

SUPREME COURT OF SOUTH CAROLINA

In the Matter of Paul Winford Owen, Jr.

417 S.C. 85 (2016) · No. Appellate Case No. 2016-001060 · Decided July 20, 2016

SUMMARY

The South Carolina Supreme Court accepted an Agreement for Discipline by Consent and publicly reprimanded attorney Paul Winford Owen, Jr. for misconduct arising from his conduct in a bankruptcy court proceeding. The court found violations involving competence, frivolous claims, candor to the tribunal, compliance with tribunal rules, dishonesty, and conduct prejudicial to the administration of justice, and imposed costs and completion of an ethics program as conditions.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Per Curiam; Pleicones, C.J.; Beatty, J.; Kittredge, J.; Hearn, J.; Few, J.
JURISDICTION	South Carolina
DECIDED	July 20, 2016
DOCKET	Appellate Case No. 2016-001060
DISPOSITION	other
PROCEDURAL POSTURE	Attorney disciplinary matter submitted to the South Carolina Supreme Court through an Agreement for Discipline by Consent under Rule 21 of the Rules for Lawyer Disciplinary Enforcement.
PRECEDENTIAL VALUE	published

TOPICS

bankruptcy

appellate procedure

PRACTICE AREAS

legal ethics

attorney discipline

bankruptcy

QUESTIONS PRESENTED

1. Whether respondent's admitted conduct violated the specified South Carolina Rules of Professional Conduct and Rules for Lawyer Disciplinary Enforcement.

2. Whether respondent's misconduct warranted a public reprimand and the conditions proposed in the Agreement for Discipline by Consent.

HOLDINGS

1. Respondent's admitted conduct violated Rules 1.1, 3.1, 3.3, 3.4, 8.4(a), 8.4(d), and 8.4(e) of Rule 407, SCACR, and Rule 7(a)(1) of Rule 413, SCACR.
2. Respondent's misconduct warranted a public reprimand with conditions, and the court accepted the Agreement for Discipline by Consent.

KEY QUOTATIONS

"We find respondent's misconduct warrants a public reprimand." (Conclusion)

"Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct." (Conclusion)

FACTUAL BACKGROUND

Respondent was sanctioned by the United States Bankruptcy Court for the District of South Carolina and fined \$5,000 after making an argument based on *Jesinoski v. Countrywide Home Loans* while the parties' dispute was still in binding arbitration. He admitted that the arbitration was the sole forum in which to raise that argument and that presenting it in bankruptcy court caused the proceeding to be groundless. He also admitted falsely telling the bankruptcy judge that he was proceeding at the Bankruptcy Trustee's direction when he was actually responsible for the argument, although he later corrected the statement and apologized.

PROCEDURAL HISTORY

The Office of Disciplinary Counsel and respondent entered into an Agreement for Discipline by Consent in which respondent admitted misconduct and consented to an admonition or public reprimand with conditions. The Supreme Court of South Carolina accepted the Agreement and imposed a public reprimand, together with payment of disciplinary costs and completion of an ethics program.

DISPOSITION

other

CASES CITED

- *Jesinoski v. Countrywide Home Loans*, 574 U.S. ___, 135 S. Ct. 790, 190 L. Ed. 2d 650 (2015)
- *In the Matter of Toney*, 396 S.C. 303, 721 S.E.2d 437 (2012)

OPINION

PER CURIAM.

THE STATE OF SOUTH CAROLINA In The Supreme Court In the Matter of Paul Winford Owen, Jr., Respondent. Appellate Case No. 2016-001060 Opinion No. 27650 Submitted June 23,

2016 – Filed July 20, 2016 PUBLIC REPRIMAND Lesley M. Coggiola, Disciplinary Counsel, and William C. Campbell, Assistant Disciplinary Counsel, both of Columbia, for Office of Disciplinary Counsel.

John P. Freeman, Esquire, of Columbia, for Respondent. PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent (Agreement) pursuant to Rule 21 of the Rules for Lawyer Disciplinary Enforcement (RLDE) contained in Rule 413 of the South Carolina Appellate Court Rules (SCACR).

In the Agreement, respondent admits misconduct and consents to the imposition of an admonition or public reprimand with conditions. We accept the Agreement and issue a public reprimand with conditions as set forth hereafter in this opinion.

The facts, as set forth in the Agreement, are as follows. Facts By order dated October 27, 2015, respondent was sanctioned by the Honorable David R. Duncan, a judge of the United States Bankruptcy Court for the District of South Carolina, and assessed a fine of \$5,000.00.

The sanction arose out of respondent's conduct in a bankruptcy court hearing held on August 25, 2015. At the time of the hearing, the parties were in binding arbitration and respondent's arguments were still under consideration by the arbitrator. Nevertheless, during the bankruptcy hearing, respondent made arguments based on the United States Supreme Court decision in *Jesinoski v. Countrywide Home Loans*, 574 U.S. ___, 135 S.Ct.

790, 190 L.Ed.2d 650 (2015). Respondent admits the arbitration proceeding was the sole forum before which to raise his argument under *Jesinoski* and that he should not have presented the *Jesinoski* argument to the bankruptcy court.

As a result of respondent's conduct, the bankruptcy court and opposing party were required to endure a proceeding which was groundless. Further, respondent admits that, at the hearing, he told Judge Duncan he was proceeding at the direction of the Bankruptcy Trustee when, in actuality, he was responsible for the argument. Respondent later wrote a letter to Judge Duncan in which he called attention to his misstatement and apologized to all concerned.

Respondent acknowledges the Court deserves no less than complete, candid disclosures which are truthful at the time they are made. He agrees his misstatement regarding the Bankruptcy Trustee was not excused by his corrective disclosure in his letter to the bankruptcy court. Law Respondent admits that by his conduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation); Rule 3.1 (lawyer shall not bring or defend proceeding, or assert or controvert an issue therein, unless there is basis in law and fact for doing so that is not frivolous); Rule 3.3 (lawyer shall not knowingly make false statement of fact to tribunal); Rule 3.4 (lawyer shall not knowingly disobey obligation

under rules of tribunal); 8.4(a) (it is professional misconduct for lawyer to violate Rules of Professional Conduct); Rule 8.4(d) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (lawyer shall not engage in conduct prejudicial to administration of justice).

Respondent also admits he has violated the following Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct). Conclusion We find respondent's misconduct warrants a public reprimand.¹ Accordingly, we accept the Agreement and publicly reprimand respondent for his misconduct.

Within thirty (30) days of the date of this opinion, respondent shall pay the costs incurred in the investigation and prosecution of this matter by ODC and the Commission on Lawyer Conduct (Commission). Within six (6) months of the date of this opinion, respondent shall complete the Legal Ethics and Practice Program Ethics School and shall provide proof of completion of the program to the Commission no later than ten (10) days after the program has concluded.

PUBLIC REPRIMAND. PLEICONES, C.J., BEATTY, KITTREDGE, HEARN and FEW, JJ., concur. 1 Respondent's disciplinary history includes an admonition issued in 2007. See Rule 7(b) (4), RLDE (admonition may be used in subsequent proceeding as evidence of prior misconduct solely upon issue of sanction). Further, in 2005, he entered into a deferred disciplinary agreement which cites some of the Rules of Professional Conduct respondent admits violating in the current matter.

See *In the Matter of Toney*, 396 S.C. 303, 721 S.E.2d 437 (2012) (Court can consider prior deferred disciplinary agreement involving similar misconduct in concluding lawyer's disciplinary history demonstrates pattern of misconduct).