

SUPREME COURT OF NEBRASKA

State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Elaine A. Waggoner

267 Neb. 583 (2004) (Neb. 2004) · No. No. S-03-1290 · Decided March 12, 2004

SUMMARY

The Nebraska Supreme Court approved Elaine A. Waggoner's conditional admission to attorney-discipline charges involving neglect of legal matters, failure to deposit client funds in a trust account, and related violations of professional conduct rules. The court imposed a public reprimand, 18 months of probation with monitoring, and costs.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Hendry, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	March 12, 2004
DOCKET	No. S-03-1290
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the respondent filed a conditional admission of formal disciplinary charges in exchange for a stated consent judgment of public reprimand and 18 months of probation with monitoring.
STANDARD OF REVIEW	Independent review of the record; disciplinary violations must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential
PARTIES	State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Elaine A. Waggoner

TOPICS

administrative law

agency adjudication

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should approve the respondent's conditional admission under Nebraska Court Rule of Discipline 13.
2. Whether the admitted conduct violated DR 1-102(A)(1), DR 6-101(A)(3), DR 9-102(A)(2), and the respondent's oath of office as an attorney.
3. Whether public reprimand and 18 months of probation with monitoring were appropriate sanctions.

HOLDINGS

1. The court approved the conditional admission because the respondent knowingly admitted the essential relevant facts and violations and waived all proceedings connected with the formal charges, as permitted by Nebraska Court Rule of Discipline 13.
2. By clear and convincing evidence, Waggoner violated DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(A)(2), as well as her oath of office as an attorney.
3. The appropriate sanction was a formal public reprimand and 18 months of probation with monitoring, with costs and expenses taxed to the respondent.

KEY QUOTATIONS

“Based on the conditional admission of respondent, the recommendation of the Counsel for Discipline, and our independent review of the record, we find by clear and convincing evidence that respondent has violated DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(A)(2), as well as her oath of office as an attorney, and that respondent should be and hereby is publicly reprimanded.” (689)

“JUDGMENT OF PUBLIC REPRIMAND AND PROBATION.” (689)

FACTUAL BACKGROUND

Waggoner was admitted to practice law in Nebraska in 1978 and practiced privately in Lincoln. In representing two clients, she unduly delayed completing entrusted legal matters. In representing a third client, she failed to deposit a retainer into her attorney trust account. She conditionally admitted the material facts and disciplinary violations.

PROCEDURAL HISTORY

Formal charges were filed against Waggoner on November 13, 2003, alleging neglect of two client matters, failure to deposit a client retainer into a trust account, violations of specified disciplinary rules, and violation of her attorney's oath. Waggoner filed a conditional admission on January 27, 2004, knowingly admitting the essential facts and rule violations and waiving further proceedings. The Nebraska Supreme Court independently reviewed the record, approved the conditional admission, and imposed the agreed discipline.

DISPOSITION

OPINION

PER CURIAM.

675 N.W.2d 686 (2004) 267 Neb. 583 STATE of Nebraska ex rel. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, relator v. Elaine A. WAGGONER, respondent. No. S-03-1290. Supreme Court of Nebraska. March 12, 2004. *687 HENDRY, C.J., and WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ. PER CURIAM. INTRODUCTION Respondent, Elaine A. Waggoner, was admitted to the practice of law in the State of Nebraska on September 14, 1978, and at all times relevant hereto was engaged in the private practice of law in Lincoln, Nebraska.

On November 13, 2003, formal charges were filed against respondent. The formal charges set forth three counts, including charges that respondent violated the following provisions of the Code of Professional Responsibility: Canon 1, DR 1-102(A)(1) (violating disciplinary rule); Canon 6, DR 6-101(A)(3) (neglecting legal matter); and Canon 9, DR 9-102(A)(2) (failing to deposit client funds in trust account), as well as her oath of office as an attorney.

Neb.Rev.Stat. § 7-104 (Reissue 1997). On January 27, 2004, respondent filed a conditional admission under Neb. Ct. R. of Discipline 13 (rev.2002). In her conditional admission, respondent, in substance, knowingly admitted the facts essential to support the above formal charges; knowingly admitted that she violated DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(A)(2), as well as her oath of office as an attorney; and effectively waived all proceedings against her in connection with the formal charges in exchange for a judgment of a formal public reprimand and probation for 18 months with monitoring.

Upon due consideration, the court approves the conditional admission and orders that respondent be publicly reprimanded and that respondent shall be subject to probation with monitoring as outlined *infra* for 18 months. FACTS In summary, the formal charges allege that during the course of her representation of two separate clients, respondent unduly delayed in completing certain legal matters entrusted to her on behalf of those clients.

The formal charges further allege that as to a third client, respondent failed to deposit a retainer paid to her by the client in her attorney trust account. As noted above, respondent filed a conditional admission on January 27, 2004. ANALYSIS Rule 13 provides in pertinent part: (B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any

member appointed to prosecute on behalf of the Counsel for *688 Discipline; such conditional admission is subject to approval by the Court.

The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

Pursuant to the conditional admission, in addition to the public reprimand, respondent agreed that during her probationary period, she would be monitored subject to the following terms: Probation for 18 months with monitoring and costs taxed to respondent.

The probation shall include the monitoring of respondent by Kathryn A. Olson.... Kathryn A. Olson shall not be compensated for her monitoring duties; however, she shall be reimbursed by respondent for actual expenses incurred. At the conclusion of the term of probation, the monitoring lawyer shall notify the Court of respondent's successful completion thereof.

During the 18 month probationary period, respondent shall provide the monitor, at least monthly, a list of all cases for which the respondent is then responsible. During each of the first six months, respondent shall personally meet with the monitor to discuss the list of cases for which respondent is then responsible.

The monitor shall also assist respondent in developing and implementing appropriate office procedures. The names of respondent's clients shall be kept confidential by way of a number assigned to each case. The list of cases shall include the following for each case: 1. Date attorney-client relationship began. 2. General type of case (i.e. divorce, adoption, probate, contract, real estate, civil litigation, criminal).

3. Date of last contact with client. 4. Last type and date of work completed on file (pleading, correspondence, document preparation, discovery, court hearing). 5. Next type and date of work that should be completed on case. 6. Any applicable statute of limitation and its date.

The monitor shall have the right to contact respondent with any questions the monitor may have regarding the list. If at any time the monitor believes respondent has violated a disciplinary rule, or has failed to comply with the terms of probation, she shall report the same to the Counsel for Discipline. Pursuant to rule 13, we find that respondent knowingly admits the essential relevant facts outlined in the formal charges and knowingly admits that she violated DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(A)(2), as well as her oath of office as an attorney.

We further find that respondent waives all proceedings against her in connection herewith. Upon due consideration, the court approves the conditional admission and enters orders as indicated

below. CONCLUSION Based on the conditional admission of respondent, the recommendation of the Counsel for Discipline, and our independent review of the record, we find by clear and convincing evidence that respondent has violated DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(A)(2), as well as *689 her oath of office as an attorney, and that respondent should be and hereby is publicly reprimanded.

It is further ordered that respondent be subject to probation with monitoring as outlined above for a period of 18 months, effective immediately. Respondent is directed to pay costs and expenses in accordance with Neb.Rev.Stat. §§ 7-114 and 7-115 (Reissue 1997) and Neb. Ct. R. of Discipline 23(B) (rev.2001). JUDGMENT OF PUBLIC REPRIMAND AND PROBATION.