

SUPREME COURT OF OKLAHOMA

State ex rel. Oklahoma Bar Ass'n v. Wagnon

State ex rel. Okla. Bar Ass'n v. Wagnon, 2004 OK 78, 104 P.3d 571 · Decided October 12, 2004

SUMMARY

The Oklahoma Supreme Court reviewed reciprocal disciplinary proceedings based on Jeffrey D. Wagnon's resignation from the Texas Bar, together with allegations of misconduct in Oklahoma. The court found that the Texas misconduct was conclusively established and upheld findings concerning several Oklahoma violations, while exonerating Wagnon on one allegation. Wagnon was disbarred and ordered to pay \$966.02 in costs.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Taylor, J.
JURISDICTION	Oklahoma
DECIDED	October 12, 2004
DISPOSITION	other
PROCEDURAL POSTURE	The Oklahoma Bar Association initiated a reciprocal disciplinary proceeding under Rule 7.7 based on Respondent's resignation from the State Bar of Texas in lieu of discipline and separately filed a Rule 6 complaint concerning alleged Oklahoma misconduct. The matters were consolidated and referred to a Professional Responsibility Tribunal trial panel. The Supreme Court of Oklahoma conducted de novo review and imposed discipline.
STANDARD OF REVIEW	De novo review
PRECEDENTIAL VALUE	Published Oklahoma Supreme Court opinion; precedential
PARTIES	State ex rel. Oklahoma Bar Association v. Jeffrey D. Wagnon

TOPICS

- appellate procedure
- standard of review
- remedies

PRACTICE AREAS

- legal ethics
- attorney discipline
- professional responsibility

QUESTIONS PRESENTED

1. Whether misconduct underlying Wagon's resignation from the Texas Bar was conclusively established for purposes of reciprocal discipline in Oklahoma.
2. Whether Wagon committed the Oklahoma Rules of Professional Conduct violations found by the trial panel.
3. Whether the evidence established that Wagon's conduct left the client without protection of an emergency or final protective order.
4. What disciplinary sanction was warranted in light of the misconduct and aggravating and mitigating circumstances.
5. Whether Wagon should be assessed the costs of the disciplinary proceedings.

HOLDINGS

1. Misconduct alleged in the Texas disciplinary proceeding was conclusively established because Wagon had a full and fair opportunity to litigate the allegations but resigned rather than challenge them. The Oklahoma Supreme Court therefore could rely on that misconduct as a basis for reciprocal discipline.
2. Wagon's conduct in representing Sonya Wilson violated Oklahoma Rules of Professional Conduct Rules 1.3, 1.4, and 3.2.
3. Wagon violated Rule 1.2 by moving to vacate a final protective order without the client's knowledge or consent and violated Rule 1.4 by failing to explain the matter sufficiently to permit the client to make an informed decision.
4. The allegation that Wagon's conduct left Gosvener without the protection of any order was not proven by clear and convincing evidence, and Wagon was exonerated on that allegation.
5. Disbarment was the appropriate sanction for Wagon's serious, repeated misconduct affecting seven clients in two states, aggravated by his failure to respond adequately to the disciplinary processes.
6. Wagon was required to reimburse the Oklahoma Bar Association \$966.02 for costs incurred in the investigation, preparation of the record, and proceedings, payable within ninety days.

KEY QUOTATIONS

"Based upon this Court's de novo review, Respondent is disbarred." (104 P.3d at 571)

"Thus, those allegations became conclusively established." (104 P.3d at 572)

"Authority to move to vacate the final protective order was the client's." (104 P.3d at 575)

"RESPONDENT DISBARRED AND ORDERED TO PAY COSTS." (104 P.3d at 576)

FACTUAL BACKGROUND

Jeffrey D. Wagon resigned from the State Bar of Texas while disciplinary proceedings were pending after allegations that he neglected matters for five clients, failed to communicate, misrepresented work performed, and failed to respond to disciplinary complaints. After moving to Oklahoma, he neglected client matters, failed

to communicate with clients, failed to return documents and a retainer promptly, and acted without client authority in seeking to vacate a final protective order. The Oklahoma Supreme Court found one additional allegation—that the protective-order conduct left the client unprotected—was not proven by clear and convincing evidence.

