

NEBRASKA SUPREME COURT

State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Tobin D. Wolfe

301 Neb. 117 (2018) · No. S-18-437 · Decided September 21, 2018

SUMMARY

The Nebraska Supreme Court considered attorney-discipline charges against Tobin D. Wolfe involving ten client grievances and violations of professional-conduct rules. The court granted the parties' joint motion for judgment on the pleadings and suspended Wolfe from practicing law for two years, effective November 6, 2017, followed by two years of monitored probation upon reinstatement.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Per Curiam; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	September 21, 2018
DOCKET	S-18-437
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline action in which the parties jointly moved for judgment on the pleadings after a referee conducted a hearing and recommended discipline.
STANDARD OF REVIEW	Attorney-discipline proceedings are tried de novo on the record. Charges must be established by clear and convincing evidence.
PRECEDENTIAL VALUE	published and precedential
PARTIES	State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Tobin D. Wolfe

TOPICS

remedies

administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the undisputed record established by clear and convincing evidence that Wolfe violated the specified Nebraska Rules of Professional Conduct and his attorney oath.
2. Whether discipline should be imposed and, if so, what sanction was appropriate under the circumstances.
3. Whether the parties' joint motion for judgment on the pleadings should be granted.

HOLDINGS

1. The record established by clear and convincing evidence that Wolfe violated Nebraska Court Rules of Professional Conduct §§ 3-501.1, 3-501.3, 3-501.4, 3-501.5(f), 3-501.16(d), 3-508.1(b), and 3-508.4, and violated his oath of office under Neb. Rev. Stat. § 7-104.
2. A two-year suspension of Wolfe's license, effective November 6, 2017, followed by two years of monitored probation upon reinstatement, was appropriate.
3. The parties' joint motion for judgment on the pleadings was granted.

KEY QUOTATIONS

“A proceeding to discipline an attorney is a trial de novo on the record.” (at 121)

“To determine whether and to what extent discipline should be imposed in an attorney discipline proceeding, this court considers the following factors: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender’s present or future fitness to continue in the practice of law.” (at 122)

FACTUAL BACKGROUND

Wolfe, admitted to practice in Nebraska in 2013, represented 10 clients whose grievances were filed between April and December 2017. The misconduct included failures to communicate, competently and diligently handle matters, account for fees, refund unearned fees, return a client file, and respond to the Counsel for Discipline. Wolfe had no prior discipline and presented evidence that an undiagnosed major depressive episode contributed significantly to his conduct.

PROCEDURAL HISTORY

The Counsel for Discipline filed formal charges containing 10 counts against Wolfe. Wolfe answered, a referee conducted a hearing, and the referee found violations of multiple Nebraska Rules of Professional Conduct and Wolfe's attorney oath, recommending a two-year suspension beginning on the date of temporary suspension followed by two years of supervised probation upon readmission. Neither party filed exceptions, and the parties jointly moved for judgment on the pleadings.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Gast, 298 Neb. 203, 903 N.W.2d 259 (2017)
- State ex rel. Counsel for Dis. v. Island, 296 Neb. 624, 894 N.W.2d 804 (2017)
- State ex rel. Counsel for Dis. v. Nich, 279 Neb. 533, 780 N.W.2d 638 (2010)
- State ex rel. Counsel for Dis. v. Simon, 288 Neb. 385, 848 N.W.2d 642 (2014)

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