

SUPREME COURT OF OHIO

Cincinnati Bar Ass'n v. Kathman

92 Ohio St. 3d 92 (Ohio 2001) · Decided June 13, 2001

SUMMARY

The Ohio Supreme Court disciplined an attorney who participated in a living-trust marketing and preparation arrangement with nonattorneys. The court held that the attorney violated disciplinary rules prohibiting practicing under a trade name, sharing legal fees with a nonlawyer, and aiding the unauthorized practice of law, but did not violate the rule concerning interference with professional judgment. The court suspended the attorney from practice for six months.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Douglas; Resnick; Cook; Lundberg Stratton; Sweeney; Pfeifer
JURISDICTION	Ohio
DECIDED	June 13, 2001
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding initiated by the Cincinnati Bar Association before the Supreme Court of Ohio after a hearing and findings by the Board of Commissioners on Grievances and Discipline.
STANDARD OF REVIEW	The Supreme Court of Ohio independently renders the final determination of facts and conclusions of law in attorney-discipline cases, while reviewing the disciplinary record and adopting supported findings.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio establishing an attorney-discipline rule concerning assistance to nonattorneys marketing and selling living trusts.
PARTIES	Cincinnati Bar Association v. Edward T. Kathman

TOPICS

estate planning

trusts

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PRACTICE AREAS

legal ethics

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unauthorized practice of law

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QUESTIONS PRESENTED

1. Whether Kathman practiced under a trade name in violation of DR 2-102(B).
2. Whether Kathman shared legal fees with nonattorneys in violation of DR 3-102(A).
3. Whether Kathman permitted persons who recommended, employed, or paid him to direct or regulate his professional judgment in violation of DR 5-107(B).
4. Whether an attorney violates DR 3-101(A) by assisting nonattorneys who market or sell living trusts and by summarily approving trust documents prepared by nonattorneys.
5. What sanction was appropriate for the established disciplinary violations.

HOLDINGS

1. Kathman violated DR 2-102(B) by permitting his name to appear on the letterhead of the nonattorney Estate Preservation Group and related entities in a manner constituting practice under a trade name.
2. Kathman violated DR 3-102(A) by distributing portions of a client's legal-services fee to the Estate Plan, the Estate Preservation Group, and its representatives.
3. The evidence did not establish that Kathman violated DR 5-107(B), and the court adopted the board's conclusion finding no violation.
4. An attorney violates DR 3-101(A) when the attorney assists a nonattorney in marketing or selling legal trust documents to the public and does nothing more than summarily approve documents created by the nonattorney.
5. A six-month suspension from the practice of law was an appropriate sanction for Kathman's misconduct.

KEY QUOTATIONS

"We hold that an attorney violates DR 3-101(A) when the attorney assists a nonattorney, as respondent assisted the nonattorneys, in the marketing and selling of living trusts." (96)

"For the reasons stated, an attorney aids in the unauthorized practice of law in violation of DR 3-101(A) where the attorney engages in a relationship with a nonattorney to market or sell legal trust documents to the public and does nothing more than summarily approve documents created by the nonattorney." (98)

"Respondent is hereby suspended from the practice of law for six months." (99)

FACTUAL BACKGROUND

Kathman, an Ohio attorney, served as a purported review attorney for the Estate Preservation Group and the Estate Plan, nonattorney entities that marketed and sold living trusts. The nonattorney agents solicited clients, gathered financial and estate information, obtained the full fee before Kathman contacted the client, and assisted clients in executing trust documents. Kathman typically retained \$200, distributed the remainder of the fee to the entities and their representatives, directed preparation of the trusts, did not review the completed trust

documents, and did not provide the clients with independent legal advice or supervise the nonattorney participants.

PROCEDURAL HISTORY

The Cincinnati Bar Association charged Kathman with violations of several Disciplinary Rules arising from his participation in a living-trust marketing arrangement operated by nonattorneys. The disciplinary board found violations of DR 2-102(B), DR 3-102(A), and DR 5-107(B), but found no violation of DR 3-101(A). The Supreme Court of Ohio adopted the board's factual findings, adopted most of its legal conclusions, rejected its conclusion concerning DR 3-101(A), found that violation as well, and imposed a six-month suspension.

DISPOSITION

other

CASES CITED

- Ohio State Bar Assn. v. Reid, 85 Ohio St. 3d 327, 708 N.E.2d 193 (1999)
- Trumbull Cty. Bar Assn. v. Hanna, 80 Ohio St. 3d 58, 684 N.E.2d 329 (1997)
- Land Title Abstract & Trust Co. v. Dworken, 129 Ohio St. 23, 193 N.E. 650 (1934)
- Green v. Huntington Natl. Bank, 4 Ohio St. 2d 78, 212 N.E.2d 585 (1965)
- Iowa State Bar Assn. Commt. on Professional Ethics & Conduct v. Baker, 492 N.W.2d 695 (Iowa 1992)
- People v. Volk, 805 P.2d 1116 (Colo. 1991)
- In re Mid-America Living Trust Assoc., Inc., 927 S.W.2d 855 (Mo. 1996)
- Florida Bar v. Schramek, 616 So. 2d 979 (Fla. 1993)
- People ex rel. MacFarlane v. Boyls, 197 Colo. 242, 591 P.2d 1315 (1979)
- People v. Macy, 789 P.2d 188 (Colo. 1990)
- State ex rel. Miller v. St. Louis Union Trust Co., 335 Mo. 845, 74 S.W.2d 348 (1934)
- Wayne Cty. Bar Assn. v. Naumoff, 74 Ohio St. 3d 637, 660 N.E.2d 1177 (1996)
- Akron Bar Assn. v. Miller, 80 Ohio St. 3d 6, 684 N.E.2d 288 (1997)