

SUPREME COURT OF OKLAHOMA

State of Oklahoma ex rel. Oklahoma Bar Association v. Larry Dean Wagener

State ex rel. Oklahoma Bar Ass'n v. Wagener, 107 P.3d 567 (Okla. 2005) · No. SCBD # 4797 · Decided January 18, 2005

SUMMARY

The Supreme Court of Oklahoma imposed a six-month suspension on Larry Dean Wagener for neglecting a criminal appeal, failing to communicate with his client, and concealing the dismissal of the appeal. The court also considered Wagener's prior suspension and unauthorized practice of law during suspension, and assessed \$486.95 in costs.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Colbert, J.
JURISDICTION	Oklahoma
DECIDED	January 18, 2005
DOCKET	SCBD # 4797
DISPOSITION	other
PROCEDURAL POSTURE	The Oklahoma Bar Association initiated a Rule 6 disciplinary proceeding against Wagener. After a Professional Responsibility Tribunal panel recommended public censure, the Supreme Court of Oklahoma conducted de novo review and independently determined the appropriate sanction.
STANDARD OF REVIEW	De novo review of the stipulated facts and recommended disciplinary sanction; misconduct must be proven by clear and convincing evidence.
PRECEDENTIAL VALUE	published and precedential Oklahoma Supreme Court opinion

TOPICS

- appellate procedure
- criminal procedure
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the stipulated facts established by clear and convincing evidence that Wagener violated Oklahoma Rules of Professional Conduct 1.1, 1.3, 1.4, and 8.4.
2. Whether public censure was an appropriate sanction for Wagener's client neglect, concealment of his failure to perfect the appeal, and related misconduct while under suspension.
3. Whether Wagener's unauthorized practice of law and failure to comply with suspension-notification requirements warranted enhancement of the recommended discipline.

HOLDINGS

1. The allegations of misconduct were proven by clear and convincing evidence, and Wagener's conduct violated Rules 1.1, 1.3, 1.4, and 8.4 of the Oklahoma Rules of Professional Conduct.
2. Public censure was inadequate; Wagener was suspended from the practice of law for six months and assessed the costs of the proceeding.

KEY QUOTATIONS

"This Court's primary function is to protect the public and determine an attorney's continued fitness to practice law, not to punish." (569)

"It is apparent that Respondent's pattern of irresponsible behavior continued after this Court's imposition of a sixty-day suspension." (569)

FACTUAL BACKGROUND

Wagener represented Darel John Barnett after Barnett's conviction on rape and lewd-molestation charges and was retained to handle the appeal. Although Wagener filed a notice of intent to appeal and designated the record, he failed to obtain the transcripts and failed to file the Petition in Error required for appellate jurisdiction. He did not disclose the failure or the dismissal of the appeal to Barnett and instead stopped communicating with him. During the same general period, Wagener also practiced law while suspended and failed to notify a client and a court of his suspension.

PROCEDURAL HISTORY

Wagener represented a criminal defendant on appeal but failed to file the Petition in Error required for appellate jurisdiction, failed to inform the client that the appeal had been dismissed, and ceased communicating with him. Wagener stipulated that this conduct violated Oklahoma Rules of Professional Conduct 1.1, 1.3, 1.4, and 8.4. The Professional Responsibility Tribunal recommended public censure; the Supreme Court rejected that recommendation, imposed a six-month suspension, and assessed costs.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Bar Ass'n v. Wagener, 2002 OK 4, 48 P.3d 771
- State ex rel. Oklahoma Bar Ass'n v. Wolfe, 1997 OK 47, 937 P.2d 988
- State ex rel. Oklahoma Bar Ass'n v. Taylor, 2003 OK 56, 71 P.3d 18
- State ex rel. Oklahoma Bar Ass'n v. Southern, 2000 OK 88, 15 P.3d 1

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