

SUPREME COURT OF NORTH DAKOTA

In the Matter of the Application for Disciplinary Action Against
TaLisa A. Nemec

2009 ND 58 · No. Nos. 20090077, 20090078 · Decided April 9, 2009

SUMMARY

The Supreme Court of North Dakota accepted TaLisa A. Nemec's consent to discipline and suspended her from the practice of law for 24 months, retroactive to December 19, 2007, to run concurrently with an earlier 18-month suspension. The discipline arose from client abandonment, failures of communication and diligence, failure to protect client interests upon termination, and related violations of professional conduct and lawyer discipline rules.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Gerald W. VandeWalle, Chief Justice; Daniel J. Crothers; Carol Ronning Kapsner; Mary Muehlen Maring; Dale V. Sandstrom
JURISDICTION	North Dakota
DECIDED	April 9, 2009
DOCKET	Nos. 20090077, 20090078
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of North Dakota reviewed a stipulation, consent to discipline, and hearing panel recommendation in an attorney-discipline proceeding referred under N.D.R. Lawyer Discipl. 3.1(F).
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion

TOPICS

- administrative law
- appellate procedure

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility
- administrative law

QUESTIONS PRESENTED

- Whether the Supreme Court should accept Nemec's stipulation and consent to discipline.

2. What discipline should be imposed for Nemec's violations of the North Dakota Rules of Professional Conduct and the North Dakota Rules of Lawyer Discipline.

HOLDINGS

1. The Supreme Court accepted the Stipulation, Consent to Discipline, and Recommendation of the Hearing Panel.
2. Nemec was suspended from the practice of law for twenty-four months, retroactive to December 19, 2007, to run concurrently with her prior eighteen-month suspension, and was required to pay \$250 in costs and expenses and comply with the reinstatement requirements of N.D.R. Lawyer Discipl. 4.5.

KEY QUOTATIONS

“ORDERED, the Stipulation, Consent to Discipline and Recommendation of Hearing Panel filed March 3, 2009, is accepted, and TaLisa A. Nemec is suspended from the practice of law for a period of twenty-four months, retroactive to December 19, 2007, to run concurrently with the eighteen month suspension imposed in Disciplinary Board v. Nemec, 2008 ND 216, 758 N.W.2d 660” (¶ 8)

FACTUAL BACKGROUND

Nemec represented Heather Graner in a family-law matter and appeal but stopped communicating with Graner after the Supreme Court issued its decision, despite Graner's messages. Nemec also represented Wayne Zahn in a criminal appeal and intended post-conviction matter, but failed to communicate with him, notify him of her suspension, return his file, or assist with post-conviction relief. Nemec moved to Montana and abandoned her law practice without notifying or protecting the interests of her clients.

PROCEDURAL HISTORY

Nemec was previously placed on interim suspension and later received an eighteen-month suspension for disciplinary violations. In this proceeding, the Disciplinary Board charged her with additional violations arising from abandonment and inadequate communication with clients. Nemec did not answer the petition but stipulated to a twenty-four-month suspension, retroactive to December 19, 2007, concurrent with her prior suspension, and payment of \$250 in costs. The Supreme Court accepted the stipulation and ordered the agreed discipline.

DISPOSITION

other

CASES CITED

- Disciplinary Board v. Nemec, 2007 ND 204, 743 N.W.2d 129
- Disciplinary Board v. Nemec, 2008 ND 216, 758 N.W.2d 660
- Graner v. Graner, 2007 ND 139, 738 N.W.2d 9

OPINION

In Matter of Application for Disciplinary Board Action Against Nemec 2009 ND 58

PER CURIAM.