PROCEDURAL HISTORY

The trial panel found that the Texas misconduct was conclusively established and found several Oklahoma violations, while concluding that one Oklahoma allegation was not proven by clear and convincing evidence. It recommended disbarment. On de novo review, the Supreme Court agreed with the established Texas misconduct and the proven Oklahoma violations, exonerated Respondent on Count III, imposed disbarment, and assessed \$966.02 in costs.

DISPOSITION

other

CASES CITED

- State of Okla. ex rel. Okla. Bar Ass'n v. Bransgrove, 1998 OK 93, 976 P.2d 540, 541
- State of Okla. ex rel. Okla. Bar Ass'n v. Heinen, 2002 OK 81, 60 P.3d 1018, 1020

OPINION

TAYLOR, J.

TAYLOR, J. " 1 The Oklahoma Bar Association initiated a Rule 7.7 reciprocal disciplinary proceeding against Respondent, Jeffrey D. Wagnon based upon his resignation from the State Bar of Texas in lieu of disciplinary action. A Rule 6 complaint was also filed based on allegations of misconduct in Oklahoma.

The two matters were consolidated by this Court and assigned to a trial panel of the Professional Responsibility Tribunal. The panel was directed to make findings of fact and conclusions of law regarding the Rule 6 complaint. It was further directed to hear evidence germane to mitigation of the bar disciplinary sanction to be imposed. 1 2 That panel has recommended the sancetion of disbarment for the misconduct which was conclusively established by Respondent's resignation in Texas along with the Oklahoma misconduct which the trial panel determined.

Based upon this Court's de novo review, Respondent is disbarred. He is assessed the costs incurred in the investigation, the preparation of the record, and the proceedings in this matter. TEXAS MISCONDUCT T3 Under Rule 7.7(b) of the Rules Governing Disciplinary Proceedings, Okla. Stat. tit. 5, ch.1, app. 1-A (2001), an adjudication of misconduct by the highest court of another state provides the basis for the imposition of discipline in Oklahoma.

See State of Okla. ex rel. Okla. Bar Ass'n v. Bransgrove, 1998 OK 93, 976 P.2d 540, 541. Allegations of misconduct in a sister jurisdiction become conclusively established upon a respondent's failure to challenge them. See State of Okla. ex rel. Okla. Bar Ass'n v. Heinen, 2002 OK 81, 60 P.3d 1018, 1020. T4 Respondent in this matter resigned from the Texas Bar pending disciplinary proceedings.

The Supreme Court of Texas "consider[ed] the detailed statement of professional misconduct contained within the Response of Chief Disciplinary Counsel to be deemed conclusively established for all purposes." This Court upholds the conclusive establishment of the allegations made in Texas. Respondent possessed a full and fair opportunity to litigate the Texas complaints.

He chose to resign rather than to challenge the allegations against him. Thus, those allegations became conclusively established. 1[5 The professional misconduct with which Respondent was charged in Texas is as follows: *573A. Kimberly Boyd-Jeffery Dane Wag-non, Case No. D1100219550 - In or about July 2001, as a result of Wag-non's misrepresentation that he would represent her, Complainant Kimberly Boyd hired Wagon to represent her in a wrongful foreclosure claim.

Wagon was paid a \$3000 retainer fee in the matter. Wagon filed suit on behalf of Complainant Boyd. Thereafter, Wagon neglected the legal matter and failed to provide any meaningful legal services for Complainant Boyd. Further, Wagon failed to communicate with Complainant Boyd regarding the matter and failed to return phone calls and respond to faxes requesting information about the status of the case.

Wagon failed to notify Complainant Boyd of hearing dates and failed to provide an itemized accounting of Complainant Boyd's retainer when requested. Complainant Boyd hired new counsel to complete the representation.

On or about October 81, 2002, Wagon received notice of this complaint by certified mail, return receipt requested. Wag-non was requested to reply, in writing, within thirty (30) days of receipt, but failed to do so and asserted no grounds for his failure to respond. [[Image here]] B. Verlana Craven-Jeffery Dane Wag-non, Case No. D1080219298 In or about May 2002, as a result of Wag-non's misrepresentation that he would represent her, Complainant Verlana Craven hired Wagon to represent her in a Chapter 13 Bankruptcy.

