

SUPREME COURT OF APPEALS OF WEST VIRGINIA

Office of Lawyer Disciplinary Counsel v. Nichols

212 W. Va. 318 (2002) · Decided October 11, 2002

SUMMARY

The Supreme Court of Appeals of West Virginia temporarily suspended Glenn M. Nichols’s law license under West Virginia Rule of Lawyer Disciplinary Procedure 3.27. The court found sufficient unrefuted evidence that Nichols had repeatedly misrepresented the status of clients’ matters and posed a substantial threat of irreparable harm to the public. The court also continued an order appointing a trustee to oversee the interests of Nichols’s clients pending the disciplinary proceedings.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
JURISDICTION	West Virginia
DECIDED	October 11, 2002
DISPOSITION	other
PROCEDURAL POSTURE	The Office of Lawyer Disciplinary Counsel petitioned the Supreme Court of Appeals of West Virginia for temporary suspension of Nichols's law license under West Virginia Rule of Lawyer Disciplinary Procedure 3.27 pending resolution of underlying disciplinary proceedings and requested continuation of a client-protection trusteeship.
STANDARD OF REVIEW	Under West Virginia Rule of Lawyer Disciplinary Procedure 3.27, the Supreme Court determines whether sufficient evidence shows that the lawyer violated the Rules of Professional Conduct and poses a substantial threat of irreparable harm to the public pending the underlying disciplinary proceeding. The special procedure is reserved for the most extreme cases of lawyer misconduct.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Office of Lawyer Disciplinary Counsel v. Glenn M. Nichols

TOPICS

remedies

appellate procedure

standard of review

PRACTICE AREAS

legal ethics

lawyer discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether the record provided sufficient evidence that Nichols had violated the Rules of Professional Conduct.
2. Whether Nichols posed a substantial threat of irreparable harm to the public warranting temporary suspension under West Virginia Rule of Lawyer Disciplinary Procedure 3.27.
3. Whether the previously entered order appointing an attorney to oversee Nichols's clients' affairs should remain in effect pending the disciplinary proceedings.

HOLDINGS

1. The unrefuted evidence sufficiently demonstrated, for purposes of the interim proceeding, that Nichols had violated multiple provisions of the Rules of Professional Conduct, including the prohibitions on dishonesty, fraud, deceit, or misrepresentation and the duty to act with reasonable diligence and promptness.
2. Nichols posed a substantial threat of irreparable harm to the public while the underlying disciplinary proceedings were pending, warranting temporary suspension of his law license.
3. The order appointing an attorney to oversee the affairs and protect the interests of Nichols's clients remained in full force pending completion of the disciplinary proceedings.

KEY QUOTATIONS

“The special procedures outlined in Rule 3.27 of the West Virginia Rules of Lawyer Disciplinary Procedure should only be utilized in the most extreme cases of lawyer misconduct.” (at 321)

“the Supreme Court of Appeals may suspend the license of a lawyer ... when there is evidence that a lawyer (1) has committed a violation of the Rules of Professional Conduct ... and (2) poses a substantial threat of irreparable harm to the public until the underlying disciplinary proceeding has been resolved.” (at 321)

“We hereby temporarily suspend Mr. Nichols’ law license until the underlying disciplinary proceedings against him have concluded.” (at 322)

FACTUAL BACKGROUND

Former clients alleged that Nichols accepted fees to file lawsuits or perform other legal services, failed to do so, and repeatedly misrepresented that the matters had been filed or were progressing. Additional complaints alleged similar conduct involving an employment matter, an adoption petition, debt collection, and estate administration, as well as failure to account for a retainer and issuance of a check that lacked sufficient funds. Nichols did not respond to the petition for temporary suspension.

PROCEDURAL HISTORY

The OLDC filed disciplinary charges arising from complaints by former clients and reported additional complaints alleging a continuing pattern of failing to perform legal services, misrepresenting that filings had been made, and mishandling client funds. Nichols did not respond to the petition. The Supreme Court previously required the Chief Judge of the Circuit Court of Kanawha County to appoint a trustee for Nichols's clients, and the court continued that order while temporarily suspending Nichols's license.

DISPOSITION

other

CASES CITED

- Office of Disciplinary Counsel v. Battistelli, 193 W. Va. 629, 457 S.E.2d 652 (1995)
- Committee on Legal Ethics of West Virginia State Bar v. Ikner, 190 W. Va. 433, 438 S.E.2d 613 (1993)
- Lawyer Disciplinary Bd. v. Battistelli, 206 W. Va. 197, 523 S.E.2d 257 (1999)
- Lawyer Disciplinary Bd. v. Friend, 200 W. Va. 368, 489 S.E.2d 750 (1997)

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