

SUPREME COURT OF THE STATE OF DELAWARE

Matter of a Member of the Bar: Malik

No. 260, 2017 (Del. July 7, 2017) · No. No. 260, 2017 · Decided July 7, 2017

SUMMARY

The Delaware Supreme Court accepted the Board on Professional Responsibility's recommendation to publicly reprimand John S. Malik and place him on probation for two years subject to specified conditions. The disciplinary matter involved admitted violations concerning fee statements, safeguarding and maintaining client-fund records, supervision of a nonlawyer, and misrepresentations in a Certificate of Compliance.

CASE DETAILS

COURT	Supreme Court of the State of Delaware
WRITING FOR THE COURT	Justice Valihura; Justice Vaughn; Justice Seitz
JURISDICTION	Delaware
DECIDED	July 7, 2017
DOCKET	No. 260, 2017
DISPOSITION	approved
PROCEDURAL POSTURE	Lawyer disciplinary proceeding in which the Delaware Board on Professional Responsibility recommended a public reprimand and two years of probation with specified conditions, and neither the Office of Disciplinary Counsel nor the respondent objected.
STANDARD OF REVIEW	The Supreme Court considered the Board's report and recommendation and accepted its findings and recommended discipline; the Board stated that professional-misconduct allegations must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published disciplinary order; binding as to the disposition of Malik's disciplinary matter, with limited precedential value beyond the sanction-specific application of established disciplinary principles.

TOPICS

agency adjudication administrative law judicial review of agency action

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Board's findings that Malik violated Delaware Lawyers' Rules of Professional Conduct 1.5(f), 1.15(a), 1.15(d), 5.3, 8.4(c), and 8.4(d) should be accepted.
2. Whether a public reprimand and two years of probation with specified conditions was appropriate discipline.
3. Whether the Board's recommendation, including costs of the disciplinary proceeding and audit, should be accepted.

HOLDINGS

1. The Supreme Court accepted the Board's June 26, 2017 report, including its findings that Malik committed six violations of the Delaware Lawyers' Rules of Professional Conduct and its recommendation of a public reprimand followed by two years of probation with specified conditions.
2. A public reprimand and two-year probation with conditions were appropriate sanctions for Malik's admitted violations involving fee disclosures, safeguarding and accounting for client funds, supervision of a nonlawyer, misrepresentations in a Certificate of Compliance, and conduct prejudicial to the administration of justice.

KEY QUOTATIONS

"We find the Board's recommendation of a public reprimand with a two-year period of probation with conditions to be appropriate."

FACTUAL BACKGROUND

Malik, a Delaware solo practitioner and member of the Delaware Bar since 1984, was responsible for his law practice's books and records. An audit identified deficiencies involving client-fund reconciliation, a negative fiduciary-account balance, stale client balances, missing documentation and retainer agreements, inadequate client statements, and delinquent City of Wilmington taxes. Malik also failed to provide required fee information and filed a Delaware Supreme Court Certificate of Compliance containing misrepresentations. He admitted all six alleged violations.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel filed a petition for discipline against John S. Malik in February 2017. Malik filed an amended answer admitting all six alleged violations, and a Board panel held a hearing primarily concerning sanctions. The Board recommended a public reprimand, two years of probation with conditions, and costs; the Supreme Court accepted the Board's report and recommendation.

DISPOSITION

approved

CASES CITED

- In re Benson, 774 A.2d 258 (Del. 2001)
- In re Castro, No. 5, 2017 (Del. Apr. 12, 2017)
- In re Doughty, 832 A.2d 724, 735-736 (Del. 2003)
- In re Finestrauss, 32 A.3d 978, 979 (Del. 2011)
- In re Froelich, 838 A.2d 1117 (Del. 2003)
- In re Gray, 152 A.3d 581 (Del. 2016)
- In re Macpherson-Johnson, 782 A.2d 265 (Del. 2001)
- In re Martin, 35 A.3d 419 (Del. 2011)
- In re Oltowski, 976 A.2d 172 (Del. 2009)
- In re Spiller, 788 A.2d 114, 118 (Del. 2001)
- In re Smith, 985 A.2d 391 (Del. 2009)
- In re Thompson, 911 A.2d 373, 376 n.9 (Del. 2006)
- In re Woods, 2016 WL 3886148 (Del. 2016)