

SUPREME COURT OF NORTH DAKOTA

In the Matter of Disciplinary Action Against Eugene F. Buresh

2007 ND 8 · No. 20060230 · Decided August 25, 2007

SUMMARY

The Supreme Court of North Dakota held that Eugene F. Buresh violated professional-conduct rules by converting client funds, mishandling a trust account, and deceiving a client. The court ordered him disbarred, required restitution of \$30,946.45 plus interest to Jennifer Jacobs, and assessed \$3,126.00 in disciplinary costs; the chief justice dissented in favor of an eighteen-month suspension.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Per Curiam; Mary Muehlen Maring; Daniel J. Crothers; Dale V. Sandstrom; Benny A. Graff, S.J.
JURISDICTION	North Dakota
DECIDED	August 25, 2007
DOCKET	20060230
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from a hearing panel's findings that Eugene F. Buresh violated North Dakota Rules of Professional Conduct 1.15(a) and (b) and North Dakota Rules of Lawyer Discipline 1.2(A)(3). The hearing panel recommended an eighteen-month suspension, restitution, and costs; the Supreme Court reviewed the recommended sanction on its own motion and imposed disbarment instead.
STANDARD OF REVIEW	Disciplinary proceedings are reviewed de novo on the record. The Court gives due weight to the hearing panel's findings, conclusions, and recommendations, but independently determines the appropriate sanction. Disciplinary counsel must prove each alleged disciplinary violation by clear and convincing evidence.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

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QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that Buresh violated North Dakota Rules of Professional Conduct 1.15(a) and (b) and North Dakota Rule of Lawyer Discipline 1.2(A)(3).
2. Whether disbarment, rather than the hearing panel's recommended eighteen-month suspension, was the appropriate sanction for Buresh's conversion of client funds and repeated deception.

HOLDINGS

1. The evidence clearly and convincingly established that Buresh violated North Dakota Rules of Professional Conduct 1.15(a) and (b) by failing to safeguard and promptly deliver client funds, and violated North Dakota Rule of Lawyer Discipline 1.2(A)(3) by engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation.
2. Disbarment was the appropriate sanction because Buresh knowingly converted client property, caused substantial injury, repeatedly deceived the client for his own benefit, and had aggravating factors that outweighed his mitigating factors.
3. A criminal conviction was not a condition precedent to attorney discipline where the facts themselves warranted discipline.

KEY QUOTATIONS

“Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client;” (¶ 10)

“A lawyer's conversion of a client's funds to his own use is impossible to condone and is one of the least excusable acts of misconduct for which a lawyer can be disciplined.” (¶ 11)

FACTUAL BACKGROUND

Buresh represented the Jacobs family in the sale of a family farm and received sale proceeds into his law-office trust account. He used or transferred approximately \$28,500 of trust-account funds to address a temporary office financial crisis, leaving insufficient funds to cover a \$30,950.45 check payable to Jennifer Jacobs. After the check was returned twice for insufficient funds, Buresh repeatedly assured Jacobs that payment had been or would be sent while attempting to replenish the account. As of the disciplinary proceeding, Jacobs had not received the money owed to her.

PROCEDURAL HISTORY

A disciplinary hearing panel found that Buresh misused client trust-account funds, failed to deliver funds owed to Jennifer Jacobs, and engaged in dishonest conduct. The panel recommended an eighteen-month suspension, restitution of \$30,946.45 with interest, and payment of proceeding costs. Although neither party objected to the

recommendation, the Supreme Court directed briefing on the adequacy of the sanction and, after de novo review on the record, ordered disbarment.

DISPOSITION

other

CASES CITED

- Disciplinary Bd. v. Chiquist, 2006 ND 107, ¶ 7, 714 N.W.2d 469
- Disciplinary Bd. v. Chiquist, 2006 ND 107, ¶ 21, 714 N.W.2d 469
- Disciplinary Bd. v. Rau, 533 N.W.2d 691, 695 (N.D. 1995)
- Disciplinary Bd. v. Dosch, 527 N.W.2d 270, 273 (N.D. 1995)
- Disciplinary Bd. v. Kaiser, 484 N.W.2d 102, 108 (N.D. 1992)
- In Re Reinstatement of Ellis, 2006 ND 194, 721 N.W.2d 693
- Matter of Allen, 262 N.W.2d 25 (N.D. 1978)
- Application of Christianson, 253 N.W.2d 410 (N.D. 1977)
- Disciplinary Action Against Kaiser, 484 N.W.2d 102 (N.D. 1992)