

SUPREME COURT OF NORTH DAKOTA

Disciplinary Board of the Supreme Court of North Dakota v.
Peterson

2004 ND 101 (2004) · No. 20040134 · Decided May 28, 2004

SUMMARY

The North Dakota Supreme Court considered an application for interim suspension of attorney Donald L. Peterson based on allegations including forged documents, false notarization, misrepresentation, and filing purported court documents. The court found sufficient evidence of misconduct and a substantial threat of irreparable harm to the public, and ordered Peterson's law license suspended immediately pending disposition of formal disciplinary proceedings.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Per Curiam; Gerald W. VandeWalle, C.J.; Carol Ronning Kapsner; Dale V. Sandstrom; William A. Neumann; Mary Muehlen Maring
JURISDICTION	North Dakota
DECIDED	May 28, 2004
DOCKET	20040134
DISPOSITION	other
PROCEDURAL POSTURE	The Disciplinary Board sought an interim suspension of Peterson's license to practice law pending disposition of formal disciplinary proceedings. After Peterson requested and received an opportunity to be heard, the Supreme Court considered affidavits and other supporting materials.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion
PARTIES	Disciplinary Board of the Supreme Court of North Dakota v. Donald L. Peterson

TOPICS

- sanctions
- administrative law
- remedies
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the evidence established misconduct sufficient to warrant an interim suspension under N.D.R. Lawyer Discipl. 3.4(B).
2. Whether Peterson posed a substantial threat of irreparable harm to the public justifying immediate suspension pending disposition of the formal disciplinary proceedings.

HOLDINGS

1. An interim suspension was warranted because sufficient evidence demonstrated attorney misconduct and a substantial threat of irreparable harm to the public.

KEY QUOTATIONS

“Donald L. Peterson's license to practice law in the State of North Dakota is SUSPENDED effective immediately and until disposition by this Court of the pending formal proceedings upon which this Application is predicated.” (¶8)

FACTUAL BACKGROUND

The disciplinary application alleged that Peterson forged a client's signature on an affidavit, notarized the false signature, and submitted the document to the Ward County Clerk of Court. It also alleged that he prepared a purported order bearing a judge's forged signature and provided a client with a purported medical-malpractice complaint that had never been filed. Formal proceedings concerning some of the allegations had been heard by a Hearing Panel, but the panel had not yet filed its findings, conclusions, and recommendation.

PROCEDURAL HISTORY

Formal disciplinary proceedings were pending before a Hearing Panel concerning allegations that Peterson forged or falsified documents and misrepresented filings to a court and a client. The Disciplinary Board filed an application for interim suspension on May 13, 2004, supplemented by an affidavit on May 24. Peterson filed opposing affidavits and was heard on May 27, 2004. The Supreme Court ordered an immediate interim suspension pending disposition of the formal proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The Hearing Panel was directed to proceed expeditiously with the formal proceedings already heard. Disciplinary Counsel was directed to promptly apply to the district court for appointment of a professional trustee, and Peterson was ordered to comply with N.D.R. Lawyer Discipl. 6.3.

OPINION

PER CURIAM.

2004 ND 101 In the Matter of the Application for Disciplinary Action Against Donald J. Peterson, a Member of the Bar of the State of North Dakota. Disciplinary Board of the Supreme Court of North Dakota, Petitioner v. Donald L. Peterson, Respondent. No. 20040134 Supreme Court of North Dakota. Decided May 28, 2004 Per Curiam. [¶1] On May 13, 2004, an Application with attached exhibits seeking the Interim Suspension of Donald L. Peterson, a member of the Bar of North Dakota, was filed under N.D.R.

Lawyer Discipl. 3.4 by Paul W. Jacobson, Disciplinary Counsel for the Disciplinary Board of the Supreme Court, asserting Peterson has committed misconduct and that he poses a substantial threat of irreparable harm to the public.

On May 24, 2004, Jacobson also filed an Affidavit with attachments of Linda B. Reed in support of the Application for Interim Suspension. On May 24, 2004, Peterson filed his Affidavit along with the Affidavits of L. Mark Bell and Laura Larson resisting the Application for Interim Suspension. [¶2] The evidence implicates N.D.R. Prof. Conduct 1.4, Communication, which provides that a lawyer shall make reasonable efforts to keep a client reasonably informed about the status of a matter, promptly comply with a client's reasonable requests for information, and explain matters related to the representation to the extent reasonably necessary to permit the client to make informed decisions; N.D.R.

