

SUPREME COURT OF NORTH DAKOTA

In re Disciplinary Action Against McCray

755 N.W.2d 835 (N.D. 2008) · No. Nos. 20070376, 20070377 · Decided September 3, 2008

SUMMARY

The Supreme Court of North Dakota reviewed disciplinary proceedings arising from Loren C. McCray's operation of a credit-repair law practice. The court found clear and convincing evidence that McCray violated multiple professional-conduct and lawyer-discipline rules, including rules concerning unreasonable fees, misrepresentation, solicitation, unauthorized practice, and fee sharing with a nonlawyer. The court ordered a six-month-and-one-day suspension and assessment of disciplinary proceeding costs.

CASE DETAILS

COURT	Supreme Court of North Dakota
WRITING FOR THE COURT	Per Curiam; Gerald W. Vande Walle, Chief Justice; Steven E. McCullough, District Judge, sitting in place of Maring, J., disqualified; Dale V. Sandstrom, Justice
JURISDICTION	North Dakota
DECIDED	September 3, 2008
DOCKET	Nos. 20070376, 20070377
DISPOSITION	other
PROCEDURAL POSTURE	McCray and disciplinary counsel petitioned the Supreme Court of North Dakota for review of a hearing panel report recommending a 120-day suspension for violations arising from McCray's credit-repair law practice.
STANDARD OF REVIEW	Disciplinary proceedings are reviewed de novo on the record. The Court gives due weight to the hearing panel's findings and special deference to findings based on conflicting evidence, while disciplinary counsel bears the burden of proving each violation by clear and convincing evidence.
PRECEDENTIAL VALUE	Published North Dakota Supreme Court opinion; precedential as to the legal and disciplinary rules applied.
PARTIES	Loren C. McCray, Disciplinary Counsel v. Disciplinary Board of the Supreme Court of the State of North Dakota

TOPICS

credit reporting

consumer protection

bankruptcy

PRACTICE AREAS

legal ethics and professional responsibility

lawyer discipline

consumer protection

credit reporting

bankruptcy

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that McCray charged unreasonable fees in violation of N.D.R. Prof. Conduct 1.5.
2. Whether McCray violated N.D.R. Prof. Conduct 4.1 by authorizing false or misleading statements in dispute letters sent to credit-reporting agencies.
3. Whether McCray violated N.D.R. Prof. Conduct 7.3(a) by using sponsored seminars and representatives to solicit prospective clients for pecuniary gain.
4. Whether McCray violated N.D.R. Prof. Conduct 8.4(c) and (f) and N.D.R. Lawyer Discipl. 1.2A(3) and (8) through dishonest, misleading, and administration-of-justice-prejudicial conduct.
5. Whether McCray violated N.D.R. Prof. Conduct 8.4(g) and N.D.C.C. § 27-14-02(7) by engaging in conduct tending to bring reproach upon the legal profession.
6. Whether McCray assisted nonlawyers in the unauthorized practice of law in violation of N.D.R. Prof. Conduct 5.5(e).
7. Whether McCray improperly shared legal fees with a nonlawyer in violation of N.D.R. Prof. Conduct 5.4(a).
8. What sanction was appropriate for the established violations.

HOLDINGS

1. McCray violated N.D.R. Prof. Conduct 1.5 by charging a \$590 fee over ten months for minimal legal work and by collecting recurring fees before credit-repair services were fully performed.
2. McCray violated N.D.R. Prof. Conduct 4.1 by knowingly authorizing form letters that falsely purported to be written and sent by clients and contained false or misleading statements about credit-report entries.
3. McCray violated N.D.R. Prof. Conduct 7.3(a) by sponsoring seminars that targeted vulnerable prospective clients and arranging for representatives to sell Bradley Ross Law's legal services for pecuniary gain.
4. McCray violated N.D.R. Prof. Conduct 8.4(c) and (f) and N.D.R. Lawyer Discipl. 1.2A(3) and (8) because his solicitation, fee practices, and use of dishonest and misleading dispute letters adversely reflected on his fitness and prejudiced the administration of justice.
5. McCray violated N.D.R. Prof. Conduct 8.4(g) and N.D.C.C. § 27-14-02(7) because his conduct tended to bring reproach upon the legal profession.

