

SUPREME COURT OF WASHINGTON

In re Disciplinary Proceeding Against Sandra L. Ferguson

246 P.3d 1236 (Wash. 2011) · No. No. 200,719-8 · Decided February 3, 2011

SUMMARY

The Washington Supreme Court upheld a 90-day suspension imposed on attorney Sandra L. Ferguson for appearing ex parte in a contested property matter without notice, failing to disclose relevant facts, and obtaining contempt and restitution relief through misrepresentations. The court concluded that substantial evidence supported the disciplinary findings and that the sanction and reduced cost assessment were appropriate.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Madsen, C.J.; Charles W. Johnson, J.; Tom Chambers, J.; Susan Owens, J.; Mary E. Fairhurst, J.; Debra L. Stephens, J.; Richard B. Sanders, Justice Pro Tem
JURISDICTION	Washington
DECIDED	February 3, 2011
DOCKET	No. 200,719-8
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ferguson appealed the Washington State Bar Association Disciplinary Board's decision adopting findings of professional misconduct and recommending a 90-day suspension. The Washington State Bar Association separately sought review of the Disciplinary Board Chair's reduced assessment of costs.
STANDARD OF REVIEW	The court reviews factual findings for substantial evidence, gives considerable weight to the hearing officer's findings, particularly credibility determinations, and reviews conclusions of law de novo. It gives great deference to the Board's recommended sanction but retains ultimate authority over the sanction. Cost assessments are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Washington
PARTIES	Sandra L. Ferguson v. Washington State Bar Association

TOPICS

contempt injunctions civil procedure costs bankruptcy

PRACTICE AREAS

legal ethics and attorney discipline professional responsibility civil procedure injunctive relief contempt

QUESTIONS PRESENTED

1. Whether substantial evidence supported the hearing officer's and Disciplinary Board's findings that Ferguson knowingly violated notice and ex parte requirements, failed to disclose relevant facts, and engaged in deception or misrepresentation.
2. Whether the ex parte order was a temporary restraining order under CR 65(b), permitting relief without notice, or instead preliminary injunctive, contempt, and CR 60 relief requiring notice and a hearing.
3. Whether a 90-day suspension was an appropriate sanction for Ferguson's misconduct.
4. Whether the Disciplinary Board Chair abused his discretion by reducing the costs assessed against Ferguson and declining to reconsider the cost order.

HOLDINGS

1. Substantial evidence supported the Board's findings of fact, and those findings supported its conclusions that Ferguson committed all three charged violations.
2. The order was not a valid temporary restraining order under CR 65(b); it was preliminary injunctive and contempt-related relief that required notice and a hearing.
3. The Board's recommended 90-day suspension and reprimand were appropriate and were adopted by the court.
4. The Disciplinary Board Chair did not abuse his discretion by reducing the cost assessment based on the interests of justice or by declining to reconsider the order.

KEY QUOTATIONS

"We hold that substantial evidence in the record supports the Board's findings of fact, which in turn support its conclusions of law. We also hold that the Board's recommended 90 day suspension is an appropriate sanction. Finally, we hold that the Board Chair's reduced assessment of costs was not an abuse of discretion." (246 P.3d at 1239)

"The hearing officer correctly concluded that the order was not a TRO under CR 65(b) but rather a preliminary injunction and that as a matter of law, the relief granted in the order required notice and a hearing." (246 P.3d at 1247)

"We affirm the order of the Board suspending Sandra Ferguson for 90 days. In addition, the Chair's assessment of reduced costs appropriately considered the interests of justice and was not an abuse of discretion." (246 P.3d at 1254)

FACTUAL BACKGROUND

Ferguson represented family members in a contested dispute involving possession of a house and related real-estate agreements. Without notifying opposing counsel, she appeared ex parte and obtained an order holding the opposing parties in contempt and granting her clients possession through a writ of restitution. She failed to disclose relevant facts, including information concerning mortgage-payment processing and the clients' intent to file bankruptcy, and made false or misleading statements to the court. The opposing parties subsequently filed bankruptcy, and the parties ultimately settled their property claims.

