

SUPREME COURT OF NEBRASKA

State ex rel. Counsel for Discipline v. Chapin, 270 Neb. 56

699 N.W.2d 359 (2005) · No. S-04-1264 · Decided June 24, 2005

SUMMARY

The Nebraska Supreme Court considers attorney-discipline charges against Robert William Chapin, Jr., based on neglect of a client's civil rights case, failure to respond to client inquiries, and failure to return the client's file. The court granted the parties' joint motion for judgment, found violations of specified disciplinary rules and the attorney's oath, and imposed a public reprimand, costs, and expenses.

CASE DETAILS

COURT	Supreme Court of Nebraska
WRITING FOR THE COURT	Per Curiam; Wright, J.; Connolly, J.; Gerrard, J.; Stephan, J.; McCormack, J.; Miller-Lerman, J.
JURISDICTION	Nebraska
DECIDED	June 24, 2005
DOCKET	S-04-1264
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding before the Nebraska Supreme Court following a referee's findings and recommendation. The parties jointly moved for judgment accepting the referee's findings and recommendation, and no exceptions were filed.
STANDARD OF REVIEW	Attorney disciplinary proceedings are tried de novo on the record, and alleged violations must be established by clear and convincing evidence. When no exceptions are filed, the referee's findings may be treated as final and conclusive.
PRECEDENTIAL VALUE	Published opinion; precedential Nebraska Supreme Court decision

TOPICS

- appellate procedure
- standard of review
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the referee's findings, absent exceptions by either party, should be accepted as final and conclusive.
2. Whether clear and convincing evidence established that Chapin violated DR 1-102(A)(1), DR 6-101(A)(3), DR 9-102(B)(4), and his oath of office as an attorney.
3. What discipline should be imposed for the established violations.

HOLDINGS

1. When no exceptions are filed to a referee's report in an attorney disciplinary proceeding, the Nebraska Supreme Court may consider the referee's findings final and conclusive.
2. Clear and convincing evidence established that Chapin violated DR 1-102(A)(1), DR 6-101(A)(3), DR 9-102(B)(4), and his oath of office as an attorney.
3. A public reprimand was the appropriate discipline for Chapin's violations.

KEY QUOTATIONS

"A proceeding to discipline an attorney is a trial de novo on the record." (361)

"To sustain a charge in a disciplinary proceeding against an attorney, a charge must be established by clear and convincing evidence." (361)

"Each attorney discipline case must be evaluated individually in light of its particular facts and circumstances." (362)

FACTUAL BACKGROUND

Chapin, a Nebraska attorney, was retained in October 2002 to represent a client in a civil rights action. From December 2002 through June 2003, he neglected the matter by failing to file amended pleadings and verify service on all defendants, failed to respond to the client's inquiries, and failed to return the client's file when requested. The referee found that this conduct violated three disciplinary rules and that the record also established a violation of Chapin's attorney's oath.

PROCEDURAL HISTORY

The Counsel for Discipline filed formal and amended formal charges against Chapin alleging violations of disciplinary rules and his attorney's oath. After a referee hearing, the referee found violations of three disciplinary rules and recommended a public reprimand. The parties filed a joint motion for judgment, and the Nebraska Supreme Court treated the referee's findings as final and conclusive because neither party filed exceptions.

DISPOSITION

other

CASES CITED

- State ex rel. Counsel for Dis. v. Widtfeldt, 269 Neb. 289, 691 N.W.2d 531 (2005)
- State ex rel. Counsel for Dis. v. Villarreal, 267 Neb. 353, 673 N.W.2d 889 (2004)

OPINION

State Ex Rel. Counsel for Discipline v. Chapin 699 N.W.2d 359

PER CURIAM.

699 N.W.2d 359 (2005)

270 Neb. 56

STATE of Nebraska ex rel. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, relator, v. Robert William CHAPIN, Jr., respondent. No. S-04-1264. Supreme Court of Nebraska. June 24, 2005.

*360 WRIGHT, CONNOLLY, GERRARD, STEPHAN, McCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

INTRODUCTION

On November 9, 2004, formal charges were filed by the office of the Counsel for Discipline of the Nebraska Supreme Court, relator, against Robert William Chapin, Jr., respondent. On December 13, amended formal charges were filed against respondent. The amended formal charges set forth two counts; however, count II of the amended formal charges was later dismissed by relator. Count I of the amended formal charges included allegations that respondent violated the following provisions of the Code of Professional Responsibility: Canon 1, DR 1-102(A)(1) (violating disciplinary rule); Canon 6, DR 6-101(A)(3) (neglecting legal matter); and Canon 9, DR 9-102(B) (4) (failing to return property of client), as well as his oath of office as an attorney, Neb.Rev.Stat. § 7-104 (Reissue 1997). Respondent's answer disputed the allegations. A referee was appointed and heard evidence. The referee filed a report on May 10, 2005. With respect to the single remaining count in the amended formal charges, the referee concluded that respondent's conduct had breached DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(B)(4). The referee made no finding regarding the allegation that respondent had violated his oath of office as an attorney. *361 The referee recommended that respondent receive a public reprimand. On May 13, respondent and relator filed a joint motion for judgment, requesting that this court accept the referee's findings and recommendation and enter judgment thereon. We grant the joint motion for judgment and impose discipline as indicated below.

