

SUPREME COURT OF WASHINGTON

In re the Matter of the Disciplinary Proceeding Against Donald B. Kronenberg

117 P.3d 1134 (Wash. 2005) · No. No. 200,081-9 · Decided August 18, 2005

SUMMARY

The Washington Supreme Court reviewed disciplinary charges against attorney Donald B. Kronenberg for bribing and tampering with a witness, deceiving prosecutors, and being unfit to practice law. The court affirmed the Disciplinary Board's findings and ordered Kronenberg disbarred, concluding that evidentiary errors involving hearsay and polygraph reports were harmless.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Chambers, J.; Alexander, C.J.; C. Johnson, J.; Madsen, J.; Sanders, J.; Bridge, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.
JURISDICTION	Washington
DECIDED	August 18, 2005
DOCKET	No. 200,081-9
DISPOSITION	affirmed
PROCEDURAL POSTURE	Attorney disciplinary proceeding appealed from a Disciplinary Board decision affirming a hearing officer's findings that Kronenberg bribed and tampered with a witness, deceived prosecutors, and was unfit to practice law, and recommending disbarment.
STANDARD OF REVIEW	The Washington Supreme Court has plenary power over lawyer discipline and ultimate responsibility for disciplinary sanctions. It reviews disciplinary proceedings, including factual findings and recommended sanctions, under its independent authority while requiring an attorney challenging factual findings to identify specific unsupported findings and cite the record.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Donald B. Kronenberg v. Washington State Bar Association

TOPICS

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hearsay

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PRACTICE AREAS

legal ethics and attorney discipline

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QUESTIONS PRESENTED

1. Whether the hearing officer's findings that Kronenberg intended to bribe or tamper with J.D. and used a purported civil settlement as a pretext were supported by the record.
2. Whether admission of hearsay evidence under ELC 10.14(d)(1) violated Kronenberg's procedural due process rights.
3. Whether any error in admitting disputed hearsay evidence was harmless.
4. Whether polygraph reports were admissible under ELC 10.14(d)(1) and, if inadmissible, whether their admission was harmless.
5. Whether disbarment was the appropriate sanction for Kronenberg's witness tampering, dishonesty, and interference with the administration of justice.
6. Whether delay in bringing disciplinary charges, the absence of an interim suspension, lack of reoffending, or the absence of criminal prosecution required a lesser sanction.

HOLDINGS

1. The purported civil settlement was a ruse devised to bribe J.D. not to testify at Cotton's criminal trial and to conceal the bribe.
2. Admission of hearsay evidence under ELC 10.14(d)(1) does not inherently violate procedural due process where the evidence is the kind on which reasonably prudent persons are accustomed to rely in conducting their affairs.
3. Any error in admitting the disputed hearsay was harmless because the declarants testified and were subject to cross-examination, and the facts supported by the evidence were independently established by other evidence.
4. Polygraph evidence is inadmissible absent stipulation by both parties, and the reports in this case did not satisfy ELC 10.14(d)(1).
5. Admission of the polygraph reports was harmless because overwhelming evidence independently supported the hearing officer's findings.
6. Disbarment was the appropriate sanction for Kronenberg's intentional witness tampering, dishonesty, deception, and interference with the administration of justice.

KEY QUOTATIONS

"We conclude that the civil settlement was a ruse to bribe J.D. not to testify at Cotton's criminal trial and was devised to conceal the bribe itself." (117 P.3d at 1138)

“Due process is satisfied by the “best evidence reasonably obtainable, having due regard for its necessity, availability, and trustworthiness.”” (117 P.3d at 1139)

“Because they are not recognized as reliable evidence, the results of polygraph tests are not admissible absent stipulation from both parties.” (117 P.3d at 1140)

“We reaffirm that principle here.” (117 P.3d at 1140)

FACTUAL BACKGROUND

While representing Harold Cotton in a felony child-rape case, Kronenberg offered the State's principal witness, J.D., money and a one-way plane ticket in exchange for leaving Washington and not testifying. Kronenberg formalized the arrangement as a purported civil settlement and confidentiality agreement, paid J.D. \$3,000, and failed to disclose material information about J.D.'s whereabouts after a court ordered disclosure. Kronenberg also misled prosecutors about his role in procuring J.D.'s absence and later encouraged J.D. to leave town.

PROCEDURAL HISTORY

The Washington State Bar Association filed a three-count formal complaint against Kronenberg. After a five-day hearing, the hearing officer found all counts proved and recommended disbarment. The Disciplinary Board affirmed by a vote of 10-1, and Kronenberg appealed to the Washington Supreme Court, which affirmed the Board and ordered disbarment.

DISPOSITION

affirmed

CASES CITED

- In re Disciplinary Proceeding Against Romero, 152 Wash. 2d 124, 132, 94 P.3d 939 (2004)
- In re Disciplinary Proceeding Against McKean, 148 Wash. 2d 849, 861, 64 P.3d 1226 (2003)
- In re Disciplinary Proceeding Against Kagele, 149 Wash. 2d 793, 814, 820-21, 72 P.3d 1067 (2003)
- In re Disciplinary Proceeding Against Haskell, 136 Wash. 2d 300, 311, 962 P.2d 813 (1998)
- In re Estate of Lint, 135 Wash. 2d 518, 532, 957 P.2d 755 (1998)
- Rogers Potato Serv., L.L.C. v. Countrywide Potato, L.L.C., 152 Wash. 2d 387, 391, 97 P.3d 745 (2004)
- State v. Gosby, 85 Wash. 2d 758, 766-67, 539 P.2d 680 (1975)
- In re Disciplinary Proceeding Against Cohen, 149 Wash. 2d 323, 332-33, 338, 67 P.3d 1086 (2003)
- Chmela v. Department of Motor Vehicles, 88 Wash. 2d 385, 392, 561 P.2d 1085 (1977)
- State v. Bargas, 52 Wash. App. 700, 704-05, 763 P.2d 470 (1988)
- Feldmiller v. Olson, 75 Wash. 2d 322, 324-25, 450 P.2d 816 (1969)
- State v. Thomas, 150 Wash. 2d 821, 860, 83 P.3d 970 (2004)
- State v. Renfro, 96 Wash. 2d 902, 905, 639 P.2d 737 (1982)
- In re Disciplinary Proceeding Against Stroh, 97 Wash. 2d 289, 301, 644 P.2d 1161 (1982)

- In re Disciplinary Proceeding Against Tasker, 141 Wash. 2d 557, 567-69, 9 P.3d 822 (2000)
- In re Disciplinary Proceeding Against Anschell, 149 Wash. 2d 484, 519-20, 69 P.3d 844 (2003)
- In re Disciplinary Proceeding Against Dann, 136 Wash. 2d 67, 83-84, 960 P.2d 416 (1998)
- In re Disciplinary Proceeding Against Kennedy, 97 Wash. 2d 719, 723, 649 P.2d 110 (1982)
- Zuver v. Airtouch Communications, Inc., 153 Wash. 2d 293, 103 P.3d 753 (2004)
- Dreiling v. Jain, 151 Wash. 2d 900, 908, 93 P.3d 861 (2004)

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