

NEBRASKA SUPREME COURT

State ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Frank E. Robak, Sr.

301 Neb. 748 (2018) · No. No. S-18-165 · Decided November 30, 2018

SUMMARY

The Nebraska Supreme Court addressed attorney disciplinary charges against Frank E. Robak, including client neglect, failure to communicate, and failure to cooperate with the disciplinary process. The court ordered an indefinite suspension from the practice of law, with a minimum suspension of one year, followed by two years of monitored probation upon reinstatement.

CASE DETAILS

COURT	Nebraska Supreme Court
WRITING FOR THE COURT	Per Curiam; Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.
JURISDICTION	Nebraska
DECIDED	November 30, 2018
DOCKET	No. S-18-165
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding. The relator filed formal charges, Robak failed to answer, and the court granted judgment on the pleadings as to the facts while reserving the appropriate discipline for decision.
PRECEDENTIAL VALUE	published precedential opinion

TOPICS

remedies

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

QUESTIONS PRESENTED

1. What discipline should be imposed for the established violations of the Nebraska Rules of Professional Conduct and Robak's attorney oath?
2. Whether the established client neglect and failure to cooperate with the disciplinary process warranted indefinite suspension with conditions for reinstatement.

HOLDINGS

1. A violation of a disciplinary rule concerning the practice of law is a ground for attorney discipline.
2. Under Neb. Ct. R. § 3-304, the Nebraska Supreme Court may impose disbarment, suspension, probation in lieu of or following suspension, or censure and reprimand.
3. In determining whether and to what extent discipline should be imposed, the court considers the nature of the offense, deterrence, the reputation of the bar, protection of the public, the offender's general attitude, and the offender's present or future fitness to practice law.
4. Attorney-discipline cases must be evaluated in light of their particular facts and circumstances, including the attorney's conduct underlying the violations, conduct during the proceeding, and aggravating and mitigating factors.
5. Robak was indefinitely suspended from the practice of law, subject to a minimum suspension of one year and two years of monitored probation upon reinstatement.

KEY QUOTATIONS

“Responding to inquiries and requests for information from relator is an important matter, and an attorney’s cooperation with the discipline process is fundamental to the credibility of attorney disciplinary proceedings.” (at 751)

“We order that Robak be indefinitely suspended from the practice of law in the State of Nebraska, with a minimum suspension of 1 year, effective immediately.” (at 754-755)

FACTUAL BACKGROUND

Robak represented a client in a civil action after receiving a \$5,000 fee, but over approximately three years communicated only sporadically and failed to provide competent and diligent representation. He declined the client's refund request and initially responded to the resulting grievance, but then failed to respond to requests for additional information, the formal grievance notice, the formal complaint, and the formal charges. Robak referenced serious health problems but did not develop that potential mitigating circumstance in the disciplinary record.

PROCEDURAL HISTORY

The Counsel for Discipline filed formal charges alleging violations of Robak's attorney oath and several Nebraska Rules of Professional Conduct. Robak did not answer, object to the motion for judgment on the pleadings, or submit a brief concerning discipline. The Nebraska Supreme Court established the violations on judgment on the pleadings and then determined the appropriate sanction.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Wolfe, ante p. 117, 918 N.W.2d 244 (2018)
- State ex rel. Counsel for Dis. v. Tonderum, 286 Neb. 942, 840 N.W.2d 487 (2013)
- State ex rel. Counsel for Dis. v. Jorgenson, 298 Neb. 855, 906 N.W.2d 43 (2018)
- State ex rel. Counsel for Dis. v. Tighe, 295 Neb. 30, 886 N.W.2d 530 (2016)
- State ex rel. Counsel for Dis. v. Ubbinga, 295 Neb. 995, 893 N.W.2d 694 (2017)
- State ex rel. Counsel for Dis. v. Moore, 294 Neb. 283, 881 N.W.2d 923 (2016)

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