

SUPREME COURT OF THE STATE OF IDAHO

Idaho State Bar v. Pangburn

154 Idaho 233 (2013) · No. 38215 · Decided February 27, 2013

SUMMARY

The Idaho Supreme Court reviewed the Idaho State Bar Professional Conduct Board Hearing Committee’s recommendation that Bobby E. Pangburn be disbarred for misconduct involving two clients. The Court adopted the recommendation, concluding that Pangburn’s admitted violations, including conflicts of interest, lack of diligence, conduct prejudicial to the administration of justice, and failure to return unearned fees, supported disbarment effective February 1, 2010.

CASE DETAILS

COURT	Supreme Court of the State of Idaho
WRITING FOR THE COURT	Horton, Justice; Burdick, Chief Justice; Eismann, Justice; J. Jones, Justice; W. Jones, Justice
JURISDICTION	Idaho
DECIDED	February 27, 2013
DOCKET	38215
DISPOSITION	approved
PROCEDURAL POSTURE	Attorney-discipline appeal from the Idaho State Bar Professional Conduct Board Hearing Committee’s recommendation that Bobby E. Pangburn be disbarred. The Idaho Supreme Court independently reviewed the record and adopted the recommended sanction.
STANDARD OF REVIEW	The Supreme Court examines an attorney-discipline hearing committee’s decision for clear error or arbitrariness and capriciousness, requires misconduct to be proven by clear and convincing evidence, gives considerable weight to the Committee’s findings but is not bound by them, and independently reviews the record and determines the appropriate sanction.
PRECEDENTIAL VALUE	Published Idaho Supreme Court opinion; precedential
PARTIES	Bobby E. Pangburn v. Idaho State Bar

TOPICS

post-conviction relief

sentence modification

appellate procedure

standard of review

preservation of error

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

post-conviction representation

due process

QUESTIONS PRESENTED

1. Whether the record supported the Hearing Committee's findings and recommendation of disbarment.
2. Whether Pangburn's retention of the undisputed portion of Illingworth's retainer constituted conversion despite the absence of dishonesty, fraud, deceit, or misrepresentation.
3. Whether Pangburn's conflict of interest and handling of Hall's post-conviction claim warranted disbarment despite Hall's eventual sentence reduction and alleged oral waiver.
4. Whether the Committee adequately considered mitigating factors.
5. Whether the sanction should run concurrently with Pangburn's prior suspension and be effective as of an earlier date.
6. Whether judicial estoppel barred the Idaho State Bar from seeking disbarment after previously recommending a lesser sanction.
7. Whether the Supreme Court's remand for consideration of more significant sanctions violated Pangburn's due process rights.
8. Whether the Committee's untimely decisions were invalid or entitled to reduced weight.
9. Whether the Supreme Court was required to impose a sanction proportionate to sanctions imposed in prior attorney-discipline cases.

HOLDINGS

1. In attorney-discipline cases, the Supreme Court independently reviews the record, determines the facts and appropriate sanction, and applies a clear-and-convincing-evidence standard while reviewing the Committee's decision for clear error or arbitrariness and capriciousness.
2. An attorney's wrongful and permanent deprivation of a client's property constitutes conversion, and conversion does not require dishonesty, fraud, deceit, or misrepresentation.
3. A lawyer's representation of a former trial client in post-conviction proceedings involving the lawyer's own alleged ineffective assistance violates the conflict-of-interest rule when the requirements for consent are not satisfied; the resulting substantial potential injury may support disbarment.
4. Judicial estoppel did not bar the Idaho State Bar or the Hearing Committee from pursuing and recommending disbarment after an earlier recommended stipulation for suspension had been rejected.
5. The Supreme Court's rejection of the initial recommended sanction and remand for consideration of more significant sanctions did not violate Pangburn's due process rights because he received notice and meaningful opportunities to be heard before the Committee and the Supreme Court.

6. The Hearing Committee's failure to comply with the deadlines for issuing its decisions did not invalidate those decisions or reduce the weight owed to its recommendation because the timing requirements were not jurisdictional and did not impair Pangburn's ability to be heard.
7. Disbarment was the appropriate sanction for Pangburn's admitted violations, and the disbarment was properly made effective February 1, 2010.

KEY QUOTATIONS

"The act of wrongfully and permanently depriving someone of his property establishes conversion." (154 Idaho at 237)

"Although Pangburn may be correct that Hall was not actually harmed, there was a very high potential for harm at the time." (154 Idaho at 240)

"The requirements of due process are met in this case. This Court's remand for consideration of more significant sanctions preserved Pangburn's due process rights rather than violated them." (154 Idaho at 243)

"We conclude that the need to protect the public, the courts and the legal profession dictates that this Court accept the Committee's recommendation that Pangburn be disbarred." (154 Idaho at 247)

FACTUAL BACKGROUND

Pangburn represented Robert Hall in post-conviction proceedings despite having previously represented Hall at trial, creating a conflict of interest. Pangburn removed Hall's ineffective-assistance claim from an amended petition and failed to notify the court of the conflict; Hall's sentence was ultimately reduced after further proceedings. Pangburn also retained disputed and undisputed portions of a \$12,000 fee paid for representing Robert Illingworth, failed to return \$7,280 determined to be owed, and failed to reimburse the Client Assistance Fund after it paid Illingworth's mother. Pangburn admitted violations involving diligence, conflicts of interest, conduct prejudicial to the administration of justice, return of unearned fees, and safekeeping disputed property.

PROCEDURAL HISTORY

Pangburn had previously been suspended in Idaho through reciprocal disciplinary proceedings arising from Oregon misconduct. After the Idaho State Bar filed a new complaint concerning Pangburn's representation of two Idaho clients, the parties initially stipulated to a further suspension. The Hearing Committee recommended approval of that stipulation, but the Supreme Court rejected it and remanded for consideration of more significant sanctions. After a sanctions hearing on remand, the Committee recommended disbarment effective February 1, 2010. The Supreme Court affirmed that recommendation and awarded costs to the Idaho State Bar.

DISPOSITION

approved

CASES CITED

- Idaho State Bar v. Clark, 153 Idaho 349, 283 P.3d 96 (2012)

- Idaho State Bar v. Frazier, 136 Idaho 22, 28 P.3d 363 (2001)
- Matter of Jenkins, 120 Idaho 379, 816 P.2d 335 (1991)
- Idaho State Bar v. Souza, 142 Idaho 502, 129 P.3d 1251 (2006)
- Wiseman v. Schaffer, 115 Idaho 537, 768 P.2d 800 (Ct. App. 1989)
- Klam v. Koppel, 63 Idaho 171, 118 P.2d 729 (1941)
- Heinze v. Bauer, 145 Idaho 232, 178 P.3d 597 (2008)
- Loomis v. Church, 76 Idaho 87, 277 P.2d 561 (1954)
- McKay v. Owens, 130 Idaho 148, 937 P.2d 1222 (1997)
- Sadid v. Idaho State University, 2013 WL 257386 (Idaho Jan. 24, 2013)
- Aberdeen-Springfield Canal Co. v. Peiper, 133 Idaho 82, 982 P.2d 917 (1999)
- State v. Rhoades, 121 Idaho 63, 822 P.2d 960 (1991)
- Castaneda v. Brighton Corp., 130 Idaho 923, 950 P.2d 1262 (1998)
- Matter of Jenkins, 127 Idaho 408, 901 P.2d 1309 (1995)
- Matter of Tway, 123 Idaho 59, 844 P.2d 688 (1992)