

SUPREME COURT OF OHIO

Disciplinary Counsel v. MacLean

106 Ohio St. 3d 50 (Ohio 2005) · Decided August 3, 2005

SUMMARY

The Ohio Supreme Court suspended Timothy M. MacLean from practicing law for two years after he practiced while his license was suspended for failure to comply with continuing legal education requirements. The court credited him with time already served under the prior suspension and made him immediately eligible to apply for reinstatement upon satisfying applicable requirements.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick, J.; Pfeifer, J.; Lundberg Stratton, J.; O’Connor, J.; O’Donnell, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	August 3, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding initiated by Disciplinary Counsel based on stipulated violations of the Ohio Code of Professional Responsibility. The Board of Commissioners on Grievances and Discipline recommended a two-year suspension with credit for time already served.
STANDARD OF REVIEW	Upon review of the board's stipulated findings and recommendation, the Supreme Court of Ohio independently determined whether the misconduct occurred and whether the recommended sanction was appropriate.
PRECEDENTIAL VALUE	published and precedential Ohio Supreme Court opinion
PARTIES	Disciplinary Counsel v. Timothy M. MacLean

TOPICS

- administrative law
- agency adjudication

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether MacLean violated the Ohio Code of Professional Responsibility by practicing law while his license was suspended for CLE noncompliance.
2. Whether a two-year suspension, with credit for time served under the prior suspension and immediate eligibility to apply for reinstatement, was the appropriate sanction.

HOLDINGS

1. MacLean violated DR 1-102(A)(5), DR 2-110(B)(2), and DR 3-101(B) by practicing law and continuing representation after his license had been suspended.
2. A two-year suspension from the practice of law, with credit for time actually served under the April 5, 2002 suspension and immediate eligibility to apply for reinstatement upon satisfying applicable requirements, was appropriate.

KEY QUOTATIONS

“Accordingly, respondent is hereby suspended from the practice of law in Ohio for two years; however, he is credited for time actually served under the suspension of April 5, 2002.” (at 52)

“Respondent is thus immediately eligible to apply for reinstatement to the practice of law in Ohio by fulfilling all relevant reinstatement requirements, including Gov.Bar R. V(10) and X(7).” (at 52)

FACTUAL BACKGROUND

MacLean failed to report continuing-legal-education activity, failed to pay a prior CLE-related fine, and failed to complete required CLE hours. The Supreme Court of Ohio suspended his license on April 5, 2002, and ordered him to cease representing clients and notify relevant parties. Despite the suspension, he participated in depositions, attended a pretrial conference, and obtained a trial continuance while representing a personal-injury plaintiff before opposing counsel moved to disqualify him; he then immediately stopped practicing.

PROCEDURAL HISTORY

Disciplinary Counsel charged MacLean with practicing law while his license was suspended for continuing-legal-education noncompliance. MacLean admitted the charged misconduct, and a panel of the Board of Commissioners on Grievances and Discipline accepted stipulated facts and recommended sanctions. The Supreme Court of Ohio reviewed the board's findings and recommendation and imposed the recommended suspension.

DISPOSITION

other

CASES CITED

- 88 Ohio St. 3d 1401, 1403, 722 N.E.2d 1029
- In re Report of Comm. on Continuing Legal Edn., 95 Ohio St. 3d 1414, 766 N.E.2d 155 (2002)
- Disciplinary Counsel v. Carson, 93 Ohio St. 3d 137, 753 N.E.2d 172 (2001)

OPINION

PER CURIAM.

Per Curiam. {¶ 1} Respondent, Timothy M. MacLean of Lakewood, Ohio, Attorney Registration No. 0069346, was admitted to the practice of law in Ohio in 1998. On December 8, 2003, relator, Disciplinary Counsel, charged that respondent had violated the Code of Professional Responsibility by practicing law after his license had been suspended for failure to comply with continuing legal education (“CLE”) requirements.

Respondent answered the complaint, admitting all the charged misconduct. {¶ 2} A panel of the Board of Commissioners on Grievances and Discipline heard the cause and accepted the parties’ stipulated findings of fact and misconduct and recommended the parties’ suggested sanction. Misconduct {¶ 3} On October 15, 1999, the Commission on Continuing Legal Education notified this court that respondent had failed to report his CLE activity for the 1997-1998 reporting period, see Gov.Bar R. X(6)(B)(1), and recommended a sanction of \$150.

On November 3, 1999, we ordered respondent to show cause why the sanction should not be imposed, and we sent certified notice of our order to the law firm where respondent worked. Respondent did not respond to our order, and on January 20, 2000, we fined respondent \$150, to be paid within 30 days, again providing certified notice to respondent at his law firm.

