

# Solo Practitioners Beware: Failure to Follow Multiple Rules of Professional Conduct Can Equal Indefinite Suspension of Law License

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## Introduction

In *Erie-Huron Cnty. Bar Assn. v. Smith*, 2016 WL 911280 (Ohio Mar. 10, 2016), the Ohio Supreme Court upheld the Board of Professional Conduct's ruling to indefinitely suspend a solo-practicing attorney's law license. The Supreme Court held an indefinite suspension was warranted due to the attorney's failure to file bankruptcy petitions on behalf of his clients, failure to return advanced fees, failure to deposit advanced funds into a client trust account, and failure to notify clients he lacked professional liability insurance.

## Factual and Procedural History

In 1978, Charles Ross Smith III ("Smith") was admitted to practice law in Ohio. *Id.* at \*1. In 2008, he opened a solo law practice focusing primarily on bankruptcy law. *Id.* Smith's physical health deteriorated; six years later, in February 2014, Ohio's disciplinary counsel received a letter from Smith stating his poor health had caused him to close down his practice. *Id.* Smith's letter further stated that many of his clients had paid their legal fees and associated court costs in advance, and that he was now unable to complete the promised work or refund their money. *Id.* Shortly thereafter, the Erie-Huron County Bar Association ("Bar Association") received multiple grievances against Smith from some of his former clients. *Id.*

The Bar Association's investigation revealed that in 43 separate matters, clients paid Smith to file bankruptcy petitions on their behalf; nonetheless, he failed to file the petitions or return the client's money. *Id.* Additionally, the Bar Association's investigation revealed that Smith failed to deposit his client's advanced funds into his client trust account. *Id.* Instead, Smith deposited the money into another bank account from which he drew to pay operating expenses for his law office. *Id.*

Based on Smith's conduct, the Board of Professional Conduct ("Board") found that Smith violated several Professional Conduct Rules, including Rule 1.3 (requiring a lawyer to act with reasonable diligence in representing a client), Rule 1.15(a) (requiring a lawyer to hold property of clients in an interest-bearing client trust account, separate from the lawyer's own property), Rule 1.15(c) (requiring a lawyer to deposit advanced legal fees and expenses into a client trust account to be withdrawn by the lawyer only as fees are earned or expenses are incurred), and 1.16(e) (requiring a lawyer to promptly refund any unearned fee upon the lawyer's withdrawal from employment). *Id.* In addition, the Bar Association discovered that Smith failed to notify his clients he lacked professional liability insurance since July 2013, as mandated by Professional Conduct Rule 1.4(c). *Id.* Finding that Smith engaged in most of the charged misconduct, the Board recommended that he be indefinitely suspended from the practice of law, with conditions placed on any potential reinstatement. *Id.*

### Analysis

The Ohio Supreme Court began its analysis by noting it considers several relevant factors when imposing sanctions for attorney misconduct. *Id.* at \*2. These factors include the ethical duties the lawyer violated and the sanctions imposed in similar cases. *Id.* The Court stated it also weighs evidence of any aggravating and mitigating factors. *Id.* During its hearing, the Board had found the following aggravating factors in favor of Smith's disbarment: he exhibited a pattern of misconduct; committed multiple offenses; his clients were vulnerable and harmed by his misconduct; and he failed to make restitution. *Id.* In mitigation, the Board found Smith had no prior discipline and fully cooperated in the disciplinary process. *Id.* Though the Board acknowledged Smith's physical health likely caused him to close his practice, it did not consider his health as a mitigating factor because Smith did not submit any substantial medical evidence at his hearing. *Id.* Along with the recommendation that Smith be indefinitely suspended from the practice of law, the Board added several conditions on any potential reinstatement. *Id.* In support of its recommendation, the Board cited *Cincinnati Bar Assn. v. Britt*, 977 N.E.2d 620, in which the Ohio Supreme Court indefinitely suspended an attorney for collecting retainers and filing fees from more than 40 clients but failing to perform the promised work or refund the clients' money. *Id.* Additionally, like Smith, the attorney in *Britt* failed to deposit the advanced fees into a client trust fund. *Id.*

The Supreme Court agreed with the Board and found *Britt* persuasive. *Id.* Both attorneys engaged in similar misconduct. Both cases had similar mitigating factors. *Id.* Like the attorney in *Britt*, Smith had no prior disciplinary actions, fully cooperated in the disciplinary process, admitted to the charged misconduct, and helped determine the amount he received from each client and the amount still owed. *Id.*

### Conclusion and Takeaway

In light of Smith's misconduct, the aggravating and mitigating factors, and the sanctions imposed in comparable cases, the Supreme Court adopted the Board's recommended sanction. *Id.* at \*3. Smith was indefinitely suspended from the practice of law in Ohio. *Id.* The conditions placed on Smith's reinstatement included making full restitution to all affected clients, paying the costs of this matter, committing no further misconduct, obtaining a passing score on the multistate professional responsibility examination, and

completing 12 hours of continuing legal education classes with an emphasis on law-office management and management of client trust accounts. *Id.* Smith would also be required to meet all other biennial continuing legal education requirements. *Id.* Finally, if reinstated to the practice of law, he would be required to serve a two-year period of monitored probation. *Id.*

Although the court's opinion does not provide any details concerning the nature of Smith's medical issues, this case serves as a reminder of what can happen when medical or other issues make it difficult for a solo practitioner to keep up with his or her practice. State bar associations routinely offer resources to attorneys who may be facing challenges in their personal lives. Seeking help could assist an attorney in avoiding the kind of difficulties encountered in this case.

By Jasna Dubo

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