

SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board v. Kadenge

706 N.W.2d 403 (Iowa 2005) · Decided December 2, 2005

SUMMARY

The Iowa Supreme Court held that attorney Nyaradzai M. Kadenge committed multiple ethical violations, including neglecting client matters, mishandling client funds, failing to cooperate with disciplinary authorities, making misrepresentations, and appearing in court while intoxicated. The court increased the Grievance Commission’s recommended six-month suspension to an eighteen-month suspension. Reinstatement was conditioned on restitution to specified former clients, and costs were taxed to Kadenge.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Streit, Justice
JURISDICTION	Iowa
DECIDED	December 2, 2005
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding brought by the Iowa Supreme Court Attorney Disciplinary Board after the Grievance Commission found multiple ethical violations and recommended a six-month license suspension, restitution, and refund of a retainer.
STANDARD OF REVIEW	Attorney disciplinary proceedings are reviewed de novo. The court gives respectful consideration to the Grievance Commission's findings and recommendations but is not bound by them. The Board must prove attorney misconduct by a convincing preponderance of the evidence, and the court may adopt, increase, or reduce the recommended sanction.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion and precedential authority on attorney discipline, de novo review, trust-account obligations, professional neglect, and sanctions.
PARTIES	Iowa Supreme Court Attorney Disciplinary Board v. Nyaradzai M. Kadenge

TOPICS

remedies restitution appellate procedure standard of review

PRACTICE AREAS

legal ethics and professional responsibility attorney discipline trust-account management
legal malpractice prevention

QUESTIONS PRESENTED

1. Whether the Board proved by a convincing preponderance of the evidence that Kadenge violated the Iowa Code of Professional Responsibility through trust-account mishandling, neglect, noncooperation, misrepresentation, and appearing in court while intoxicated.
2. Whether advance payments that were not shown to be general retainers had to be deposited in a client trust account until earned.
3. What sanction was warranted for Kadenge's multiple ethical violations, client harm, failure to cooperate, and intoxicated appearance in court.
4. Whether the court could impose restitution and refund conditions on any application for reinstatement.

HOLDINGS

1. Kadenge violated the Iowa Code of Professional Responsibility by depositing advance payments from Roth, Sadikovic, and Cox into general firm accounts before the fees were earned and by failing to maintain and account for client funds.
2. Kadenge committed professional neglect by failing to resist a motion to dismiss in the Sallis matter, failing to respond to discovery and a motion to dismiss in the Begic matter, and failing to inform Lenius of an adverse ruling and the deadline for appeal.
3. Kadenge's repeated failure to respond to the Board's complaints and inquiries and his failure to fully comply with discovery constituted separate misconduct and conduct prejudicial to the administration of justice.
4. Kadenge violated the prohibition against dishonesty, fraud, deceit, or misrepresentation by intentionally telling Begic's new attorney that he had malpractice insurance and identifying an insurer when he knew he was uninsured.
5. Kadenge violated multiple disciplinary rules by appearing in court while intoxicated and by falsely telling the court he had not been drinking.
6. An eighteen-month suspension of Kadenge's license was warranted because the multiple serious violations, client harm, failure to cooperate, trust-account misconduct, and intoxicated court appearance made the Commission's recommended six-month suspension inadequate.

KEY QUOTATIONS

“We conclude the respondent’s license should be suspended for a period of not less than eighteen months.”
(411)

“Emotional problems or alcohol use will not excuse negligent or neglectful conduct with respect to one’s clients. It will also not excuse trust account violations.” (411)

FACTUAL BACKGROUND

Kadenge repeatedly neglected client matters, mishandled advance fees and trust-account funds, failed to respond to disciplinary inquiries, and made a false representation that he carried malpractice insurance. His neglect caused or contributed to the dismissal of client claims and the loss of an opportunity to appeal. He also appeared in court while intoxicated, denied drinking when questioned, and subsequently pleaded guilty to public intoxication.

PROCEDURAL HISTORY

The Board filed a complaint alleging neglect of client matters, trust-account violations, misrepresentations, intoxication in court, and failure to cooperate with disciplinary authorities. After a hearing, the Grievance Commission found the violations proved and recommended a six-month suspension, payment of \$2,000 owed to Sadikovic, and a \$1,000 retainer refund to Sallis. The Iowa Supreme Court reviewed the proceeding de novo, increased the sanction to an eighteen-month suspension, imposed payment and refund conditions for reinstatement, and taxed costs to Kadenge.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Ruth, 656 N.W.2d 93, 97 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Bell, 650 N.W.2d 648, 650 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Grotewold, 642 N.W.2d 288, 293 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Lett, 674 N.W.2d 139, 142, 144 (Iowa 2004)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Eich, 652 N.W.2d 216, 217 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Apland, 577 N.W.2d 50, 54-57 (Iowa 1998)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Frerichs, 671 N.W.2d 470, 475 (Iowa 2003)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Moorman, 683 N.W.2d 549, 551 (Iowa 2004)
- Comm. on Prof’l Ethics & Conduct v. Horn, 379 N.W.2d 6, 8-9 (Iowa 1985)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Kennedy, 684 N.W.2d 256, 260-61 (Iowa 2004)
- Comm. on Prof’l Ethics & Conduct v. Bromwell, 389 N.W.2d 854, 857 (Iowa 1986)
- Comm. on Prof’l Ethics & Conduct v. Crary, 245 N.W.2d 298, 304 (Iowa 1976)
- Comm. on Prof’l Ethics & Conduct v. Blomker, 379 N.W.2d 19, 21 (Iowa 1985)
- Iowa Supreme Ct. Bd. of Prof’l Ethics & Conduct v. Bernard, 653 N.W.2d 373, 376 (Iowa 2002)

- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Freeman, 603 N.W.2d 600, 603-04 (Iowa 1999)
- Comm. on Prof'l Ethics & Conduct v. Gill, 479 N.W.2d 303, 305 (Iowa 1991)
- Comm. on Prof'l Ethics & Conduct v. Havercamp, 442 N.W.2d 67, 69-70 (Iowa 1989)
- Comm. on Prof'l Ethics & Conduct v. Oleson, 422 N.W.2d 176, 177 (Iowa 1988)
- Comm. on Prof'l Ethics & Conduct v. Johnson, 404 N.W.2d 184, 185-86 (Iowa 1987)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Thompson, 595 N.W.2d 132, 134 (Iowa 1999)
- Comm. on Prof'l Ethics & Conduct v. Haney, 435 N.W.2d 742, 743 (Iowa 1989)

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