

SUPREME COURT OF OHIO

Disciplinary Counsel v. Underwood

136 Ohio St. 3d 220, 2013-Ohio-3118 (2013) · No. 2012-1709 · Decided July 18, 2013

SUMMARY

The Supreme Court of Ohio addressed attorney misconduct involving client trust-account management, advance fees, and conduct prejudicial to the administration of justice. The court adopted a consent-to-discipline agreement imposing a one-year suspension, stayed in its entirety subject to no further misconduct and completion of six hours of continuing legal education in law-office management.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Kennedy, J.; French, J.; O'Neill, J.
JURISDICTION	Ohio
DECIDED	July 18, 2013
DOCKET	2012-1709
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Ohio reviewed a certified report from the Board of Commissioners on Grievances and Discipline based on the parties' consent-to-discipline agreement.
STANDARD OF REVIEW	The court reviewed the consent-to-discipline agreement and the certified disciplinary report for conformity with the applicable disciplinary procedure and independently determined the appropriate disposition.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Disciplinary Counsel v. Arica Lynn Underwood

TOPICS

[administrative law](#) [agency adjudication](#) [remedies](#) [restitution](#)

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Underwood violated Prof.Cond.R. 1.15(a), 1.15(c), 8.4(d), and 8.4(h).
2. Whether the parties' consent-to-discipline agreement should be adopted.
3. What sanction was appropriate for the stipulated misconduct.
4. Whether the alleged violations of Prof.Cond.R. 1.16(e) and 3.4(c) should be dismissed.

HOLDINGS

1. Underwood violated Prof.Cond.R. 1.15(a), 1.15(c), 8.4(d), and 8.4(h).
2. The court adopted the parties' consent-to-discipline agreement in its entirety, except that it dismissed the alleged violations of Prof.Cond.R. 1.16(e) and 3.4(c).
3. Underwood was suspended from the practice of law for one year, with the suspension stayed in its entirety on the conditions that she commit no further misconduct and complete at least six hours of continuing legal education in law-office management within six months of the order.

KEY QUOTATIONS

“Accordingly, Underwood is hereby suspended from the practice of law for a period of one year, but the suspension is stayed in its entirety upon the conditions that Underwood engage in no further misconduct and that she complete, in addition to the general requirements of Gov.Bar R. X, at least six hours of continuing legal education in law-office management within six months of this order.” (¶ 7)

FACTUAL BACKGROUND

Underwood represented a client and failed to maintain a required record for her client trust account and failed to deposit advance legal fees and expenses into that account. She also failed to refund an unearned fee, although that alleged violation was dismissed, and engaged in conduct prejudicial to the administration of justice and conduct adversely reflecting on her fitness to practice law. She stipulated to the relevant violations, paid restitution, cooperated in the disciplinary proceedings, and had no prior disciplinary record.

PROCEDURAL HISTORY

Disciplinary counsel charged Underwood with professional misconduct arising from one client matter. The parties submitted a consent-to-discipline agreement; a panel and the Board of Commissioners on Grievances and Discipline found that the agreement conformed to the applicable procedural rule and recommended adoption. The Supreme Court adopted the agreement, dismissed two alleged violations, and imposed a stayed one-year suspension.

DISPOSITION

other

OPINION

PER CURIAM.

[Cite as Disciplinary Counsel v. Underwood, 136 Ohio St. 3d 220, 2013-Ohio-3118.] DISCIPLINARY COUNSEL v. UNDERWOOD. [Cite as Disciplinary Counsel v. Underwood, 136 Ohio St. 3d 220, 2013-Ohio-3118.] Attorneys—Misconduct—Trust-account and fee-related violations—Consent to discipline—One-year suspension, all stayed on conditions. (No. 2012-1709 —Submitted February 6, 2013—Decided July 18, 2013.)

