

SUPREME COURT OF NEBRASKA

State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Thomas M. Petersen, 272 Neb. 975

725 N.W.2d 845 (2007) · No. No. S-06-182 · Decided January 19, 2007

SUMMARY

The Nebraska Supreme Court addressed the discipline to impose on Thomas M. Petersen for neglecting client matters, mishandling or failing to account for fees, and failing to respond to disciplinary inquiries. The court found clear and convincing evidence that Petersen violated multiple provisions of the former Nebraska Code of Professional Responsibility and his attorney oath. It ordered that he remain indefinitely suspended until February 1, 2008, with reinstatement conditioned on proof of continued recovery and a two-year monitored probation plan.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Heavican, C.J.; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	January 19, 2007
DOCKET	No. S-06-182
DISPOSITION	other
PROCEDURAL POSTURE	Attorney discipline proceeding in which the respondent admitted the allegations in formal charges, the court previously adopted those facts, and the relator moved for judgment on the pleadings concerning the appropriate discipline.
STANDARD OF REVIEW	Attorney discipline proceedings are trials de novo on the record. Disciplinary charges must be supported by clear and convincing evidence. When an answer admits the formal charges and raises no issue of fact or law, the court may dispose of the matter by judgment on the pleadings.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Thomas M. Petersen

TOPICS

remedies

PRACTICE AREAS

attorney discipline

professional responsibility

legal ethics

civil procedure

QUESTIONS PRESENTED

1. Whether judgment on the pleadings was appropriate after Petersen admitted the allegations in the formal charges.
2. Whether Petersen's admitted conduct violated specified provisions of the Nebraska Code of Professional Responsibility and his attorney oath.
3. What discipline should be imposed given the misconduct, prior disciplinary history, and mitigating evidence of rehabilitation.

HOLDINGS

1. Judgment on the pleadings was appropriate because Petersen admitted the allegations in the formal charges and raised no factual or legal issue requiring trial on the merits.
2. The court found by clear and convincing evidence that Petersen violated DR 1-102(A)(1) and (5), DR 2-110(A)(3), DR 6-101(A)(2) and (3), DR 7-101(A)(2), DR 9-102(A) and (B)(3), and his oath of office as an attorney.
3. Petersen was ordered to remain indefinitely suspended from the practice of law, with no possibility of reinstatement until February 1, 2008; any reinstatement would require independent third-party proof of continued recovery-program participation and abstinence from drugs and alcohol, followed by two years of monitored probation.

KEY QUOTATIONS

"A proceeding to discipline an attorney is a trial de novo on the record." (725 N.W.2d at 850)

"Upon due consideration of the record, the court finds that Petersen should remain indefinitely suspended from the practice of law with no possibility of reinstatement until February 1, 2008." (725 N.W.2d at 852)

FACTUAL BACKGROUND

Petersen represented clients in criminal and domestic-relations matters but neglected aspects of their cases, causing them to retain other counsel. He failed to account for advanced fees, failed to refund unearned fees, and did not respond to requests for information concerning client grievances. Petersen admitted the misconduct and presented evidence of substance-abuse treatment, sobriety monitoring, support-group participation, and an attorney-monitoring contract.

PROCEDURAL HISTORY

The Counsel for Discipline filed formal charges alleging that Petersen neglected client matters, failed to account for and refund unearned fees, mishandled trust-account matters, and failed to respond to disciplinary inquiries. Petersen admitted the allegations. The Nebraska Supreme Court granted the relator's first motion for judgment on the pleadings in part, appointed a referee to hear evidence on discipline, and received the referee's recommendation for continued indefinite suspension with monitored probation upon reinstatement. No exceptions were filed, and the court granted the relator's second motion for judgment on the pleadings.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Petersen, 271 Neb. 262, 710 N.W.2d 646 (2006)
- State ex rel. Counsel for Dis. v. Muia, 271 Neb. 287, 711 N.W.2d 850 (2006)
- State ex rel. Counsel for Dis. v. Horneber, 270 Neb. 951, 708 N.W.2d 620 (2006)
- State ex rel. Counsel for Dis. v. Jones, 270 Neb. 471, 704 N.W.2d 216 (2005)
- State ex rel. Counsel for Dis. v. Reilly, 271 Neb. 465, 712 N.W.2d 278 (2006)
- State ex rel. Counsel for Dis. v. Hogan, 272 Neb. 19, 717 N.W.2d 470 (2006)
- State ex rel. NSBA v. Jensen, 260 Neb. 803, 619 N.W.2d 840 (2000)
- State ex rel. NSBA v. Pullen, 260 Neb. 125, 615 N.W.2d 474 (2000)
- State ex rel. Counsel for Dis. v. Petersen, 264 Neb. 790, 652 N.W.2d 91 (2002)
- State ex rel. Counsel for Dis. v. Petersen, 267 Neb. 176, 672 N.W.2d 637 (2004)