

NEBRASKA SUPREME COURT

State ex rel. Counsel for Discipline v. Swanson

267 Neb. 540 (2004) · Decided March 12, 2004

SUMMARY

The Nebraska Supreme Court reviewed disciplinary charges against Debra M. Swanson involving mishandling client funds, failure to refund unearned fees, misrepresentations, refusal to comply with discovery obligations, and a sexual relationship with a client. Applying a clear-and-convincing-evidence standard and conducting a trial de novo on the record, the court upheld the violations and ordered Swanson disbarred effective immediately.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Per Curiam; Connolly; Gerrard; Hendry; Lerman; McCormack; Miller; Stephan; Wright
JURISDICTION	Nebraska
DECIDED	March 12, 2004
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which the referee recommended disbarment. Swanson filed exceptions challenging the sufficiency of the evidence and the severity of the recommended sanction.
STANDARD OF REVIEW	Attorney-discipline proceedings are tried de novo on the record. The Nebraska Supreme Court reaches an independent conclusion, but may give weight to the referee's factual determinations when credible evidence conflicts on a material issue. Disciplinary charges must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.
PARTIES	State ex rel. Counsel for Discipline v. Debra M. Swanson

TOPICS

appellate procedure

standard of review

remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that Swanson violated the Nebraska attorney disciplinary rules and her oath of office in counts I, II, III, and VII.
2. Whether disbarment was an appropriate sanction in light of Swanson's cumulative misconduct, dishonesty, failure to pay judgments, attitude, and lack of mitigating circumstances.

HOLDINGS

1. Clear and convincing evidence established that Swanson violated DR 1-102(A)(1), DR 9-102(A), DR 9-102(B)(3), and her oath of office by failing to deposit client funds into an attorney trust account and failing to maintain contemporaneous records and render an accounting.
2. Clear and convincing evidence established that Swanson violated DR 1-102(A)(1), (5), and (6), DR 2-110(A)(3), DR 9-102(A), and her oath of office by failing to safeguard and refund a client's fee, making false billing representations, and failing to pay the resulting judgment.
3. Clear and convincing evidence established that Swanson violated DR 1-102(A)(1), DR 7-101(A)(3), and her oath of office by engaging in a sexual relationship with a client while representing him in a dissolution action involving child-custody issues.
4. Clear and convincing evidence established that Swanson violated DR 1-102(A)(1), (5), and (6), DR 9-102(B)(4), and her oath of office by refusing to answer deposition questions in violation of a court order, failing to refund an advance fee, and failing to pay the resulting judgment and sanction.
5. Disbarment was the appropriate sanction for Swanson's cumulative misconduct.

KEY QUOTATIONS

“A proceeding to discipline an attorney is a trial de novo on the record, in which the Nebraska Supreme Court reaches a conclusion independent of the findings of the referee” (549)

“When this court considers the cumulative nature of Swanson’s actions, the need to protect the public, the need to deter others from similar conduct, the reputation of the bar as a whole, Swanson’s fitness to practice law, and the lack of mitigating circumstances, we conclude that disbarment is the appropriate sanction.” (552)

FACTUAL BACKGROUND

Swanson mishandled client funds by failing to deposit them into an attorney trust account, failing to maintain required records, and failing to refund unearned fees. She retained a client's \$500 fee despite doing no work, refused to pay a resulting judgment, and prepared an inaccurate billing statement after the grievance was filed. She also engaged in a sexual relationship with a client during representation and retained much of another client's \$9,865 advance fee, failed to provide a credible accounting, disobeyed deposition-related court orders, and failed to pay resulting judgments and sanctions.

PROCEDURAL HISTORY

The Counsel for Discipline filed seven counts of formal charges against Swanson. After an evidentiary hearing, the referee found clear and convincing evidence supporting violations on counts I, II, III, and VII and recommended disbarment; counts IV, V, and VI were dismissed or unsupported. The Nebraska Supreme Court reviewed the matter de novo on the record and independently determined the appropriate discipline.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Achola, 266 Neb. 808, 669 N.W.2d 649 (2003)
- State ex rel. Special Counsel for Dis. v. Shapiro, 266 Neb. 328, 665 N.W.2d 615 (2003)
- State ex rel. Counsel for Dis. v. James, ante p. 186, 673 N.W.2d 214 (2004)
- State ex rel. Counsel for Dis. v. Mills, ante p. 57, 671 N.W.2d 765 (2003)
- State ex rel. Counsel for Dis. v. Cannon, 266 Neb. 507, 666 N.W.2d 734 (2003)