

WASHINGTON SUPREME COURT

In re Disciplinary Proceeding Against Cohen

150 Wn. 2d 744 (2004) · Decided January 15, 2004

SUMMARY

The Washington Supreme Court reviews attorney Norman Wolfe Cohen’s disciplinary proceeding arising from his representation of an employment-law client. The court upholds findings that Cohen failed to act diligently, communicate adequately, and properly withdraw from the representation, and affirms a one-year suspension and restitution. The court also holds that pending disciplinary proceedings may be considered as evidence of a pattern of misconduct and declines to give credit for a suspension imposed in another matter.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Bridge, J.; Johnson, J.; Madsen, J.; Sanders, J.; Chambers, J.; Owens, J.; Fairhurst, J.
JURISDICTION	Washington
DECIDED	January 15, 2004
DISPOSITION	affirmed
PROCEDURAL POSTURE	Attorney Norman Wolfe Cohen appealed the Washington State Bar Disciplinary Board's recommendation imposing a one-year suspension and restitution for violations of the Washington Rules of Professional Conduct. The Washington Supreme Court reviewed the disciplinary findings and recommended sanction, including whether a pending disciplinary proceeding could be considered in determining the sanction.
STANDARD OF REVIEW	The Washington Supreme Court bears ultimate responsibility for lawyer discipline, gives considerable weight to hearing-officer findings, particularly credibility findings, upholds factual findings supported by a clear preponderance of the evidence, reviews conclusions of law for support in the findings, and gives greater weight to the Board's sanction recommendation than to the hearing officer's recommendation. The court is not bound by the Board's recommendation.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.

TOPICS

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QUESTIONS PRESENTED

1. Whether Cohen's physical and mental health evidence established that RPC 1.15(a)(2) required or justified his withdrawal from Erickson's representation.
2. Whether Cohen violated RPC 1.15, 1.3, and 1.4 by withdrawing shortly before trial without adequately informing Erickson and causing material adverse effects to Erickson's interests.
3. Whether the one-year suspension and restitution requirement were supported by the applicable aggravating and mitigating circumstances and were proportionate to sanctions imposed in comparable disciplinary cases.
4. Whether a pending disciplinary proceeding known to the attorney may be considered as evidence of a pattern of misconduct in determining sanctions.
5. Whether Cohen was entitled to credit against the one-year suspension for time served in the separate pending disciplinary matter.

HOLDINGS

1. Cohen violated RPC 1.3 and 3.2 by failing to represent Erickson diligently and failing to expedite the litigation.
2. Cohen violated RPC 1.4(a) and 1.4(b) by failing to communicate adequately with Erickson about continuances, dismissal, arbitration, the trial de novo, and withdrawal.
3. Cohen failed to establish that his physical or mental conditions required withdrawal under RPC 1.15(a)(2), and his physician's nonspecific letter did not justify his late withdrawal.
4. Cohen violated RPC 1.15(b), 1.3, and 1.4 by withdrawing approximately one month before trial when withdrawal materially adversely affected Erickson's interests.
5. A hearing officer and the Disciplinary Board may consider a pending disciplinary action as evidence of a pattern of misconduct when determining the appropriate sanction, provided the attorney was aware of the pending action.
6. The one-year suspension was proportionate and warranted by Cohen's repeated misconduct, prior disciplinary record, and the significant harm caused to Erickson.
7. Cohen was not entitled to credit against the one-year suspension for time served in Cohen I; the suspensions were to run consecutively.

KEY QUOTATIONS

“Here, the WSBA established that Cohen withdrew less than a month before trial and that Erickson could not find another attorney to take his case.” (757)

“Accordingly, we hold that the hearing officer properly considered Cohen I as evidence of a pattern of misconduct when determining the length of Cohen’s suspension.” (762)

“Given the facts of this case and Cohen’s prior disciplinary record, the Board’s recommendation of a one-year suspension with restitution should be affirmed.” (764)

FACTUAL BACKGROUND

Cohen represented Ron Erickson in an employment dispute beginning in 1996. Cohen repeatedly delayed the litigation, failed to communicate material developments, transferred the matter to mandatory arbitration without adequately consulting Erickson, and failed to timely make a jury demand after requesting a trial de novo. Cohen moved to withdraw less than a month before trial, relying on a nonspecific physician's letter, and Erickson could not obtain new counsel and ultimately dismissed the case with prejudice after facing potential liability for the opposing party's fees and costs.

PROCEDURAL HISTORY

The WSBA charged Cohen with three counts of professional misconduct arising from his representation of Ron Erickson in an employment dispute. A hearing officer found all three counts proved and recommended a one-year suspension, restitution, and probation. The Disciplinary Board adopted the findings and imposed a one-year suspension and restitution, declined to impose probation, and refused to credit Cohen for any suspension served in another pending matter. Cohen appealed, and the WSBA cross-appealed for guidance concerning consideration of pending disciplinary proceedings.

DISPOSITION

affirmed

CASES CITED

- In re Disciplinary Proceeding Against Anschell, 141 Wn. 2d 593, 607, 615-19, 9 P.3d 193 (2000)
- In re Disciplinary Proceeding Against Kuvana, 149 Wn. 2d 237, 246, 259, 66 P.3d 1057 (2003)
- In re Disciplinary Proceeding Against Huddleston, 137 Wn. 2d 560, 568-69, 974 P.2d 325 (1999)
- In re Disciplinary Proceeding Against McMullen, 127 Wn. 2d 150, 162, 896 P.2d 1281 (1995)
- In re Disciplinary Proceeding Against Dann, 136 Wn. 2d 67, 84, 960 P.2d 416 (1998)
- In re Disciplinary Proceeding Against Noble, 100 Wn. 2d 88, 94-96, 667 P.2d 608 (1983)
- In re Disciplinary Proceeding Against Petersen, 120 Wn. 2d 833, 869-71, 846 P.2d 1330 (1993)
- In re Disciplinary Proceeding Against McGough, 115 Wn. 2d 1, 17, 793 P.2d 430 (1990)
- In re Disciplinary Proceeding Against Halverson, 140 Wn. 2d 475, 492-93, 998 P.2d 833 (2000)
- In re Disciplinary Proceeding Against Brothers, 149 Wn. 2d 575, 586, 70 P.3d 940 (2003)

- In re Disciplinary Proceeding Against Miller, 149 Wn. 2d 262, 285, 66 P.3d 1069 (2003)
- In re Brown, 184 Ariz. 480, 484 n.3, 910 P.2d 631 (1996)
- In re Wilson, 715 N.E.2d 838, 841-42 (Ind. 1999)
- In re Disciplinary Action Against Bailey, 527 N.W.2d 274, 276 (N.D. 1995)
- In re Disciplinary Proceeding Against Cohen, 149 Wn. 2d 323, 339-40, 342, 67 P.3d 1086 (2003)
- In re Disciplinary Proceeding Against Kagele, 149 Wn. 2d 793, 821, 72 P.3d 1067 (2003)
- In re Disciplinary Proceeding Against Haskell, 136 Wn. 2d 300, 317, 962 P.2d 813 (1998)

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