SUPREME COURT OF KANSAS

In the Matter of Michael F. Brunton

282 Kan. 423, 144 P.3d 606 (2006) · No. No. 96,581 · Decided October 27, 2006

SUMMARY

The Kansas Supreme Court addressed an uncontested attorney-discipline proceeding involving Michael F. Brunton. The court adopted findings that Brunton violated professional-conduct rules through misconduct in a bankruptcy case and willful failure to file income-tax returns. Rather than impose an immediate suspension, the majority continued specified treatment, tax-payment, monitoring, and substance-abuse conditions for two years, with a six-month immediate suspension favored by a minority.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Per curiam; Christel E. Marquardt, assigned; Stephen D. Hill, assigned
JURISDICTION	Kansas
DECIDED	October 27, 2006
DOCKET	No. 96,581
DISPOSITION	other
PROCEDURAL POSTURE	Original uncontested attorney-discipline proceeding brought by the Kansas disciplinary administrator. The respondent stipulated to the charged violations, and the hearing panel recommended public censure subject to conditions.
STANDARD OF REVIEW	The Supreme Court independently determines whether violations of the Kansas Rules of Professional Conduct exist and what discipline should be imposed. The hearing panel's findings, conclusions, and recommendations are advisory, but its report is given the same dignity as a special verdict or trial-court findings and is adopted when amply supported by the evidence and not against its clear weight.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Office of the Disciplinary Administrator v. Michael F. Brunton

TOPICS

appellate procedure bankruptcy nondischargeable debts income tax tax penalties

PRACTICE AREAS

legal ethics and attorney discipline bankruptcy tax

QUESTIONS PRESENTED

1. Whether Brunton violated KRPC 3.1 by asserting a frivolous bankruptcy-plan provision and failing to provide proper notice to the restitution creditor.
2. Whether Brunton's willful failure to file income tax returns constituted professional misconduct under KRPC 8.4(b).
3. Whether Brunton's refusal to correct the bankruptcy plan constituted conduct prejudicial to the administration of justice under KRPC 8.4(d).
4. What discipline should be imposed for the stipulated violations.

HOLDINGS

1. Brunton violated KRPC 3.1 by failing to provide proper notice to the creditor in Fisher's bankruptcy case and by asserting a plan provision seeking discharge of criminal restitution despite the absence of a nonfrivolous basis.
2. Brunton's willful failure to file income tax returns, for which he pleaded guilty to a federal criminal charge, violated KRPC 8.4(b) because the criminal conduct reflected adversely on his honesty and trustworthiness.
3. Brunton engaged in conduct prejudicial to the administration of justice by refusing to amend the bankruptcy plan after learning that its restitution-discharge provision was improper.
4. Immediate imposition of a disciplinary sanction other than continuation of conditions was not necessary; imposition of any additional sanction was suspended for two years subject to specified treatment, tax-compliance, monitoring, and drug-testing conditions.

KEY QUOTATIONS

> *"A majority of the court is satisfied that, if respondent continues to comply with the panel's conditions and continues to comply with Kansas Impaired Lawyers Assistance Program requirements, the public will be adequately protected."* (611)

> *"Should respondent violate any of these conditions or have a positive drug test, the Disciplinary Administrator shall forthwith notify this court by Motion for Order to Show Cause why a disciplinary sanction should not be imposed."* (612)

FACTUAL BACKGROUND

Michael F. Brunton represented Janet L. Fisher in a Chapter 13 bankruptcy case after she had been ordered to pay $40,000 in criminal restitution. He proposed discharging all but $5,000 of the restitution, failed to provide proper notice to the restitution creditor, and refused to amend the plan after the error was identified, resulting in bankruptcy-court sanctions. Brunton also willfully failed to file income tax returns for 1998, 1999, and 2000, pleaded guilty to one count, and owed substantial taxes, interest, and penalties.

PROCEDURAL HISTORY

The disciplinary administrator filed a formal complaint charging violations arising from respondent's handling of a Chapter 13 bankruptcy matter and his willful failure to file federal income tax returns. After respondent stipulated to the violations, a hearing panel recommended public censure, conditions involving treatment, tax compliance, and drug testing, and an indefinite suspension if the conditions were violated. The Kansas Supreme Court adopted the panel's factual findings and legal conclusions but suspended imposition of any additional sanction for two years subject to modified conditions.

DISPOSITION

other

CASES CITED

- In re Lober, 276 Kan. 633, 636-37, 78 P.3d 442 (2003)
- In re Gribble, 261 Kan. 985, 986, 933 P.2d 672 (1997)