SUPREME COURT OF OKLAHOMA

State of Oklahoma ex rel. Oklahoma Bar Association v. Tracy Smith, a.k.a. Tracy Smith Zahl

Smith, 2011 OK 8 (Okla. 2011) · No. SCBD No. 5615 · Decided January 31, 2011

SUMMARY

The Oklahoma Supreme Court publicly reprimanded Tracy Smith and imposed a one-year deferred suspension subject to probationary conditions for attempting to obtain a controlled substance through a forged prescription and for related substance-use conduct. The Court found violations of Oklahoma Rules of Professional Conduct 8.4(a), (b), and (c), and Rule 1.3 of the Rules Governing Disciplinary Proceedings, while giving substantial weight to Smith's self-reporting, cooperation, treatment, and commitment to rehabilitation.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Per Curiam; Colbert, V.C.J.; Kauger, J.; Watt, J.; Winchester, J.; Edmondson, J.; Reif, J.; Combs, J.
JURISDICTION	Oklahoma
DECIDED	January 31, 2011
DOCKET	SCBD No. 5615
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary proceeding brought by the Oklahoma Bar Association under Rule 6 of the Rules Governing Disciplinary Proceedings. The matter was uncontested before the Professional Responsibility Tribunal, which recommended a public reprimand and a one-year deferred suspension subject to probationary conditions; the Supreme Court conducted de novo review.
STANDARD OF REVIEW	De novo review. The Supreme Court independently examines the record and assesses the weight and credibility of the evidence and is not bound by the parties' admissions or stipulations or by the tribunal's findings or recommendation.
PRECEDENTIAL VALUE	Published precedential opinion

PARTIES	State of Oklahoma ex rel. Oklahoma Bar Association v. Tracy Smith, a.k.a. Tracy Smith Zahl

TOPICS

remedies · appellate procedure · standard of review

PRACTICE AREAS

legal ethics and professional responsibility · attorney discipline · substance-abuse-related professional misconduct

QUESTIONS PRESENTED

1. Whether respondent's admitted conduct violated Rule 8.4(a), (b), and (c) of the Oklahoma Rules of Professional Conduct and Rule 1.3 of the Rules Governing Disciplinary Proceedings.
2. Whether the disciplinary proceeding was properly brought under Rule 6 rather than Rule 10 of the Rules Governing Disciplinary Proceedings.
3. What professional discipline was appropriate in light of respondent's misconduct, addiction, rehabilitation, self-reporting, cooperation, lack of client harm, and other mitigating circumstances.
4. Whether respondent should be ordered to pay the costs of the disciplinary proceeding.

HOLDINGS

1. The proceeding was properly commenced under Rule 6 because there was no evidence that respondent was mentally or physically incapacitated or unable to practice law, which would have supported proceeding under Rule 10.
2. Clear and convincing evidence established that respondent violated Rule 8.4(a), (b), and (c) of the Oklahoma Rules of Professional Conduct and Rule 1.3 of the Rules Governing Disciplinary Proceedings.
3. Public censure, coupled with a one-year deferred suspension subject to the agreed probationary conditions, was appropriate discipline.
4. Respondent was ordered to pay $1,121.15 in costs within ninety days after the opinion became final.

KEY QUOTATIONS

> *"Our review of the proceedings before the PRT is de novo."* (246 P.3d at 1093)

> *"The respondent in the case at bar committed the criminal offense of attempting to obtain a controlled dangerous substance by forgery or fraud. This is serious misconduct and it is not to be taken lightly."* (246 P.3d at 1096)

> *"Based on the particular facts and circumstances of this case, we determine that public censure coupled with a deferred suspension of one year, subject to the agreed probationary conditions, is appropriate to serve as a deterrent and to encourage a permanent change of lifestyle."* (246 P.3d at 1096)

FACTUAL BACKGROUND

Respondent, an Oklahoma lawyer, developed an addiction to prescription pain medications and attempted to obtain Tussionex, a controlled substance, using a forged prescription bearing a physician's DEA number. She was arrested at a pharmacy after the pharmacy and police verified the prescription, and she admitted that she had obtained other drugs through forged prescriptions in the preceding weeks. She entered inpatient treatment, later experienced several relapses involving diet pills and marijuana, and thereafter maintained sobriety through counseling, support meetings, supervision, and random drug testing.

PROCEDURAL HISTORY

The Oklahoma Bar Association charged respondent with professional misconduct based on attempting to obtain controlled substances with forged prescriptions and subsequent substance use relapses. Respondent admitted the material allegations and violations, and the Professional Responsibility Tribunal recommended a public reprimand, one-year deferred suspension, and ten probationary conditions. The Supreme Court independently reviewed the record, adopted the tribunal's factual findings, imposed the recommended discipline, and assessed costs.

DISPOSITION

other

CASES CITED

- State ex rel. Oklahoma Bar Ass'n v. Kinsey, 2009 OK 31, 212 P.3d 1186
- State ex rel. Oklahoma Bar Ass'n v. Willis, 1993 OK 138, 863 P.2d 1211
- State ex rel. Oklahoma Bar Ass'n v. Garrett, 2005 OK 91, 127 P.3d 600
- State ex rel. Oklahoma Bar Ass'n v. McBride, 2007 OK 91, 175 P.3d 379
- State ex rel. Oklahoma Bar Ass'n v. Donnelly, 1992 OK 164, 848 P.2d 543
- State ex rel. Oklahoma Bar Ass'n v. Burns, 2006 OK 75, 145 P.3d 1088