Thereafter, Wagon neglected the legal matter and failed to appear at scheduled hearings. Further, Wagon failed to file the Chapter 13 Plan. The court dismissed Complainant Craven's bankruptcy because of Wagon's neglect.. Complainant Craven has attempted to, contact Wagon regarding the matter and Wagon has failed or refused to communicate with Complainant Craven.

On or about September 80, 2002, Wagon received notice of this complaint by certified mail, return receipt requested. Wag-non was requested to reply, in writing, within thirty (80) days of

receipt, but failed to do so and asserted no grounds for his failure to respond. [[Image here]] C. Commission for Lawyer Discipline v. Jeffery Dane Wagon, Case No. D0010319916 On or about September 5, 2001, Complainant Amy Smith paid Wagon a fee of \$700.00 to represent her in the incorporation of her business.

Thereafter, Wagon neglected the legal matter and failed to provide any legal services to Complainant Smith. Further, Wagon failed or refused to respond to Complainant Smith's numerous inquiries about the status of the matter and failed to return the unearned - fee.

On or about July 26, 2002, Wagon received notice of this complaint by certified mail, return receipt requested. Wagon was requested to reply, in writing, within thirty (80) days of receipt, but failed to do so and asserted no grounds for his failure to respond. [[Image here]] D. Commission for Lawyer Discipline v. Jeffery Dane Wagon, Case No. D0060218865 Wagon was hired in December 2000, on a contingency fee basis, to represent Complainant Billy Don Taylor in a personal injury case.

Thereafter, Wagon failed to perform any substantive legal services on behalf of Complainant Taylor. Wagon abandoned his office without notice to Complainant Taylor and failed to communicate with Complainant Taylor regarding the status of his case. | On or about July 8, 2002, Wagon was notified of this complaint by certified mail, return receipt requested.

Wagon was re-. requested to reply, in writing, within thirty (30) days of receipt, but failed to do so and asserted no grounds for his failure to respond. [[Image here]] *574E. Commission for Lawyer Discipline v. Jeffery Dane Wagon, Case No. D0070218944 Wagon was hired to represent Complainant Bermah L. Vaughn in Case No. 98-155-C26, IBEC v. Bermah McKinney, et al. Thereafter, Wagon failed to raise defenses in an answer to the suit and failed to file a counterclaim as requested by Complainant Vaughn.

However, Wagon misrepresented to Complainant Vaughn that he had filed them. Wagon then failed to respond to a motion for summary judgment and failed to appear at a scheduled deposition. Further Wagon failed to notify Complainant Vaughn of the hearing on the motion for summary judgment resulting in a default judgment being granted. Beginning in January 2002, Wagon failed to respond to any of Complainant Vaughn's requests for information regarding the status of the case and failed to withdraw from the representation despite requests from Complainant Vaughn that he do so.

On or about July 26, 2002, Wagon was notified of this complaint by certified mail return receipt requested. Wagon was requested to reply, in writing, within thirty (30) days of receipt, but failed to do so and asserted no grounds for his failure to respond. [[Image here]] It is this conduct which now forms part of the basis for the imposition of discipline in Oklahoma.

The Texas misconduct is centered around client neglect which resulted in a default judgment against one client and dismissal of another client's action. The misconduct includes failure to inform clients concerning the status of a matter, failure to maintain adequate communication with clients, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, failure to take reasonable steps to mitigate the consequences to the client upon withdrawal from representation, and failure to timely furnish the Texas Chief Disciplinary Counsel's office with a response.

OKLAHOMA MISCONDUCT T6 The Oklahoma Bar Association filed a three-count complaint based on Respondent's conduct after he moved to Oklahoma from Texas in 2002. The conduct implicates several provisions of the Rules of Professional Conduct, Okla. Stat. tit. 5, ch. 1, app. 3-A (2001). 17 Count I alleged misconduct in Respondent's representation of Sonya Wilson in a business-related matter.

Some legal services were performed but then Respondent's activities slowed. Eventually, he stopped communicating with Wilson altogether. Respondent then moved from Tulsa to Pawhuska without notifying Wilson. His phone was disconnected and Wilson was unable to make contact with Respondent for several months. Respondent returned Wilson's documents and retainer only after she complained to the Bar Association.

