

SUPREME COURT OF VERMONT

In re Glenn Robinson, Esq.

2019 VT 8, 209 A.3d 570 · No. 2018-112 · Decided February 22, 2019

SUMMARY

The Vermont Supreme Court reviewed a Professional Responsibility Board decision concerning attorney misconduct involving two former clients. The Court upheld violations of Vermont Rules of Professional Conduct 1.7, 4.3, and 8.4(g), reversed the violation of Rule 8.4(d), and imposed disbarment rather than the panel's recommended two-year suspension. The opinion also clarified that the Court gives consideration and great weight to, but does not defer to, disciplinary panel recommendations on sanctions.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Per Curiam; Paul L. Reiber, C.J.; Beth Robinson, J.; Harold E. Eaton, Jr., J.; Karen R. Carroll, J.; Dennis R. Pearson, Superior Judge (Ret.), specially assigned
JURISDICTION	Vermont
DECIDED	February 22, 2019
DOCKET	2018-112
DISPOSITION	other
PROCEDURAL POSTURE	The Supreme Court of Vermont reviewed, under Administrative Order 9, a Professional Responsibility Board hearing panel decision finding attorney Glenn Robinson violated Vermont Rules of Professional Conduct 1.7, 4.3, 8.4(d), and 8.4(g), imposing a two-year suspension and conditions for reinstatement. Disciplinary counsel sought disbarment, while Robinson challenged factual findings, violation determinations, and the sanction.
STANDARD OF REVIEW	The Court reviews the hearing panel's factual findings for clear error, including mixed findings of fact and law when supported by the evidence; it reviews legal conclusions, including violation determinations and sanction recommendations, de novo. The Court gives consideration to, but does not defer to, the panel's sanction recommendation and exercises plenary authority over attorney discipline.

PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Office of Disciplinary Counsel v. Glenn Robinson, Esq.

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QUESTIONS PRESENTED

1. Whether the hearing panel's factual findings concerning Robinson's conduct with C.M. and P.B. were clearly erroneous.
2. Whether Robinson violated Vermont Rule of Professional Conduct 1.7 by representing C.M. while engaging in a sexual relationship with her without obtaining written informed consent.
3. Whether Robinson violated Rule 4.3 by dealing with P.B. as an unrepresented person without clarifying that he was acting in his own interest and without advising her to obtain independent counsel.
4. Whether Robinson violated Rule 8.4(d) when the hearing panel sua sponte considered and found an uncharged violation after the evidentiary hearing.
5. Whether Robinson violated Rule 8.4(g) by creating a hostile work environment and implicitly conditioning P.B.'s employment on waiving discrimination and sexual-harassment claims.
6. What sanction was appropriate for the violations, and whether the Court owed deference to the hearing panel's sanction recommendation.

HOLDINGS

1. The Supreme Court reviews disciplinary hearing panel findings of fact for clear error and reviews legal conclusions, including violation determinations and sanction recommendations, de novo. The Court may consider the panel's sanction recommendation but does not defer to it because the Supreme Court retains plenary authority over attorney discipline.
2. An attorney violates Rule 1.7 by representing a client while engaging in a sexual relationship with the client and failing to obtain the client's informed consent to the conflict, confirmed in writing.
3. A lawyer dealing with an unrepresented person must not imply disinterestedness, must correct a known or reasonably apparent misunderstanding about the lawyer's role, and must advise the person to obtain counsel when the person's interests conflict or may conflict with the lawyer's interests. Robinson knowingly violated Rule 4.3 by presenting P.B. with a self-protective waiver without clarifying his role or advising her to obtain independent counsel.

4. The hearing panel could not impose discipline for an uncharged Rule 8.4(d) violation considered after the evidentiary hearing without providing the respondent notice of the alleged rule violation and an opportunity to present evidence at the hearing.
5. An attorney violates Rule 8.4(g) by knowingly engaging in unwelcome sexual conduct that creates a hostile work environment and by implicitly conditioning an employee's continued employment on agreeing not to pursue discrimination or sexual-harassment claims under the circumstances presented.
6. Disbarment is the appropriate sanction because Robinson knowingly committed multiple violations, targeted vulnerable individuals, acted with a selfish motive and intent to benefit himself, engaged in a pattern of misconduct, and caused serious or potentially serious injury to the victims and the legal profession.

