

SUPREME COURT OF KANSAS

In the Matter of Edward F. Walsh, IV

286 Kan. 235, 182 P.3d 1218 (2008) · No. No. 99,410 · Decided May 16, 2008

SUMMARY

The Kansas Supreme Court considers disciplinary charges against attorney Edward F. Walsh arising from his handling of two estate-sale transactions and his failure to cooperate with the disciplinary investigation. The court addresses alleged violations involving false statements, interference with witnesses, and failure to assist the Disciplinary Administrator, as well as the respondent's procedural objections. The hearing panel recommended a one-year suspension, while one member recommended indefinite suspension or disbarment.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Kansas
DECIDED	May 16, 2008
DOCKET	No. 99,410
DISPOSITION	other
PROCEDURAL POSTURE	Original proceeding in attorney discipline. The Kansas Supreme Court reviewed a contested disciplinary proceeding and the hearing panel's findings and recommended one-year suspension.
STANDARD OF REVIEW	The panel's findings, conclusions, and recommendations are advisory, but the final hearing report receives the dignity of a jury special verdict or trial-court findings. The Supreme Court adopts findings amply sustained by the evidence, does not reweigh evidence or reassess credibility, and determines whether disputed findings are supported by clear and convincing evidence.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Frank D. Diehl, Deputy Disciplinary Administrator, for petitioner v. Edward F. Walsh, IV

TOPICS

appellate procedure

standard of review

administrative law

contracts

PRACTICE AREAS

legal ethics

attorney discipline

professional responsibility

appellate procedure

QUESTIONS PRESENTED

1. Whether reliance on statements allegedly made during an unrecorded prehearing telephone call violated the disciplinary rules or deprived Walsh of due process.
2. Whether the Johnsons' settlement letter expressing satisfaction and requesting no discipline was required to be treated as a mitigating factor.
3. Whether the disciplinary hearing panel and the Supreme Court had jurisdiction over conduct occurring outside Kansas and partly outside the practice of law.
4. Whether substantial, clear, convincing, and satisfactory evidence supported findings that Walsh violated KRPC 3.4(f), KRPC 4.1(a), and Supreme Court Rule 207(b).
5. What discipline was appropriate for the established violations.

HOLDINGS

1. Any deviation from disciplinary rules or procedures does not warrant dismissal absent a clear and convincing showing of actual prejudice. Walsh failed to show actual prejudice because independent hearing evidence established his attempt to prevent the Johnsons from testifying and he had an opportunity to address the allegation.
2. The hearing panel did not err by declining to give significant mitigating weight to the Johnsons' letter requesting no discipline where the letter was found to have been compelled as a condition of settlement.
3. Kansas disciplinary authorities have jurisdiction over a Kansas-admitted attorney for misconduct occurring outside Kansas and for conduct outside the traditional practice of law when the charged rules authorize discipline for that conduct.
4. Ample, uncontested evidence supported findings that Walsh violated KRPC 4.1(a) by knowingly making a false statement of material fact to a third person and violated KRPC 3.4(f) by requesting nonclients to refrain from voluntarily providing relevant testimony.
5. Indefinite suspension from the practice of law in Kansas was the appropriate discipline, notwithstanding the hearing panel's recommendation of a one-year suspension.

KEY QUOTATIONS

"We view the findings of fact, conclusions of law, and recommendations made by the disciplinary panel as advisory only, but we give the final hearing report the same dignity as a special verdict by a jury or the findings of a trial court." (1227)

"Considering the facts and circumstances of this case, we consider indefinite suspension to be the appropriate discipline, and we adopt the reasoning of hearing panel member John D. Gatz in his concurring opinion."

FACTUAL BACKGROUND

Walsh, a Kansas-licensed attorney, represented or acted for Lynn Steely Estate Sales in two Missouri estate-sale matters. He failed to timely remit proceeds and provide promised accounting materials, made a false statement that requested materials had been mailed, and sent checks that were returned for insufficient funds. During the ensuing disciplinary investigation, he failed to provide required responses and records, failed to appear for an investigator's interview, and conditioned a settlement with the Johnsons on their refraining from voluntarily testifying at the disciplinary hearing.

PROCEDURAL HISTORY

The Disciplinary Administrator filed a formal complaint alleging violations of KRPC 4.1, KRPC 8.4(c), and Supreme Court Rule 207 based on conduct involving two estate sales and the ensuing disciplinary investigation. The hearing panel found violations of KRPC 3.4(f), KRPC 4.1(a), and Supreme Court Rule 207(b), and a majority recommended a one-year suspension. The Supreme Court rejected the respondent's challenges to jurisdiction, procedure, evidentiary sufficiency, and mitigation, found ample evidence of all three violations, and imposed indefinite suspension.

DISPOSITION

other

CASES CITED

- In re Comfort, 284 Kan. 183, 190, 159 P.3d 1011 (2007)
- In re Lober, 276 Kan. 633, 636, 78 P.3d 442 (2003)
- In re Kershner, 250 Kan. 383, 388, 827 P.2d 1189 (1992)
- In re Arnold, 274 Kan. 761, 762, 56 P.3d 259 (2002)
- In re Eastepp, 258 Kan. 766, 907 P.2d 842 (1995)