SUPREME COURT OF WISCONSIN

In the Matter of Disciplinary Proceedings Against John R. Maynard

776 N.W.2d 583 (Wis. 2009) · No. 2008AP417-D · Decided December 29, 2009

SUMMARY

The Supreme Court of Wisconsin reviewed an attorney disciplinary proceeding involving John R. Maynard's receipt and personal deposit of payments for legal services performed while associated with a law firm. The court adopted findings that Maynard violated professional-conduct rules concerning handling funds, misleading communications, and dishonesty, and suspended his Wisconsin law license for 90 days. The court also ordered him to pay the proceeding's costs and comply with suspension-related duties.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Wisconsin
DECIDED	December 29, 2009
DOCKET	2008AP417-D
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding reviewed by the Wisconsin Supreme Court after Attorney Maynard's appeal was dismissed as untimely. The court reviewed the referee's report, findings, conclusions, and recommended discipline under SCR 22.17(2).
STANDARD OF REVIEW	A referee's findings of fact are not overturned unless clearly erroneous. The Supreme Court independently reviews the referee's legal conclusions and independently determines the appropriate discipline.
PRECEDENTIAL VALUE	Published Wisconsin Supreme Court opinion; precedential authority regarding attorney-discipline review and application of the cited professional-conduct rules.
PARTIES	John R. Maynard v. Office of Lawyer Regulation

TOPICS

appellate procedure · standard of review · commercial litigation · corporate law

PRACTICE AREAS

legal ethics and attorney discipline · professional responsibility · appellate procedure

QUESTIONS PRESENTED

1. Whether former SCR 20:1.15(d)(1) applied to funds received for legal services performed while Maynard was a shareholder, even though Maynard characterized the funds as not being client funds.
2. Whether Maynard's use of firm letterhead, failure to disclose his of-counsel status, direction of payments to a post office box under his exclusive control, and identification of himself as a firm principal constituted false or misleading communications under former SCR 20:7.1(a) and former SCR 20:7.5(a).
3. Whether the referee's recommended 90-day suspension was an appropriate sanction for Maynard's misconduct.

HOLDINGS

1. Former SCR 20:1.15(d)(1) applies to funds in which a third party, including a former law firm entitled to receive firm revenue, has an interest; Maynard violated the rule by receiving payments for services performed as a shareholder, failing to notify the firm, and depositing the funds into his personal account rather than delivering or safeguarding them.
2. Maynard violated former SCR 20:7.1(a) and former SCR 20:7.5(a) by using firm letterhead and directing clients to send payments to an ostensible firm post office box without disclosing that he was merely of counsel, while representing on the postal application that he was a firm principal.
3. A 90-day suspension of Maynard's Wisconsin law license was warranted, together with an order requiring him to pay the costs of the disciplinary proceeding.

KEY QUOTATIONS

> *"Attorney Maynard does not seriously dispute the referee's finding that the firm, not Attorney Maynard, had the right to receive and the obligation to distribute fairly the proceeds at issue."* (at 588)

> *"Attorney Maynard's conduct has demonstrated dishonesty incompatible with his professional obligations as a lawyer."* (at 589)

> *"We approve and adopt the referee's findings, conclusions, and recommended 90-day suspension."* (at 589)

FACTUAL BACKGROUND

Maynard was a shareholder in the law firm Maynard, McIlnay, Schmitt & Button from August 2005 through June 2006 and thereafter continued with the firm as of counsel. He sent invoices for work performed while he was a shareholder that directed clients to mail payments to a firm-designated post office box that he had secretly obtained and to which only he had access. He personally received and deposited $7,776.84 in client payments into his personal account without notifying or remitting the funds to the firm, and he falsely identified himself as a firm principal on the postal application. The firm had understood that revenues from the services were firm income to be distributed by the firm.

PROCEDURAL HISTORY

The Office of Lawyer Regulation filed a four-count disciplinary complaint. Referee Michael Ash found three counts proven and recommended a 90-day license suspension and assessment of costs. Maynard challenged the findings and conclusions on Counts 1 and 2 and argued that the recommended sanction was excessive. Because his appeal was untimely, the Supreme Court reviewed the referee's report and independently determined the appropriate discipline.

DISPOSITION

other

CASES CITED

- In re Disciplinary Proceedings Against Carroll, 2001 WI 130, 248 Wis. 2d 662, 636 N.W.2d 718
- In re Disciplinary Proceedings Against Reitz, 2005 WI 39, 279 Wis. 2d 550, 694 N.W.2d 894
- In re Disciplinary Proceedings Against Arthur, 2005 WI 40, 279 Wis. 2d 583, 694 N.W.2d 910
- In re Disciplinary Proceedings Against O'Neil, 197 Wis. 2d 224, 539 N.W.2d 881 (1995)
- In re Disciplinary Proceedings Against Crandall, 2008 WI 112, 314 Wis. 2d 33, 754 N.W.2d 501