

SUPREME COURT OF THE STATE OF KANSAS

In re Malone

In re Malone · No. No. 125,292 · Decided October 14, 2022

SUMMARY

The Kansas Supreme Court considers an attorney discipline proceeding against Terrence J. Malone arising from his fee and collateral arrangement with a former criminal-defense client. The court found violations of Kansas Rules of Professional Conduct 1.8(a), 1.9(c), 1.15(a) and (c), and 3.3(a), and imposed a 90-day suspension from the practice of law.

CASE DETAILS

COURT	Supreme Court of the State of Kansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Kansas
DECIDED	October 14, 2022
DOCKET	No. 125,292
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding in attorney discipline before the Kansas Supreme Court.
STANDARD OF REVIEW	Attorney misconduct must be established by clear and convincing evidence. Findings to which no exception is taken are deemed admitted; challenged findings are upheld if supported by clear and convincing evidence, and the court does not reweigh conflicting evidence, assess witness credibility, or redetermine factual questions. The court independently determines the appropriate discipline and is not bound by the recommendations of the Disciplinary Administrator or hearing panel.
PRECEDENTIAL VALUE	Published Kansas Supreme Court opinion; precedential.

TOPICS

- agency adjudication
- administrative law
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the stipulated and admitted conduct established violations of KRPC 1.8(a), 1.9(c), 1.15(a) and (c), and 3.3(a) by clear and convincing evidence.
2. What discipline should be imposed for the established violations.

HOLDINGS

1. The evidence clearly and convincingly established that Malone violated KRPC 1.8, 1.9, 1.15, and 3.3 through his fee-and-collateral transaction with S.R., use of information relating to the representation to S.R.'s disadvantage, failure to safeguard disputed client-related property, and lack of candor to the tribunal.
2. A 90-day suspension from the practice of law was warranted, without a reinstatement hearing, despite mitigating circumstances, because Malone's misconduct caused actual harm to his former client and placed the client's liberty at risk.

KEY QUOTATIONS

“This court is not bound by the recommendations made by the Disciplinary Administrator or the hearing panel.” (16)

“These facts, coupled with the other aggravating circumstances found by the panel, warrant a suspension greater than the 30-day period recommended by the panel.” (17)

FACTUAL BACKGROUND

Malone represented S.R. in a criminal matter under an oral \$5,000 flat-fee agreement and accepted a motorcycle title as collateral for the unpaid balance without satisfying the written-disclosure, independent-counsel, and informed-consent requirements of KRPC 1.8(a). After S.R. paid or offered approximately \$1,300, Malone transferred the motorcycle title into his own name, reported S.R. to police for allegedly stealing the motorcycle, and filed a replevin and conversion action that omitted material information about the fee arrangement and payments. The conduct exposed S.R. to potential probation revocation and caused actual litigation costs and other harm; the civil dispute was later settled.

PROCEDURAL HISTORY

The Disciplinary Administrator filed a formal complaint alleging violations of the Kansas Rules of Professional Conduct. Malone stipulated to violations, and a panel of the Kansas Board for Discipline of Attorneys found violations of KRPC 1.8(a), 1.9(c), 1.15(a) and (c), and 3.3(a), recommending a 30-day suspension. The Disciplinary Administrator recommended a 90-day suspension, and the Kansas Supreme Court imposed a 90-day suspension without requiring a reinstatement hearing.

DISPOSITION

other

CASES CITED

- In re Spiegel, 315 Kan. 143, 147, 504 P.3d 1057 (2022)
- In re Murphy, 312 Kan. 203, 218, 473 P.3d 886 (2020)
- In re Hodge, 307 Kan. 170, 209-10, 407 P.3d 613 (2017)
- In re Hawver, 300 Kan. 1023, 1038, 339 P.3d 573 (2014)
- In re Long, 315 Kan. 842, 853, 511 P.3d 952 (2022)

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