

SUPREME COURT OF NEBRASKA

State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court v. Jackie L. Barfield

305 Neb. 79 (2020) · No. No. S-19-204 · Decided February 21, 2020

SUMMARY

The Nebraska Supreme Court reviewed an attorney disciplinary proceeding involving Jackie L. Barfield's commingling of client funds with personal and business funds, use of an attorney trust account for personal expenses, and account overdrafts. The court held that the misconduct warranted disbarment, emphasizing the prolonged and routine nature of the violations and Barfield's prior private reprimand. The court also addressed mitigating and aggravating factors in determining the appropriate sanction.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Miller-Lerman; Cassel; Stacy; Funke; Papik; Freudenberg
JURISDICTION	Nebraska
DECIDED	February 21, 2020
DOCKET	No. S-19-204
DISPOSITION	other
PROCEDURAL POSTURE	Original attorney-discipline proceeding in which the respondent challenged the referee's recommendation of disbarment and requested suspension instead.
STANDARD OF REVIEW	When no exceptions are filed to a referee's factual findings, the Nebraska Supreme Court may adopt those findings as final and conclusive. Because attorney-discipline cases are original proceedings, the court reviews the referee's recommendations de novo on the record and reaches an independent conclusion.
PRECEDENTIAL VALUE	Published precedential opinion of the Nebraska Supreme Court
PARTIES	Jackie L. Barfield v. State of Nebraska ex rel. Counsel for Discipline of the Nebraska Supreme Court

TOPICS

remedies

appellate procedure

standard of review

writ of certiorari

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

appellate procedure

remedies

QUESTIONS PRESENTED

1. What sanction was appropriate for Barfield's violations of Nebraska professional-conduct rules governing safekeeping client property and attorney misconduct?
2. Whether Barfield's cooperation, remorse, affordable legal services, lack of client complaints, health concerns, and claimed lack of financial loss were sufficient mitigating circumstances to avoid disbarment.

HOLDINGS

1. When neither party files exceptions to a referee's factual findings in an attorney-discipline proceeding, the Nebraska Supreme Court may adopt those findings as final and conclusive.
2. The Nebraska Supreme Court reviews a referee's disciplinary recommendation de novo on the record because attorney-discipline cases are original proceedings before the court.
3. An attorney violates the rule against commingling by intermingling client funds with the attorney's funds so that their separate identity is lost or the funds may be used for personal expenses or exposed to the attorney's creditors; good faith, ignorance, and absence of client loss do not excuse the violation.
4. Disbarment is the appropriate sanction for prolonged, intentional, and routine commingling or misappropriation of client funds when the mitigating circumstances are not extraordinary and do not substantially outweigh aggravating circumstances.

KEY QUOTATIONS

“Thus, we have repeatedly said that absent extraordinary mitigating circumstances, disbarment is the appropriate discipline in cases of misappropriation or commingling of client funds.” (90)

“After balancing the relevant factors in comparison to other cases, considering the need to protect the public, considering the need to deter others, and considering the reputation of the bar as a whole, we agree with the referee that disbarment is the only appropriate sanction.” (95)

FACTUAL BACKGROUND

Barfield, a Nebraska attorney admitted in 1993, used her attorney trust account as a personal and business account for approximately five years. From at least 2013 through 2018, she wrote personal checks, made cash withdrawals, paid business and personal expenses, and incurred at least 23 overdrafts and insufficient-fund charges. She admitted the conduct and had previously received a private reprimand involving mishandling of client-related settlement funds in 2000.

PROCEDURAL HISTORY

Formal disciplinary charges were filed in February 2019 alleging that Barfield commingled client funds with personal and business funds and violated Nebraska professional-conduct rules. Barfield admitted the allegations, and judgment on the pleadings was entered as to the facts. After a disciplinary hearing, the referee recommended disbarment. Neither party filed exceptions to the referee's factual findings, and the Nebraska Supreme Court reviewed the sanction de novo on the record.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Nimmer, 300 Neb. 906, 916 N.W.2d 732 (2018)
- State ex rel. Counsel for Dis. v. Thebarger, 289 Neb. 356, 854 N.W.2d 914 (2014)
- State ex rel. Counsel for Dis. v. Council, 289 Neb. 33, 853 N.W.2d 844 (2014)
- State ex rel. Counsel for Dis. v. Crawford, 285 Neb. 321, 827 N.W.2d 214 (2013)
- State ex rel. Counsel for Dis. v. Switzer, 280 Neb. 815, 790 N.W.2d 433 (2010)
- State ex rel. NSBA v. Howze, 260 Neb. 547, 618 N.W.2d 663 (2000)
- State ex rel. NSBA v. Malcom, 252 Neb. 263, 561 N.W.2d 237 (1997)
- State ex rel. NSBA v. Woodard, 249 Neb. 40, 541 N.W.2d 53 (1995)
- State ex rel. Counsel for Dis. v. Trembly, 300 Neb. 195, 912 N.W.2d 764 (2018)
- State ex rel. Counsel for Dis. v. Pierson, 281 Neb. 673, 798 N.W.2d 580 (2011)
- State ex rel. Counsel for Dis. v. Beltzer, 284 Neb. 28, 815 N.W.2d 862 (2012)
- State ex rel. NSBA v. Gridley, 249 Neb. 804, 545 N.W.2d 737 (1996)
- State ex rel. NSBA v. Veith, 238 Neb. 239, 470 N.W.2d 549 (1991)
- The Florida Bar v. Breed, 378 So. 2d 783 (Fla. 1979)
- State ex rel. Counsel for Dis. v. Davis, 276 Neb. 158, 760 N.W.2d 928 (2008)
- State ex rel. Counsel of Dis. v. Wintroub, 267 Neb. 872, 678 N.W.2d 103 (2004)
- State ex rel. Counsel for Dis. v. Huston, 262 Neb. 481, 631 N.W.2d 913 (2001)
- State ex rel. NSBA v. Kratina, 260 Neb. 1030, 620 N.W.2d 748 (2001)
- State ex rel. NSBA v. Bruckner, 249 Neb. 361, 543 N.W.2d 451 (1996)
- State ex rel. NSBA v. Gleason, 248 Neb. 1003, 540 N.W.2d 359 (1995)
- State ex rel. Counsel for Dis. v. Sundvold, 287 Neb. 818, 844 N.W.2d 771 (2014)