

SUPREME COURT OF OHIO

Akron Bar Assn. v. Wittbrod

Akron Bar Ass'n v. Wittbrod, 122 Ohio St. 3d 394, 2009-Ohio-3549 · No. 2008-0723 · Decided July 28, 2009

SUMMARY

The Supreme Court of Ohio held that Harry J. Wittbrod violated professional-conduct rules by failing to inform a client that he lacked malpractice insurance and by attempting to limit his malpractice liability through settlement negotiations. The court imposed a six-month suspension from practice, stayed on conditions including mental-health treatment, monitored probation, and law-office-management training.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Moyer, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Connor, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.
JURISDICTION	Ohio
DECIDED	July 28, 2009
DOCKET	2008-0723
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on a certified report from the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio. The Supreme Court rejected the board's initial consent-discipline recommendation, remanded for further proceedings, and then reviewed the board's revised findings and recommended sanction.
STANDARD OF REVIEW	The Supreme Court independently reviewed the certified disciplinary record and accepted the board's findings when supported by the evidence; the opinion expressly found clear and convincing evidence of the insurance-notice violation.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Ohio
PARTIES	Akron Bar Association v. Harry J. Wittbrod

TOPICS

remedies

administrative law

PRACTICE AREAS

legal ethics and attorney discipline

professional responsibility

disciplinary sanctions

malpractice settlement restrictions

QUESTIONS PRESENTED

1. Whether Wittbrod violated the applicable disciplinary rules by failing to advise and document that his client had not been provided notice that he lacked professional-liability insurance.
2. Whether Wittbrod violated DR 6-102 or Prof.Cond.R. 1.8(h)(2) by attempting to obtain dismissal of a client's pending disciplinary grievance during settlement negotiations in a malpractice matter.
3. What sanction was appropriate for the established misconduct.

HOLDINGS

1. Wittbrod violated DR 1-104(A) and (B) by failing to advise his client that he did not maintain professional-liability insurance and failing to document that notice.
2. Wittbrod violated DR 6-102 or Prof.Cond.R. 1.8(h)(2) by attempting to obtain dismissal of the client's pending grievance as part of settlement negotiations relating to the malpractice claim.
3. A six-month suspension from the practice of law, stayed in its entirety on conditions involving mental-health treatment, law-office-management continuing legal education, and one-year monitoring if Wittbrod resumes practice, was appropriate.

KEY QUOTATIONS

“Respondent is suspended from the practice of law in Ohio for six months, but the suspension is stayed on the conditions that he comply with the conditions of his OLAP contract, including any recommendations for medical treatment made by OLAP, that he attend one or more CLE courses on law-office management, and that his practice be monitored for one year by an attorney appointed by relator.” (¶ 21)

FACTUAL BACKGROUND

Wittbrod represented a client in a workers' compensation matter during 2005 and 2006 without advising the client that he lacked professional-liability insurance. He later missed a deadline for appealing an Industrial Commission decision, was sued for malpractice, and settled the malpractice claim for approximately \$11,000. During settlement negotiations, he proposed dismissal of the client's pending disciplinary grievance as a settlement term. Wittbrod also had documented mental-health issues, cooperated in the disciplinary proceeding after an initial delay, and agreed to treatment, monitored probation if he resumed practice, and law-office-management training.

PROCEDURAL HISTORY

The Akron Bar Association charged Wittbrod with six counts of professional misconduct. The parties initially submitted a consent-to-discipline agreement, and the board recommended a stayed one-year suspension. The Supreme Court rejected that recommendation and returned the matter for further proceedings. After a panel

found misconduct on Counts III and IV but not the remaining counts, the board recommended a six-month suspension stayed on specified conditions. Neither party objected, and the Supreme Court accepted the findings and sanction.

DISPOSITION

other

CASES CITED

- Akron Bar Assn. v. Wittbrod, 118 Ohio St. 3d 1405, 2008-Ohio-2411, 886 N.E.2d 869
- Disciplinary Counsel v. Clavner, 77 Ohio St. 3d 431, 432, 674 N.E.2d 1369 (1977)
- Akron Bar Assn. v. Markovich, 117 Ohio St. 3d 313, 2008-Ohio-862, 883 N.E.2d 1046, ¶¶ 5-6
- Cleveland Bar Assn. v. Kates, 78 Ohio St. 3d 69, 70-71, 676 N.E.2d 512 (1997)