

SUPREME COURT OF WASHINGTON

In re the Disciplinary Proceeding Against Preszler, 169 Wash. 2d 1

232 P.3d 305 (2010) · Decided June 17, 2010

SUMMARY

The Washington Supreme Court reviews the disciplinary sanction imposed on Terry J. Preszler for charging an unreasonable fee, providing mistaken legal advice, filing inaccurate documents, failing to supervise a paralegal, and disbursing bankruptcy-related settlement proceeds without prior court approval. The court holds that a single act may constitute conduct prejudicial to the administration of justice under former RPC 8.4(d), assumes without deciding that two counts should merge, and imposes the recommended three-year suspension.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Fairhurst, J.; Fairhurst; Madsen; Johnson; Alexander; Owens; Stephens
JURISDICTION	Washington
DECIDED	June 17, 2010
DISPOSITION	other
PROCEDURAL POSTURE	Preszler sought review of the Washington State Bar Association Disciplinary Board's recommendation that he be suspended from the practice of law for three years.
STANDARD OF REVIEW	The court reviewed the legal question concerning former RPC 8.4(d) de novo. It treated uncontested disciplinary findings as verities on appeal and gave great weight to the hearing officer's mental-state findings, deferring to them unless unsupported by substantial evidence. The court independently determined the appropriate discipline while considering proportionality and the Board's recommendation.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Terry J. Preszler v. Washington State Bar Association

TOPICS

bankruptcy

chapter 13

appellate procedure

standard of review

PRACTICE AREAS

legal ethics and attorney discipline

bankruptcy

professional responsibility

QUESTIONS PRESENTED

1. Whether a single act of impropriety in failing to follow a bankruptcy court rule can constitute conduct prejudicial to the administration of justice under former RPC 8.4(d).
2. Whether disciplinary counts based on Preszler's disbursement of personal-injury proceeds should merge.
3. Whether the Disciplinary Board properly applied the lawyer-sanction analysis and recommended a three-year suspension rather than a different sanction.

HOLDINGS

1. A single act of impropriety can constitute conduct prejudicial to the administration of justice under former RPC 8.4(d); a pattern of misconduct is not required.
2. The court assumed without deciding that counts 14 and 15 should merge because the merger question did not affect the final sanction.
3. The presumptive sanction for the unreasonable-fee violation was suspension because Preszler acted knowingly and caused ordinary actual or potential injury. The presumptive sanction for the bankruptcy-rule violations was disbarment because he knowingly violated court rules with intent to obtain a benefit and caused serious actual or potential injury.
4. Preszler was not entitled to mitigation for restitution, ordinary cooperation, or delay, and he failed to show that the three-year suspension was disproportionate. The court adopted the Board's recommended three-year suspension.

KEY QUOTATIONS

“Guided by these cases and our amendment in Carmick, we conclude a single act of impropriety can violate former RPC 8.4(d).” (169 Wash. 2d at 16-17)

“The knowledge element relates to the attorney’s underlying conduct, not to the legal conclusion that the conduct is an ethical violation.” (169 Wash. 2d at 22)

“Restitution is not in good faith when the lawyer’s ethical misconduct was knowing and yet the lawyer pays restitution only when a client demands it.” (169 Wash. 2d at 29)

“This mitigating factor applies only “in situations where an attorney goes above and beyond the compliance required in a disciplinary investigation or proceeding.”” (169 Wash. 2d at 32)

FACTUAL BACKGROUND

Preszler represented the Gerrards in a chapter 13 bankruptcy and became involved in settling Kinnie Gerrard's prebankruptcy personal-injury claim. Although the claim had effectively settled before the contingency-fee agreement was signed, Preszler claimed a one-third fee, prepared or signed bankruptcy documents containing inaccurate or incomplete information, and disbursed \$10,323 to himself without first obtaining the bankruptcy

court's approval. After another attorney demanded repayment, Preszler reimbursed the trust account and obtained a release from the Gerrards.

