

SUPREME COURT OF SOUTH CAROLINA

In re Hoffman

408 S.C. 186 (2014) · Decided May 28, 2014

SUMMARY

The South Carolina Supreme Court accepts an Agreement for Discipline by Consent and publicly reprimands an attorney for mishandling client funds, charging an unreasonable fee, commingling funds, threatening criminal prosecution, failing to maintain required trust-account records, and failing to fully respond to disciplinary requests. The court also orders the attorney to pay disciplinary costs, complete an ethics program, and submit specified trust-account records for one year.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Per Curiam; Justice Beatty, not participating
JURISDICTION	South Carolina
DECIDED	May 28, 2014
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter submitted to the Supreme Court of South Carolina under an Agreement for Discipline by Consent between the respondent attorney and the Office of Disciplinary Counsel.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

trust administration

trustee duties

trusts

PRACTICE AREAS

legal ethics

attorney discipline

trust-account administration

QUESTIONS PRESENTED

1. Whether respondent's admitted conduct violated the South Carolina Rules of Professional Conduct and trust-account recordkeeping requirements.
2. Whether the Agreement for Discipline by Consent should be accepted and what sanction should be imposed.

HOLDINGS

1. Respondent's conduct violated Rules 1.5, 1.15, 4.5, and 8.1(b) of the South Carolina Rules of Professional Conduct, as well as Rule 417, SCACR, by charging or retaining improper fees, mishandling and commingling client funds, threatening criminal prosecution to obtain a civil advantage, failing to respond fully to disciplinary demands, and failing to maintain required trust-account records.
2. Respondent's misconduct warranted a public reprimand, payment of disciplinary costs, completion of the South Carolina Bar's Legal Ethics and Practice Program, and one year of trust-account record reporting to the Commission.

KEY QUOTATIONS

“Respondent acknowledges this withdrawal was improper because he had not yet earned the entire \$5,000 and his fee agreement was insufficient for him to treat the funds as an advanced fee earned upon receipt under Rule 1.5(f), RPC, Rule 407, SCACR.” (at 187-188)

“Respondent admits he failed to create and maintain many of the other records required by Rule 417, SCACR, including a receipt and disbursement journal, client ledgers, accountings, reconciliation reports, trial balances, and legible images of the front and back of canceled checks.” (at 190)

“Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct.” (at 191)

FACTUAL BACKGROUND

Respondent was retained to assist with administration of a trust and received a \$5,000 retainer described in the fee agreement as a nonrefundable initial deposit. He transferred the entire amount from his trust account before earning it, later claimed entitlement to the full deposit and additional charges, and failed to provide an itemized accounting or refund unearned fees. Respondent also commingled personal and earned funds in the trust account and failed to maintain required financial records, producing only incomplete and illegible bank records during the disciplinary investigation.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel investigated after a bank reported a \$5,000 item presented against insufficient funds in respondent's trust account. Respondent failed to provide records requested during the investigation and admitted violations of the Rules of Professional Conduct and trust-account recordkeeping requirements. The parties entered an Agreement for Discipline by Consent, which the court accepted and modified by imposing a public reprimand, costs, ethics training, and one year of trust-account reporting.

DISPOSITION

other

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