

SUPREME COURT OF THE STATE OF KANSAS

In the Matter of Rickey Edward Hodge, Jr.

In re Hodge · No. No. 116,542 · Decided December 29, 2017

SUMMARY

The Kansas Supreme Court considered a contested attorney discipline proceeding involving Rickey Edward Hodge, Jr. The court found clear and convincing evidence that Hodge violated multiple Kansas Rules of Professional Conduct while representing a financially distressed landscaping company and pursuing transactions involving the company's assets and a client's ranch. The court adopted the recommended sanction of disbarment.

CASE DETAILS

COURT	Supreme Court of the State of Kansas
JURISDICTION	Kansas
DECIDED	December 29, 2017
DOCKET	No. 116,542
DISPOSITION	other
PROCEDURAL POSTURE	Contested original attorney-discipline proceeding before the Kansas Supreme Court following a five-day hearing before a panel of the Kansas Board for Discipline of Attorneys.
STANDARD OF REVIEW	Attorney misconduct must be established by clear and convincing evidence. When exceptions are taken to factual findings, the Supreme Court determines whether the findings are supported by clear and convincing evidence, without reweighing conflicting evidence, assessing witness credibility, or redetermining factual questions.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential authority.
PARTIES	Office of the Disciplinary Administrator v. Rickey Edward Hodge, Jr.

TOPICS

breach of fiduciary duty

fiduciary duty

duty of loyalty

limited liability companies

contracts

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

conflicts of interest

QUESTIONS PRESENTED

1. Whether Hodge maintained an attorney-client relationship with CLS after his purported termination of representation.
2. Whether Hodge created an implied attorney-client relationship with L.A. concerning the ranch transaction.
3. Whether Hodge violated KRPC 1.7 by simultaneously representing clients or entities with directly adverse interests.
4. Whether Hodge violated KRPC 1.8(a) by entering into business transactions with clients without fair terms, adequate disclosure, independent-counsel opportunity, and informed written consent.
5. Whether Hodge violated KRPC 1.8(b), KRPC 4.2, and KRPC 8.4(g).
6. What discipline should be imposed for the established misconduct.

HOLDINGS

1. An attorney-client relationship may be implied from the parties' conduct and may continue despite a purported termination when the attorney continues to provide legal advice, remains attorney of record, exercises influence over the client, and otherwise acts as counsel. Hodge remained counsel for CLS and created an implied attorney-client relationship with L.A. concerning the ranch.
2. A lawyer violates KRPC 1.7 by simultaneously representing a client and a lawyer-owned purchasing entity when their interests are directly adverse or the lawyer's personal and entity interests create a substantial risk of materially limiting the client's representation, absent the rule's informed-consent requirements.
3. A lawyer violates KRPC 1.8(a) by entering a business transaction with a client on unfair or unreasonable terms without full written disclosure, a reasonable opportunity to obtain independent legal counsel, and informed written consent to the essential terms and the lawyer's role.
4. A lawyer may not use information relating to a client's representation to the client's disadvantage without informed consent.
5. A lawyer violates KRPC 4.2 by communicating directly with a represented party about the subject of the representation after knowing that the party is represented by another lawyer, without that lawyer's consent or legal authorization.
6. Self-dealing, exploitation of clients, and related conduct that adversely reflects on a lawyer's fitness to practice law violate KRPC 8.4(g).
7. Disbarment is appropriate for knowing and intentional multiple violations involving conflicts of interest, self-dealing, misuse of client information, communication with a represented party, and potentially serious injury to clients, particularly where aggravating factors include selfish motive, multiple offenses, deceptive conduct, refusal to acknowledge wrongdoing, and client vulnerability.

KEY QUOTATIONS

“The contract may be implied from conduct of the parties.” (at 67)

“Just because the respondent states that what he is stating is not legal advice, does not make it so.” (at 79)

FACTUAL BACKGROUND

Hodge represented Complete Landscaping Systems, Inc. in collection-related matters while learning of the company's severe financial distress and the personal financial difficulties of its majority owner, L.A. He then attempted to acquire CLS assets through Yard Concerns, an entity he owned, and purchased L.A.'s ranch through Hodge Acquisitions at a price substantially below the property's assessed and appraised values. Hodge continued providing legal advice and using his attorney identity while pursuing the transactions, failed to obtain adequate informed written consent or independent counsel protections, and communicated directly with CLS after it retained bankruptcy counsel.

PROCEDURAL HISTORY

The Disciplinary Administrator filed a formal complaint on July 15, 2014. After hearings in October 2015 and March 2016, the disciplinary panel found violations of KRPC 1.7, 1.8(a), 1.8(b), 4.2, and 8.4(g), and unanimously recommended disbarment. Hodge filed exceptions challenging factual findings, the alleged violations, and the recommended discipline. The Kansas Supreme Court reviewed the panel's findings and the parties' arguments and concluded that clear and convincing evidence established multiple violations and that disbarment was appropriate.

DISPOSITION

other

CASES CITED

- In re Foster, 292 Kan. 940, 945, 258 P.3d 375 (2011)
- In re Lober, 288 Kan. 498, 505, 204 P.3d 610 (2009)
- In re Dennis, 286 Kan. 708, 725, 188 P.3d 1 (2008)
- In re Woodring, 289 Kan. 173, 174-75, 210 P.3d 120 (2009)
- In re Bishop, 285 Kan. 1097, 1106, 179 P.3d 1096 (2008)
- In re Kline, 298 Kan. 96, 113-14, 311 P.3d 321 (2013)
- In re Mintz, 298 Kan. 897, 902, 317 P.3d 756 (2014)
- In re Frahm, 291 Kan. 520, 525, 241 P.3d 1010 (2010)
- Associated Wholesale Grocers, Inc. v. Americold Corp., 266 Kan. 1047, 1053, 975 P.2d 231 (1999)
- In re Adoption of Irons, 235 Kan. 540, Syl. ¶ 6, 548-49, 684 P.2d 332 (1984)
- Alexander v. Russo, 1 Kan. App. 2d 546, Syl. ¶ 2, 571 P.2d 350 (1977)
- Double M Const. v. Kansas Corporation Comm'n, 288 Kan. 268, 275, 202 P.3d 7 (2009)
- In re Walsh, 286 Kan. 235, 250, 182 P.3d 1218 (2008)
- In re Bowman, 298 Kan. 231, 238, 310 P.3d 1054 (2013)
- Universal City Studios, Inc. v. Reimerdes, 98 F. Supp. 2d 449 (S.D.N.Y. 2000)

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