

SUPREME COURT OF NEBRASKA

State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. David C. Holcomb

290 Neb. 164 (2015) · No. No. S-14-692 · Decided February 13, 2015

SUMMARY

The Nebraska Supreme Court approved David C. Holcomb's conditional admission to allegations that he made false Internet postings accusing his uncle and cousin of crimes. The court determined that his conduct violated his attorney's oath and Nebraska Rule of Professional Conduct § 3-508.4(a) and (c), and imposed a public reprimand plus costs.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Heavican, C.J.; Wright, J.; Connolly, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.; Cassel, J.
JURISDICTION	Nebraska
DECIDED	February 13, 2015
DOCKET	No. S-14-692
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding arising from formal charges and respondent's conditional admission under Nebraska's disciplinary rules.
PRECEDENTIAL VALUE	Published precedential opinion

TOPICS

appellate procedure

PRACTICE AREAS

attorney discipline

legal ethics

professional responsibility

QUESTIONS PRESENTED

1. Whether the court should approve respondent's conditional admission under Neb. Ct. R. § 3-313.

2. Whether respondent's admitted conduct violated his oath of office as an attorney and Neb. Ct. R. of Prof. Cond. § 3-508.4(a) and (c).
3. What discipline should be imposed upon approval of the conditional admission.

HOLDINGS

1. The court approved Holcomb's conditional admission because it knowingly admitted or did not challenge the matters charged and waived further proceedings as permitted by Neb. Ct. R. § 3-313.
2. Holcomb violated his oath of office as an attorney and Neb. Ct. R. of Prof. Cond. § 3-508.4(a) and (c).
3. The appropriate discipline was a public reprimand, together with payment of costs and expenses as ordered.

KEY QUOTATIONS

“Upon due consideration, the court approves the conditional admission and enters the orders as indicated below.” (166)

“Respondent is publicly reprimanded.” (166)

FACTUAL BACKGROUND

Holcomb, a Nebraska attorney, posted on a website he owned and controlled that his uncle and cousin had committed various crimes and should be prosecuted by the International Criminal Court. The posting included their publicly recorded address and telephone number, and the formal charges alleged that the criminal allegations were false and that Holcomb knew they were false or acted in reckless disregard of the truth. Holcomb conditionally admitted violating his attorney oath and Nebraska Rule of Professional Conduct § 3-508.4(a) and (c).

PROCEDURAL HISTORY

The Counsel for Discipline filed formal charges against David C. Holcomb on July 31, 2014. Holcomb filed a conditional admission on November 13, 2014, waiving further proceedings in exchange for a public reprimand. The Nebraska Supreme Court approved the conditional admission and entered judgment of public reprimand.

DISPOSITION

other

OPINION

PER CURIAM.

Nebraska Advance Sheets 164 290 NEBRASKA REPORTS court. Therefore, the court did not err in denying postconviction relief without considering the claims raised in Thorpe's motion in opposition. VI. CONCLUSION For the foregoing reasons, we affirm the order of the district

court which denied Thorpe's amended motion for post-conviction relief without an evidentiary hearing.

Affirmed. State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court, relator, v. David C. Holcomb, respondent. ___ N.W.2d ___ Filed February 13, 2015. No. S-14-692. Original action. Judgment of public reprimand. Heavican, C.J., Wright, Connolly, Stephan, McCormack, Miller-Lerman, and Cassel, JJ. Per Curiam. INTRODUCTION This case is before the court on the conditional admission filed by David C. Holcomb, respondent, on November 13, 2014.

The court accepts respondent's conditional admission and enters an order of public reprimand. FACTS Respondent was admitted to the practice of law in the State of Nebraska on October 14, 2008. At all relevant times, he was engaged in the practice of law in Omaha, Nebraska.

On July 31, 2014, the Counsel for Discipline of the Nebraska Supreme Court filed formal charges against respondent. The formal charges consist of one count against respondent. With respect to the one count, the formal charges state that on or about November 6, 2013, respondent posted on a Web site Nebraska Advance Sheets STATE EX REL. COUNSEL FOR DIS. v. HOLCOMB 165 Cite as 290 Neb. 164 which he owned and controlled that his uncle and his cousin had committed various crimes and suggested that they should be prosecuted by the International Criminal Court.

The Web site posting called for readers to report respondent's uncle and cousin to the International Criminal Court, and the posting included respondent's uncle and cousin's publicly recorded address and telephone number.

The formal charges state that "[t]he allegations of criminal conduct by [respondent's uncle] and [respondent's cousin] stated by respondent in his Internet posting are false and respondent knew they were false when he posted them, or he posted them in reckless disregard for the truth." The formal charges allege that by his actions, respondent violated his oath of office as an attorney, Neb. Rev. Stat. § 7-104 (Reissue 2012), and Neb. Ct.

R. of Prof. Cond. § 3-508.4(a) and (c) (misconduct). On November 13, 2014, respondent filed a conditional admission pursuant to Neb. Ct. R. § 3-313 of the disciplinary rules, in which he conditionally admitted that he violated his oath of office as an attorney and conduct rule § 3-508.4(a) and (c).

In the conditional admission, respondent knowingly chose not to challenge or contest the truth of the matters conditionally admitted and waived all proceedings against him in connection therewith in exchange for a public reprimand.

The proposed conditional admission included a declaration by the Counsel for Discipline, stating that respondent's proposed discipline is appropriate and consistent with sanctions imposed in

other disciplinary cases with similar acts of misconduct. ANALYSIS Section 3-313, which is a component of our rules governing procedures regarding attorney discipline, provides in pertinent part: (B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange for a stated form of consent judgment of discipline as to all or Nebraska Advance Sheets 166 290 NEBRASKA REPORTS part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court.

The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way.

Pursuant to § 3-313, and given the conditional admission, we find that respondent knowingly does not challenge or contest the matters conditionally admitted. We further determine that by his conduct, respondent violated conduct rule § 3-508.4(a) and (c) and his oath of office as an attorney licensed to practice law in the State of Nebraska. Respondent has waived all additional proceedings against him in connection herewith.

Upon due consideration, the court approves the conditional admission and enters the orders as indicated below. CONCLUSION Respondent is publicly reprimanded. Respondent is directed to pay costs and expenses in accordance with Neb. Ct. R. §§ 3-310(P) (rev. 2014) and 3-323(B) within 60 days after the order imposing costs and expenses, if any, is entered by the court.

Judgment of public reprimand.