

SUPREME COURT OF OKLAHOMA

STATE ex rel. OKLAHOMA BAR ASSOCIATION v. WINTORY

2015 OK 25 (Okla. 2015) · No. 6119 · Decided April 28, 2015

SUMMARY

The Oklahoma Supreme Court, on rehearing, imposed reciprocal discipline on Richard M. Wintory based on his 90-day suspension in Arizona. The court found that Wintory repeatedly failed to disclose the full extent of his communications with a confidential intermediary in a capital murder case and misled defense counsel, co-counsel, the trial court, and the Arizona Attorney General's Office. The court suspended him from practicing law in Oklahoma for two years and one day.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Combs, V.C.J.; Reif, C.J.; Kauger, J.; Watt, J.; Taylor, J.
JURISDICTION	Oklahoma
DECIDED	April 28, 2015
DOCKET	6119
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding for attorney discipline under Oklahoma's reciprocal-discipline rule. On rehearing, the Oklahoma Supreme Court reviewed Respondent's Arizona suspension and the parties' submissions de novo after withdrawing its prior disciplinary opinion and ordering Respondent to show cause.
STANDARD OF REVIEW	De novo review
PRECEDENTIAL VALUE	precedential
PARTIES	State of Oklahoma ex rel. Oklahoma Bar Association v. Richard M. Wintory

TOPICS

appellate procedure due process constitutional law

PRACTICE AREAS

legal ethics professional responsibility attorney discipline appellate procedure constitutional law

QUESTIONS PRESENTED

1. Whether the Oklahoma Supreme Court had original and exclusive jurisdiction to impose reciprocal discipline on an Oklahoma-licensed attorney disciplined in another jurisdiction.
2. Whether the Arizona disciplinary materials constituted prima facie evidence of the misconduct and whether Wintory could relitigate the underlying facts under Rule 7.7.
3. What discipline was appropriate in Oklahoma for Wintory's misconduct, including whether the circumstances warranted discipline greater than the ninety-day Arizona suspension.

HOLDINGS

1. The Oklahoma Supreme Court has a nondelegable constitutional responsibility to regulate the practice of law and exercises exclusive original jurisdiction over attorney-discipline proceedings.
2. Documents imposing discipline in another jurisdiction and transmitted under Rule 7.7 constitute the charge and prima facie evidence that the respondent committed the described acts.
3. Under Rule 7.7, a respondent may not relitigate the facts underlying a foreign disciplinary adjudication; any challenge to the foreign fact-finding is limited to evidence contained in a certified transcript from that proceeding.
4. The Court may impose discipline equal to, greater than, or less than the discipline imposed by the foreign jurisdiction, and Wintory's repeated lack of candor and misleading filings warranted suspension from Oklahoma practice for two years and one day.

KEY QUOTATIONS

“The Supreme Court of Oklahoma possesses a nondelegable, constitutional responsibility to regulate the practice of law and the licensure, ethics, and discipline of legal practitioners in this state.” (¶ 14)

“Accordingly, the facts that resulted in the imposition of discipline by the other jurisdiction cannot be relitigated, but only reviewed in the context of the evidence previously presented in the other jurisdiction.” (¶ 18)

“Respondent did not tell the court the whole truth.” (¶ 30)

FACTUAL BACKGROUND

While serving as a prosecutor in an Arizona murder-for-hire case, Wintory contacted a confidential intermediary appointed to assist the defense in locating the defendant's biological mother for mitigation evidence. He had multiple conversations with the intermediary but repeatedly failed to disclose the full number and circumstances of those contacts to defense counsel, the trial court, his co-counsel, and the Arizona Attorney General's Office. He signed filings that did not provide a complete account, and phone records later revealed additional communications. The Arizona matter resulted in a ninety-day suspension by consent, and the Oklahoma court treated the resulting misconduct as prejudicial to the administration of justice.

PROCEDURAL HISTORY

The Arizona disciplinary authorities suspended Wintory for ninety days based on an agreement for discipline by consent arising from misconduct while prosecuting a capital murder case. The Oklahoma Bar Association transmitted the Arizona disciplinary materials under Rule 7.7. The Oklahoma Supreme Court initially imposed a two-year-and-one-day suspension, granted Wintory's petition for rehearing based on a due-process objection, withdrew the prior opinion, ordered a show-cause response, and after considering the parties' briefs and evidence again imposed the same suspension.

DISPOSITION

other

CASES CITED

- State ex rel. Okla. Bar Ass'n v. Wilcox, 2014 OK 1, 318 P.3d 1114
- State ex rel. Okla. Bar Ass'n v. McArthur, 2013 OK 73, 318 P.3d 1095
- State ex rel. Okla. Bar Ass'n v. Farrant, 1994 OK 13, 867 P.2d 1279
- State ex rel. Okla. Bar Ass'n v. Garrett, 2005 OK 91, 127 P.3d 600
- State ex rel. Okla. Bar Ass'n v. Raskin, 1982 OK 39, 642 P.2d 262
- State ex rel. Okla. Bar Ass'n v. Layton, 2014 OK 21, 324 P.3d 1244
- State ex rel. Okla. Bar Ass'n v. Knight, 2014 OK 71, 330 P.3d 1216
- State ex rel. Okla. Bar Ass'n v. Kleinsmith, 2013 OK 16, 297 P.3d 1248
- State ex rel. Okla. Bar Ass'n v. Patterson, 2001 OK 51, 28 P.3d 551
- State ex rel. Okla. Bar Ass'n v. Heinen, 2002 OK 81, 60 P.3d 1018
- State ex rel. Okla. Bar Ass'n v. Rymer, 2008 OK 50, 187 P.3d 725
- State ex rel. Okla. Bar Ass'n v. Henderson, 1999 OK 29, 977 P.2d 1096
- State ex rel. Okla. Bar Ass'n v. Pacenza, 2006 OK 23, 136 P.3d 616
- State ex rel. Okla. Bar Ass'n v. Stewart, 2003 OK 13, 71 P.3d 1
- In the Matter of the Reinstatement of Page, 2004 OK 49, 94 P.3d 80
- State ex rel. Okla. Bar Ass'n v. Moon, 2012 OK 77, 295 P.3d 1
- State ex rel. Okla. Bar Ass'n v. Doris, 1999 OK 94, 991 P.2d 1015
- State ex rel. Okla. Bar Ass'n v. Gassaway, 2008 OK 60, 196 P.3d 495
- State ex rel. Okla. Bar Ass'n v. Johnston, 1993 OK 91, 863 P.2d 1136
- State ex rel. Okla. Bar Ass'n v. Askins, 1993 OK 78, 882 P.2d 1054
- State ex rel. Okla. Bar Ass'n v. Downing, 1993 OK 44, 863 P.2d 1111
- State ex rel. Okla. Bar Ass'n v. Herlihy, 1991 OK 123, 827 P.2d 164
- State ex rel. Okla. Bar Ass'n v. Stubblefield, 1988 OK 141, 766 P.2d 979
- State ex rel. Okla. Bar Ass'n v. Moore, 1987 OK 21, 741 P.2d 445
- State ex rel. Okla. Bar Ass'n v. Moss, 1983 OK 104, 682 P.2d 205
- State ex rel. Okla. Bar Ass'n v. Hensley, 1983 OK 32, 661 P.2d 527

- State ex rel. Okla. Bar Ass'n v. Peveto, 1980 OK 182, 620 P.2d 392
- Mitchell v. Oklahoma, 2006 OK CR 20, ¶ 103, 136 P.3d 671
- Stouffer v. State, 2006 OK CR 46, 147 P.3d 245

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