FACTS

The substance of the referee's findings may be summarized as follows: Respondent was admitted

to the practice of law in the State of Nebraska on September 18, 1981. He has practiced in Lancaster County, Nebraska. With regard to count I of the amended formal charges, the referee found that in October 2002, respondent was retained by an individual to represent him in a civil rights action against the Lancaster County Corrections Department and certain named defendants. The referee further found that from December 2002 through June 2003, respondent neglected his client's case by failing to file amended pleadings and failing to verify that all defendants were served. The referee further found that respondent failed to respond to his client's inquiries and failed to return his client's file when requested to do so. The referee found that respondent's actions constituted a violation of the following provisions of the Code of Professional Responsibility: DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(B)(4). With respect to the discipline to be imposed, the referee recommended that respondent receive a public reprimand. On May 13, 2005, respondent and relator filed a joint motion for judgment, in which the parties concurred with the referee's findings and moved this court to accept the referee's recommendation.

ANALYSIS

As noted above, neither party filed written exceptions to the referee's report. Pursuant to Neb. Ct. R. of Discipline 10(L) (rev.2003), relator and respondent filed a joint motion for judgment. When no exceptions are filed, the Nebraska Supreme Court may consider the referee's findings final and conclusive. *State ex rel. Counsel for Dis. v. Widtfeldt*, 269 Neb. 289, 691 N.W.2d 531 (2005). Based upon the findings in the referee's report, which we consider to be final and conclusive, we conclude the amended formal charges are supported by clear and convincing evidence, and the joint motion for judgment is granted. A proceeding to discipline an attorney is a trial de novo on the record. *Id.* To sustain a charge in a disciplinary proceeding against an attorney, a charge must be established by clear and convincing evidence. *Id.* Violation of a disciplinary rule concerning the practice of law is a ground for discipline. *State ex rel. Counsel for Dis. v. Villarreal*, 267 Neb. 353, 673 N.W.2d 889 (2004). Based upon the undisputed findings of the referee, we find that the above-referenced facts have been established by clear and convincing evidence. Based upon the foregoing evidence, we conclude that by virtue of respondent's conduct, respondent has violated the following provisions of the Code of Professional Responsibility: DR 1-102(A)(1), DR 6-101(A)(3), and DR 9-102(B)(4). The record also supports a finding by clear and convincing evidence that respondent violated his oath of office as an attorney, and we find that respondent has violated said oath. We have stated that "[t]he basic issues in a disciplinary proceeding against a lawyer are whether discipline should be imposed and, if so, the type of discipline *362 appropriate under the circumstances." *State ex rel. Counsel for Dis. v. Widtfeldt*, 269 Neb. at 293, 691 N.W.2d at 535. Neb. Ct. R. of Discipline 4 (rev.2004) provides that the following may be considered as discipline for attorney misconduct: (A) Misconduct shall be grounds for

- (1) Disbarment by the Court; or
- (2) Suspension by the Court; or
- (3) Probation by the Court in lieu of or subsequent to suspension, on such terms as the Court may

designate; or

(4) Censure and reprimand by the Court; or

(5) Temporary suspension by the Court; or

(6) Private reprimand by the Committee on Inquiry or Disciplinary Review Board.

(B) The Court may, in its discretion, impose one or more of the disciplinary sanctions set forth above. See, also, rule 10(N). With respect to the imposition of attorney discipline in an individual case, we have stated that "[e]ach attorney discipline case must be evaluated individually in light of its particular facts and circumstances." *State ex rel. Counsel for Dis. v. Widtfeldt*, 269 Neb. at 293, 691 N.W.2d at 535. For purposes of determining the proper discipline of an attorney, this court considers the attorney's acts both underlying the events of the case and throughout the proceeding. *Id.* We have considered the referee's report and recommendation, the findings of which have been established by clear and convincing evidence, and the applicable law. Upon due consideration, the court finds that respondent should be and hereby is publicly reprimanded.

CONCLUSION

The joint motion for judgment is granted. We find by clear and convincing evidence that respondent violated DR 1-102(A)(1), DR 6-101(A)(3), DR 9-102(B)(4), and his oath of office as an attorney. It is the judgment of this court that respondent should be and is hereby publicly reprimanded. Respondent is directed to pay costs and expenses in accordance with Neb.Rev.Stat. §§ 7-114 and 7-115 (Reissue 1997) and Neb. Ct. R. of Discipline 23(B) (rev.2001) and rule 10(P) within 60 days after an order imposing costs and expenses, if any, is entered by the court. JUDGMENT OF PUBLIC REPRIMAND. HENDRY, C.J., not participating.