

SUPREME COURT OF SOUTH CAROLINA

In re White, 391 S.C. 581

707 S.E.2d 411 (S.C. 2011) · No. No. 26939 · Decided March 7, 2011

SUMMARY

The South Carolina Supreme Court disciplined attorney William Gary White, III, for sending an insulting and intimidating letter concerning a zoning dispute with the Town of Atlantic Beach. The court found violations involving competence, respect for third persons, conduct prejudicial to the administration of justice, and the Lawyer's Oath, while declining to find a failure to cooperate with disciplinary authorities. The court imposed a ninety-day definite suspension and required completion of the South Carolina Bar's Legal Ethics and Practice Program within six months of reinstatement.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Toal, C.J.; Pleicones, J.; Beatty, J.; Kittredge, J.; Hearn, J.
JURISDICTION	South Carolina
DECIDED	March 7, 2011
DOCKET	No. 26939
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from formal charges filed by the Office of Disciplinary Counsel after an investigation by the Commission on Lawyer Conduct. The Hearing Panel found multiple violations and recommended a suspension; the Supreme Court independently reviewed the record and imposed discipline.
STANDARD OF REVIEW	The Supreme Court independently reviews the record, is not bound by the Hearing Panel's recommendation, and may make its own findings of fact and conclusions of law. Disciplinary violations must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published opinion; precedential within South Carolina on the stated attorney-discipline and professional-conduct principles.
PARTIES	Office of Disciplinary Counsel v. William Gary White, III

TOPICS

constitutional law

first amendment

free speech

municipal law

PRACTICE AREAS

legal ethics

attorney discipline

constitutional law

professional responsibility

QUESTIONS PRESENTED

1. Whether Respondent's insulting and intimidating letter violated Rule 4.4(a) by using means having no substantial purpose other than to embarrass, delay, or burden third persons.
2. Whether Respondent's conduct was protected by the First Amendment freedoms of speech and religion.
3. Whether Respondent violated Rule 8.1 by failing to respond to lawful demands from a disciplinary authority.
4. Whether Respondent's wife's health constituted a mitigating circumstance.
5. What sanction was appropriate for the established misconduct.

HOLDINGS

1. Respondent violated Rule 4.4(a) because his letter was a calculated tactic to intimidate and embarrass persons opposing his client's legal position, and its insulting and degrading language had no substantial legitimate purpose.
2. The First Amendment freedoms of speech and religion do not prevent discipline for an attorney's misconduct that violates professional standards governing the practice of law.
3. Respondent did not violate Rule 8.1 because the record showed that he filed answers, responded to inquiries, submitted witness and exhibit lists, and participated in the disciplinary hearing.
4. A definite suspension of ninety days and completion of the Legal Ethics and Practice Program within six months of reinstatement were appropriate sanctions.

KEY QUOTATIONS

"Although an attorney does not surrender her freedom of expression upon admission to the bar, once admitted, a lawyer must temper her criticisms in accordance with professional standards of conduct." (589)

"His statement that the RPC are always trumped by the First Amendment is not a correct statement of the law, and we hold the Hearing Panel properly found his actions amounted to sanctionable misconduct." (591)

"We further order Respondent to complete the Legal Ethics and Practice Program administered by the South Carolina Bar within six months of reinstatement." (592)

FACTUAL BACKGROUND

Respondent represented the Atlantic Beach Christian Methodist Episcopal Church in a zoning dispute with the Town of Atlantic Beach that settled in 2007. After the new Town Manager sent the Church's landlords a notice concerning zoning compliance, Respondent sent a letter accusing the Town Manager of having no brains and

questioning whether he had a soul, while calling Town officials pagans, insane, and pigheaded. The letter was copied to Town officials and led to a disciplinary complaint.

PROCEDURAL HISTORY

The Commission on Lawyer Conduct investigated Respondent's conduct during a zoning dispute and the Office of Disciplinary Counsel filed formal charges. The Hearing Panel found violations of several Rules of Professional Conduct and Rules for Lawyer Disciplinary Enforcement, recommended a suspension, fine, costs, and completion of the Legal Ethics and Practice Program. The Supreme Court rejected the alleged Rule 8.1 failure-to-cooperate violation, otherwise upheld the misconduct findings, declined to impose a fine or costs, and ordered a ninety-day suspension plus completion of the program after reinstatement.

DISPOSITION

other

CASES CITED

- In re Tullis, 375 S.C. 190, 191, 652 S.E.2d 395, 395 (2007)
- In re Thompson, 343 S.C. 1, 10, 539 S.E.2d 396, 401 (2000)
- In re Hazzard, 377 S.C. 482, 488, 661 S.E.2d 102, 106 (2008)
- In re Greene, 371 S.C. 207, 216, 638 S.E.2d 677, 682 (2006)
- In re Norfleet, 358 S.C. 39, 595 S.E.2d 243 (2004)
- In re Golden, 329 S.C. 335, 341, 496 S.E.2d 619, 622 (1998)
- Gentile v. State Bar of Nevada, 501 U.S. 1030, 1066, 1071, 1075-77, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991)
- In re Rouss, 221 N.Y. 81, 84, 116 N.E. 782, 783 (1917)
- Theard v. United States, 354 U.S. 278, 281, 77 S. Ct. 1274, 1276, 1 L. Ed. 2d 1342 (1957)
- Florida Bar v. Went For It, Inc., 515 U.S. 618, 625, 115 S. Ct. 2371, 132 L. Ed. 2d 541 (1995)
- Goldfarb v. Virginia State Bar, 421 U.S. 773, 792, 95 S. Ct. 2004, 44 L. Ed. 2d 572 (1975)
- Burton v. Statewide Grievance Committee, 48 Conn. Supp. 94, 830 A.2d 1205, 1211 (2002)
- United States District Court for the Eastern District of Washington v. Sandlin, 12 F.3d 861, 866 (9th Cir. 1993)