

SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board v. Michael Hocine Said

Iowa Supreme Court Attorney Disciplinary Board v. Said, No. 15-0641 · No. 15-0641 · Decided September 4, 2015

SUMMARY

The Iowa Supreme Court reviews attorney disciplinary proceedings involving Michael Hocine Said's representation of a client in immigration removal proceedings. The court finds violations involving failure to communicate with the client, making a false statement to a tribunal, and improper trust-account and fee practices. The court suspends Said's Iowa law license for thirty days and assesses costs against him.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Mark S. Cady, Chief Justice
JURISDICTION	Iowa
DECIDED	September 4, 2015
DOCKET	15-0641
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding reviewed by the Supreme Court of Iowa from a report and recommendation of the Grievance Commission of the Supreme Court of Iowa.
STANDARD OF REVIEW	Attorney disciplinary matters are reviewed de novo. Misconduct must be proven by a convincing preponderance of the evidence; the court respectfully considers but is not bound by the commission's findings and recommendation.
PRECEDENTIAL VALUE	Published opinion; precedential Iowa Supreme Court attorney-discipline decision.
PARTIES	Iowa Supreme Court Attorney Disciplinary Board v. Michael Hocine Said

TOPICS

immigration

deportation

administrative law

remedies

appellate procedure

PRACTICE AREAS

legal ethics and attorney discipline

immigration law

trust-account compliance

professional responsibility

QUESTIONS PRESENTED

1. Whether Said violated the duty to keep his client reasonably informed by failing to timely communicate the removal order and missed appeal deadline.
2. Whether Said violated the duty to explain matters reasonably necessary for Hernandez to make informed decisions about the representation.
3. Whether Said knowingly made a false statement to the Board of Immigration Appeals regarding preparation and forwarding of an ethics complaint.
4. Whether Said violated the rule requiring withdrawal of advance fees only as earned.
5. Whether Said violated Iowa court rules governing client-property records, trust-account withdrawals, client notification, and accounting.
6. What sanction was appropriate for the established misconduct.

HOLDINGS

1. Said violated Iowa Rule of Professional Conduct 32:1.4(a)(3) by failing to keep Hernandez reasonably informed about the status of his removal case after the appeal deadline was missed.
2. Said violated Iowa Rule of Professional Conduct 32:1.4(b) by failing to explain the missed deadline and available course of action sufficiently for Hernandez to make an informed decision about the representation.
3. Said violated Iowa Rule of Professional Conduct 32:3.3(a)(1) by knowingly representing to the tribunal that he was preparing and would forward an ethics notice when he was not in fact preparing one.
4. Said violated Iowa Rule of Professional Conduct 32:1.15(c) by withdrawing portions of the advance flat fee before they were earned.
5. Said violated Iowa Rule of Professional Conduct 32:1.15(f) by failing to comply with Iowa Court Rules 45.2(2) and 45.7(4), including the duties to maintain complete records, account for client property, and notify the client of trust-account withdrawals.
6. A thirty-day suspension of Said's license to practice law was appropriate.

KEY QUOTATIONS

“The missed deadline in this case, by itself, would not support a finding of neglect in violation of rule 32:1.4(b).” (7)

“On the other hand, a flat fee does not authorize withdrawals independent of the work performed or the work remaining to be performed.” (10)

“We suspend Said’s license to practice law in this state with no possibility of reinstatement for thirty days from the filing of this opinion.” (16)

FACTUAL BACKGROUND

Said represented Pedro Hernandez in federal removal proceedings under a \$5,200 flat-fee agreement. After an immigration judge denied Hernandez's application for cancellation of removal and granted voluntary departure, the order was misplaced in Said's office and the appeal deadline expired. Said filed a motion seeking a stay and late appeal, stating that he was preparing an ethics complaint and would forward it to the immigration authorities, but he never filed or forwarded the notice and did not timely inform Hernandez of the missed deadline. Said also periodically withdrew advance flat-fee funds from his trust account without adequate connection to earned work, notice, or accounting.

PROCEDURAL HISTORY

The Iowa Supreme Court Attorney Disciplinary Board filed a complaint alleging that Said violated professional-conduct and trust-account rules while representing a client in removal proceedings. After a January 23, 2015 hearing, the Grievance Commission found all charged violations established by a convincing preponderance of the evidence and recommended a thirty-day suspension. The Supreme Court of Iowa reviewed the matter de novo, independently found the violations, and imposed the recommended suspension.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Eslick, 859 N.W.2d 198, 201 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Bartley, 860 N.W.2d 331, 335, 337 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Engelmann, 840 N.W.2d 156, 158 (Iowa 2013)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ricklefs, 844 N.W.2d 689, 697 (Iowa 2014)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Kennedy, 684 N.W.2d 256, 260 (Iowa 2004)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Dunahoo, 730 N.W.2d 202, 206 (Iowa 2007)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Boles, 808 N.W.2d 431, 438, 441-42 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Clarity, 838 N.W.2d 648, 659-60 (Iowa 2013)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Weiland, 862 N.W.2d 627, 639 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Mendez, 855 N.W.2d 156, 170, 173 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Yang, 821 N.W.2d 425, 430-31 (Iowa 2012)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Apland, 577 N.W.2d 50, 55 (Iowa 1998)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Dolezal, 796 N.W.2d 910, 918, 922-23 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Piazza, 756 N.W.2d 690, 697-98 (Iowa 2008)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Casey, 761 N.W.2d 53, 61 (Iowa 2009)

- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Van Ginkel, 809 N.W.2d 96, 109-10 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Parrish, 801 N.W.2d 580, 587-88, 590 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Humphrey, 812 N.W.2d 659, 666 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Adams, 749 N.W.2d 666, 670 (Iowa 2008)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Baldwin, 857 N.W.2d 195, 215 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Nelson, 838 N.W.2d 528, 543 (Iowa 2013)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Taylor, 814 N.W.2d 259, 268 (Iowa 2012)

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