SUPREME COURT OF OREGON

In re Complaint as to the Conduct of Margaretta Eakin, 334 Or. 238

48 P.3d 147 (2002) · No. SC S47644 · Decided June 7, 2002

SUMMARY

The Oregon Supreme Court reviewed a lawyer disciplinary proceeding involving Margaretta Eakin's conduct in a contract dispute and a child-custody matter. On de novo review, the court found violations involving client trust-account funds, trust-account records, and return of client property, but rejected several alleged dishonesty, excessive-fee, and litigation-misconduct violations. The court imposed a 60-day suspension.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Oregon
DECIDED	June 7, 2002
DOCKET	SC S47644
DISPOSITION	other
PROCEDURAL POSTURE	Automatic review of a lawyer disciplinary proceeding in which a trial panel of the Disciplinary Board found multiple violations and recommended disbarment.
STANDARD OF REVIEW	De novo review under BR 10.6; the Bar bears the burden of proving misconduct by clear and convincing evidence. The court generally gives weight to a trial panel's credibility findings, but declined to do so where the panel's credibility determination rested on a material factual mistake.
PRECEDENTIAL VALUE	Published Oregon Supreme Court en banc opinion; precedential.
PARTIES	Oregon State Bar v. Margaretta Eakin, accused

TOPICS

appellate procedure · standard of review · family law procedure · family law · trust administration

PRACTICE AREAS

legal ethics and professional responsibility | lawyer discipline | client trust accounts | family law | appellate procedure

QUESTIONS PRESENTED

1. Whether the Bar proved by clear and convincing evidence that Eakin intentionally converted or dishonestly misappropriated $850 from Schreiber's client trust account.
2. Whether Eakin violated the disciplinary rules requiring lawyers to maintain client funds in trust, maintain adequate client-property records, and promptly return client property.
3. Whether Eakin's litigation conduct in Schmidt's custody matter constituted dishonesty, conduct prejudicial to the administration of justice, or churning.
4. Whether Eakin charged a clearly excessive fee in the Schmidt matter.
5. What sanction was appropriate for the proven trust-account violations.

HOLDINGS

1. The Bar failed to prove by clear and convincing evidence that Eakin violated DR 1-102(A)(3) by intentionally converting or dishonestly withdrawing the $850 from Schreiber's trust account.
2. Eakin violated DR 9-101(A), DR 9-101(C)(3), and DR 9-101(C)(4) by improperly removing client funds from the trust account, failing to maintain adequate trust-account records, and failing to return $850 to Schreiber when requested.
3. The Bar failed to prove that Eakin's litigation activities constituted dishonesty or churning under DR 1-102(A)(3), or conduct prejudicial to the administration of justice under DR 1-102(A)(4).
4. The Bar failed to prove that Eakin charged or collected a clearly excessive fee in violation of DR 2-106(A).
5. A 60-day suspension from the practice of law was appropriate because Eakin should have known that she was dealing improperly with client funds, had substantial experience, and caused injury or potential injury, notwithstanding mitigating factors.

KEY QUOTATIONS

> *"Although other lawyers might have prepared the case differently, or gathered information more efficiently, or not bothered at all, the accused's conduct was, nevertheless, within permissible bounds."* (334 Or. 238, 157)

> *"That, combined with the accused's substantial experience in the practice of law, require that the accused be suspended from the practice of law for 60 days."* (334 Or. 238, 158)

FACTUAL BACKGROUND

Eakin represented Schreiber in a contract dispute and removed $850 from his client trust account based on an erroneous belief that she had paid that amount to an expert; she had not paid the expert that amount, failed to maintain adequate trust-account records, and did not return the funds when requested. Eakin also represented Schmidt in a contentious child-custody dispute and pursued extensive discovery and litigation tactics while charging approximately $63,000 to $66,000 in fees and costs. The court found that the Bar did not prove dishonesty, churning, prejudice to the administration of justice, or a clearly excessive fee in the Schmidt matter.

PROCEDURAL HISTORY

The Oregon State Bar charged Eakin with disciplinary violations arising from a contract dispute and a child-custody matter. The trial panel found violations of several disciplinary rules and recommended disbarment. The Oregon Supreme Court conducted automatic de novo review, rejected most of the alleged violations, found violations involving management of a client trust account and return of client property, and imposed a 60-day suspension.

DISPOSITION

other

CASES CITED

- In re Johnson, 300 Or. 52, 55, 707 P.2d 573 (1985)
- In re Trukositz, 312 Or. 621, 629, 825 P.2d 1369 (1992)
- In re Starr, 326 Or. 328, 342, 952 P.2d 1017 (1998)
- In re Hockett, 303 Or. 150, 158, 734 P.2d 877 (1987)
- In re Martin, 328 Or. 177, 185-186, 970 P.2d 638 (1998)
- In re King, 320 Or. 354, 357, 883 P.2d 1291 (1994)
- In re Pierson, 280 Or. 513, 516, 571 P.2d 907 (1977)
- In re Phelps, 306 Or. 508, 513, 760 P.2d 1331 (1988)
- In re Gustafson, 327 Or. 636, 643, 968 P.2d 367 (1998)
- In re Devers, 328 Or. 230, 241, 974 P.2d 191 (1999)
- In re Mannis, 295 Or. 594, 668 P.2d 1224 (1983)