

COURT OF APPEALS OF THE STATE OF NEW YORK

Matter of Feinberg

5 N.Y.3d 206, 833 N.E.2d 1204, 800 N.Y.S.2d 529 (2005) · Decided June 29, 2005

SUMMARY

The New York Court of Appeals reviewed the removal of Kings County Surrogate Michael H. Feinberg for systematically awarding legal fees to counsel for the Public Administrator without required affidavits or individualized consideration of statutory factors. The court held that his conduct violated professional-competence and appearance-of-impropriety requirements and accepted the State Commission on Judicial Conduct's determined sanction of removal from office.

CASE DETAILS

COURT	Court of Appeals of the State of New York
WRITING FOR THE COURT	Chief Judge Kaye; Judge G.B. Smith; Judge Ciparick; Judge Rosenblatt; Judge Graffeo; Judge Read; Judge R.S. Smith
JURISDICTION	New York
DECIDED	June 29, 2005
DISPOSITION	approved
PROCEDURAL POSTURE	Michael H. Feinberg petitioned the New York Court of Appeals to reject the State Commission on Judicial Conduct's determination that he should be removed from office for repeatedly failing to comply with statutory requirements governing legal-fee awards to counsel for the Public Administrator and for conduct creating an appearance of impropriety.
STANDARD OF REVIEW	Plenary review of the record and consideration of the evidence and arguments
PRECEDENTIAL VALUE	Published opinion of the New York Court of Appeals; precedential
PARTIES	Michael H. Feinberg, as Surrogate of Kings County v. State Commission on Judicial Conduct

TOPICS

estate administration

probate

statutory interpretation

plain meaning rule

administrative law

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Feinberg's repeated failure to require affidavits of legal services and to consider the statutory factors before awarding counsel fees violated his duty to maintain professional competence in the law.
2. Whether the routine award of fees calculated at approximately eight percent of estate values, without individualized review or consideration of the statutory factors, constituted misconduct under the Rules of Judicial Conduct.
3. Whether appointing and favoring a longtime friend and political supporter while approving unsupported and comparatively high fees conveyed an appearance of impropriety.
4. Whether removal from the office of Surrogate of Kings County was the proper sanction.

HOLDINGS

1. SCPA 1108 (2) (c) requires the surrogate, before allowing counsel fees, to obtain an affidavit detailing the services rendered, time spent, and basis for compensation, and to consider the statutory factors when fixing the fee.
2. A judge's systematic failure over an extended period to comply with clear statutory requirements governing the judge's office constitutes misconduct and may support removal, rather than being treated merely as legal error.
3. Appointing a close personal friend and political supporter and awarding that person substantial, unsupported fees without the required individualized review can convey an appearance of impropriety and favoritism.
4. Removal from the office of Surrogate of Kings County was the proper remedy for Feinberg's misconduct.

KEY QUOTATIONS

"Shall" plainly did not mean "may." (215)

"Here, the record reflects not mere lapses or errors in judgment but a wholesale failure of petitioner's duty, reflecting an indifference if not cynicism toward his judicial office." (216)

FACTUAL BACKGROUND

From 1997 through mid-May 2002, Feinberg routinely approved legal fees for counsel to the Kings County Public Administrator without requiring the affidavits of legal services mandated by statute and without individually considering the statutory fee factors. The fees were generally calculated to produce a total award of approximately eight percent of each estate's value, despite lower fee practices in other New York City counties. Feinberg had appointed his longtime friend and political supporter, Louis Rosenthal, as counsel without a search or interview process, and Rosenthal received more than \$8.6 million in fees during the relevant period. Feinberg required retrospective affidavits only after learning of an impending newspaper investigation, and no fee was adjusted.

PROCEDURAL HISTORY

The State Commission on Judicial Conduct filed a disciplinary complaint alleging violations of the Rules of Judicial Conduct. After a seven-day evidentiary hearing, a referee found violations involving failure to maintain professional competence and improper fee awards. The Commission adopted the referee's findings, added a finding that Feinberg's conduct created an appearance of impropriety, and determined that removal was the appropriate sanction. The Court of Appeals conducted plenary review and accepted the determined sanction.

DISPOSITION

approved

CASES CITED

- Matter of Reeves, 63 N.Y.2d 105, 109-110 (1984)
- Matter of Bauer, 3 N.Y.3d 158 (2004)
- Matter of Spector v. State Comm'n on Jud. Conduct, 47 N.Y.2d 462, 469 (1979)
- Matter of Greenfeld, 71 N.Y.2d 389, 392 (1988)