

WASHINGTON SUPREME COURT

In re the Disciplinary Proceeding Against Kronenberg

155 Wn. 2d 184 (2005) · Decided August 18, 2005

SUMMARY

The Washington Supreme Court affirmed the Disciplinary Board’s decision to disbar Donald B. Kronenberg for bribing and tampering with a witness, deceiving prosecutors, and being unfit to practice law. The court held that the evidence supported the findings of misconduct and that any errors involving hearsay and polygraph evidence were harmless. The court also concluded that disbarment was appropriate under the applicable disciplinary standards.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Chambers, J.; Alexander, C.J.; C. Johnson, J.; Madsen, J.; Sanders, J.; Bridge, J.; Owens, J.; Fairhurst, J.; J.M. Johnson, J.
JURISDICTION	Washington
DECIDED	August 18, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Kronenberg appealed to the Washington Supreme Court from a Disciplinary Board order affirming a hearing officer's findings that the Washington State Bar Association had proved three disciplinary counts and recommending disbarment.
STANDARD OF REVIEW	The Washington Supreme Court exercises plenary power and ultimate responsibility over lawyer discipline. It reviews the disciplinary record, including factual findings and recommended sanctions, while requiring misconduct to be proved by a clear preponderance of the evidence. An attorney challenging factual findings must identify specific unsupported findings and cite the record. Evidentiary errors are assessed for prejudice and are harmless when the same facts are established by other evidence.
PRECEDENTIAL VALUE	Published Washington Supreme Court opinion; precedential.
PARTIES	Donald B. Kronenberg v. Washington State Bar Association

TOPICS

evidence

hearsay

administrative law

appellate procedure

standard of review

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

administrative law

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the hearing officer's factual findings that Kronenberg intended to bribe or tamper with J.D. and used a purported civil settlement as a cover were supported by the record.
2. Whether admission of hearsay evidence under ELC 10.14(d)(1) violated Kronenberg's procedural due process rights.
3. Whether any error in admitting disputed hearsay evidence was harmless.
4. Whether polygraph reports were admissible under ELC 10.14(d)(1) and, if not, whether their admission was harmless.
5. Whether disbarment was the appropriate sanction for Kronenberg's witness tampering, deception, and related misconduct, including whether disciplinary delay mitigated the sanction.

HOLDINGS

1. The hearing officer's findings that Kronenberg intended to bribe or tamper with J.D. and that the purported civil settlement was a ruse to conceal the bribery were supported by the record.
2. Admission of hearsay evidence under ELC 10.14(d)(1), when it is the kind of evidence on which reasonably prudent persons rely in conducting their affairs, satisfies procedural due process in attorney disciplinary proceedings.
3. Any error in admitting disputed hearsay evidence was harmless because the declarants testified and were subject to cross-examination, and the same facts were established by other evidence.
4. Polygraph reports were inadmissible absent stipulation from both parties and did not satisfy ELC 10.14(d)(1), but their admission was harmless because overwhelming independent evidence supported the hearing officer's findings.
5. Disbarment was the appropriate sanction for Kronenberg's intentional witness tampering, deception, and interference with the administration of justice.

KEY QUOTATIONS

"We conclude that the civil settlement was a ruse to bribe J.D. not to testify at Cotton's criminal trial and was devised to conceal the bribe itself." (192)

"Similarly, we find that the standard set forth in ELC 10.14(d)(1) satisfies due process." (193-194)

"Because we find overwhelming evidence to support the hearing officer's other findings, their admission was harmless." (195)

“We have long held that disbarment is the appropriate sanction for witness tampering.” (196)

“We affirm the Board and disbar Kronenberg.” (198)

FACTUAL BACKGROUND

Kronenberg represented Harold Cotton in a felony child-rape prosecution in which 14-year-old J.D. was the principal witness. Before trial, Kronenberg offered J.D. money and a one-way ticket to Oklahoma in exchange for leaving the state and not testifying, and memorialized the arrangement in a purported civil settlement and confidentiality agreement. After receiving \$3,000 from Cotton and giving J.D. the ticket and remaining cash, Kronenberg failed to disclose information about J.D.'s whereabouts despite a court order and misled prosecutors about his role in procuring J.D.'s absence.

PROCEDURAL HISTORY

The WSBA filed a three-count formal disciplinary complaint in 2000. After a five-day hearing in 2003, the hearing officer found that Kronenberg had bribed or tampered with a witness, deceived prosecutors, and was unfit to practice law, and recommended disbarment. The Disciplinary Board affirmed by a 10-1 vote, and the Washington Supreme Court affirmed the Board and ordered Kronenberg disbarred.

DISPOSITION

other

CASES CITED

- In re Disciplinary Proceeding Against Romero, 152 Wn. 2d 124, 132, 94 P.3d 939 (2004)
- In re Disciplinary Proceeding Against McKean, 148 Wn. 2d 849, 861, 64 P.3d 1226 (2003)
- In re Disciplinary Proceeding Against Kagele, 149 Wn. 2d 793, 814, 72 P.3d 1067 (2003)
- In re Disciplinary Proceeding Against Haskell, 136 Wn. 2d 300, 311, 962 P.2d 813 (1998)
- In re Estate of Lint, 135 Wn. 2d 518, 532, 957 P.2d 755 (1998)
- Rogers Potato Serv., L.L.C. v. Countrywide Potato, L.L.C., 152 Wn. 2d 387, 391, 97 P.3d 745 (2004) (per curiam)
- State v. Gosby, 85 Wn. 2d 758, 766-67, 539 P.2d 680 (1975)
- In re Disciplinary Proceeding Against Cohen, 149 Wn. 2d 323, 332-33, 338, 67 P.3d 1086 (2003)
- Chmela v. Department of Motor Vehicles, 88 Wn. 2d 385, 392, 561 P.2d 1085 (1977)
- State v. Bargas, 52 Wn. App. 700, 704-05, 763 P.2d 470 (1988)
- Feldmiller v. Olson, 75 Wn. 2d 322, 324-25, 450 P.2d 816 (1969)
- State v. Thomas, 150 Wn. 2d 821, 860, 83 P.3d 970 (2004)
- State v. Renfro, 96 Wn. 2d 902, 905, 639 P.2d 737 (1982)
- In re Disciplinary Proceeding Against Stroh, 97 Wn. 2d 289, 301, 644 P.2d 1161 (1982)
- In re Disciplinary Proceeding Against Tasker, 141 Wn. 2d 557, 567-69, 9 P.3d 822 (2000)
- In re Disciplinary Proceeding Against Anschell, 149 Wn. 2d 484, 519-20, 69 P.3d 844 (2003)

- In re Disciplinary Proceeding Against Dann, 136 Wn. 2d 67, 83-84, 960 P.2d 416 (1998)
- In re Disciplinary Proceeding Against Kennedy, 97 Wn. 2d 719, 723, 649 P.2d 110 (1982)
- Zuver v. Airtouch Communications, Inc., 153 Wn. 2d 293, 103 P.3d 753 (2004)
- Dreiling v. Jain, 151 Wn. 2d 900, 908, 93 P.3d 861 (2004)

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