

SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board v. Sheree L. Smith

885 N.W.2d 185 (Iowa 2016) · No. No. 16-0111 · Decided September 9, 2016

SUMMARY

The Iowa Supreme Court reviewed disciplinary proceedings against attorney Sheree L. Smith arising from her representation of a family-law client and deficiencies in her client trust-account practices. The court found multiple violations involving record retention, commingling, cash withdrawals, client notification, and failure to respond to disciplinary inquiries, and suspended Smith’s license for sixty days.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Hecht, Justice
JURISDICTION	Iowa
DECIDED	September 9, 2016
DOCKET	No. 16-0111
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding arising from the report and recommended sanction of the Grievance Commission of the Supreme Court of Iowa; the Supreme Court reviewed the matter de novo.
STANDARD OF REVIEW	De novo review. The Board must prove each rule violation by a convincing preponderance of the evidence, and the commission's recommendations are considered but are not binding.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Iowa
PARTIES	Iowa Supreme Court Attorney Disciplinary Board v. Sheree L. Smith

TOPICS

- appellate procedure
- standard of review
- family law procedure
- dissolution of marriage
- family law

PRACTICE AREAS

- attorney discipline
- legal ethics
- professional responsibility
- trust-account compliance
- appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence established that Smith violated the Iowa rules requiring preservation, adequacy, and accessibility of client trust-account records.
2. Whether Smith violated the rules prohibiting commingling of personal funds and client trust-account funds.
3. Whether the Board proved that Smith withdrew Hopkins's fees before they were earned.
4. Whether the Board proved that Smith violated the duties to promptly deliver client property and return unearned fees or property after representation ended.
5. Whether Smith violated the rules prohibiting cash withdrawals from trust accounts and requiring written notice of withdrawals to clients.
6. Whether Smith knowingly failed to respond to lawful demands for information from the disciplinary authority.
7. What sanction was appropriate for Smith's sustained violations and aggravating and mitigating circumstances.

HOLDINGS

1. Smith violated the Iowa rules requiring lawyers to preserve complete and sufficiently detailed trust-account records for six years, maintain access to those records, and be able to produce printed copies.
2. Smith violated the rules prohibiting commingling by using her client trust account as a personal and business operating account and depositing personal income-tax refunds, insurance proceeds, and earned fees into it.
3. The Board failed to prove by a convincing preponderance of the evidence that Smith withdrew Hopkins's fees before earning them.
4. The Board failed to prove that Smith violated the rules requiring prompt delivery of client property or return of unearned fees and expenses.
5. Smith violated the rule requiring trust-account withdrawals to be made by check payable to a named payee rather than to cash.
6. Smith violated the rule requiring written notice to clients of the time, amount, and purpose of withdrawals from advance-fee or expense funds.
7. Smith violated rule 32:8.1(b) by knowingly failing to respond to at least three Board letters seeking information and records.
8. A sixty-day suspension of Smith's Iowa law license was warranted by her multiple, systematic, and long-term trust-account violations, three prior admonishments, experience, and inadequate recordkeeping, despite mitigation for serving clients of modest means.

KEY QUOTATIONS

“*LICENSE SUSPENDED.*” (at 185)

“We respectfully consider the commission’s recommendations, but they are not binding upon us.” (opinion p. 8)

“We conclude “the recurring pattern of conduct in this case warrants a . . . suspension.”” (opinion p. 17)

“Accordingly, we suspend Smith’s license for sixty days.” (opinion p. 20)

FACTUAL BACKGROUND

Smith represented Jill Hopkins in a postdecree family-law matter after Hopkins paid an \$1,185 retainer. Smith withdrew funds from the client trust account without providing an itemized bill, failed to respond to successor counsel's request concerning the retainer, and could not produce adequately detailed trust-account records. Audits and the disciplinary investigation revealed years of trust-account deficiencies, including commingling personal and earned funds, cash withdrawals, inadequate record preservation, and failure to respond to Board inquiries. Smith had three prior private admonishments.

PROCEDURAL HISTORY

The Iowa Supreme Court Attorney Disciplinary Board charged Smith with multiple violations of the Iowa Rules of Professional Conduct and Client Trust Account Rules. Smith and the Board stipulated to facts, violations, and a recommended thirty-day suspension. After a hearing, the grievance commission found a factual basis for most alleged violations and recommended a sixty-day suspension. The Supreme Court independently reviewed the record, rejected some stipulated violations for lack of proof, sustained others, and imposed a sixty-day suspension.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Haskovec, 869 N.W.2d 554, 557, 562-63 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Eslick, 859 N.W.2d 198, 199, 201-04 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Nelissen, 871 N.W.2d 694, 699-700 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Lubinus, 869 N.W.2d 546, 549-51, 553-54 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Morris, 847 N.W.2d 428, 430, 433, 435-36 (Iowa 2014)
- Comm. on Prof'l Ethics & Conduct v. Kraschel, 260 Iowa 187, 192-93, 148 N.W.2d 621, 625 (1967)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Hall, 728 N.W.2d 383, 385, 387 (Iowa 2007)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Santiago, 869 N.W.2d 172, 182-85 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Baldwin, 857 N.W.2d 195, 203-04, 209-10 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Mendez, 855 N.W.2d 156, 162, 170 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ireland, 748 N.W.2d 498, 502 (Iowa 2008)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Wright, 857 N.W.2d 510, 514, 517 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Kingery, 871 N.W.2d 109, 117 (Iowa 2015)

- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Hedgecoth, 862 N.W.2d 354, 360 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Lett, 674 N.W.2d 139, 146 (Iowa 2004)
- Comm. on Prof'l Ethics & Conduct v. Steele, 414 N.W.2d 108, 111 (Iowa 1987) (en banc)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Kersenbrock, 821 N.W.2d 415, 420, 422 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Boles, 808 N.W.2d 431, 441-43 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Parrish, 801 N.W.2d 580, 585-90 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ricklefs, 844 N.W.2d 689, 702 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Said, 869 N.W.2d 185, 194 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Van Ginkel, 809 N.W.2d 96, 110 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Taylor, 814 N.W.2d 259, 268 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Howe, 706 N.W.2d 360, 370 (Iowa 2005)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Sunleaf, 588 N.W.2d 126, 126-27 (Iowa 1999)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Wagner, 599 N.W.2d 721, 730 (Iowa 1999)
- In re De Caro, 220 Iowa 176, 185, 262 N.W. 132, 137 (1935)