

SUPREME COURT OF OKLAHOMA

State ex rel. Oklahoma Bar Association v. Flaniken

2004 OK 6 (Okla. 2004) · No. SCBD 4722 · Decided February 3, 2004

SUMMARY

The Supreme Court of Oklahoma dismissed on the merits an attorney-discipline complaint alleging that Robert S. Flaniken charged an unreasonable contingency fee in a probate matter. The court held that the Oklahoma Bar Association failed to prove by clear and convincing evidence that the fee violated Rule 1.5(a), rejecting a hindsight-based reasonableness test for a lawfully formed contingency-fee agreement. Separate opinions addressed the application of contingency fees to routine probate services and potential will contests.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Winchester, J.; Watt, C.J.; Opala, V.C.J.; Lavender, J.; Hargrave, J.; Edmondson, J.; Hodges, J.; Kauger, J.; Boudreau, J.
JURISDICTION	Oklahoma
DECIDED	February 3, 2004
DOCKET	SCBD 4722
DISPOSITION	dismissed
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from a complaint that Respondent charged an unreasonable contingency fee in connection with probate representation.
STANDARD OF REVIEW	The Supreme Court exercises original jurisdiction in attorney disciplinary matters and independently redetermines the facts and issues presented. Disciplinary charges must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; binding majority decision on the stated attorney-discipline and contingency-fee issues.
PARTIES	State of Oklahoma, ex rel. Oklahoma Bar Association v. Robert S. Flaniken

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QUESTIONS PRESENTED

1. Whether the Oklahoma Bar Association proved by clear and convincing evidence that Respondent charged an unreasonable fee in violation of Rule 1.5(a) of the Oklahoma Rules of Professional Conduct.
2. Whether the reasonableness of a lawfully formed contingency-fee agreement should be evaluated retrospectively in hindsight based on the fact that the anticipated will contest did not occur.

HOLDINGS

1. The Oklahoma Bar Association failed to prove by clear and convincing evidence that Respondent charged an unreasonable fee under Rule 1.5(a), so the disciplinary complaint was dismissed.
2. The Court rejected the Bar Association's proposed hindsight test for determining whether a lawyer's lawfully contracted percentage fee was unreasonable merely because the anticipated will contest did not occur.

KEY QUOTATIONS

“We reject the proposed "hindsight" test of the Bar Association where a lawyer has lawfully contracted for a percentage of a client's recovery, and reject the Complainant's recommendation of discipline for the Respondent.” (85 P.3d at 827)

“COMPLAINT DISMISSED ON THE MERITS.” (85 P.3d at 827)

FACTUAL BACKGROUND

Peggy Hepler was the personal representative and sole beneficiary under the will of Dewey Lawrence Hughes, an elderly, blind, and infirm man who died unmarried and without descendants. Because relatives questioned the will and Hughes's competence, Respondent reasonably anticipated a will contest. Hepler rejected an hourly-fee arrangement and entered into a contingency-fee agreement under which Respondent received one-third of the inherited liquid assets, even though no will contest occurred; the probate court separately approved fees for Respondent's personal-representative services.

PROCEDURAL HISTORY

The Professional Responsibility Tribunal held a hearing on April 24, 2003, and concluded that the Oklahoma Bar Association failed to meet its burden of proof. The tribunal recommended that the complaint be dismissed. The Supreme Court of Oklahoma exercised original jurisdiction, independently evaluated the matter, and dismissed the complaint on the merits.

DISPOSITION

dismissed

CASES CITED

- Matter of Page, 1993 OK 165, ¶ 3, 866 P.2d 1207, 1209
- Oklahoma Turnpike Authority v. New Life Pentecostal Church of Jenks, 1994 OK 9, ¶ 13 n.17, 870 P.2d 762, 766 n.17
- State ex rel. Oklahoma Bar Ass'n v. Eakin, 1995 OK 106, ¶ 16, 914 P.2d 644, 650
- Tibbets & Pleasant v. Martin, 1925 OK 142, ¶ 5, 233 P. 698, 699
- Abel v. Tisdale, 1980 OK 161, ¶ 16, 619 P.2d 608, 611
- Sneed v. Sneed, 1984 OK 22, 681 P.2d 754
- State ex rel. Burk v. City of Oklahoma City, 1979 OK 115, 598 P.2d 659
- Oliver's Sports Center, Inc. v. National Standard Ins. Co., 1980 OK 120, ¶ 7, 615 P.2d 291, 294
- Southard v. MacDonald, 1961 OK 72, 360 P.2d 940, 944
- Committee on Legal Ethics v. Tatterson, 177 W. Va. 356, 352 S.E.2d 107, 114 (1986)
- In re Gerard, 132 Ill. 2d 507, 139 Ill. Dec. 495, 548 N.E.2d 1051, 1056 (1989)
- Pocius v. Halvorsen, 30 Ill. 2d 73, 195 N.E.2d 137, 139 (1963)
- Fletcher v. Fletcher, 227 Ill. App. 3d 194, 169 Ill. Dec. 211, 591 N.E.2d 91, 95 (1992)
- State ex rel. Oklahoma Bar Association v. Hatcher, 1969 OK 42, 452 P.2d 150, 153
- State ex rel. Oklahoma Bar Association v. Cantrell, 1987 OK 17, 734 P.2d 1292, 1292
- State ex rel. Oklahoma Bar Association v. Miskovsky, 1997 OK 55, 938 P.2d 744, 747
- The Florida Bar v. Moriber, 314 So. 2d 145, 148 (Fla. 1975)
- In matter of Greer, 61 Wash. 2d 741, 380 P.2d 482, 486 (1963)

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