

SUPREME COURT OF OHIO

Cleveland Metropolitan Bar Association v. Heben

150 Ohio St. 3d 335, 2017-Ohio-6965 (2017) · No. 2016-1495 · Decided July 27, 2017

SUMMARY

The Supreme Court of Ohio held that Edward Joseph Heben violated Prof.Cond.R. 1.6(a) by publicly disclosing confidential client information in an affidavit filed in a divorce proceeding. The court suspended Heben for one year but stayed the entire suspension on the condition that he commit no further misconduct, citing his otherwise unblemished legal career and mitigating factors.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; O'Donnell; Kennedy; French; O'Neill; DeWine; O'Connor; Fischer
JURISDICTION	Ohio
DECIDED	July 27, 2017
DOCKET	2016-1495
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on a certified report from the Board of Professional Conduct of the Supreme Court of Ohio. The respondent objected to the board's recommended sanction.
STANDARD OF REVIEW	The Supreme Court of Ohio reviews the board's findings and independently determines the appropriate sanction; it defers to the hearing panel's credibility determinations unless the record weighs heavily against them.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	Cleveland Metropolitan Bar Association v. Edward Joseph Heben Jr.

TOPICS

appellate procedure

standard of review

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether Heben violated Prof.Cond.R. 1.6(a) by publicly disclosing confidential client information and attorney-client communications in an affidavit supporting his withdrawal from representation.
2. Whether Prof.Cond.R. 1.6(b)(5) permitted Heben's disclosures as reasonably necessary to establish a claim or defense in a fee controversy with his former client.
3. Whether Prof.Cond.R. 1.6(b)(3) permitted Heben's disclosures to mitigate injury allegedly resulting from the client's illegal or fraudulent conduct.
4. What sanction was appropriate for Heben's isolated unauthorized disclosure in light of the aggravating and mitigating factors.

HOLDINGS

1. Heben violated Prof.Cond.R. 1.6(a) by disclosing attorney-client communications and other confidential client information in a publicly filed withdrawal affidavit without authorization.
2. Prof.Cond.R. 1.6(b)(5) did not justify Heben's disclosures because he neither filed a motion to intervene or fee application nor limited the information disclosed to what was reasonably necessary to establish a fee claim.
3. Prof.Cond.R. 1.6(b)(3) did not justify Heben's disclosures because he did not establish that Cecchini used his legal services to commit fraudulent or illegal acts or that the disclosures mitigated substantial financial injury.
4. A one-year suspension fully stayed on the condition of no further misconduct was the appropriate sanction.

KEY QUOTATIONS

“A fundamental principle in the attorney-client relationship is that the attorney shall maintain the confidentiality of any information learned during the attorney-client relationship.” (¶ 22)

“Edward Joseph Heben Jr. is suspended from the practice of law in Ohio for one year, with the entire suspension stayed on the condition that he commit no further misconduct.” (¶ 23)

FACTUAL BACKGROUND

Heben briefly represented Jennifer Cecchini in 2008 and again entered an appearance in her pending divorce case in September 2013. Cecchini paid a \$3,000 retainer, but terminated Heben's services less than two weeks later. In a motion to withdraw, Heben filed an affidavit disclosing attorney-client communications, legal advice, fee-related information, and allegations concerning Cecchini's conduct. The divorce judge struck the affidavit because the disclosures were inappropriate and unnecessary to withdrawal.

PROCEDURAL HISTORY

The Cleveland Metropolitan Bar Association charged Heben with professional misconduct in two client matters. After a hearing, a three-member panel found that he violated Prof.Cond.R. 1.6(a) and dismissed the remaining charges, recommending a one-year suspension with six months stayed. The Board of Professional Conduct

adopted that recommendation. The Supreme Court of Ohio sustained the misconduct finding but modified the sanction to a one-year suspension fully stayed on the condition that Heben commit no further misconduct.

DISPOSITION

other

CASES CITED

- Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St. 3d 164, 2006-Ohio-550, 842 N.E.2d 35
- Akron Bar Assn. v. Holder, 102 Ohio St. 3d 307, 2004-Ohio-2835, 810 N.E.2d 426
- Disciplinary Counsel v. Fowerbaugh, 74 Ohio St. 3d 187, 191, 658 N.E.2d 237 (1995)
- Kala v. Aluminum Smelting & Refining Co., Inc., 81 Ohio St. 3d 1, 4, 688 N.E.2d 258 (1998)
- Disciplinary Counsel v. Miller, 2017-Ohio-2821