

SUPREME COURT OF OHIO

Disciplinary Counsel v. Gerchak

130 Ohio St. 3d 143, 2011-Ohio-5075 (2011) · No. 2011-0700 · Decided October 5, 2011

SUMMARY

The Supreme Court of Ohio suspended attorney David John Gerchak from practicing law for one year, with the entire suspension stayed on conditions. The court adopted findings that Gerchak made misrepresentations to a bankruptcy court and engaged in conduct prejudicial to the administration of justice, violating Ohio Prof.Cond.R. 8.4(c) and 8.4(d).

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	O'Connor, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; McGee Brown, J.
JURISDICTION	Ohio
DECIDED	October 5, 2011
DOCKET	2011-0700
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding on a certified report from the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio.
PRECEDENTIAL VALUE	Published Ohio Supreme Court opinion
PARTIES	Disciplinary Counsel v. David John Gerchak

TOPICS

bankruptcy fraud

bankruptcy

PRACTICE AREAS

legal ethics

attorney discipline

bankruptcy

QUESTIONS PRESENTED

1. Whether Gerchak violated Prof.Cond.R. 8.4(c) by making misrepresentations to the bankruptcy court.

2. Whether Gerchak's misconduct was prejudicial to the administration of justice in violation of Prof.Cond.R. 8.4(d).
3. Whether the appropriate sanction was a one-year suspension stayed in full based on mitigating circumstances.

HOLDINGS

1. Gerchak violated Prof.Cond.R. 8.4(c) by making false statements and misrepresentations to the bankruptcy court concerning payment of the filing fee.
2. Gerchak violated Prof.Cond.R. 8.4(d) by engaging in conduct prejudicial to the administration of justice.
3. The evidence was insufficient to establish that Gerchak violated Prof.Cond.R. 8.4(h), and that charge was properly dismissed.
4. A one-year suspension from the practice of law was warranted, but the entire suspension was stayed on the conditions that Gerchak successfully complete his three-year Ohio Lawyers Assistance Programs contract and commit no further misconduct.

KEY QUOTATIONS

“A violation of Prof.Cond.R. 8.4(c) will typically result in an actual suspension from the practice of law unless ‘significant mitigating factors that warrant a departure’ from that principle are present.” (¶ 13)

FACTUAL BACKGROUND

Gerchak, a bankruptcy-law practitioner, had his electronic-filing privileges suspended for 60 days after being held in contempt by the United States Bankruptcy Court for the Northern District of Ohio. During that suspension, he used another attorney's electronic-filing account to file a client's bankruptcy petition and submitted an application falsely stating that the client could not pay the filing fee except in installments, even though the client had already paid Gerchak the fee. He admitted the conduct in the bankruptcy proceeding, was again held in contempt, and was ordered to disgorge an \$800 fee.

PROCEDURAL HISTORY

Disciplinary Counsel filed a complaint alleging that Gerchak made misrepresentations to a bankruptcy court and violated several Rules of Professional Conduct. The parties stipulated to violations of Prof.Cond.R. 8.4(c); after a hearing, the board found violations of Prof.Cond.R. 8.4(c) and (d), found insufficient evidence of a violation of Prof.Cond.R. 8.4(h), and recommended a one-year suspension stayed in full on conditions. The Supreme Court of Ohio adopted the board's findings and recommendation after Gerchak failed to respond to a show-cause order.

DISPOSITION

other

CASES CITED

- Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St. 3d 424, 2002-Ohio-4743, 775 N.E.2d 818, ¶ 16

- Disciplinary Counsel v. Broeren, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935, ¶ 21
- Disciplinary Counsel v. Potter, 126 Ohio St. 3d 50, 2010-Ohio-2521, 930 N.E.2d 307, ¶ 10
- Disciplinary Counsel v. Rohrer, 124 Ohio St. 3d 65, 2009-Ohio-5930, 919 N.E.2d 180, ¶ 45
- Disciplinary Counsel v. Ricketts, 128 Ohio St. 3d 271, 2010-Ohio-6240, 943 N.E.2d 981, ¶ 41

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