SUPREME COURT OF KANSAS

In re Collins

295 Kan. 1084 (2012) · Decided November 30, 2012

SUMMARY

The Kansas Supreme Court reviews a disciplinary proceeding involving attorney Craig E. Collins. The court addresses violations arising from overdrafts and misuse of an attorney trust account, failure to cooperate with the disciplinary investigation, and prolonged failure to prepare clients' federal and state tax returns. The opinion discusses the clear-and-convincing-evidence standard and the applicable Kansas professional-conduct rules.

CASE DETAILS

COURT	Supreme Court of Kansas
JURISDICTION	Kansas
DECIDED	November 30, 2012
DISPOSITION	other
PROCEDURAL POSTURE	Contested original attorney-discipline proceeding brought by the Office of the Disciplinary Administrator. After a hearing, the Kansas Board for Discipline of Attorneys found multiple violations and recommended a one-year suspension with a reinstatement hearing; the Kansas Supreme Court reviewed the panel's findings, conclusions, and recommended sanction.
STANDARD OF REVIEW	The Supreme Court independently determines whether violations of the Kansas Rules of Professional Conduct exist and what discipline should be imposed. Attorney misconduct must be established by clear and convincing evidence. In assessing that evidence, the court does not weigh conflicting evidence, assess witness credibility, or redetermine factual questions. Interpretation of the Kansas Rules of Professional Conduct is reviewed without deference.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.
PARTIES	Office of the Disciplinary Administrator v. Craig E. Collins

TOPICS

administrative law · tax · tax collection · tax refunds

PRACTICE AREAS

legal ethics and professional responsibility · attorney discipline · administrative law · tax law

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that Collins violated KRPC 1.15 by depositing personal funds into his attorney trust account.
2. Whether Collins's failure to respond promptly to the Disciplinary Administrator's requests violated KRPC 8.1(b) and Supreme Court Rule 207(b), independently of any trust-account violation.
3. Whether clear and convincing evidence established that Collins violated KRPC 1.3 and 8.4(g) by failing to prepare the Hanes clients' tax returns diligently and promptly.
4. What disciplinary sanction was appropriate for the proven violations.

HOLDINGS

1. KRPC 1.15(d)(1) prohibits depositing personal funds into a client trust account regardless of whether client funds are also present, subject only to the rule's stated exceptions. Collins violated KRPC 1.15(a) and (d)(1) by keeping and using personal funds in his attorney trust account.
2. An attorney's duty to cooperate with disciplinary authorities under KRPC 8.1(b) and Supreme Court Rule 207(b) is a separate, independent duty and does not depend on proof of an underlying KRPC 1.15 violation. Collins violated both provisions by failing to timely respond to the Disciplinary Administrator's requests.
3. Collins violated KRPC 1.3 and 8.4(g) by failing for years to prepare and file the Hanes clients' federal and state income tax returns despite having sufficient information, thereby failing to act with reasonable diligence and engaging in conduct adversely reflecting on his fitness to practice law.
4. A one-year suspension from the practice of law is appropriate for Collins's pattern of neglect, failure to perform legal services causing client injury, misuse of a client trust account, and failure to cooperate with the disciplinary investigation. Reinstatement requires compliance with Supreme Court Rule 218 and a hearing under Rule 219.

KEY QUOTATIONS

> *"KRPC 1.15(d)(1) prohibits the placing of personal funds in a client trust account, whether commingled or not."* (295 Kan. at 1094)

> *"But an attorney's failure to cooperate under KRPC 8.1(b) is not dependent on an underlying violation of KRPC 1.15. The duty to cooperate is a separate independent duty."* (295 Kan. at 1094-95)

> *"We hold a 1-year suspension is the appropriate discipline given the nature of respondent's offenses, as well as the undisputed findings that respondent failed to perform services for his clients and misused his client trust account."* (295 Kan. at 1096)

FACTUAL BACKGROUND

Collins maintained an attorney trust account that was overdrafted six times, including for personal expenses such as attorney registration and continuing legal education fees, and he failed to timely respond to repeated requests from the Disciplinary Administrator for explanations. He also represented Pete and Paula Hanes but failed for years to complete their federal and state income tax returns despite receiving the necessary information, contributing to tax-related collection activity, seizure of property, and lost refunds. The hearing panel found that Collins knowingly violated multiple professional duties and caused actual financial injury to the clients and injury to the legal profession.

PROCEDURAL HISTORY

The Disciplinary Administrator filed a formal complaint on December 8, 2011. A hearing panel conducted a hearing on January 25, 2012, involving trust-account overdrafts, failure to cooperate with the disciplinary investigation, and failure to prepare clients' tax returns. The panel found violations of KRPC 1.3, 1.15(a) and (d)(1), 8.1(b), 8.4(g), and Supreme Court Rule 207(b), and recommended a one-year suspension followed by a Rule 219 reinstatement hearing. The Supreme Court rejected Collins's exceptions, adopted the panel's conclusions, and imposed the recommended discipline.

DISPOSITION

other

CASES CITED

- In re Patterson, 289 Kan. 131, 133-34, 209 P.3d 692 (2009)
- In re Dennis, 286 Kan. 708, 725, 188 P.3d 1 (2008)
- In re Lober, 288 Kan. 498, 505, 204 P.3d 610 (2009)
- In re B.D.Y., 286 Kan. 686, 699, 187 P.3d 594 (2008)
- In re Bryan, 275 Kan. 202, 211, 61 P.3d 641 (2003)
- In re Lober, 276 Kan. 633, 636-37, 78 P.3d 442 (2003)
- In re Wiles, 289 Kan. 201, 203, 210 P.3d 613 (2009)