

SUPREME COURT OF SOUTH CAROLINA

In re Trexler

350 S.C. 483 (2002) · Decided July 22, 2002

SUMMARY

The South Carolina Supreme Court disbarred an attorney based on two additional client matters that were omitted from earlier disciplinary charges. The court held that the respondent could be disciplined for misconduct committed before his prior disbarment and ordered the new disbarment to run concurrently with the earlier one, with restitution required.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Chief Justice Toal; Justice Moore; Justice Waller; Justice Burnett; Justice Pleicones
JURISDICTION	South Carolina
DECIDED	July 22, 2002
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding in which the South Carolina Commission on Lawyer Conduct recommended disbarment after respondent defaulted on formal charges involving two additional client matters.
PRECEDENTIAL VALUE	Published opinion; precedential South Carolina Supreme Court decision

TOPICS

- administrative law
- agency adjudication
- remedies
- restitution

PRACTICE AREAS

- attorney discipline
- professional responsibility
- legal ethics

QUESTIONS PRESENTED

- Whether a lawyer may be disciplined for misconduct committed before disbarment when the formal charges are brought after the lawyer has already been disbarred.

2. Whether the allegations in formal disciplinary charges are deemed admitted when the respondent fails to answer and defaults.
3. Whether the admitted misconduct, considered together with respondent's earlier misconduct, warrants disbarment and restitution.

HOLDINGS

1. A lawyer may be disciplined for additional acts of misconduct committed before disbarment, even when the disciplinary proceeding concerning those acts occurs after the lawyer has already been disbarred.
2. When a respondent fails to answer and is in default, the factual allegations contained in the formal charges are deemed admitted.
3. Disbarment is warranted where the additional admitted misconduct is considered together with the misconduct underlying the respondent's earlier disbarment; the new disbarment runs concurrently with the earlier disbarment and includes restitution under the existing restitution plan.

KEY QUOTATIONS

“Because the acts of misconduct alleged in the formal charges currently before this Court were committed prior to disbarment, we find respondent can be disciplined for the additional acts of misconduct despite the fact that he has already been disbarred.” (at 485)

“When a respondent fails to answer and is in default, the factual allegations contained in the formal charges are deemed admitted.” (at 486)

FACTUAL BACKGROUND

Respondent represented two clients but failed to provide competent and diligent representation, failed to appear or adequately prepare in court matters, mishandled client funds, failed to refund fees, failed to communicate with clients, failed to disclose his interim suspension, and failed to respond to disciplinary inquiries. One client was falsely told that neither she nor respondent needed to appear in court; another was held in contempt after respondent's insufficient-funds check failed to pay opposing counsel. These allegations were deemed admitted after respondent defaulted.

PROCEDURAL HISTORY

Respondent had previously been disbarred for misconduct in 24 client matters. After two additional matters were discovered, new formal charges were served and filed; respondent failed to answer, and the Office of Disciplinary Counsel filed an Affidavit of Default. The hearing officer deemed the allegations admitted and recommended disbarment concurrent with the prior disbarment, with restitution. The full panel adopted the recommendation, neither party filed exceptions, and the Supreme Court of South Carolina adopted the recommendation.

DISPOSITION

other

CASES CITED

- In the Matter of Trexler, 343 S.C. 608, 541 S.E.2d 822 (2001)
- In the Matter of Kitchel, 347 S.C. 291, 554 S.E.2d 868 (2001)
- In the Matter of Thornton, 327 S.C. 193, 489 S.E.2d 198 (1997)
- In the Matter of Craig, 344 S.C. 646, 545 S.E.2d 823 (2001)
- In the Matter of Driggers, 334 S.C. 40, 512 S.E.2d 112 (1999)

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