SUPREME COURT OF WASHINGTON

In the Matter of the Disciplinary Proceeding Against John L. McKean, Attorney at Law

64 P.3d 1226 (Wash. 2003) · No. No. 13294-1 · Decided March 6, 2003

SUMMARY

The Washington Supreme Court reviewed disciplinary sanctions imposed on attorney John L. McKean for entering into a business arrangement with clients, using client trust-account funds to finance the venture, commingling funds, and failing to disclose conflicts of interest. The court affirmed violations involving RPC 1.14 and RPC 1.8(a), additionally found a violation of RPC 1.7(b), and rejected an alleged RPC 8.4(c) violation for insufficient proof of dishonesty. It affirmed a six-month suspension followed by six months of probation.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Johnson, J.; Alexander, C.J.; Madsen, J.; Sanders, J.; Ireland, J.; Bridge, J.; Chambers, J.; Owens, J.; Smith, J.P.T.
JURISDICTION	Washington
DECIDED	March 6, 2003
DOCKET	No. 13294-1
DISPOSITION	affirmed
PROCEDURAL POSTURE	McKean appealed the Washington State Bar Association Disciplinary Board's recommendation imposing a six-month suspension followed by six months of probation. The Supreme Court of Washington reviewed the Board's findings, conclusions, sanction recommendation, and assessment of disciplinary costs.
STANDARD OF REVIEW	The court has plenary authority and ultimate responsibility to determine the nature of lawyer discipline. It generally will not disturb unanimously approved factual findings if supported by a clear preponderance of the evidence, and it reviews the Board's recommended sanction independently.
PRECEDENTIAL VALUE	published and precedential
PARTIES	John L. McKean v. Washington State Bar Association

TOPICS

trust administration · trustee duties · breach of fiduciary duty · bankruptcy · corporate law

PRACTICE AREAS

legal ethics and professional responsibility · attorney discipline · trust-account management · fiduciary duties · conflicts of interest · bankruptcy-related representation

QUESTIONS PRESENTED

1. Whether the hearing examiner's and Disciplinary Board's factual findings were supported by a clear preponderance of the evidence.
2. Whether a lawyer violates RPC 1.14 by loaning client funds held in a trust account to the lawyer's own business venture or to a business associate or client.
3. Whether McKean violated RPC 1.8(a) by entering into a business transaction with clients without adequate disclosure of the conflict and its risks.
4. Whether McKean violated RPC 1.7(b) when his financial interest in American Hay Company materially limited his representation of the Bergman Estate without written informed consent.
5. Whether the evidence established a violation of RPC 8.4(c)'s prohibition on dishonesty, fraud, deceit, or misrepresentation.
6. Whether a six-month suspension followed by six months of probation was the appropriate sanction.
7. Whether McKean waived his challenge to the assessment of disciplinary costs and expenses.

HOLDINGS

1. Unanimously approved disciplinary findings will generally be upheld when supported by a clear preponderance of the evidence; McKean failed to demonstrate that the challenged findings lacked evidentiary support.
2. RPC 1.14 prohibits a lawyer from loaning money held in trust to the lawyer's own business ventures, business associates, or other clients; McKean violated RPC 1.14 by loaning client funds to his business venture with another client.
3. A lawyer violates RPC 1.14 by commingling client funds with personal funds and by using a trust account as a personal or business account, even absent proof of actual client loss or dishonest intent.
4. McKean violated RPC 1.7(b) because his financial interest in American Hay Company may have materially limited his representation of the Bergman Estate, and he did not obtain written consent after full disclosure.
5. The WSBA failed to prove that McKean's representation of the Martins violated RPC 1.7(b), but the court affirmed the separate RPC 1.8(a) violation arising from McKean's business transaction with them.
6. The evidence did not establish that McKean violated RPC 8.4(c), because although his conduct reflected bad judgment, it did not rise to the level of dishonesty, fraud, deceit, or misrepresentation proven by the

WSBA.

7. A six-month suspension followed by six months of probation, including trust-account competency and continuing-legal-education conditions, was an appropriate and proportional sanction for McKean's misconduct.
8. McKean waived his challenge to the assessment of $8,906.90 in disciplinary costs and expenses by failing to seek review before the Board within the time required by RLD 5.7.

KEY QUOTATIONS

> *"We hold that RPC 1.14 encompasses the extreme care, caution, and good judgment required of a lawyer when handling a client's property."* (1233)

> *"A lawyer has the highest fiduciary duty to steward his client's funds with the utmost care, transparency, and prudence."* (1233)

> *"A lawyer thus violates RPC 1.14 by loaning money held in trust to the lawyer's own business ventures or those of the lawyer's business associates, or to other clients."* (1233)

> *"We thus affirm that suspension is the appropriate presumptive sanction for the violation of RPC 1.14."* (1236)

FACTUAL BACKGROUND

McKean represented financially troubled farmers who were involved in a Chapter 12 bankruptcy. He entered into a business arrangement with them and loaned $11,128.25 from his attorney trust account to the business, without adequate documentation, security, or notice to the owners of the funds. He also used trust-account funds in connection with his own business interests, commingled client and personal funds, maintained deficient records, and failed to disclose conflicts arising from his financial interest in the business and his representation of the Bergman Estate. The funds were ultimately reimbursed with interest, and no client suffered actual financial loss, but the court found substantial potential harm and serious professional misconduct.

PROCEDURAL HISTORY

A WSBA hearing examiner found violations involving mishandling client funds, conflicts of interest, and trust-account practices, while dismissing other charges. The hearing examiner recommended a one-year suspension followed by six months of probation. The Disciplinary Board adopted the findings and conclusions, reduced the suspension to six months, and imposed six months of probation with conditions. The Washington Supreme Court affirmed the findings, conclusions, suspension, probation, and costs.

DISPOSITION

affirmed

CASES CITED

- In re Disciplinary Proceeding Against Tasker, 141 Wash. 2d 557, 565-66, 9 P.3d 822 (2000)

- In re Disciplinary Proceeding Against Heard, 136 Wash. 2d 405, 413-14, 963 P.2d 818 (1998)
- In re Disciplinary Proceeding Against Halverson, 140 Wash. 2d 475, 483, 492-93, 497, 998 P.2d 833 (2000)
- Ridge v. State Bar, 47 Cal. 3d 952, 766 P.2d 569, 574, 254 Cal. Rptr. 803 (1989)
- Seventh Elect Church in Israel v. Rogers, 102 Wash. 2d 527, 534, 688 P.2d 506 (1984)
- In re Disciplinary Proceeding Against Krogh, 85 Wash. 2d 462, 488, 536 P.2d 578 (1975)
- In re Disciplinary Proceeding Against McGough, 115 Wash. 2d 1, 11, 793 P.2d 430 (1990)
- In re Levingston, 685 So. 2d 105 (La. 1996)
- In re Disciplinary Proceeding Against Carmick, 146 Wash. 2d 582, 595, 48 P.3d 311 (2002)
- In re Disciplinary Proceeding Against Haskell, 136 Wash. 2d 300, 317-18, 962 P.2d 813 (1998)
- In re Disciplinary Proceeding Against Curran, 115 Wash. 2d 747, 774, 801 P.2d 962 (1990)