

SUPREME COURT OF NEBRASKA

State ex rel. Counsel for Discipline of Nebraska Supreme Court v. Muia

266 Neb. 970 (2003) · Decided November 7, 2003

SUMMARY

The Nebraska Supreme Court granted judgment on the pleadings in an attorney-discipline proceeding against Paul M. Muia. The court found clear and convincing evidence that Muia neglected a medical malpractice matter, improperly withdrew from representation, and failed to properly handle client funds, violating specified disciplinary rules and his attorney's oath. The court ordered a four-month suspension, effective immediately, and required compliance with applicable disciplinary rules and payment of costs.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Nebraska                                                                                                                                                                                                                                                                                                                                   |
| WRITING FOR THE COURT | Per Curiam; Connolly; Gerrard; Hendry; Lerman; McCormack; Miller; Stephan; Wright                                                                                                                                                                                                                                                                           |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                                    |
| DECIDED               | November 7, 2003                                                                                                                                                                                                                                                                                                                                            |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Attorney-discipline proceeding arising from formal charges filed by the Counsel for Discipline. After a referee found clear and convincing evidence of multiple disciplinary violations and recommended a four-month suspension, neither party filed exceptions. The relator moved for judgment on the pleadings, which the Nebraska Supreme Court granted. |
| STANDARD OF REVIEW    | Attorney-discipline proceedings are reviewed de novo on the record. When no exceptions are filed, the referee's findings may be treated as final and conclusive. Disciplinary charges must be established by clear and convincing evidence.                                                                                                                 |
| PRECEDENTIAL VALUE    | Published Nebraska Supreme Court opinion; precedential authority on the stated attorney-discipline procedures and sanction analysis.                                                                                                                                                                                                                        |

TOPICS

sanctions

motion for judgment on the pleadings

civil procedure

costs

## PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

civil procedure

remedies

## QUESTIONS PRESENTED

1. Whether the referee's undisputed findings established the charged disciplinary violations by clear and convincing evidence.
2. Whether the court could grant the relator's motion for judgment on the pleadings when neither party filed exceptions to the referee's report.
3. What sanction was appropriate for Muia's neglect of a legal matter, improper withdrawal from representation, and failure to properly handle client funds.

## HOLDINGS

1. When neither party files exceptions to a referee's report in an attorney-discipline proceeding, the Nebraska Supreme Court may treat the referee's findings as final and conclusive and resolve the matter through judgment on the pleadings.
2. The referee's findings established by clear and convincing evidence that Muia violated DR 2-110(A)(2), DR 6-101(A)(3), DR 9-102(A), and his attorney's oath of office.
3. A four-month suspension from the practice of law was the appropriate sanction for Muia's misconduct.

## KEY QUOTATIONS

*"A proceeding to discipline an attorney is a trial de novo on the record."* (at 973)

*"To determine whether and to what extent discipline should be imposed in a lawyer discipline proceeding, this court considers the following factors: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law."* (at 974)

## FACTUAL BACKGROUND

Paul M. Muia agreed in 1998 to represent Janice Russell in a medical-malpractice matter despite having no prior experience handling such cases. Russell paid Muia \$600 toward litigation costs, but he did little to advance the matter, failed to consult experts or treating physicians, failed to research the statute of limitations, and never filed a lawsuit. Muia ended the representation in August 2000 without advising Russell about the limitations period or helping her obtain new counsel, and he failed to deposit one advance payment into his attorney trust account, although he ultimately repaid all but \$100.27 spent on medical records.

## PROCEDURAL HISTORY

The Counsel for Discipline filed a single-count formal charge against Paul M. Muia. A referee heard evidence, found violations of disciplinary rules and Muia's attorney oath, and recommended a four-month suspension.

Because neither party filed exceptions, the court treated the referee's findings as final and conclusive, granted the motion for judgment on the pleadings, and imposed the recommended suspension.

#### DISPOSITION

other

#### CASES CITED

- State ex rel. Counsel for Dis. v. Hart, 265 Neb. 649, 658 N.W.2d 632 (2003)
- State ex rel. Counsel for Dis. v. Sipple, 265 Neb. 890, 660 N.W.2d 502 (2003)
- State ex rel. NSBA v. Frank, 262 Neb. 299, 631 N.W.2d 485 (2001)
- State ex rel. NSBA v. Brown, 251 Neb. 815, 560 N.W.2d 123 (1997)
- State ex rel. NSBA v. Rothery, 260 Neb. 762, 619 N.W.2d 590 (2000)
- State ex rel. NSBA v. Freese, 259 Neb. 530, 611 N.W.2d 80 (2000)
- State ex rel. NSBA v. Denton, 258 Neb. 600, 604 N.W.2d 832 (2000)
- State ex rel. NSBA v. Gallner, 263 Neb. 135, 638 N.W.2d 819 (2002)