

# SUPREME COURT OF OHIO

## Disciplinary Counsel v. Sarver

Disciplinary Counsel v. Sarver (Slip Opinion), 2020 Ohio 5478 (Ohio 2020) · No. 2020-0229 · Decided December 2, 2020

### SUMMARY

The Ohio Supreme Court held that Prof.Cond.R. 3.4(c)'s prohibition against knowingly disobeying an obligation under a tribunal's rules applies to a lawyer's conduct occurring after a tribunal has issued a final order, not just before or during litigation. The court also found that an attorney's failure to notify a client of his suspension violated Prof.Cond.R. 1.4(a)(1) because the client's informed consent was required to proceed with representation. The respondent was permanently disbarred for continuing to practice law while under suspension, forging a client's signature, distributing settlement funds without court approval, and making false statements to the court and disciplinary counsel.

### CASE DETAILS

|                       |                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                    |
| WRITING FOR THE COURT | Fischer, J.; O'Connor, C.J.; French, J.; Dewine, J.; Donnelly, J.; Stewart, J.; Kennedy, J.                              |
| JURISDICTION          | Ohio                                                                                                                     |
| DECIDED               | December 2, 2020                                                                                                         |
| DOCKET                | 2020-0229                                                                                                                |
| DISPOSITION           | disbarred                                                                                                                |
| PROCEDURAL POSTURE    | ON CERTIFIED REPORT by the Board of Professional Conduct of the Supreme Court, No. 2019-025                              |
| STANDARD OF REVIEW    | This court is the ultimate arbiter of attorney discipline, and reviews the board's findings and recommendations de novo. |
| PRECEDENTIAL VALUE    | Published                                                                                                                |
| PARTIES               | Disciplinary Counsel v. Jason Allan Sarver                                                                               |

### TOPICS

sanctions breach of fiduciary duty contempt attorney fees

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether Sarver violated Prof.Cond.R. 1.4(a)(1) by failing to inform Mustin of his suspension and obtain her informed consent.
2. Whether Prof.Cond.R. 3.4(c) applies to a lawyer's conduct that occurs after a tribunal has issued a final order.
3. Whether Sarver presented mitigating evidence.
4. What is the appropriate sanction for Sarver's misconduct?

## HOLDINGS

1. The prohibition against a lawyer's knowing disobedience of an obligation under the rules of a tribunal contained in Prof.Cond.R. 3.4(c) applies to a lawyer's conduct that occurs after a tribunal has issued a final order as well as to a lawyer's conduct that occurs before or during litigation.
2. Sarver's failure to notify Mustin of his suspension and to obtain her informed consent to proceed with the representation violated Prof.Cond.R. 1.4(a)(1) because his actions placed Mustin in jeopardy of violating her fiduciary duties to the estate and required her informed consent.
3. Permanent disbarment is the appropriate sanction to protect the public given Sarver's prior discipline, dishonest and selfish motive, multiple violations, harm caused, and lack of mitigating factors.

## KEY QUOTATIONS

*“The plain language of Prof.Cond.R. 3.4(c) states that a lawyer shall not 'knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on a good faith assertion that no valid obligation exists.’” (¶ 23)*

*“We have recognized that the presumptive sanction for continuing to practice law while under suspension is disbarment.” (¶ 28)*

*“Based on Sarver's prior discipline, his dishonest and selfish motive, his multiple new violations of the Rules of Professional Conduct, the harm caused to Mustin, and this court's precedent, we hold that permanent disbarment is the appropriate sanction in this case.” (¶ 34)*

*“Integrity is a necessary characteristic for an attorney practicing law in Ohio, and Sarver does not possess this qualification.” (¶ 59)*

*“We must protect the public from lawyers like Sarver who manipulate their clients, individuals to whom the lawyer owes a fiduciary relationship as well as ethical duties.” (¶ 60)*

## FACTUAL BACKGROUND

Sarver represented Juanita Mustin in a wrongful-death claim after her daughter's death. He negotiated a \$50,000 settlement with Allstate. On November 28, 2018, Sarver was suspended from practice for two years (with 18 months stayed) for prior misconduct. Despite the suspension, Sarver continued to represent Mustin, filed a false

affidavit of compliance with the court, forged Mustin's signature on settlement documents, deposited the check, and distributed funds without probate court approval. He also falsely claimed a magistrate advised him to reduce the estate. Mustin did not learn of the suspension until February 2019.

