

SUPREME COURT OF OKLAHOMA

State ex rel. Oklahoma Bar Association v. Nichols

Nichols, 2021 OK 28 (Okla. 2021) · No. SCBD-6888 · Decided May 25, 2021

SUMMARY

The Oklahoma Supreme Court disciplined Brandon S. Nichols for failing to notify clients and withdraw from pending matters after his suspension, engaging in the unauthorized practice of law, and failing to cooperate with the Oklahoma Bar Association's investigation. The Court suspended Nichols for two years effective November 27, 2019, and ordered him to pay \$397.05 in costs.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Kane, V.C.J.; Kauger, J.; Winchester, J.; Edmondson, J.; Gurich, J.; Rowe, J.; Darby, C.J.; Combs, J.
JURISDICTION	Oklahoma
DECIDED	May 25, 2021
DOCKET	SCBD-6888
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding brought by the Oklahoma Bar Association against a suspended Oklahoma attorney. The Professional Responsibility Tribunal found multiple rule violations and recommended a one-year suspension; the Supreme Court independently reviewed the record and imposed a two-year suspension.
STANDARD OF REVIEW	The Supreme Court has exclusive original jurisdiction in attorney-discipline proceedings and reviews the evidence de novo, determining whether misconduct was proved by clear and convincing evidence. The Court independently determines the critical facts and the appropriate discipline; the Professional Responsibility Tribunal's findings and recommendation are not binding.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential
PARTIES	State of Oklahoma ex rel. Oklahoma Bar Association v. Brandon S. Nichols

TOPICS

administrative law

appellate procedure

standard of review

judicial review of agency action

PRACTICE AREAS

attorney discipline

professional responsibility

unauthorized practice of law

appellate procedure

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that Nichols engaged in the unauthorized practice of law while suspended.
2. Whether Nichols violated the duties to notify clients of his suspension and withdraw from pending representations.
3. What discipline was appropriate in light of the proven violations, prior discipline, lack of cooperation, and the purposes of attorney discipline.
4. Whether the costs of the disciplinary proceeding should be assessed against Nichols.

HOLDINGS

1. Clear and convincing evidence established that Nichols violated Rule 5.5 of the Oklahoma Rules of Professional Conduct by engaging in the unauthorized practice of law after his license was suspended.
2. Nichols violated Rule 9.1 of the Rules Governing Disciplinary Proceedings and Rule 1.16(a) of the Oklahoma Rules of Professional Conduct by failing to timely notify clients of his suspension and failing to withdraw from all pending cases.
3. Nichols violated Rules 1.16(a), 5.5, and 8.4(a) of the Oklahoma Rules of Professional Conduct and Rules 1.3 and 9.1 of the Rules Governing Disciplinary Proceedings.
4. Nichols's misconduct warranted a two-year suspension effective from the last date of his unauthorized practice of law, November 27, 2019, rather than the one-year suspension recommended by the Professional Responsibility Tribunal.
5. Nichols was required to pay \$397.05 in disciplinary proceeding costs within ninety days after the opinion became final.

KEY QUOTATIONS

“Our review of the evidence is de novo in determining if the Complainant proved its allegations of misconduct by clear and convincing evidence.” (¶ 7)

“Whether to impose discipline is a decision that rests solely with this Court, and the recommendations of the PRT are neither binding nor persuasive.” (¶ 8)

“We hold that the Respondent's misconduct warrants suspension for two years, effective from the last date of his unauthorized practice of law on November 27, 2019.” (¶ 33)

FACTUAL BACKGROUND

Nichols was suspended by the Oklahoma Supreme Court on June 10, 2019, for failing to satisfy mandatory continuing legal education requirements. He did not timely notify clients of his suspension or withdraw from all pending cases, and while suspended he sent a demand letter, spoke with a grievance complainant about the matter, and filed pleadings in three cases. He also failed to cooperate fully with the Bar's investigation, failed to answer the disciplinary complaint, and did not attend his disciplinary hearing.

PROCEDURAL HISTORY

The Oklahoma Bar Association filed a formal complaint alleging that Nichols failed to notify clients and withdraw from pending matters after his suspension and engaged in the unauthorized practice of law during the suspension. Nichols failed to answer the complaint and did not appear at the Professional Responsibility Tribunal hearing, so the allegations were deemed admitted. The Tribunal recommended a one-year suspension, but the Oklahoma Supreme Court independently determined that a two-year suspension was warranted and assessed costs.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Bar Association v. Holden, 1995 OK 25, 895 P.2d 707
- State ex rel. Oklahoma Bar Association v. Bolusky, 2001 OK 26, 23 P.3d 268
- State ex rel. Oklahoma Bar Association v. Green, 1997 OK 39, 936 P.2d 947
- State ex rel. Oklahoma Bar Association v. Eakin, 1995 OK 106, 914 P.2d 644
- State ex rel. Oklahoma Bar Association v. Schraeder, 2002 OK 51, 51 P.3d 570
- State ex rel. Oklahoma Bar Association v. Phillips, 2002 OK 86, 60 P.3d 1030
- State ex rel. Oklahoma Bar Association v. Kinsey, 2009 OK 31, 212 P.3d 1186
- State ex rel. Oklahoma Bar Association v. Townsend, 2012 OK 44, 277 P.3d 1269
- In re Reinstatement of Munson, 2010 OK 27, 236 P.3d 96
- State ex rel. Oklahoma Bar Association v. Moisant, 2019 OK 55, 457 P.3d 1040
- State ex rel. Oklahoma Bar Association v. Malloy, 2006 OK 38, 142 P.3d 383
- State ex rel. Oklahoma Bar Association v. Knight, 2015 OK 59, 359 P.3d 1122
- State ex rel. Oklahoma Bar Association v. McCoy, 2010 OK 67, 240 P.3d 675
- State ex rel. Oklahoma Bar Association v. Patterson, 2001 OK 51, 28 P.3d 551
- State ex rel. Oklahoma Bar Association v. Holden, 1996 OK 88, 925 P.2d 32