

SUPREME COURT OF OREGON

In re Complaint as to the Conduct of Koch, 345 Or. 444

198 P.3d 910 (2008) · No. SC S055631; OSB 06-116, 06-117 · Decided December 11, 2008

SUMMARY

The Oregon Supreme Court reviewed a lawyer disciplinary proceeding involving Jacqueline L. Koch's representation of two clients in dissolution matters. The court found violations involving neglect, client communication, handling and accounting for client funds, and failure to respond to disciplinary authorities, but rejected several other charged violations. It imposed a 120-day suspension from the practice of law without probation.

CASE DETAILS

COURT	Supreme Court of Oregon
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Oregon
DECIDED	December 11, 2008
DOCKET	SC S055631; OSB 06-116, 06-117
DISPOSITION	other
PROCEDURAL POSTURE	The Oregon State Bar petitioned for review of a trial panel's lawyer-discipline decision. The accused defaulted by failing to answer the Bar's complaint, and the trial panel imposed a five-month suspension stayed pending one year's probation without making express findings on the charged violations. The Oregon Supreme Court reviewed the matter de novo and determined both the violations and the appropriate sanction.
STANDARD OF REVIEW	De novo review of the facts in lawyer disciplinary proceedings; express credibility findings based on witness demeanor receive deference.
PRECEDENTIAL VALUE	Published Oregon Supreme Court en banc opinion; precedential
PARTIES	Oregon State Bar v. Jacqueline L. Koch, accused

TOPICS

- family law procedure
- dissolution of marriage
- qdro
- default
- civil procedure

PRACTICE AREAS

legal ethics and professional responsibility

lawyer discipline

family law

QUESTIONS PRESENTED

1. Whether factual allegations deemed true by an accused's default automatically establish charged ethical violations by clear and convincing evidence.
2. Whether Koch violated the professional-conduct rules governing neglect, client communications, client funds, termination of representation, and responses to disciplinary authorities.
3. What sanction was appropriate for the violations proved by the Bar.
4. Whether probation was appropriate in addition to or instead of a suspension.

HOLDINGS

1. A default deems the complaint's factual allegations true, but the trial panel must still determine whether those facts establish the charged ethical violations by clear and convincing evidence before imposing a sanction.
2. The Supreme Court may determine de novo whether the Bar proved charged ethical violations by clear and convincing evidence when the record contains no witness testimony requiring deference on the charged conduct.
3. Koch violated RPC 1.4(a), RPC 1.15-1(d), and DR 9-101(C)(3) by failing, despite Dolbeer's requests, to provide an accounting of client funds, and violated RPC 1.15-1(d) by failing promptly to deliver the unearned balance of his retainer.
4. Koch violated RPC 1.3 by neglecting Mahler's legal matter, RPC 1.4(a) by failing to keep Mahler informed and respond to reasonable requests, and RPC 8.1(a)(2) by knowingly failing twice to respond to disciplinary-authority demands.
5. The Bar failed to prove that Koch violated RPC 1.15-1(d), RPC 1.16(d), or RPC 1.4(b) in the Mahler matter.
6. A 120-day suspension from the practice of law was appropriate, and probation was not appropriate.

KEY QUOTATIONS

"The fact, however, that the factual allegations in the complaint are deemed true as a result of the accused's default does not mean that those facts necessarily establish the charged violations by clear and convincing evidence; rather, the trial panel still has to make that finding." (912)

"Only after finding that an ethical violation has occurred may the trial panel determine the appropriate sanction." (912)

"Not only is the phrase 'reasonably necessary' a legal conclusion, but the complaint never specifies the 'matter' that the accused failed to explain to Mahler or why any explanation regarding that unspecified matter was reasonably necessary for Mahler to make an informed decision." (916)

“The accused is suspended from the practice of law for 120 days, effective 60 days from the date of the filing of this decision.” (919)

FACTUAL BACKGROUND

Koch represented Mark Dolbeer in a dissolution proceeding and failed, despite repeated requests, to provide an accounting of his retainer or promptly deliver the unearned balance after representation ended. She also represented Beth Anne Mahler in a dissolution proceeding involving preparation of a qualified domestic relations order, but delayed informing Mahler that another lawyer would prepare the QDRO and later failed to respond to Mahler's and the other lawyer's repeated requests for information and assistance. In both matters, Koch failed to provide requested information to Bar disciplinary authorities, although neither client suffered monetary loss.

PROCEDURAL HISTORY

The Bar charged Koch with multiple violations arising from her representation of Mark Dolbeer and Beth Anne Mahler. After Koch failed to answer, the Bar entered a default order deeming the complaint's factual allegations true. The trial panel proceeded directly to sanction and imposed a five-month stayed suspension. On the Bar's petition for review, the Supreme Court independently determined whether the allegations and record established the violations by clear and convincing evidence, then imposed a 120-day suspension without probation.

DISPOSITION

other

CASES CITED

- In re Magar, 337 Or. 548, 100 P.3d 727 (2004)
- In re Kluge, 332 Or. 251, 27 P.3d 102 (2001)
- In re Fitzhenry, 343 Or. 86, 162 P.3d 260 (2007)
- In re Knappenberger, 340 Or. 573, 135 P.3d 297 (2006)
- Porter v. Hill, 314 Or. 86, 838 P.2d 45 (1992)
- In re Arbuckle, 308 Or. 135, 775 P.2d 832 (1989)
- In re Redden, 342 Or. 393, 153 P.3d 113 (2007)
- In re LaBahn, 335 Or. 357, 67 P.3d 381 (2003)
- In re Meyer, 328 Or. 220, 970 P.2d 647 (1999)
- In re Miles, 324 Or. 218, 923 P.2d 1219 (1996)
- In re Haws, 310 Or. 741, 801 P.2d 818 (1990)
- In re Murdock, 328 Or. 18, 968 P.2d 1270 (1998)
- In re Obert, 336 Or. 640, 89 P.3d 1173 (2004)

