SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board v. Larry Alan Stoller

879 N.W.2d 199 (Iowa 2016) · No. No. 15–1824 · Decided May 13, 2016

SUMMARY

The Iowa Supreme Court reviewed attorney disciplinary charges arising from Larry Alan Stoller's representation of parties in an abandoned restaurant lease and equipment dispute, and from his successive representation of Robert and Marcia Zylstra and NuStar Farms. The court found several violations of Iowa's professional-conduct rules, including conflicts of interest and dishonest conduct, and imposed a sixty-day suspension rather than the three-month suspension recommended by the grievance commission.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Zager, Justice
JURISDICTION	Iowa
DECIDED	May 13, 2016
DOCKET	No. 15–1824
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding reviewed by the Supreme Court of Iowa after the Grievance Commission found ethical violations in two client matters and recommended a public reprimand and a concurrent three-month suspension.
STANDARD OF REVIEW	De novo review. The Board must prove attorney misconduct by a convincing preponderance of the evidence, a burden greater than a preponderance of the evidence but less than proof beyond a reasonable doubt. The court gives the commission's findings and recommendations respectful consideration but is not bound by them and may impose a lesser or greater sanction.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion; precedential.
PARTIES	Iowa Supreme Court Attorney Disciplinary Board v. Larry Alan Stoller

TOPICS

corporate law · landlord tenant · commercial litigation · contracts

PRACTICE AREAS

legal ethics · attorney discipline · conflicts of interest · corporate law · landlord-tenant law

QUESTIONS PRESENTED

1. Whether Stoller violated Iowa Rule of Professional Conduct 32:1.7 by simultaneously representing the Martens and Chaplin in a landlord-tenant transaction without timely informed written consent.
2. Whether Stoller violated Iowa Rule of Professional Conduct 32:4.2(a) by communicating with an OCI shareholder while OCI was represented by counsel.
3. Whether Stoller's conduct in arranging the OCI equipment transaction constituted dishonesty, fraud, deceit, or misrepresentation under rule 32:8.4(c).
4. Whether Stoller violated rule 32:1.7(a)(2) by representing NuStar while his representation of the Zylstras was ongoing or had recently ended and the interests were materially adverse.
5. Whether Stoller violated rule 32:1.9(a) or (c) by representing NuStar in a substantially related matter after representing the Zylstras.
6. What sanction was appropriate for the proven violations and whether a firearm-possession restriction could be imposed without notice.

HOLDINGS

1. A lawyer's simultaneous representation of a landlord and tenant in the same lease transaction creates a concurrent conflict of interest because the lawyer's representation of each client is materially limited by duties owed to the other. The conflict requires informed written consent, and consent obtained after the material transaction has occurred does not cure the violation.
2. The Board failed to prove by a convincing preponderance of the evidence that Stoller violated rule 32:4.2(a), because the evidence did not establish that his calls with Jolene Schmidtke concerned the pending OCI litigation rather than obtaining tax records.
3. Stoller violated rule 32:8.4(c) by knowingly assisting in a sham transaction that purported to transfer OCI's equipment through a person lacking authority, contrary to Iowa law, and by representing that the transaction was legally proper.
4. Stoller violated rule 32:1.7(a)(2) by representing NuStar while his representation of the Zylstras was ongoing or had just been terminated and while he was contemplating adverse litigation against them, without obtaining informed written consent.
5. The Board failed to prove that Stoller violated rule 32:1.9(a), because the scope of his prior representation of the Zylstras concerning manure easements was not sufficiently significant and substantially related to the later NuStar lawsuit.

6. The Board failed to prove that Stoller violated rule 32:1.9(c), because the record did not show that he used or revealed information obtained from the Zylstras in the manure-easement meeting.
7. The Board failed to prove a rule 32:8.4(c) violation in the Zylstra matter because Stoller's conduct amounted to negligence or an incorrect interpretation of the conflict rules, not conduct demonstrating the required scienter.
8. A sixty-day suspension of Stoller's Iowa law license was appropriate for the proven conflicts-of-interest violations and the rule 32:8.4(c) violation in the OCI matter.
9. The court declined to impose a firearm-possession restriction as a condition of reinstatement because Stoller lacked notice that the commission would consider such a sanction.

