

SUPREME COURT OF WASHINGTON

In the Matter of the Disability Proceeding Against John M. Keefe,
Attorney at Law

154 P.3d 213 (Wash. 2007) · No. 200,388-5 · Decided March 22, 2007

SUMMARY

The Washington Supreme Court affirmed the transfer of attorney John M. Keefe to disability inactive status. The court held that substantial evidence supported findings that Keefe's mental condition prevented him from competently practicing law and from defending himself or assisting counsel in his disciplinary proceeding. The court also upheld reliance on documentary evidence and expert testimony despite Keefe's refusal to undergo an in-person mental examination.

CASE DETAILS

COURT	Supreme Court of Washington
WRITING FOR THE COURT	Owens, J.; Gerry L. Alexander, C.J.; Tom Chambers, J.; Charles W. Johnson, J.; Barbara A. Madsen, J.; Mary E. Fairhurst, J.; James M. Johnson, J.; Bobbe J. Bridge, J.; Marlin J. Appelwick, J. Pro Tem
JURISDICTION	Washington
DECIDED	March 22, 2007
DOCKET	200,388-5
DISPOSITION	affirmed
PROCEDURAL POSTURE	Keefe appealed to the Washington Supreme Court from the Washington State Bar Association Disciplinary Board's decision adopting a hearing officer's recommendation that he be transferred to disability inactive status.
STANDARD OF REVIEW	The court reviews challenged factual findings as it would in a disciplinary proceeding, giving considerable weight to the hearing officer's findings, particularly credibility determinations, and upholding them if supported by substantial evidence. Conclusions of law concerning ultimate incapacity are upheld when supported by the factual findings.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court opinion
PARTIES	John M. Keefe v. Washington State Bar Association

TOPICS

ada / disability

appellate procedure

administrative law

standard of review

PRACTICE AREAS

attorney discipline

professional disability proceedings

appellate procedure

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QUESTIONS PRESENTED

1. Whether substantial evidence supported the hearing officer's finding that Keefe lacked the mental capacity to practice law.
2. Whether an expert psychiatrist could provide a sufficient basis for an incapacity opinion by reviewing Keefe's writings and litigation records without conducting an in-person examination.
3. Whether substantial evidence supported the finding that Keefe lacked the capacity to defend himself in the disciplinary proceeding, with or without counsel.

HOLDINGS

1. An expert psychiatrist may permissibly base an incapacity opinion on documentary evidence, including the respondent attorney's writings and transcripts, when that information provides a reasonable basis for the opinion and is of a type reasonably relied upon by experts in the field.
2. Substantial evidence supported the finding that Keefe's mental disability rendered him incapable of competently practicing law, even though the disability might affect his judgment only in particular cases related to his delusional system.
3. An attorney is not competent to defend a disciplinary proceeding when mental impairment prevents rational assistance of counsel or, when appearing pro se, prevents intelligent waiver of counsel and adequate representation; substantial evidence supported that finding as to Keefe.

KEY QUOTATIONS

"Substantial evidence exists if the record contains 'evidence in sufficient quantum to persuade a fair-minded, rational person of the truth of a declared premise.'" (217)

"The fact that Keefe may have raised some legitimate arguments and defenses does not necessarily render him capable of defending himself." (220)

FACTUAL BACKGROUND

Keefe, a Washington attorney, made extensive allegations during his disciplinary proceeding that the hearing had been fixed by conspiratorial groups, that an imposter had posed as disciplinary counsel, and that various individuals had interfered with his communications. He refused to undergo an independent mental examination, did not attend the disability hearing, and instructed his appointed counsel not to participate. Based on lay testimony and Dr. Brian Grant's review of more than 25 exhibits and transcripts, the hearing officer found that Keefe's delusional and paranoid thinking impaired his ability to process information, reason, distinguish fantasy from reality, practice law, and assist in his defense.

PROCEDURAL HISTORY

The Washington State Bar Association initiated a disciplinary proceeding against Keefe. After Keefe made delusional statements during the proceeding and refused an independent mental examination and did not attend the disability hearing, the Association initiated a supplemental disability proceeding. The hearing officer found by a clear preponderance of the evidence that Keefe lacked the capacity to practice law and to defend the disciplinary proceeding; the Board affirmed by a nine-to-three vote. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Disability Proceeding Against Diamondstone, 153 Wash. 2d 430, 438, 440, 105 P.3d 1 (2005)
- In re Disciplinary Proceeding Against Poole, 156 Wash. 2d 196, 208-09 & n.2, 125 P.3d 954 (2006)
- In re Disciplinary Proceeding Against Bonet, 144 Wash. 2d 502, 511, 29 P.3d 1242 (2001)
- State v. Roberts, 142 Wash. 2d 471, 522, 14 P.3d 713 (2000)
- Sunbreaker Condo. Ass'n v. Travelers Ins. Co., 79 Wash. App. 368, 374, 901 P.2d 1079 (1995)
- In re Disciplinary Proceeding Against Meade, 103 Wash. 2d 374, 378-81, 693 P.2d 713 (1985)
- In re Disciplinary Proceeding Against Ryan, 97 Wash. 2d 284, 287, 644 P.2d 675 (1982)
- In re Campbell, 74 Wash. 2d 276, 279-81, 444 P.2d 784 (1968)
- State v. Gwaltney, 77 Wash. 2d 906, 907, 468 P.2d 433 (1970)
- In re Disciplinary Proceeding Against Brown, 94 Wash. App. 7, 13-14, 972 P.2d 101 (1998)