6. McCray violated N.D.R. Prof. Conduct 5.5(e) by assisting leased Indiana employees in performing legal work under his license without adequate supervision.
7. McCray violated N.D.R. Prof. Conduct 5.4(a) by sharing legal fees with Bellwether, Inc., or its affiliates.
8. A suspension of six months and one day, rather than the hearing panel's recommended 120-day suspension, was appropriate, together with payment of disciplinary costs.

KEY QUOTATIONS

“A legal fee of \$590 during a 10-month time span for less than 12 minutes of “legal” work that consisted primarily of mailing dispute letters in the client's own name is unreasonable.” (842)

“In effect, McCray allowed the Indiana employees to practice law under his license.” (846)

“Considering the multiple offenses and McCray's refusal to acknowledge the wrongful nature of his conduct, we order that McCray be suspended from the practice of law for six months and one day and that he pay the full costs and expenses of the disciplinary proceeding.” (847)

FACTUAL BACKGROUND

McCray operated Bradley Ross Law, P.C., a North Dakota professional corporation providing credit-repair services, while maintaining a very large client base and relying heavily on leased nonlawyer employees in Indiana. Clients were charged recurring monthly fees regardless of the amount of work performed, and approximately 95 percent of the firm's gross revenue was paid to Bellwether, Inc., or its affiliates. The firm used form dispute letters purportedly sent by clients to credit-reporting agencies, including letters containing false statements and inaccurate information. McCray also sponsored seminars that promoted the firm's legal services and staffed booths where attendees could sign representation contracts.

PROCEDURAL HISTORY

A hearing panel found violations of multiple North Dakota Rules of Professional Conduct and North Dakota Rules for Lawyer Discipline and recommended a 120-day suspension plus \$7,808.66 in costs. Both McCray and disciplinary counsel petitioned for review; McCray sought dismissal and disciplinary counsel sought disbarment. The Supreme Court conducted de novo review, affirmed the violations, increased the suspension to six months and one day, and ordered payment of costs.

DISPOSITION

other

CASES CITED

- Disciplinary Board v. Buresh, 2007 ND 8, ¶ 6, 726 N.W.2d 210
- Disciplinary Board v. Bullis, 2006 ND 228, ¶ 12, 723 N.W.2d 667
- Disciplinary Board v. Johnson, 2007 ND 203, ¶ 17, 743 N.W.2d 117
- Disciplinary Board v. Chinquist, 2006 ND 107, ¶ 7, 714 N.W.2d 469

- Disciplinary Board v. McKechnie, 2003 ND 170, ¶ 7, 670 N.W.2d 864
- Jones v. North Dakota State Board of Medical Examiners, 2005 ND 22, ¶¶ 20-22, 691 N.W.2d 251
- Federal Trade Commission v. Gill, 265 F.3d 944, 952, 956 (9th Cir. 2001)
- Disciplinary Counsel v. Kramer, 113 Ohio St. 3d 455, 866 N.E.2d 498, 501 (2007)
- Disciplinary Board v. Howe, 2001 ND 7, ¶ 15, 621 N.W.2d 361
- Committee on Professional Ethics and Conduct v. Baker, 492 N.W.2d 695, 701 (Iowa 1992)
- Disciplinary Board v. Nassif, 547 N.W.2d 541, 543 (N.D. 1996)
- In re Hear, 755 N.E.2d 579, 581 (Ind. 2001)
- Disciplinary Board v. Edwardson, 2002 ND 106, ¶ 21, 647 N.W.2d 126
- Caldis v. Board of County Commissioners, 279 N.W.2d 665, 669 (N.D. 1979)
- Bates v. State Bar of Arizona, 433 U.S. 350, 383 (1977)
- Belli v. State Bar of California, 10 Cal. 3d 824, 112 Cal. Rptr. 527, 519 P.2d 575, 581-82 (1974)
- Jacoby v. State Bar of California, 19 Cal. 3d 359, 138 Cal. Rptr. 77, 562 P.2d 1326, 1334 (1977)
- Bigelow v. Virginia, 421 U.S. 809 (1975)
- Iosello v. Lexington Law Firm, No. 03 C 987-6 (N.D. Ill. Aug. 12, 2003)
- Riemers v. State, 2008 ND 101, ¶ 11, 750 N.W.2d 407