PROCEDURAL HISTORY

The WSBA filed an amended disciplinary complaint charging Preszler with 17 counts. After the first hearing officer's decision was remanded for a new hearing because the officer had considered personal knowledge and evidence outside the record, a second hearing officer found violations of five sets of professional-conduct rules. The Disciplinary Board recommended a three-year suspension by a 9-to-2 vote, and Preszler petitioned the Washington Supreme Court for review. The court rejected most of his arguments and imposed the Board's recommended sanction.

DISPOSITION

other

CASES CITED

- In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 329, 342, 346, 349, 157 P.3d 859 (2007)
- In re Disciplinary Proceeding Against Longacre, 155 Wn.2d 723, 735, 744, 122 P.3d 710 (2005)
- In re Disciplinary Proceeding Against Carmick, 146 Wn.2d 582, 597, 606, 48 P.3d 311 (2002)
- In re Disciplinary Proceeding Against Kuvara, 149 Wn.2d 237, 256, 259, 66 P.3d 1057 (2003)
- In re Disciplinary Proceeding Against Bonet, 144 Wn.2d 502, 514, 29 P.3d 1242 (2001)
- In re Disciplinary Proceeding Against Anschell, 141 Wn.2d 593, 611, 9 P.3d 193 (2000)
- In re Disciplinary Proceeding Against Stansfield, 164 Wn.2d 108, 127, 187 P.3d 254 (2008)
- In re Disciplinary Proceeding Against Egger, 152 Wn.2d 393, 407, 416, 98 P.3d 477 (2004)
- In re Disciplinary Proceeding Against Brothers, 149 Wn.2d 575, 579-81, 585, 70 P.3d 940 (2003)
- In re Disciplinary Proceeding Against Schwimmer, 153 Wn.2d 752, 756, 758-65, 108 P.3d 761 (2005)
- In re Disciplinary Proceeding Against Trejo, 163 Wn.2d 701, 732-34, 185 P.3d 1160 (2008)
- In re Disciplinary Proceeding Against Cramer, 168 Wn.2d 220, 239, 225 P.3d 881 (2010)
- In re Disciplinary Proceeding Against Dynan, 152 Wn.2d 601, 622, 625, 98 P.3d 444 (2004)
- In re Disciplinary Proceeding Against Johnson, 114 Wn.2d 737, 747, 790 P.2d 1227 (1990)
- In re Disciplinary Proceeding Against Kronenberg, 155 Wn.2d 184, 196-97, 117 P.3d 1134 (2005)
- In re Disciplinary Proceeding Against Anschell, 149 Wn.2d 484, 515, 519, 69 P.3d 844 (2003)
- In re Disciplinary Proceeding Against Cohen, 149 Wn.2d 323, 327-29, 338, 341, 67 P.3d 1086 (2003)
- In re Disciplinary Proceeding Against Kagele, 149 Wn.2d 793, 799-808, 820-21, 72 P.3d 1067 (2003)
- In re Disciplinary Proceeding Against Huddleston, 137 Wn.2d 560, 576, 579, 974 P.2d 325 (1999)
- In re Disciplinary Proceeding Against Dann, 136 Wn.2d 67, 83 n.5, 960 P.2d 416 (1998)
- In re Disciplinary Proceeding Against Tasker, 141 Wn.2d 557, 568, 9 P.3d 822 (2000)
- In re Disciplinary Proceeding Against VanDerbeek, 153 Wn.2d 64, 89-100, 95, 101 P.3d 88 (2004)

- In re Disciplinary Proceeding Against Heard, 136 Wn.2d 405, 417-18, 963 P.2d 818 (1998)
- In re Disciplinary Proceeding Against Noble, 100 Wn.2d 88, 95, 667 P.2d 608 (1983)
- In re Disciplinary Proceeding Against Miller, 149 Wn.2d 262, 277-78, 285, 66 P.3d 1069 (2003)
- In re Disciplinary Proceeding Against Burtch, 162 Wn.2d 873, 899-900, 175 P.3d 1070 (2008)

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