

SUPREME COURT OF NEBRASKA

State of Nebraska ex rel. Counsel for Discipline of the Nebraska
Supreme Court v. Paul M. Conley, 268 Neb. 674

686 N.W.2d 902 (2004) · No. S-04-460 · Decided October 1, 2004

SUMMARY

The Supreme Court of Nebraska approved Paul M. Conley's conditional admission to disciplinary charges arising from his representation of clients in a Chapter 13 bankruptcy proceeding. The court found violations involving dishonesty, conduct prejudicial to the administration of justice, fitness to practice law, and prejudice to a client, and imposed a public reprimand and costs.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	October 1, 2004
DOCKET	S-04-460
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding in which formal charges were filed and the respondent submitted a conditional admission in exchange for a public reprimand.
STANDARD OF REVIEW	Independent review of the record; violations were required to be established by clear and convincing evidence.
PRECEDENTIAL VALUE	Published Nebraska Supreme Court opinion; precedential attorney-discipline decision.
PARTIES	State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Paul M. Conley

TOPICS

- sanctions
- bankruptcy
- chapter 13
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should approve Conley's conditional admission of the formal disciplinary charges.
2. Whether the admitted conduct violated DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), and DR 7-101(A)(3).
3. Whether a public reprimand and assessment of costs and expenses were appropriate discipline.

HOLDINGS

1. The court approved the conditional admission because Conley knowingly admitted the essential relevant facts and waived all proceedings concerning the admitted charges.
2. By clear and convincing evidence, Conley violated DR 1-102(A)(4), DR 1-102(A)(5), DR 1-102(A)(6), and DR 7-101(A)(3).
3. A public reprimand was appropriate, and Conley was ordered to pay allowable costs and expenses.

KEY QUOTATIONS

"The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith." (268 Neb. 675-76)

"Based on the conditional admission of respondent, the recommendation of the Counsel for Discipline, and our independent review of the record, we find by clear and convincing evidence that respondent has violated DR 1-102(A)(4), (5), and (6), and DR 7-101(A)(3), and that respondent should be and hereby is publicly reprimanded." (268 Neb. 676)

FACTUAL BACKGROUND

Conley represented Steve and Becky Vandenberg in a chapter 13 bankruptcy proceeding beginning in November 2001. During the proceeding, he entered into a stipulation with a creditor without the clients' authorization and without informing them of the stipulation's complete terms. After receiving notice that the clients were in default on trustee payments, he failed to notify them or take steps to prevent dismissal of the bankruptcy case, which was dismissed on February 12, 2003.

PROCEDURAL HISTORY

Formal charges were filed against Conley on April 15, 2004, alleging violations of several provisions of the Nebraska Code of Professional Responsibility arising from his representation of bankruptcy clients. Conley filed a conditional admission on August 10, 2004, admitting the allegations and waiving further proceedings in exchange for a public reprimand. The Nebraska Supreme Court independently reviewed the record, approved the conditional admission, publicly reprimanded Conley, and ordered payment of costs and expenses.

DISPOSITION

OPINION

PER CURIAM.

686 N.W.2d 902 (2004) 268 Neb. 674 STATE of Nebraska ex rel. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, relator, v. Paul M. CONLEY, respondent. No. S-04-460. Supreme Court of Nebraska. October 1, 2004. WRIGHT, CONNOLLY, GERRARD, STEPHAN, and MILLER-LERMAN, JJ. *903 PER CURIAM. INTRODUCTION Respondent, Paul M. Conley, was admitted to the practice of law in the State of Nebraska on June 1, 1968, and at all times relevant hereto was engaged in the private practice of law in Lancaster County, Nebraska.

On April 15, 2004, formal charges were filed against respondent. The formal charges set forth one count that included charges that respondent violated the following provisions of the Code of Professional Responsibility: Canon 1, DR 1-102(A)(4) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); DR 1-102(A)(5) (engaging in conduct prejudicial to administration of justice); DR 1-102(A)(6) (engaging in conduct that adversely reflects on respondent's fitness to practice law); and Canon 7, DR 7-101(A)(3) (prejudicing or damaging client during course of professional relationship).

On August 10, 2004, respondent filed a conditional admission under Neb. Ct. R. of Discipline 13 (rev.2002), in which he knowingly admitted the truth of the allegations that he violated DR 1-102(A)(4), (5), and (6), and DR 7-101(A)(3), and, in effect, waived all proceedings against him in connection therewith in exchange for a public reprimand. Upon due consideration, the court approves the conditional admission and orders that respondent be publicly reprimanded.

FACTS In summary, the formal charges allege that on November 21, 2001, respondent undertook the representation of Steve and Becky Vandenberg in a chapter 13 bankruptcy proceeding. The formal charges further allege that during the course of the bankruptcy proceedings, respondent entered into a stipulation with one of the Vandenberg's creditors without authorization from the Vandenberg's, and without the Vandenberg's knowledge regarding the complete terms of the stipulation.

The formal charges further allege that during the pendency of the bankruptcy proceeding, respondent received notice from the chapter 13 trustee that the Vandenberg's were in default in making their monthly payments to the trustee, and allege that respondent failed to notify the Vandenberg's or to take any steps to prevent the dismissal of the Vandenberg's bankruptcy proceedings.

The formal charges further allege that the Vandenberg's' chapter 13 bankruptcy proceeding was dismissed on February 12, 2003. ANALYSIS Rule 13 provides in pertinent part: (B) At any time after the Clerk has entered a Formal Charge against a Respondent on the docket of the Court, the Respondent may file with the Clerk a conditional admission of the Formal Charge in exchange for a stated form of consent judgment of discipline as to all or part of the Formal Charge pending against him or her as determined to be appropriate by the Counsel for Discipline or any member appointed to prosecute on behalf of the Counsel for Discipline; such conditional admission is subject to approval by the Court.

The conditional admission shall include a written statement that the Respondent knowingly admits or knowingly does not challenge or contest the truth of the matter or matters conditionally admitted and waives all proceedings against him or her in connection therewith. If a tendered conditional admission is not finally approved as above provided, it may not be used as evidence against the Respondent in any way. *904 Pursuant to rule 13, we find that respondent knowingly admits the essential relevant facts outlined in the formal charges and knowingly admits that he violated DR 1-102(A)(4), (5), and (6), and DR 7-101(A)(3).

We further find that respondent waives all proceedings against him in connection herewith. Upon due consideration, the court approves the conditional admission and enters the orders as indicated below. CONCLUSION Based on the conditional admission of respondent, the recommendation of the Counsel for Discipline, and our independent review of the record, we find by clear and convincing evidence that respondent has violated DR 1-102(A)(4), (5), and (6), and DR 7-101(A)(3), and that respondent should be and hereby is publicly reprimanded.

Respondent is directed to pay costs and expenses in accordance with Neb.Rev.Stat. §§ 7-114 and 7-115 (Reissue 1997) and Neb. Ct. R. of Discipline 10(P) (rev.2003) and 23(B) (rev.2001), within 60 days after an order imposing costs and expenses, if any, is entered by the court. JUDGMENT OF PUBLIC REPRIMAND. HENDRY, C.J., and McCORMACK, J., not participating.