

SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board v. Donald H. Capotosto

No. 19–0249 · No. No. 19-0249 · Decided May 3, 2019

SUMMARY

The Iowa Supreme Court held that Donald H. Capotosto violated Iowa Rules of Professional Conduct 32:1.3, 32:1.4(a)(3) and (4), and 32:8.4(d) by neglecting multiple probate matters, failing to communicate with clients, and failing to comply with a deferral agreement. Considering aggravating and mitigating factors, including prior discipline and his service in court-appointed cases, the court suspended his license to practice law for sixty days. The court assessed the proceeding's costs against Capotosto.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Mark Cady, Chief Justice
JURISDICTION	Iowa
DECIDED	May 3, 2019
DOCKET	No. 19-0249
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary action reviewed by the Supreme Court of Iowa from a report and recommendation of the Iowa Supreme Court Grievance Commission.
STANDARD OF REVIEW	Attorney disciplinary proceedings are reviewed de novo. The court is not bound by the commission's findings and recommendations but gives them respectful consideration. The Board must prove misconduct by a convincing preponderance of the evidence.
PRECEDENTIAL VALUE	precedential
PARTIES	Iowa Supreme Court Attorney Disciplinary Board v. Donald H. Capotosto

TOPICS

- estate litigation
- probate procedure
- probate
- appellate procedure
- standard of review

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

probate

QUESTIONS PRESENTED

1. Whether Capotosto violated Iowa Rule of Professional Conduct 32:1.3 by repeatedly neglecting probate matters and failing to complete estate-related tasks.
2. Whether Capotosto violated Iowa Rules of Professional Conduct 32:1.4(a)(3) and 32:1.4(a)(4) by failing to keep clients informed and respond to reasonable requests for information.
3. Whether Capotosto violated Iowa Rule of Professional Conduct 32:8.4(d) by engaging in sustained negligence that was prejudicial to the administration of justice.
4. What disciplinary sanction was appropriate in light of the violations, prior discipline, aggravating circumstances, and mitigating circumstances.

HOLDINGS

1. Repeatedly failing to perform required functions, meet deadlines, and complete probate estates within a reasonable time constitutes a lack of reasonable diligence and promptness under rule 32:1.3. Capotosto violated the rule through his consistent and continuous neglect of multiple probate cases.
2. An attorney violates rules 32:1.4(a)(3) and 32:1.4(a)(4) by failing to keep clients reasonably informed about their matters and by failing to promptly comply with reasonable requests for information. Capotosto violated both provisions.
3. Sustained negligence in numerous probate matters that causes unnecessary delinquency notices, additional proceedings, and expenditure of judicial resources constitutes conduct prejudicial to the administration of justice under rule 32:8.4(d). Capotosto violated the rule.
4. A sixty-day suspension of Capotosto's license to practice law was the appropriate sanction for his repeated probate neglect, communication violations, conduct prejudicial to the administration of justice, prior discipline, and failure to comply with the deferral agreement, notwithstanding mitigating evidence.

KEY QUOTATIONS

“We review attorney disciplinary proceedings de novo.” (at 4)

“Clearly, Capotosto’s actions demonstrate a consistent and continuous pattern of neglect.” (at 5)

“Accordingly, we find Capotosto’s sustained negligence in his numerous probate cases hindered the efficiency of our judicial system in violation of rule 32:8.4(d).” (at 6)

“Upon consideration of the commission’s findings and facts of this case, we conclude a sixty-day suspension of respondent’s license to practice law is the appropriate sanction.” (at 11)

FACTUAL BACKGROUND

Donald H. Capotosto, an Iowa attorney, allowed multiple probate estates to become delinquent and failed to cure the delinquencies or withdraw from the matters. After entering a deferral agreement requiring him to remedy the

cases, refrain from opening new probate matters, complete probate continuing legal education, and submit quarterly reports, he failed to comply and opened additional estates. The number of delinquent estates increased to twelve by the Grievance Commission hearing, and one estate involved in his prior 2015 reprimand remained open and delinquent.

PROCEDURAL HISTORY

Capotosto and the Iowa Supreme Court Attorney Disciplinary Board stipulated to facts and rule violations arising from neglect of probate estates and failure to comply with a deferral agreement. The Grievance Commission recommended a sixty-day suspension, while the Board recommended at least a six-month suspension and a future bar on handling probate cases. The Supreme Court independently reviewed the matter de novo and imposed a sixty-day suspension.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Dolezal, 796 N.W.2d 910, 913 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Van Ginkel, 809 N.W.2d 96, 102-03 (Iowa 2012)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Grotewold, 642 N.W.2d 288, 293 (Iowa 2002)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Lickiss, 786 N.W.2d 860, 867-70 (Iowa 2010)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ryan, 863 N.W.2d 20, 26 (Iowa 2015)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Nelson, 838 N.W.2d 528, 537-38 (Iowa 2013)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Stansberry, 922 N.W.2d 591, 597 (Iowa 2019)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Templeton, 784 N.W.2d 761, 768 (Iowa 2010)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Rhinehart, 827 N.W.2d 169, 180 (Iowa 2013)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Clarity, 838 N.W.2d 648, 660 (Iowa 2013)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Earley, 729 N.W.2d 437, 443 (Iowa 2007)
- Comm. on Prof'l Ethics & Conduct v. Haney, 435 N.W.2d 742, 743 (Iowa 1989)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ochs, 804 N.W.2d 720, 722-23 (Iowa 2011)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. McCuskey, 814 N.W.2d 250, 258 (Iowa 2012)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Dolezal, 841 N.W.2d 114, 127-28 (Iowa 2013)
- Comm. on Prof'l Ethics & Conduct v. Rogers, 313 N.W.2d 535, 537 (Iowa 1981) (en banc)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Ireland, 723 N.W.2d 439, 442 (Iowa 2006)
- Iowa Supreme Ct. Att'y Disciplinary Bd. v. Marks, 831 N.W.2d 194, 201 (Iowa 2013)