

COURT OF APPEALS OF MARYLAND

Attorney Grievance Commission v. Zimmerman

428 Md. 119 (2012) · Decided August 21, 2012

SUMMARY

The Maryland Court of Appeals explains its prior per curiam order disbarring Donya Tarraine Zimmerman for misappropriating and misusing client funds, failing to maintain required escrow balances, and failing to return unearned retainers. The court upheld findings that Zimmerman violated Maryland trust-account rules, Maryland Lawyers' Rules of Professional Conduct, and the statutory prohibition on using trust money for unauthorized purposes.

CASE DETAILS

COURT	Court of Appeals of Maryland
WRITING FOR THE COURT	Adkins
JURISDICTION	Maryland
DECIDED	August 21, 2012
DISPOSITION	affirmed
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the Court of Appeals reviewed a circuit court hearing judge's findings of fact and conclusions of law and determined the appropriate sanction.
STANDARD OF REVIEW	The Court of Appeals independently reviews the record in attorney discipline proceedings, accepts the hearing judge's factual findings unless clearly erroneous, reviews conclusions of law de novo, and determines whether the alleged misconduct is supported by clear and convincing evidence.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Attorney Grievance Commission of Maryland v. Donya Tarraine Zimmerman

TOPICS

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PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the hearing judge's factual findings concerning Zimmerman's handling of Shilling's and Danner's retainers were clearly erroneous.
2. Whether Zimmerman violated MLRPC 1.15(a) and (c) by failing to deposit client funds into an escrow account and by using unearned client funds for personal and business purposes.
3. Whether Zimmerman violated MLRPC 1.16(d) by failing to promptly refund unearned retainers and return a client file after termination of representation.
4. Whether the evidence established violations of Maryland Rules 16-604 and 16-609 and section 10-306 of the Business Occupations and Professions Article.
5. Whether Zimmerman violated MLRPC 8.4(b), (c), and (d) through criminal, dishonest, and administration-of-justice-prejudicial conduct.
6. Whether the evidence supported violations of MLRPC 1.3 and 1.4 concerning Danner.
7. What sanction was appropriate for the sustained violations.

HOLDINGS

1. In attorney discipline proceedings, the Court accepts the hearing judge's factual findings unless clearly erroneous, giving appropriate deference to credibility determinations and the judge's resolution of conflicting evidence.
2. The Court independently reviews the hearing judge's conclusions of law de novo and makes the ultimate determination whether attorney misconduct has been established by clear and convincing evidence.
3. A lawyer violates MLRPC 1.15(a) and Maryland Rule 16-604 by cashing client retainer checks and delaying deposit of the funds into an attorney escrow account rather than depositing them directly.
4. A lawyer violates MLRPC 1.15(c), Maryland Rule 16-609, and section 10-306 of the Business Occupations and Professions Article by withdrawing unearned client funds to pay personal or business expenses or otherwise using trust money for an unauthorized purpose.
5. A lawyer violates MLRPC 1.16(d) by failing to take reasonably practicable steps to protect a former client's interests, including returning unearned retainer funds and surrendering client papers or files.
6. The evidence did not clearly and convincingly establish that Zimmerman violated MLRPC 1.3 or 1.4 during the brief period in which Danner remained a client; the Court sustained Zimmerman's exception to those violations.
7. Willful misappropriation of client funds, coupled with false representations about returning those funds, violates MLRPC 8.4(b), (c), and (d).
8. Disbarment is the appropriate sanction for Zimmerman's intentional misappropriation of client funds and related dishonest conduct because no compelling extenuating circumstances justified a lesser sanction.

KEY QUOTATIONS

“The default sanction for ethical violations involving intentional misappropriation, or other intentional dishonest conduct, is disbarment.” (146)

“The appropriate sanction here is disbarment. We do not find sufficient mitigation to avoid that sanction.” (147)

FACTUAL BACKGROUND

Zimmerman received advance retainers from clients Monique V. Shilling and Deedra L. Danner but failed to maintain the unearned portions in an attorney escrow account. She used client funds to pay personal and business expenses, including taxes, payroll, bar dues, malpractice insurance, and payments to herself, and her escrow account incurred overdrafts. After the representations ended, she delayed or failed to return unearned retainers and client files and made false representations about having sent refunds. The hearing judge found, and the Court of Appeals concluded, that the conduct involved willful misappropriation, dishonesty, and misuse of trust funds.

PROCEDURAL HISTORY

The Attorney Grievance Commission petitioned for disciplinary or remedial action against Zimmerman based on her handling of client retainers and escrow funds belonging to Monique V. Shilling and Deedra L. Danner. After a hearing, the Circuit Court for Montgomery County found numerous violations of the Maryland Lawyers' Rules of Professional Conduct, Maryland trust-account rules, and section 10-306 of the Business Occupations and Professions Article. The Court of Appeals disbarred Zimmerman in a per curiam order on June 12, 2012, and issued this opinion explaining the decision, affirming the order of disbarment and awarding costs.

DISPOSITION

affirmed

CASES CITED

- Attorney Grievance Commission v. London, 427 Md. 328, 47 A.3d 986 (2012)
- Attorney Grievance Commission v. Kreamer, 387 Md. 503, 876 A.2d 79 (2005)
- Attorney Grievance Commission v. Edib, 415 Md. 696, 4 A.3d 957 (2010)
- Attorney Grievance Commission v. Agiliga, 422 Md. 613, 31 A.3d 103 (2011)
- Attorney Grievance Commission v. Zuckerman, 386 Md. 341, 872 A.2d 693 (2005)
- Attorney Grievance Commission v. Nussbaum, 401 Md. 612, 934 A.2d 1 (2007)
- Attorney Grievance Commission v. Park, 427 Md. 180, 46 A.3d 1153 (2009)
- Attorney Grievance Commission v. Sucklal, 418 Md. 1, 12 A.3d 650 (2011)
- Attorney Grievance Commission v. Usiak, 418 Md. 667, 18 A.3d 1 (2011)
- Attorney Grievance Commission v. Stern, 419 Md. 525, 19 A.3d 904 (2011)
- Attorney Grievance Commission v. Palmer, 417 Md. 185, 9 A.3d 37 (2010)
- Attorney Grievance Commission v. Vanderlinde, 364 Md. 376, 773 A.2d 463 (2001)

- Attorney Grievance Commission v. David, 331 Md. 317, 628 A.2d 178 (1993)
- Attorney Grievance Commission v. Awuah, 346 Md. 420, 697 A.2d 446 (1997)
- Attorney Grievance Commission v. McIntire, 286 Md. 87, 405 A.2d 273 (1979)
- Attorney Grievance Commission v. McCulloch, 397 Md. 674, 919 A.2d 660 (2007)
- Attorney Grievance Commission v. West, 378 Md. 395, 836 A.2d 588 (2003)
- Attorney Grievance Commission v. Breschi, 340 Md. 590, 667 A.2d 659 (1995)

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