

SUPREME COURT OF OKLAHOMA

State ex rel. Oklahoma Bar Ass'n v. Berry

142 P.3d 388 (Okla. 2006) · Decided June 13, 2006

SUMMARY

The Oklahoma Supreme Court approved James D. Berry, Jr.'s resignation from the Oklahoma Bar Association while disciplinary proceedings were pending. The order struck his name from the Roll of Attorneys, required compliance with Rule 9.1, and barred an application for reinstatement for five years, subject to reimbursement of qualifying Client Security Fund payments.

CASE DETAILS

COURT	Supreme Court of Oklahoma
JURISDICTION	Oklahoma
DECIDED	June 13, 2006
DISPOSITION	approved
PROCEDURAL POSTURE	The Oklahoma Bar Association sought approval of James D. Berry, Jr.'s resignation from the Oklahoma Bar Association while disciplinary investigations were pending.
PRECEDENTIAL VALUE	precedential
PARTIES	State ex rel. Oklahoma Bar Association v. James D. Berry, Jr.

TOPICS

civil procedure waiver

PRACTICE AREAS

legal ethics attorney discipline

QUESTIONS PRESENTED

- Whether Berry's resignation from the Oklahoma Bar Association while disciplinary proceedings were pending complied with Rule 8.1 and should be approved.
- What conditions should govern Berry's removal from the Roll of Attorneys and any future application for reinstatement.

HOLDINGS

1. The Supreme Court of Oklahoma approved Berry's resignation because it complied with Rule 8.1, was freely and voluntarily tendered, and was accompanied by his acknowledgment of the pending allegations and their potential disciplinary consequences.
2. Berry's name was ordered stricken from the Roll of Attorneys, and he was barred from applying for reinstatement for five years from the effective date of the order and until he reimbursed the Client Security Fund for any principal and interest paid on his behalf.

KEY QUOTATIONS

“IT IS THEREFORE ORDERED THAT Complainant’s Application and Respondent’s resignation pending disciplinary proceedings is approved.” (¶ 3)

“Respondent’s name be stricken from the Roll of Attorneys, and that he may make no application for reinstatement to membership in the Oklahoma Bar Association prior to the lapse of five years from the effective date of this Order” (¶ 4)

FACTUAL BACKGROUND

James D. Berry, Jr. voluntarily tendered his resignation from the Oklahoma Bar Association while four grievances were under investigation. The grievances involved alleged neglect of client matters, insufficient funds in a trust account, an unpaid loan from a client, and failure to perform work after receiving a retainer. Berry acknowledged the allegations, waived his right to contest them, agreed to comply with disciplinary rules, and accepted restrictions on any future reinstatement.

PROCEDURAL HISTORY

Berry submitted an affidavit and resignation pursuant to Rule 8.1 of the Rules Governing Disciplinary Proceedings. The Oklahoma Bar Association filed an application for an order approving the resignation, and the Supreme Court of Oklahoma approved both the application and resignation.

DISPOSITION

approved

OPINION

PER CURIAM.

¶ 0 ORDER APPROVING RESIGNATION FROM THE OKLAHOMA BAR ASSOCIATION PENDING DISCIPLINARY PROCEEDINGS ¶ 1 Before this Court is an affidavit filed by James D. Berry, Jr., pursuant to Rule 8.1, Rules Governing Disciplinary Proceedings, 5 O.S.2001, Ch. 1, App. 1-A, requesting that he be allowed to resign his membership in the Oklahoma Bar Association and relinquish his right to practice law.

Complainant has filed an Application for Order Approving Resignation Pending Disciplinary Proceedings. ¶ 2 UPON CONSIDERATION OF THE MATTER WE FIND: 1. Respondent, James D. Berry, Jr., OBA # 12,559, executed his resignation pending disciplinary proceedings on May 31, 2006. 2. Respondent's resignation was freely and voluntarily tendered; he was not acting under coercion or duress and he was fully aware of the consequences of submitting his resignation.

3. Respondent states that he is aware of the following grievances filed with the Office of the General Counsel of the Oklahoma Bar Association, and that he is aware of the investigations pending thereon, TO WIT: a. DC 05-305 Respondent was paid \$1,250.00 to file a bankruptcy on behalf of a client. Respondent failed to adequately communicate with the client and caused his client to miss a hearing.

A bench warrant was issued against the client for failing to appear at the hearing. b. DC 05-418 Respondent wrote a check from his trust account to the Pottawatomie County Court Clerk in the amount of \$161.00, as well as a second check to the same County Clerk for \$10,000.00. Respondent's trust account did not have sufficient funds to pay either check, and both checks bounced.

The \$10,000.00 was subsequently satisfied. c. DC 06-023 Respondent obtained a loan for \$25,000.00 from a client whom he had represented over a *389period of six years. Respondent has not repaid any of the loan, d. DC 06-128 Respondent neglected to work a case after being paid a \$5,000.00 retainer. 4) Respondent acknowledges that the allegations regarding Respondent's conduct, if proven, would constitute violations of the Rules Governing Disciplinary Proceedings and the Oklahoma Rules of Professional Conduct, 5 O.S.2001, Ch. 1, App.

3-A, as well as his oath as an attorney, and being aware that the burden of proof rests upon the Oklahoma Bar Association, Respondent has voluntarily waived any and all right to contest the above allegations. 5) Respondent recognizes that the approval or disapproval of this resignation is within the discretion of this Court, and Respondent recognizes and agrees that he may not make application for reinstatement to membership in the Oklahoma Bar Association prior to expiration of five years from the effective date of this Order; 6) Respondent has familiarized himself with, and has agreed to comply with, Rule 9.1, Rules Governing Disciplinary Proceedings, within twenty (20) days following the date of his resignation.

7) Respondent acknowledges and agrees that he may be reinstated to the practice of law only upon full compliance with Rule 11, Rules Governing Disciplinary Proceedings. 8) Respondent is aware that the Oklahoma Bar Association has incurred costs in the investigation of this matter but is willing to waive his payment of costs. 9) Respondent acknowledges that the Client Security Fund may receive claims from his former clients and agrees to reimburse the fund the principal amounts and the applicable statutory interest prior to the filing of any application for reinstatement.

10)The resignation pending disciplinary proceedings executed by Respondent is in compliance with Rule 8.1, Rules Governing Disciplinary Proceedings, 5 O.S.2001, Ch. 1, App. 1-A. Respondent requests that he be allowed to resign his membership in the Oklahoma Bar Association and relinquish his right to practice law. 11) Respondent's name and address appear on the official roster maintained by the Oklahoma Bar Association as: James D. Berry, Jr., OBA # 12,559, P.O.

Box 3908, Shawnee, OK 74802. Respondent was admitted to the practice of law on October 5,1988. 12) The Respondent's resignation should be approved. ¶ 3 IT IS THEREFORE ORDERED THAT Complainant's Application and Respondent's resignation pending disciplinary proceedings is approved. ¶ 4 IT IS FURTHER ORDERED THAT Respondent's name be stricken from the Roll of Attorneys, and that he may make no application for reinstatement to membership in the Oklahoma Bar Association prior to the lapse of five years from the effective date of this Order and upon showing that Respondent has reimbursed the Client Security Fund for any principal and interest paid on his behalf. ¶ 5 IT IS FURTHER ORDERED THAT Respondent comply with Rule 9.1 of the Rules Governing Disciplinary Proceedings, 5 O.S.2001, Ch. 1, App.

1-A. DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS 12th DAY OF JUNE, 2006. ¶ 6 ALL JUSTICES CONCUR.