KEY QUOTATIONS

“we review the panel’s findings of fact for clear error and review de novo its conclusions of law, including the panel’s violation determinations and sanction recommendations.” (¶ 27)

“Because the panel elected to sua sponte consider the Rule 8.4(d) violation after the close of the hearing and provided no accommodation for the parties, particularly respondent, to present evidence in response, we conclude that the panel was precluded from considering whether respondent violated this rule.” (¶ 52)

“we adhere to the presumptive sanction and order the maximum penalty permitted by our rules—disbarment.” (¶ 78)

FACTUAL BACKGROUND

Robinson represented C.M. in divorce proceedings while engaging in a sexual relationship with her, without obtaining the written informed-consent waiver required by Vermont Rule of Professional Conduct 1.7. He later employed P.B., a former client who had mental-health issues and limited legal sophistication, and engaged in unwanted sexual conduct toward her in the workplace. Robinson also presented P.B. with an agreement purporting to establish their relationship as mutually welcome and waive past and future sexual-harassment and gender-discrimination claims, without advising her that he was not representing her interests or that she should obtain independent counsel.

PROCEDURAL HISTORY

Following an investigation triggered by a sexual-harassment complaint, a Professional Responsibility Board hearing panel conducted a five-day hearing and issued findings, conclusions, and sanctions in March 2018. The panel imposed a two-year suspension with conditions on resuming practice. The Vermont Supreme Court ordered review, affirmed the violations of Rules 1.7, 4.3, and 8.4(g), reversed the Rule 8.4(d) violation because it was added without adequate procedural notice and opportunity to present evidence, and imposed disbarment.

DISPOSITION

other

CASES CITED

- In re Strouse, 2011 VT 77, 190 Vt. 170, 34 A.3d 329 (per curiam)
- In re Sinnott, 2004 VT 16, 176 Vt. 596, 845 A.2d 373 (mem.)
- Graham v. Town of Duxbury, 173 Vt. 498, 499, 787 A.2d 1229, 1232 (2001) (mem.)
- In re Fink, 2011 VT 42, 189 Vt. 470, 22 A.3d 461
- In re Korrow Real Estate, LLC Act 250 Permit Amendment Application, 2018 VT 39, 187 A.3d 1125
- In re Confluence Behavioral Health, LLC, 2017 VT 112, 180 A.3d 867
- Town of Victory v. State, 2004 VT 110, 177 Vt. 383, 865 A.2d 373
- In re Berk, 157 Vt. 524, 527-28, 602 A.2d 946, 948 (1991) (per curiam)
- In re Harrington, 134 Vt. 549, 552, 367 A.2d 161, 163 (1976) (per curiam)
- In re Elgin, 918 A.2d 362, 373 (D.C. 2007)
- In re McCarty, 164 Vt. 604, 605, 665 A.2d 885, 887 (1995) (mem.)
- In re Berg, 955 P.2d 1240, 1257 (Kan. 1998)
- In re Vogel, 482 S.W.3d 520, 539 (Tenn. 2016)
- Lawyer Disciplinary Bd. v. White, 811 S.E.2d 893, 900 (W. Va. 2018)
- In re Tenenbaum, 880 A.2d 1025, 1035 (Del. 2005)
- In re Pope, 2014 VT 94, 197 Vt. 638, 101 A.3d 1284 (mem.)
- In re Neisner, 2012 VT 102, 189 Vt. 145, 16 A.3d 587
- In re Karpin, 162 Vt. 163, 173-74, 647 A.2d 700, 706 (1993) (per curiam)
- In re Wright, 131 Vt. 473, 480, 493, 310 A.2d 1, 4, 12 (1973) (per curiam)
- In re Lewis, 415 S.E.2d 173 (Ga. 1992)
- Attorney Grievance Comm'n of Maryland v. Hall, 969 A.2d 953, 970 (Md. 2009)
- Attorney Grievance Comm'n of Maryland v. Culver, 849 A.2d 423, 450 (Md. 2004)
- In re Blais, 174 Vt. 628, 628, 817 A.2d 1266, 1267 (2002) (mem.)
- In re Bucknam, 160 Vt. 355, 366, 628 A.2d 932, 938 (1993)