

SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board v. Robert J. Hearity

812 N.W.2d 614 (Iowa 2012) · No. No. 11-1645 · Decided February 24, 2012

SUMMARY

The Iowa Supreme Court reviewed disciplinary charges against Robert J. Hearity arising from his representation of multiple clients, including neglect, unreasonable fees, failure to respond to disciplinary authorities, unauthorized practice while suspended, and misrepresentation to a court. The court imposed a one-year suspension, with no possibility of reinstatement during that period, and assessed costs against Hearity.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Waterman, Justice
JURISDICTION	Iowa
DECIDED	February 24, 2012
DOCKET	No. 11-1645
DISPOSITION	other
PROCEDURAL POSTURE	On review of the report and recommended sanction of the Grievance Commission of the Supreme Court of Iowa in an attorney-discipline proceeding.
STANDARD OF REVIEW	De novo review. The court respectfully considers the commission's findings but is not bound by them. The Board must establish attorney misconduct by a convincing preponderance of the evidence, and the court may impose a sanction more or less severe than the commission's recommendation.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Iowa
PARTIES	Iowa Supreme Court Attorney Disciplinary Board v. Robert J. Hearity

TOPICS

- appellate procedure
- standard of review
- administrative law

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

appellate procedure

QUESTIONS PRESENTED

1. Whether the Board proved by a convincing preponderance of the evidence that Hearity violated the Iowa Rules of Professional Conduct.
2. Whether Hearity violated the duties of diligence and expedition by neglecting an estate and failing to prosecute a client's appeal.
3. Whether Hearity charged an unreasonable fee and failed to communicate the scope and basis of the fee in the Georgia DUI matter.
4. Whether Hearity improperly terminated representation and failed to protect a client's interests on appeal.
5. Whether Hearity violated the duty to respond to a disciplinary authority's lawful demand for information.
6. Whether Hearity violated the rule governing disobedience of tribunal obligations.
7. Whether Hearity engaged in the unauthorized practice of law after receiving notice of his license suspension.
8. Whether Hearity knowingly made a false statement to a juvenile court regarding his knowledge of the suspension.
9. Whether the same conduct violated both the specific false-statement rule and the general dishonesty rule.
10. What sanction was appropriate in light of the misconduct and aggravating and mitigating circumstances.

HOLDINGS

1. The Supreme Court of Iowa independently reviews attorney-discipline proceedings de novo, is not bound by the commission's findings, and may impose a sanction more or less severe than the commission recommends when misconduct is proven by a convincing preponderance of the evidence.
2. When a respondent fails to answer an ethics complaint within the specified time, the allegations are deemed admitted.
3. Hearity violated Iowa Rules of Professional Conduct 32:1.3 and 32:3.2 by neglecting the Theroith estate for more than three and one-half years, repeatedly delaying required proceedings, and failing to prosecute Walls's appeal, resulting in dismissal.
4. Hearity violated Iowa Rules of Professional Conduct 32:1.5(a) and 32:1.5(b) by retaining an unjustified \$500 advance fee and failing to communicate in writing the scope of representation and basis or rate of fees and expenses in the Georgia DUI matter.
5. Hearity violated Iowa Rules of Professional Conduct 32:1.16(c) and 32:1.16(d) by effectively abandoning Walls's appeal without permission to withdraw and by taking no reasonably practicable steps to protect Walls's interests.

6. Hearity violated Iowa Rule of Professional Conduct 32:8.1(b) by knowingly failing to respond to the Board's lawful request for information and documentation concerning Campbell's fee complaint.
7. The Board failed to prove a violation of Iowa Rule of Professional Conduct 32:3.4(c) because the misconduct did not establish that Hearity undermined the competitive fairness of the adversary process or disadvantaged opposing counsel.
8. Hearity violated Iowa Rule of Professional Conduct 32:5.5(a) by appearing in juvenile court six days after accepting certified notice of his license suspension.
9. Hearity knowingly made a false statement of fact to the juvenile court in violation of Iowa Rule of Professional Conduct 32:3.3(a)(1) because the circumstances established that he actually knew of his suspension when he stated that he had not received notice.
10. The court declined to find a separate violation of Iowa Rule of Professional Conduct 32:8.4(c) for the same conduct that violated the specific false-statement rule, 32:3.3(a)(1).
11. Hearity violated Iowa Rule of Professional Conduct 32:8.4(d) because his misconduct impeded the efficient and proper operation of the courts.
12. A one-year suspension of Hearity's license, with no possibility of reinstatement for one year from the date of the opinion, was appropriate in light of the multiple violations, prior similar misconduct, failure to cooperate, and absence of mitigating evidence.

KEY QUOTATIONS

"We suspend his license to practice law indefinitely with no possibility of reinstatement for one year from the date of this opinion." (at 616)

"We review attorney disciplinary proceedings de novo." (at 616)

"Rule 32:1.3 requires counsel to 'act with reasonable diligence and promptness.'" (at 617)

"An ostrich-like, head-in-the-sand approach should not immunize attorneys from an inference of actual knowledge." (at 623)

"Upon any application for reinstatement, Hearity must establish that he has not practiced law during the suspension period and that he has complied with the requirements of Iowa Court Rules 35.13 and 35.22." (at 627)

FACTUAL BACKGROUND

Hearity represented clients in an estate, criminal matters, an appeal, and a Georgia DUI matter while failing to act diligently, complete required tasks, communicate fee terms, or protect a client's appellate interests. He also appeared in juvenile court after accepting certified notice of an order suspending his Iowa law license and falsely stated that he had not received notice of the suspension. Hearity failed to answer the disciplinary complaint or cooperate with the Board's investigation, and he had prior disciplinary admonitions for similar conduct.

PROCEDURAL HISTORY

The Iowa Supreme Court Attorney Disciplinary Board filed a complaint alleging five counts of misconduct, encompassing twelve alleged rule violations. Hearity failed to answer the complaint, respond to discovery requests, or otherwise participate, so the allegations were deemed admitted. The Grievance Commission found multiple instances of misconduct and recommended an eighteen-month suspension. On de novo review, the Supreme Court of Iowa found multiple violations and imposed a one-year suspension with no possibility of reinstatement during that period.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Dunahoo, 799 N.W.2d 524 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Schmidt, 796 N.W.2d 33 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Wagner, 768 N.W.2d 279 (Iowa 2009)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Conroy, 795 N.W.2d 502 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Cunningham, ___ N.W.2d ___, ___ (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Johnson, 792 N.W.2d 674 (Iowa 2010)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Knopf, 793 N.W.2d 525 (Iowa 2011)
- Burgess v. Great Plains Bag Corp., 409 N.W.2d 676 (Iowa 1987)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Parrish, 801 N.W.2d 580 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Netti, 797 N.W.2d 591 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Templeton, 784 N.W.2d 761 (Iowa 2010)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Boles, ___ N.W.2d ___, ___ (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Casey, 761 N.W.2d 53 (Iowa 2009)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ireland, 748 N.W.2d 498 (Iowa 2008)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Gottschalk, 729 N.W.2d 812 (Iowa 2007)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Joy, 728 N.W.2d 806 (Iowa 2007)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Walters, 646 N.W.2d 111 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Kennedy, 684 N.W.2d 256 (Iowa 2004)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Plumb, 766 N.W.2d 626 (Iowa 2009)

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