

SUPREME COURT OF NEBRASKA

State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Rodney A. Halstead

298 Neb. 149 (2017) · No. No. S-16-774 · Decided November 3, 2017

SUMMARY

The Nebraska Supreme Court reviewed the appropriate sanction for Rodney A. Halstead, who admitted filing false annual guardianship reports over six consecutive years. The court concluded that the repeated written misrepresentations violated the attorney's duty of candor to the tribunal and warranted a serious sanction. It suspended Halstead from practicing law for one year, imposed continuing legal education and reinstatement requirements, and prohibited guardianship or conservatorship appointments during a one-year probation period after reinstatement.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Heavican, C.J.; Wright, J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Kelch, J.; Funke, J.
JURISDICTION	Nebraska
DECIDED	November 3, 2017
DOCKET	No. S-16-774
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding before the Nebraska Supreme Court. The respondent admitted the factual allegations, and the court entered judgment on the pleadings as to the facts before referring the sanction issue to a referee.
STANDARD OF REVIEW	Because attorney-discipline cases are original proceedings before the Nebraska Supreme Court, the court reviews the referee's recommendations de novo on the record and reaches an independent conclusion.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential.

TOPICS

guardianships

guardianship procedure

appellate procedure

standard of review

PRACTICE AREAS

Attorney discipline

Guardianships

Professional responsibility

QUESTIONS PRESENTED

1. What sanction was appropriate for Halstead's repeated violations of his attorney oath and the Nebraska Rules of Professional Conduct through false annual guardianship reports?
2. What standard of review governs the Nebraska Supreme Court's review of a referee's sanction recommendation in an attorney-discipline proceeding?

HOLDINGS

1. The Nebraska Supreme Court reviews a referee's recommendations de novo on the record because attorney-discipline cases are original proceedings before the court.
2. In determining whether and to what extent discipline should be imposed, the court considers the nature of the offense, deterrence, the reputation of the bar, protection of the public, the offender's general attitude, and the offender's present or future fitness to practice law.
3. Repeated written violations of the duty of candor to a tribunal over a six-year period warranted a one-year suspension from the practice of law, together with ethics and office-management continuing legal education, reinstatement requirements, and one year of probation prohibiting guardianship or conservatorship appointments.

KEY QUOTATIONS

"Because attorney discipline cases are original proceedings before this court, we review a referee's recommendations de novo on the record, reaching a conclusion independent of the referee's findings." (152)

"To determine whether and to what extent discipline should be imposed in a lawyer discipline proceeding, the Nebraska Supreme Court considers the following factors: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law." (153)

"And cumulative acts of attorney misconduct are distinguishable from isolated incidents, therefore justifying more serious sanctions." (154)

"But the duty of candor to the tribunal lies at the heart of an attorney's role as an officer of the court." (155)

FACTUAL BACKGROUND

Halstead was appointed permanent guardian of an incapacitated adult in 2009 and was required to file annual reports describing the ward's condition, address, and the dates and frequency of his visits. From 2010 through 2015, he filed reports containing statements that he had visited or received updates about the ward, although he had not visited the ward or spoken with anyone at the assisted living facility since 2009. The reports also failed to reveal that the ward had moved in 2011, and the ward's location was discovered only after a court-appointed visitor investigated.

PROCEDURAL HISTORY

Counsel for Discipline filed formal charges alleging that Halstead violated his attorney oath and multiple Nebraska Rules of Professional Conduct by authoring and filing false annual guardianship reports. Halstead admitted the allegations, and the court sustained judgment on the pleadings limited to the facts. After an evidentiary hearing on discipline, the referee recommended a one-year suspension with additional conditions; the Nebraska Supreme Court independently reviewed the recommendation de novo and adopted it.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Gast, 296 Neb. 687, 896 N.W.2d 583 (2017)
- State ex rel. NSBA v. Zakrzewski, 252 Neb. 40, 560 N.W.2d 150 (1997)
- State ex rel. NSBA v. Scott, 252 Neb. 698, 564 N.W.2d 588 (1997)
- State ex rel. Counsel for Dis. v. Mills, 267 Neb. 57, 671 N.W.2d 765 (2003)
- State ex rel. Counsel for Dis. v. Rokahr, 267 Neb. 436, 675 N.W.2d 117 (2004)
- State ex rel. Counsel for Dis. v. Gilner, 280 Neb. 82, 783 N.W.2d 790 (2010)
- State ex rel. Counsel for Dis. v. Peppard, 291 Neb. 948, 869 N.W.2d 700 (2015)
- State ex rel. Counsel for Dis. v. Connor, 289 Neb. 660, 856 N.W.2d 570 (2014)