

SUPREME COURT OF WISCONSIN

Office of Lawyer Regulation v. Alan D. Eisenberg

322 Wis. 2d 518 (Wis. 2010) · No. No. 2007AP1083-D · Decided February 18, 2010

SUMMARY

The Wisconsin Supreme Court reviewed disciplinary proceedings against attorney Alan D. Eisenberg. The court upheld the referee's finding that Eisenberg engaged in misconduct by filing and pursuing a civil action for harassment or malicious injury, revoked his Wisconsin law license, and assessed the proceeding's costs against him. The court also considered Eisenberg's extensive prior disciplinary history.

CASE DETAILS

COURT	Supreme Court of Wisconsin
WRITING FOR THE COURT	Per curiam
JURISDICTION	Wisconsin
DECIDED	February 18, 2010
DOCKET	No. 2007AP1083-D
DISPOSITION	other
PROCEDURAL POSTURE	Attorney Alan D. Eisenberg appealed from a referee's report finding that he committed professional misconduct and recommending revocation of his Wisconsin law license. The Supreme Court reviewed the referee's factual findings and legal conclusions and determined the appropriate sanction.
STANDARD OF REVIEW	A referee's findings of fact are affirmed unless clearly erroneous; conclusions of law are reviewed de novo. The Supreme Court may impose whatever sanction it deems appropriate regardless of the referee's recommendation.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Alan D. Eisenberg v. Office of Lawyer Regulation

TOPICS

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PRACTICE AREAS

legal ethics and attorney discipline

professional responsibility

appellate procedure

sanctions and costs

QUESTIONS PRESENTED

1. Whether clear, satisfactory, and convincing evidence established that Eisenberg violated SCR 20:3.1(a)(3) by filing and pursuing a civil action when he knew or it was obvious that the action would merely harass or maliciously injure M.D.
2. Whether the referee's findings of fact were clearly erroneous.
3. Whether revocation of Eisenberg's law license was the appropriate sanction in light of the misconduct and his extensive prior disciplinary history.
4. Whether Count Two, alleging a violation of SCR 20:3.1(a)(1), was proved.

HOLDINGS

1. The referee's findings of fact were supported by clear, satisfactory, and convincing evidence and were not clearly erroneous; the court adopted them.
2. Eisenberg violated SCR 20:3.1(a)(3) by filing and pursuing the civil suit when he knew or it was obvious that the action would serve merely to harass or maliciously injure M.D.
3. Eisenberg could not collaterally attack in the disciplinary proceeding the prior determination that sanctions were properly imposed for initiating and maintaining the civil action to harass M.D.
4. Revocation of Eisenberg's Wisconsin law license was necessary because the aggravated misconduct and extensive disciplinary history required a sanction sufficient to protect the public, deter misconduct, and impress upon him the seriousness of his conduct.
5. Count Two, alleging that Eisenberg knowingly advanced an unwarranted claim or defense under SCR 20:3.1(a)(1), was not proved and was dismissed.

KEY QUOTATIONS

"The record clearly establishes that Attorney Eisenberg had no good-faith legal basis for filing the civil lawsuit, but rather his motive was part of a continuing campaign to intimidate, harass, and maliciously injure M.D." (778 N.W.2d 661)

"In light of the aggravated nature of the misconduct and Attorney Eisenberg's extensive disciplinary history, we conclude that no sanction short of revocation would be sufficient to protect the public, achieve deterrence, and impress upon Attorney Eisenberg the seriousness of his misconduct." (778 N.W.2d 662)

FACTUAL BACKGROUND

Eisenberg represented W.D. in a criminal case and divorce proceeding involving W.D.'s estranged wife, M.D. Less than a day after W.D.'s acquittal, Eisenberg filed a civil action against M.D. and used the action, threatening conduct, publicity, and repeated assertions about an alleged jury demand for M.D.'s prosecution to obtain leverage and to harass or injure her. The civil action was later dismissed, M.D. obtained default judgment and sanctions, and the courts determined that the action was frivolous. In the disciplinary proceeding, the referee

found that Eisenberg knowingly pursued the action for harassment or malicious injury and that his extensive prior disciplinary history warranted revocation.

PROCEDURAL HISTORY

The Office of Lawyer Regulation charged Eisenberg with two violations of SCR 20:3.1 arising from his filing and prosecution of a civil action against M.D. and from a later pro se motion concerning attorney fees. The referee found Count One proved but Count Two unproved and recommended revocation and assessment of costs. The Supreme Court adopted the referee's findings and conclusions, dismissed Count Two, revoked Eisenberg's license, and ordered him to pay the proceeding's full costs.

DISPOSITION

other

REMAND INSTRUCTIONS

Eisenberg was ordered to pay the costs of the disciplinary proceeding to the Office of Lawyer Regulation within 60 days, comply with SCR 22.26, and have his license revoked effective April 1, 2010. No remand was ordered.

CASES CITED

- State v. Eisenberg, 48 Wis. 2d 364, 180 N.W.2d 529 (1970)
- In re Disciplinary Proceedings Against Eisenberg, 144 Wis. 2d 284, 423 N.W.2d 867 (1988)
- In re Disciplinary Proceedings Against Eisenberg, 2004 WI 14, 269 Wis. 2d 43, 675 N.W.2d 747
- In re Disciplinary Proceedings Against Eisenberg, 2007 WI 7, 298 Wis. 2d 578, 726 N.W.2d 634
- Eisenberg v. Deutsch, 289 Wis. 2d 218, 709 N.W.2d 111 (Wis. Ct. App. 2005)
- Jandrt v. Jerome Foods, Inc., 227 Wis. 2d 531, 597 N.W.2d 744 (1999)
- In re Disciplinary Proceedings Against Lauer, 108 Wis. 2d 746, 324 N.W.2d 432 (1982)
- In re Disciplinary Proceedings Against Widule, 2003 WI 34, 261 Wis. 2d 45, 660 N.W.2d 686
- In re Disciplinary Proceedings Against Caldwell, 171 Wis. 2d 393, 491 N.W.2d 482 (1992)
- In re Disciplinary Proceedings Against Converse, 2006 WI 4, 287 Wis. 2d 72, 707 N.W.2d 530

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