

NEBRASKA SUPREME COURT

State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Joseph P. Cullan

300 Neb. 948 (2018) · No. S-18-441 · Decided August 31, 2018

SUMMARY

The Nebraska Supreme Court granted the Counsel for Discipline’s motion for reciprocal discipline against Joseph P. Cullan. Following an Iowa public reprimand for misrepresenting his prior disciplinary history in a pro hac vice application, the court imposed the same sanction and ordered payment of applicable costs and expenses.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.
JURISDICTION	Nebraska
DECIDED	August 31, 2018
DOCKET	S-18-441
DISPOSITION	other
PROCEDURAL POSTURE	Original reciprocal attorney-discipline proceeding brought by the Counsel for Discipline after the Iowa Supreme Court publicly reprimanded respondent.
STANDARD OF REVIEW	The court considered the record and the facts determined by the Iowa attorney disciplinary board; in reciprocal discipline proceedings, the foreign jurisdiction's determination of misconduct is generally conclusive and is not relitigated.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Joseph P. Cullan

TOPICS

appellate procedure

remedies

PRACTICE AREAS

legal ethics

attorney discipline

reciprocal discipline

QUESTIONS PRESENTED

1. Whether the Nebraska Supreme Court should grant the Counsel for Discipline's motion for reciprocal discipline based on the Iowa public reprimand.
2. What discipline was appropriate under the circumstances.

HOLDINGS

1. A judicial determination of attorney misconduct in another jurisdiction is generally conclusive proof of guilt in a reciprocal-discipline proceeding and is not subject to relitigation in Nebraska.
2. Public reprimand was appropriate, and the Nebraska Supreme Court imposed the same public reprimand entered by the Iowa Supreme Court.

KEY QUOTATIONS

"In a reciprocal discipline proceeding, a judicial determination of attorney misconduct in one jurisdiction is generally conclusive proof of guilt and is not subject to relitigation in the second jurisdiction." (949)

"Upon due consideration of the record, and the facts as determined by the Iowa attorney disciplinary board, we determine that public reprimand is appropriate." (950)

FACTUAL BACKGROUND

Respondent was admitted to practice law in Nebraska and was also a member of the California and Arizona bars. In an Iowa pro hac vice application, he represented that he had not previously been sanctioned, although he had recently been sanctioned in two Douglas County, Nebraska, district court cases. The Iowa Supreme Court publicly reprimanded him, finding that his lack of care went beyond mere negligence, and Nebraska imposed reciprocal discipline.

PROCEDURAL HISTORY

The Iowa Supreme Court, through the Iowa Supreme Court Attorney Disciplinary Board, issued respondent a public reprimand on May 2, 2018. The Nebraska Counsel for Discipline filed a motion for reciprocal discipline under Neb. Ct. R. § 3-321, and the Nebraska Supreme Court granted the motion, imposed the identical public reprimand, and ordered payment of allowable costs and expenses.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Murphy, 283 Neb. 982, 814 N.W.2d 107 (2012)

OPINION

PER CURIAM.

Nebraska Supreme Court Online Library www.nebraska.gov/apps-courts-epub/ 10/05/2018 08:13 AM CDT - 948 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE EX REL. COUNSEL FOR DIS. v. CULLAN Cite as 300 Neb. 948 State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court, relator, v. Joseph P. Cullan, respondent. ___ N.W.2d ___ Filed August 31, 2018.

No. S-18-441. Original action. Judgment of public reprimand. Heavican, C.J., Miller-Lerman, Cassel, Stacy, Funke, and Papik, JJ. Per Curiam. INTRODUCTION On May 2, 2018, the Iowa Supreme Court filed an order of public reprimand of the respondent, Joseph P. Cullan.

The Counsel for Discipline of the Nebraska Supreme Court, the relator, filed a motion for reciprocal discipline against the respondent. We grant the motion for reciprocal discipline and impose the same discipline as the Iowa Supreme Court. FACTS The respondent was admitted to the practice of law in the State of Nebraska on July 1, 2001.

The respondent is also a member of the state bars of California and Arizona. On May 2, 2018, the Iowa Supreme Court, through the Iowa Supreme Court Attorney Disciplinary Board, issued an order of public reprimand of the respondent in case No. 18-0434.

The respondent's case before the Iowa attorney disciplinary board generally involved representing in an application for admission pro hac vice that he had not been sanctioned in the past. In - 949 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE EX REL. COUNSEL FOR DIS. v. CULLAN Cite as 300 Neb. 948 fact, the respondent had recently been sanctioned in two cases in the district court for Douglas County, Nebraska.

On May 4, 2018, the relator filed a motion for reciprocal discipline pursuant to Neb. Ct. R. § 3-321 of the disciplinary rules. ANALYSIS The basic issues in a disciplinary proceeding against an attorney are whether discipline should be imposed and, if so, the type of discipline appropriate under the circumstances. State ex rel. Counsel for Dis. v. Murphy, 283 Neb. 982, 814 N.W.2d 107 (2012).

In a reciprocal discipline proceeding, a judicial determination of attorney misconduct in one jurisdiction is generally conclusive proof of guilt and is not subject to relitigation in the second jurisdiction. Id. Neb. Ct. R. § 3-304 of the disciplinary rules provides that the following may be considered as discipline for attorney misconduct: (A) Misconduct shall be grounds for: (1) Disbarment by the Court; or (2) Suspension by the Court; or (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may designate; or (4) Censure and reprimand by the Court; or (5) Temporary suspension by the Court; or (6) Private reprimand by the Committee on Inquiry or Disciplinary Review Board.

(B) The Court may, in its discretion, impose one or more of the disciplinary sanctions set forth above. Section 3-321 of the disciplinary rules provides in part: (A) Upon being disciplined in another jurisdiction, a member shall promptly inform the Counsel for Discipline of the discipline imposed. Upon receipt by the Court of appropriate notice that a member has been disciplined in another jurisdiction, the Court may enter an order imposing the identical discipline, or greater or lesser discipline as the Court deems appropriate, or, in its discretion, - 950 - Nebraska Supreme Court Advance Sheets 300 Nebraska Reports STATE EX REL.

COUNSEL FOR DIS. v. CULLAN Cite as 300 Neb. 948 suspend the member pending the imposition of final discipline in such other jurisdiction. In imposing attorney discipline, we evaluate each case in light of its particular facts and circumstances. State ex rel. Counsel for Dis. v. Murphy, supra. Upon due consideration of the record, and the facts as determined by the Iowa attorney disciplinary board, we determine that public reprimand is appropriate.

Our record includes a notice of the findings of the Iowa attorney disciplinary board which found that the respondent's "lack of care... went beyond mere negligence." We take the determination of misconduct as found in the Iowa public reprimand to be established herein.

Accordingly, we grant the motion for reciprocal discipline and enter an order of public reprimand. CONCLUSION The motion for reciprocal discipline is granted. The respondent is publicly reprimanded. The respondent is directed to pay costs and expenses in accordance with Neb. Ct. R. §§ 3-310(P) (rev. 2014) and 3-323 of the disciplinary rules within 60 days after an order imposing costs and expenses, if any, is entered by the court.

Judgment of public reprimand.