

SUPREME COURT OF DELAWARE

In the Matter of a Member of the Bar of the Supreme Court of the State of Delaware: Richard L. Abbott

925 A.2d 482 (Del. 2007) · No. No. 676, 2006 · Decided May 2, 2007

SUMMARY

The Delaware Supreme Court held that attorney Richard L. Abbott violated Delaware Lawyers' Rules of Professional Conduct 3.5(d) and 8.4(d) by using inflammatory, discourteous language in briefs and by impugning the integrity of opposing counsel and the tribunal. The Court imposed a public reprimand, issued through the opinion.

CASE DETAILS

COURT	Supreme Court of Delaware
WRITING FOR THE COURT	Steele, Chief Justice; Holland, Justice; Berger, Justice; Jacobs, Justice; Ridgely, Justice
JURISDICTION	Delaware
DECIDED	May 2, 2007
DOCKET	No. 676, 2006
DISPOSITION	other
PROCEDURAL POSTURE	The Office of Disciplinary Counsel filed objections to the Board on Professional Responsibility's Final Report, which had dismissed charges against Abbott. The Supreme Court of Delaware independently reviewed the record, found violations of Rules 3.5(d) and 8.4(d), and imposed a public reprimand.
STANDARD OF REVIEW	The Supreme Court independently reviews the record to determine whether substantial evidence supports the Board's factual findings and reviews the Board's legal conclusions de novo. The Court is not bound by the Board's recommendation.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Office of Disciplinary Counsel v. Richard L. Abbott

TOPICS

appellate procedure

standard of review

administrative law

agency adjudication

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

appellate advocacy

QUESTIONS PRESENTED

1. Whether Abbott's inflammatory accusations against opposing counsel and discourteous, degrading language in his briefs violated Delaware Lawyers' Rule of Professional Conduct 3.5(d).
2. Whether Abbott's unfounded allegation that the tribunal might decide the case based on bias rather than the merits violated Rule 3.5(d).
3. Whether Abbott's conduct was prejudicial to the administration of justice in violation of Rule 8.4(d).
4. What sanction was appropriate for the violations.

HOLDINGS

1. A lawyer violates Rule 3.5(d) by directly accusing opposing counsel of fabricating the basis of an administrative decision and by using discourteous conduct that is degrading to a tribunal.
2. Unfounded accusations impugning the integrity of a tribunal, including an allegation that the tribunal might decide a matter based on bias rather than its merits, violate Rule 3.5(d).
3. Conduct that causes a tribunal to strike portions of a lawyer's submissions and devote judicial resources to explaining that action is prejudicial to the administration of justice and violates Rule 8.4(d).
4. Zealous advocacy does not require or permit disruptive, disrespectful, degrading, or disparaging rhetoric; such rhetoric crosses the line from acceptable forceful advocacy into unethical conduct.
5. A public reprimand is the appropriate sanction for Abbott's violations of Rules 3.5(d) and 8.4(d).

KEY QUOTATIONS

“Zealous advocacy never requires disruptive, disrespectful, degrading or disparaging rhetoric.” (at 489)

“The use of such rhetoric crosses the line from acceptable forceful advocacy into unethical conduct that violates the Delaware Lawyers' Rules of Professional Conduct.” (at 489)

“The issuance of this opinion will constitute that action.” (at 489)

FACTUAL BACKGROUND

Richard L. Abbott represented 395 Associates, LLC in an appeal to the Delaware Superior Court from a decision of the New Castle County Board of License, Inspection & Review. In his opening and reply briefs, Abbott accused opposing counsel and the County of fabricating legal grounds, used sarcastic and inflammatory characterizations, and suggested that the Superior Court might decide the matter based on bias rather than the merits. The Superior Court struck portions of the briefing sua sponte and issued an opinion explaining its actions, resulting in a waste of judicial resources.

PROCEDURAL HISTORY

ODC charged Abbott with professional misconduct based on inflammatory and disparaging language in briefs filed in an appeal to the Superior Court from a decision of the New Castle County Board of License, Inspection & Review. The Board on Professional Responsibility found insufficient clear and convincing evidence of violations and dismissed the claims. ODC objected, and the Delaware Supreme Court independently reviewed the record and rejected the Board's conclusions.

DISPOSITION

other

CASES CITED

- In re Froelich, 838 A.2d 1117, 1120 (Del. 2003)
- Cannon v. Cherry Hill Toyota, Inc., 190 F.R.D. 147 (D.N.J. 1999)
- Thomason v. Norman E. Lehrer, P.C., 182 F.R.D. 121, 123 (D.N.J. 1998)
- In re Ramunno, 625 A.2d 248, 250 (Del. 1993)
- Paramount Commc'ns, Inc. v. QVC Network Inc., 637 A.2d 34, 52, 54 (Del. 1994)
- Peters v. Pine Meadow Ranch Home Ass'n, 151 P.3d 962 (Utah 2007)
- In re Simon, 913 So. 2d 816, 819 (La. 2005)
- In re Wilkins, 782 N.E.2d 985, 986 (Ind. 2003)
- In re Shearin, 765 A.2d 930, 939 (Del. 2000)
- Matter of Mekler, 669 A.2d 655, 667 (Del. 1995)
- Nix v. Whiteside, 475 U.S. 157, 168 (1986)
- In re Vincenti, 92 N.J. 591, 458 A.2d 1268 (1983)
- Kaung v. Cole Nat. Corp., 884 A.2d 500, 508 (Del. 2005)
- 395 Assocs., LLC v. New Castle County, 2005 WL 3194566, at *1 (Del. Super.)