

SUPREME COURT OF THE STATE OF WASHINGTON

In re Disciplinary Proceeding Against Waechter

419 P.3d 827 (Wash. 2018) · No. 201,645-6 · Decided June 14, 2018

SUMMARY

The Washington Supreme Court disbarred attorney William H. Waechter for multiple lawyer trust account violations, including conversion of client funds and forging a client's signature on a check. The court held that the emotional or personal problems mitigating factor should have been considered in relation to Waechter's trust account practices, but gave it little weight and upheld disbarment. The court also held that double jeopardy principles do not apply to attorney disciplinary proceedings.

CASE DETAILS

COURT	Supreme Court of the State of Washington
WRITING FOR THE COURT	Gonzalez, J.
JURISDICTION	Washington
DECIDED	June 14, 2018
DOCKET	201,645-6
DISPOSITION	other
PROCEDURAL POSTURE	Waechter sought review of the Washington State Bar Association Disciplinary Board's unanimous recommendation that he be disbarred.
STANDARD OF REVIEW	The court gives considerable weight to hearing-officer factual findings, particularly credibility and veracity findings, and upholds them if supported by substantial evidence. Conclusions of law are reviewed de novo. Sanctions are reviewed de novo, but a unanimous Board recommendation is upheld absent a clear reason for departure and unless disproportionate.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	William H. Waechter v. Washington State Bar Association

TOPICS

administrative law

judicial review of agency action

constitutional law

due process

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Disciplinary Board erred by failing to apply the personal-or-emotional-problems mitigating factor.
2. Whether double-jeopardy principles apply to attorney disciplinary proceedings involving multiple charges based on related misconduct.
3. Whether disbarment was a proportionate sanction for Waechter's misconduct.

HOLDINGS

1. The Disciplinary Board erred by failing to consider the personal-or-emotional-problems mitigating factor in evaluating Waechter's trust-account practices because the evidence established a connection between his compassion fatigue and poor bookkeeping. The factor did not apply to his conversion of client funds or forgery and carried little weight overall, so it did not alter the sanction.
2. Double-jeopardy protections do not apply to attorney disciplinary proceedings.
3. Disbarment was proportionate and appropriate for Waechter's misconduct.

KEY QUOTATIONS

“Attorney discipline is not subject to double jeopardy protection.” (at 838)

“Accordingly, we defer to the unanimous Board's recommendation of disbarment.” (at 841)

FACTUAL BACKGROUND

Waechter operated a personal-injury practice and a lawyer trust account. During the period audited, he repeatedly transferred trust-account funds to cover shortages, converted client and third-party funds, failed to maintain required trust-account records and accountings, and delayed payments. He also deposited an insurance check payable to himself and his nephew, forged his nephew's signature, failed to notify him of the check, and used the funds without permission.

PROCEDURAL HISTORY

The WSBA charged Waechter with 15 counts of professional misconduct arising from trust-account violations, conversion and theft of client funds, inadequate accounting practices, and forgery. After a May 2016 hearing, the hearing officer found all counts proved, recommended disbarment and restitution, and identified aggravating and mitigating factors. The Disciplinary Board denied reconsideration and unanimously adopted the recommendation. The Washington Supreme Court granted review, held that the emotional-or-personal-problems mitigator should have been considered as to bookkeeping violations but carried little weight, rejected Waechter's double-jeopardy argument, and disbarred him.

DISPOSITION

CASES CITED

- In re Disciplinary Proceeding Against Kuvara, 149 Wn.2d 237, 246, 66 P.3d 1057 (2003)
- In re Disciplinary Proceeding Against Poole, 156 Wn.2d 196, 208-09, 125 P.3d 954 (2006)
- In re Disciplinary Proceeding Against Guarnero, 152 Wn.2d 51, 58, 93 P.3d 166 (2004)
- In re Disciplinary Proceeding Against Cramer, 165 Wn.2d 323, 331-32, 198 P.3d 485 (2008)
- In re Disciplinary Proceeding Against Longacre, 155 Wn.2d 723, 744, 122 P.3d 710 (2005)
- In re Disciplinary Proceeding Against Holcomb, 162 Wn.2d 563, 591, 173 P.3d 898 (2007)
- In re Disciplinary Proceeding Against Poole, 164 Wn.2d 710, 733-34, 193 P.3d 1064 (2008)
- In re Disciplinary Proceeding Against Schwimmer, 153 Wn.2d 752, 760-61, 108 P.3d 761 (2005)
- Anthis v. Copland, 173 Wn.2d 752, 760, 270 P.3d 574 (2012)
- In re Welfare of Colyer, 99 Wn.2d 114, 119, 660 P.2d 738 (1983)
- In re Chastain, 340 S.C. 356, 363-64, 532 S.E.2d 264 (2000)
- In re Caranchini, 160 F.3d 420, 423 (8th Cir. 1998)
- Mississippi State Bar v. Young, 509 So. 2d 210, 213 n.1 (Miss. 1987)
- People v. Marmon, 903 P.2d 651, 655 (Colo. 1995)
- In re McDaniel, 470 N.E.2d 1327, 1328 (Ind. 1984)
- In re Discipline of Babilis, 951 P.2d 207, 214 (Utah 1997)
- In re Disciplinary Matter Involving Triem, 929 P.2d 634, 641 (Alaska 1996)
- State ex rel. Oklahoma Bar Association v. Giger, 2004 OK 43, 93 P.3d 32, 37
- Attorney Grievance Commission v. Brown, 308 Md. 219, 517 A.2d 1111, 1112 (1986)
- In re Brown, 12 Cal. 4th 205, 906 P.2d 1184, 1191, 48 Cal. Rptr. 2d 29 (1995)
- Office of Disciplinary Counsel v. Campbell, 463 Pa. 472, 481, 345 A.2d 616 (1975)
- In re Stroh, 97 Wn.2d 289, 302-03, 644 P.2d 1161 (1982)
- In re Disciplinary Proceeding Against Marshall, 167 Wn.2d 51, 70, 217 P.3d 291 (2009)
- In re Disciplinary Proceeding Against Whitt, 149 Wn.2d 707, 717, 72 P.3d 173 (2003)
- In re Disciplinary Proceeding Against Miller, 149 Wn.2d 262, 277-78, 66 P.3d 1069 (2003)
- In re Disciplinary Proceeding Against Gillingham, 126 Wn.2d 454, 469, 896 P.2d 656 (1995)
- In re Disciplinary Proceeding Against McKean, 148 Wn.2d 849, 859-60, 875, 64 P.3d 1226 (2003)
- In re Disciplinary Proceeding Against Tasker, 141 Wn.2d 557, 572-73, 9 P.3d 822 (2000)
- In re Disciplinary Proceeding Against Young Suk Oh, 176 Wn.2d 245, 253-58, 290 P.3d 963 (2012)
- In re Disciplinary Proceeding Against Blanchard, 158 Wn.2d 317, 335-36, 144 P.3d 286 (2006)
- In re Disciplinary Proceeding Against Trejo, 163 Wn.2d 701, 708-11, 185 P.3d 1160 (2008)

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