciplinary Counsel v. David I. McKenna

TOPICS

estate planning probate trusts

PRACTICE AREAS

legal ethics and professional responsibility attorney discipline estate planning

QUESTIONS PRESENTED

1. Whether McKenna's neglect of the estate-planning representation, failure to communicate with the client, and failure to respond to disciplinary counsel violated the Rhode Island Rules of Professional Conduct.
2. Whether suspension from the practice of law for at least three months, with an application for reinstatement, was appropriate in light of McKenna's misconduct and prior disciplinary history.

HOLDINGS

1. An attorney who fails to diligently complete a client representation, fails to communicate with the client and provide documents for which the client paid, and knowingly fails to respond to lawful disciplinary demands is subject to discipline under the applicable Rules of Professional Conduct.
2. Suspension for at least three months, together with a requirement that the respondent apply for reinstatement, was appropriate for the misconduct and demonstrated history of neglect.

KEY QUOTATIONS

"Accordingly, the respondent, David I. McKenna, is suspended from the practice of law for at least three months, commencing thirty days from the date of this order." (at 146)

FACTUAL BACKGROUND

In May 2012, John D'Errico retained McKenna to prepare estate-planning documents and paid him \$1,642 after reviewing draft documents. McKenna agreed to revise and provide the completed documents but did not do so, failed to return D'Errico's calls, and did not respond to disciplinary counsel's written requests. McKenna later claimed that his failure was partly attributable to pending documentation with the Rhode Island Division of Taxation, but the Division's records showed that he submitted an incorrect filing, failed to respond to the Division's notice, and had no further contact with it. The disciplinary board found that McKenna lied about those claimed difficulties.

PROCEDURAL HISTORY

Disciplinary Counsel filed a petition alleging that McKenna neglected an estate-planning representation, failed to communicate with the client, failed to provide paid-for documents, failed to respond to disciplinary inquiries, and made false representations concerning the Division of Taxation. The disciplinary board held hearings, reopened the record to receive additional evidence, found that McKenna had lied about his claimed difficulties with the Division of Taxation, and recommended suspension for at least three months with an application for reinstatement. The Supreme Court directed McKenna to show cause and, after hearing from the parties and reviewing the record, imposed the recommended discipline.

DISPOSITION

other

CASES CITED

- In re McKenna, No. 2006-287-M.P. (R.I., filed Oct. 16, 2006)

- In re McKenna, 973 A.2d 620 (R.I. 2009)
- In re Fishbein, 8 A.3d 1038, 1039 (R.I. 2010)

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