

SUPREME COURT OF NEBRASKA

State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Jason M. Bruno

308 Neb. 478 (2021) · No. No. S-20-814 · Decided February 19, 2021

SUMMARY

The Nebraska Supreme Court granted the Counsel for Discipline’s motion for reciprocal discipline against Jason M. Bruno based on disciplinary findings in Arizona. The court suspended Bruno from practicing law in Nebraska for six months and imposed related notification and cost obligations.

CASE DETAILS

COURT	Supreme Court of Nebraska
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	February 19, 2021
DOCKET	No. S-20-814
DISPOSITION	other
PROCEDURAL POSTURE	Original reciprocal-discipline proceeding arising from disciplinary action imposed on the respondent by the State Bar of Arizona. The Nebraska Counsel for Discipline moved under Neb. Ct. R. § 3-321 to impose reciprocal discipline.
STANDARD OF REVIEW	The court considered the record and the facts determined by the State Bar of Arizona and evaluated the appropriate discipline in light of the particular facts and circumstances.
PRECEDENTIAL VALUE	Published opinion; precedential Nebraska Supreme Court decision
PARTIES	State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Jason M. Bruno

TOPICS

appellate procedure

civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Nebraska should impose reciprocal discipline based on the disciplinary judgment entered against Bruno in Arizona.
2. Whether Bruno demonstrated a denial of due process or an infirmity of proof sufficient to prevent Nebraska from relying on the Arizona disciplinary determination.
3. What discipline was appropriate under the circumstances.

HOLDINGS

1. A judicial determination of attorney misconduct in one jurisdiction is generally conclusive proof of guilt and is not subject to relitigation in the second jurisdiction.
2. Bruno did not demonstrate a lack of due process or an infirmity of proof in the Arizona disciplinary proceedings.
3. A 6-month suspension from the practice of law was appropriate reciprocal discipline.

KEY QUOTATIONS

“In a reciprocal discipline proceeding, a judicial determination of attorney misconduct in one jurisdiction is generally conclusive proof of guilt and is not subject to relitigation in the second jurisdiction.” (480)

“The respondent has not demonstrated a lack of due process of law or an infirmity of proof.” (481)

FACTUAL BACKGROUND

Bruno was admitted to practice law in Arizona and Nebraska. Arizona disciplinary authorities found that he violated rules concerning candor toward a tribunal, fairness to opposing counsel, and professional misconduct after he failed to disclose material in a discovery matter. The Arizona proceedings found that he intentionally concealed evidence, misled opposing counsel, and caused the opposing party to alter its litigation strategy, resulting in a 6-month suspension and additional conditions.

PROCEDURAL HISTORY

The State Bar of Arizona issued a final disciplinary judgment suspending Bruno for 6 months, followed by probation and other conditions, after finding violations arising from a discovery matter. The Nebraska Counsel for Discipline filed a motion for reciprocal discipline. After the Nebraska Supreme Court issued an order to show cause, Bruno challenged the Arizona proceedings on due-process and evidentiary grounds and requested oral argument. The court denied oral argument, granted the motion, and imposed a 6-month suspension.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Murphy, 283 Neb. 982, 814 N.W.2d 107 (2012)

OPINION

PER CURIAM.

Nebraska Supreme Court Online Library www.nebraska.gov/apps-courts-epub/ 05/07/2021 08:12 AM CDT - 478 - Nebraska Supreme Court Advance Sheets 308 Nebraska Reports STATE EX REL. COUNSEL FOR DIS. v. BRUNO Cite as 308 Neb. 478 State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court, relator, v. Jason M. Bruno, respondent. ____ N.W.2d ____ Filed February 19, 2021.

No. S-20-814. Original action. Judgment of suspension. Heavican, C.J., Miller-Lerman, Cassel, Stacy, Funke, Papik, and Freudenberg, JJ. Per Curiam. INTRODUCTION The State Bar of Arizona entered a “Decision Order” regarding the respondent, Jason M. Bruno, on October 9, 2020.

The Counsel for Discipline of the Nebraska Supreme Court, the relator, filed a motion for reciprocal discipline against the respondent. We grant the motion for reciprocal discipline and impose a suspension of 6 months. FACTS The respondent was admitted to the practice of law in the State of Arizona in 2004 and in the State of Nebraska on February 28, 2005. He has been an active member of the Nebraska State Bar Association and the State Bar of Arizona.

