

SUPREME COURT OF OHIO

Disciplinary Counsel v. Gonzalez

138 Ohio St. 3d 320, 2014-Ohio-851 (2014) · No. 2013-0222 · Decided March 11, 2014

SUMMARY

The Supreme Court of Ohio disciplined Vincent Ferdinand Gonzalez for multiple violations of the Ohio Rules of Professional Conduct, including failing to notify clients that he lacked malpractice insurance, commingling personal and client funds, deficient trust-account recordkeeping, inadequate representation, improper attempted withdrawal, and failure to cooperate with disciplinary authorities. The court dismissed some alleged violations, including misappropriation and dishonesty, but found other misconduct proved by clear and convincing evidence. Gonzalez was suspended for two years, with the second year stayed subject to no further misconduct, and was required to make \$1,302.27 in restitution to a former client as a condition of reinstatement.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Kennedy, J.; O'Neill, J.; French, J.; Lanzinger, J.
JURISDICTION	Ohio
DECIDED	March 11, 2014
DOCKET	2013-0222
DISPOSITION	other
PROCEDURAL POSTURE	Review of a certified report of the Board of Commissioners on Grievances and Discipline concerning attorney misconduct. Gonzalez objected to findings on three of seven counts.
STANDARD OF REVIEW	The relator must prove facts establishing a disciplinary-rule violation by clear and convincing evidence. The court defers to a hearing panel's credibility determinations unless the record weighs heavily against them.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Ohio; precedential.
PARTIES	Vincent Ferdinand Gonzalez v. Disciplinary Counsel

TOPICS

family law

divorce

trusts

remedies

PRACTICE AREAS

attorney discipline

legal ethics

trust-account compliance

domestic-relations practice

QUESTIONS PRESENTED

1. Whether Gonzalez violated Ohio's professional-conduct rules by failing to notify clients in the prescribed form that he lacked professional-liability insurance.
2. Whether Gonzalez violated the professional-conduct rules by commingling personal and client funds in his trust account.
3. Whether the evidence established that Gonzalez failed to maintain required records and account for client settlement funds.
4. Whether the evidence clearly and convincingly established that Gonzalez misappropriated Perez's funds or acted dishonestly, fraudulently, deceitfully, or with misrepresentation.
5. Whether Gonzalez violated professional-conduct rules through inadequate diligence and conduct during Samame's divorce trial and by attempting to withdraw without court permission.
6. Whether Gonzalez failed to cooperate with the disciplinary investigation.
7. What sanction was appropriate for the established misconduct.

HOLDINGS

1. A lawyer who does not maintain the required professional-liability insurance must notify clients using the prescribed separate form signed by the client; disclosure in a fee contract does not satisfy that requirement when the lawyer does not consistently use the prescribed form. Gonzalez violated Prof.Cond.R. 1.4(c).
2. A lawyer violates Prof.Cond.R. 1.15(a) by retaining personal funds in a client trust account while client funds are also deposited there, regardless of whether the lawyer's spouse authorized the disbursements.
3. Failure to maintain client ledgers, receipts, documentation, and monthly reconciliations required for client-trust-account administration violates Prof.Cond.R. 1.15(a)(2) and 1.15(a)(5).
4. Failure to account for client funds, standing alone, does not establish by clear and convincing evidence that the lawyer misappropriated the funds or engaged in dishonesty, fraud, deceit, or misrepresentation.
5. A lawyer violates Prof.Cond.R. 1.3, 1.16(c), 8.4(d), and 8.4(h) by failing to act diligently, attempting to withdraw without court permission after the court has denied withdrawal, and providing inadequate representation that prejudices the administration of justice and adversely reflects on fitness to practice.
6. Knowingly failing to respond to disciplinary-authority inquiries and requests for information violates Prof.Cond.R. 8.1(b) and 8.4(h).
7. The appropriate sanction was a two-year suspension, with the second year stayed on the condition of no further misconduct, and restitution of \$1,302.27 to Perez as a condition of reinstatement.

KEY QUOTATIONS

“Although relator proved that Gonzalez failed to account for \$1,302.27 in client funds—for which we are separately sanctioning him—this misconduct alone does not necessarily show that Gonzalez also misappropriated the money from Perez or defrauded him.” (¶ 14)

“Given this misconduct, and having reviewed the aggravating factors and finding no mitigating factors, we hold that the appropriate sanction in this case is a two-year suspension with the second year stayed on the condition that Gonzalez commit no further misconduct during the term of his suspension.” (¶ 39)

FACTUAL BACKGROUND

Gonzalez, an Ohio solo practitioner, had not maintained professional-liability insurance since February 2007 and did not consistently use the prescribed separate notice form. He deposited personal funds, including his wife's personal-injury settlement, into his client trust account while client funds were also held there, failed to maintain required ledgers and reconciliations, and could not account for \$1,302.27 from a client's settlement. During a divorce trial, he attempted to withdraw without court permission and provided little meaningful representation after the court denied withdrawal. He also failed to respond to disciplinary inquiries and requests for client files.

PROCEDURAL HISTORY

Disciplinary Counsel charged Gonzalez with seven counts involving lack of malpractice-insurance notice, trust-account commingling and recordkeeping, alleged misappropriation, inadequate representation, unauthorized withdrawal, and failure to cooperate. A hearing panel found most violations and recommended indefinite suspension with restitution; the board adopted that recommendation. The Supreme Court of Ohio sustained some objections, dismissed certain violations, found other violations proved, and imposed a two-year suspension with the second year stayed subject to no further misconduct and restitution as a condition of reinstatement.

DISPOSITION

other

CASES CITED

- Cuyahoga Cty. Bar Assn. v. Gonzalez, 89 Ohio St. 3d 470, 733 N.E.2d 587 (2000)
- Disciplinary Counsel v. Squire, 130 Ohio St. 3d 368, 2011-Ohio-5578, 958 N.E.2d 914
- Columbus Bar Assn. v. Sterner, 77 Ohio St. 3d 164, 672 N.E.2d 633 (1996)
- Disciplinary Counsel v. Weiss, 133 Ohio St. 3d 236, 2012-Ohio-4564, 977 N.E.2d 636
- Disciplinary Counsel v. Kelly, 121 Ohio St. 3d 39, 2009-Ohio-317, 901 N.E.2d 798
- Cleveland Bar Assn. v. Belock, 82 Ohio St. 3d 98, 694 N.E.2d 897 (1998)
- Cuyahoga Cty. Bar Assn. v. Wise, 108 Ohio St. 3d 164, 2006-Ohio-550, 842 N.E.2d 35
- Stark Cty. Bar Assn. v. Buttacavoli, 96 Ohio St. 3d 424, 2002-Ohio-4743, 775 N.E.2d 818
- Disciplinary Counsel v. Broeren, 115 Ohio St. 3d 473, 2007-Ohio-5251, 875 N.E.2d 935

