

SUPREME COURT OF PENNSYLVANIA

Office of Disciplinary Counsel v. Simpson

74 Pa. D. & C.4th 206 (Pa. 2005) · Decided May 12, 2005

SUMMARY

The Pennsylvania Supreme Court reviewed disciplinary proceedings against Stephen W. Simpson for commingling client and personal funds, overdrawing an IOLTA account, and practicing law while on inactive status. The court ordered a two-year suspension and required compliance with Pennsylvania Rule of Disciplinary Enforcement 217, with costs assessed against Simpson.

CASE DETAILS

COURT	Supreme Court of Pennsylvania
WRITING FOR THE COURT	Gephart
JURISDICTION	Pennsylvania
DECIDED	May 12, 2005
DISPOSITION	other
PROCEDURAL POSTURE	The Office of Disciplinary Counsel filed a petition for discipline against an attorney. After the attorney failed to answer and a disciplinary hearing was held, the Disciplinary Board recommended a one-year-and-one-day suspension; the Supreme Court of Pennsylvania ordered a two-year suspension.
PRECEDENTIAL VALUE	Published Pennsylvania disciplinary decision; persuasive disciplinary precedent concerning sanctions for unauthorized practice while on inactive status and related trust-account misconduct.
PARTIES	Office of Disciplinary Counsel v. Stephen W. Simpson

TOPICS

- agency adjudication
- administrative law
- judicial review of agency action

PRACTICE AREAS

- legal ethics
- attorney discipline
- unauthorized practice of law
- trust accounts

QUESTIONS PRESENTED

1. Whether Simpson violated the Pennsylvania Rules of Professional Conduct and Rules of Disciplinary Enforcement by commingling personal and client funds and mishandling his IOLTA account.
2. Whether Simpson violated the Pennsylvania Rules of Professional Conduct and Rules of Disciplinary Enforcement by practicing law and holding himself out as an attorney while on inactive status.
3. What disciplinary sanction was appropriate in light of the unauthorized practice, financial misconduct, mitigating circumstances, and prior disciplinary precedent.

HOLDINGS

1. Simpson violated Pennsylvania Rule of Professional Conduct 1.15(a) by commingling personal funds with client funds, and his use of the IOLTA account and repeated overdrafts constituted additional professional misconduct under the cited professional-conduct and disciplinary-enforcement rules.
2. An attorney transferred to inactive status may not accept new retainers, engage as an attorney in new matters, or represent himself or herself as a lawyer, and Simpson violated those requirements by handling approximately 100 legal matters and appearing as counsel while remaining ineligible to practice.
3. A two-year suspension from the practice of law was appropriate for Simpson's prolonged and extensive unauthorized practice while inactive, failure to inform clients of his status, commingling of funds, and repeated IOLTA overdrafts, notwithstanding his remorse, cooperation, and lack of prior discipline.

KEY QUOTATIONS

“The rationale for suspension is that an attorney has an affirmative duty to know the status of his privilege to practice law and to comply with the professional requirements.” (216)

“The acts of fulfilling continuing legal education credits, filing an annual registration form and paying an annual fee are not mere ministerial duties, but part and parcel of the privilege of practicing law in the Commonwealth.” (216)

“Application of the strong line of precedent to respondent’s actions leads the board to conclude that a suspension of two years is appropriate.” (218)

FACTUAL BACKGROUND

Stephen W. Simpson was transferred to inactive status effective December 22, 1999, because of failures relating to continuing legal education and attorney registration requirements. Despite notice of his inactive status and failure to satisfy reinstatement requirements, he practiced law and handled approximately 100 matters between December 1999 and April 2003 without informing clients that he was ineligible to practice. He also used an IOLTA account as an operating account, commingled personal and client funds, and repeatedly overdrew the account, although the record did not show that client funds were actually misused.

PROCEDURAL HISTORY

The petition charged Simpson with commingling client and personal funds, overdrawing his IOLTA account, and practicing law while on inactive status. Simpson did not answer the petition but appeared pro se at the hearing

and stipulated to the violations. The Hearing Committee recommended a one-year-and-one-day suspension. The Disciplinary Board recommended a two-year suspension, and the Supreme Court of Pennsylvania adopted that recommendation and ordered Simpson suspended for two years.

DISPOSITION

other

CASES CITED

- Office of Disciplinary Counsel v. Brown, 64 D.B. 2003, 954 Disciplinary Docket No. 3 (Pa. Oct. 15, 2004)
- Office of Disciplinary Counsel v. Forman, 70 D.B. 2001, 799 Disciplinary Docket No. 3 (Pa. Jan. 31, 2003)
- Office of Disciplinary Counsel v. Harris, 150 D.B. 2002, 930 Disciplinary Docket No. 3 (Pa. July 15, 2004)
- Office of Disciplinary Counsel v. Jones, 71 D.B. 1999 and 126 D.B. 1999, No. 531 Disciplinary Docket No. 3 (Pa. Aug. 15, 2001)

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