PROCEDURAL HISTORY

A hearing officer found that Ferguson violated the Rules of Professional Conduct by appearing ex parte without notice, failing to disclose relevant facts, and obtaining relief through deception or misrepresentation, recommending a 30-day suspension. The Disciplinary Board adopted most findings and conclusions and increased the recommended suspension to 90 days. The Supreme Court reviewed Ferguson's disciplinary appeal and the Washington State Bar Association's challenge to the Chair's cost assessment, affirming both the suspension and reduced costs.

DISPOSITION

affirmed

CASES CITED

- In re Disciplinary Proceeding Against Botimer, 166 Wash. 2d 759, 214 P.3d 133 (2009)
- In re Disciplinary Proceedings Against Bonet, 144 Wash. 2d 502, 29 P.3d 1242 (2001)
- In re Disciplinary Proceeding Against VanDerbeek, 153 Wash. 2d 64, 101 P.3d 88 (2004)
- In re Disciplinary Proceedings Against Huddleston, 137 Wash. 2d 560, 974 P.2d 325 (1999)
- In re Disciplinary Proceeding Against Guarnero, 152 Wash. 2d 51, 93 P.3d 166 (2004)
- In re Disciplinary Proceeding Against Cramer, 168 Wash. 2d 220, 225 P.3d 881 (2010)
- In re Disciplinary Proceeding Against Whitt, 149 Wash. 2d 707, 72 P.3d 173 (2003)
- In re Disciplinary Proceeding Against Hicks, 166 Wash. 2d 774, 214 P.3d 897 (2009)
- In re Disciplinary Proceeding Against Schwimmer, 153 Wash. 2d 752, 108 P.3d 761 (2005)
- In re Disciplinary Proceeding Against Behrman, 165 Wash. 2d 414, 197 P.3d 1177 (2008)
- In re Disciplinary Proceeding Against Eugster, 166 Wash. 2d 293, 209 P.3d 435 (2009)
- In re Disciplinary Proceeding Against Lopez, 153 Wash. 2d 570, 106 P.3d 221 (2005)
- In re Disciplinary Proceeding Against Longacre, 155 Wash. 2d 723, 122 P.3d 710 (2005)
- In re Disciplinary Proceeding Against Day, 162 Wash. 2d 527, 173 P.3d 915 (2007)
- In re Disciplinary Proceeding Against Marshall, 167 Wash. 2d 51, 217 P.3d 291 (2009)
- In re Disciplinary Proceeding Against Holcomb, 162 Wash. 2d 563, 173 P.3d 898 (2007)
- In re Disciplinary Proceeding Against Kronenberg, 155 Wash. 2d 184, 117 P.3d 1134 (2005)
- In re Disciplinary Proceeding Against Dynan, 152 Wash. 2d 601, 98 P.3d 444 (2004)
- Greenbaum v. State Bar, 15 Cal. 3d 893, 544 P.2d 921, 126 Cal. Rptr. 785 (1976)

- Stanley v. Bd. of Pro. Responsibility, 640 S.W.2d 210 (Tenn. 1982)
- In re Disciplinary Proceeding Against Carmick, 146 Wash. 2d 582, 48 P.3d 311 (2002)
- In re Disciplinary Proceeding Against Sanai, 167 Wash. 2d 740, 225 P.3d 203 (2009)
- Rettkowski v. Dep't of Ecology, 128 Wash. 2d 508, 910 P.2d 462 (1996)
- In re Disciplinary Proceeding Against Kennedy, 80 Wash. 2d 222, 492 P.2d 1364 (1972)
- In re Disciplinary Proceeding Against Noble, 100 Wash. 2d 88, 667 P.2d 608 (1983)

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