

SUPREME COURT OF IOWA

Iowa Supreme Court Attorney Disciplinary Board v. Carty

738 N.W.2d 622 (Iowa 2007) · No. No. 07-0385 · Decided August 31, 2007

SUMMARY

The Iowa Supreme Court held that attorney John W. Carty violated disciplinary rules by collecting a probate fee prematurely, failing to reduce his ordinary fee after the estate was correctly valued, and collecting duplicative extraordinary fees. The court imposed a sixty-day suspension, required restitution of \$6,165 to a trust established under the decedent's will, and taxed the proceeding's costs against Carty.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Cady, Justice
JURISDICTION	Iowa
DECIDED	August 31, 2007
DOCKET	No. 07-0385
DISPOSITION	other
PROCEDURAL POSTURE	The Iowa Supreme Court Attorney Disciplinary Board charged Carty with violations of the Iowa Code of Professional Responsibility for Lawyers. The Grievance Commission found violations and recommended a suspension of at least four months. The Iowa Supreme Court reviewed the matter de novo.
STANDARD OF REVIEW	Attorney disciplinary matters are reviewed de novo. The court gives the Grievance Commission's findings weight but is not bound by them.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion; precedential authority on the stated disciplinary and probate-fee rules.
PARTIES	Iowa Supreme Court Attorney Disciplinary Board v. John W. Carty

TOPICS

- probate procedure
- estate administration
- probate
- estate litigation

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Carty violated DR 2-106(A) by collecting the full ordinary probate fee before the final report was filed and costs were paid.
2. Whether Carty violated DR 2-106(A) by failing to reduce his ordinary fee claim after the estate's gross value was corrected downward.
3. Whether Carty violated DR 2-106(A) by charging and collecting duplicative extraordinary fees for services included in his ordinary-fee compensation.
4. Whether the violations also constituted violations of DR 1-102(A)(1) and DR 1-102(A)(6).
5. What discipline was appropriate for the violations.

HOLDINGS

1. Carty violated DR 2-106(A) by accepting the full ordinary probate fee before filing the final report and paying the costs, contrary to Iowa Court Rule 7.2(4).
2. Carty violated DR 2-106(A) by failing to amend his ordinary fee claim after the estate's gross value was reduced.
3. Carty violated DR 2-106(A) by charging and collecting extraordinary fees for services that duplicated ordinary services for which he had already been compensated.
4. By violating DR 2-106(A), Carty also violated DR 1-102(A)(1), and his conduct violated DR 1-102(A)(6) because it adversely reflected on his fitness to practice law.
5. A sixty-day suspension was warranted, together with restitution of \$6,165, costs, and compliance with the applicable reinstatement and client-notification rules.

KEY QUOTATIONS

“A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.” (624)

“Prior to his reinstatement under Iowa Court Rule 35.12(2), Carty shall make restitution in the amount of \$6165 to the trust established under the Beech will for distribution to the beneficiaries of the trust.” (625)

FACTUAL BACKGROUND

Carty served as attorney for the estate of Ralph G. Beech and had prepared Beech's will. He received the full ordinary probate fee before filing the final report and paying costs, and after the estate's gross value was reduced by nearly \$90,000, he did not amend his fee claim. He also sought and collected extraordinary fees that included services for which he had already been compensated as ordinary services. Carty did not return the excessive or duplicative fees after the errors were discovered.

PROCEDURAL HISTORY

Carty represented the estate of Ralph G. Beech and received ordinary and extraordinary probate fees. After the estate's value was reduced and duplicative services were identified, Carty did not correct the excessive fees. The Board charged him with disciplinary violations, and the Grievance Commission recommended a suspension of not less than four months. On de novo review, the Iowa Supreme Court found violations and imposed a sixty-day suspension, restitution, and costs.

DISPOSITION

other

CASES CITED

- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Bernard, 653 N.W.2d 373, 375 (Iowa 2002)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Beckman, 674 N.W.2d 129, 137-38 (Iowa 2004)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Johnston, 732 N.W.2d 448, 454 (Iowa 2007)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Fleming, 602 N.W.2d 340, 340 (Iowa 1999)
- Iowa Supreme Ct. Bd. of Prof'l Ethics & Conduct v. Evans, 537 N.W.2d 783, 784-86 (Iowa 1995)
- Comm'n on Prof'l Ethics & Conduct v. Winkel, 415 N.W.2d 601, 602 (Iowa 1987)