

SUPREME COURT OF KANSAS

In re Najim

In re Najim · No. No. 116,943 · Decided December 1, 2017

SUMMARY

The Kansas Supreme Court reviewed a disciplinary proceeding involving attorney Harry Louis Najim's federal felony conviction for structuring a transaction to evade currency-reporting requirements. The court upheld the finding that Najim violated KRPC 8.4(b) and imposed an indefinite suspension retroactive to his temporary suspension.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Per Curiam; Michael J. Malone, Senior Judge, assigned; Beier, J., not participating
JURISDICTION	Kansas
DECIDED	December 1, 2017
DOCKET	No. 116,943
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding in attorney discipline. Najim challenged the hearing panel's determination that he violated KRPC 8.4(b) and its recommended three-year suspension.
STANDARD OF REVIEW	The Kansas Supreme Court independently considers the evidence, the disciplinary panel's findings, and the parties' arguments to determine whether misconduct occurred and what discipline is appropriate. Attorney misconduct must be established by clear and convincing evidence; aggravating and mitigating circumstances need only be supported by some evidence for weighing.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential
PARTIES	Harry Louis Najim v. Stanton A. Hazlett, Disciplinary Administrator

TOPICS

criminal procedure

appellate procedure

standard of review

evidence

PRACTICE AREAS

attorney discipline

professional responsibility

legal ethics

QUESTIONS PRESENTED

1. Whether Najim's federal conviction for violating 31 U.S.C. § 5324(b)(1) constituted a criminal act reflecting adversely on his honesty, trustworthiness, or fitness as a lawyer under KRPC 8.4(b).
2. Whether the disciplinary panel properly characterized the federal offense as structuring a transaction to evade reporting requirements.
3. What discipline was appropriate in light of the misconduct and the aggravating and mitigating circumstances.

HOLDINGS

1. Najim's conviction for violating 31 U.S.C. § 5324(b)(1) constituted a criminal act involving dishonesty that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer, and therefore violated KRPC 8.4(b).
2. The disciplinary panel properly characterized Najim's offense as structuring a transaction to evade reporting requirements rather than merely failing to file a report.
3. Najim was indefinitely suspended from the practice of law, retroactive to the May 18, 2015 order of temporary suspension, with reinstatement governed by Supreme Court Rule 219.

KEY QUOTATIONS

“In a disciplinary proceeding, this court considers the evidence, the findings of the disciplinary panel, and the arguments of the parties and determines whether violations of KRPC exist and, if they do, what discipline should be imposed.” (20)

“Accordingly, we conclude clear and convincing evidence supports the hearing panel's determination that respondent violated KRPC 8.4(b).” (23)

“We assume without deciding this factor was not present because even without it—when considering the remaining aggravators and the mitigators—respondent's indefinite suspension from the practice of law is otherwise warranted.” (24)

“The suspension shall be retroactive to the May 18, 2015, order of temporary suspension and continue thereafter until reinstatement shall be ordered pursuant to Supreme Court Rule 219.” (26)

FACTUAL BACKGROUND

Harry Louis Najim, a Kansas attorney, provided legal services to an undercover federal agent involved in contraband cigarette trafficking and related unlawful activity. Najim accepted \$16,500 in cash but did not notify his law firm so that it could file a required currency report. He pleaded guilty to causing a nonfinancial trade or business to fail to file a report for the purpose of evading reporting requirements under 31 U.S.C. § 5324(b)(1).

PROCEDURAL HISTORY

The Kansas office of the Disciplinary Administrator filed a formal disciplinary complaint after Najim pleaded guilty in federal court to violating 31 U.S.C. § 5324(b)(1). A hearing panel of the Kansas Board for Discipline of Attorneys found a KRPC 8.4(b) violation and recommended a three-year suspension. The Kansas Supreme Court independently reviewed the evidence and imposed an indefinite suspension retroactive to Najim's temporary suspension.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand. Najim must comply with Supreme Court Rule 218 and may seek reinstatement only through the procedure required by Supreme Court Rule 219.

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 Hall, 304 Kan. 999, 1014, 377 P.3d 1149 (2016)
- In re Minneman, 287 Kan. 477, 483, 196 P.3d 1156 (2008)
- In re Bronson, 204 N.J. 173, 7 A.3d 777 (2010)
- People v. DeRose, 35 P.3d 708 (Colo. 2001)
- In re Busch, 287 Kan. 80, 87, 194 P.3d 12 (2008)
- In re Frahm, 291 Kan. 520, 241 P.3d 1010 (2010)
- In re Minneman, 287 Kan. 477, 196 P.3d 1156 (2008)
- In re Laskowski, 282 Kan. 710, 147 P.3d 135 (2006)
- In re Cozza, 241 A.D.2d 223 (N.Y. 1998)
- In re Wintroub, 277 Neb. 787, 765 N.W.2d 482 (2009)
- In re DeRose, 55 P.3d 126 (Colo. 2002)
- Disciplinary Counsel v. Bennett, 124 Ohio St. 3d 314, 921 N.E.2d 1064 (2010)
- In re Stiller, 725 A.2d 533 (D.C. 1999)
- In re Vanderveen, 166 Wash. 2d 594, 211 P.3d 1008 (2009)
- Oneida Nation of New York v. Cuomo, 645 F.3d 154 (2d Cir. 2011)
- State v. Caenen, 235 Kan. 451, 458-59, 681 P.2d 639 (1984)
- In re Daugherty, 277 Kan. 257, 261, 83 P.3d 789 (2004)