On October 9, 2020, the State Bar of Arizona’s presiding disciplinary judge issued a final judgment and order in which it found that the respondent violated the Arizona Rules of Professional Conduct. The respondent was found to have - 479 - Nebraska Supreme Court Advance Sheets 308 Nebraska Reports STATE EX REL. COUNSEL FOR DIS. v. BRUNO Cite as 308 Neb. 478 violated “Arizona Rules of Professional Conduct ER 3.3(a)(3), ER 3.4(a) and (d), and ER 8.4 (c) and (d).” The charges arose from a discovery matter.

The underlying facts generally involved the respondent’s failure to disclose material. The order suspended the respondent from the practice of law for a period of 6 months, followed by 2 years of probation upon reinstatement, additional CLE, and a “MAP assessment” with possible terms and conditions, plus costs and expenses.

On November 19, 2020, the relator filed a motion for reciprocal discipline pursuant to Neb. Ct. R. § 3-321 of the disciplinary rules. The motion stated that the above-cited Arizona Supreme Court rules are in sum and substance the equivalent to Neb. Ct. R. of Prof. Cond. §§ 3-503.3(a)(3) (rev. 2016) (candor toward tribunal), 3-503.4(a) and (d) (fairness to opposing party and counsel), and 3-508.4(c) and (d) (rev.

2016) (misconduct). This court filed an order to show cause as to why it should not impose reciprocal discipline. On December 14, 2020, the respondent filed a response in which he requested oral argument and claimed, summarized and restated, that (1) he was not afforded due process in the disciplinary proceedings in Arizona and (2) the evidence does not support discipline.

On January 6, 2021, the relator filed a response, arguing that the respondent has not overcome the presumption of regularity of the Arizona proceedings, and requested that this court impose a like discipline as that imposed by the Arizona Supreme Court. ANALYSIS The basic issues in a disciplinary proceeding against an attorney are whether discipline should be imposed and, if so, the type of discipline appropriate under the circumstances.

State ex rel. Counsel for Dis. v. Murphy, 283 Neb. 982, 814 N.W.2d 107 (2012). In a reciprocal discipline proceeding, a judicial determination of attorney misconduct in one jurisdiction is generally conclusive proof of guilt and is not - 480 - Nebraska Supreme Court Advance Sheets 308 Nebraska Reports STATE EX REL. COUNSEL FOR DIS. v. BRUNO Cite as 308 Neb. 478 subject to relitigation in the second jurisdiction.

Id. Neb. Ct. R. § 3-304 of the disciplinary rules provides that the following may be considered as discipline for attorney misconduct: (A) Misconduct shall be grounds for: (1) Disbarment by the Court; or (2) Suspension by the Court; or (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may designate; or (4) Censure and reprimand by the Court; or (5) Temporary suspension by the Court; or (6) Private reprimand by the Committee on Inquiry or Disciplinary Review Board.

(B) The Court may, in its discretion, impose one or more of the disciplinary sanctions set forth above. Section 3-321 of the disciplinary rules provides in part: (A) Upon being disciplined in another jurisdiction, a member shall promptly inform the Counsel for Discipline of the discipline imposed. Upon receipt by the Court of appropriate notice that a member has been disciplined in another jurisdiction, the Court may enter an order imposing the identical discipline, or greater or lesser discipline as the Court deems appropriate, or, in its discretion, suspend the member pending the imposition of final discipline in such other jurisdiction.

In imposing attorney discipline, we evaluate each case in light of its particular facts and circumstances. State ex rel. Counsel for Dis. v. Murphy, supra. Upon due consideration of the record, and the facts as determined by the State Bar of Arizona, we determine that suspension is appropriate.

The respondent has not demonstrated a lack of due process of law or an infirmity of proof. The respondent made a robust defense in Arizona. The Arizona Supreme Court determined that the respondent concealed the existence of evidence which had not been disclosed to the defense.

The court found that this was intentional and misleading to the - 481 - Nebraska Supreme Court Advance Sheets 308 Nebraska Reports STATE EX REL. COUNSEL FOR DIS. v. BRUNO Cite as 308 Neb. 478 opposing counsel and that it caused the respondent's opposing party to change its strategy.

We grant the motion for reciprocal discipline and impose a suspension of 6 months. CONCLUSION We conclude that cause has not been shown by the respondent. The respondent's request for oral argument is denied. The motion for reciprocal discipline is granted.

The respondent is suspended from the practice of law for 6 months. The respondent shall comply with all notification requirements by suspended members provided by Neb. Ct. R. § 3-316 (rev. 2014), and upon failure to do so, he shall be subject to punishment for contempt of this court.

The respondent is directed to pay costs and expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2012) and Neb. Ct. R. §§ 3-310(P) (rev. 2019) and 3-323(B) of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by the court. Judgment of suspension.