

NEBRASKA SUPREME COURT

State of Nebraska ex rel. Counsel for Discipline of the Nebraska
Supreme Court v. Patrick J. Nelson

311 Neb. 251 (2022) · No. No. S-21-475 · Decided March 25, 2022

SUMMARY

The Nebraska Supreme Court disbarred Patrick J. Nelson for neglecting multiple client matters, failing to communicate with clients and courts, practicing while suspended, and repeatedly failing to respond to disciplinary inquiries. The court concluded that the cumulative misconduct, prior discipline, and lack of participation in the disciplinary proceedings warranted immediate disbarment.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Per Curiam; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	March 25, 2022
DOCKET	No. S-21-475
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney disciplinary action in which the Nebraska Supreme Court previously granted the relator's unopposed motion for judgment on the pleadings as to the facts and considered the appropriate sanction.
STANDARD OF REVIEW	The court independently determines the appropriate sanction in attorney disciplinary proceedings, evaluating the particular facts and circumstances, the nature of the misconduct, aggravating and mitigating factors, and the attorney's present or future fitness to practice.
PRECEDENTIAL VALUE	Published precedential opinion of the Nebraska Supreme Court
PARTIES	State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Patrick J. Nelson

TOPICS

PRACTICE AREAS

QUESTIONS PRESENTED

1. What discipline should be imposed for Nelson's cumulative violations of his attorney oath and the Nebraska Rules of Professional Conduct?
2. Whether Nelson's prior discipline, neglect of multiple client matters, failure to communicate, failure to respond to disciplinary authorities, and lack of participation in the disciplinary proceeding warranted disbarment rather than indefinite suspension.

HOLDINGS

1. Cumulative acts of attorney misconduct, including repeated disregard of requests for information from the Counsel for Discipline, ordinarily warrant disbarment; considering Nelson's repeated neglect, prior discipline, client harm, and failure to participate, disbarment was the appropriate sanction.
2. In determining whether and to what extent to discipline an attorney, the Nebraska Supreme Court considers the nature of the offense, deterrence, maintenance of the bar's reputation, protection of the public, the respondent's general attitude, and present or future fitness to practice.
3. An attorney's continuing to practice law contrary to a temporary suspension order is an independent basis for disbarment.
4. Attorney disciplinary proceedings primarily determine whether it is in the public interest for the attorney to continue practicing, rather than primarily punishing the attorney.
5. Indefinite suspension ordinarily is not consistent with the court's duty to protect the public.

KEY QUOTATIONS

"The purpose of a disciplinary proceeding against an attorney is not so much to punish the attorney as it is to determine whether it is in the public interest that an attorney be permitted to practice, which question includes considerations of the protection of the public." (260)

"Ordinarily, indefinite suspension of an attorney's license to practice law is not consistent with our duty to protect the public." (261)

FACTUAL BACKGROUND

Nelson was administratively suspended from practicing law in June 2018 for failing to satisfy continuing legal education reporting requirements and was reinstated in December 2018. During and after the suspension, he remained counsel of record in several client matters without informing the courts or clients of his suspension, failed to withdraw, neglected cases, failed to communicate, and caused or contributed to dismissals and penalties and interest in estate matters. He also failed to respond to repeated disciplinary inquiries, did not answer the formal charges, and did not participate in briefing on the sanction.

PROCEDURAL HISTORY

Formal charges were filed on June 10, 2021, alleging five counts of attorney misconduct. Nelson did not answer, participate in the proceedings, or file a brief on discipline. The court granted judgment on the pleadings as to the facts, found violations of his attorney oath and multiple Nebraska Rules of Professional Conduct, and ordered briefing on the appropriate discipline. The Counsel for Discipline sought disbarment or indefinite suspension, and the court ordered disbarment.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Birch, 309 Neb. 79, 957 N.W.2d 923 (2021)
- State ex rel. Counsel for Dis. v. Sutton, 269 Neb. 640, 694 N.W.2d 647 (2005)
- State ex rel. Counsel for Dis. v. Samuelson, 280 Neb. 125, 783 N.W.2d 779 (2010)
- State ex rel. Counsel for Dis. v. Gast, 298 Neb. 203, 903 N.W.2d 259 (2017)
- State ex rel. Counsel for Dis. v. Tonderum, 286 Neb. 942, 840 N.W.2d 487 (2013)
- State ex rel. Counsel for Dis. v. Coe, 271 Neb. 319, 710 N.W.2d 863 (2006)
- State ex rel. Counsel for Dis. v. Hart, 270 Neb. 768, 708 N.W.2d 606 (2005)
- State ex rel. Counsel for Dis. v. Villarreal, 267 Neb. 353, 673 N.W.2d 889 (2004)
- State v. Jorgenson, 302 Neb. 188, 922 N.W.2d 753 (2019)
- State ex rel. Counsel for Dis. v. Tighe, 295 Neb. 30, 886 N.W.2d 530 (2016)