KEY QUOTATIONS

> *"We review attorney disciplinary proceedings de novo."* (at 12)

> *"We agree with our prior cases that the position of a landlord and a tenant are enough at odds that one attorney's representation of both parties creates a concurrent conflict of interest that requires the informed, written consent of both parties."* (at 16)

> *"The term "dishonesty," as used in a rule of professional conduct regarding engaging in conduct involving dishonesty, while encompassing fraud, deceit, and misrepresentation, also includes conduct evincing a lack of honesty, probity, or integrity in principle or a lack of fairness and straightforwardness."* (at 22)

> *"The "absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive[s] [a] petitioner of procedural due process.""* (at 40)

> *"For the above reasons, we suspend Stoller's license to practice law with no possibility of reinstatement for sixty days from the filing of this opinion."* (at 40)

FACTUAL BACKGROUND

Stoller represented Martin and Melinda Marten, landlords of property leased to Okoboji Cocktails, Inc. After OCI abandoned the premises, Stoller advised the Martens to retain OCI's equipment and arranged for Diane Chaplin, an OCI shareholder and former officer, to consent to the transfer and then lease the premises and equipment through a newly formed corporation. Stoller did not obtain written conflict consent until after the transaction and lease had occurred, and the transaction led to replevin litigation and substantial legal expenses. In a separate matter, Stoller had represented Robert and Marcia Zylstra before undertaking representation of NuStar Farms in a dispute adverse to the Zylstras, and he threatened specific-performance and damages litigation against them while terminating their representation.

PROCEDURAL HISTORY

The Board filed its disciplinary complaint on January 22, 2015. After a two-day hearing, the Grievance Commission found violations involving conflicts of interest and dishonesty, fraud, deceit, or misrepresentation and recommended sanctions. The Supreme Court conducted a de novo review, agreed with some but not all of the findings, rejected the firearm restriction recommended by the commission, and imposed a sixty-day suspension.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Cross, 861 N.W.2d 211, 217 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ricklefs, 844 N.W.2d 689, 696 (Iowa 2014)
- State v. McKinley, 860 N.W.2d 874, 882 (Iowa 2015)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Wagner, 599 N.W.2d 721, 726–27 (Iowa 1999)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Fay, 619 N.W.2d 321, 325 (Iowa 2000)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Santiago, 869 N.W.2d 172, 180 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Qualley, 828 N.W.2d 282, 292–93 (Iowa 2013)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Parrish, 801 N.W.2d 580, 587 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Netti, 797 N.W.2d 591, 605–07 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Haskovec, 869 N.W.2d 554, 560–62 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ouderkirk, 845 N.W.2d 31, 41 (Iowa 2014)
- Doe v. Perry Community School District, 650 N.W.2d 594, 598–99 (Iowa 2002)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Marks, 814 N.W.2d 532, 539 (Iowa 2012)
- Bottoms v. Stapleton, 706 N.W.2d 411, 416 (Iowa 2005)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Blessum, 861 N.W.2d 575, 591 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Morris, 847 N.W.2d 428, 435 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Earley, 729 N.W.2d 437, 443 (Iowa 2007)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. McGinness, 844 N.W.2d 456, 463–67 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Mendez, 855 N.W.2d 156, 173–75 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Yang, 821 N.W.2d 425, 430–31 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Zenor, 707 N.W.2d 176, 181, 187 (Iowa 2005)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Carter, 847 N.W.2d 228, 232, 234 (Iowa 2014)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Kersenbrock, 821 N.W.2d 415, 417–18, 421 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Nelissen, 871 N.W.2d 694, 700–02 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Van Ginkel, 809 N.W.2d 96, 107, 110–11 (Iowa 2012)
- In re Ruffalo, 390 U.S. 544, 552, 88 S. Ct. 1222, 20 L. Ed. 2d 117 (1968)