

# SUPREME COURT OF OHIO

## Disciplinary Counsel v. Darling

2022 Ohio 870 (Ohio 2022) (Ohio 2022) · No. 2021-1232 · Decided March 24, 2022

### SUMMARY

The Supreme Court of Ohio held that Stephen Michael Darling violated multiple Rules of Professional Conduct by misappropriating client settlement funds, failing to safeguard and distribute those funds, making false statements, and engaging in dishonest conduct during disciplinary proceedings. The court indefinitely suspended Darling from practicing law, conditioned reinstatement on restitution and an Ohio Lawyers Assistance Program evaluation, and taxed costs to him.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Per Curiam; Maureen O'Connor, Chief Justice; Sharon L. Kennedy, Justice; Judi French Fischer, Justice; Patrick F. Fischer, Justice; Patrick DeWine, Justice; Michael P. Donnelly, Justice; Melody J. Stewart, Justice; Jennifer Brunner, Justice        |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                                    |
| DECIDED               | March 24, 2022                                                                                                                                                                                                                                          |
| DOCKET                | 2021-1232                                                                                                                                                                                                                                               |
| DISPOSITION           | other                                                                                                                                                                                                                                                   |
| PROCEDURAL POSTURE    | Attorney-discipline proceeding decided on a certified report from the Board of Professional Conduct of the Supreme Court of Ohio.                                                                                                                       |
| STANDARD OF REVIEW    | The Supreme Court of Ohio independently reviews the certified disciplinary record and determines the appropriate sanction after considering the ethical duties violated, aggravating and mitigating factors, and sanctions imposed in comparable cases. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                                               |
| PARTIES               | Disciplinary Counsel v. Stephen Michael Darling                                                                                                                                                                                                         |

### TOPICS

remedies

## PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

misappropriation of client funds

## QUESTIONS PRESENTED

1. Whether Darling committed the stipulated violations of the Ohio Rules of Professional Conduct arising from his handling and misappropriation of client settlement funds.
2. Whether Darling violated the rules governing illegal conduct, dishonesty, false statements, and misrepresentation through his bad-check theft conviction and conduct during the disciplinary investigation and hearing.
3. What sanction is appropriate in light of the misconduct, aggravating and mitigating factors, and comparable disciplinary cases.

## HOLDINGS

1. Darling violated Prof.Cond.R. 1.5(c)(2), 1.15(a), 1.15(d), 1.15(e), 8.1(a), and 8.4(c) by failing to prepare a settlement closing statement, failing to safeguard client and third-party funds in a client trust account, failing to distribute funds properly, and engaging in false, dishonest, and deceptive conduct.
2. Darling violated Prof.Cond.R. 8.4(b) and 8.4(c) through his misdemeanor theft conviction for depositing checks drawn on closed accounts and engaging in related dishonest conduct.
3. Indefinite suspension from the practice of law, with restitution and specified reinstatement conditions, is the appropriate sanction.

## KEY QUOTATIONS

*“the primary purpose of disciplinary sanctions is to protect the public rather than punish the offender.”* (¶ 26)

*“[Darling] only admits to those actions that he cannot evade.”* (¶ 30)

## FACTUAL BACKGROUND

Darling represented Joshua Lusk in a personal-injury matter and received \$12,000 to pay his legal fee, negotiate and pay a chiropractor's bill, and return any remaining funds. He deposited the money into a personal account, failed to maintain a client trust account or prepare a settlement closing statement, misappropriated the funds, and did not pay the chiropractor's \$8,835 bill. Darling later made false statements to Lusk, his wife, and disciplinary counsel about the settlement funds and related documents. He also pleaded guilty to misdemeanor theft after depositing checks drawn on closed accounts and was found to have engaged in dishonest conduct during the disciplinary proceedings.

## PROCEDURAL HISTORY

Disciplinary counsel filed an amended complaint charging Darling with eight ethical violations. The parties stipulated to facts, misconduct, and aggravating and mitigating factors. After a hearing, a three-member panel recommended indefinite suspension with reinstatement conditions, and the Board of Professional Conduct

adopted the panel's findings and recommendation without objection. The Supreme Court of Ohio adopted the findings and sanction.

#### DISPOSITION

other

#### REMAND INSTRUCTIONS

No remand. Darling is indefinitely suspended, must pay \$8,835 in restitution within 60 days, and must submit proof of an Ohio Lawyers Assistance Program evaluation and compliance with treatment recommendations as a condition of reinstatement. Upon reinstatement, he may be required to work with a monitoring attorney.

#### CASES CITED

- Disciplinary Counsel v. O'Neill, 103 Ohio St.3d 204, 2004-Ohio-4704, 815 N.E.2d 268, ¶ 53
- Disciplinary Counsel v. Burchinal, 133 Ohio St.3d 38, 2012-Ohio-3882, 975 N.E.2d 960
- Disciplinary Counsel v. Miller, 126 Ohio St.3d 221, 2010-Ohio-3287, 932 N.E.2d 323
- Cuyahoga Cty. Bar Assn. v. Maybaum, 112 Ohio St.3d 93, 2006-Ohio-6507, 858 N.E.2d 359