ON CERTIFIED REPORT by the Board of Commissioners on Grievances and Discipline of the Supreme Court, No. 12-051. _____ Per Curiam. {¶ 1} Respondent, Arica Lynn Underwood of Cincinnati, Ohio, Attorney Registration No. 0067664, was admitted to the practice of law in Ohio in 1997.

On July 16, 2012, relator, disciplinary counsel, charged Underwood with professional misconduct related to one client matter. The charges against Underwood included failing to maintain a record of her client trust account, failing to deposit fees and expenses paid in advance into her trust account, failing to refund an unearned fee to her client upon her withdrawing from representation, knowingly disobeying a court order, engaging in conduct that is prejudicial to the administration of justice, and engaging in conduct that adversely reflects on her fitness to practice law. {¶ 2} A panel of the Board of Commissioners on Grievances and Discipline considered the cause on the parties' consent-to-discipline agreement.

See BCGD Proc.Reg. 11. {¶ 3} In the consent-to-discipline agreement, Underwood stipulates to the facts alleged in relator's complaint and agrees that her conduct violated Prof.Cond.R. 1.15(a) (requiring a lawyer to maintain a record for each client on SUPREME COURT OF OHIO whose behalf funds are held), 1.15(c) (requiring a lawyer to deposit advance legal fees and expenses into a client trust account, to be withdrawn by the lawyer only as fees are earned or expenses incurred), 8.4(d) (prohibiting a lawyer from engaging in conduct that is prejudicial to the administration of justice), and 8.4(h) (prohibiting a lawyer from engaging in conduct that adversely reflects on the lawyer's fitness to practice law).

Relator has agreed to the dismissal of the alleged violations of Prof.Cond.R. 1.16(e) (requiring a lawyer to promptly refund any unearned fee upon the lawyer's withdrawal from employment) and 3.4(c) (prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal). {¶ 4} The parties stipulate that the fact that Underwood engaged in multiple offenses is an aggravating factor.

See BCGD Proc.Reg. 10(B)(1)(d). As for mitigation, the parties note the absence of a prior disciplinary record, the payment of restitution to her client, Underwood's cooperative attitude toward the disciplinary proceedings, and the imposition of another sanction from the court by

finding her in contempt. See BCGD Proc.Reg. 10(B)(2)(a), (c), (d), and (f). Based upon these factors, the parties stipulate to a one-year suspension, stayed in its entirety upon the condition that Underwood complete, in addition to the general requirements of Gov.Bar R. X, at least six hours of continuing legal education in law-office management within six months of any disciplinary order issued in this case. {¶ 5} The panel and board found that the consent-to-discipline agreement conforms to BCGD Proc.Reg.

11 and recommend that we adopt the agreement in its entirety. {¶ 6} We agree that Underwood violated Prof.Cond.R. 1.15(a), 1.15(c), 8.4(d), and 8.4(h) and, as stated in the parties' agreement, that this conduct warrants a one-year suspension, stayed in its entirety.

Therefore, we adopt the 2 January Term, 2013 parties' consent-to-discipline agreement, and we dismiss the charged violations of Prof.Cond.R. 1.16(e) and 3.4(c). {¶ 7} Accordingly, Underwood is hereby suspended from the practice of law for a period of one year, but the suspension is stayed in its entirety upon the conditions that Underwood engage in no further misconduct and that she complete, in addition to the general requirements of Gov.Bar R. X, at least six hours of continuing legal education in law-office management within six months of this order.

If Underwood fails to comply with the conditions of the stay, the stay will be lifted, and Underwood will serve the entire one-year suspension. Costs are taxed to Underwood. Judgment accordingly. O'CONNOR, C.J., and PFEIFER, O'DONNELL, LANZINGER, KENNEDY, FRENCH, and O'NEILL, JJ., concur. _____ Jonathan E. Coughlan, Disciplinary Counsel, and Karen Osmond, Assistant Disciplinary Counsel, for relator.

Alvin E. Mathews Jr., for respondent. _____ 3