

SUPREME COURT OF OKLAHOMA

State of Oklahoma ex rel. Oklahoma Bar Association v. Terry Paul Malloy

142 P.3d 383 (Okla. 2006) · No. SCBD 4998 · Decided September 11, 2006

SUMMARY

The Oklahoma Supreme Court considered whether an attorney could avoid discipline for practicing law while subject to a facially valid suspension order allegedly issued without adequate notice. The court imposed a nine-month suspension and assessed \$1,019.66 in costs, emphasizing the attorney's duty to obey court orders and his prior disciplinary history.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Winchester, J.; Watt, C.J.; Lavender, J.; Hargrave, J.; Opala, J.; Edmondson, J.; Taylor, J.; Colbert, J.; Kauger, J.
JURISDICTION	Oklahoma
DECIDED	September 11, 2006
DOCKET	SCBD 4998
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding initiated by the Oklahoma Bar Association under Rule 6 of the Rules Governing Disciplinary Proceedings. The respondent sought dismissal, asserting that the prior suspension order was issued without adequate notice and violated due process.
STANDARD OF REVIEW	De novo review of the evidence to determine whether the Bar proved misconduct by clear and convincing evidence; the decision whether to impose discipline rests solely with the Oklahoma Supreme Court.
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential.
PARTIES	State of Oklahoma ex rel. Oklahoma Bar Association v. Terry Paul Malloy

TOPICS

due process

civil procedure

constitutional law

costs

PRACTICE AREAS

legal ethics and attorney discipline

professional responsibility

constitutional law

QUESTIONS PRESENTED

1. Whether Malloy could obtain dismissal of the disciplinary proceeding by asserting that the prior suspension order was issued without adequate notice and therefore violated due process.
2. Whether Malloy's continued practice of law after receiving the facially valid suspension order constituted professional misconduct warranting discipline.
3. Whether Malloy's prior disciplinary history justified enhancement of the discipline imposed.

HOLDINGS

1. An attorney may not disregard a facially valid suspension order based on the attorney's unilateral belief that the order is invalid; the attorney must timely bring the claimed defect to the issuing court's attention through appropriate legal procedures.
2. Malloy engaged in professional misconduct by practicing law while suspended and by disregarding the Court's suspension order.
3. The Bar was not required to charge Rule 3.4(c) separately because the complaint provided sufficient factual notice of the alleged misconduct and afforded Malloy an opportunity to respond.
4. A nine-month suspension from the practice of law and assessment of \$1,019.66 in proceeding costs were warranted.

KEY QUOTATIONS

"As an officer of the court, Respondent is held to higher ethical standards than those of a layperson and he has the affirmative duty to obey any order of this Court" (386)

"Respondent is not allowed to hide behind an order he believes is invalid without bringing his refusal to obey the order to this Court's attention." (386)

"A lawyer's willful disregard of a suspension order "is a serious matter" that undermines the authority of the judicial system and erodes the public trust in our profession." (387)

FACTUAL BACKGROUND

Malloy completed his 2002 continuing legal education requirements but failed to file the required compliance report. The Bar sent an order to show cause by certified mail, and after Malloy failed to respond, the Oklahoma Supreme Court issued an order suspending him from practicing law. Malloy admitted receiving the suspension order in July 2003 but continued practicing law for approximately nine months, seeking reinstatement only after opposing counsel reported his unauthorized practice to the Bar. He had previously received three private reprimands and one public censure.

PROCEDURAL HISTORY

The Bar charged Malloy with unauthorized practice of law while administratively suspended for failing to timely report continuing legal education compliance. The Professional Responsibility Tribunal found that his misconduct warranted enhanced punishment and recommended a nine-month suspension and costs. The Oklahoma Supreme Court exercised exclusive original jurisdiction, reviewed the evidence de novo, rejected dismissal, and imposed the recommended nine-month suspension and costs.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Bar Ass'n v. Holden, 1995 OK 25, 895 P.2d 707
- State ex rel. Oklahoma Bar Ass'n v. Bolusky, 2001 OK 26, 23 P.3d 268
- State ex rel. Oklahoma Bar Ass'n v. Eakin, 1995 OK 106, 914 P.2d 644
- Graff v. Kelly, 1991 OK 71, 814 P.2d 489
- State ex rel. Oklahoma Bar Ass'n v. Hine, 1997 OK 52, 937 P.2d 996
- State ex rel. Okla. Bar Ass'n v. Patterson, 2001 OK 51, 28 P.3d 551
- State ex rel. Oklahoma Bar Ass'n v. Bedford, 1997 OK 83, 956 P.2d 148
- State ex rel. Oklahoma Bar Ass'n v. Johnston, 1993 OK 91, 863 P.2d 1136
- Vance v. Federal Nat'l Mortgage Ass'n, 1999 OK 73, 988 P.2d 1275
- State ex rel. Okl. Bar Ass'n v. Downing, 1993 OK 44, 863 P.2d 1111
- State ex rel. Okl. Bar Ass'n v. Wolfe, 1997 OK 47, 937 P.2d 988
- State ex rel. Okla. Bar Ass'n v. O'Neal, 1993 OK 61, 852 P.2d 713

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