See 88 Ohio St.3d 1401, 1403, 722 N.E.2d 1029. {¶ 4} On October 15, 2001, the Commission on Continuing Legal Education notified this court that respondent had failed to pay the \$150 fine and was again in violation of Gov.Bar R. X, this time for failing to report his CLE activity for the 1999-2000 reporting period and failing to complete required CLE hours for *51ethics, professionalism, and prevention of substance abuse.

On November 16, 2001, we ordered respondent to show cause why we should not impose a \$250 sanction, again sending certified notice to the law firm where respondent worked. Respondent did not respond to our order, and on April, 5, 2002, we suspended respondent’s license to practice law and imposed the additional \$250 fine, again providing certified notice of our order.

See In re Report of Comm. on Continuing Legal Edn. (2002), 95 Ohio St.3d 1414, 766 N.E.2d 155. {¶ 5} The April 5, 2002 order directed respondent to cease all appearances on behalf of clients, to stop advising clients and preparing client documents, and to notify all clients, all courts in which litigation was pending, and opposing counsel of his suspension.

Between September and November 2002, however, respondent participated in depositions, attended a pretrial conference, and obtained the continuance of a trial date while representing the plaintiff in a personal-injury case.

On October 31, 2002, opposing counsel in the case moved to disqualify respondent, citing his suspended status and failure to notify counsel of record. Respondent immediately ceased practicing law. {¶ 6} Based on the stipulations and the panel's report, the board found that respondent had violated DR 1-102(A)(5) (barring conduct that is prejudicial to the administration of justice), 2-110(B)(2) (requiring an attorney representing a client before a tribunal to withdraw if the attorney's continued employment will result in the violation of a disciplinary rule), and 3-101(B) (barring an attorney from practicing law in any jurisdiction in violation of professional regulations).

Sanction {¶ 7} In recommending a sanction for this misconduct, the board considered the aggravating and mitigating factors of respondent's case. See Section 10 of the Rules and Regulations Governing Procedure on Complaints and Hearings Before the Board of Commissioners on Grievance and Discipline ("BCGD Proc. Reg"). {¶ 8} The board found no aggravating factors.

Respondent did not have a prior disciplinary record. BCGD Proc.Reg. 10(B)(2)(a). Moreover, respondent did not act dishonestly or selfishly in failing to complete CLE and properly report his CLE record. As a comparatively new attorney, he simply did not pay attention to the CLE requirements and realized too late the consequences of his neglect. BCGD Proc.Reg.

10(B)(2)(b). {¶ 9} Respondent was also cooperative and forthright in the disciplinary proceedings. BCGD Proc.Reg. 10(B)(2)(d). Without attempting to excuse his misconduct, respondent apologetically explained that he did not actually receive our orders, perhaps because of the way mail was distributed at his law firm.

The board observed that once respondent realized that his license had been suspended, he immediately stopped practicing law. Finally, the board was impressed that respondent's law firm continued to employ him as a law clerk during his suspension. Jonathan E. Coughlan, Disciplinary Counsel, and Lori J. Brown, First Assistant Disciplinary Counsel, for relator.

Timothy Michael MacLean, pro se. {¶ 10} Consistent with the parties' suggested sanction and the panel's recommendation, the board recommended that respondent be suspended from the practice of law for two years and that he be credited for time actually served under the suspension ordered on April 5, 2002.

The board further recommended that respondent be considered eligible to immediately apply for reinstatement upon fulfilling all the requirements of Gov.Bar R. X. {¶ 11} Upon review, we agree that respondent violated DR 1 — 102(A)(5), 2-110(B)(2), and 3-101(B), as found by the board.

We also agree that a two-year suspension, with credit for time actually served under the suspension ordered on April 5, 2002, is appropriate. {¶ 12} Respondent inadvertently neglected his CLE obligations due to inexperience.

In a similar case, *Disciplinary Counsel v. Carson* (2001), 93 Ohio St.3d 137, 753 N.E.2d 172, we suspended another attorney for two years, staying one year and allowing credit for the year that he had ceased practicing on his own, because he had practiced while his license was under suspension for CLE noncompliance. That attorney had failed to realize, in part due to alcohol dependence, that he could not return to practice after paying his sanction without reapplying and readmission. {¶ 13} Accordingly, respondent is hereby suspended from the practice of law in Ohio for two years; however, he is credited for time actually served under the suspension of April 5, 2002.

Respondent is thus immediately eligible to apply for reinstatement to the practice of law in Ohio by fulfilling all relevant reinstatement requirements, including Gov.Bar R. V(10) and X(7). Costs are taxed to the respondent. Judgment accordingly. Moyer, C.J., Resnick, Pfeifer, Lundberg Stratton, O'Connor, O'Donnell and Lanzinger, JJ., concur.