Prof. Conduct 8.4, which provides it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice or engage in other conduct that is enumerated in the North Dakota Century Code as a basis for revocation or suspension of a lawyer's certificate of admission through violation of §27-13-01(1), N.D.C.C., which provides that an attorney must maintain respect for the courts and judicial officers, §27-14-02(1), N.D.C.C., which provides that an attorney's admission to the bar may be revoked or suspended when the attorney has committed an offense determined by the Supreme Court to have a direct bearing upon a person's ability to serve the public as an attorney, and §27-14-02(7), N.D.C.C., which provides that an attorney may not commit any act which brings reproach upon the legal profession; and N.D.R.

Lawyer Discipl. 1.2(A)(3), Grounds for Discipline, which provides a lawyer may be disciplined for engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. [¶3] Additionally, it is alleged Peterson forged documents, which, if proven, show a pattern of misrepresentation and deception to a client and to the court. Furthermore, N.D. Stds. Imposing Lawyer Sanctions 5.11 is implicated as it provides in part that disbarment is generally appropriate when a lawyer engages in serious conduct a necessary element of which includes false swearing or misrepresentation and when the lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously reflects on a lawyer's fitness to

practice law. [¶4] The Application further asserts that formal proceedings are pending against Peterson.

The allegations heard by the Hearing Panel involve Peterson filing documents with the Ward County Clerk of Court's office on May 16, 2003, one of which was an "Affidavit of Robert Taylor" purporting to bear the signature of Taylor.

The purported Taylor signature was noted as "Subscribed and sworn to before me this 30th day of April, 2003.", and was signed by Donald L. Peterson, Notary Public. Peterson admits in his Affidavit to the Court that Taylor did not sign the document notarized by him, rather Peterson wrote Taylor's name and notarized the false signature. Additionally, the Hearing Panel heard allegations concerning a copy of a purported Order Dismissing Complaint involving Austin Mutual Insurance Company, dated March 2, 2003, signed by Judge Gary A. Holum, bearing a number for a civil case venued in District Court, Ward County, North Dakota.

Peterson prepared the purported Order Dismissing Complaint; it was not, in fact, signed by Judge Holum, but rather the signature was either made by Peterson or at his direction. The case number on the purported Order was not for the matter involving Austin Mutual Insurance Company; such a case had not been filed with the court.

The matters were consolidated for hearing, and the findings, conclusions and recommendation of the Hearing Panel have not been filed. At the request of Peterson, the time for filing Peterson's post hearing brief was extended to May 28, 2004. [¶5] Following the granting of additional time in the pending formal proceedings, another disciplinary complaint was filed alleging that Peterson provided a client with copies of a purported complaint in a medical malpractice action filed in Ward County District Court, which, in fact, has not been filed in Ward or Williams County District Court.

The disciplinary complaint further raised questions on the veracity of an Affidavit of Service Peterson provided to his client and the evidence submitted with this complaint precipitated the filing of the Application for Interim Suspension. [¶6] On May 17, 2004, Peterson filed a request for an opportunity to be heard on the Application for Interim Suspension under N.D.R.

Lawyer Discipl. 3.4(B). The matter was heard on May 27, 2004, at 1:30 p.m. [¶7] Sufficient evidence was submitted by Disciplinary Counsel demonstrating misconduct and a substantial threat of irreparable harm to the public.

The Court considered the matter, and [¶8] ORDERED, under N.D.R. Lawyer Discipl. 3.4(B), Donald L. Peterson's license to practice law in the State of North Dakota is SUSPENDED effective immediately and until disposition by this Court of the pending formal proceedings upon which this Application is predicated.

The Hearing Panel should proceed expeditiously on the formal proceedings that have been heard. [¶9] IT IS FURTHER ORDERED that Disciplinary Counsel promptly apply to the district court for a professional trustee as provided in N.D.R. Lawyer Discipl. 6.4. [¶10] IT IS FURTHER ORDERED that Donald L. Peterson comply with N.D.R. Lawyer Discipl. 6.3. [¶11] Gerald W. VandeWalle, C.J. Carol Ronning Kapsner Dale V. Sandstrom William A. Neumann Mary Muehlen Maring