

SUPREME COURT OF OHIO

Cincinnati Bar Assn. v. Kathman

2021 Ohio 2189 (Ohio 2021) · No. 2021-0216 · Decided June 30, 2021

SUMMARY

The Supreme Court of Ohio held that Edward Timothy Kathman violated multiple professional-conduct rules, including duties concerning supervision of a nonlawyer employee, client financial assistance, IOLTA recordkeeping, commingling and improper use of client funds, and safeguarding trust-account funds. The court imposed a one-year suspension, stayed six months conditionally, required completion of 24 hours of continuing legal education before reinstatement, and ordered one year of monitored probation after reinstatement.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per curiam; Maureen O'Connor, Chief Justice; Maureen O'Connor; Maureen E. O'Connor; Maureen E. O'Connor, C.J.; Patrick F. Fischer; Jennifer Brunner; Sharon L. Kennedy; R. Patrick DeWine; Michael P. Donnelly; Melody J. Stewart
JURISDICTION	Ohio
DECIDED	June 30, 2021
DOCKET	2021-0216
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on a certified report of the Board of Professional Conduct of the Supreme Court of Ohio.
STANDARD OF REVIEW	The Supreme Court of Ohio independently reviews the board's findings of fact, conclusions of law, and recommended sanction in attorney-discipline proceedings; here, it agreed with and adopted the board's findings and conclusions based on the parties' stipulations and the record.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential attorney-discipline decision.
PARTIES	Cincinnati Bar Association v. Edward Timothy Kathman

TOPICS

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

trust accounts

QUESTIONS PRESENTED

1. Whether Kathman violated the Ohio Rules of Professional Conduct through inadequate supervision of a nonlawyer employee.
2. Whether Kathman violated the rules by providing improper financial assistance to clients.
3. Whether Kathman violated the rules governing IOLTA record keeping, commingling, use of client trust funds, and safeguarding of client or third-party funds.
4. What sanction was warranted in light of the violations and the aggravating and mitigating factors.

HOLDINGS

1. Kathman violated Prof.Cond.R. 5.3(a) and 5.3(b) by failing to make reasonable efforts to ensure that his paralegal's conduct was compatible with his professional obligations and by failing to exercise reasonable supervisory authority over her work.
2. Kathman violated Prof.Cond.R. 1.8(e) by advancing money to five clients in connection with pending or contemplated litigation, outside the rule's limited exceptions.
3. Kathman violated Prof.Cond.R. 1.15(a)(3), (a)(4), and (a)(5) by failing to maintain required trust-account records, deposit documentation, bank records, and monthly reconciliations.
4. Kathman violated Prof.Cond.R. 1.15(a) and 1.15(b) by maintaining substantial personal funds in the IOLTA, commingling personal and client funds, issuing checks before funds were collected or deposited, and using the IOLTA for unrelated funds.
5. Kathman violated Prof.Cond.R. 1.15(a) by failing to safeguard client or third-party funds and failing to promptly remedy unauthorized access to his IOLTA through a linked PayPal account.
6. A one-year suspension from the practice of law, with six months conditionally stayed, was warranted, along with completion of 24 hours of continuing legal education before reinstatement and one year of monitored probation after reinstatement.

KEY QUOTATIONS

“In the present case, Kathman’s failure to supervise Gorman, together with the trust-account violations and the multiple instances of advancing money to clients, warrants an actual suspension, particularly in light of his prior disciplinary offense.” (¶ 38)

“Accordingly, we suspend Kathman from the practice of law for one year, with six months of that suspension stayed on the conditions that Kathman engage in no further misconduct and that he pay the cost of these proceedings.” (¶ 39)

FACTUAL BACKGROUND

Kathman employed a paralegal, Jillian Gorman, with minimal supervision, and Gorman later forged checks and embezzled funds from his law practice. Kathman also provided improper financial advances to clients, failed to maintain required IOLTA records and reconciliations, commingled substantial personal funds with client funds, used the IOLTA for transactions unrelated to client matters, and failed to promptly remedy unauthorized access to the account through PayPal. Kathman had previously received a six-month suspension for professional misconduct in 2001.

PROCEDURAL HISTORY

The Cincinnati Bar Association filed an amended five-count disciplinary complaint against Kathman. After the parties submitted stipulations and exhibits, a three-member panel held a hearing, dismissed certain alleged violations, found the remaining stipulated violations, and recommended a one-year suspension with six months conditionally stayed and monitored probation after reinstatement. The Board of Professional Conduct adopted the panel's findings and recommendation, and the Supreme Court of Ohio adopted the board's findings, conclusions, and sanction.

DISPOSITION

other

CASES CITED

- Cincinnati Bar Assn. v. Kathman, 92 Ohio St.3d 92, 748 N.E.2d 1091 (2001)
- State v. Gorman, Hamilton C.P. No. B 1701441 (Feb. 28, 2018)
- Disciplinary Counsel v. Ball, 67 Ohio St.3d 401, 618 N.E.2d 159 (1993)
- Disciplinary Counsel v. Murraine, 130 Ohio St.3d 397, 2011-Ohio-5795, 958 N.E.2d 942
- Disciplinary Counsel v. Alexander, 133 Ohio St.3d 232, 2012-Ohio-4575, 977 N.E.2d 633
- Columbus Bar Assn. v. Thompson, 69 Ohio St.2d 667, 669, 433 N.E.2d 602 (1982)
- Erie-Huron Counties Joint Certified Grievance Commt. v. Miles, 76 Ohio St.3d 574, 577, 669 N.E.2d 831 (1996)
- Cleveland Metro. Bar Assn. v. Podor, 121 Ohio St.3d 131, 2009-Ohio-358, 902 N.E.2d 488