

SUPREME COURT OF SOUTH DAKOTA

In re the Matter of Discipline of Michael P. Reynolds

2009 SD 9 (2009) · No. Nos. 24932-DG, 24932-DG · Decided February 11, 2009

SUMMARY

The Supreme Court of South Dakota imposed a three-year suspension from the practice of law on Michael P. Reynolds. The court found that Reynolds neglected client matters, failed to communicate, allowed a statute of limitations to expire, engaged in undisclosed conflicts of interest, violated agreements with the Disciplinary Board, and failed to respond to disciplinary proceedings. Following the suspension, Reynolds may petition for reinstatement.

CASE DETAILS

COURT	Supreme Court of South Dakota
WRITING FOR THE COURT	Gilbertson, Chief Justice; Zinter, Justice; Meierhenry, Justice; Wilbur, Circuit Judge, sitting for Konenkamp, Justice; Miller, Retired Justice, sitting for Sabers, Retired Justice
JURISDICTION	South Dakota
DECIDED	February 11, 2009
DOCKET	Nos. 24932-DG, 24932-DG
DISPOSITION	other
PROCEDURAL POSTURE	Attorney-discipline proceeding initiated by the South Dakota Disciplinary Board. After Reynolds failed to answer the formal accusation or respond to the petition for temporary suspension, the Supreme Court conducted a show-cause proceeding and determined the appropriate sanction.
STANDARD OF REVIEW	The Court gives careful consideration to the Disciplinary Board's factual findings because the Board observed and heard the witnesses firsthand, but does not defer to the Board's recommended sanction. The final determination of appropriate discipline rests with the Supreme Court.
PRECEDENTIAL VALUE	Published opinion; precedential South Dakota Supreme Court decision

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QUESTIONS PRESENTED

1. Whether Reynolds violated the South Dakota Rules of Professional Conduct and statutory disciplinary requirements through neglect, inadequate communication, conflicts of interest, misconduct, and failure to cooperate with the Disciplinary Board.
2. Whether Reynolds violated the terms of the Private 60 Agreements by failing to comply with reporting, mentoring, practice-limitation, and client-withdrawal requirements.
3. What sanction was necessary to protect the public and address Reynolds's repeated misconduct.
4. Whether Reynolds's failure to answer the formal accusation required the Court to proceed without an answer under SDCL 16-19-68.

HOLDINGS

1. The Supreme Court independently determines the appropriate discipline, giving careful consideration to the Disciplinary Board's factual findings but not deferring to its recommended sanction.
2. An attorney's obligation to maintain good moral character is continuing and includes diligence, reliability, fiduciary responsibility, respect for others' rights, and respect for the judicial process; repeated neglect, failure to communicate, conflicts of interest, and failure to cooperate with disciplinary authorities constitute grounds for discipline.
3. The paramount purpose of attorney discipline is protection of the public, not punishment of the attorney, and the Court must not balance potential rehabilitation against the duty to protect the public.
4. A three-year suspension from the practice of law, effective immediately, was the appropriate sanction; Reynolds could petition for reinstatement only after satisfying specified conditions, and failure to satisfy the conditions would result in permanent disbarment.
5. When an accused attorney fails to answer a formal accusation within the thirty-day period prescribed by SDCL 16-19-68, the Court may proceed to render the judgment required by the case.

KEY QUOTATIONS

"We are not to balance the potential for rehabilitation against protection of the public." (§64)

"It is the order of this Court that Reynolds be suspended from the practice of law for three years, effective immediately." (§65)

"Failure to meet the suspension conditions will result in permanent disbarment." (§66)

FACTUAL BACKGROUND

Reynolds repeatedly neglected client matters, failed to communicate with clients, allowed a statute of limitations to expire, and represented clients with an undisclosed conflict of interest. After entering a Private 60 Agreement and later amended agreements designed to permit continued practice under supervision, he again failed to

communicate, ignored his mentor and the Disciplinary Board, violated restrictions limiting his practice to Dunbar Enterprises, and failed to participate in litigation that resulted in a substantial default judgment against a client. He also failed to answer the formal accusation and respond to the temporary-suspension petition.

PROCEDURAL HISTORY

The Disciplinary Board filed a formal accusation alleging violations of the South Dakota Rules of Professional Conduct and separately petitioned for temporary suspension. Reynolds failed to answer or timely respond, and the Court temporarily suspended him and ordered him to show cause why he should not be disbarred. The Board recommended disbarment, but the Court imposed a three-year suspension subject to conditions for readmission.

DISPOSITION

other

CASES CITED

- In re Arendt, 2004 SD 83, 684 NW2d 79
- Discipline of Ortner, 2005 SD 83, 699 NW2d 865
- Matter of Discipline of Wehde, 517 NW2d 132, 133-134 (SD 1994)
- In re Egan, 52 SD 394, 402, 218 NW 1, 4 (1928)
- In re Kerl, 32 Idaho 737, 188 P 40 (1920)
- Discipline of Eicher, 2003 SD 40, 661 NW2d 354
- Petition of Pier, 1997 SD 23, 561 NW2d 297
- Matter of Chamley, 349 NW2d 56, 58 (SD 1984)
- In re Discipline of Mattson, 2002 SD 112, ¶¶40, 54, 651 NW2d 278, 286, 289
- In re Discipline of Kintz, 315 NW2d 328, 331 (SD 1982)
- In re Rude, 88 SD 416, 221 NW2d 43, 47-48
- Discipline of Tidball, 503 NW2d 850, 856 (SD 1993)
- In re Discipline of Laprath, 2003 SD 114, ¶¶84, 670 NW2d 41, 66-67
- Matter of Discipline of Dorothy, 2000 SD 23, ¶¶42-47, 605 NW2d 493, 505-507
- Application of Widdison, 539 NW2d 671, 678 n.15 (SD 1995)
- Truman v. Griesse, 2009 SD 8, ¶28
- Discover Bank v. Stanley, 2008 SD 111, ¶21, 757 NW2d 756, 762