

SUPREME COURT OF OHIO

Cleveland Metropolitan Bar Association v. Polke

135 Ohio St. 3d 121, 2012-Ohio-5852 (Ohio 2012) · No. Nos. 2008-1708 and 2012-0296 · Decided December 12, 2012

SUMMARY

The Supreme Court of Ohio terminated Dennis J. Polke’s mental-health suspension after finding that the cause for the suspension had been removed. The court also adopted stipulated findings that Polke committed multiple disciplinary-rule violations involving neglect, failure to perform legal services, failure to deliver client funds, and conduct prejudicial to the administration of justice. It imposed a one-year suspension stayed in full on conditions including CLE compliance, reimbursement or bankruptcy discharge determinations, an Ohio Lawyers Assistance Program contract, monitored probation, payment of costs, and no further misconduct.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; O'Connor, C.J.; Pfeifer, J.; Lundberg Stratton, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; Kennedy, J.
JURISDICTION	Ohio
DECIDED	December 12, 2012
DOCKET	Nos. 2008-1708 and 2012-0296
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Ohio reviewed a certified report from the Board of Commissioners on Grievances and Discipline concerning termination of Polke's mental-health suspension and stipulated findings of attorney misconduct.
STANDARD OF REVIEW	The court independently reviewed the stipulated facts, findings of misconduct, aggravating and mitigating factors, and recommended sanction.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Cleveland Metropolitan Bar Association v. Dennis J. Polke

TOPICS

bankruptcy

nondischargeable debts

remedies

PRACTICE AREAS

attorney discipline

professional responsibility

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QUESTIONS PRESENTED

1. Whether Polke's mental-health suspension should be terminated after the cause for that suspension had been removed despite his noncompliance with financial and continuing-legal-education conditions.
2. Whether the stipulated facts established violations of the applicable Disciplinary Rules.
3. What sanction was appropriate for Polke's multiple violations of the Disciplinary Rules.
4. Whether the suspension conditions could require Polke to reimburse the Clients' Security Fund and pay costs, or obtain a bankruptcy-court determination of dischargeability.

HOLDINGS

1. The mental-health suspension must be terminated because Polke sustained his burden of showing that the cause for the suspension had been removed, although termination did not make him immediately eligible for reinstatement.
2. Termination of the mental-health suspension did not entitle Polke to immediate reinstatement because separate CLE and other reinstatement conditions remained unsatisfied.
3. Polke committed six violations of DR 6-101(A)(3) and DR 7-101(A)(2), four violations of DR 9-102(B)(4), and two violations of DR 1-102(A)(5).
4. Polke was suspended from the practice of law for one year, with the entire suspension stayed on specified conditions.

KEY QUOTATIONS

“Although Polke has not complied with the financial or CLE aspects of his mental-health suspension order, it is not now necessary for us to decide the effect of his bankruptcy proceeding on his financial obligations to this court under his mental-health suspension order.” (¶ 11)

“Accordingly, we suspend Dennis J. Polke from the practice of law for one year, with the entire suspension stayed upon his satisfying the following conditions:” (¶ 22)

FACTUAL BACKGROUND

Polke accepted retainers from six clients but neglected or intentionally failed to complete the agreed legal work. In four matters he failed to promptly deliver funds to which clients were entitled, and in two criminal matters he failed to appear at scheduled court proceedings. Polke had previously been suspended for mental-health reasons; later evaluations found no signs or symptoms of mental illness, although the record showed that he had not completed certain continuing-legal-education, payment, reimbursement, and treatment-related conditions.

PROCEDURAL HISTORY

Polke was placed on mental-health suspension after proceedings before a panel and the full Board of Commissioners on Grievances and Discipline found that mental illness substantially impaired his ability to practice law. He later applied to terminate that suspension, and the board certified that the cause for the suspension had been removed but declined to recommend immediate reinstatement because he had not satisfied additional conditions. The board also adopted stipulated findings that Polke committed multiple violations arising from six client matters and recommended a one-year suspension stayed on conditions.

DISPOSITION

other

CASES CITED

- In re Polke, No. 10-11391 (Bankr. N.D. Ohio 2000)
- In re Bertsche, 261 B.R. 436 (Bankr. S.D. Ohio 2000)
- In re Continuing Legal Edn. Suspension of Polke, 118 Ohio St. 3d 1447, 2008-Ohio-2889, 888 N.E.2d 1101
- 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
- In re Atty. Registration Suspension of Polke, 107 Ohio St. 3d 1431, 2005-Ohio-6408, 838 N.E.2d 671
- In re Atty. Registration Reinstatement of Polke, 108 Ohio St. 3d 1428, 2006-Ohio-378, 841 N.E.2d 790
- Disciplinary Counsel v. Pfundstein, 128 Ohio St. 3d 61, 2010-Ohio-6150, 941 N.E.2d 1180