

SUPREME COURT OF OKLAHOMA

State ex rel. Oklahoma Bar Association v. Friesen

2016 OK 109 (Okla. 2016) · No. SCBD-6333 · Decided October 25, 2016

SUMMARY

The Oklahoma Supreme Court reviewed attorney-discipline proceedings against Larry Douglas Friesen arising from his representation of Alma and Oscar Nevarez. The Court found clear and convincing violations involving safekeeping client funds, diligence, communication, competence, and unreasonable fees, and ordered Friesen disbarred, his name stricken from the roll of attorneys, compliance with Rule 9 of the Rules Governing Disciplinary Proceedings, and payment of costs.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Combs, V.C.J.; Reif, C.J.; Kauger, J.; Watt, J.; Winchester, J.; Edmondson, J.; Taylor, J.; Colbert, J.
JURISDICTION	Oklahoma
DECIDED	October 25, 2016
DOCKET	SCBD-6333
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding before the Supreme Court of Oklahoma. The Professional Responsibility Tribunal found multiple violations and recommended a one-year suspension; the Supreme Court conducted a de novo review and imposed disbarment.
STANDARD OF REVIEW	De novo review. The Supreme Court of Oklahoma has exclusive and original jurisdiction over attorney-discipline proceedings and independently determines whether misconduct occurred and the appropriate discipline.
PRECEDENTIAL VALUE	Oklahoma Supreme Court opinion; the source contains a notice that the opinion had not yet been released for publication and was subject to revision or withdrawal.
PARTIES	State of Oklahoma ex rel. Oklahoma Bar Association v. Larry Douglas Friesen

TOPICS

contracts

trusts

trustee duties

estate planning

asset protection

PRACTICE AREAS

attorney discipline

legal ethics

trust accounts

estate planning

fee disputes

QUESTIONS PRESENTED

1. Whether clear and convincing evidence established that Friesen violated Oklahoma Rule of Professional Conduct 1.15 by treating an advance fee as earned immediately, failing to safeguard disputed client funds, and failing to provide an accounting or promptly return funds.
2. Whether clear and convincing evidence established violations of Oklahoma Rules of Professional Conduct 1.3 and 1.4 through lack of diligence, inadequate communication, and failure to respond to reasonable requests for information.
3. Whether Friesen violated Oklahoma Rule of Professional Conduct 1.5 by charging and retaining an unreasonable fee that was disproportionate to the services rendered.
4. Whether Friesen violated Oklahoma Rule of Professional Conduct 1.1 and Rule 1.3 of the Rules Governing Disciplinary Proceedings through incompetent representation and conduct bringing discredit upon the legal profession.
5. What discipline was warranted in light of the misconduct, prior discipline, mitigating circumstances, and purposes of attorney discipline.

HOLDINGS

1. An attorney violates Oklahoma Rule of Professional Conduct 1.15 by transferring an advance fee to an operating account before the fee is earned and by failing to keep disputed funds separate, provide a prompt accounting, and return funds to which the client is entitled.
2. An attorney violates Oklahoma Rules of Professional Conduct 1.3 and 1.4 by failing to act diligently and promptly, keep clients reasonably informed, explain the representation sufficiently for informed decisions, and respond to reasonable requests for information.
3. A lawyer violates Oklahoma Rule of Professional Conduct 1.5 by charging or retaining a fee that is unreasonable or obviously disproportionate to the services rendered, including where promised services are not diligently or timely performed.
4. Clear and convincing evidence established that Friesen violated Rule 1.1 of the Oklahoma Rules of Professional Conduct and Rule 1.3 of the Rules Governing Disciplinary Proceedings.
5. Disbarment, striking Friesen's name from the roll of attorneys, compliance with Rule 9 of the Rules Governing Disciplinary Proceedings, and payment of disciplinary costs were warranted.

KEY QUOTATIONS

“Upon our de novo review, we find Respondent's professional misconduct is established by clear and convincing evidence and order he be disbarred from the practice of law, his name be stricken from the roll of attorneys, he comply with Rule 9, RGDP, and he pay costs.” (¶ 0)

“We order Respondent, Larry Douglas Friesen, be disbarred from the practice of law, his name be stricken from the roll of attorneys, he comply with Rule 9, RGDP, and he bear the costs as provided herein.” (¶ 26)

FACTUAL BACKGROUND

Friesen represented Alma and Oscar Nevarez in a wrongful-death action that settled for \$675,000. After fees and costs, the clients received \$462,438, and they later signed an agreement providing that \$97,438 would be paid as a flat fee for future estate-planning, trust, annuity, and asset-protection services. Friesen immediately transferred the \$97,438 to his operating account, although much of the promised work would occur years later, and he never established the children's college accounts or performed the promised estate-planning work. Over approximately two and one-half years, the clients repeatedly requested information, but Friesen failed to provide meaningful information, an accounting, or a return of disputed or unearned funds until after the clients filed a civil action.

PROCEDURAL HISTORY

The Oklahoma Bar Association filed a disciplinary complaint on November 13, 2015. After a May 4, 2016 hearing, the Professional Responsibility Tribunal found clear and convincing evidence of violations of Oklahoma Rules of Professional Conduct 1.1, 1.3, 1.4, 1.5, and 1.15 and Rule 1.3 of the Rules Governing Disciplinary Proceedings, recommending a one-year suspension. On de novo review, the Supreme Court found the misconduct established and ordered disbarment, striking Friesen's name from the roll of attorneys and assessing costs.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Bar Association v. Cooley, 2013 OK 42, ¶ 4, 304 P.3d 453
- State ex rel. Oklahoma Bar Association v. Hart, 2014 OK 96, ¶ 6, 339 P.3d 895
- State ex rel. Oklahoma Bar Association v. Wilburn, 2006 OK 50, ¶ 3, 142 P.3d 420
- State ex rel. Oklahoma Bar Association v. Livshee, 1994 OK 12, ¶ 12, 870 P.2d 770
- State ex rel. Oklahoma Bar Association v. Weigel, 2014 OK 4, ¶ 23, 321 P.3d 168
- State ex rel. Oklahoma Bar Association v. Wright, 1997 OK 119, ¶ 47, 957 P.2d 1174
- State ex rel. Oklahoma Bar Association v. Friesen, 2015 OK 34, 350 P.3d 1269
- State ex rel. Oklahoma Bar Association v. Beasley, 2006 OK 49, ¶ 34, 142 P.3d 410
- State ex rel. Oklahoma Bar Association v. Doris, 1999 OK 94, ¶ 38, 991 P.2d 1015
- State ex rel. Oklahoma Bar Association v. Perkins, 1988 OK 65, 757 P.2d 825
- State ex rel. Oklahoma Bar Association v. Sheridan, 2003 OK 80, 84 P.3d 710
- State ex rel. Oklahoma Bar Association v. Whiteley, 1990 OK 46, 792 P.2d 1174