

SUPREME COURT OF IOWA

Iowa Supreme Court Board of Professional Ethics and Conduct v. Thomas P. Frerichs

671 N.W.2d 470 (Iowa 2003) · No. No. 03-1030 · Decided November 13, 2003

SUMMARY

The Iowa Supreme Court held that Thomas P. Frerichs violated professional-responsibility rules through an unethical advance-fee agreement, mishandling and failing to account for client funds, neglecting a client matter, failing to safeguard client property, and failing to cooperate with disciplinary investigations. The court imposed an indefinite suspension from practice with no possibility of reinstatement for four months, superseding the Grievance Commission's recommended public reprimand.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Cady
JURISDICTION	Iowa
DECIDED	November 13, 2003
DOCKET	No. 03-1030
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding reviewed de novo by the Supreme Court of Iowa following the Grievance Commission's finding that Frerichs violated the Iowa Code of Professional Responsibility and its recommendation of a public reprimand.
STANDARD OF REVIEW	The court reviews attorney disciplinary proceedings de novo and gives weight, but is not bound, to the Grievance Commission's findings.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Iowa Supreme Court Board of Professional Ethics and Conduct v. Thomas P. Frerichs

TOPICS

[contracts](#)[contract interpretation](#)[trust administration](#)[trustee duties](#)

PRACTICE AREAS

legal ethics and professional responsibility

attorney discipline

legal fees and client funds

trust-account administration

QUESTIONS PRESENTED

1. Whether the criminal-defense fee agreement's nonrefundable minimum fee constituted a permissible general retainer or an unethical special retainer.
2. Whether Frerichs violated the professional-responsibility rules by failing to deposit advance fees in a client trust account, withdrawing unearned fees, failing to account for and return client funds, and misappropriating client funds.
3. Whether Frerichs violated the professional-responsibility rules by neglecting the Meredith representation and failing to safeguard and return client property.
4. Whether Frerichs violated the professional-responsibility rules by failing to cooperate with the Board's investigations.
5. What discipline was appropriate in light of the violations, prior disciplinary history, health conditions, and other aggravating and mitigating circumstances.

HOLDINGS

1. A nonrefundable advance minimum fee for representation in a specific case is presumptively a special retainer, not a general retainer, unless the agreement genuinely compensates the lawyer for availability independent of performing the specified legal services. The fee agreement here was an illegal and unethical fee arrangement under DR 2-106(A).
2. Advance payments that are special retainers, including fixed or flat fees paid in advance for specified services, remain client funds, must be deposited in a client trust account, and may be withdrawn only as the fee is earned through completed services; unearned amounts must be returned.
3. Frerichs violated DR 2-106(A), DR 9-102(A), DR 1-102(A)(4), DR 9-102(B), and DR 9-103(A) by entering into the illegal fee agreement, failing to maintain the advance fee in a trust account, misappropriating client funds, and failing to account for and properly deliver client funds.
4. Frerichs violated DR 6-101(A)(3), DR 7-101(A), and DR 9-102(B), and engaged in conduct adversely reflecting on his fitness under DR 1-102(A)(6), by failing to complete the nonprofit-formation work, failing to communicate, and failing to safeguard and return the client's papers.
5. Frerichs violated DR 1-102(A)(5) and (6) by repeatedly failing to respond to notices from the Board in both disciplinary matters.
6. An indefinite suspension from the practice of law, with no possibility of reinstatement for four months, was warranted.

KEY QUOTATIONS

“As opposed to general retainers, special retainers represent money that still belongs to the client after it is paid to an attorney and must be deposited in a client trust account.” (475-476)

“Although this contract language mentioned factors characteristic of a general retainer, it was clearly insufficient to overcome the presumption of a special retainer.” (477)

“In view of all the relevant factors and the aggravating and mitigating circumstances, we conclude that Frerichs should be indefinitely suspended from the practice of law in this state with no possibility for reinstatement for four months.” (478)

FACTUAL BACKGROUND

Frerichs entered into a criminal-defense fee agreement providing for a \$10,000 minimum fee deemed earned upon execution and a \$20,000 retainer. He placed advance funds in his general account, failed to provide an accounting when requested by the trustee of the client's living trust, and later returned approximately \$11,000. In a separate representation, he failed to complete work to establish a nonprofit corporation, failed to return the client's papers and telephone calls, and caused the client's business to lose revenue. He also repeatedly failed to respond to notices from the Board concerning both complaints.

PROCEDURAL HISTORY

The Iowa Supreme Court Board of Professional Ethics and Conduct charged Frerichs with violations arising from an attorney-fee agreement, representation of a business client, and failure to cooperate with the Board's investigations. The Grievance Commission found the charged violations and recommended a public reprimand. On de novo review, the Supreme Court found additional and serious violations and imposed an indefinite suspension with no possibility of reinstatement for four months.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Bernard, 653 N.W.2d 373, 375-76 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Apland, 577 N.W.2d 50, 54-60 (Iowa 1998)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Walters, 646 N.W.2d 111, 113-14 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Grotewold, 642 N.W.2d 288, 295 (Iowa 2002)
- Comm. on Prof'l Ethics & Conduct v. Robinson, 458 N.W.2d 393, 394 (Iowa 1990)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Adams, 623 N.W.2d 815, 818-19 (Iowa 2001)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Lemanski, 606 N.W.2d 11, 14 (Iowa 2000)
- Comm. on Prof'l Ethics & Conduct v. Liles, 430 N.W.2d 111, 113 (Iowa 1988)
- Comm. on Prof'l Ethics & Conduct v. Conzett, 476 N.W.2d 43, 45-46 (Iowa 1991)
- Lester Brickman & Lawrence A. Cunningham, Nonrefundable Retainers Revisited, 72 N.C. L. Rev. 1, 8-12, 24-27 (1993)

- Lester Brickman & Lawrence A. Cunningham, Nonrefundable Retainers Revisited, 72 N.C. L. Rev. 1, 31-32 & n.121 (1993)

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