

SUPREME COURT OF OKLAHOMA

State ex rel. Oklahoma Bar Association v. Kutner

Kutner, 2022 OK 18 (Okla. 2022) · No. SCBD-7060 · Decided February 28, 2022

SUMMARY

The Oklahoma Supreme Court imposed reciprocal discipline on Sanford A. Kutner based on his professional discipline in Louisiana. The court found that Kutner engaged in unauthorized practice of law, neglected a legal matter, failed to communicate with a client, failed to return unearned fees, and did not timely notify the Oklahoma Bar Association of the Louisiana discipline; it suspended him for eighteen months and assessed costs.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Kuehn, J.; Darby, C.J.; Kane, V.C.J.; Kauger, J.; Winchester, J.; Edmondson, J.; Gurich, J.; Combs, J.; Rowe, J.
JURISDICTION	Oklahoma
DECIDED	February 28, 2022
DOCKET	SCBD-7060
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding for attorney discipline based on professional discipline imposed on Kutner by the Supreme Court of Louisiana.
STANDARD OF REVIEW	Attorney misconduct must be demonstrated by clear and convincing evidence. In a reciprocal disciplinary proceeding, a certified copy of the other jurisdiction's adjudication and supporting documents constitutes prima facie evidence of the described acts, and the Oklahoma Supreme Court independently determines the appropriate discipline while considering proportionality and the sanction imposed by the other jurisdiction.
PRECEDENTIAL VALUE	precedential
PARTIES	State of Oklahoma ex rel. Oklahoma Bar Association v. Sanford A. Kutner

TOPICS

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Kutner violated Rule 7.7 of the Rules Governing Disciplinary Proceedings by failing to notify the Oklahoma Bar Association within twenty days of discipline imposed by the Supreme Court of Louisiana.
2. Whether the certified Louisiana disciplinary materials established that Kutner engaged in professional misconduct.
3. Whether Kutner's Louisiana misconduct constituted grounds for discipline in Oklahoma.
4. What sanction was appropriate for the misconduct and failure to report the Louisiana discipline.

HOLDINGS

1. An Oklahoma lawyer must notify the Oklahoma Bar Association's General Counsel within twenty days of a final disciplinary order imposed in another jurisdiction, and failure to do so is itself grounds for discipline.
2. A certified copy of the disciplinary documents and adjudication from another jurisdiction constitutes the charge and prima facie evidence that the lawyer committed the acts described.
3. An Oklahoma-licensed lawyer who practices law in another jurisdiction without authorization is subject to discipline in Oklahoma, and the same conduct may support discipline for unauthorized practice, lack of diligence, failure to communicate, and failure to return unearned fees.
4. An eighteen-month suspension from the practice of law in Oklahoma was warranted and should begin on April 20, 2021, the date the Supreme Court of Louisiana imposed its sanction.

KEY QUOTATIONS

“The primary purpose of disciplinary proceedings is protection of the public and purification of the Bar, not the punishment of the offending lawyer.” (¶ 2)

“Having found clear and convincing evidence that Kutner, a veteran attorney, engaged in the unauthorized practice of law in Louisiana, that he neglected that legal matter as well, and that he failed to notify the OBA of the Louisiana disciplinary action, this Court finds that he should be suspended from the practice of law in Oklahoma for eighteen months, to begin on the same date that the Supreme Court of Louisiana imposed its sanction: April 20, 2021.” (¶ 18)

FACTUAL BACKGROUND

Kutner, an Oklahoma-licensed lawyer residing in Louisiana, represented a Louisiana client in civil-rights matters without Louisiana authorization, accepted approximately \$3,700 in fees, and signed a contingency-fee agreement using his wife's name and his initials even though she did not participate in the representation. The

client's federal lawsuit was dismissed for failure to serve the defendants, Kutner ceased communicating with the client, and unearned fees were not initially returned. The Supreme Court of Louisiana imposed an eighteen-month practice restriction, and Kutner did not promptly notify the Oklahoma Bar Association of that discipline.

PROCEDURAL HISTORY

The Oklahoma Bar Association notified the Oklahoma Supreme Court of Kutner's Louisiana discipline under Rule 7.7 of the Rules Governing Disciplinary Proceedings. The court directed Kutner to show cause why final discipline should not be imposed; he filed no written response with the court, although he sent a letter to the OBA. The court accepted the evidentiary materials, found clear and convincing evidence of misconduct and failure to report the Louisiana sanction, suspended Kutner for eighteen months, and assessed costs.

DISPOSITION

other

CASES CITED

- State ex rel. OBA v. Wintory, 2015 OK 25, ¶ 14, 350 P.3d 131, 135
- State ex rel. OBA v. Bellamy, 2012 OK 20, ¶ 8, 273 P.3d 56, 61-62
- State ex rel. OBA v. Auer, 2016 OK 75, ¶ 16, 376 P.3d 243, 248
- State ex rel. OBA v. Loeliger, 2005 OK 79, ¶ 15, 127 P.3d 591, 595
- State ex rel. OBA v. Kleinsmith, 2013 OK 16, ¶¶ 4-5, 297 P.3d 1248, 1250-51
- State ex rel. OBA v. Hyde, 2017 OK 59, ¶¶ 30-31, 397 P.3d 1286, 1293-94
- State ex rel. OBA v. Combs, 2007 OK 65, ¶ 35, 175 P.3d 340, 351
- State ex rel. OBA v. Benefield, 2005 OK 75, ¶¶ 31-33, 125 P.3d 1191, 1196
- State ex rel. OBA v. Green, 2020 OK 21, ¶¶ 28-30, 465 P.3d 1197, 1205