

SUPREME COURT OF KANSAS

In re Cleland

271 Kan. 926 (2001) · Decided July 13, 2001

SUMMARY

The Kansas Supreme Court considered an uncontested attorney discipline proceeding against James A. Cleland based on his disbarment and professional misconduct in Colorado. The court adopted the disciplinary panel's findings that Cleland violated multiple Kansas Rules of Professional Conduct and ordered his disbarment, removal from the Kansas roll of attorneys, and assessment of costs.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	North Dakota
DECIDED	July 13, 2001
DISPOSITION	other
PROCEDURAL POSTURE	Uncontested attorney-discipline proceeding brought by the Kansas Office of the Disciplinary Administrator after respondent's Colorado disbarment and related misconduct findings.
PRECEDENTIAL VALUE	Published state supreme court opinion
PARTIES	Office of the Disciplinary Administrator v. James A. Cleland

TOPICS

appellate procedure trustee duties breach of trust trusts

PRACTICE AREAS

attorney discipline legal ethics professional responsibility

QUESTIONS PRESENTED

- Whether respondent's established misconduct and violations of the Kansas Rules of Professional Conduct and related Supreme Court rules warranted disbarment.
- Whether the Kansas Supreme Court should adopt the disciplinary hearing panel's findings, conclusions of law, and recommendation in an uncontested proceeding.

HOLDINGS

1. The court accepted and concurred with the disciplinary hearing panel's findings and conclusions that respondent violated the specified Kansas Rules of Professional Conduct and Supreme Court rules, and ordered that he be disbarred.

KEY QUOTATIONS

“It Is Therefore Ordered that respondent, James A. Cleland, be and he is hereby disbarred in accordance with Supreme Court Rule 203(a)(1) (2000 Kan. Ct. R. Annot. 224) for his violations of the KRPC and his license and privilege to practice law are hereby revoked.” (271 Kan. at 928)

“This court, having considered the record, the report, and the recommendations of the disciplinary hearing panel, accepts and concurs with the findings, conclusions of law, and recommendations of the panel.” (271 Kan. at 927-928)

FACTUAL BACKGROUND

Respondent James A. Cleland was a Kansas-admitted attorney who had been disciplined in Colorado, including a two-year suspension for breach of fiduciary responsibilities as a trustee involving improper disbursement of funds and subsequent disbarment for repeated misappropriation of client funds. After the Kansas disciplinary complaint was filed, Cleland failed to answer, cooperate with the investigation, appear at the formal-complaint hearing, or appear before the Kansas Supreme Court. The Kansas hearing panel found violations involving diligence, client communication, fees, handling client property and funds, dishonesty, fitness to practice, cooperation with the disciplinary investigation, and answering the complaint.

PROCEDURAL HISTORY

The Disciplinary Administrator filed a formal complaint under Supreme Court Rule 202. Respondent received notice but did not answer, cooperate with the investigation, appear before the Kansas Board for Discipline of Attorneys, or appear before the Kansas Supreme Court. The hearing panel found violations of the Kansas Rules of Professional Conduct and related Supreme Court rules and recommended disbarment. The Kansas Supreme Court accepted and concurred with the panel's findings, conclusions, and recommendation.

DISPOSITION

other

CASES CITED

- In re Cleland, 2 P.3d 700 (Colo. 2000)

OPINION

PER CURIAM.

Per Curiam: This is an uncontested attorney discipline case filed by the office of the Disciplinary Administrator against the respondent, James A. Cleland, whose last registration address filed with

the Clerk of the Appellate Courts is Durango, Colorado, and who is an attorney admitted to the practice of law in the State of Kansas.

The complaint filed against the respondent arises out of a final adjudication in Colorado that respondent was guilty of professional misconduct warranting disbarment. *In re Cleland*, 2 P.3d 700 (Colo. 2000). The present complaint is filed under Rule 202 (2000 Kan. Ct. R. Annot. 221).

Although the respondent was afforded notice of the filing of the formal complaint and the hearing on the formal complaint, he did not file an answer or appear before the Kansas Board for Discipline of Attorneys (Board). Further, the respondent did not appear before this court. Rule 202 provides: In Colorado, two attorney disciplinary proceedings were conducted.

In the first proceeding on September 17, 1999, the Colorado Supreme Court found that the respondent was guilty of professional misconduct and suspended the respondent for 2 years. The suspension resulted from the breach of fiduciary responsibilities as a trustee with respect to funds which were placed with him by improperly disbursing those funds.

On January 7, 2000, respondent was disbarred from the United States Court of Appeals for the Tenth Circuit as a result of his suspension from the Colorado State Bar. In the second Colorado proceeding on May 22, 2000, the Colorado Supreme Court disbarred the respondent.

The disbarment was based on different misconduct than that which resulted in the respondent's suspension for a period of 2 years. In the case which led to the respondent's disbarment, the respondent was found on numerous occasions to have misappropriated client funds.

The hearing panel of the Board found that respondent violated Kansas Rules of Professional Conduct (KRPC) 1.3 (failing to act with reasonable diligence and promptness) (2000 Kan. Ct. R. Annot. 310), 1.4(a) (failing to keep a client reasonably informed) (2000 Kan. Ct. R. Annot. 320), 1.5(a) (unreasonable fees) (2000 Kan. Ct. R. Annot. 330), 1.15(a) (failing to keep the clients' property separate from the attorney's property) (2000 Kan.

Ct. R. Annot. 360), 1.15(b) (failing to deliver funds to a client) (2000 Kan. Ct. R. Annot. 360), 1.15(c) (failing to retain funds until the dispute between attorney and client was resolved) (2000 Kan. Ct. R. Annot. 360), 8.4(a) (violating the rules of professional conduct) (2000 Kan. Ct. R. Annot. 420), 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) (2000 Kan.

Ct. R. Annot. 420), and 8.4(g) (engaging in conduct that adversely reflects on the lawyer's fitness to practice law) (2000 Kan. Ct. R. Annot. 420). The panel also found that even though the formal complaint did not specifically allege a violation of Supreme Court Rule 207(b) (2000 Kan. Ct. R. Annot. 237) (aid in investigations of the Disciplinary Administrator) and Supreme Court Rule 211(b) (2000 Kan.

Ct. R. Annot. 250) (answer to complaints filed by the Disciplinary Administrator), the respondent violated those rules by failing to cooperate in the disciplinary investigation, by failing to file a written answer, and by failing to appear at the hearing held on the formal complaint.

The panel recommended disbarment. This court, having considered the record, the report, and the recommendations of the disciplinary hearing panel, accepts and concurs with the findings, conclusions of law, and recommendations of the panel. *928It Is Therefore Ordered that respondent, James A. Cleland, be and he is hereby disbarred in accordance with Supreme Court Rule 203(a)(1) (2000 Kan.

Ct. R. Annot. 224) for his violations of the KRPC and his license and privilege to practice law are hereby revoked. It Is Further Ordered that the Clerk of the Appellate Courts strike the name of James A. Cleland from the roll of attorneys licensed to practice law in Kansas. It Is Further Ordered that this opinion be published in the official Kansas Reports and the costs of this action be assessed to the respondent.

Davis, J., not participating.