This Court agrees with the trial panel's determination that Respondent's conduct violated Rule 1.3, the duty to act with reasonable diligence, Rule 1.4, the duty to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information, and Rule 3.2, the duty to make reasonable efforts to expedite litigation.

T8 Counts II and III arose from Respondent's representation of Bobbie Sue Briggs Gosvener, plaintiff in a divorce action. Prior to Respondent's representation, Gosvener sought and obtained an emergency protective order against her estranged husband through a lawyer with the Osage Nation Counseling Center. That lawyer was also representing her in the divorce action.

When the lawyer's contract with the tribe expired, Respondent was assigned to the matter,. T9 After a few months, Gosvener was unhappy, due to an inability to communicate with Respondent, and fired him. Respondent withdrew from the divorce action when Gosvener hired another lawyer. There was confusion concerning Respondent's representation of Gosvener regarding the protective order.

Gosvener believed she had fired Respondent from representation in both the divorce action and the associated protection *575order matter. Respondent testified that he thought he still represented Gosvener concerning the protective order. { 10 When the emergency protective order came up for review, counsel for the husband did not appear and a final protective order was entered.

Later, husband's counsel made contact with Respondent and alleged he had been given no notice of the hearing. Respondent's file reflected no notice to opposing counsel. Respondent, without Gosvener's knowledge or consent, moved to vacate the final protective order and reset the final protective order hearing.

The trial court granted the motion and reset the hearing. When Gosvener learned that the final order had been vacated, she directed her divorce lawyer to have it reinstated. The district court reinstated the final protective order noting that the court file indicated that husband's counsel had received notice of the original hearing on the final protective order. {11 This conduct by Respondent, which resulted in Count II of the Rule 6 complaint, constitutes a violation of Rule 1.2 concerning the scope of representation.

Authority to move to vacate the final protective order was the client's. Respondent's conduct also violates the Rule 1.4 requirement that "[a] lawyer shall explain a matter to the extent reasonably necessary to 'permit the client to make informed decisions regarding the representation.'" ~ I 12 Count III alleged that by vacating the final protective order the Respondent left Gosvener without the protection of any order for a period of time.

At the disciplinary hearing, however, it became evident that Gosvener may have remained protected by the emergency protective order until the final order was reinstated. The Bar conceded, and the trial panel agreed, that Count III was not demonstrated by clear and convincing evidence. This Court also agrees and Respondent is exonerated in regard to that allegation.

DISCIPLINARY SANCTION T13 Respondent's actions in Oklahoma and Texas demonstrate serious misconduct in several regards over an extended period of time. Enhancing the sanction to be imposed is Respondent's failure to timely or adequately respond to the disciplinary process in Texas and in Oklahoma. T14 Respondent failed to timely respond to any of the five Texas complaints.

When Respondent chose to resign from the Texas Bar, the Supreme Court of Texas ordered him to file two affidavits concerning notice of resignation to clients and the bench. Neither affidavit was filed and Respondent has ignored reminders of that obligation. T 15 Respondent's indifference to the Texas disciplinary process is mirrored in his response to the disciplinary process in Oklahoma.

He has failed to act in a timely manner, or has failed to respond, at each stage of the disciplinary process. In addition, Respondent promised the General Counsel's Office on at least nine occasions that he would resign rather than proceed to trial, Less than a week before trial, however, he reversed his position at the urging of his mother. _ T16 At the disciplinary hearing, Respondent was provided the opportunity to present evidence tending to mitigate the severity of discipline.

He presented only his testimony that in 2001 he suffered a "severe bout of depression" brought on by economic losses and his wife leaving him. His testimony revealed that, although he had been

treated for depression, he had failed to "stick with the course of therapy and medication." No supporting evidence concerning Respondent's depression or his financial and family problems was presented.

T17 Respondent's misconduct spanned several years and seven clients in two states. The disciplinary sanction to be imposed is enhanced by his response to the disciplinary process. This Court imposes the severest sanction, that of disbarment. { 18 The Oklahoma Bar Association is entitled to be reimbursed for the expenses incurred in the investigation, the record, and the proceedings in this matter.

Respondent is assessed these costs in the amount of \$966.02. It is ordered that the costs be paid within 90 days. *576RESPONDENT DISBARRED AND ORDERED TO PAY COSTS. € 19 ALL JUSTICES CONCUR.