

SUPREME COURT OF KANSAS

In re Rathbun

280 Kan. 672 (2005) · Decided December 9, 2005

SUMMARY

The Kansas Supreme Court reviewed disciplinary proceedings against attorney Kiehl Rathbun for violations involving diligence, client communication, safekeeping property, frivolous claims, and cooperation with the disciplinary investigation. The court adopted the hearing panel’s findings and extended Rathbun’s existing probation for one year, subject to additional conditions.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Per Curiam; Lockett, J., Retired, assigned
JURISDICTION	Kansas
DECIDED	December 9, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding filed by the Office of the Disciplinary Administrator. Rathbun admitted the alleged facts and stipulated to the alleged violations, and filed no exceptions to the disciplinary hearing panel's report. The Kansas Supreme Court reviewed and adopted the panel's findings and recommendation.
STANDARD OF REVIEW	Misconduct charges must be established by clear and convincing evidence. When no exceptions are filed, the hearing panel's report is deemed admitted under Supreme Court Rule 212(c) and (d).
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Office of the Disciplinary Administrator v. Kiehl Rathbun

TOPICS

administrative law

PRACTICE AREAS

legal ethics attorney discipline professional responsibility

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that Rathbun violated KRPC 1.3, KRPC 1.4, KRPC 1.15, KRPC 3.1, and Supreme Court Rule 207(b).
2. Whether the hearing panel's report was deemed admitted because Rathbun filed no exceptions.
3. What discipline was appropriate in light of the established violations, aggravating and mitigating factors, and Rathbun's progress during existing probation.

HOLDINGS

1. Clear and convincing evidence established that Rathbun violated KRPC 1.3, KRPC 1.4, KRPC 1.15, KRPC 3.1, and Supreme Court Rule 207(b).
2. When a respondent files no exceptions to a disciplinary hearing panel's report, the report is deemed admitted under Supreme Court Rule 212(c) and (d).
3. The appropriate disposition was to suspend imposition of other discipline and extend Rathbun's existing probation for one year, until May 30, 2007, subject to existing and additional conditions.

KEY QUOTATIONS

“To warrant a finding of misconduct, the charges must be established by clear and convincing evidence.”
(679)

“When a respondent does not file exceptions to the hearing panel’s report, the report is deemed admitted under Rule 212(c) and (d)” (679)

FACTUAL BACKGROUND

Rathbun engaged in repeated misconduct in several client matters between 1999 and 2002, including failing to respond to a disciplinary complaint, failing to act diligently in an inmate representation and a medical-malpractice matter, failing to communicate with a client, retaining property belonging to a third person, failing to prosecute a civil action, and filing a frivolous separate-maintenance action. He admitted the alleged facts and stipulated to the violations. The hearing panel found aggravating factors including prior discipline, a pattern of misconduct, multiple offenses, and substantial experience, while also finding mitigation based on remorse, treatment for personal and emotional problems, and progress during probation.

PROCEDURAL HISTORY

The Kansas Board for Discipline of Attorneys conducted a formal hearing and found that Rathbun violated multiple Kansas Rules of Professional Conduct and Supreme Court Rule 207(b). The hearing panel recommended extending Rathbun's existing probation for one year. Because Rathbun filed no exceptions, the panel report was deemed admitted, and the Supreme Court accepted the findings, conclusions, and recommendation, subject to additional probation conditions.

DISPOSITION

other

CASES CITED

- In re Rathbun, 275 Kan. 920, 69 P.3d 537 (2003)

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