2009 ND 58 In the Matter of the Application for Disciplinary Action Against TaLisa A. Nemec, a Member of the Bar of the State of North Dakota. Disciplinary Board of the Supreme Court of the State of North Dakota, Petitioner, v. TaLisa A. Nemec, Respondent. Nos. 20090077, 20090078 Supreme Court of North Dakota. Filed April 9, 2009. PER CURIAM. [¶ 1] TaLisa A. Nemec was admitted to practice as an attorney at law in the courts of North Dakota on October 3, 2005, and her name has appeared on the roll of attorneys since that date. Nemec was placed on interim suspension effective December 19, 2007, and until further order of the court pending final disposition of the disciplinary proceedings predicated upon the complaints filed. Disciplinary Board v. Nemec, 2007 ND 204, 743 N.W.2d 129. The final disposition was filed December 3, 2008, when Nemec was suspended from the practice of law for a period of eighteen months, retroactive to December 19, 2007, for violation of N.D.R. Prof. Conduct 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.16(b) Declining or Terminating Representation; and 8.1(b), Bar Admissions and Disciplinary Matters. Disciplinary Board v. Nemec, 2008 ND 216, 758 N.W.2d 660. [¶ 2] On January 8, 2009, Nemec admitted service of a Summons and Petition for Discipline. The Petition for Discipline alleged Nemec represented Heather Graner in a family law matter in District Court. After adverse findings against Graner, Nemec acted as Graner's attorney on her appeal. By decision filed August 22, 2007, this Court affirmed in part, and reversed in part, and remanded the case for further proceedings in the district court. Graner v. Graner, 2007 ND 139, 738 N.W.2d 9. During a telephone conference that took place on the day the North Dakota Supreme Court announced its decision, Nemec told Graner she was going to research the implications of the decisions and get back to Graner the following week. Despite email and telephone messages from Graner, Nemec abandoned her client, never communicating with Graner again. [¶ 3] The Petition further asserts that Nemec undertook representation of Wayne Zahn for the purpose of appealing his judgments of conviction upon jury verdicts for criminal charges, as well as assist Zahn with a petition for post-conviction relief. Nemec handled Zahn's appeal to its conclusion but thereafter failed to communicate with Zahn, failed to advise Zahn of her suspension from the practice of law, failed to return Zahn's file to him (until a court-appointed trustee did so), and failed to assist Zahn in filing a petition for post conviction relief. [¶ 4] The Petition further alleges that Nemec abandoned the practice of law, moving to Montana in the days prior to the Thanksgiving Holiday 2007 but failed to notify, communicate with, or otherwise look after the interests of her clients, including Graner and Zahn. [¶ 5] The Petition for Discipline asserts Nemec's conduct is a violation of N.D.R. Prof. Conduct 1.1, Competence, (a lawyer shall provide competent representation to a client); 1.3, Diligence, (a lawyer shall act with reasonable diligence and promptness in representing a client); 1.4, Communication, (a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished; explain a matter to the extent reasonably necessary to permit the client to make

informed decisions regarding the representation; and promptly comply with the client's reasonable requests for information); 1.16(b), Declining or Terminating Representation, (a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client); 1.16(e), Declining or Terminating Representation, (upon termination of representation, a lawyers shall take steps to the extent reasonably necessary to protect a client's interest); 8.1(b), Bar Admissions and Disciplinary Matters, (a lawyer shall not knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority); N.D.R. Lawyer Discipl. 1.2A(8), (a lawyer shall not engage in conduct prejudicial to justice); and N.D.R. Lawyer Discipl. 6.3, Notice of Status, (a lawyer who has been subject to an order of suspension to cause notice to be given to all clients being represented in pending matters that the lawyer cannot act as a lawyer after the effective date of the order). [¶ 6] Nemec did not answer the Petition for Discipline. A Stipulation, Consent to Discipline and Recommendation of Hearing Panel was filed March 3, 2009. In the Stipulation, Nemec consented to suspension from the practice of law for twenty-four months, retroactive to December 19, 2007, to run concurrently with the eighteen month suspension imposed in Disciplinary Board v. Nemec, 2008 ND 216, 758 N.W.2d 660. Nemec further stipulated that she may not apply for reinstatement under Rule 4.5, N.D.R. Lawyer Discipl., until 60 days before the expiration of the stipulated period of suspension, that she pay costs and expenses in the amount of \$250, that her consent to discipline was freely and voluntarily rendered without coercion or duress while being fully aware of the implications of the consent and that she knows the charges cannot be successfully defended. [¶ 7] The Stipulation, Consent to Discipline and Recommendation of Hearing Panel was referred to the Supreme Court under N.D.R. Lawyer Discipl. 3.1(F). The Supreme Court considered the matter, and [¶ 8] ORDERED, the Stipulation, Consent to Discipline and Recommendation of Hearing Panel filed March 3, 2009, is accepted, and TaLisa A. Nemec is suspended from the practice of law for a period of twenty-four months, retroactive to December 19, 2007, to run concurrently with the eighteen month suspension imposed in Disciplinary Board v. Nemec, 2008 ND 216, 758 N.W.2d 660, for violation of N.D.R. Prof. Conduct 1.1, Competence; 1.3, Diligence; 1.4, Communication; 1.16(b), Declining or Terminating Representation; 1.16(e), Declining or Terminating Representation; 8.1(b), Bar Admissions and Disciplinary Matters; N.D.R. Lawyer Discipl. 1.2A(8), Grounds for Discipline, and N.D.R. Lawyer Discipl. 6.3, Notice of Status. [¶ 9] FURTHER ORDERED, TaLisa A. Nemec pay the costs and expenses of the disciplinary proceeding in the amount of \$250.00, payable to the Secretary of the Disciplinary Board. [¶ 10] FURTHER ORDERED, TaLisa A. Nemec comply with N.D.R. Lawyer Discipl. 4.5 regarding reinstatement. [¶ 11] Gerald W. VandeWalle, C.J. Daniel J. Crothers Carol Ronning Kapsner Mary Muehlen Maring Dale V. Sandstrom