DISTRICT OF COLUMBIA COURT OF APPEALS

In re John F. Kennedy and Kathleen A. Dolan

In re John F. Kennedy and Kathleen A. Dolan · No. 20-BG-682 · Decided September 1, 2022

SUMMARY

The District of Columbia Court of Appeals adopted disciplinary recommendations arising from attorneys' representation of more than 100 security officers in an FLSA collective action. The court held that John F. Kennedy intentionally misappropriated settlement funds and disbarred him, nunc pro tunc to May 4, 2021; it suspended Kathleen A. Dolan for nine months for negligent misappropriation and related violations. The court also held that the attorneys violated rules governing aggregate settlements, client communication, fees, and handling of client funds.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Steadman, Senior Judge; Glickman, Associate Judge; Deahl, Associate Judge
JURISDICTION	District of Columbia
DECIDED	September 1, 2022
DOCKET	20-BG-682
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on the Board on Professional Responsibility's report and recommendation. The Board recommended disbarment of John F. Kennedy for intentional misappropriation and related violations, and a nine-month suspension of Kathleen A. Dolan for negligent misappropriation and related violations.
STANDARD OF REVIEW	Under D.C. Bar Rule XI, § 9(h)(1), the Court accepts the Board's factual findings unless unsupported by substantial evidence and adopts its recommended disposition unless doing so would foster inconsistent dispositions or otherwise be unwarranted. The Court reviews the Board's legal determinations and determinations of ultimate fact de novo.
PRECEDENTIAL VALUE	published
PARTIES	Disciplinary Counsel v. John F. Kennedy, Kathleen A. Dolan

TOPICS

employment law · remedies · standard of review · appellate procedure

PRACTICE AREAS

legal ethics · attorney discipline · employment law · remedies

QUESTIONS PRESENTED

1. Whether respondents violated D.C. Rule of Professional Conduct 1.8(f) by entering into an aggregate settlement of multiple clients' claims without each client's informed written consent after consultation.
2. Whether a collective action that is not governed by the safeguards applicable to a certified Rule 23 class action falls within any exception to Rule 1.8(f).
3. Whether Kennedy violated Rule 8.4(c) by concealing settlement terms and misleading clients into signing settlement authorization forms.
4. Whether respondents misappropriated entrusted client funds by unilaterally taking 67% of a lump-sum settlement as attorney's fees without client authorization.
5. Whether Kennedy's misappropriation was intentional and required disbarment, and whether Dolan's misappropriation was negligent and warranted a nine-month suspension with reinstatement conditions.

HOLDINGS

1. Lawyers representing individual clients in a collective action must comply with D.C. Rule of Professional Conduct 1.8(f) and obtain each client's informed written consent, after consultation, before making an aggregate settlement. The absence of Rule 23-style notice and court-approval safeguards means a collective action is not exempt from Rule 1.8(f).
2. Kennedy violated Rule 8.4(c) by deliberately concealing the settlement terms and misleading clients by telling them they risked exclusion from the case or receiving nothing if they did not sign the settlement authorization form.
3. Until the clients authorize an agreed fee amount, the entire settlement award is entrusted client property. A lawyer may not unilaterally take a portion of a lump-sum settlement as fees merely because the lawyer performed legal work or may ultimately have a right to payment.
4. Kennedy's knowing and concealed taking of unauthorized client funds constituted intentional misappropriation and required disbarment because no extraordinary mitigating circumstances were present.
5. Dolan's conduct constituted negligent rather than intentional misappropriation, warranting a nine-month suspension subject to specified practice-management, trust-account, and probation conditions.

KEY QUOTATIONS

> *"When a lawyer performs legal work for another, the client of course has an obligation to pay the lawyer's fee. But absent agreement or a statutory lien, the lawyer has no right to any particular property of the debtor-client, including the proceeds of litigation."* (at 15)

> *"Disbarment is the presumptive sanction for misappropriation unless "the misconduct resulted from nothing more than simple negligence.""* (at 17)

> *"It is therefore ORDERED that John F. Kennedy is disbarred from the practice of law in the District of Columbia, nunc pro tunc to May 4, 2021."* (at 20)

FACTUAL BACKGROUND

Kennedy and Dolan represented more than 100 current and former Inter-Con security officers in an FLSA and District of Columbia wage-law collective action. Without obtaining informed consent to the material settlement terms or fee amount, Kennedy negotiated a $320,000 settlement later reduced to $310,000, directed that approximately 33% be distributed to the clients, and caused the firm to retain approximately 67% as attorney's fees. The clients were not told the total settlement amount, the fee amount, or how the settlement funds were allocated; Kennedy deliberately concealed those details, while Dolan had limited litigation involvement but managed the trust account and knew the settlement terms.

PROCEDURAL HISTORY

Disciplinary Counsel charged Kennedy and Dolan with violations arising from their representation of more than 100 claimants in an FLSA and District of Columbia wage-law collective action against Inter-Con. The Hearing Committee found multiple violations and recommended disbarment for Kennedy and a nine-month suspension for Dolan. The Board adopted the Hearing Committee's findings, modified Dolan's reinstatement conditions, and recommended the sanctions that the Court adopted.

DISPOSITION

other

CASES CITED

- In re Samad, 51 A.3d 486, 495 (D.C. 2012) (per curiam)
- Matter of Addams, 579 A.2d 190, 191 (D.C. 1990) (en banc)
- In re Travers, 764 A.2d 242, 250 (D.C. 2000)
- In re Haar, 698 A.2d 412, 422, 424 (D.C. 1997)
- Knisley v. City of Jacksonville, 497 N.E.2d 883, 887-88 (Ill. App. Ct. 1986), appeal denied, 505 N.E.2d 353 (Ill. App. Ct. 1987)
- Tax Auth., Inc. v. Jackson Hewitt, Inc., 898 A.2d 512, 514-15, 522 (N.J. 2006)
- Fegley v. Higgins, 19 F.3d 1126, 1134-35 (6th Cir. 1994)
- In re Choroszej, 624 A.2d 434, 436 (D.C. 1992) (per curiam)
- In re Herbst, 931 A.2d 1016, 1016-17 (D.C. 2007) (per curiam)
- In re Bailey, 883 A.2d 106, 123 (D.C. 2005)
- In re Hager, 812 A.2d 904, 923 (D.C. 2002)

INSTRUCTIONS FOR AN AI ASSISTANT