## PROCEDURAL HISTORY

Sarver was previously suspended in November 2018 (Sarver I). A new complaint was filed in June 2019, leading to this disciplinary proceeding. The Board of Professional Conduct found misconduct and recommended permanent disbarment. Sarver objected.

## DISPOSITION

disbarred

## REMAND INSTRUCTIONS

Jason Allan Sarver is permanently disbarred from the practice of law and ordered to make restitution of \$50,000 to Allstate Insurance Company or the estate of Jessica Mustin.

## CASES CITED

- Disciplinary Counsel v. Sarver, 155 Ohio St. 3d 100, 2018-Ohio-4717, 119 N.E.3d 405
- Disciplinary Counsel v. Robinson, 126 Ohio St. 3d 371, 2010-Ohio-3829, 933 N.E.2d 1095
- Cleveland Metro. Bar Assn. v. Azman, 147 Ohio St. 3d 379, 2016-Ohio-3393, 66 N.E.3d 695
- Columbus Bar Assn. v. Okuley, 154 Ohio St.3d 124, 2018-Ohio-3857, 111 N.E.3d 1173
- Disciplinary Counsel v. Sabroff, 123 Ohio St. 3d 182, 2009-Ohio-4205, 915 N.E.2d 307
- Dayton Bar Assn. v. Sullivan, 158 Ohio St. 3d 423, 2020-Ohio-124, 144 N.E.3d 401
- Disciplinary Counsel v. Hoskins, 150 Ohio St. 3d 41, 2017-Ohio-2924, 78 N.E.3d 845
- Disciplinary Counsel v. Fletcher, 135 Ohio St. 3d 404, 2013-Ohio-1510, 987 N.E.2d 678
- Disciplinary Counsel v. Frazier, 110 Ohio St. 3d 288, 2006-Ohio-4481, 853 N.E.2d 295
- Disciplinary Counsel v. Allison, 98 Ohio St. 3d 322, 2003-Ohio-776, 784 N.E.2d 695
- Cincinnati Bar Assn. v. Rothermel, 112 Ohio St. 3d 443, 2007-Ohio-258, 860 N.E.2d 754
- Disciplinary Counsel v. Meyer, 142 Ohio St. 3d 448, 2015-Ohio-493, 32 N.E.3d 434
- Disciplinary Counsel v. Freeman, 126 Ohio St. 3d 389, 2010-Ohio-3824, 934 N.E.2d 328
- Cleveland Metro. Bar Assn. v. Pryatel, 145 Ohio St. 3d 398, 2016-Ohio-865, 49 N.E.3d 1286
- Disciplinary Counsel v. Mbakpuo, 98 Ohio St. 3d 177, 2002-Ohio-7087, 781 N.E.2d 208
- Disciplinary Counsel v. Bellew, 152 Ohio St. 3d 430, 2017-Ohio-9203, 97 N.E.3d 438
- Disciplinary Counsel v. Shaw, 138 Ohio St. 3d 522, 2014-Ohio-1025, 8 N.E.3d 928
- Toledo Bar Assn. v. Hickman, 119 Ohio St. 3d 102, 2008-Ohio-3837, 892 N.E.2d 437
- Disciplinary Counsel v. Edwards, 134 Ohio St. 3d 271, 2012-Ohio-5643, 981 N.E.2d 857
- Disciplinary Counsel v. O'Neill, 103 Ohio St. 3d 204, 2004-Ohio-4704, 815 N.E.2d 286

- Disciplinary Counsel v. Fowerbaugh, 74 Ohio St.3d 187, 658 N.E.2d 237 (1995)
- Disciplinary Counsel v. Krieger, 108 Ohio St. 3d 319, 2006-Ohio-1062, 843 N.E.2d 765

#### **CITED IN**

- Disciplinary Counsel v. Sarver, Disciplinary Counsel v. Sarver, 2020-Ohio-5478, ¶ 32

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